

**Town of Milford
Zoning Board of Adjustment
April 5, 2018
Case #2018-11
North River Road Properties, LLC
Variance**

Present: Steven Bonczar, Chair
Jason Plourde, Vice Chair
Michael Thornton
Joan Dargie
Rob Costantino
Wade Scott Campbell, Alternate
Karin Lagro, Alternate
Tracy Steel, Alternate

Absent: Robin Lunn, Zoning Administrator
Laura Dudziak, Board of Selectmen Representative

Secretary: Peg Ouellette

North River Road Properties, LLC, for the property located at 0 Chase Lane, Milford Tax Map 17, Lot 11-1, in the Residential A district, is seeking a Variance of the Milford Zoning Ordinances per Article V, Section 5.02.4 to allow for the construction of an onsite septic system on a lot with less than 150 feet of frontage and 40,000 SF in size.

APPROVED June 7, 2018

Steven Bonczar, Chair, opened the meeting and introduced the Board members. All five regular Board members were present, so the Alternates, T. Steel, W. Campbell and K. Lagro could ask questions of the Board and applicants but not participate in the deliberation or voting. He informed all of the procedures of the Board. He read the notice of hearing.

Chad Branon, Engineer with Fieldstone Land Consultants, representing North River Road Properties, LLC, came forward. They were seeking a variance from Sec. 5.02.4 to permit construction of an inside septic system on Tax Map 17, Lot 11-1 in the Res. A district. This section required that all single family lots not served by both municipal sewer and water have a minimum of 40,000 SF with a minimum of 150 ft. of frontage on a Class V or better road. Property was on south side of Chase Lane with Falconer Ave. to the east and Patch Hill Ln. to the west. Had approx. .429 acres with 147 ft. frontage on Chase Lane. Applicant owns property and trying to build one existing parcel, but discovered connection to municipal sewer not possible. When property was created in 2006 the proposal was to connect to municipal sewer on Chase Ln. He met with Wastewater Dept. and was informed that a connection was not possible because the sewer main

55 along the frontage was actually a 4 inch force main that you cannot tie into. Option of pumping sewer up
56 Chase Ln. to closest manhole. Town didn't want private sewer line in their right of way. Wastewater Dept.
57 felt the best option was to come before ZBA and seek a variance to install an onsite septic system on this
58 property. At completion of that meeting he met with Community Development staff and they guided him in
59 preparing the application. He received a letter from Bradley T. Witfield of the Water Dept. dated 3/12/18
60 stating that he was informed that the property at Chase Ln. didn't have access to municipal sewer. He read
61 that letter. He said they don't have a physical way to connect.
62 S. Bonczar specified that the letter from the Water Dept. be designated as Exhibit 1.
63 C. Branon read the responses to the five criteria for a variance in the application. He added comments as
64 follows: 1. He said it will not look any different to abutters. Will be a single-family home. They performed
65 a test pit onsite and prepared subsurface disposal design which would meet state and local criteria except for
66 the dimensional requirements because of the existing size of the lot.
67 4. He added that they worked with the builder and felt that new houses ultimately would improve
68 surrounding property values. 5. 1. He said that they did not create the hardship; they were seeking avenue
69 requested by the town staff to make this lot buildable. He said the hardship lies with the land and conditions
70 of sewer infrastructure as it relates to this property. No ability to change the geometry of the land and size of
71 the property. They were just short on the frontage. Property was of adequate size to accommodate an onsite
72 septic system. 5.2.B He added that he wouldn't read this one, it but generally speaking they had taken all
73 avenues to build in compliance with approval granted in 2006 but find the only avenue to build on it, because
74 of the infrastructure and because the town didn't want a private sewer line within their right of way, the only
75 option was to build an onsite system. They have to have a variance to build that in order to reasonably use
76 this property. He added that they had a letter of support from the Wastewater Dept. documenting that; and he
77 would testify that they were told by them this was the best avenue, the onsite septic system. Property cannot
78 be used in strict conformance with ordinance because they can't tie into the existing sewer system. 5.2.C –
79 He didn't believe this applied.
80 S. Bonczar asked the Bd. for questions.
81 R. Costantino asked how the property got water.
82 C. Banon said it had water on Chase Lane.
83 R. Costantino said, town water, but no town sewer?
84 C. Branon said that was correct.
85 J. Dargie said when it was approved in 2006 it was thought to have town sewer and nobody ever verified it.
86 C. Branon said that was his assumption.
87 J. Dargie asked if anyone could go back and look at the approval for the subdivision.
88 C. Branon said town staff researched the file. After meeting with Wastewater Dept. they met with L. Daley
89 and asked him to outline what they needed to do to file for this permit, or other options. They researched the
90 file and all they found was that plan and the last note on that plan saying the lot should be tied to municipal
91 sewer. At that time both were owned by the same property owner. Should have been an easement so that
92 somebody could install a sewer line to connect out to Falconer Ave. Not an option because properties now in
93 two separate ownerships. Appeared it was an oversight.
94 J. Dargie asked if reason for the requirement was for larger lots to have septic?
95 S. Bonczar said he thought it was density. When plans were drawn up, that was the assumption. It met A
96 district for lot size because it would be tied into water and sewer. In this case, they had sewer there but based
97 on the design of that sewer it couldn't be connected. It ended up being a non-buildable lot.
98 J. Dargie said from the size they want to put on this property the septic fit on that property.
99 C. Branon said it was a large lot. They do septic systems on quarter acre lots. This was a half acre. They
100 don't have to position a well on the lot. In his opinion, with 40,000 SF and 150 ft. frontage it would
101 accommodate a well and septic on a lot. It was a density situation where the town would like to see more
102 dense development where the infrastructure is. Septic design met all local and state requirements. Will not
103 be seeking any waivers for septic design.
104 J. Plourde asked if he was saying municipal sewer not provided on Chase Lane.
105 C. Branon said it was not.
106 J. Plourde said if it was they would not be there.
107 S. Bonczar asked if it was pumped.

C. Branon said it was a pressure line. Can't tie a gravity into a pressure line, or you will fill someone's basement.
J. Plourde said to S. Bonczar that in R. Lunn's (Zoning Administrator) notes, it said that as a condition of approval both lots connect to municipal sewer and water. J. Plourde said since this was not possible with this case with this lot, did that negate the previous approval?
S. Bonczar said no.
C. Branon said it didn't. L. Daley (Community Development Director) and R. Lunn sent them to ZBA. It can't because the lot exists. The subdivision had been recorded at the Registry and sold to his client. No going back now. This process was set up for this unique situation.
J. Plourde said reason for his question was he didn't know if they had to go back to the Planning Bd.
S. Bonczar said except for this, they wouldn't be there. He asked for any further questions from the Bd.
None. He opened public comment. None. He again asked for any other questions from the Bd. None.
S. Bonczar closed the public comment.

S. Bonczar moved into discussion of criteria for a variance.

Granting the variance would not be contrary to the public interest because:

S. Bonczar said it was a buildable lot. It was a technical issue. It was a lot that existed but couldn't build on it without some type of relief based on the technical issue of the sewer. He thought it would not be contrary to public interest. Still allowing a single family home.
J. Dargie said it was the same size, not going to look any different.
R. Costantino said it was not affecting anybody else.

If the variance were granted, the spirit of the ordinance would be observed because:]

J. Dargie said it was same size lot.
S. Bonczar said it was a single family.
J. Dargie said the spirit of the ordinance was that they could have a smaller lot.
M. Thornton said if you could connect, you would.
S. Bonczar said it was not going to go down the street.

Granting the variance would do substantial justice because:

S. Bonczar didn't see by denying this, the public would gain. Applicant would lose ability to build on a buildable approved lot.
J. Dargie agreed.
R. Costantino said there would be no affect on anybody else.
S. Bonczar asked -what would anybody else gain by denying?
R. Costantino said nothing.

Granting the variance would not diminish the value of the surrounding properties because:

S. Bonczar said nothing was really changing except there will be a septic, while the density was the same.
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Unnecessary hardship:

J. Dargie said they tried to connect to sewer. They could connect if the town would allow them a private connection in the right of way. Basically gave them no other choice.
S. Bonczar said the whole idea of the ordinance was for a certain density. They were not changing that. If this was a new lot you could say they had that density but had to be connected to sewer. This was already approved and the buyer already has the assumption it was already approved and they could be connected, but they couldn't. Remedy was a private system.
J. Plourde referred to the Handbook about characteristic of the land making it different than others, unnecessary hardship could be claimed. What made this parcel different was that it was on Chase Ln., which didn't have sewer. It was the location of the lot that was the land characteristic that brought in the unnecessary hardship.
M. Thornton said somewhere along the line someone had opportunity to route a sewer line that would conform, didn't.

162 S. Bonczar said the town facility, meaning the sewer line, couldn't support this lot even though it was
 163 approved with that intention.
 164
 165 **Is the proposed use a reasonable one?**
 166 S. Bonczar said they were putting a single family on land designed for that, with water and sewer.
 167 J. Dargie said this would allow them to have less than 150 ft frontage and less than an acre.
 168 J. Plourde said, looking at the plan, it was 146 ft. but it was really about lot size, which was less.
 169 S. Bonczar said if it met the sewer it would be 100 ft. It was the sewer connection that caused it not to fit the
 170 frontage.
 171 J. Plourde said if it was in Category A there wouldn't be a problem.
 172 S. Bonczar said that was the intention when it was approved.
 173 J. Plourde and J. Dargie agreed.
 174
 175
 176 S. Bonczar then proceeded to the vote on the criteria for a variance.
 177
 178 **1. Would granting the variance not be contrary to the public interest?**
 179 J. Plourde – yes; J. Dargie – yes; M. Thornton – yes; R. Costantino – yes; S. Bonczar - yes
 180 **2. Could the variance be granted without violating the spirit of the ordinance?**
 181 J. Dargie – yes; J. Plourde – yes; R. Costantino – yes; M. Thornton – yes; S. Bonczar - yes
 182 **3. Would granting the variance do substantial justice?**
 183 J. Dargie – yes; J. Plourde – yes; M. Thornton – yes; R. Costantino – yes; S. Bonczar - yes
 184 **4. Could the variance be granted without diminishing the value of abutting property?**
 185 R. Costantino – yes; J. Dargie – yes; M. Thornton – yes; J. Plourde – yes; S. Bonczar - yes
 186 **5. Would denial of the variance result in unnecessary hardship taking the following into**
 187 **consideration:**
 188 J. Plourde – yes; R. Costantino – yes; J. Dargie – yes; M. Thornton – yes; S. Bonczar – yes
 189
 190 S. Bonczar said, all the required criteria being satisfied, the variance was unanimously approved.
 191 S. Bonczar informed applicants they were approved and informed them of the 30-day appeal period.