

**Town of Milford  
Zoning Board of Adjustment  
April 5, 2018  
Case #2018-09  
Michael Powers  
Variance**

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

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

Secretary: Peg Ouellette

Michael Powers, for the property located at 98 Wilton Road at Milford Tax Map 11, Lot 19, in the Integrated Commercial Industrial district, is seeking a Variance of the Milford Zoning Ordinances per Article V, Section 5.08.1 to allow for a new single family dwelling to be built.

**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.

Michael Powers, applicant, and Andrea Kokko of Kokko Realty, appearing on behalf of M. Powers, came forward.

A. Kokko stated that M. Powers recently property at 98 Wilton Rd. and 100 Wilton Rd. and wanted to build on a vacant lot. By all information, it was possible, with the map they had, to build within the existing setbacks, etc. but a single family property was not allowed in the ICI district. They were there to request building a single family rather than commercial. She then read the answers to the five criteria questions on the application.

S. Bonczar asked for questions from the Board.

R. Costantino said the applicant stated he had bought the adjoining property. Which one was that?

55 M. Powers said, looking at the property from the road, it was on the right.  
56 J. Plourde asked if it was the one with the shared driveway.  
57 M. Powers said yes.  
58 J. Dargie asked if the drive was used by Lots 11-21 and 11-22.  
59 M. Powers said actually five.  
60 J. Dargie asked if there was a private road behind.  
61 S. Bonczar said it could be seen on Google Maps.  
62 M. Powers said there was no parking out front. Small sidewalk and two to three ft. of property.  
63 J. Dargie said she saw that but didn't look further.  
64 S. Bonczar said it could be seen between the houses.  
65 J. Dargie asked if the easement was deeded to all others.  
66 M. Powers said only two.  
67 J. Dargie asked, 11-20 and 11-21?  
68 M. Powers said correct.  
69 R. Costantino said the railroad track was only 16 ft. from corner of the house.  
70 A. Kokko & M. Powers said it was a right of way, not the track itself.  
71 R. Costantino said it was pretty close. He drove there earlier in the day and you could see it right from the  
72 property.  
73 S. Bonczar asked the size of the lot.  
74 M. Powers said 3,000 SF.  
75 R. Costantino said half or quarter of the lot was the drive; can't do anything in that part.  
76 M. Powers said he wasn't planning to put it up there; will move drive over to side next to the other house.  
77 Parking would be up there, possibly.  
78 R. Costantino said other concern would be, for this building is proposed line of each of the setbacks. Can't  
79 put a shed or build a deck without a special exception.  
80 J. Dargie said nor stairs.  
81 M. Powers said when Fieldstone and he talked, he asked how big a house [he could build]. Doesn't expect it  
82 to be 40 x 32. Would never do that size. Would do more in keeping with other houses. Not going to all those  
83 setbacks.  
84 R. Costantino asked if it would have an inside garage.  
85 M. Powers said he hadn't gotten that far yet on the planning.  
86 S. Bonczar said they weren't there to talk design, but this was almost right to the setback. Even a two step  
87 staircase is part of the structure that would cause applicant to come back to the Bd.  
88 M. Powers said he spoke to Fieldstone. He understood that but he said you could do masonry steps coming  
89 off it. Could do a brick back patio.  
90 S. Bonczar said it couldn't be a structure.  
91 M. Powers said it wouldn't be that big. Wanted to keep more in line with the house sizes there now.  
92 A. Kokko said most of the houses were right up against the road and back area was parking area. Houses  
93 along this section were 1100 to 1400 SF, not large. They had discussed a small home like a townhouse up on  
94 the road and using the back for parking. When they met with Fieldstone it was found there was enough room  
95 to put a smaller house in back where it would not be right against the road. Where the retaining wall is, was  
96 almost the flip of the others because there was room for parking.  
97 S. Bonczar asked if the previous house was right against the road.  
98 M. Powers said yes.  
99 J. Dargie asked how long ago the fire was.  
100 M. Powers said 1993. S. Bonczar said the house was torn down in 1994.  
101 A. Kokko said the retaining wall was part of the foundation.  
102 M. Powers said it would have to be all rebuilt if you ever tried to use it.  
103 J. Plourde said application addressing the criteria was a little vague. Re it not being contrary to the public  
104 interest it said it would increase surrounding values.  
105 A. Kokko said this section of town was not maintained as well as the town would like to see. Houses along  
106 this strip, including the one the applicant purchased, were let go into disrepair. Two others were  
107 foreclosures. Homes have been in significant disrepair. Previous foreclosure was restored and resoled in

108 three years. Applicant had done repairs to 100 Wilton Rd. and planned to sell it. Adding construction to this  
109 lot bring up values – not being surrounded by homes in disrepair or needing further repair.  
110 J. Plourde said one of the hardest things for the Zoning Bd. was understanding unnecessary hardship.  
111 Hardest to come to terms with because they could all look at it differently. That was associated with some  
112 characteristic of the land. He believed she was saying it was because of the shape, size and location of the lot  
113 that the other uses allowed by right or special exception would not thrive in a location like that. She was  
114 saying the hardship was associated with trying to match what was zoned and that was why they were coming  
115 in for a residential house.  
116 A. Kokko said exactly. The ICI district, just storefronts, etc., you were talking about 1000 to 1200 SF with  
117 parking and traffic in an out – especially with a shared drive – it wasn't conducive to that section.  
118 S. Bonczar said it didn't have to be with the land; it could also be with the provisions of the ordinance. In  
119 this case it may be characteristics of the location and the zoning and surrounding property may prove to be a  
120 hardship.  
121 J. Plourde said it was brought up during presentation, do they have any say in it – three homes with access to  
122 the drive. The one in question and the two to the west.  
123 S. Bonczar said that would be civil; do they allow a single family home in the ICI district where the  
124 ordinance didn't have that as acceptable use or acceptable as special exception even though existing lots  
125 around that were single family homes. That would be a legal issue.  
126 J. Dargie said looking at criteria #4 they could take that into account for that reason.  
127 S. Bonczar said you could, but he wouldn't.  
128 J. Dargie said it could come into play.  
129 S. Bonczar said there was a fine line. Applicant stated there was access there, but the fact was with or  
130 without a building there he owned the property. So granting a variance to build a single family would make  
131 a difference.  
132 J. Plourde agreed. Just didn't want it to be a case of the other homeowners [of the lots that shared the  
133 driveway] asking, what do we do now.  
134 S. Bonczar said not building a home in that right of way.  
135 M. Powers said he had to keep that clear for the other three homes.  
136 J. Plourde said there were other homes beyond what he owned.  
137 M. Powers said two had right of way and two didn't.  
138 A. Kokko said other property had deeded rights so he had to keep that open for those other lots. Not talking  
139 about situation where he could put up a wall.  
140 S. Bonczar asked for anything more from the Board. Nothing. He opened the public comment. None. He  
141 stated there was no correspondence received on this case.  
142 A. Kokko asked the Chair to read into the record the notes from R. Lunn (Zoning Administrator).  
143 S. Bonczar stated they were part of the packet. That administrative review was just a summary for the Bd.,  
144 to give more background. It gives the Bd. general reason why they were there. It was through the application  
145 and testimony they got details. There being no other questions from the public or the Bd., he closed public  
146 comment and proceeded to deliberation of the case.  
147 S. Bonczar said there were a lot of different uses in ICI district – about 30.  
148 M. Thornton said under CC, "Dwelling, Mixed-use" threw him.  
149 S. Bonczar said look at the definition. It was very specific. They had definition of dwelling – single-family,  
150 two-family, multi-family, etc. Mixed use stated one room or rooms connected together and designed for use  
151 as a dwelling unit, located in a non-residential building with no more than two dwelling units that are in  
152 addition to the primary non-residential use. In this case it was a non-existing building which was going to be  
153 built for residential use. It didn't fit that definition. Looking at ICI, there were a lot of uses, but none of  
154 them approve single family dwelling. If you looked at Google or rode by all the lots next to it or further  
155 down the street to the Wilton town line were residential homes in ICI. He thought ICI was looking ahead to  
156 giving flexibility for the future. Use as a storefront, etc. But existing use currently was almost entirely single  
157 family residential homes.  
158 R. Costantino said the buildings must have been there before.  
159 S. Bonczar said yes. Should consider whether if you put any other permitted use in there, would that fit the  
160 characteristics of the area?  
161 M. Thornton commented, not a hospital.

162 J. Plourde said many that would not.  
163 R. Costantino said he considered that. There was a big enough to put a very small manufacturing place, but  
164 it wouldn't fit with the neighborhood, even though it could be done. Would not be in the best interest of that  
165 area.  
166 J. Plourde agreed.  
167 M. Thornton said, looking at long term reasoning for making it ICI was to open it up to the industrial and  
168 commercial uses and not limit to residential. So, somebody thought that along this line somewhere it would  
169 be suitable for mixed use.  
170 S. Bonczar didn't know the history. If someone proposed ICI, would have to have larger lots. Lots were very  
171 small and right of way to the railroad very tight. Very difficult, in his opinion, to build something in that ICI,  
172 at least in that area. Going to the east toward the mill building was different. But that narrow section of  
173 Wilton Rd. to the town line was really residential.  
174 J. Dargie said Sec. 5.08.3 said any uses of land not specifically included in the ICI District as acceptable,  
175 acceptable by Special Exception, or acceptable by Conditional Use Permit shall be considered as not  
176 permitted.  
177 J. Plourde said that was why they were there for a variance.  
178 J. Dargie said it seemed it was not permitted. This should be changed to permit single family.  
179 J. Plourde said the house was there and burned down in 1993. ICI was created in 1995. It (house) was there  
180 before the ordinance.  
181 R. Costantino said a different person owned the lot. This was bought knowing that was the case.  
182 J. Plourde asked if the intention was to take down all those houses?  
183 R. Costantino said if they all burned down at the same time.  
184 J. Dargie said it should have been left Residential, and could be Commercial by special exception. Make it  
185 case by case that way.  
186 J. Plourde said if you looked at uses allowed by special exception - ADU.  
187 M. Thornton said, yet not a single family.  
188 S. Bonczar said not a new one, anyway.  
189 J. Dargie said she was not sure that they looked to that area.  
190 S. Bonczar said that was why they were there, to kind of legitimize that. Going through criteria. They had  
191 good discussion of characteristics of the land in the application, so he would like to talk about the granting of  
192 the variance not being contrary to the public interest.  
193  
194 **1. Granting the variance would not be contrary to the public interest because:**  
195 J. Dargie said because it was similar to those already in the area. Not sure what public interest was in  
196 creating ICI [in that area].  
197 J. Plourde said it wouldn't change the character of the neighborhood.  
198 J. Dargie said it would be no gain to the public – not necessarily that they would outweigh [benefits to  
199 applicant].  
200 J. Plourde said the public didn't benefit if they denied it.  
201 J. Dargie agreed.  
202 S. Bonczar if you didn't put a house and put in something that fit in the ICI district, would it be more  
203 beneficial to the public. He didn't see it. All agreed.  
204  
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206 **2. If the variance were granted, the spirit of the ordinance would be observed because:**  
207 S. Bonczar said this was a little sticky except that in the current situation in that neighborhood.  
208 J. Dargie said, as R. Costantino spirit of the ordinance created that ordinance. If every house burned down it  
209 became a commercial property. With the density, she didn't see how. They were all right on the road. What  
210 business would do that?  
211 T. Steel said a retail business because employees need parking.  
212 W. Campbell said maybe a dress shop.  
213 S. Bonczar asked how everybody else felt.  
214 J. Plourde said if that house never burned down it would still be there – talking about almost replacing the  
215 existing house in a better location.

216 J. Dargie agreed. It's a much better location, back off the road.  
217 J. Plourde said if not a house there previously, he might feel differently.  
218 J. Dargie felt the same, because then you were going against the density, making the situation worse. But  
219 there was already a house there. They could have built it that year.  
220

221 **3. Granting the variance would do substantial justice because:**

222 S. Bonczar, re what J. Dargie said re public interest, by denying he felt loss to the owner would be greater.  
223 M. Thornton said it would be a gain either way.  
224 J. Plourde said it was gain to the abutters if this house went in.  
225 M. Thornton said he was talking to bigger picture.  
226 R. Costantino asked what the gain was.  
227 J. Plourde said better gain to the abutters with the residence there than most of the accepted uses.  
228 R. Costantino agreed. Instead of that.  
229 J. Plourde said not looking at a vacant site vs. a residential home.  
230 J. Dargie said nothing in the ordinance that it has to be vacant. It's giving you 25 different possibilities.  
231

232 **4. Granting the variance would not diminish the value of surrounding properties because:**

233 S. Bonczar thought this was easier than if the applicant came in and wanted some of those houses allowed in  
234 the ICI.  
235 J. Dargie said then they would not be coming to the Bd.  
236 S. Bonczar agreed. But if someone had to ask that question. But he thought a new home there could help  
237 property values.  
238 M. Thornton said more than the ICI intention.  
239 J. Dargie said property was unique because of that easement and drive. You wouldn't want a business there.  
240 The shared drive could potentially have all this odd traffic coming and going. And people not knowing where  
241 they are going.  
242 S. Bonczar said that was a good point. Applicant would have to keep that open. You couldn't put in a big  
243 enough building allowed by some of those ICI uses and still have that access.  
244 J. Dargie said she will talk about E, because her previous point was that what made this one a unique  
245 characteristic was that it had a common drive shared with four or five other residential properties. Those  
246 drive into people's back yards. Didn't have a turnaround. You wanted what was there to be very specific so  
247 people know where they are. You don't want to invite the rest of the public to come in there.  
248

249 **5. Unnecessary hardship:**

250 J. Dargie said her point was the fact of the characteristics of this particular property was what made it  
251 different from the others. That was a hardship related to that property. All the individuals that had an  
252 easement on that property. You could take into account the other two properties that had an easement. They  
253 were also kind of partners in that and that made it an unusual characteristic.  
254 J. Plourde said the Zoning Bd. looks at every case individually. Ordinances are written kind of generally  
255 without taking into consideration specific areas, sections of roads, specific lots. If this was commercial area  
256 or some of these acceptable uses were already there and they were trying to build a residential home, that  
257 would be a totally different situation. They need to look at this specifically and say is there a hardship if one  
258 of the other uses goes in vs. the proposed use. Granting would positively impact abutters vs. one of the  
259 acceptable uses.  
260 M. Thornton said vs. the intent.  
261 J. Plourde said yes. If this was in a different area and still within the ICI he might feel different. Because of  
262 this specific area, that was why he felt that way.  
263 M. Thornton and its character.  
264 J. Plourde said R. Lunn noted the allowed uses in ICI would be difficult to establish due to the residential  
265 character and lot size. That fell in line with the discussion.  
266 S. Bonczar agreed. There is a fair relationship between the public purposes of the ICI not allowing single  
267 family homes in. That in itself was not a hardship but due to the location of the lot and surrounding lots in  
268 that zone, that was where it came in. If all other lots were commercial and they wanted to put a single family

269 house in, that would be totally different. There was a relationship but because of the fact of the surrounding  
270 neighborhood he thought there was a hardship if you didn't allow it to be built.  
271 M. Thornton asked if he meant to the applicant.  
272 S. Bonczar said yes.

273 **And:**

274 **Is the proposed use a reasonable one?**

275 S. Bonczar said it was a reasonable use. It was not allowed, but it was reasonable.

276 J. Plourde said the existing uses didn't have a lot of impact. Not like they were continuing a bad thing.

277 S. Bonczar said no, they were not.

278 S. Bonczar asked for any other comment from the Bd. re the criteria. None. He said there were no  
279 conditions proposed.

280 J. Dargie said the only thing mentioned was the setback, but if the applicant went further into the setbacks he  
281 would have to come back for the setbacks.

282

283

284 S. Bonczar then proceeded to the vote on the criteria for a variance.

285

286 **1. Would granting the variance not be contrary to the public interest?**

287 J. Plourde – yes; R. Costantino – yes; M. Thornton – yes; J. Dargie – yes; S. Bonczar - yes

288 **2. Could the variance be granted without violating the spirit of the ordinance?**

289 J. Dargie – yes; M. Thornton – yes; R. Costantino – yes; J. Plourde – yes; S. Bonczar - yes

290 **3. Would granting the variance do substantial justice?**

291 R. Costantino – yes; M. Thornton – yes; J. Dargie – yes; J. Plourde – yes; S. Bonczar - yes

292 **4. Could the variance be granted without diminishing the value of abutting property?**

293 J. Plourde – yes; M. Thornton – yes; J. Dargie – yes; R. Costantino – yes; S. Bonczar - yes

294 **5. Would denial of the variance result in unnecessary hardship taking the following into  
295 consideration:**

296 J. Dargie – yes; R. Costantino – yes; M. Thornton – yes; J. Plourde – yes; S. Bonczar - yes

297

298 S. Bonczar said based on voting, all the required criteria being satisfied, the variance was unanimously  
299 approved.