



ZONING BOARD OF ADJUSTMENT PO BOX 310

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MEETING MINUTES March 25, 2010

Members Present: Chair-Nancy Johnson, Michael Tabory, John Gilman, James Smith,

Member Not Present: Robert Srnc (Excused)

Others Present: Art Nickless, Charles Karcher

The Chair called the meeting to order at 6:04PM

1. Election of Officers.

Michael Tabory made the motion to nominate Nancy Johnson as Chair. James Smith seconded. Motion carried 4-0.

Nancy Johnson made the motion to elect Robert Srnc as the Vice Chair. John Gilman seconded. All in favor 4-0, motion passed

2. By-Laws.

John Gilman moved to approve the by-laws as written. Seconded by James Smith. Motion carried 4-0.

3. Application. The Zoning Board of Adjustment discussed the following: A Variance request from Article VI, Section A,1 of the Milton Zoning Ordinance to permit a second SF dwelling on subject lot. Property is located at Mp 9, Lot1, 11 Spruce Lane in Milton Mills, NH.

The application will be considered for acceptance at the meeting. If the application is accepted and time permits, a Public Hearing will then follow. A copy of the application and related materials are available at the Milton Land Use Office.

The Chair noted that there were only 4 members present and gave the applicant's representative the option to proceed with the hearing of the application or continue the hearing to another date with a full Board. She made the applicant's representative aware that should any vote be 2-2 then the motion does not pass.

Art Nickless, representing the applicant, stated he would like to proceed with the hearing.

Mike Tabory moved to accept the application as complete. James Smith seconded. Motion carried 4-0.

The Chair opened the public hearing. No comment was made. The Chair closed the public hearing.

Art Nickless from Norway Plains represented Mr. Morrill (applicant) who is away on business. The property is located on Spruce Lane which is a private road and the property actually only has 50' of frontage on Willey Road. The sub division of the property was approved in 1978. Mr. Nickless stated that a building permit was obtained to build a garage/storage building and the intent was to have a game room on the second story. He continued to state that Mr. Morrill's son is in the military (Guard) and he (Mr. Morrill) decided to make it a place to live for his son. At this time construction has ceased on the advice of the Code Enforcement Agent, pending the decision of the Zoning Board on the application.

Art Nickless stated that none of his arguments for this hearing will be based upon the building already being started. He continued to state that the property is located in the Low Density Residential zone which has a requirement of 2 acres and 200' of frontage for building conditions. He noted that two family dwellings (duplex's) are allowed in the zone and that the applicant is asking that the Zoning Board allow that the second unit be detached versus attached (which is allowed in the ordinance). Mr. Morrill's son would like to live here on the property in Milton Mills and the land will be placed in a trust with no intention of selling land. The property has approximately 25 acres and 50 feet of road frontage on a class 5 road. In continuing with his explanation of the property, Mr. Nickless explained that Spruce Lane is sole frontage for one lot and access for another lot and additionally is a privately maintained road. What Mr. Morrill is trying to avoid is having to subdivide and having to build a town approved road which he does not feel would benefit himself or the town. It is the opinion of the applicant that the request for a variance would not be proposing something that is out of character with the neighborhood or be contrary to public interest, as there are presently properties in the neighborhood with living quarters above garages. The structure as it is barely visible from Willey Road. The request of the variance would not be contrary to the spirit of the ordinance because two family dwellings, as a duplex, are already allowed and the only difference would be that the two units would be separated by land. Substantial justice would be done because given the size of the property and it's limitations to frontage, the applicant feels it would allow reasonable use of the property that is in keeping within the ordinance with the exception that the units will be separated and not attached. The value of surrounding properties would not be diminished because it will be another residential building similar to others in the area. The hardship issue has changed

over the past few years based on Simplex and the applicant feels that the parcel is a large parcel however only has 50 feet of frontage, so zoning restrictions interfere with the use of his property and limit the subdivision possibilities which the applicant does not want to do anyway. There are at least two similar uses in the area of detached living spaces above garages. No fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restrictions on the property. The section of the ordinance Mr. Nickless is referring to is where it allows a two unit dwelling however not to be detached units. It is the opinion of some that two units are two units whether attached or detached on a parcel of property. The basic use is compatible to the neighborhood and would have no impact on public or private rights of person in the neighborhood.

Michael Tabory stated that the applicants would need a variance to subdivide or they would have to build a town road. Art Nickless noted that they would need 500-600 feet of road at \$100 per foot (approximately 50-60 thousand dollars) to build this cul-de-sac. Art Nickless noted that the existing private road is 600 feet.

Mike Tabory brought to the attention of the Board that each house would need its own septic system.

1. The variance will not be contrary to the public interest because:

James Smith does not believe it would increase the density of the neighborhood as you cannot really see it from the road.

This item of the criteria **passed** unanimously 4-0.

2. Spirit of the ordinance is observed.

Michael Tabory inquired how big the piece of land is where this structure is located if the property were to be subdivided. Art Nickless stated that it would be about 2 acres. Michael Tabory stated that it would cost about sixty thousand dollars to create a road in order to subdivide.

James Smith feels that the application for the use of the property is contrary to the ordinance because the ordinance is clear that there is to be only one residential dwelling per lot. One large duplex on a lot, which is permitted, versus allowing two detached single family units per lot is a dangerous precedent to set. He further stated that the spirit of the ordinance would not be observed if passed. John Gilman stated that this is a large parcel of land and it will cost a lot of money to put in a road. It is his opinion that the spirit of the ordinance would be observed due to the large size of the parcel. Chairman Johnson agreed with James Smith that the proposal is not in the spirit of the ordinance. Chairman Johnson feels the spirit of the ordinance reflects zoning and we have to take restrictions setbacks and frontage very seriously and although in some cases the

ZBA is more flexible, however, the number of detached units on a lot is essential piece to the spirit of the ordinance and allowing this would set a bad precedence. This is a unique lot but the two units not connected is not is the spirit of ordinance. Michael Tabory stated that he sympathizes with the applicant, but also does not feel it is in the spirit of ordinance because the lot is already non conforming and this would further increase the non conformity.

This item of the criteria **did not pass** upon a vote of 1 for and three against.

3. Granting variance would do substantial justice.

Michael Tabory stated that it would do substantial justice based on the size of the lot and the cost associated with putting in a road to make the lot conforming. James Smith felt that the structure (garage) was built as a house to start with as it has a deck and three stories, however the granting of the variance would do substantial justice due to the size of the lot and the potential cost. John Gilman agreed with Michael Tabory and James Smith. Chairman Johnson noted that due to the uniqueness of the property she agrees that granting of the variance would do substantial justice.

This item of the criteria **passed** unanimously with a 4-0 vote.

4. The values of surrounding properties are not diminished.

Michael Tabory stated that it is the burden of proof of the applicant to prove that the value of surrounding properties would not be diminished and no evidence has been presented in this regard. Art Nickless noted that if they felt the structure would have been out of character with the neighborhood he would have presented evidence. Based on that response, Michael Tabory stated he would agree. Chairman Johnson noted that it would not diminish the value of properties. James Smith agreed. Charlie Karcher noted that this is a wooded area and the structure would not be visible. John Gilman did not feel that it would diminish the value of the surrounding properties

This item of the criteria **passed** 4-0.

5. Literal enforcement of the provision of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area.

A. Denial of the variance would result in unnecessary hardship.

(i) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property.

Chairman Johnson stated that with the same reasoning as said earlier in regards to the spirit of the ordinance, her continued reasoning is that while the applicant stated the property will be put in a family trust and it will stay in the family, it may never come to fruition for various reasons. Chairman Johnson further stated that she does not like playing with things in the future such as the trust. She would be concerned that if the house was built and someone wanted to buy the house, there will be a huge problem with them trying to get the mortgage even if a variance was granted. It is her opinion that she votes no on 5.A-1 that no fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property. James Smith noted that the frontage and acreage is not uncommon in the Milton Mills area. He also agreed with the Chair in regards to her statements and voted no on the criteria. John Gilman voted yes. Michael Tabory noted that it is a nature of the area to have long and large lots, but he believes the intent of the ordinance is to have larger parcels of land and not cramped properties and houses on top of one another. He votes no, because it was the intent of the voters to have larger parcels of land and they stated that when they adopted this zoning.

This portion of the criteria **did not pass** with a vote of 1-3.

(ii) The proposed use is a reasonable one.

Michael Tabory felt it was reasonable proposed use because there is a large amount of area. The Board unanimously agreed.

This portion of the criteria **passed** with a vote of 4-0.

- B. If the criteria in subparagraph (A) above are not established, explain why the property cannot be used in strict conformance with the ordinance and why a variance is therefore necessary to enable a reasonable use of it:

The Chair noted that she feels this has been addressed in the previous answers given. She further stated that although costly, the frontage could be created for a subdivision if a road were to be created per town standards. Art Nickless inquired if he could make some comments in regards to the spirit of the ordinance. Chairman Johnson stated he could. Art Nickless stated that under the cluster portion of the ordinance, a person can have multiple single family homes in a small area. He questioned if what the applicant is seeking can be done some other reasonable way. If the applicant were to establish and build a road would it be reasonable for the town to take up the maintenance of the road and would it change the character of the area by putting in a paved road.

The Chair noted that a cluster is an option and is approved by the Planning Board he would not have to come back before the Zoning Board.

The Chair noted that the variance has been denied and the applicant has 30 should he decide to appeal the Boards decision. Or should he decide, he could appeal to the Planning Board under a different avenue.

Michael Tabory inquired if they would still have to subdivide if they created a cluster development. Charlie Karcher stated that there are standards that they would have to go by and that in a cluster development they do not have to establish lot lines. There are many ways in doing a development like that and it works well for most families. Chairman Johnson stated that it would work for something similar to a family compound.

4. Approval of November 19th 2009 Minutes and March 11th 2010 Minutes.

James Smith made the motion to approve the minutes of November 19th 2009. John Gilman seconded. All in favor 4-0, motion passed.

The Chair noted that the approval of the March 11th 2010 minutes would be put on the next agenda.

5. Adjournment.

Michael Tabory made the motion to adjourn at 6:54PM. John Gilman seconded. All in favor 4-0, motion passed.

These minutes were taken by Michelle Beauchamp during the meeting as well as added to with the use of a recording device by Wendy Keane.

Respectfully submitted,

Wendy Keane
Land Use Clerk