

BOARD OF ADJUSTMENT MINUTES – FEBRUARY 3, 2005

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Present: Len Harten, Chairman
Rick Westergren, Vice-Chairman
Katherine Bauer
Kathleen Maher
Robert Levenson

Kevin Taylor, Alternate
Shirley Carl, Recording Secretary

Case #01-05 - Sarah Desmarais/Thomas Vlach, 479 North River Road, Map 4, Lot 17 (Res. "R") seeking a variance from Article V, Para. 5.044.A and 5.044.B to allow one additional dwelling unit to an existing non-conforming legal use. Proposed new dwelling unit is a subdivision creating a new lot with no frontage, zero setback and proposed lot exceeds the density.

Motion to approve _____
Seconded by _____
Signed _____
Date _____

1 Chairman Harten opened the meeting at 7:30 PM by stating that the hearings are
2 held in accordance with the Town of Milford Zoning Ordinance and the applicable
3 State Statutes.

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5 This is a tabled hearing from January 20, 2005.

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7 The notice of hearing/abutter list was read into the record. Present – Steve
8 Desmarais; no abutters.

9
10 L. Harten asked Steve if there is anything in the record that allows him to speak
11 in behalf of the owner. Steve stated that Sarah is his wife and he has power of
12 attorney. (He doesn't have the power of attorney with him but the Board is
13 welcome to call his wife). No one on the Board had a problem with the above.

14
15 Steve then brought forth the issue of frontage. This is a condo so the unit doesn't
16 have a lot. The lot is the lot and the condo has 1,000' of frontage. K. Bauer then
17 spoke to a condo also being a subdivision; which it is. L. Harten questioned the
18 "zero setback" issue. She feels that K. Lynch is getting at the fact that each
19 house has a lot. (She was referring to a Planning Board subdivision and
20 houses/lots/frontage). Steve stated that he doesn't need a variance for frontage
21 but rather for density. It is one lot with ten units on it. K. Bauer continued that by
22 calling it a subdivision, then there is a large parcel of land that is subdivided even
23 though people don't own the envelope around their building, it is being called a
24 lot and she feels that is where K. Lynch is coming from regarding the article and
25 paragraph #. Steve explained that there is no lot, it is the number of units on a
26 lot; there is only one lot, which is the entire complex. Steve is looking to reinstate
27 what was granted when he purchased the piece of property. Not asking for a
28 variance for frontage or setback because the house exists. K. Bauer then
29 interjected that she knows that is where K. Lynch is coming from, he isn't
30 considering the whole parcel. If he is wrong, then this application is wrong. The
31 building inspector is differing from the applicant and we are supposed to proceed
32 on that basis. She continued by stating that K. Lynch pulled this section (5.044)
33 as the reason for the variance. K. Bauer asked K. Lynch why he was calling this
34 a dimensional variance and that is how we got into the subject of a subdivision.
35 B. Levenson mentioned that the standards for an area variance are less than for
36 a use variance.

37
38 A question was asked as to what else could it be; response from B. Levenson
39 was "expansion of a non-conforming use". Steve stated that he is not expanding
40 a non-conforming use; he is using a use exactly the way it has been used for 20
41 years. The house is a house that the exact size of two units. He then provided a
42 plan of the building and the other buildings. The footprint of the house except for
43 a tiny corner is the same. He purchased this from Donald Currier who got it
44 approved in 1981. When he purchased it, he decided to move into the house;
45 build one duplex a year and then build our house some place else and divide the
46 house as it was intended to be divided; move to the other house and have ten

1 rentals. It was approved for ten units and the other four duplexes are designed
2 exactly the same size of the house. The house was going to be divided and
3 reference was made to the floor plan that shows there isn't even a wall to build; it
4 is an existing wall. He ended up living in the house for ten years instead of the
5 planned one year. A friend of Tom's came along and rented the house and lived
6 there for 10 years. Here we are 19 yrs. later. He then went to Bill Parker and
7 asked him if anything needed to be done with the Planning Board and he said
8 that all that had to be done was to go before the Planning Board and have them
9 approve the driveway change and the division of it into two. At the Planning
10 Board meeting, K. Lynch informed him that he had to return to the ZBA because
11 he didn't put the line down the middle of house showing Units nine and ten. He
12 said that variance that was granted in 1981 is no longer a valid variance. As a
13 result, he applied to the ZBA. The reason that this piece of property is different
14 than another one is that this, as a condominium, being one of nine units instead
15 of one of ten units is twice as large as all of the other units. It is not like having a
16 house in a neighborhood where the house is twice as big, because each of the
17 owners of the condominium has to share in the maintenance of the building. This
18 unit will have twice as much roof, siding, windows and probably twice as many
19 people because a four bedroom house could handle a population of four to five
20 people (this instance is the one where the woman that rented the house for ten
21 years had three children). He then gave the population of the units at this time.
22 There are five that consist of retired couples; one single man and one unit with
23 two children and another with two less than school age children. He contends
24 that the intensity of the use is not going to increase, it will be two units and
25 possible for the population of those units to be higher than the population of a
26 four-bedroom house but in the 20 years he has owned the property, that hasn't
27 been the case.

28
29 The house is 2,400 SF but only 1800 SF is finished because the upstairs has
30 some attic space, but the population of the house has been the same. Whether it
31 is Section 5.041 or 5.044, he doesn't know. He doesn't believe it is an expansion
32 of the intensity of the use of this piece of property, it is what it was intended to be
33 and whether or not the Board agrees that the variance was granted in 1981
34 doesn't make any difference. He presently owns a house in the middle of a
35 condominium that is completely out of character with the condo and as a house,
36 it suffers from being out of context with the condos and as a condo it is out of
37 character with the condos because how do you assess a condo fee against the
38 condo that is twice as big as the other ones.

39
40 The bottom line is that he is stuck with a situation and what should happen is that
41 the house be divided and units 9 and 10 that were planned from the very
42 beginning gets executed and it is finished. The impact on the Town is negligible.
43 In his opinion that unit won't add square footage or population. It is 2400 SF. He
44 then went through what happened at the Planning Board many years ago. He
45 was told he needed to go before them and then he was asked why he was there.
46 K. Bauer then stated that no matter what happens he still needs relief from the

1 ordinance which has since changed. The variance had been approved for ten
2 units.

3
4 Steve then provided a 1983 condo plan that had been recorded showing nine
5 units.

6
7 K. Bauer clarified the situation as follows:

- 8 1. Condo complex with nine units;
- 9 2. The footprint of the house won't change;
- 10 3. A unit is being added (that is where the increased density comes in).
11 She explained that is what she meant when she stated that it is an
12 expansion of a non-conforming use. The use is obviously non-conforming.
13 All that Res. "R" allows is one single-family on two acres.
- 14 4. Going back to the application, we are supposed to be ruling on what K.
15 Lynch broke out of the ordinance, of which she isn't entirely in agreement
16 with. K. Lynch stated variance from Article V, Para. 5.044.A and 5.044.B.

17
18 Steve then commented that Kevin's opinion was that the lot size wasn't large
19 enough for what he wants to do. He is asking for an acceptable use for a one-
20 family and he wants a ten family dwelling. Instead of 5.044 it should be 5.041. K.
21 Bauer then stated that is where they are in total disagreement because that goes
22 back to K. Lynch saying legally this is a subdivision. Steve was in agreement that
23 it was a subdivision, but it isn't a subdivision of lots. It is a subdivision because a
24 condominium is a subdivision. K. Bauer's response to that was why K. Lynch
25 broke this out into a dimensional variance because of area requirements not a
26 use variance. Steve continued by stating that in a cluster development he would
27 need 20 acres of net tract area to do this and he doesn't have it. He needs an
28 area variance.

29
30 K. Bauer then reiterated that we are supposed to be ruling on is that it is a legal
31 non-conforming use; proposed new dwelling unit is a subdivision creating a new
32 lot with no frontage; zero setback and proposed lot exceeds the density. Steve
33 responded that it is a lot with ten units on it. B. Levenson then entered the
34 discussion and presumed it is an expansion of a legal non-conforming use and
35 that has a much lighter and easier set of criteria. K. Bauer then stated that K.
36 Lynch chose not to break out that for the applicant. He is then saying that it is on
37 a lot with no frontage; wrong density. Steve then said the density is the issue.
38 There is 1,000' of frontage but what is allowed on this lot is a two-family house.
39 K. Bauer felt that what is being discussed is a difference between what Kevin is
40 talking about, a subdivision with each condo unit and what Steve is saying. Steve
41 agrees that this is a subdivision, but the density is what he is asking for; should it
42 be 5.044 or 5.041 or both? K. Bauer then stated that 5.044 was what the code
43 administrator decided, he is using only dimensional requirements because there
44 is no frontage, etc. L. Harten is not in agreement with K. Lynch. K. Bauer then
45 asked that if we don't agree with K. Lynch, can we proceed. K. Lynch is saying

1 that Steve has several lots within the big lot even though it is condos. There is
2 an envelope around the
3 farmhouse that doesn't have frontage, etc. Whether the Board agrees with that
4 isn't the point. L. Harten then stated the subdivision as a whole does have all of
5 it. L. Harten would like to proceed but he isn't sure if it is legal. Because of the
6 confusion regarding this issue, a comment was made that K. Lynch should be at
7 the hearings.

8
9 Confusion reigned. Steve explained that he isn't creating a new lot with no
10 frontage; setback and house exist. K. Bauer stated that K. Lynch is saying that
11 each unit creates its own lot. Steve continued that the proposed lot exceeds the
12 density. The Board can address or ignore all the rest if you want, but the lot
13 density is what he is proposing. He asked what part of the ordinance and
14 someone told him 5.044 but it may be 5.041 where it says you have a right to put
15 a one/two unit on the lot. Steve felt the Board can address all of 5.044, but he is
16 addressing the point that his density exceeds one unit and he wants to make it
17 ten units (nine are existing). What is there has been there forever, the well and
18 septic won't change; it will be two two-bedroom units instead of one four
19 bedroom unit. Unfortunately the recorded plan in 1983 indicates only nine units
20 but he had a variance for ten units back in 1981 and the variance goes with the
21 land forever. Steve then explained the nine and ten unit situation. He then went
22 to the Planning Board for a site plan review. It was for ten units and then he
23 made it for nine because he was going to live in the house and change it back
24 into ten. Bill Drescher was at the meeting and told me to go back to the ZBA and
25 get another variance, it is that simple and that is why he is here.

26 B. Levenson personally feels it is an expansion of a non-conforming use and
27 asked if we can establish that as the premise that Steve is here; hear the case on
28 that basis as special exception and if the Code Officer has a problem, let him
29 come back and appeal our decision? K. Bauer feels it has to be reissued from
30 the code administrator. She feels that the procedure is that Steve appeals the
31 administrative decision made and requests an expansion of a non-conforming
32 use by special exception, which is easier to get. Steve said that if he divides it,
33 he will probably come back and ask for a variance to have a less than a two acre
34 lot for the house so he can split it off and sell it. It won't be part of the condo
35 because it is 2400 SF.

36
37 A question was asked as to how Mr. Drescher got involved. Steve stated that he
38 was in the Town Hall and Mr. Drescher happened to come in for something else,
39 and after two months of perusal by the staff, I was told at 5 pm the day of the
40 meeting that I couldn't do it without appearing before the ZBA. K. Lynch spoke to
41 him about it and he said just go to the ZBA and request another variance to
42 divide the house in half; it is simpler. K. Bauer then stated that K. Lynch knew
43 about the special exception for non-conforming use and chose not to use it for
44 whatever reason. She feels that because it is such a complicated issue, he didn't
45 want to use it. Steve asked the board to deliberate on the last word where it says
46 "density". K. Maher then entered the discussion that by law, the Board has to

1 consider everything application and ordinance says. It has to be a variance from
2 Article V, Para. 5.044.A and 5.044.B. If we went ahead and applied the above
3 two articles, she would have to say No to everything because it doesn't even
4 come close to meeting the spirit and intent of the ordinance. She doesn't think it
5 belongs under 5.044 A or B. K. Bauer felt that someone has to appeal Kevin's
6 decision either this Board or the applicant. She continued by informing Steve
7 that this isn't what he should have brought forth to rule on and that he doesn't
8 agree with it. Steve doesn't agree with the frontage but does agree with the
9 density.

10
11 B. Levenson then stated that we have a non-conforming use; a condo multi-
12 family complex in a single-family residence. You expand that complex from nine
13 units to ten units.

14
15 L. Harten would like to speak with K. Lynch and see if he would change it from a
16 variance to a special exception. Len stated that he has spoken with K. Lynch
17 about this and he doesn't have a problem with what Steve is doing. If we tried to
18 go forward with this as presented....

19
20 **A motion was made by K. Maher seconded by B. Levenson, all in favor to**
21 **table the case to March 3, 2005 pending resolution with the Code**
22 **Administrator regarding Article and Para. # requested.**

23
24 **Hearing was closed at 8:24 PM.**
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