

Milford Zoning Board of Adjustment
November 16, 2006
Case #28-06
David Labrecque/Elizabeth Paradis
Variance

Present: Len Harten
 Katherine Bauer
 Ron Pieper, Jr.
 Bob Levenson
 Fletcher Seagroves
 Noreen O’Connell, Board of Selectmen’s representative

Secretary: Kathryn Parenti

Case #28-06: David Labrecque and Elizabeth Paradis – Variance

David Labrecque, along with Elizabeth Paradis, the owner of Map 54, Lot 15, Wallingford Road, in the Residential “R” district, is requesting a variance from Article V, Section 5.044.A to allow the owner to subdivide the existing lot creating one new residential lot with less than the required frontage.

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

L. Harten, chairman, read the notice of hearing and the list of abutters into the record. David Labrecque, applicant, Craig Possee, 36 Wallingford Road, Heiko and Heike Moritz, 451 Ponemah Hill Road, and Richard and Joan Grant, 12 Wallingford Road, were present.

Attorney Pat Panciocco, of the firm Wiggin and Nourie, P.A., stated she would be representing the applicant, David Labrecque. She then passed out copies of the plan for the proposed subdivision to the members of the board and to interested audience members. These copies are included in the file.

L. Harten invited her to begin her presentation.

P. Panciocco began by stating the property in question is located on Wallingford Road, in the residential "R" district. The parcel is approximately 4.47 acres with 360 feet of frontage and it has the required setbacks for the residence "R" zoning district, which are 30 feet in the front and 15 feet to the side and rear. She stated the applicant is seeking a variance to subdivide the parcel into two (2) lots. She referred to the larger plan she had handed out and stated that it was the result of an actual survey. The plan showed the proposed improvements to the property including the removal of the existing building in the rear of the property. Both of the proposed lots exceed the requirements of the residence "R" district. She stated there are wetlands on the property but they are above the elevation where the improvements would be constructed. She also said the proposed lots are not very different from those existing in the area. She then asked if there were any questions by the board.

B. Levenson said the application stated there would be one conforming lot and one non-conforming lot.

P. Panciocco stated the western lot was conforming due to the 10.44 feet of frontage that was on Wallingford Road, shown on the plan as a small jog.

B. Levenson read the definition of frontage from page 12 of the 2006 Town of Milford Zoning Ordinance. "*That continuous portion of a lot bordering on a road(s) ...*"

L. Harten asked if it was continuous on Wallingford Road.

P. Panciocco stated it was.

K. Bauer replied that the portion of frontage is still on the road it abuts. It is a continuous line into the road, which is not usually the case.

R. Pieper stated that it looked odd but he felt it met the requirements since the road is narrower at one end than it is on the other. By definition, it is continuous.

F. Seagroves stated he had no problem with the frontage.

L. Harten had no problem as well.

P. Panciocco stated she would continue on with the criteria for a variance.

B. Levenson stated that on the deed at the Registry of Deeds, it states that the frontage of the parcel is 350 feet.

P. Panciocco stated that was an old plan. Her figures are from an actual survey, with more accurate equipment. She said she had noticed the old deed also and stated it was probably from 1963 or 1965.

K. Bauer stated she felt reassured that the site plan was from an actual, accurate survey.

L. Harten asked P. Panciocco to continue.

1. The proposed use would not diminish the surrounding property values because:

P. Panciocco stated that they are asking for dimensional relief because there was a shortage of frontage on the second lot. It would not diminish the surrounding values because the use is a permitted use by the Town of Milford Zoning Ordinance. She stated they are not asking to do anything that hasn't already been done. The request is permitted and consistent with what is in the area. The proposed lots are actually larger than those in the area.

2. Granting the variance would not be contrary to the public interest

because: P. Panciocco replied that the proposed lots would meet all the other requirements, except for the frontage requirement.

3. Denial of the variance would result in unnecessary hardship to the owner because:

a. Please state why and in what manner an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.

P. Panciocco stated that the hardship is the shortened frontage. The lots would comply with every other requirement except for the frontage required by the ordinance.

b. Please state why the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

P. Panciocco stated that the physical limitation of the parcel is the reason for the variance. There is no other reasonable way to deal with the shortage of frontage. The proposed lots are larger than the minimum size required and that more than offsets the dimensional relief.

4. Granting the variance would do substantial justice because:

(See item #5 below)

5. The use is not contrary to the spirit of the ordinance because:

P. Panciocco addressed both of these together by stating that these were addressed in the legal case of Chester Rod and Gun Club versus the Town of Chester. She stated the court discussed these two items that many people have trouble defining what is public interest and what is the spirit of the ordinance. The court tries to identify the interests they are trying to protect by the specific ordinances. In this case the restriction is the 200 feet of frontage. The restriction is in place to prevent overcrowding of the land. The court then determines if granting relief will be contrary to that interest. She stated that the court asks if the character of the neighborhood would be altered, if the neighborhood would be overcrowded if relief were granted. In this case, the lots are larger than those in the neighborhood to offset the dimensional deficiency. Because of this, the request does not negatively impact the public nor harm the surrounding area. It is not contrary to the spirit of the ordinance because the two single-family homes are an allowed use in the zone.

P. Panciocco also pointed out there is a driveway to the east of the property that acts as an additional buffer to the surrounding property.

Richard Grant, abutter asked about the right of way and stated that was not deeded on anyone's property.

P. Panciocco stated that it was a driveway, it's there and there won't be any access to any homes from the driveway. It would just be there to act as a buffer. She stated she would be happy to answer any questions.

L. Harten asked if any abutters or concerned citizens had any questions.

R. Grant stated that the property did not have any wet areas until the developer of the neighborhood cut down all the trees. He asked if there was ratio between wetlands and buildable land.

L. Harten stated that there were setbacks for wetlands.

B. Levenson stated there was no ratio but other communities do have them.

Heiko Moritz stated there was a trench along his driveway and has a problem with water that washes from the new development. He wondered if this would worsen the problem. Water washes down from that area to his conservation easement and into his yard; this is a problem that hasn't been addressed properly. He stated his stonewall had to be reinforced by riprap due to the excess water.

N. O'Connell stated that the town has not accepted Wallingford Road yet. She recommends that before the road is accepted, they should make sure the drainage issues are taken care of. She recommended the residents write letters to the Board of Selectmen or call the Code Enforcement Officer. The developer is still responsible for that area.

L. Harten said it was privately maintained at this point.

R. Grant stated that there is a culvert under the road and the water washes down the road and washes it out. The new catch basins affect his access to his right of way.

N. O'Connell suggested that he get the issues straightened out with the Code Enforcement Officer.

R. Grant felt that the proposed plan was not accurate and didn't show an accurate amount of water that is really there.

L. Harten stated unfortunately the above issues are not why they were here tonight. They were there to determine whether they could grant a variance.

P. Panciocco stated there was a survey done in July 2006. The wetlands were flagged at that time. She stated the survey addresses vegetation and hydrology. Any run off from the area would be addressed in the development plans. At this point, they are just looking for dimensional relief. They would still need to appear before the Planning Board.

L. Harten read a letter from the Conservation Commission into the record, stating their concerns over the water on the lots.

Craig Posse, abutter, stated this presentation was a good indication of what the applicant's intentions are. He felt this fit in with the other lots. He felt the comments presented by the other abutters did not have any thing to do with this issue.

L. Harten asked if there were any more questions. Since there were none, he closed the public portion of the hearing.

L. Harten stated they needed to decide if the variance was for use or area.

1. Is the variance requested a variance from a dimensional requirement of the Zoning Ordinance?

K. Bauer – yes R. Pieper – yes F. Seagroves – yes

B. Levenson – yes L. Harten – yes

2. Is the variance requested a variance from a use requirement of the Zoning Ordinance?

R. Pieper – no F. Seagroves – no B. Levenson – no

K. Bauer – no L. Harten – no

L. Harten then read the criteria for discussion.

1. Could the variance be granted without diminishing the value of abutting property?

B. Levenson stated the variance could be granted without diminishing the value of the property.

F. Seagroves agreed.

R. Pieper stated that the proposed lot sizes are in accordance with what the town prefers. The proposed use is the same as the neighborhood.

K. Bauer agreed; the subdivision is into two large lots.

L. Harten agreed also. This is nothing unique and would not diminish surrounding property values.

2. Would granting the variance not be contrary to the public interest?

B. Levenson stated he was not convinced the survey was right, since the deed stated the frontage was 350 feet and not 360 feet. The deed description maps out a square while the survey shows something not resembling a square.

F. Seagroves stated they should go by the data taken from the survey.

L. Harten stated they could not change a legal description.

B. Levenson stated he didn't understand the difference. He agreed the deed was old but it is a document of record and it specifies what the dimensions are. His dilemma was with the discrepancy between the deed and the survey.

K. Bauer stated she didn't have any problem ruling on the results of the survey. She felt comfortable working with what had been presented and felt it was very valid.

R. Pieper stated he shared B. Levenson's concern. He felt the board could grant a variance in a way that was not contrary to the public interest.

L. Harten felt granting the variance would not be contrary to the public interest.

3. Would denial of the variance result in unnecessary hardship taking the following into consideration:

a. The area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.

b. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the area variance.

B. Levenson stated there was no other way for the applicant to do what he wants to do. He felt yes was the answer to both issues.

F. Seagroves felt the answer was yes to both statements. If the variance were not granted there would be a hardship.

R. Pieper stated that the frontage was less than 400 feet divided by two, resulting in one lot with less than the required frontage. The variance would have to be granted in order for the applicant to use this property.

K. Bauer stated this was a special condition, the fact that the lot was over 4 acres; the proposed lots would be larger than what is required in the area. She felt the new ruling on Simplex makes granting a variance easier. They are now looking at the proposed use of the property, when they hadn't before. She couldn't see how this could occur in any other way; the subdivision could not occur any other way. She also wanted to remind the

board that if they voted no on any of the criteria, they would have to vote no as a final vote.

R. Pieper stated there was only one point where they could divide the parcel, with only one new lot in compliance.

L. Harten agreed. The lots are larger than required which more than makes up for the shortfall in the frontage required by the ordinance. There is no other way for the applicant to accomplish this, no other way to reconfigure the property.

4. Would granting the variance do substantial justice?

B. Levenson stated that no injustice would occur.

F. Seagroves replied that if they subdivided the parcel the way it is shown on the plan, no injustice would occur.

K. Bauer stated that she did not see any injustice.

R. Pieper stated that keeping the lot intact would be no gain to the public and would be a loss to the applicant.

L. Harten agreed.

5. Could the variance be granted without violating the spirit of the ordinance?

F. Seagroves stated that the spirit of the ordinance would not be violated.

K. Bauer replied the spirit of the ordinance promotes low density, implied or included and would still be intact if the variance was granted.

R. Pieper agreed with K. Bauer. There was no safety hazard to the public, no violation of the ordinance. He felt the shortage was not a hazard to the public.

L. Harten stated there would be no violation of the spirit; there is only a 40-foot shortage in the frontage and the proposed lots are large. There would be no overcrowding in the neighborhood.

B. Levenson asked if it mattered that Elizabeth Paradis was not the owner of record. The owner of record is defined by the deed.

L. Harten reopened the public portion of the hearing.

P. Panciocco responded that this was a probate issue and there is a note on the plan stating that it's a 1994 probate.

Robert Paradis stated that his mother, Elizabeth Paradis, is the executrix of his grandfather's will. The land belonged to his grandfather, Bernard Paradis. He would like this land to become the retirement homes for himself and for David Labrecque.

P. Panciocco stated this was a private matter and the probate court allows her to be a manager of the property since the land is an asset of the estate. She will make sure the statement that this property is in probate in on the plan. Elizabeth Paradis has authorized them to do this.

L. Harten closed the public portion of the hearing.

R. Pieper wondered what they would rule on.

L. Harten stated they would rule on the surveyed plans.

F. Seagroves stated that Town Counsel stated they could only rule on plans that have been submitted.

R. Pieper stated that the approval is based on the submitted plans. He wondered, if it turned out that the plans were way off, would the applicant have to come back before the board.

L. Harten stated they would.

B. Levenson stated that the deed specified 350 feet of frontage and the plan shows the frontage includes 10 feet on the side. Either the frontage is there or not; it's either or square or a multidimensional space.

K. Bauer stated that it was a surveyed plan.

L. Harten called for a vote.

1. Could the variance be granted without diminishing the value of abutting property?

K. Bauer- yes R. Pieper – yes F. Seagroves – yes
B. Levenson – yes L. Harten – yes

2. Would granting the variance not be contrary to the public interest?

R. Pieper – yes F. Seagroves – yes B. Levenson – yes
K. Bauer – yes L. Harten – yes

3. Would denial of the variance result in unnecessary hardship taking the following into consideration:

- a. The area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.
- b. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the area variance.

F. Seagroves- yes B. Levenson- yes K. Bauer – yes
R. Pieper – yes L. Harten – yes

4. Would granting the variance do substantial justice?

B. Levenson – yes K. Bauer – yes R. Pieper – yes
F. Seagroves – yes L. Harten – yes

6. Could the variance be granted without violating the spirit of the ordinance?

K. Bauer – yes R. Pieper – yes F. Seagroves – yes
B. Levenson – yes L. Harten – yes

Final Vote:

R. Pieper – yes F. Seagroves – yes B. Levenson – yes
K. Bauer – yes L. Harten – yes

L. Harten asked if there was a motion.

R. Pieper made the motion to grant the area variance in Case #28-06.

K. Bauer seconded the motion.

All voted unanimously to approve Case #28-06.

L. Harten reminded the applicant there was a 30-day appeal period. The board thanked the applicants for the excellent presentation of their case.