

Milford Board of Adjustment Minutes
May 4, 2006
Case #16-06
Chance Properties Hollis, LLC

Present: L. Harten
B. Levenson
F. Seagroves
K. Bauer

Secretary: Kathryn Parenti

Case #16-06: Chance Properties Hollis, LLC – Special Exception. The owner of a lot of record on West Street, Chance Properties Hollis, LLC, Map 19, Lot 19-1, in the Residential “A” district, is seeking a special exception from Article V, Section 5.025.A and Section 5.025.B to build a new single family home on Map 24, Lot 19-1 within the required setbacks: 13.9 ft from the property line on each side and 25.9 ft from the front property line.

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

L. Harten, chairman, read the notice of hearing into the record.

B. Levenson had a question about the statement of two lots of record in the notice. He said there are two separate lots of record and two separate cases and this should be noted.

L. Harten said he wasn't concerned with the typo.

K. Bauer asked if he had done the waiver.

L. Harten said he would do that after he read the list of abutters. He read the list of abutters into the record and the following were present: Loriann & Frank Demambro, 50 West St., Michael & Gayle St. Pierre, 38 West St.) He mentioned that he thought an abutter had not been notified of the hearing, since they were not listed on the list of abutters. The Berchers of 44 West Street were the missing abutters.

B. Levenson asked if they were present.

Rebecca Bercher said she and her husband Wade were present.

L. Harten asked them when they received notification of the hearing.

R. Bercher replied that it was a couple of weeks ago.

L. Harten asked the applicant if he would sign the Waiver of Right to a Five Member Board. Bob Shepard, attorney for Chance Properties Hollis, LLC said that Scott Bonenfant, would sign the waiver.

B. Shepard introduced himself and said that he had prepared the application. He also introduced S. Bonenfant as owner of Chance Properties Hollis, LLC and owner of Map 24, Lot 19-1. He said that S. Bonenfant had purchased the two lots in question (Map 24 Lot 19-1, 19-2). This case was in regard to Lot 19-1. He had submitted a plot plan showing the two lots and was wondering if the abutters had a chance to look at the plan.

L. Harten asked if he had a large plan.

B. Shepard stated he did and hung the large plan for the audience to see.

K. Bauer stated that the tax map had identified the property as one piece of land.

B. Shepard said that it was indeed two lots of record.

K. Bauer said the tax map doesn't show it as such.

B. Shepard stated that they would eventually. He went on to explain that Chance Properties would like to build a house 2 feet wider than the side setbacks, with a small porch that infringes on a small portion of the front 30-foot setback. He said that Chance wants to build a slightly larger house than allowed to make it bigger and more livable which would involve the side setbacks being 13.9 feet. The back yard would be larger. The house would have 3 bedrooms whether it was 20 feet wide or 22 feet wide. The increase in width would make for a much nicer house.

L. Harten asked about the front setback, the 5-foot encroachment.

B. Shepard said that only part of the setback would be involved.

B. Levenson pointed out a typo in the notice of hearing; the 29.5 feet from the front property line should read 25.9 feet.

B. Shepard stated that the porch would be the only encroachment and many homes on the street encroach the front setbacks. He then went on to respond to the facts supporting their request for a special exception.

1. The proposed use shall be similar to those permitted in the district:

B. Shepard replied that the new home would be a moderately priced three-bedroom home that would be in keeping with the other homes in the neighborhood.

2. The specific site is an appropriate location for the proposed use because:

The property is in a residential zone and a single-family home, which is a permitted use. The home is a moderately priced, single family, three-bedroom home.

3. The use as developed will not adversely affect the adjacent area because:

B. Shepard replied that there would be a slight infringement on the side yard setback by 1' 3" on each side and a partial infringement on the front setback of 5', to allow for a larger back yard. These deviations would not have an adverse affect on the spacing between the lots. The spacing allows for a nice home with a nice setback.

4. There will be no nuisance or serious hazards to vehicles or pedestrians:

B. Shepard replied that the increase in size by 2 feet would not create a hazard. The home will fit in nicely on the lot; it will not adversely affect the town sewer and water system. There will be no increase in traffic as a result of the construction of this home.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:

B. Shepard replied that the proposed home would fit nicely on the lot in question. It will be moderately priced. He felt it was a reasonable proposal; if the house were built a little wider, it would be more attractive. Two feet can make a large difference in the size of a bedroom.

L. Harten asked the board if they had any questions.

K. Bauer stated that they were looking at lots of record from over 100 years ago. These lots are grand fathered and they are very small. Two lots together might add up to 10,000 square feet, much less than the 15,000 square feet that is required now. She wondered if the builder would consider building one house on the two lots.

S. Bonenfant replied no.

K. Bauer also stated that all the old lots show 50 feet of frontage and today's requirement is 100 feet of frontage. Lot 19, was Mrs. Calvetti's original lot; she owned three lots of record. Many houses have taken up more than one lot of record. Map 18 Lot 1 takes up 2 lots of record that is shown on the tax map as one lot. She wanted her objection noted for the record: two houses on two very small lots is not conducive to the neighborhood, even though the neighborhood is a single-family neighborhood. She was not sure if that was an appropriate use.

B. Shepard stated that there are two lots and two houses can go there. The only person penalized by a smaller house would be the buyer.

K. Bauer stated that she understood.

S. Bonenfant said that the situation on Bridge Street was much worse; the houses are about 2 or 3 feet apart from each other..

K. Bauer stated that if the two lots were consolidated, the spacing would be much better. She didn't think it was in keeping with the neighborhood.

B. Levenson stated that in principle, you could put two houses there, on two lots of record.. He didn't see anything to gain by denying it; it was going to happen.. He said it was sad.

K. Bauer said that it was indeed sad, that all the small lots of record could be built on. The owners will all have to come to the board to gain relief.

B. Levenson stated that it was sad but the 1' 3" encroachment on either side is small; he couldn't find any logic that says no.

K. Bauer asked if it was in keeping with the neighborhood.

B. Levenson stated that even though the lots are not in keeping with the neighborhood, they are lots of record are build able. They exist and there's nothing the board can do about it.

L. Harten asked if any abutters had any comments or questions.

Gayle St. Pierre, 38 West St., stated that she lived on the corner of Knight Street and West Street. She felt this was not in keeping with the neighborhood. Her lot has a build able lot too but she wouldn't build there. She felt the increase in size would make a difference. She did have a disagreement with this.

L. Harten asked if she would be happier with a smaller house.

G. St. Pierre replied that she doesn't care how much more money they will make. The houses would be too close to her land. The houses would not be pleasing to the eye; they look too narrow, like mobile homes. She said she was amazed that two houses could even go there.

L. Harten stated he didn't think anyone on the board disagreed with her but they will build there regardless.

K. Bauer said she didn't feel comfortable granting relief so they can put two houses on two small lots. They will build them if they meet all the conditions, even if they know they'll be putting two houses on two very small lots.

Robert Pollock asked about the distance between the existing house and the new lot.

R. Bercher replied that the back corner was one foot away from the side property line.

R. Pollock asked if they could, instead of grand fathering the new lots, bring them up to today's standards if they sell.

L. Harten said if it's a lot of record, they have no choice.

K. Bauer replied that they are legal lots of records. These lots are shown on the tax maps as one parcel. The tax maps have not been updated; the subdivision will be shown on the updated tax maps.

B. Levenson said that the town policy is if one owner owns adjoining lots, they are shown as one lot on the tax maps. It's always been 3 separate lots.

L. Harten asked if the Berchers had any thing to say.

R. Bercher said she's aware that the situation is what it is, but the way their house is situated, they can't even lean a ladder on the side of their house without going over the property line. There is a slope from her foundation to the new lot; what would happen when they start to build, would it affect her house. She wondered what would happen with the water in her basement with the new construction that would be 13 feet from her house.

S. Bonenfant replied that he would bring the lot up to grade so all the lots would have the equivalent slope. It's a non-issue.

R. Bercher stated her kitchen window overlooks the new lot. She felt the smaller house, further away, not in the setbacks, would be the best plan.

L. Harten stated that her house is basically on the property line.

W. Bercher stated that the board has to stick with the zoning ordinance.

R. Bercher replied that this would set precedence for further development; the street would look just like Elm, Nashua and Bridge Streets, not a neighborhood.

L. Harten said the board likes to take each case on its merits; they don't set precedents.

R. Bercher replied that she respects that they take them case by case.

G. St. Pierre said that if the board felt they could grant them extra space, why not make the smaller space be between the two new homes and not on the sides that affect the abutters.

L. Harten said you wouldn't want to live in a house where you can shake hands with the neighbor through the window. The fact is the original house was built on the property line, which is something the board can't do anything about.

W. Bercher said the board should stick with the 15 foot setback.

Arthur Constantine, father of Gayle St. Pierre, asked how large the foundation was and did that include the siding and what would the foundation be for the smaller house.

S. Bonenfant said the foundation was 22' x 44'; the smaller would be 20' x 44'.

B. Shepard said that it has to be within the 13' 9" setback or it wouldn't comply.

A. Constantine said that he thinks the two houses should be closer together. He worked 20 years on the Tyngsboro Appeals Board and he feels that the laws were put on the books to be abided by. He said it was better to hurt the prospective buyer and not the people who already live there. If the laws are broken on one lot, changing the setbacks, what's going to stop the next guy from doing the same thing. The abutters don't want this. He felt this would set a precedent.

L. Harten replied that they were not necessarily breaking the law; the board is there to grant relief where appropriate.

Michael St. Pierre said that if the set back is 13' 9" at the back near his lot, the front portion of the setback will be a lot less since the property line is at an angle.

Map 24 lot 18 is not square.

B. Shepard replied that the plan is a surveyed plan.

M. St. Pierre said that surveyor's stake is at the rear corner of the lot is by his fence, the front corner is 8 feet toward their land.

K. Bauer agreed said there is some discrepancy in the deeds by a couple of feet here and there. On the plan it says the pins will be set; she doesn't know, by looking at the plans, what the discrepancy is and 50 feet is not the exact frontage.

L. Harten asked if this answered the question.

M. St. Pierre asked if it would change the measurements, once the exact size is noted.

B. Shepard replied that the plan is surveyed; the frontage is 50 feet.

L. Harten replied it assumes the lots are square.

G. St. Pierre stated that the lots are not square.

K. Bauer said to look at the deeds.

R. Bercher said if the lots were square, the sidelines would be equal and they're not but the frontage was 50 feet.

B. Shepard agreed that the lots were not perfectly square.

L. Harten asked if there were any more questions.

Loriann Demambro stated that there's nothing they can do about the two houses; she bought in that neighborhood because of the large yards. If they the board changes the setbacks for this one, any one with all the other larger lots can parcel out land, put houses in the small lots and change the neighborhood.

L. Harten said that you can't subdivide existing lots until they go to the planning board.

K. Bauer stated that was not what she was saying. If you look at the 1904 tax map, Lynch's lot is probably 5 lots that could hold 3 or 4 more houses and it wouldn't be illegal. If buildings go within setbacks, the owner has to go before the board. If the buildings don't go into the setbacks, they don't have to go before the board.

R. Bercher said that this would significantly change the value of the area; the economical impact at this time would be hard to predict, but if everyone who had the larger lots did this, it would significantly change the value of her home.

L. Harten said there is really nothing the board can do about that.

W. Bercher replied that the board is allowing a bigger house than is allowed.

G. St. Pierre said that you couldn't foresee what happens with other people. She is requesting the builder stay within the zoning guidelines. They can't stop the building but they can make them follow the rules. She requested the board uphold the laws.

L. Harten asked if anyone else had any comments.

Noreen O'Connell said that she's heard from realtors that there isn't any shortage of inventory of family sized homes. There does seem to be a shortage of smaller homes for retirees. Smaller homes would be grabbed right up.

K. Bauer said that if the houses had less than 3 bedrooms.

N. O'Connell stated that she felt the 3 bedroom homes were not appropriate for the lots. Smaller homes would be much more appropriate.

L. Harten asked if there were any more comments. He then closed the public portion of the hearing.

K. Bauer asked if they could go through the conditions.

L. Harten read the conditions.

1. The proposed use shall be similar to those permitted in the district:

B. Levenson said the house is a permitted used for the district.

F. Seagroves agreed, as did L. Harten and K. Bauer.

2. The specific site is an appropriate location for the proposed use because:

B. Levenson replied that it was by the definition in the ordinances.

F. Seagroves agreed.

K. Bauer wanted to go back to number 1. She said she disagrees; a three-bedroom home is not similar. She changed her vote to no on number 1; it is not in keeping with the neighborhood. If it was in keeping with the neighborhood, one house would be on the two lots.

L. Harten asked even if the abutting house is on the property line.

K. Bauer said that to be in keeping with the neighborhood, even if the houses sit on substandard lots, it doesn't add up to 10,000 feet. It still doesn't come up to what is required today, even with all three lots together. She went back to number 2 and said her answer was no, it was overbuilding the location.

L. Harten said it was an appropriate location; it is a residential neighborhood.

3. The use as developed will not adversely affect the adjacent area because:

B. Levenson said that building a home on this size lot has its own impact but without knowing the effects. It is an emotional issue; when you change open space to two homes, he understood the impact of that but didn't know if it would have a negative impact or not.

F. Seagroves said that both homes would look the same; the porches look nice and impact a small area of the front setback.

K. Bauer felt that it would greatly affect the density, adversely affecting the area. She felt the board should not grant relief to allow someone to over build on lots this small, two lots less than 5,000 square feet.

L. Harten said that there would be two houses built there regardless of what was decided at this meeting. He didn't feel the impact would change if the house is 20 feet or 22 feet wide.

4. There will be no nuisance or serious hazard to vehicles or pedestrians:

B. Levenson said he doesn't see there will be a hazard. It's a simple home in a residential neighborhood. It can't be adding any danger.

F. Seagroves said he doesn't see any hazard by putting two more cars on the street.

K. Bauer said there would be no hazard to pedestrians or vehicles.

L. Harten stated that at 20 feet or 22 feet wide, there is no hazard.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:

B. Levenson said he would presume this; the board would make sure of it.

F. Seagroves said the houses use town water and sewer.

K. Bauer said the board gets so many requests for garages on Westchester and Ridgefield Drives. There would be no chance of a garage with these homes.

She said for the record, most house lots, the foundation is in the setbacks; that's it. The entire side yard is set back; it's not illegal but it's not the best aesthetics. She said yes it is legal but there is no room for future garages, future accessory buildings due to the setbacks.

L. Harten said he wasn't sure if this was an appropriate question but he's sure appropriate facilities will be provided.

L. Harten asked if there was any further discussion. Since there was no additional discussion, he called for the vote.

1. Is the exception allowed by the Ordinance?

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

2. Are the specified conditions present under which the exception may be granted?

F. Seagroves – yes K. Bauer – no B. Levenson – yes L. Harten – yes

L. Harten asked for a motion to approve.

B. Levenson made the motion to approve the application for a special exception.

F. Seagroves seconded the motion.

The application for special exception was approved by a 3 to 1 vote.

L. Harten reminded the applicant of the 30-day appeal period.

The applicants thanked the board.