

Milford Board of Adjustment Minutes
April 6, 2006
Case #08-06
Kimberlee Moody

Present: K. Bauer
B. Levenson
K. Taylor
D. Michel
R. Westergren

Secretary: Kathryn Parenti

Case #08-06: Kimberlee Moody – Variance. The owner of 212 Mile Slip Road, Kimberlee Moody, Map 50, Lot 3, in the Residential “R” district, is requesting a variance from Article V, Section 5.044.B to permit a two-family dwelling unit on a parcel with less than four (4) acres.

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

47 K. Bauer stated that the applicant would like to turn her single family home into a two-family
48 dwelling which is permitted in the residence “R” district, by special exception. She is
49 applying for an area variance because her property does not meet the 4-acre requirement.
50 Her land is between 3.5 and 3.7 acres. The board will deal with the variance first, since that
51 approval is required for the special exception.

52 K. Bauer read the notice of hearing into the record. She then read the abutters list; none were
53 present. She then invited the applicant, Kimberlee Moody, to come forward and present her
54 case.

55 K. Bauer asked the applicant to respond to the conditions required for an area variance.

- 56 **1. The proposed use would not diminish the surrounding property values**
57 **because:** K. Moody replied that no additions would be made to the existing
58 house except for a deck on the rear of the home.
- 59 **2. Granting the variance would not be contrary to the public interest because:**
60 K. Moody stated that this is a residential area with like residences, many families.
- 61 **3. Denial of the variance would result in unnecessary hardship to the owner**
62 **because:**

- 63 a. **Please state why and in what manner an area variance is needed to**
64 **enable the applicant’s proposed use of the property given the special**
65 **conditions of the property:**

66 K. Moody replied that the family is an ex-military family and they had moved
67 a lot. This was where they had chosen to raise their children. All the children
68 attended Milford schools. She has attempted to try other ways to stay here,
69 like dividing off a buildable lot, but none of them worked. She would like to
70 live in one half of the home and rent the other half.

71 B. Levenson asked if this was for her own personal use.

72 K. Moody replied that no, in order to be able to stay there she would have to rent out the
73 other half.

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

77 K. Moody said it was as she previously explained; she had spent a lot of time
78 with Kevin Lynch, Town of Milford Building Inspector, on trying to find
79 ways to divide the lot. The lot is an odd shape and not set up to be easily
80 divided. If she was to sell and move, and she would like to stay in Milford,
81 the cost of homes in town is too prohibitive.

- 82 **4. Granting the variance would do substantial justice because:** K. Moody
83 replied that this is the family homestead; the children would have a home
84 to come back to for college vacations, etc. It would allow her to continue to
85 take care of the property that she is familiar with and provide her with some
86 income.
- 87 **5. The use is not contrary to the spirit of the ordinance because:** K. Moody
88 replied that two-family homes are allowed in residence “R” by special exception.
89 The use will still be residential.

90 K. Bauer asked if the property was 3.5 or 3.7 acres.

91 K. Moody replied that by town tax records, it was 3.7 acres.

92 K. Bauer asked if the board had any questions.

93 D. Michel asked about hardship, she had children in college and taking care of the house; is
94 that where the hardship came from.
95 K. Moody replied that her children had taken out student loans, as she was unable to help
96 them pay for college. She divorced in 2000 and her child support and alimony will end in
97 June 2006. She has been unable to work full time due to health issues.
98 K. Bauer stated that financial hardship could be a factor but not the only reason. She also
99 said that the applicant had pursued other avenues but due to the special conditions of the
100 property, was forced to try this, even though the property almost meets the required size.
101 K. Taylor asked if there was enough frontage for a two-family dwelling.
102 K. Bauer replied that it did, 400 linear feet.
103 B. Levenson asked if this needed to go before the planning board.
104 K. Bauer replied that it did not.
105 B. Levenson asked about the septic system; would it be big enough.
106 K. Bauer replied that the septic system is not under discussion.
107 K. Moody added that she has an oversized septic system and she would not be adding any
108 bedrooms.
109 R. Westergren said he was curious on how they would divide the house.
110 K. Bauer referred him to the drawing supplied in the application for a special exception.
111 B. Levenson asked if she would be supplying the services, i.e., water and electric.
112 K. Moody stated that if this were approved, she would talk to PSNH to divide the service.
113 B. Levenson asked if she would supply the water and the septic system.
114 K. Moody replied yes.
115 K. Bauer asked if anyone had any questions before the board went into private discussion.
116 There were no questions.
117 K. Bauer stated that the board needed to vote on whether the variance was for use or area.

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

120 K. Taylor – yes R. Westergren – yes D. Michel – yes
121 B. Levenson – yes K. Bauer – yes

122 **2. Is the variance requested a variance from a use restriction requirement of**
123 **the Zoning Ordinance?**

124 R. Westergren – no D. Michel – no B. Levenson – no
125 K. Taylor – no K. Bauer – no

126 The board voted unanimously that this application is for an area variance.

127
128 **1. Could the variance be granted without diminishing the value of abutting**
129 **property?**

130 K. Taylor – yes R. Westergren – yes D. Michel – yes
131 B. Levenson – yes K. Bauer – yes

132 **2. Would granting the variance be of benefit to the public interest?**

133 K. Bauer stated that in “The Board of Adjustment in New Hampshire – a handbook for local
134 officials”, question 2 is stated, “*Granting the variance would not be contrary to the public*
135 *interest because:*”.

136 D. Michel stated that it is not contrary; it is a benefit. He made a motion to substitute the
137 handbook statement for the application statement.

138 K. Bauer replied that if a board member stated this, it would be better than making a motion
139 to change it.

140 D. Michel said that because it is written one way, it would protect the applicant in case of
141 appeal. It would provide another layer of protection. He then withdrew his motion and urged
142 the board to state question number 2 both ways, “ be of benefit to the public interest and
143 would not be contrary to the public interest”.

144 R. Westergren – yes D. Michel – yes B. Levenson – yes
145 K. Taylor – yes K. Bauer – yes

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

148 **a. The area variance is needed to enable the applicant’s proposed use of**
149 **the property given the special conditions of the property.**

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

153 K. Taylor – yes R. Westergren – yes D. Michel - yes
154 B. Levenson – yes K. Bauer – yes

155 **4. Would granting the variance do substantial justice?**

156 R. Westergren – yes D. Michel – yes B. Levenson - yes
157 K. Taylor – yes K. Bauer – yes

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

159 K. Taylor – yes R. Westergren – yes D. Michel – yes
160 B. Levenson – yes K. Bauer – yes

161 K. Bauer asked for a motion to approve the area variance.
162 B. Levenson moved to approve the area variance.
163 D. Michel seconded the motion.
164 The board of adjustment voted unanimously to grant an area variance to Kimberlee Moody,
165 owner of 212 Mile Slip Road.
166 K. Bauer reminded the applicant that there was a 30-day appeal period.
167 K. Moody thanked the board.
168 The board wished her luck.