

**Town of Milford
Zoning Board of Adjustment Minutes
April 5, 2007
Patricia Berntson
Case #10-07
Special Exception**

Present: Len Harten, Chairman
 Katherine Bauer
 Bob Levenson
 Fletcher Seagroves
 Ron Pieper, Jr.

Secretary: Kathryn Parenti

Patricia Berntson, owner of Map 43, Lot 26, located on Tonella Rd, in the Residential “B” district, is requesting a Special Exception from Article V, Section 5.036.A to allow the construction of a two-family dwelling twelve (12) feet within the required front setback.

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

L. Harten, chairman, opened the regular meeting of the Milford Zoning Board of Adjustment at 7:30 pm. He then stated that the hearings are held in accordance with the Town of Milford Zoning Ordinances and the applicable New Hampshire statutes. He continued by informing all of the procedures of the board. He then introduced the board. He continued by reading the notice of hearing into the record.

R. Pieper noted there was an error in the Notice of Hearing. He stated that the Section should be 5.036.A for Residence "B" instead of 5.025.A for Residence "A".

L. Harten then read the abutters list into the record. Patricia Bernston, applicant, Harvey Halverson and Lorraine Marchildon, representing the Ledgewood Condominium Association, were present. He then read a memo from Rita Carroll, of the Conservation Commission to Kathryn Parenti, Administrative Assistant regarding the site. In addition, he read a letter from the directors of the Ledgewood Condominium Association to Bill Parker, Director of the Office of Community Development. He invited the applicants forward to present their case.

Bob Kokko and Andrea Kokko presented for Patricia Bernston. A. Kokko stated the only thing they are requesting is a twelve (12) foot exception from the thirty (30) foot front setback. The building will be the same as they brought before the board before and it would be setback eighteen (18) feet from the road instead of the required thirty (30) feet. The home would be a duplex and that is allowed in Residence "B".

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

A. Kokko stated there are apartments and condominiums surrounding this site and there would be no difference from the other uses in the area.

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

A. Kokko stated the new location of the home is not in the wetland buffer and is the only buildable area on the lot; the best solution would be to encroach on the front setbacks rather than the wetlands buffer.

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

A. Kokko stated the surrounding area is more densely populated than this site and the use is similar to those surrounding it.

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

A. Kokko stated there will be no nuisance or hazard to vehicles or pedestrians.

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

A. Kokko stated there was town water and sewer on the road.

L. Harten expressed his concern with the memo from the Conservation Commission regarding the use by the residents and the impact on the wetland buffer.

A. Kokko stated they are not asking to build in the buffer but it was okay to walk in the buffer, which is twenty five (25) feet in front of the wetland area. The placement of the house is the most suitable area on the lot and the entire right side of the house, from the road, is usable land. The buffer on the left side will still remain untouched.

B. Kokko stated they can't change the buffer but can alter the useable land.

K. Bauer stated they would not be able to dig any piers for a deck or shed in the wetland buffer. She wanted it made clear that they understood the restriction.

A. Kokko stated if the owners wanted to build a deck three (3) feet off the rear of the house, they could, if the base was not dug into the ground. She also noted they could place a shed in the buffer, on the surface.

B. Levenson stated the shed had to be raised up on concrete blocks and not placed on the ground in the buffer to allow the water to flow around it so there would be no disruption in flow. He stated decks must also be raised above ground.

A. Kokko stated anyone purchasing the property would be furnished a map with the wetland buffer and wetland area marked.

K. Bauer stated that most homeowners don't check for restrictions.

B. Levenson wondered if it was possible to note the wetland restriction in the deed to make the homeowner aware of what is behind the house.

L. Harten stated he hoped it would be made clear to the buyer.

B. Levenson asked if the measurements in the application, 26 by 70 square feet should be 26 feet by 70 feet. He also asked if the plan showed the entire size of the building.

B. Kokko stated the plan showed all of the building that would easily fit on the site, to give a potential buyer as much room to work with as they could, including one-car garages on either side of the building, which would be not as close to the road as the main portion of the structure.

K. Bauer asked if there would be two (2) cuts for the driveways on Tonella Road. She stated she was concerned by this.

L. Harten asked if there would be any disturbance in the wetland buffer, since the rectangle of the building butts right up to it.

A. Kokko stated the dotted lines on the plan showed where the disturbance would be, which would be returned to its natural state once construction was finished. She stated the ordinance says one can disturb up to 3000 square feet of buffer without a variance. She also said she had gone into the Office of Community Development and spoke with Kathy Parenti, who called Kevin Lynch into the conversation. He felt the amount of surface disturbance was acceptable, as long as the land was returned to its natural state. She said she thought they would need to apply for a variance but were told by K. Lynch they did not. They will just be disturbing a small amount around the foundation for trucks to move back and forth on.

K. Bauer stated she would feel more comfortable if they could assure there would not be much disturbance in the wetland buffer.

A. Kokko asked if less than 3000 square feet of disturbance is technically allowed by the ordinance.

K. Bauer stated it must meet the criteria for a special exception. If there were any objections, they should be brought forward and explained to the applicant.

B. Kokko stated that twelve (12) to fifteen (15) feet that will be disturbed is almost half of the buffer and they would have to plan that it will be disturbed and will be restored after construction is finished.

L. Harten stated that the location of the foundation must be certified to show that no portion of it is in the wetland buffer.

B. Kokko stated an engineer would do it.

L. Harten stated he wanted to comment on the letter from the Ledgewood board of directors regarding their traffic concerns. He asked where the driveways would be on Tonella Road.

B. Kokko stated they would not be near the corner and would be at least 100 feet from the guardrail on the west side. He stated the corner is gradual and the line of sight is good and does not come close to a traffic hazard.

B. Levenson stated the town has to approve the driveway and if there were any problems with the placement, they would be the better judges of the situation.

K. Bauer stated the driveways could not go in without two (2) cuts. She noted there was no layout of the driveway on the plan. She asked if there was any possibility for a turnaround, if not, the residents would have to back out on Tonella Road.

R. Pieper stated there would probably be two twenty (20) foot driveways since the garages would be about twenty (20) feet from the road and they would be about two (2) car lengths long.

K. Bauer felt it would be dangerous for the additional 2 to 6 cars backing out onto Tonella Road.

B. Kokko stated they were not cutting through any banking and the line of sight was good from both sides.

A. Kokko stated she had lived on Tonella Road for several years and she felt backing out onto the road was not an issue.

K. Bauer asked if the garage roof pitch would be in the same direction as the roof on the house.

B. Kokko stated they would probably be in the same line as the rest of the structure, but he couldn't say for sure since they will not be the builders.

R. Pieper asked when the wetlands and buffers were surveyed.

A. Kokko stated they were surveyed by Meridian and she had gotten the plans in August, 2006.

L. Harten asked if any abutters had questions.

H. Halverson asked where, on the plan, the driveway would come out. He wondered if the driveway would be where there were trucks currently parked.

B. Kokko showed on the plan where the driveways would go, in the middle of the lot, approximately 250 feet from the corner and 250 feet from the end of the lot.

R. Pieper asked what the speed limit was on the road.

H. Halverson stated the posted speed limit in the LedgeWood development was 30 miles per hour. He stated he was comfortable with the location of the driveways, as long as they were not near the curve in the road.

L. Harten asked if there were any more comments.

B. Kokko passed around page of photographs of two homes on the road, with less than the required front setbacks so show that this dwelling would be similar to those in the neighborhood.

K. Bauer stated they were permitted because they were grandfathered and that would not be allowed today.

L. Harten asked if there were any additional comments. Since there were none, he closed the public portion of the hearing. He asked the board if there were any additional comments.

B. Levenson stated he was a firm believer in the knowledge of the Conservation Commission. He did note they stated there was a small buildable area on the lot but the statement made in their memo, dated March 30, 2007: *"Anyone purchasing the property should be made aware that there is little to no useable area for a yard, or deck, etc."* He felt they were conceding that something would eventually happen on the land.

R. Pieper felt they were not conceding but acknowledging the piece of land is buildable. He stated he preferred that building not take place but there were no restrictions against it. He felt that B. Levenson made a very good point.

K. Bauer stated for the record that she would like to see the wetlands properly flagged and she wanted the foundation to be certified to prevent any mistakes from occurring.

L. Harten stated that the applicants are aware of what must be done but if any building occurs in the buffer zone, they would have to tear down and move the building. He stated the board will not allow this to happen again, although in the other situation, the builder never checked to see if the placement of the foundation was in an approved location. He asked if there were any more comments. There were none so he then called for a vote.

1. Is the exception allowed by the ordinance?

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

L. Harten – yes

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

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

L. Harten – yes

L. Harten asked for a motion.

R. Pieper made the motion to amend the request to read Section 5.036.A instead of 5.025.A.

K. Bauer seconded the request to amend.

All were in favor.

R. Pieper made the motion to approve the request, as amended for a special exception to allow the construction of two-family dwelling twelve (12) feet within the required front setback.

K. Bauer seconded the motion.

Final Vote:

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

L. Harten – yes

Case #10-07 was unanimously approved.

L. Harten reminded the applicant of the 30-day appeal period and wished them luck.