

**Town of Milford  
Zoning Board of Adjustment Minutes  
September 6, 2007  
Frank Stetson  
Case #32-07  
Variance**

Present:        Len Harten  
                  Katherine Bauer  
                  Bob Levenson  
                  Fletcher Seagroves  
                  Steve Bonczar

Absent:         Ron Pieper, Jr.

Secretary:     Kathryn Parenti

The applicant, Frank Stetson, owner of 196 Federal Hill Road, Map 53 Lot 19, in the Residence "R" district, is requesting a variance from Article V, Section 5.044.A to permit a lot with less than the required size and frontage.

Motion to Approve: \_\_\_\_\_

Seconded: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

L. Harten, chairman, read the notice of hearing into the record. He then read the abutter list into the record; Michael Dobbins of 183 Federal Hill Road, Kenneth Nelligan of 164 Federal Hill Road, Christopher Knoell of Sioux Falls, South Dakota, Donald Stetson of 133 Ponemah Hill Road and Kevin Stetson of 188 Federal Hill Road were present.

L. Harten read a letter from Frank Stetson, dated August 16, 2007, allowing his son, Kevin Stetson to represent him in this matter. He then invited the applicant forward to present his case.

K. Stetson noted he was here to ask for a variance for his father's lot, Map 53 Lot 19. He noted he had not surveyed the land but the property would be surveyed if the variance was granted. He stated the measurements were good but not accurate to a surveyor's standards. He said they were looking to reduce the lot size from 3.1 acres to 1.5 acres. He noted the size was not surveyed but was based on deed information so the acreage was not exact. He stated if the variance was granted to make this lot a non-conforming lot, they would then go before the Planning Board and ask to add the remaining 1.5 acres to the larger lot in the rear. He noted this subdivision was approved by the Planning Board on August 21, 2007 to combine several lots. In addition, he owns the larger new lot. They were trying to create a second access to the larger lot and part of the agreement with the Planning Board was the larger lot was to be considered a non-buildable lot as there was not enough frontage. The larger lot currently has only sixty four (64) feet of frontage and this variance would add an additional fifty (50) feet and 1.6 acres, to bring it up to 39.4 acres.

B. Levenson asked if it would still be considered unbuildable.

K. Stetson replied it would but they were not asking for a variance for that. He noted he has no intentions of moving and he wanted the lot for he and his family to use. In addition, he noted this would be the only chance for him to gain a second access because his father is selling his property, Map 53 Lot 19. There would be no financial gain to do this.

S. Bonczar asked if he has access already, why he needs a second access, if he was planning to use the property himself.

K. Stetson noted his grandfather bought all the acreage in the fifties and the land was intended as an insurance policy; if he needed to sell it for financial reasons, there would be access other than the current access that is too close to his driveway. He noted there was limited distance from the garage and the property line and there is an easement for the driveway.

S. Bonczar asked why this was before the board now.

K. Stetson noted his father was selling the property and this is the only opportunity he will have to add the frontage and access at no cost to himself.

K. Bauer noted she had been in attendance at the Planning Board meeting and she had thought they had re-subdivided the large lot into two (2) lots.

K. Stetson said only half was shown on his map and will be deeded as Map 53 Lot 21 and the request before the board was to reduce the frontage of Map 53 Lot 19 to 180' and its acreage to be 1.5 acres, which will be consistent with the lots in the area. He did note some lots in the area were very large as well.

S. Bonczar noted they were taking a legitimate conforming lot and making it non-conforming with respect to both frontage and acreage. He felt the applicant had not proven there was a necessity and this was just for convenience.

K. Stetson noted the entrance to the large lot was limited because of where he lives.

S. Bonczar countered by noting the area was wide and had access, which many back lots in town do not have. He wondered why the current access was not enough and why it warranted the making of a non-conforming lot in two (2) ways.

K. Stetson noted there was an existing stone wall that they felt would make a good boundary line and all the remaining portion of the lot is a wooded hillside. His father is offering this to him at no cost because he is selling his lot.

K Bauer asked where the location of his garage was in relation to the access to the back lot.

K. Stetson replied the garage is approximately nineteen (19) feet from the side property line, which is not enough for a road.

B. Levenson stated he felt there was no hardship if they were just going to use the back lot for hiking.

K. Bauer asked how wide the current access is.

K. Stetson replied it was between sixty (60) and forty two (42) feet wide and not wide enough by the current standards. It needs to be fifty (50) feet wide or they need to get a waiver. He reiterated his father is selling the property and this opportunity will not be around in three months or so. He felt that was the hardship.

B. Levenson stated the applicant was arguing there is no access point for the lot he has said he's not going to do any thing with, but there is an access point that is wide enough so he didn't see that there was any hardship.

K. Stetson noted there were no plans to develop the land but it would change the value of the land. If he did, the town would require two (2) entrances or six hundred (600) feet of cul de sac would be needed.

B. Levenson restated he felt there was no hardship, which is one of the criteria for a variance.

K. Bauer stated the Planning Board has, in the past, strongly recommended two (2) access points and although there are two (2) close together, there are two. She noted the Reserve was presented to the Planning Board with one access point and had to go back and develop two (2). She noted, although K. Stetson's intention is to not do anything at this time, the land may be developed by the family or someone else. She felt it was a valid point to try to give another access point to the back lot as this lot may be developed sooner or later.

S. Bonczar noted it was not this board's job to speculate development or what the zoning ordinance will address in the future. He noted he was hung up on the fact they were taking a conforming lot and changing it. He felt very strongly that they should not do that.

K. Bauer noted if they granted the variance, it would go with the land and they do look forward into the future.

B. Levenson stated if the two (2) outlet principle was a hard and fast guideline by the Planning Board, why didn't they insist the second outlet be created at that time? If it was that important, the Planning Board would have required access off of Ponemah Hill Road.

K. Stetson replied that Map 53 Lot 21-1 has two entrances and they can't go into other entrance without going into the big lot, through his uncle's land. He noted they can get in on the lower section, which is fairly flat but it would come up onto a rock knob. He felt adding the second access would improve the value of the land and provide additional access since the other option is a very steep route. He stated the consolidation was paid for by himself and his uncle. They were doing this now to avoid family arguments in the future.

K. Bauer noted the Planning Board had looked at the plan and its two (2) access points. She thought the Planning Board might have thought this would pass.

B. Levenson replied the lot was a non-buildable lot and they were creating a non-conforming lot. He wondered why they were doing this if they weren't going to do anything with the

land. He felt there were other alternatives to this request and he felt the criteria for a variance were not being met.

K. Stetson noted the hardship was that this opportunity would not be there in the future, once his father's land sells.

There was some discussion regarding the possible placement of a road in another spot but K. Stetson felt due to the layout of the land, the slope would be too great and access would be difficult.

S. Bonczar argued that they would be creating a non-conforming lot by doing this.

K. Bauer stated that the reduced lot would not be inconsistent with the others in the area.

K. Stetson stated his overall goal would be to build a house on the hill on the back lot and sell his current home but he felt it would not be financially feasible for many reasons. He noted his father was trying to do something for him that he has the opportunity to do now and he stated he if this was not considered a hardship, he would accept that. The reduced frontage and lot size would be consistent with many in the neighborhood.

L. Harten then asked him to go over the five (5) criteria for a variance.

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

K. Stetson replied the lot is consistent with the majority of the property around and the house is centered on the lot. He felt the stone wall would make a good permanent marker for the property line. He noted there was an opening in the stone wall for the access point.

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

K. Stetson stated the request would not impact the public interest and it would not change the value of the property.

**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:**

K. Stetson replied once his father's property is sold, this opportunity would be gone; it is the last chance he has to gain a second point of access to the back lot, at no cost to himself since it would be given to him by his father.

**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:**

K. Stetson noted the third access point is not owned by him but by his uncle. The access point may never be developed and he didn't know what his uncle would do with the land in the future. To place the access point at any other location would not work due to the prohibitive grade.

B. Levenson inquired about the marking of a road on the plan.

K. Stetson explained it was the easement for the road to the fire tower.

**4. Granting the variance would do substantial justice because:**

K. Stetson replied by providing the second access point, it would reduce the issue he has with the first access point being too close to his garage. It would allow the use of the stone wall as a boundary.

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

K. Stetson replied the requirement of the zoning ordinance for two hundred (200) feet of frontage and two (2) acres was to prevent small lots in rural areas. He noted they were not creating any new lots, just allowing an access point to the rear lot. In addition, the location of the second access point has a better sight distance than the original access point.

K. Bauer noted if this passes and they have to go back before the Planning Board, could he explain the lot line adjustment that would come about.

K. Stetson showed on the map where the large lot comes around the smaller property and becomes part of the large area. He noted the neighbor's concern is with making another buildable lot and his goal is not to make another lot but to add more acreage and another access point to the rear lot.

L. Harten opened the discussion to any concerned abutters.

K. Nelligan had some comments that were not relevant to the issue at hand and were personal in nature. L. Harten reminded him that historical problems from the past did not apply here.

K. Nelligan did inquire why K. Stetson could not build an access points through his uncle's land.

K. Stetson replied the area was too steep to do such a thing; the grade was upwards of 6%.

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

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

K. Bauer – yes            S. Bonczar – yes            F. Seagroves – yes            B. Levenson – yes

L. Harten – yes

**Is the variance requested a variance from a use restriction requirement of the Zoning Ordinance?**

S. Bonczar – no            B. Levenson – no            F. Seagroves – no            K. Bauer – no

L. Harten – no

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

S. Bonczar felt this request would not diminish the value of surrounding property.

K. Bauer stated as presented, reducing the frontage from the 200 feet requirement to 180 feet, 3 acres to 1.5 acres, this would not diminish the value of surrounding property.

F. Seagroves replied there would be no diminution of value as the surrounding area has lots of similar size.

B. Levenson felt this might diminish the value of the smaller lot but not the value of surrounding properties.

L. Harten felt this would not diminish the value of surrounding properties.

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

B. Levenson stated there would be no gain to the public interest by granting the variance. He felt it would be contrary to the public interest.

S. Bonczar stated if they relate public interest to upholding the zoning ordinance, he was not sure it was positive to the public interest. He felt there was no good definition of public interest and felt this was not positive to the public interest.

L. Harten noted this was addressed on page 13 of the The Board of Adjustment in New Hampshire, A Handbook for Local Officials.

B. Levenson stated, in this case, the relief given by the board would be against the public interest.

K. Bauer read from page 13: “...but merely must show that there will be no harm”. She stated she did not see there would be any harm if this was granted.

F. Seagroves stated he had a problem with this question. He didn’t see where a reduction from 200 feet to 180 feet of frontage and the smaller size lot would be contrary but that small change would make the lot not conforming any more. He felt it was unfavorable and contrary to the public interest.

S. Bonczar stated the harm would be the violation of the ordinance and the people of the town have voted on the ordinance; there would be harm to the public interest.

K. Bauer said the change was minimal.

S. Bonczar stated the harm to the public interest is the violation of the ordinance, even though the impact is minimal.

B. Levenson stated it was tough to answer. To give the applicant the extra 50 feet of frontage when he says he has no plans to use or develop the lot when there is already access and frontage would not be in the public interest. They would be creating a non-conforming lot to satisfy the applicant’s interests and there was no reason to do it. By taking the extra fifty (50) feet of frontage, they are creating a substandard lot and he couldn’t understand how this could be in the public interest.

L. Harten stated he agreed with K. Bauer that this was a difficult question regarding public interest when the applicant is part of the public. He wasn’t sure if reducing the lot size and frontage would be of harm to the public and he didn’t see a great problem with that. He read from page 13 of The Handbook: “...if the applicant satisfies the other four (4) criteria, a denial based solely on the public interest criterion is...unlikely to be upheld in court”.

K. Bauer noted if you vote no to the criterion of the request being contrary and vote yes to all the rest of the criteria, this would be grounds for going to court. She felt this question was nebulous, as was the substantial justice criterion. She felt if they vote against the hardship question, all the rest of the criteria should fall into place.

L. Harten stated he did not feel this was 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 wondered if the applicant chooses to do nothing with the land, why he needs the variance and the access. He also felt there were other feasible alternatives.

K. Bauer stated she did not have a problem with this. If you are looking at the benefit for each lot and the entire plan and not just the property in question, the alternatives are not reasonable or feasible. With regard to the lot he wants to change, that wouldn’t result in an unnecessary hardship as there are no special conditions of the property in question. The answer was no to the hardship question. She felt this was a strange request for the many reasons stated this evening.

S. Bonczar did not feel there were any special conditions with the lot in question because it is a conforming lot. Now they want to make it non-conforming to facilitate the use of another lot and he didn't see that there was any hardship there. With the feasibility question, they were asking to make a conforming lot non-conforming and he felt there were other means to accomplish what the applicant wants. He didn't feel there was any financial burden to prevent the owner from using the land the way he wants.

K. Bauer noted the applicant was putting the focus on the back lot and they were not here to decide on that lot. The lot in question does not appear to meet the hardship questions.

F. Seagroves stated he agreed with K. Bauer's comment; he didn't see how they could grant this as there were no special conditions and no hardship. With regard to the second part of the question, the board was not here to grant a road into the back lot; they were here to decide to make the lot in question non-conforming.

L. Harten stated he has struggled with this while trying to consider the lot in question. He felt, looking at the whole picture, there were no other reasonable or feasible methods to accomplish this. In addition, looking at the lot in question, there were no special conditions to the lot that make sense for the applicant to break off land to give access to the back lot. With regard to the back lot, if he were the applicant, he wouldn't want the right of way to the back land to come that close to his driveway.

K. Bauer stated if one house was built in the back, it wouldn't be the problem but if there was a larger development back there, the access near the existing house would be not good. There would be more impact with a larger development than with one house, but that was not what they were dealing with tonight.

L. Harten stated if they were reaching for a hardship, they could say there would be negative impact on the property where the right of way to the back lot would be going through.

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

B. Levenson stated if there was no hardship then the answers to both 4 and 5 would have to be no.

K. Bauer reiterated B. Levenson's answer, that she would have to vote no.

S. Bonczar stated they are guided by The Handbook: "...*the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice*". (page 16) The value in either lot is the correct frontage and acreage and he is aware of the applicant's intent but there is no injustice in this case.

F. Seagroves agreed with S. Bonczar and he didn't see where there was any loss that would outweigh any gain to the public.

L. Harten agreed; any loss to the applicant was not outweighed by the gain to the general public and granting the variance would not indicate substantial justice had been done.

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

K. Bauer said if the variance was granted, the reduction of 200 feet to 180 feet of frontage and 3.1 acres to 1.5 acres would not be contrary to the spirit of the ordinance.

S. Bonczar did not agree as there was a conforming lot that met all requirements and by making it non-conforming by ten (10) or one hundred (100) feet is not keeping with the spirit of the ordinance.

B. Levenson felt this request was not justified because the applicant was doing something not warranted when they asked for a variance. Where was the acreage and frontage going? It was going to further enhance a non-buildable lot.

F. Seagroves agreed with S. Bonczar that this was making a conforming 3.1 acre lot into a non-conforming 1.5 acre lot and that is against the spirit of the ordinance.

L. Harten agreed felt this was not contrary to the spirit as it still leaves a good sized lot with diminished road frontage but not substantially. He didn't feel "...the health, safety or general welfare of the community" (page 16 of The Handbook) would be violated and this was not contrary to the spirit of the ordinance.

L. Harten asked if there were any additional questions or comments. He reopened the public portion of the hearing to address a question posed by K. Stetson.

K. Stetson noted the reason this case was originally tabled was the abutters to the large lot were not notified. He wondered why they had to be notified if the large lot was not being taken into consideration.

B. Levenson noted the abutters were notified to give them the option to attend the hearing. The board is obligated by law to notify them. He noted the original request to the Zoning Board predated the Planning Board meeting and the consolidation of the lots. Since there was a change proposed, the abutters of the lots in question needed to be notified.

K. Bauer noted if they had granted the variance at the past meeting, they would have given frontage to a lot that no longer exists.

B. Levenson clarified between cases 29-07 and 32-07, they have been to the Planning Board, have consolidated and re-divided lots and now the new lot does have frontage. There is now a large lot with a little frontage that it didn't have before and that the Planning Board has deemed is non-buildable. Everyone surrounding these lots that would be affected needed to be notified.

K. Stetson wondered about the criteria that dealt with the public interest and the spirit of the ordinance then no variance should ever be granted when it creates a lot that doesn't conform to zoning regulations.

B. Levenson felt the questions could be in a better order but in the end, if there is one no to a question, the final answer must be no.

K. Stetson noted this was an opportunity that will not exist in the future and is therefore a hardship.

B. Levenson noted if the applicant was not happy with the results of the hearing, there were options such as filing an appeal, and if that is denied, go on to court if they deemed it necessary.

L. Harten closed the public portion of the hearing and called for a vote.

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

K. Bauer – yes                      S. Bonczar – yes                      F. Seagroves – yes                      B. Levenson – yes  
L. Harten - yes

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

S. Bonczar – no                      F. Seagroves – no                      B. Levenson – no                      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 – no      B. Levenson – no      K. Bauer – no      S. Bonczar - no  
L. Harten - no

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

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

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

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

L. Harten asked if there was a motion to deny the request for a variance.

B. Levenson made the motion to deny the variance request of Case #32-07.

F. Seagroves seconded.

**Final Vote:**

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

The variance was denied by a 5-0 vote.

L. Harten reminded the applicant's brother of the thirty-day appeal period.