

**Town of Milford
Zoning Board of Adjustment Minutes
June 7, 2007
ARCS, LLC
Case #18-07
Variance**

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

Absent: Bob Levenson

Secretary: Kathryn Parenti

The applicant, ARCS Realty, owner of Map 29 Lot 82, 0 Johnson Street, in the Residence “A” district, is requesting a variance from Article V, Section 5.024 to permit a single family residence on a lot with no road frontage.

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. He read the abutters list; Pamela Jewett of 24 Johnson Street, Linda Russell of 25 Merrills Court and Antoinette Sprague of 20 King Street, were present. He noted there was a letter in the file, authorizing Andrea Kokko to represent Robert Kokko in this matter. As there were only four (4) board members present, L. Harten asked A. Kokko to sign the waiver of right to a five (5) member board. He then asked A. Kokko to present her case. He then invited the applicant forward to present the case. A. Kokko stated they were asking for a variance for relief from the road frontage requirement. She noted the parcel in question was 3.25 acres and was land locked. In addition, the owner of Map 29 Lot 81 was willing to grant a right of way through the property for access to Map 29 Lot 82. This would give the parcel in question twenty-four (24) feet of frontage on Johnson Street.

L. Harten asked A. Kokko to go through the five criteria for a variance.

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

A. Kokko noted the surrounding properties are single family or multi-family with smaller lots and this would not diminish the surrounding values.

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

A. Kokko replied the lot is located in the residence "A" zone which is intended for single family homes. Granting the variance would be in the public interest by further promulgating this use on a much larger than normal lot.

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:

A. Kokko replied the owner cannot access or use the property as neighboring lots can, as a house lot. Granting a variance for no frontage subject to specific right of way restrictions would allow use of the land.

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:

A. Kokko stated there is no other possible access to the property except through another property, which Map 28 Lot 81 is willing to allow at this time.

4. Granting the variance would do substantial justice because:

A. Kokko stated this would allow the owner to enjoy his property which is now inaccessible.

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

A. Kokko stated this request would not violate the spirit of the ordinance. As a single house in town lot of 3.25 acres, this lot will have much more land than necessary with its frontage being on a substantial right of way leading to a town road.

L. Harten asked if there were any questions.

K. Bauer reiterated the lot currently has no frontage and if this passes, it would have frontage on a right of way. She also noted this had come before the board in 2005 and the variance had expired.

A. Kokko noted this was granted by a unanimous vote with a condition. She stated the deed, with the right of way, would be in place before the building permit would be granted.

K. Bauer asked if she would have a problem if the request was granted with the same condition.

A. Kokko replied she would not.

K. Bauer asked if the lot in question was a lot of record before the zoning ordinance was in effect and why was the lot land locked.

A. Kokko noted that a Mr. Hayward was the original owner and he had sent out letters to local real estate offices and investors in the 1990's stating he had a landlocked parcel for sale. She noted the applicant had not made the lot landlocked.

R. Pieper asked if the right of way existed yet and who is the owner of Map 29 Lot 81.

A. Kokko stated ARCS Realty owns the lot and there is a multifamily home on the lot.

R. Pieper asked if the right of way would be granted as he was looking to protect the owner of Map 29 Lot 81.

A. Kokko said it will be granted and there will be no monetary value, just a deed change. She noted it would have to be written into the deed of Lot 81. She stated when this was proposed in 2005, the condition indicated the right of way on Lot 81 is to benefit Lot 82 and would forever be for the use for Lot 82.

L. Harten asked if there were any questions from abutters.

P. Jewett noted there was an open well on Map 29 Lot 68. She was concerned kids would fall into it.

L. Harten noted the applicant cannot address this concern as they do not own the lot with the well on it. He recommended they bring this concern to Kevin Lynch, Building Inspector and Code Enforcement Officer.

P. Jewett asked if they were planning to level out of the lot and cut all the trees and asked how large the house would be.

A. Kokko stated they could if they wanted to as it is one house lot and it depends on the builder. She said there were no house plans as of yet; they were just trying to gain access to the lot to make it a buildable lot.

L. Harten stated this was not the board's concern and he would hope the builder wouldn't take down many trees in the building process.

A. Sprague asked about the proposed right of way, was it in place now.

L. Harten replied before anything happens the right of way would have to be deeded in order to gain access to Lot 82.

A. Sprague stated she owned property on Mill Street and she was concerned with the water that comes from the hill. She felt there should not be any more building around Johnson Street due to the excess runoff.

R. Pieper asked her if the water was coming from the lot in question.

A. Sprague replied it came from the hill. She also noted she would like to see the right of way in place before this approval occurred.

L. Harten clarified the water comes from Johnson Street and flows down to Knight Street and then to Mill Street.

P. Jewett noted the rear of her property is very wet and there are wetlands on the property in question. She asked if the wetlands have been mapped out.

A. Kokko noted a survey had not been done yet and in addition, didn't think the wetlands issue was part of this hearing. She stated if they plan to build a house on the lot, they would have to have a survey done to show where the wetlands are. In addition, if the builder wants to impact part of the wetland buffer, they would have to come back before the board for that.

L. Harten reiterated that any home owner, if there is any wetlands buffer disturbance, must come before the zoning board. He assumed, if there was a wetland issue, it would have been noted by K. Lynch and if there was an issue, there would have been two (2) cases before the board this evening. He noted it was his understanding the lot was a buildable lot. In addition, in this case, the abutter and grantee of the right of way, is also the owner of the landlocked lot. They pay taxes on the lot and they are now asking to build on it.

A. Sprague stated this does not help her water situation.

L. Harten replied it sounded like the situation already exists.

R. Pieper noted he had some concern with the water and wondered if an additional building would exacerbate the situation. He asked if there was water everywhere and whether or not it was present when it rains.

P. Jewett stated the water is always there.

L. Russell stated the area has been wet since the high school was built.

L. Harten reiterated that was not tonight's request.

K. Bauer noted this was not the Zoning Board's jurisdiction. She noted there have been water issues there for many years and she said she would be more concerned if the lot in question was generating the water. She noted a wetland survey should be done for the entire area as it is a chronic problem and is something that needs action. She stated the applicant would have to come before the board if they were going to impact any wetland buffers but that was not the case before the board tonight, which was a request for relief from no road frontage.

R. Pieper noted the notice of hearing states "to permit a single family residence".

A. Kokko stated they would build a home, provided there was enough dry area on which to build, but that was not the issue tonight.

L. Harten reiterated if there was a wetlands issue, that would have to be addressed before building permit is issued and if there was a problem, they would have to come before the board again.

L. Harten asked if there were any additional questions. There were none so he closed the public portion of the hearing. He stated they would need to determine the type of variance they will be discussing.

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

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

The board then proceeded to discuss the five criteria for a variance.

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

F. Seagroves replied there would be no diminution of value except to the property granting the right of way.

K. Bauer stated F. Seagroves made a good point but as the owner of Map 29 Lot 82 was the same owner as Map 29 Lot 81, she did not see there would be a diminution surrounding property values.

R. Pieper said there was a neutral effect but the right of way could make it more challenging to sell the property in the future, but that did not concern him that much.

He stated if the current owner is fine with that then he was fine also.

L. Harten felt this would not cause a diminution of value to the surrounding properties as it is an area of single family homes and that was what was proposed.

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

K. Bauer stated yes, this would not be contrary to the public interest.

R. Pieper stated he struggled with this a bit. He felt if the abutters concerns were germane to any of the questions, this would be the one. He noted the abutters are concerned the placement of a home on the lot is going to exacerbate the water flow problem. He was not going to compare the house to the school as they are very different, with large differences in impermeable surfaces. He felt the water did not originate from this lot but starts from someplace else. He felt the abutters have some legitimate concerns but they fall outside the jurisdiction of the Zoning Board.

K. Bauer stated the water issue is something that should be addressed before another building goes up. She felt it was not a given that another building will create water issues that cannot be resolved; she didn't think it would. She noted if the board allows the frontage, the lot can be built on. She felt it was a stretch to say no for tonight's request, which was not for wetland buffer disturbance. She stated she did not see the connection between allowing the lot to be buildable to the chronic water problem.

F. Seagroves agreed with K. Bauer.

L. Harten stated he shared R. Pieper's concerns but there was no question that putting another building on the lot would create more impervious surface. He felt there was not enough information to decide if it will exacerbate the situation, keep it the same or improve it.

R. Pieper commented if a survey was conducted and there were no wetland issues, the only involvement with the town would be the building permit.

L. Harten stated anyone purchasing the lot with the intent of building on it would have some concerns and any reasonable person would want to solve any water issues that might exist. He felt this 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.**

K. Bauer stated there was no other reasonable or better way to gain access to the property other than what is proposed here. She noted it was a lot of record and the taxes are being paid. She was not certain but if the board voted against this request, it might be considered in violation of the constitutional rights of the landowner and would be deemed a taking by the town. She felt this was an unnecessary hardship to the property owner and the only way to alleviate this would be granting the right of way for the landlocked lot.

F. Seagroves stated there was no other way to achieve this and the only way to use the property is through a right of way.

R. Pieper noted both elements were fairly straight forward; the applicant can't build without a variance or a right of way. There are no other options.

L. Harten stated he agreed and there would be no other reasonable way to gain access to the land locked property. It is a lot of record and taxes are paid on it and the owner has some rights to make use of the property they own. If the board fails to grant the variance, he wasn't sure if he agreed with K. Bauer's statement regarding taking of the property.

K Bauer replied if they cut off constitutional rights, it's called a taking. In a taking, the town shall pay for what it has taken from an owner. She asked if he considered the fact that the property is landlocked a special condition.

L. Harten stated it was a hardship to the owner.

4. Would granting the variance do substantial justice?

F. Seagroves said granting the variance would give the landowner the use of the property and would allow him to build a house.

R. Pieper stated they should consider if the potential gain to the public offsets the applicant's loss. He said he was not convinced the placement of the house on that lot will exacerbate the water situation since the flow starts from someplace else. He felt, by withholding the variance, it would not do substantial justice as there is a nice piece of land that the owner can't do anything with and was large enough for a home that will meet all the building requirements.

K. Bauer agreed with R. Pieper and it felt this would do substantial justice.

L. Harten agreed; if they turned the applicant down, the loss to the individual would be greater than any gain to the public.

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

R. Pieper said the general spirit of the zoning ordinance is density and the lot is larger than those in the area. He felt twenty four (24) feet of frontage was not much but is not unsafe and the right of way would be maintained and would allow for emergency vehicles.

F. Seagroves agreed with R. Pieper and asked if this would be a private road and would it meet the current fire and emergency standards.

L. Harten felt that would be something for K. Lynch to look into.

R. Pieper suggested they could add a statement to any condition they may have, requiring the right of way meet the codes established by the town of Milford

F. Seagroves stated they should not mention width, in the condition. He felt this criterion was not a problem. He said this is what the board is here for, to grant relief like this.

K. Bauer said the spirit of the ordinance addresses safety and she didn't see there was a safety problem. As for density, this is a much larger lot than others in residence "A" and doesn't see that this goes against the spirit of the ordinance.

L. Harten agreed that this does address the density issue as it is larger than the abutting lots. He noted they had discussed the safety issue and he was not sure if there was a health issue or not, with the water running down Johnson Street.

K. Bauer stated if the water was an issue, the town had better deal with it.

L. Harten said he did not believe granting the variance would be contrary to the spirit and intent of the ordinance.

K. Bauer asked if they should propose any conditions and she felt they should go on the record with the condition before they vote.

After some discussion regarding wording, R. Pieper proposed the following condition:

"Before a building permit for this residence is issued, a recorded deed be in place, indicating

the Right-Of-Way that shall comply with all current regulations, codes and governances, on Map 29, Lot 81 to benefit Map 29, Lot 82.”

F. Seagroves seconded the condition.

All were in favor.

K. Bauer noted, for the record, that it was recommended by K. Lynch to add the condition from the last approval to this case.

L. Harten asked if there were any additional questions. Since there were none, he called for a vote.

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

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

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

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

4. Would granting the variance do substantial justice?

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

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

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

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

K. Bauer made the motion to accept the variance request of Case #18-07 with the attached condition.

R. Pieper seconded.

Final Vote:

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

The variance was approved by a unanimous vote.

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