

**Town of Milford
Zoning Board of Adjustment Minutes
May 3, 2007
Ciardelli Fuel Company
Case #15-07
Variance**

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

Absent: Ron Pieper, Jr.

Secretary: Kathryn Parenti

The applicant, Ciardelli Fuel Company, owner of Map 57 Lot 6, off Mossman Road, in the Residence “R” district, is requesting a variance from Article II, Section 2.010 to permit the construction of a single family home on a lot of record with less than the required fifteen (15) feet of frontage on a principle route of access.

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; James Mossman, 28 Mossman Road, was present. He also read a letter from the Ciardelli's, authorizing Alexander Buchanan, attorney, to represent them. He invited the applicant forward to present their case.

Alex Buchanan stated the applicant was asking for a variance to build a house on Map 57 Lot 6, utilizing, for access, a private road in Hollis. He noted the property is a preexisting lot of record, which was formerly owned by Charles Glover, who lived in a mobile home on the lot. He used the same point of access as the new owners are today. He stated it was an unusual variance as the new owners are not changing uses and they have prescriptive rights over that piece. He noted the access was fifty (50) feet wide but they did not own the access and thus are required to get a variance. He stated Kevin Lynch, Zoning Official, felt it would make more sense to make sure the record is correct so they can get a building permit for their home. He then responded to the five criteria.

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

Buchanan replied there would be no diminution of value by placing the house on the lot. He noted the tax map does not show the lot line separating Map 57 Lot 6 and Lot 11. In addition, the zone is the Residence "R" zone and a single family home is a permitted use and consistent with the surrounding uses.

A. Buchanan noted the property line between Map 57 Lot 11 and 6. He noted the town assessor recognized them as two separate lots. He noted Bea Kimball, of the assessor's office had been told by Mr. Glover to send one tax bill for the two lots and in the process, the lot line blurred. In the absence of a survey, the deed from the Glover estate to Ciardelli Fuels shows separate parcels. He noted the tax map shows the brook as the property line.

K. Bauer noted on the old tax map, the brook is shown but it is not shown on the new tax map.

L. Harten asked about the size of the lots.

A. Buchanan stated lot 6 is sixteen (16) acres and lot 11 is over sixty (60) acres. He noted they were very large lots.

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

A. Buchanan noted it would not be contrary to the public interest as there will be a single-family home on sixteen (16) acres. He stated there would not be setback issues and it is not on a principle route of access. He also noted there would not be a density issue as there would not be an increase beyond what is allowed by the zoning ordinance.

B. Levenson asked which road the access would be off of.

A. Buchanan replied it would be off of Laurel Hill Road in Hollis. He noted Mossman Road is taken care of by the abutters.

James Mossman stated there was a deed to Milford piece of the road, there was fifty (50) feet of road and the top of the road has fifty (50) feet of frontage. He noted there was a surveyor's pin in a stone marker and there is fifty (50) feet of frontage to get into the property. The road is 100 feet wide at the top of the road, for access by two property owners. He noted there was a stonewall that was not shown on the plan but in total, it was 100 feet across at Mossman Road. In essence, there was fifty (50) feet leading up to Map 57 Lot 6.

B. Levenson asked if Mossman Road was entirely in Milford.

A. Buchanan replied half of it was in Milford and half was in Hollis.

L. Harten asked if it was Laurel Hill in Amherst.

M. Ciardelli said the road was Rock Hill in Amherst and Laurel Hill in Hollis.

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.**

Buchanan said the applicants couldn't use the property for the permitted reasonable use without a variance. The only other alternative would be to build a public road on land they do not own.

- 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.**

Buchanan stated the alternative to the variance would be to build a Town road if the applicant could obtain rights over abutting land. This would not be a feasible alternative for the placement of one home.

4. Granting the variance would do substantial justice because:

Buchanan stated the granting of the variance would allow the applicant to use the property for a permitted use without detriment to abutters or the Town.

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

Buchanan stated the lot does have access over a tract having fifteen (15) feet of frontage on a public way. The owner does not own the fee to the access; if they owned the fee, they would not have to come before the board.

B. Levenson inquired about Map 57 Lot 11 and asked if it was land locked.

A. Buchanan stated the lots were acquired at the same time.

M. Ciardelli replied it was adjacent to another lot he owns.

J. Mossman stated the applicant would have the right to pass and repass, as do the other property owners surrounding Mossman Road.

L. Harten asked if it was in the deed.

M. Ciardelli replied it was in the deed but was not specific.

J. Mossman said the right to pass and repass was done in the 1970's. He noted it could be in the deed if it is necessary. He noted there were no changes except for the new people moving on the property that people have been living on for many years.

L. Harten asked if there were any questions.

S. Bonczar asked if there was an easement.

A. Buchanan stated they have prescriptive rights and they cannot be foreclosed from using it.

L. Harten closed the public portion of the hearing. He then stated they should vote to decide if it was an area or use variance.

K. Bauer noted when an area variance is requested, it is because the use is permitted. She read from Understanding Zoning Variances: "*If the purpose of the restriction is to place incidental physical limitations on an otherwise permitted use, it is an area restriction.*" She felt that statement made it clear. She noted they were talking about a permitted use and they were talking about changing dimensional requirements.

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

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

B. Levenson replied there would be no diminution of value.
S. Bonczar stated there was a large tract of land with not a lot of density and the applicant would not be changing how the land was used before and therefore, would be no diminution of value.
F. Seagroves replied there would be no diminution of value.
K. Bauer agreed as well as L. Harten.

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

B. Levenson replied it would not be contrary to the public interest.
S. Bonczar noted for Residence "R" district, this use was not out of the ordinary.
F. Seagroves, K. Bauer and L. Harten agreed.

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 noted there were strong special conditions to the property and there was no other feasible way to pursue this.

S. Bonczar replied there was a special condition and they needed access to place the residence and noted they do need a variance for that. He felt there was no other financially feasible means to achieve this.

B. Levenson noted it was a lot of record with access and they are not creating anything new.

F. Seagroves agreed.

L. Harten noted it was a lot of record, a permitted use in the district and there was no other feasible means to access the property.

4. Would granting the variance do substantial justice?

F. Seagroves stated granting the variance would do substantial justice.

B. Levenson agreed as well as K. Bauer, L. Harten and S. Bonczar.

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

B. Levenson stated granting the variance would not violate the spirit of the ordinance for all the reasons stated before.

F. Seagroves agreed.

K. Bauer noted there was not problem with density, which is the main intent of the Residence "R" district. She felt there were no threats to the public welfare.

S. Bonczar and L. Harten agreed.

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

4. Would granting the variance do substantial justice?

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

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

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

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

B. Levenson made the motion to accept the variance request of Case #15-07.

S. Bonczar seconded.

Final Vote:

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

The variance was approved by a unanimous vote.

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