

Town of Farmington
Zoning Board of Adjustment Meeting Minutes
Thursday, August 3, 2023
Selectmen's Chambers
356 Main Street- Farmington, NH 03835

Board Members Present:

Joe Pitre, Vice Chairman
John Aylard, Clerk/Secretary
Bob Morgan
Bill Fisher

Board Members Absent:

John Scruton, Chairman

Others Present:

Kyle Pimental, Planning Director
Chris Berry, Berry Surveying & Engineering
Todd Wheatley, Millennium Holdings Group
Abutters Sterling Grondin, Tracy Grondin-
Sanfacon, Melissa Perkins, Paul Plourde,
Dona Plourde

1). Call to Order:

Vice Chairman Pitre called the meeting to order at 7 p.m.

2). Pledge of Allegiance:

All present stood for the Pledge of Allegiance.

3). Review of Minutes:

May 18, 2023-Public Meeting – No errors or omissions

Motion: (Fisher, second Morgan) to approve the minutes as written passed 4-0

4). Old Business: None

5). New Business:

Public Hearing for a Variance by Millennium Holdings Group, LLC, Tax Map 15, Lot 1. A
request has been made for a Variance under Table 2.03 (B) Space and Bulk Standards. The
applicant is requesting a Variance to allow for an existing eight-unit apartment to be subdivided
onto a lot that will not meet the maximum residential density. The property is in the Rural
Residential District.

Mr. Pitre opened the public hearing and asked the applicant's representative to come forward. Berry Surveying & Engineering Project Manager Chris Berry said he was representing the applicants/owners Millennium Holdings Group. He said with him tonight is Todd Wheatley one of the principal members of Millennium Holdings and if there is a question he can't answer he would be happy to.

Mr. Berry said these gentlemen purchased a property off of Grondin Drive there's varying addresses out there but commonly known as 42-44 Grondin Drive which is a private road off of Chestnut Hill Road. He said the property is about 72 acres in size and they have now conducted

a full boundary survey of the parcel, an existing conditions plan of the parcel so they have all the topographics, the wetlands locations, the existing features and things of that nature. He said the parcel has 3 structures on it there's an 8 unit structure which sits facing Grondin Drive and its closer to Chestnut Hill Rd. He said there is a duplex structure which is further down Grondin Drive and then there's a third structure which is also a duplex also further down Grondin Drive.

Mr. Berry said they have submitted for a design review with the Planning Board to discuss the potential subdivision of the parcel of land and they were before the ZBA tonight to request a Variance on the parcel. He said the parcel is in the Rural Residential zone which requires 150 ft. of frontage on a Class V or Town road and in this case the subject parcel has less than 150 ft. of frontage.

He said they are proposing to subdivide the parcel using Grondin Drive as the road access and the road frontage. He clarified that they are not here tonight to talk about the road. He said the road is a Planning Board issue the ability to subdivide off that road requires them to review multiple standards and apply multiple standards to that roadway. Our Variance request has nothing to do with the use of Grondin Drive he said.

He said what they are before the board for tonight is the subdivision of the parcel is proposed to be essentially 4 lots and pointed out the first lot in the subdivision on the plan which is proposed to be 3 acres in size and this is the reason they are here tonight for a Variance. He said in the RR zone this 8 unit building would ordinarily need 8 acres to subdivide and create a multi-family structure on that lot.

He pointed out the second lot in the subdivision is further down Grondin Drive and is a conforming lot which would have conforming frontage on Grondin Drive after Planning Board review and approval and the land mass around that structure would conform and so would the 30,000 sq. ft. of required upland space.

He said the third lot in the subdivision also would contain a duplex structure and would also conform as it would have over 150 ft. of frontage on Grondin Drive, it would have the minimum required acreage and it would also have the 30,000 sq. ft. of upland area.

Mr. Berry said the 4th lot in the subdivision is the remaining land and the applicants would like to review the potential of a single family or duplex structure on that land and then they are considering placing the rest of the parcel in conservation. He said there are abutting parcels on all 3 sides that in some way, shape or form are conserved so they think this is a really good use of the remainder of the 72 acres which would be about 60 to 65 acres at that point.

He said in RR zone multi-family structures are no longer permitted so when he stated each unit in a multi-family building would require one acre that's not a permitted use anymore so you couldn't have without a Variance a multi-family structure in the RR zone. He said in this case they have an existing multi-family structure that is 8 units in size and as you can see based on the underlying shape of the parcel, the wetlands locations and the length-to-width ratio at the

entrance based on the location of Grondin Drive this lot cannot feasibly be made 8 acres in size without creating a lot that is really oddly shaped which is contrary to other sections of the ordinance and certainly other sections of the subdivision regulations where you could have a weird and contrived lot. By keeping a really weird band of connected space to the remainder of the 65 acres you could technically have more than 8 acres that touches this lot but I don't think that's a reasonable way of subdividing this parcel he said.

Mr. Berry said as he mentioned they have been before the Planning Board on a conceptual basis under a design review and they understand the road is a concern for many people. He said they have the 3 abutting parcels across Grondin Drive and have the right to use Grondin Drive but they do not have an obligation to maintain Grondin Drive and they want to make sure that that use is not excessive and that the maintenance and upkeep of Grondin Drive is maintained moving forward and that if additional units are recognized and/or is used as a subdivision road that it meet a better proper standard. That's what we're proposing for the project and why we're before the Zoning Board tonight he said.

Mr. Pitre asked him to describe the length, width and amount of wetlands on the property.

Mr. Berry said as he pointed out in his narrative and is customary for a zoning case the fifth criteria for granting a Variance is that owing to the special features of the land they cannot form a reasonable use of the property without an unnecessary or undue hardship by the applicant. He pointed out that this particular parcel is 65 acres of land in the remainder but 72 acres in the underlying lot now. He said the neck of the parcel is only 270 ft. wide and it does widen up but the length to width ratio here is not as standard as many of the other of the other abutting parcels are.

He said additionally the amount of wetlands on this site is pretty vast compared to other parcels in the area and the upland areas are disconnected in many ways and pointed to a large swath of wetlands and the locations of other pockets of wetlands at the back of the site. He said each one of these upland areas is disconnected from one another from a developable standpoint so if you look at the front of the parcel where the 8 unit structure is and go to where the 2 duplexes are this area that they're trying to create a 3 acre lot around in a lot of ways is marooned already regardless of whether it has 3 acres or 8 acres it's on its own island. If you were to try to connect this 8 unit piece with any of the rest of the parcel geographically it wouldn't make sense to do that because of all of the wetlands that intercede in and amongst the upland areas he said.

Mr. Pitre asked if there was anyone for the project that would like to speak.

Hearing no reply he asked if there was anyone against the project that would like to speak.

Abutter Paul Plourde said the only thing they are worried about is the road and if they subdivide another lot at the end they thought that was considered a major subdivision and they would have to bring the road up to Town specs. He said the person that owned it before had a maintenance guy that plowed it and took care of it so they didn't have to worry about it. He

asked if they buy it and they sell off pieces what happens. He said the way it looks they are going to end up selling the big one and the 2 small ones and then the back and then asked where the road stands.

Tracy Grondin-Sanfacon said they (Millennium) own these 3 parcels now and they are subject to take care of the road they (abutters) just have rights to it. She said if they break them up 3 different people could own it and then no one has rights to the road. They're saying it doesn't have to do with the road but it does she said.

Mr. Pitre said they still have to go through the Planning Board.

Mrs. Grondin-Sanfacon said she understood that but if they're giving them the right to break this up it does have to do with the road. She said also they're saying there's this small neck here and it doesn't have to do with the current owners but if the prior person was given an allowance to break apart a bigger piece up here in the first place this would have been a bigger lot. They knew that when they bought this so it's not like "oh my goodness look what we have we didn't know that when we bought it".

She said it's not a new revelation and it's not a new revelation that they have to take care of this road either. That was in the deeds when they bought it and instead of taking care of the road first they paved and rose up all 3 parking lots instead of doing anything at all to the road so they're putting the cart before the horse she said.

Mr. Pitre asked if there was anyone else wishing to speak and hearing no reply he closed the public comment portion of the hearing at 7:15 p.m.

Mr. Berry said the question has been raised what happens when the subdivide the parcel with the roadway. He said they would then be required to create a private road agreement for each one of the lots within the subdivision to properly maintain the roadway. He said it's not like they can just sell off pieces of it without any consideration for the road the Planning Board is going to have pretty strict guidelines on the documentation that would be required for a private road to be maintained in the future.

He said the 3 lots that are adjoining the north side of Grondin Drive also came from the parent parcel so there's been a history of a subdivision on this parcel. He said the 3 parcels to the north were taken out of this piece then there were 2 parcels to the south that were also taken out of this piece both by the prior landowners prior to these gentlemen buying the property.

Mr. Pimental said the Planning Dept. would not now allow for this type of development to happen regardless of whether or not multi-families are allowed in this zone or not they wouldn't have had an 8 unit, a duplex, a duplex on a single lot like this and this is not how they would have done it. He said what the applicant is proposing, granted it is creating a non-conforming lot but looking at it as a Planner it is much cleaner than how it is now in terms of having these 3 structures all on the same lot.

He said having them on individual lots and having 3 of them being conforming or just having the 8 unit because of its position it being impossible to get 8 acres it doesn't change any of the

density that is already there as these structures already exist. He said in his opinion having it broken out this way is a better use of the land than having these 3 structures placed where they are now on a single lot without any boundaries.

Mr. Pitre then asked the board to turn to the 5 criteria for granting a Variance.

1). The Variance will not be contrary to the public interest:

Applicant response: In this instance the public interest is ensuring the space and bulk standards are met for the purposes of complying with on-site water and sewer loading. The project will be required to file for a NH DES Subsurface Subdivision Permit which ensures the site and parcel as designed can support the EDA and well area. This approval ensures that the health, safety and welfare of the public are met and respected. If this test is met then the public interest in this subdivision has been satisfied. In this case given expansive land mass, the underlying density of the parcel is not proposed to change appreciably. Therefore, the loading on site is not proposed to change appreciably despite the creation of a subdivision line.

Board response: Mr. Aylard said he was against this and he didn't think it was in the public interest in the sense of they have 2 rentals that are on 4 acres and an 8 that's on the right land mass and making this a 4 instead of an 8 would fit the area better.

Mr. Fisher said right now it doesn't fit any of the zoning requirements of today and there are 3 principal uses on one parcel of land that's not allowed. He said it is in the public interest because it will create 2 conforming lots for each duplex, a third lot at the end of the proposed cul-de-sac which still has to come before the Planning Board. It would leave the parcel of land for the 8 unit structure on a non-approved lot he said.

Mr. Aylard asked if they are talking about the one lot or the whole subdivision.

Mr. Fisher said they are asking for the Variance for the one lot. He said it would open the roadway to creating the other 3 lots but they want the Variance for just the one 8 unit.

Mr. Aylard said if he understood correctly the only thing they need a Variance for is the one proposed lot.

Mr. Berry said based on how this is shaped they can create 2 conforming lots here but they can't create a conforming lot here (pointing to the site plan) so his only point in his application is that if you look at this holistically from the underlying density standpoint whether these lot lines are here or not doesn't change the density of this property. He said whether this lot is a 4, 8, 16 or 25 (acres) there's no way to cut this from the rest based on the special features this parcel has so that's why he is here asking for just the Variance for this lot. He said he brought all of this other information to their attention to show them why he is here. This is different than if I came to you and I owned a 3 acre lot and I asked if I could put an 8 unit building on it he said.

Mr. Pitre asked when the 8 unit building was built.

Mr. Berry said he didn't know.

Melissa Perkins said she is a tenant at 40 Grondin Drive, Unit 1 and at the Planning Board meeting Mr. Berry said he thought it was in the 2000's and she and her husband moved in in

1997 and so obviously it was already existing in the 90's.

Mr. Aylard said he misunderstood and thought they were trying to put another one out front.

Mr. Fisher said the 3 buildings already exist and they are just splitting it up.

Motion: (Fisher, second Morgan) the Variance will not be contrary to the public interest passed 4-0.

Mr. Berry said they understand there's a 4 member board here tonight and he is okay with that so long as the board is okay with as they progress if there are additional pieces of information that the board needs to make a decision they would like the opportunity in the future to give that to them.

Consensus of the board was they were in agreement with that.

2). The spirit of the ordinance is observed:

Applicant response: The spirit and intent of the space and bulk standards within the RR zone specifically speak to newly created density. In this case, there is no appreciable created density. It is typical that space and bulk standards are tied to underlying density, but in this case, the subdivision is being conducted around existing unit density and it is only due to the fact the configuration of the underlying parcel that 8 acres cannot be placed around the 8-unit building. This is not the same as asking for an 8 unit building to be constructed on only 3 acres in the RR zone. It is clear from the zoning document that multi-family was not considered when the space and bulk standards were enacted whereas multi-family is not a permitted use in the zone. Single family and duplex uses are permitted but multi-family is not.

Board response: **Motion:** (Aylard, second Morgan) that the granting of the Variance would preserve the spirit and intent of the ordinance;

Discussion: Mr. Aylard said for better or worse it's not something he did and it is unique to the land. It's not a self-inflicted wound he said.

Mr. Fisher said he agreed due to the uniqueness of the land there's really not much else they can do but what they are requesting.

Mr. Pitre said he had no issues with it.

Vote: the motion passed 4-0.

3). The value of surrounding properties are not diminished:

Applicant response: Granting the Variance will not result in a diminution of the surrounding property values whereas the proposed Variance does not change any of the underlying features of the site. The creation of a substandard lot around an existing non-conforming use does not create any additional burden on the abutting land owners and in turn does not change the underlying value. The applicants have invested in the property since the short time they have owned it in an effort to raise the underlying value in preparation for potential sale. The apportionment and sale of the portions raise the underlying value of each and therefore support surrounding property values.

Board response: **Motion:** (Morgan, second Fisher) to accept that granting the Variance will not

result in diminution of surrounding property values;

Discussion: Mr. Fisher said whether or not they grant the Variance nothing is going to change in the area.

An audience member asked what about the road.

Mr. Pitre said this discussion is just for the board.

Mr. Fisher said they are not here talking about the road-this is just for the piece of property not the road. He said the road will be taken care of during the Planning Board phase of this. He said if they grant the Variance it could increase property values but he is not a real estate expert because it will satisfy the requirements for it to be on its own parcel of land freeing up other parcels. It just makes it cleaner, better to identify in the future on which parcel is which and if improvements are done to this one particular piece it could lead to property improve or increased value for the surrounding properties he said.

Vote: the motion passed 4-0.

4). Substantial justice is done:

Applicant response: Substantial justice is the balancing test gain to the applicant against potential detriment to the abutting landowners, community as a whole or a degradation of the purpose and intent of the zoning ordinance. In this case, the creation of a substandard lot around an existing non-conforming multi-family building does nothing to alter the site, abutting land owners or their rights or the community as a whole. Given the special circumstance of the parcel being so large compared to the existing and proposed uses the subdivision does not fundamentally change the underlying density of the site and therefore is not a detriment to the zoning ordinance through the erosion of the intended purpose and intent. Allowing the land owner the highest and best use of the land while maintaining all aspects of the project site provides the applicant substantial justice.

Board response: **Motion:** (Fisher, second Morgan) granting the Variance would do no substantial justice;

Point of Order: Mr. Berry said he may have misunderstood Mr. Fisher's phrasing so he felt that somebody else may misunderstand his phrasing in the future and asked him to restate the motion for the record.

Motion: (Fisher, second Morgan) that granting the Variance would do substantial justice passed 4-0.

Mr. Fisher asked if they would need a reason for that.

Mr. Pimental said they would do the reason at the end so he has been keeping track of what they have been talking about-potentially increasing property values, not increasing any density, the lot is already non-conforming and he has been taking notes as they have been going on so he can reiterate some of these but he would suggest that the board make that as part of the final motion.

5). Literal enforcement of the provisions of the ordinance would result in an unnecessary

hardship:

Applicant response: The lot has many special conditions compared to other abutting parcels. The size of the parcel (72 acres) is much larger than the average direct abutter. The size, when considering the width of the roadway, is special compared to other abutting lots in the area. The parcel also contains a non-conforming multi-family structure within the necking area along with other conforming residential structures. No other abutting parcel has this circumstance and therefore is special to the lot. All three of these structures are placed on upland areas, with wetlands that surround the building areas on three sides. When all of these special features of the parcel are considered literal enforcement of the space and bulk standards cannot be reasonably adhered to. For proposed lot #1 to conform to the space and bulk standards an odd and contrived lot line would be required which seems contrary to the spirit and intent of the ordinance. Denial of the Variance due to literal enforcement of the space and bulk standards causes an unnecessary hardship to the applicant where a fee simple lot could never be reasonably created around the eight unit structure and therefore could never be cleanly separated. Due to the special size condition as well as the existing placement of existing eight unit structure on site it is unreasonable to think that the site could not be subdivided into separate portions when you consider the entire site's large density potential. The subdivision would comply with the zoning ordinance but for the fact that the building is situated towards the front in the necking area. The total site provides for nearly 8 times the minimum area required around the building if it were positioned somewhere else on the project site. Due to this fact there is no fair and substantial relationship between the general purpose of the space and bulk ordinance and this specific application where there is no change to the total density of the project site. Since the applicant is not looking to significantly alter the underlying density of the property the proposed subdivided use is very reasonable.

We would note that if the board is included to approve the Variance that it be conditioned that the 8 unit building be considered in all density calculations that may be considered in the future. This would ensure that the space and bulk standards of the entire parcel remain in line with the purpose and intent of the ordinance.

Board response: Mr. Pitre called for a motion.

Mr. Fisher said he was trying to figure out how to word it.

Mr. Pimental said he would suggest that the motion be that the board agrees that literal enforcement of the ordinance would result in an unnecessary hardship.

Motion: So moved by Mr. Fisher and seconded by Mr. Morgan.

Discussion: Mr. Aylard said he didn't think it was a bad thing but he was still trying to wrap his arms around the fact that if you just leave it alone it fits.

Mrs. Grondin-Sanfacon asked if it was normal for people to move in and just take over and then move out and not care about...

Mr. Pitre banged the gavel and asked her to please stop.

Mr. Fisher said due to the building is already existing, the location of the building between 2 wetland areas, the shape of the land which can't be altered because there are abutters on either side, Chestnut Hill Rd. is one side, there are abutters on both sides there is no way to make an 8 acre piece of property without violating current zoning regulations that say it has to be a conforming lot with no weird shapes and sizes he agreed that this is all he can do. He said he can't get larger than a little over 3 acres for this piece of property and otherwise to deny him would be a hardship of a use of his property he said.

Mr. Aylard said he agreed that he can't get the 8 acres but the distance from the line to the second rental is about an acre. He said it's small and seems like an optical illusion. He said he knew there were wetlands there and asked if that was his best judgment.

Mr. Berry said they were trying to make as many conforming lots as possible and the second lot the reason that line is placed there is because it is right on the edge of a wetland boundary and the 30,000 sq. ft. is now contiguous with that duplex. He said if he was to slide that closer to the duplex he would then be creating a second non-conforming lot otherwise he would be right.

Vote: the motion passed 4-0.

Motion: (Fisher, second Morgan) that we grant the Variance;

Discussion: Mr. Pitre asked if they needed any comments.

Friendly Amendment: Mr. Pimental suggested they add the following amendment to the motion: that the board has found that all 5 criteria have been met; in addition to that the board feels as though there may be potential to increase property values; that the lot is already non-conforming and because both the use and the configuration of the buildings and that this proposal will improve the layout and that there is no way to make the 8 unit lot conforming because of the existing configuration.

He said he wanted to make sure he captured what the board said during their discussions to make sure that was part of the motion on why they approved the Variance. Not only did they meet the 5 criteria but that was their rational behind it he said.

Mr. Fisher and Mr. Morgan accepted the amendment to the motion.

Vote: the motion passed 4-0.

Mr. Pitre said for those that have some concerns this will be debated at the Planning Board.

6). Any Other Business before the Board: None

7). Adjournment:

Motion: (Aylard, second Morgan) to adjourn the meeting passed 4-0 at 7:47 p.m.

Kathleen Magoon, Recording Secretary

Joe Pitre, Vice Chairman

The first part of the paper is devoted to a discussion of the
theoretical aspects of the problem. It is shown that the
problem is equivalent to a problem in the theory of
differential equations. The second part of the paper is
devoted to a discussion of the numerical aspects of the
problem. It is shown that the problem can be solved
numerically by using the method of finite differences.
The third part of the paper is devoted to a discussion of
the results of the numerical calculations. It is shown that
the results are in good agreement with the theoretical
results. The fourth part of the paper is devoted to a
discussion of the conclusions of the paper. It is shown
that the problem can be solved numerically by using the
method of finite differences. The fifth part of the paper
is devoted to a discussion of the conclusions of the paper.
It is shown that the problem can be solved numerically
by using the method of finite differences. The sixth part
of the paper is devoted to a discussion of the conclusions
of the paper. It is shown that the problem can be solved
numerically by using the method of finite differences.

