

## MONT VERNON ZONING BOARD OF ADJUSTMENT

## PUBLIC HEARING VIA ZOOM CONFERENCE

Tuesday, March 16, 2021

## AGENDA

7:00 PM Case 1-2021 William McKinney, 6 Secomb Road

Application for Variance

Case 2-2021 Kathryn Marchocki, 93 Old Wilton Road

Application for Variance

**Seated:** David **Sturm**, Tony **Immorlica**, Steve **O'Keefe**; Jason **Johnson**, Charles **Schuessler****7:00 PM**

Meeting called to order via zoom conference by David **Sturm**, Chairman. Roll call was taken. **Sturm** opened the public hearing on Case 1-2021. Present via zoom was the applicant, William McKinney, owner of Map 2-62. He presented his plan to construct a 26' x 26' accessory structure within 15' of the right lot line where 30' is required. It will be a post and beam carport. Due to the location of the existing dwelling and driveway, location and access to the existing septic system, and in order to preserve the existing woodlands, this location is the most feasible and limits disturbance. It will not be visible from the road. His neighbor to the east is the Pomeroy's farm. **Sturm** had McKinney address the five questions necessary to issue a finding.

I. 1. Granting the variance will not be contrary to the public interest?

Granting the variance will not be contrary to the public interest as the variance for the carport will not alter the character of the neighborhood nor will granting the variance threaten the public's health, safety or general welfare. The single-family home will remain a single-family home and the carport will be constructed in keeping with the character of the home and neighborhood.

I. 2. The spirit of the ordinance is observed?

By granting the variance, the spirit of the ordinance remains intact as the board recognized the efforts of the homeowner to minimize site and natural vegetation disturbance and to maintain borders from the adjacent lot while keeping the character of the existing home and lot intact. As noted, the location of existing driveway, septic and leach field limit where the carport can be placed without causing more significant site and vegetation disturbance than necessary.

I. 3. Substantial justice will be done?

Justice will be done by granting the variance that will allow the homeowner to erect a carport to protect personal vehicles and that carport will be constructed in keeping with the character of the existing home with the intent to minimize site disturbance and limit negative impact to adjacent properties.

I. 4. The values of surrounding properties are not diminished?

By granting of the variance, surrounding property values will not be diminished. The property immediately abutting the side lot line is in current use and wooded. More than likely, the added carport will increase the value to the existing home and have a positive impact to adjacent properties.

### I. 5. Literal enforcement of the ordinance would result in undue hardship?

By not granting the variance an undue hardship is possible due to the homeowner needing to locate the carport further away from the home causing more significant disturbance, removal of mature trees and a possible second driveway. This would not be in keeping with the character with the neighborhood. Allowing for the setback encroachment permits the homeowner to keep the existing home and carport together in a more compact footprint and with less site disturbance than a structure elsewhere on the property.

In closing, the requested variance is reasonable in that it allows for personal vehicles, owned by the homeowners, to be stored within a structure and protected from the elements. The proposed location limits site disturbance and limits negative impact to the neighborhood character by utilizing the existing driveway and keeping the carport near the existing home in a more compact manner. Granting of the variance allows the property owner to better utilize the property with a reasonable encroachment into a side setback.

Hearing nothing further, at 7:20 PM **Sturm** closed the hearing.

### 7:25 PM

**Sturm** opened the public hearing on Case 2-2021. Present via zoom was the applicant, Kathryn Marchocki, along with Attorney Tom Quinn and Spencer Tate of Meridian Land Services. The applicant requested that we table the Appeal from an Administrative Decision and hear only the application for Variance tonight. **Immorlica** motioned to table the Appeal from an Administrative Decision seconded by **O'Keefe**. All in favor. Attorney Quinn, representing Kathy Marchocki, presented her 3-lot subdivision plan. The property consists of 15.84 acres of land of which 1.18 acres is wetlands. The property has over 2,000 feet of frontage on Old Wilton Road and Dow Road. The property abuts Lot 1-9 which is owned by the Town consisting of 121 acres of conservation land. In December of 2020, the applicant submitted an application to the Mont Vernon Planning Board seeking approval of a 3-lot subdivision. The applicant's interpretation of the zoning ordinance, particularly section I-304, is that the Watershed Area requires 5 acres of land per lot, regardless of the land's capabilities. The Planning Board denied that application on January 12, 2021. The Board interpreted the Ordinance to require a minimum lot size of 5 net acres; 5 acres net of steep slopes and wetlands. The Planning Board suggested the proper venue was an application for a Variance before the ZBA. Quinn went on to say that while they have not given up on their position that the Ordinance as interpreted and enhanced by administrative gloss requires only 5 acres of land, they conceded and filed both an Appeal of Administrative Decision and this application for a Variance. They propose a 3-lot subdivision. The existing residence would be situated on Lot 1-8 which is 5.66 acres with a net of 5 acres. This is compliant under the Planning Boards interpretation. They propose two other lots. Lot 1-8-2 is 5.18 acres with a net of 4.5 acres. Lot 1-8-1 is 5 acres also with 4.5 net acres. This leaves the open field along Old Wilton Road intact and part of lot 1-8. The Master Plan cites this as the western gateway to the town. This configuration creates only one additional house lot on Old Wilton Road; 1-8-1. This approach keeps 1-8 in compliance and spreads the shortage to the other two lots. Another option might be to make two compliant lots and put all the deficiency onto one lot. However, they feel that spreading the shortage of area among two lots is less dramatic than putting it all onto a single lot. This is the applicants preferred plan. Attorney Quinn addressed the Variance Criteria.

- I. 1. and 2. The variance will not be contrary to the public interest and will be consistent with the spirit of the Ordinance.

Granting the variance will not alter the essential character of the neighborhood. The

Applicant's proposal is to create three residential lots. Residential use is permitted in the

Rural/Residential Zone, and the neighborhood has been largely developed for residential

use. Despite the strict language of the Zoning Ordinance, the neighborhood is

characterized by lots of varying sizes, several of which are not 5 net acres. Nor would granting the variance threaten the public health, safety or welfare. Given the minimal area of wetlands on the property and location of the wetlands, it is a simple matter to design the improvements, including residences, driveways, septic systems and wells away from the wetlands, thereby eliminating any potential risk to the wetlands. Attorney Quinn submitted a letter from Spencer Tate of Meridian Land Services stating that it is his professional opinion that nothing about this configuration jeopardizes the wetlands or the watershed (letter attached).

I. 3. Granting the variance would do substantial justice.

The property is situated in the Rural/Residential District and the proposed use is permitted. There is ambiguity in the requirements of the Zoning Ordinance, but even if the Planning Board's interpretation of the Ordinance is followed, the Applicant's proposed three lot subdivision substantially complies with that interpretation. Denying the variance places a substantial burden on the Applicant without creating a significant gain to the public.

I. 4. Granting the variance will not diminish the value of surrounding properties.

The Applicant's proposed three lot subdivision will not diminish the value of surrounding properties. The lots will be consistent with many other properties in the neighborhood, will conform substantially with the Planning Board's requirements of 5 net acres and will comply with other applicable requirements. Attorney Quinn submitted a letter from Jim Spellman, Associate Broker with Berkshire Hathaway - Verani Realty stating that there is no way that granting this variance will have a negative impact on any surrounding properties (letter attached).

I. 5. Literal enforcement of the Ordinance would result in undue hardship.

The property is over 15 acres of land of which approximately only one acre is wetlands. The proposed three lot subdivision substantially complies with requirements of the Zoning Ordinance. Many lots in the neighborhood do not meet the lot size requirements. Attorney Quinn presented examples of such lots on Trappist Circle, Old Wilton Road and Dow Road. The obvious purpose of the regulations is to prevent excessive density and to protect wetlands. There is no fair and substantial relationship between the general purpose of the Ordinance and the specific application of the Ordinance to the Applicant's property because the proposed three lot subdivision substantially complies with the Ordinance requirements, will not lead to excessive density, is in keeping with the character of the neighborhood and the development can be accomplished without threatening the wetlands. The proposed three lot subdivision is a reasonable use of the property because it is a permitted use, is consistent with the neighborhood and poses no threat to the wetlands or water resources in the neighborhood.

**Sturm** stated that there were three letters in favor of the subdivision submitted by Barry Salussolia, David & Eve Johnson and Pamela Abelson, all residents on Old Wilton Road. Ms. Abelson does object to the alternate plan which would cut up the front pasture and likely take it out of active farming (letters attached). She is in favor of the proposed plan shown tonight. **Immorlica** stated that Attorney Quinn has described lots to the north of the Applicant's property which are deficient in acreage. He noted that the Corps of Engineers made changes to the watershed area and he is not sure if those changes were put in place after those northerly lots had been subdivided and built on. This watershed change became apparent because of problems with the lot across the road from the Applicants lot. This change to the watershed was put into place recently. He asked what was the timing of the subdivision of the northerly lots. Quinn responded that the northerly lots on the west side of Old Wilton Road were created at a time when the Zoning Ordinance permitted them to be created. He is not arguing that those lots are a result of a different interpretation of the Ordinance. The fact is that the Ordinance has

changed. Those lots are grandfathered lots. He is just using them as an example of smaller lots in the neighborhood. It doesn't matter how those lots came to be; those lots define the neighborhood. **Immorlica** noted that the lots to the west was an open space subdivision. There are plenty of lots that do not have 5 net acres; that subdivision varies from 1.31 acres to 6.94 acres, but that is an open space subdivision. The subdivision was done properly in that they took the net land divided by five to determine the number of lots that should be there. Quinn stated that in terms of establishing what the character of the neighborhood is, their proposal is going to create lots that are as large or larger than the surrounding lots. **O'Keefe** asked for Quinn to articulate why a community would select to have a 5-acre minimum requirement in a community like ours and more importantly, why the wetlands protection piece would not be included in the 5-acre minimum. Quinn stated that the obvious answer is to prevent excessive density. What constitutes excessive density is a matter of opinion; 5 acres of land is a significant piece of property and prevents overcrowding. Our plan shows each of these lots has 5 acres. There are not a lot of towns that require 5 acres or more for a minimum lot size. The reason we are backing out wetlands is to protect the wetlands; so that we aren't building upon wetlands. We can build on these lots without compromising the integrity of the wetlands. **O'Keefe** asked where the driveway for Lot 1-8-1 would be put in. Quinn showed the area on the plan. No wetland crossing is required; it will go in between wetlands and a stone wall. Quinn then showed the area with the well radius and septic field. It is a reasonable expectation to put a house in that area. In regards to Lot 1-8-1, the applicant has a potential buyer who wants to build in the front portion of the lot. The house is not proposed to be on the back side of the wetlands; there would not be a wetland crossing necessary to build a house. The applicant is willing to have the condition that the house built on Lot 1-8-1 would be on the east side of the wetland and would not cross the wetland. **Sturm** asked if any member of the public would like to speak in favor of this application. Maria & Clarke Eveleth spoke in favor of the plan. They feel this proposal is the best way to preserve the field in front; it is an attraction and adds value to the neighborhood. They are in favor of the original plan keeping the lower field open. Colleen & Jamason Ferreira, 102 Old Wilton Road, also spoke in favor of the original plan that leaves the lower pasture open. They want it to remain an active farmland. They feel it is an asset to the whole community. Sally Wilkins of the Amherst Land Trust spoke. They have the lien on the Wahlum property. Their primary concern is the drainage along the west boundary. Tom Quinn has already mentioned that they would be willing to put a no-build restriction on that back property and the Land Trust would appreciate that protection for the property. It looks like the existing tree line is pretty much along that back setback line. If they kept that as a no-build zone that would satisfy the Land Trust concern about any impact on Wahlum. Quinn stated that they would act in good faith with the Amherst Land Trust and the Mont Vernon Conservation Commission to work out something agreeable with respect to cutting trees and Best Management Practices. Sally Wilkins is comfortable with that. Eileen Naber, 14 Beech Hill Road, approves the plan as presented. **Sturm** next asked if anyone wishes to speak in opposition to this proposal. Jim Bird stated that Attorney Quinn went through a list of dozens of lots and one thing all those lots had in common, even though they varied wildly in the amount of dry land they had, is that they all complied with the subdivision laws of Mont Vernon when they were created. In 2002 the zoning was changed. We went to density based, which looks at the tract to be subdivided, removes the wetlands and steep slopes; whatever is left in this zone is then divided by five and that's how we determine the number of lots. The only lot specific requirements for grid subdivisions are frontage, setbacks and there must be suitable upland sufficient in size and configuration to support all proposed utilities and structures. He fears that if we approve this, we will have many people coming forward wanting variances to subdivide. Since this zoning was passed, every subdivision has complied with it, except for one variance granted last year. This plan before us does not comply with Mont Vernon's subdivision regulations. If we vary from that, we could be opening a can of worms and if he were a Selectman, he would be very concerned. LeeAnn Murphy, 92 Old Wilton Road, agreed. Quinn argued that each case stands on its own; they are not setting a precedent. Bill McKinney noted that the Planning Board was unable to reach a unanimous decision on this and their recommendation was to seek the variance because of that. Our zoning is soil based; it is important to remember that Dow Road is clearly an open space subdivision where there may be lots that are smaller in size that actually contain the housing, but in reality, all of those lots own a larger parcel. You aren't dealing with higher lands; you're dealing with less drainage areas that could potentially contaminate your well. Again, the lots to the north pre-existed the watershed protection so although McKinney thinks they play into the character of the neighborhood, they existed years ago. The east side of Old Wilton Road lot was not included in the Watershed District prior to either 2019 or 2020. That homeowner was subjected to going for a variance for their lot because it did not comply with the intent of the Ordinance. He can understand that utilizing these lots is important, but they were not part of the Watershed District when the original idea of subdividing that lot came

in. The Planning Board was not unanimous in their decision on this application. A couple of members felt that the Ordinance is not clear; is the 5- acre requirement 5-acres buildable or 5 acres in total? He feels that cast some shadow of doubt on which direction to go and why it was important for the Planning Board to recommend that the ZBA look at this matter. Hearing nothing further, at 8:50 PM **Sturm** closed the hearing.

The Board deliberated Case 1-2021, McKinney, 6 Secomb Road seeking a sideline setback variance. **Sturm** noted that two of the abutters, Shawn Bertrand and Kevin Pomeroy, both were in favor of granting the variance. **O'Keefe** motioned to approve the request for a variance seconded by **Immorlica**. The Board discussed the five criteria:

- I. 1. **O'Keefe** feels this is not contrary to the public interest for Mr. McKinney to build his carport. **Immorlica** agrees.
- II. 2. **O'Keefe** feels the spirit of the ordinance is clearly observed in the way McKinney has positioned the structure in so as to not impeded on his neighbors.
- III. 3. **O'Keefe** and **Immorlica** agree that substantial justice will be done by allowing him to build a carport in order to protect his vehicles from the elements.
- IV. 4. **O'Keefe** and **Immorlica** both feel this will not diminish values of surrounding properties.
- V. 5. diminish the land and surrounding woodlands. **O'Keefe** concurs. **O'Keefe, Immorlica** and **Sturm** all feel this would be a reasonable use.

The Board voted unanimously to grant the Variance to Mr. McKinney.

The Board deliberated Case 2-2021, Marchocki, 93 Old Wilton Road, seeking a 3-lot subdivision. **O'Keefe** motioned to approve the request for a variance with the following four (4) specific conditions, seconded by **Johnson**:

- I. 1. On Lot 1-8-2 the driveway will be on Dow Road as shown on the plan presented.
- II. 2. On Lot 1-8-1 the structure will be set close to Old Wilton Road and will not cross the wetlands.
- III. 3. Drainage on all three lots will meet with the approval of the Planning Board along with consultation with the Mont Vernon Conservation Commission.
- IV. 4. Any timber management must be done in accordance with the Best Management Practices.

The Board discussed the five criteria:

- I. 1. **O'Keefe** believes based on the testimony presented there is no evidence that this would be contrary to the public interest. **Sturm, Johnson** and **Schuessler** agreed.
- II. 2. **Immorlica** thinks Attorney Quinn made a good point in that the subdivision is not inconsistent with the neighborhood; there are many lots on that road, although grandfathered in, that are quite a bit less acreage than this subdivision has proposed. The spirit is observed. **O'Keefe** agreed.
- III. 3. **Sturm** feels substantial justice has been done. **Johnson** feels that there will be a benefit to the public. This property is in current use; we will gain tax revenue with subdividing this land into three lots. **O'Keefe** agreed.
- IV. 4. **O'Keefe, Immorlica** and **Johnson** all agree that values of surrounding properties would not be diminished.
- V. 5. **Sturm** feels there was evidence presented by Attorney Quinn that this prong was met. **O'Keefe** agreed. **O'Keefe** believes this would be a reasonable use.

The Board voted to grant the variance with four condition 4-0, with one abstention. The variance was granted.

**O'Keefe** motioned to appoint **Sturm** as Chairman of the ZBA seconded by **Immorlica**. All in favor. **O'Keefe** motioned to appoint **Immorlica** as Vice-Chairman of the ZBA seconded by **Sturm**. All in favor. **Johnson** agreed to serve another three years. There was discussion on the NRPC overlay maps.

**9:40PM**

As there was no further business before the Board **Sturm** motioned to adjourn. All in favor.

Respectfully submitted,

Joan Cleary

Administrative Assistant