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MONT VERNON ZONING BOARD OF ADJUSTMENT

PUBLIC HEARING VIA ZOOM CONFERENCE

Tuesday, April 7, 2020

AGENDA

7:00 PM Case 1-2020 Jamason & Colleen Ferreira, 102 Old Wilton Road

Application for Variance

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

7:00 PM

Meeting called to order via zoom conference by David **Sturm**, Acting Chairman. Roll call was taken. **Sturm** opened the public hearing. The Board tabled the minutes from October 15, 2019. Present via zoom were the applicants Jamason & Colleen Ferreira, Jack Esposito, Tim Berry, Kim Roberge, Bill McKinney, Chris Guida of Fieldstone Land Consultants, Sherri Quimby-Cronin, Alice Corbett, Kathryn Marchocki, Jim Niemi, Matt Gelbwak, Eileen Naber. **Sturm** requested the applicant to address the reasons for requesting a hardship variance. Colleen Ferreira explained that they bought their piece of property on March 3, 2020. Before the purchase she had called the Town inquiring to make sure this was a buildable piece of land. She was told that this was a buildable lot; there was a lot line adjustment approved by the Planning Board on October 8, 2019. They received their temporary electrical permit from the Building Inspector. They then received a phone call from the Building Inspector saying there had been a mistake made and that the land they had purchased is not a legal buildable lot due to the wetland restrictions. They were told they would have to go before the ZBA and seek a variance. **Immorlica** questioned what made her come to the Town to confirm it was a buildable lot; did the realtor and seller involved present this as such? She responded that yes, they had presented this as a buildable lot. However, the Ferreira's did not take a bank loan for this purchase; they used their life savings and paid cash. She felt she needed to do her due diligence and make certain. She knew of no other way than to come to the Town for confirmation. **Immorlica** asked McKinney to clarify. When the Planning Board approves a lot line change, they are not saying the lot created by that lot line change is a building lot; it's just a lot line change, correct? McKinney responded yes, the land owner can make changes to lot lines not intending it to be a building lot. However, the Planning Board would typically try to not create non-buildable lots by a lot line adjustment or subdivision; it is not a good practice. McKinney went on to say that when Jeb Heaney and his realtor first came before the Board in June of 2019, it was explained that this land was in 5-acre zoning with added watershed district restrictions. The plan that was presented and approved in October of 2019 does not comply with our development regulations requiring 5 acres excluding wetlands. That was not made clear on those plans to the Board seated at the time; the 5.5 acres indicated was the entire lot size, not the buildable lot size. That is what now comes into question from the Planning Board. Upon further review it became apparent that the entire lot is

5.5 acres with a substantial amount of wetland. Those wetlands are not cut out of the 5.5 acres as they should be as far as the Watershed District. **O'Keefe** questioned how much of the lot acreage is actually not within the wetlands. McKinney stated this is not identified on the plan from what he can see. Guida from Fieldstone Land Consultants clarified that there are 3.8 acres of dry land and 1.7 acres of wet land. He went on to say that this was a lot line adjustment; these were two existing lots of record that had been in this area forever, one with the house on it. Jeb asked them to adjust the lot line. It didn't create a lot or delete a lot. These existing lots prior to the lot line adjustment had one lot that was non-conforming to the current overlay district and watershed district which was obviously enacted after these lots came into being. After the lot line adjustment, it still has one lot that doesn't meet that requirement and one that does. So, it was a movement of a lot line; the purpose of that was to get the existing barn onto the lot with the house on it. There were test pits done by Monadnock Survey in December 2015. Their letter classifies the soils as Class 1 soils with some Class 2 soils. At that time Mr. Heaney was contemplating an actual subdivision, but with this overlay district decided that this would not be a viable option, so did a simple lot line adjustment. **Berry** discussed the confusion with our mapping. We have a color-coded map relating to our zoning ordinance which does not have this property in the Purgatory Watershed. The most recent map from July 2019 created by the NRPC for the state to delineate the Purgatory Watershed does include these 2 original lots in the Purgatory Watershed. This is how the error came to pass; it was never represented to the Planning Board that we had one buildable lot and one non-buildable lot. **Sturm** then explained to the applicant the five different points that need to be addressed:

- I. 1) Variance is not contrary to the public interest.
- II. 2) Spirit of the ordinance is observed.
- III. 3) Substantial justice is done.
- IV. 4) The values of surrounding properties are not diminished.
- V. 5) Literal enforcement of the ordinance would result in unnecessary hardship.

Roberge had comments from a point of order standpoint: The Select Board directed the applicant to the ZBA based on the decision by the Planning Board. The applicants believe they were informed by two employees of the Town offices of the Town of Mont Vernon and the realtor representing the seller of the property that this was a buildable lot. She went on to state that Meridian did provide a plan to the town office in regard to a septic permit. The plan shows that based on state guidelines and town specifications, they are able to site a house on that property with the given setbacks, with a well and an approved septic design. She is concerned that although the proper protocol is for the applicant to answer the five different points, she feels that the Planning Board representative or Selectmen's representative should weigh in and aid the applicant in going through the criteria. **Sturm** explained that the Board does need to hear from the applicants favorably on each of the five points. The ZBA members can consider a number of factors; what is said here, their own personal knowledge about the property and can give different weight to different things they hear. McKinney questioned if the applicants were not aware of the five criteria before this evening. Ferreira responded no; they were just told to go before the ZBA and try to get a variance. Roberge stated that at that Selectmen's meeting, the previous ZBA Chairman was in attendance. He did not spell out what the five criteria were to the applicant. McKinney stated that it is not legal for a member of the Planning Board to influence the ZBA in any form or direction. The matter here with this lot line adjustment is that it was approved in October of 2019; there was no appeal to that approval within the 30 days required so it is locked in place as of now. That is the reason they need a variance request if they want to build on this lot. **Immorlica** questioned that if the applicants are not prepared tonight, will the Chairman entertain a postponement of this hearing, or do the applicants want to proceed. Ferreira stated that if they are to go ahead and don't answer the five criteria correctly, they will have just lost \$125,000. **Immorlica** explained that if they are denied, they can appeal, but would have to come forward with new information; not the same argument. McKinney stated that as the Planning Board Chair, if he was going to guide anyone in this, he would strongly recommend that they be prepared with the information because that is the risk; it is a one-shot deal. They could appeal with new information or evidence. However, if they came back with the same argument, the ZBA could not legally hear an appeal on it. **Sturm** agreed and to the applicants he stated that he knows this is a frustrating situation; we need to work together to create a record that is supportable. Ferreira stated that this is beyond a nightmare. They are as of now homeless. Putting this off longer is not an option. It is obviously a hardship. The surveyor stated that this will not interfere with the watershed or wetlands whatsoever. Guida stated that he was involved as far as the wetland delineation goes on the survey work. He said

the lot line shift has made no change in the 'buildability' of the lots. The soils are good; there's plenty of setback. In their interpretation of our regulations, they never took them to mean that wetlands had to be excluded for that area in order to make it meet zoning requirements, especially being two existing lots of record. They weren't creating any new lots, weren't making one physically non-buildable by not meeting septic requirements or any setback requirements. If the lot line never existed, you'd still have the same situation; you'd have one lot that didn't meet current zoning in existing non-conforming and one lot that did. It would still be an existing lot of record that in his professional belief would still be a buildable lot. The land is buildable and nobody is trying to create something that doesn't already exist. **Immorlica** asked would there have been a way to take those 2 parcels and create 2 lots that were both totally conforming? Guida responded no. He then read from our wetlands zoning regulations II-302.1 No septic tank or leach field may be constructed or enlarged closer than 75 feet to any wetland. II-302.2 Each lot must contain a contiguous non-wetland area sufficient in size and configuration to support all existing and proposed structures and utilities such as wells and septic systems, including a primary and secondary leach field location. That is the primary criteria for a buildable lot; it meets all requirements for the Town as well as the State subsurface with what Meridian prepared. The lot is certainly large enough; there is ample room for a house to be located. McKinney stated that the intent of the lot line adjustment was to make a non-conforming lot more conforming while also preserving what was assumed to be a buildable lot. **Sturm** next gave the abutters a chance to weigh in. Sherri Quimby-Cronin, Hutchinson Rd., stated that this is a non-conforming parcel in a watershed district. The watershed district is for the future of Mont Vernon. Her land abuts the Ferreira's. There are wetlands all along the stone wall that separates their properties as well as across the street. Her concern is that this a non-conforming lot because of the wetlands that are on it and her feeling at this point is that we need to look at why it's non-conforming and what this will do for the future of Mont Vernon. There is a reason why there are a certain number of dry acres needed on a property in a wetland district and that is in the best interest of the public. **Immorlica** noted that these two parcels combined offer 9.78 acres of dry land. He doesn't feel there would be a devastating impact to the wetlands. Guida noted that this area has been developed and utilized as a farm field since long before our time. There is a lot of usage that goes on such as spreading of manure, tilling of soils and frequently planting crops. During rain storms you will get a lot of runoff and erosion off of farm fields into the wetland area. As far as an impact, a single-family home on a 5-acre lot in the middle of a field is going to have far less impact to the wetlands and the environment as a whole than an active farm field that gets tilled twice a year. Alice Corbett, Hutchinson Rd., stated that her concern is that she is downhill from this lot. These wetlands drain into her front yard. It never dries out; it is wet all year long. She is

very concerned with where the septic system and leach field would be placed. Guida reiterated that the farm field is stable and vegetated. In building a single-family home you will basically disturb the area in order to build a home but essentially the remainder of the field is going to remain the same. He doesn't see any risk for any pollution getting into the wetlands. If this was an open cow field there would be a far greater chance of contamination of soils and wetlands. Kathryn Marchocki, Old Wilton Rd., spoke in support of this variance. She feels the Ferreira's are in a difficult spot through no fault of their own. They appear to have done their due diligence and were assured multiple times that this was a buildable lot. Beyond that, she feels that the fact that you'd need a variance to build a single-family home on a lot that exceeds 5 acres is overly restrictive and troubling, particularly given the fact that we've heard no evidence that there would be any harm done to wetlands or the environment. Lastly, this appears to place an imposition on a landowner that is not outweighed by any benefit to the environment or the wetlands. Jim Niemi, Old Wilton Rd., is opposed to granting this variance. He feels that the test pits done for the septic were done when the lot lines were different. Therefore, the actual perc test is not viable anymore because we don't know where the test pits were dug. He feels this is not a legal perc test. He feels that the rules are there for a reason. There was not enough land to properly divide into 5 acre lots necessary to meet the criteria. He understands that this is a hardship to the Ferreira's but does not feel they did their due diligence. He feels putting a house there would in fact have an impact to the wetlands. **O'Keefe** asked Berry as Selectmen's Rep. to the Planning Board, when was the error actually discovered by the Planning Board. It was explained that the lot line adjustment was approved in October of 2019; the survey issue was not brought to our attention until March of 2020 when the applicants applied for a permit. **O'Keefe** went on to say that we now have property owners here today showing a significant hardship. He questioned how granting this variance might diminish the values of surrounding properties. Niemi stated again that he feels the environmental impact on the wetlands would diminish values. Phyllis Bayles, Hutchinson Rd., agrees with Niemi that we have restrictions in place for a reason. She thinks if we make exceptions here it

will set a precedent for the future with people wanting to build without the correct acreage needed. **Sturm** offered the petitioner a last chance to offer anything else to their testimony. Ferreira stated that they had no idea what they were walking into; they bought a beautiful piece of property that they want to build a farmhouse on which would fit in with the surrounding neighborhood. If they are denied this variance, they will be sitting on a worthless piece of property that they will not be able to do anything with. McKinney commented that prior to 2019, these two lots were not in the watershed district. Those watershed district lines were redrawn by the NRPC without consultation with the Town. We received a new map from the NRPC. Prior to 2019, the watershed district would not have impacted either of these two lots. **Sturm** stated that a variance is extremely fact specific and relates only to that particular piece of property and the facts and circumstances that surround that particular piece of property. A variance for any issue on any piece of property under any facts and circumstances does not in his opinion set a precedent for any other variance for any other property under different circumstances. Each petition has to stand on its own. **Sturm** closed the public testimony. The Board discussed the five criteria.

I. 1) Variance is not contrary to the public interest.

Immorlica feels the public interest is in protecting the watershed and having a nice community. He feels that if this were turned into an agricultural use with animals it would have a much more harmful impact than to build a house with a properly designed septic system. He thinks this would be an improvement, not a detriment. **O'Keefe** agrees that it would not be contrary to public interest. He feels that a home built on this lot in a suitable area would be fine. **Johnson** agrees that it would not be contrary to the public interest.

I. 2) Spirit of the ordinance is observed.

O'Keefe feels this does not meet the spirit of the ordinance. The ordinance was designed specifically to create 5-acre zoning in that particular area and clearly states that it cannot include the wetlands for protection purposes. **Immorlica** disagrees. He feels that while it does not meet the specific letter of the ordinance it does meet the spirit of the ordinance. There are almost 10 acres of dry land on those two lots. The NRPC changes the boundary line a year ago; this would not have been an issue. There could have been 5 lots put there. **Sturm** agrees that the spirit is observed.

I. 3) Substantial justice is done.

Sturm feels we would clearly be doing substantial justice based on everything heard here tonight were we to grant this variance. **O'Keefe** agrees; he feels the applicants have gone through way too much for the purchase of a property. **Immorlica** agrees; the applicants bought a piece of land and want to build a house. **Johnson** agrees that substantial justice will be done should we grant the variance.

I. 4) Values of surrounding properties are not diminished.

O'Keefe and **Immorlica** both agree that a well-designed home would improve the quality of the area. It would also add to the town tax base.

I. 5) Literal enforcement of the ordinance would result in unnecessary hardship.

Sturm believes that there is no other reasonable use of this property if we don't grant the variance. **Immorlica** feels that enforcing the ordinance would deprive the owners of any other reasonable use of the property. **O'Keefe** agrees; the hardship is not shared by the abutters or others in

that neighborhood. **Johnson** agrees that the hardship itself would be solely borne by the land owners and would not have any effect on the abutters from a hardship standpoint.

Immorlica then motioned to grant the variance seconded by **Sturm**. **Immorlica** stated for the record that he made the motion to grant the variance because he feels that all five points have been met favorably. **Sturm** seconded the motion for the same reason. The Board did a roll call vote:

Schuessler **yes**

O’Keefe **yes**

Immorlica **yes**

Johnson **yes**

Sturm **yes**

The variance was granted by five unanimous votes. It was explained to the applicants that there is a 30-day appeal period in which time the variance can be appealed or challenged.

9:25 PM

The public hearing was concluded.

Respectfully submitted,

Joan Cleary

Administrative Assistant