

**Town of Milford
Zoning Board of Adjustment Minutes
October 21, 2010
37 Wilton Road, LLC
Case #30-10
Variance**

Present: Steven Bonczar
Kevin Johnson
Fletcher Seagroves
Laura Horning
Steve Winder

Michael Unsworth - Alternate

Absent: Katherine Bauer – Board of Selectmen’s representative
Zach Tripp - Alternate

Secretary: Kathryn Parenti

The applicant, 37 Wilton Road Milford, LLC and 282 Route 101, LLC, owner of 30 Wilton Road, Map 6, Lot 14 in the Integrated Commercial-Industrial “ICI” district, is requesting a Variance from Article V, Section 5.08.3 to permit ten (10) single family homes, a use not permitted in the district.

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

Steve Bonczar, Chairman, opened the meeting by stating 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 read the notice of hearing into the record as well as the list of abutters; Mark Prolman, applicant, Andy Prolman, an attorney with Prunier and Prolman, were present. He then invited the applicant forward to present his case.

A. Prolman stated he would be representing the applicant in this case. He stated M. Prolman and Eli Levine (who was also present) whose companies are 37 Wilton Road Milford, LLC and 282 Route 101, LLC., purchased the mill complex and the land across the street from Heidi Robichaud last year. He stated M. Prolman's work in town is familiar with everyone. He owns 168 Elm Street, a former McDonald's site which has been developed into a new restaurant. He also owns a unit in the Granite Town Plaza that has been developed as well; he had worked with the Hardmans, owners of the Plaza, in redeveloping the site. He then handed out several exhibits to the board members. He stated the property is on the western end of town, on Wilton Road. The site is approximately ten (10) homes from the Wilton town line. The parcel is located across from the mill, which is composed of mixed retail uses. To the south of the property is the railroad, which operates one or two times a day. North of the site are residential homes, which go up the hill toward Maple Street and include a new development, Falcon Ridge and across the river are commercial businesses. A portion of the parcel is across the tracks. They are proposing to subdivide 7.6 of the total 17 acres across from the mill and subdivide it into two (2) parcels. The 3.4 acre parcel will be where the proposed ten (10) lots would go; the remainder of the lot would be for parking and overflow parking for the mill. The site has historically been used for parking and provides a buffer from the commercial area. The site is derived from Hillsborough Mills and the property is naturally divided by the railroad. Plan number 12421 from 1979 was approved for the whole area. and it shows the 7.6 acres which includes the house shown on the plan to the Souhegan River to the railroad and the road. There used to be a canal there but it was turned into an underground canal some time ago; it runs under Elm Street. In 1979 the area was zoned "Industrial" and Residential "R" on the north side of the railroad. Bill Parker, Director of Community Development, told him the zoning goes back to 1970 and the intent, at that time, was to keep the land industrial to tie it into the mill. Historically, the zoning has been tied to the mill. The 1979 plan shows some residential homes on the property but they are no longer there. They are seeking ten (10) individual lots for homes, not condos, that will be sold individually. The goal is to make it a town road with the ten (10) lots, which is a little more dense than allowed in Residential "A" but not as dense as Residential "B". There is 14,000 square feet plus or minus per lot for the whole tract and the goal is to make these units affordable homes, valued at around \$200,000. They would be smaller, more modest homes but the price is not necessarily "workforce housing" per say. Ten (10) units on 3.4 acres are to deliver affordability.

The first exhibit shown was the plan and the second exhibit is sample homes and floor plans. Kevin Slattery, of Etchstone Properties (who was present), is the builder and he has done several projects like this. The intent is to deliver moderately priced homes. The zoning of the property is "Integrated-Commercial Industrial", ICI, and it has been historically tied to the Hillsborough Mill. Today the mill is a mix of uses, including retail stores, a church, and a woodworking shop. It is no longer an actual mill. The zoning is out of character with the neighborhood; as shown on the exhibit of the tax map and zoning map, as well as the GIS map. From the mill, going east, is a commercial area; heading west on Wilton Road turns into a residential district and all the homes past the mill have been in existence prior to zoning. He was hoping they had all gotten variances but they were there before the zoning ordinance was adopted. He referred to the zoning map; the other ICI areas in town have access to and visibility from main roads; this is the only one that does

not. This area cannot be seen from Route 101 but it is visible from Wilton Road, which is not the same nor does it have the same traffic volume as Nashua or Elm Streets. This site is unique because it is not similar to any other “ICI” areas in town.

The final exhibit is a letter from Jonathan Frank, of F & M Appraisal, LLC states that this proposed use would not diminish surrounding property values since they would be adding homes in an area consisting of single family homes. In addition, they are intentionally leaving the eastern half of the lot for parking for the mill and to act as a buffer from the commercial district.

S. Bonczar opened the meeting to public comment; there was none so he closed that portion of the meeting and asked the applicant to go through the criteria for a variance.

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

A. Prolman noted the proposed use will provide quality housing at an affordable price. The applicant’s goal is to develop low cost housing stock targeted for middle income families (e.g.: teachers, firefighters, police, etc). He stated he was told the town is looking for new housing stock and as stated in the Master Plan, it would encourage a healthy mix of housing stock.

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

A. Prolman noted the proposed use provides transitional mixed use of the properties – existing residential with ten (10) new homes while leaving commercial area across from Pine Valley Mill to Route 101.

3. Granting the variance would do substantial justice because:

A. Prolman stated the use allows the owner the use of otherwise dormant land and provides the town with new affordable housing stock. They are looking to put the land to good use and are forfeiting industrial land for the future, which is not a concern; the Brox industrial property is more than the town is able to do anything with.

4. The proposed use would not diminish surrounding property values:

A. Prolman noted the existing site is a vacant, overgrown parking/sand lot. The new neighborhood will improve the existing area and site. In addition, J. Frank’s letter echoes this.

5. Denial of the variance would result in unnecessary hardship.

A). “Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:

i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

A. Prolman stated historically, the property was tied to the Pine Valley Mill – both ownership and use – and we believe the zoning may have followed the historic use. Today, this portion of the property does not lend itself to ICI development.

ii) and; The proposed use is a reasonable one because:

A. Prolman noted the proposed use allows for compatible uses – residential abutting residential, while leaving a buffer from the commercial area.

B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:

A. Prolman stated the special conditions of the property, on the western border of the town, justify a variance because, although it is zoned ICI, the immediate abutters and neighbors to the west and north are all residential. A new residential neighborhood (Falcon Ridge) is

across the street and will be built out over the next few years. The property's physical features discourage ICI use – a shallow depth due to the railroad, conflicting abutting residential use, the river and Route 101 to the south provide a natural buffer to the site. Finally, the proposal would allow a transitional area between houses and the neighboring lot, the Souhegan River and Route 101.

A. Prolman also noted the "ICI" zone allows for some residential use – senior housing.

S. Bonczar asked if they had gone before the planning board.

A. Prolman replied they had not.

S. Bonczar asked if this would be developed by a single builder or would they sell off the individual lots. He was curious about the uniformity of the development.

A. Prolman replied a single builder, Etchstone Properties, would develop the site. Their goal is for affordable and uniform homes.

S. Bonczar clarified the land and homes can be purchased, unlike the situation in condominiums. He asked how many acres would be developed and how much land is left.

A. Prolman stated the entire tract is a long rectangle and is 7.6 acres. The proposal is to develop 3.4 acres and the balance of 4.2 acres would be left as parking and a buffer.

S. Bonczar assumed all the setback requirements would be met.

A. Prolman stated this is subject to planning board approval. He suspected it would be an open space development with fewer than ten (10) lots.

S. Bonczar stated the plan is for ten (10) homes; that is what the ZBA can approve. Looking at the size of the parcel, ten (10) lots on 3.4 acres is fairly tight. He asked if the development will be on water and sewer.

A. Prolman replied it was; if the development was not, they wouldn't be able to do this. He noted the layout is approximate of what they hope to do but they may have to tweak lots.

S. Bonczar noted if they don't meet the criteria for the lots, they will have to come back to the ZBA.

F. Seagroves asked if they had any plans for the larger piece of the parcel.

A. Prolman replied yes; it would be some form of residential use but it is tempered by being able to cross the railroad tracks.

K. Johnson stated basically, the property has not been used for the past thirty (30) years.

A. Prolman stated there were some token uses, like the portable barbeque stand on site now, and for overflow parking for the mill.

K. Johnson asked if the lot numbered 4 was the edge of the parcel.

A. Prolman replied it was.

L. Horning asked if they had planned for any safety device between the railroad tracks and the homes.

A. Prolman replied this would be subject to planning board approval; it could be fencing or a good vegetative screen.

L. Horning noted the ZBA is concerned with the health and safety of the town. She asked about plans for the stormwater runoff, if the retention pond was for a 50 year flood and if the safety of the residents was taken into account.

A. Prolman noted Hayner Swanson did the initial plan; sometimes the retention areas are flat, sometimes they are deep holes with a fence surrounding it. Whatever is required will be put in place.

L. Horning asked about emergency vehicle access.

A. Prolman replied if this was a standard cul de sac, it wouldn't work but in this case they have a gated access.

S. Winder stated he mentioned senior housing as being an allowed use and asked if this would be for seniors.

A. Prolman replied it was an allowed use, by special exception but this would not be for seniors; it is affordable homes.

S. Bonczar read from the Town of Milford Zoning Ordinance, Article V, Section 5.08.0, Integrated Commercial-Industrial District (ICI) (1995): “*The intent of the Integrated Commercial-Industrial District is to provide an area for sales and service activities, both wholesale and retail, as well as industrial activities. This District is intended to be the area in which vehicular oriented business can occur.*” He then read from Section 5.08.1, Acceptable Uses: “*A. Wholesale businesses, B. Retail businesses, C. Restaurants, D. Offices, E. Hotels/motels, F. Day care facilities as an accessory to the principal use, G. Public utility uses necessary for public welfare, H. Manufacturing (from Light Manufacturing 2003), I. Distribution and mailing facilities, J. Research and development laboratories, K. Motor vehicle repair facilities, L. Harvesting of natural resources, M. Banks and financial institutions, N. Processing and warehousing (1997), O. Adult Entertainment Businesses (2000), P. Telecommunication facilities (2000), Q. Motorized vehicles sales facilities (2007), R. Farm roadside stands (2010), S. Farmer’s market (2010).*” He also read from 5.08.2, Acceptable uses and yard requirements by: (2009): *A. Special Exception, 1. Schools, 2. Recreation facility, not-for-profit (1997), 3. Recreational facility, commercial (1997), 4. Processing of natural resources (1997), 5. Building and structure height greater than allowed in 5.08.7:A and B (2005), 6. Senior housing Developments (2002), 7. Accessory Dwelling Units for existing single-family dwellings (2008), 8. Reduced front, side and rear setbacks (2009). B. Conditional Use Permit (2009), 1. Small Wind Energy Systems (2009).*” He noted the reason the applicant is here is for a use that is not specified by the ordinance. He asked if there were any questions or comments by the board.

F. Seagroves noted the approval would be for ten (10) units but the planning board can change that.

S. Bonczar stated if the board approved this application, it is for ten (10) units but it can be less than ten (10), not more. They are approving a change for a residential use of up to ten (10) units on that lot.

L. Horning asked if they can change the ordinance by adding this use to the district.

S. Bonczar replied they are not changing the ordinance but asking for a variance for a use not specified. He noted the applicant is asking for a residential use in the ICI district but the district has an allowed residential use of senior housing developments by special exception. The reason they applicant is here for a variance is to ask the board to grant relief for something that is not specified in the ordinance.

K. Johnson noted every variance sets aside the ordinance in some way and it is up to the board to decide if the request goes too far. Does the “ICI” district totally forbid a residential use, but the ordinance does not say there cannot be residences in it.

S. Bonczar asked the board if they had any additional questions or comments; they did not so they proceeded to discuss the criteria for a variance.

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

K. Johnson noted granting the variance would not be contrary to the public interest. If you look at the tax map and the existing property, there are residential uses; on this side of the road, there are small lots averaging 2/10 acre and the proposal is for lots of 3/10 acre. It would benefit the public interest.

L. Horning, F. Seagroves and S. Winder agreed.

S. Bonczar agreed; it would be a benefit to the public as opposed to an industrial use. The mill is not an industrial use and this would be less traffic than another commercial or industrial use.

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

L. Horning stated the spirit of the ordinance is to promote the health, safety and welfare of the public and to encourage business growth and affordable housing.

F. Seagroves read from page 14 of the The Board of Adjustment in New Hampshire – A Handbook for Local Officials: “...does the variance alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public?” He didn’t think it would violate the spirit of the ordinance; the addition of perhaps two (2) vehicles per house would not be a lot.

S. Winder stated if this was reversed, a request for and industrial use in a residential district, they could not grant it. The area is blocked off from the main highways and is not visible but there still is room for industrial use, if needed.

K. Johnson agreed; this particular property is not suited for the “ICI” district; the use and the addition of twenty (20) cars does stay within the spirit of the ordinance.

S. Bonczar agreed; in the spirit of the ordinance, there are accessory uses allowed by special exception, among those is senior housing and accessory dwelling units, which are found in single family homes. Based on the surrounding property, the impact of this proposal is less than an industrial use would have.

3. Would granting the variance do substantial justice?

F. Seagroves agreed; he didn’t see any substantial justice being done if this request was denied. He read from The Handbook: “Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” He didn’t see where the public would gain if this was denied.

L. Horning agreed; there are shops in the mill and surrounding residential properties. She felt the proposed use would be a boost to property values as well.

S. Winder and K. Johnson agreed as well; affordable housing would be a clear benefit to the community.

S. Bonczar agreed; denial of the request would be an injustice.

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

F. Seagroves stated the variance could be granted without diminishing the value of abutting property.

L. Horning stated the variance could be granted without diminishing the value of abutting property values as stated by the appraiser.

K. Johnson stated yes, from the comments made by the appraiser and because of the character of the rest of the surrounding properties.

S. Winder stated this use would similar in nature to many of the abutting properties.

S. Bonczar stated, apart from the mill with its mixed uses, the surrounding area is residential. By adding this use the value of abutting property would increase versus with the addition of an industrial use. If the request was flipped around, there would be abutters present as it would decrease property values.

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

- A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;**
B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that

distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

ii. The proposed use is a reasonable one.

S. Winder stated the proposed use is a reasonable one and would result in unnecessary hardship if the request was denied. The land has been dormant for some time and he didn't see any conflicts with this request.

K. Johnson agreed; denial of this request would be a hardship. The property lacks access to any main road. Due to the required setback for the river, an industrial use would be difficult and not a good use of the land.

L. Horning agreed; there is no fair and substantial relationship between the ordinance and the property in relation to the topography of the lot. There is no direct access to the main roads for industrial use. The proposed use is a reasonable one.

F. Seagroves agreed; this would be a good use for that particular piece of property; it's been a grassy lot for over fifty (50) years.

S. Bonczar agreed. The proposed use is a reasonable one based on the surrounding properties to the west and north. The intent of the "ICI" district is to put retail sales, etc. in the area and this property is not conducive to that. There is no reason why this needs to be kept "ICI". Except for the parking area, it will keep it a continuous residential area from the Wilton town line to in front of the mill. It is a reasonable request.

S. Bonczar asked if there were any additional comments; there were none so he stated after reviewing the petition and after hearing all of the evidence and by taking into consideration the personal knowledge of the property in question, he called for a vote.

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

F. Seagroves – yes L. Horning – yes S. Winder – yes K. Johnson – yes
S. Bonczar – yes

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

L. Horning – yes S. Winder – yes K. Johnson – yes F. Seagroves – yes
S. Bonczar – yes

3. Would granting the variance do substantial justice?

S. Winder – yes F. Seagroves – yes L. Horning – yes K. Johnson – yes
S. Bonczar – yes

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

F. Seagroves – yes L. Horning – yes S. Winder – yes K. Johnson – yes
S. Bonczar – yes

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

**A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;
ii. The proposed use is a reasonable one.**

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

K. Johnson – yes S. Winder – yes F. Seagroves – yes L. Horning – yes
S. Bonczar – yes

S. Bonczar asked if there was a motion to approve case # 30-10, a request for a variance.

L. Horning made the motion to approve Case #30-10, with the above mentioned condition.
S. Winder seconded the motion.

Final Vote

L. Horning – yes K. Johnson – yes S. Winder – yes F. Seagroves – yes
S. Bonczar – yes

S. Bonczar reminded the applicant of the thirty (30) day appeal period.