

**Town of Milford  
Zoning Board of Adjustment Minutes  
June 16, 2016  
Case #2016-13  
Stephen & Jodi Talarico  
Variance**

Present: Kevin Johnson, Chairman  
Michael Thornton  
Jason Plourde  
Len Harten, Alternate  
Joan Dargie, Alternate  
Rob Constantino, Alternate (not voting)  
Robin Lunn, Zoning Administrator (not voting)

Absent: Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

The applicants, Stephen & Jodi Talarico for the property located at 162 Armory Road, Milford, NH Tax Map 47, Lot 15, Variance request from the Milford Zoning Ordinance Article V, Section 5.04.3 to permit the construction of a detached cabin bringing the total number of residential buildings on the property to four (4).

**MINUTES APPROVED ON 11/3/16**

Kevin Johnson, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He then introduced the Board. He continued by informing all of the procedures of the Board. He stated they might have time to consider all the cases on the agenda. Probably would, but rules allow adjournment at 10 p.m. Any cases not reached would be tabled to the next regularly scheduled meeting with no additional notice to applicants or abutters.

List of abutters was read. No abutters present.

Attorney Thomas Quinn, Representative of Stephen & Jodi Talarico came forward to present the case.

Requesting a variance to allow construction of an additional cabin on their property, bringing total of four buildings where only one single-family residence allowed.

K. Johnson said it had one small and one Accessory Dwelling Unit.

T. Quinn said an ADU would be attached.

K. Johnson said an ADU could be detached. He understood there was already one on the property.

T. Quinn said there was. He described the property. It has conservation easement, meets all requirements of district, with 300 ft frontage, 30 ft. front and 15 ft. side, rear setbacks. Proposed construction will be nowhere near the lot lines. Owners not interested in subdividing or developing for sale to third party; developing it for private family compound. Three dwellings currently on it: main house of three bedrooms with its own septic and well; guest house with one bedroom occupied by Mr. Talarico's

parents; caretaker's cottage with one bedroom occupied by caretaker. Guest house & caretaker's cottage share septic and well. Barn and small sheds on property.

Intend to build small cabin adjacent to the barn. Consists of 1300 SF, one bedroom occupied by Talaricos' daughter. Building plan attached to the application. Ordinance only allows one single-family dwelling on lot, so have applied for variance. He cited RSA 674.33 1(b) which set forth the five criteria for a variance. He had notes, separate from the application, which he read:

The requirement that the variance not be contrary to public interest is related to the requirement that it be consistent with spirit of the ordinance. Zoning ordinance represents a declaration of public interest and any variance would be contrary to some degree. Superior Court has instructed that in determining whether it is contrary to the public and violates the spirit of the ordinance, the ZBA must determine whether granting would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives. NH Supreme Court has two tests: 1) whether it would later the essential character of the neighborhood. 2) Whether it would threaten the public health, safety and general welfare. In this case, granting would not unduly and to a marked degree conflict with the ordinance such that it violates the basic zoning objectives, because granting the variance would neither alter the essential character of the neighborhood or threaten the public health, safety or welfare, and granting the variance would observe the spirit of the ordinance. Article V, Sec. 5.04 says intent is to provide low density residential, agricultural land uses and other compatible land uses that are sensitive to the rural character and environmental constraints existing in the district. Mr. & Mrs. Talarico's proposed use of their property is consistent with this intent. The property is nearly 70 acres in size and more than half of it has been dedicated to open space in the form of conservation easement. The property is substantially larger than the minimum lot size of 2 acres. With the additional cabin, density will still be one dwelling per 17 acres of land, or one dwelling per 5 acres of unencumbered land. Developed area is set back over 700 ft. from the road. The property is largely wooded; developed area of the property is invisible from the road. The portion of the property subject to conservation easement may be used permanently for forestry and agriculture. In short, there isn't anything about the proposal that is inconsistent with preserving the low density residential and agricultural use of the property and protection of the rural character and environmental constraints existing in the district. Nor would granting the variance alter the essential character of the neighborhood. The westerly boundary of the property abuts the Leisure Acre mobile home park where there are over 100 units on less than 40 acres. The easterly boundary of the property abuts a granite quarry. The addition of a small cabin will certainly not have significant impact on traffic in the area. Granting the variance will not threaten the public health, safety and welfare. It is a small cabin. It will have its own state-approved septic system and well. It will have negligible impact on traffic. It won't have any effect at all on the public health, safety or welfare.

K. Johnson asked if the Board had questions regarding the presentation so far.

J. Plourde asked what zoning district the mobile home park was in.

T. Quinn responded it was in the same district. He continued:

Granting would do substantial justice. Supreme Court said "perhaps the only guiding rule on this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." As stated previously, the property is 69 acres, and more than 20 acres is available for development. But the Talaricos are not interested in developing the property for sale. They just want to develop the property for their own personal use and enjoyment and that of their family, friends and guests. Denial of the variance would result in substantial loss to the Talaricos. They are very family oriented people and are looking forward to having the family living in the complex and because there is no district in town where this kind of arrangement is permitted they can't simply acquire a different piece of property. The property has historically been used as several separate dwellings. That goes back perhaps decades, predating the ordinance. On the other hand, there is no appreciable gain to the public with strict application of the ordinance.

Again, the intent of the ordinance is to prevent excessive development or overly intense development. The density calculation of one in five or one in 17, whichever one you pick, is less than half of what is permitted under the ordinance, which permits one house per two acres. The conservation easement, trail easement that have been placed on the property themselves show the sensitivity that the applicants towards the environmental constraints that exist in the rural residential district. More than half of this property is not going to be ever developed.

Granting the variance will not diminish the value of surround properties. As he said, the cabin will be virtually invisible from Melendy Rd and the surrounding properties. On Melendy Rd some of the properties are actually owned by the Town. Again, the property on the west is Leisure Acres mobile home park which has a far greater density, and the other side is the quarry. So, it is inconceivable one house on a 70 acres piece of property is going to reduce values of surrounding properties.

K. Johnson asked if the quarry was a working one.

S. Talarico said sometimes.

T. Quinn said the lack of turnout and not much abutter interest speaks to the fact no one anticipates that there will not be negative impact on property values in the neighborhood. He continued:

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to the Talaricos. Special features of the property do distinguish it from other properties in the area. Again, 69 or 70 acres of land, 48 acres subject to the conservation easement and the trail easement, it is largely undeveloped. It is very lightly developed. That portion of the property that is being developed is well back from Melendy Rd and out of sight of the public. The property itself contains a large granite quarry that is not currently in operation. The remaining 21 acres has already begun to be developed as a family compound. As stated previously there are 3 residences on the property now as well as a barn. So, owing to the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because no fair and substantial relationship exists between the general public purposes of the ordinance provisions and the specific application of the provisions to the property. Sec. 5.04.1 itself declares that the purpose of the Residence R district is to provide for low density residential and agricultural uses and other compatible land uses that are sensitive to the rural character and environmental constraints within the district. The proposed use of the property is consistent with that. More than two-thirds of the property is protected. The remaining land is unlikely to be developed. This compound is a good example of low density residential development that is sensitive to the rural character and environmental constraints in the district. It would be possible to just blow a road in from Melendy Rd and cut up small lots, or two acres lots, along the road. But the Talaricos don't have any interest in doing that. It is a family home, compound or estate. The strict and specific application of that section limiting the property to a single family is not fairly and substantially related to the general purposes of the zoning ordinance. Granting the variance and allowing the additional cabin to be constructed upon the property will not substantially increase the density, impair the use of the property for agricultural or forestry or otherwise pose any threat to the environment. b) The proposed use is a reasonable one. Residential use is permitted in the district. The property meets or exceeds the minimum lot size and all area requirements. More than two-thirds of the property is protected. The cabin will not be visible from the road or even from abutting properties and the construction on the property will not undermine the purposes or intent of the zoning ordinance or pose a threat to the public health, safety and welfare, or change the essential character of the neighborhood, or cause a decline in surrounding properties.. So it is a perfectly legitimate and reasonable use in our estimation. For all these reasons, we respectfully request that you grant the application.

Actual application is as follows:

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

The construction of an additional cabin upon the Premises for the Applicant's daughter will not unduly and to a marked degree violate the basic zoning objectives of the Zoning Ordinance because it will not alter the essential character of the neighborhood and will not threaten the health, safety or general welfare of the public due to the size of the property and the distance of the proposed structure from the road.

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

The purpose of the Residence R District is to provide for low-density residential and agricultural use. The Applicants have placed conservation easements on the majority of the property and the additional residence will bring the total number of residences to 1 per five acres, more or less.

**3. Granting the variance would do substantial justice because:**

In light of the large size of the parcel and a lack of interest in developing the property for subdivision and sale of residential uses, the Applicants plan to develop the property as a family compound. This plan can be completed without adverse consequences to the public.

**4. Granting the Variance would not diminish the value of surrounding properties because:**

Again, due to the size of the property, the wooded character of the property and great set back of the improvements from the road, the existing improvements are not readily visible from the road or adjacent properties.

**5. Unnecessary hardship:**

**A. Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:**

The property is distinguishable from other properties in the area due to its special characteristics. It is 69 acres of land, but is largely undeveloped. The property contains a large quarry that is no longer in operation. In addition, approximately 48 acres of the property has been dedicated to conservation and trail easements in favor of the Milford Conservation Commission. The remainder of the property, approximately 21 acres of land, is developed as a family compound or estate. The property consists of a main house (3 bedrooms), a guest house (1 bedroom) occupied by Mr. Talarico's parents, a caretaker's cottage (1 bedroom) a barn and assorted outbuildings.

**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:**

Owing to the special conditions of the Premises, no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the Applicant's property. The purpose of Section 5.04.1 and 1A is to avoid excessive density of residential housing units, both as a means of avoiding visual blight, overtaxing of the land, and preservation of open space. The Applicants' plan respects all of these objectives and doesn't undermine any of them. The Applicants' overall use and development of the property is completely consistent with these objectives

**ii. The proposed use is a reasonable one because:**

The proposed use is a reasonable one. Given the size of the property, it would be possible for the Applicants to develop the property much more intensely and construct individual condominium units for sale to the general public. Instead, the Applicants intend to develop the property only as a family estate or compound. All septic, building, and other permits are available upon the granting of the variance.

K. Johnson asked for questions from the Board.

M. Thornton asked why not avoid everything and separate off one two-acre parcel and deed it to the daughter along with the cabin.

T. Quinn said that probably would require a road on a Class V road or better, an 800 ft. long road, or better.

K. Johnson said, or splitting off way down the property next to Melendy Rd.

T. Quinn said that is protected. Pointed out on zoning map problem is that the bulk of frontage on Armory Rd. gray area is the frontage. All of that area, bulk of frontage on Armory Rd is subject to conservation easement. Driveway passes through it and across rail trail. You have to get back to where

the property opens up before you have unrestricted land. Conservation Commission interested in protecting that because of rail trail. Front of that easement is right to have a parking lot along Armory Rd. Only rear portion subject to development. To do that would have to build a Class V road; that would be expensive. Then looking at having to sell a lot or two. Not direction they want to go.

S. Talarico said this is a temporary solution for his daughter, not long-term. She's in an internship now and she will be using it for when the time comes. It's a temporary six-month window. But, grandkids, son and daughter back and forth.

T. Quinn said he used word "compound" to convey that they are not interested in condo project or subdivision – no interest in selling dwellings to third party in the future. They are comfortable with any conditions to that effect, that none of them would be sold, transferred without a subdivision or condo project.

S. Talarico said property will be for future generations.

K. Johnson said it seemed the preference was to hold everything within a small area rather than everything spread out. Thanked him for making the note in the application re variance violating the spirit of the ordinance. As pointed out, every variance has to violate the spirit to some degree, and have to balance that degree in terms of what is best for both applicant and town.

J. Plourde referred to front page of application, where it mentioned requirement of 200 ft frontage. If they subdivide and had 300 ft, they will not be meeting that requirement if the subdivide.

T/Quinn said would not be able to subdivide along Armory without variance.

There being no other questions, K. Johnson said there were no letters or e-mails in the packet.

He opened the hearing for public comment. There were none. He closed the public portion of the hearing.

K. Johnson stated that Rob Constantino who was sitting, was an alternate and would not be voting. L.

Harten, an alternate, would be voting along with J. Dargie, M. Thornton, J. Plourde and K. Johnson.

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

J. Plourde – based on reading the Handbook, one of the questions is to determine if the variance would alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public. Doesn't see it will alter, or endanger the general health or safety. Would not be contrary to the public interest.

M. Thornton – for the same reason, and from the fact you cannot see it from outside the property. Yes, it would not be contrary to the public interest.

L. Harten – agreed. Believes if they approve, would not be contrary to the public interest. Re the Handbook, it indicates literal enforcement of the ordinance would result in unnecessary hardship. Doesn't believe any harm to the public interest by granting.

J. Dargie – agreed. Would not be contrary to the public interest. Doesn't unduly and to a marked degree violate the objective of the ordinance which is to keep lower density. This piece of property could be broken up into pieces.

K. Johnson – agreed. Would not be contrary to public interest for reason stated, especially Joan, because applicant could easily create road into it and break it up into small pieces. This is solution to maintain rural character of this property.

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

J. Plourde – looking at spirit, it is meant so that they are not overcrowded. Looking at unique situation with plenty of land and even without extra housing unit – believes it would still be one unit for 17 acres. It is in the spirit of the ordinance.

M. Thornton – yes.

J. Dargie Agreed.

L. Harten – agreed. Purpose of the ordinance in Residential R district is to make sure of maintaining low density and doesn't believe having additional cabin would interfere with the density. Doesn't believe it would violate spirit.

K. Johnson agrees with everything others said.

### **3. Would granting the variance do substantial justice?**

K. Johnson – quoted from Handbook, Sec. II-11, Paragraph 3, substantial justice is done.

He wanted to go first on this because he spent time looking at some of the information and loss or gain nowhere in either state laws or ordinance is loss defined as necessarily financial. Could see this would be loss to the applicant by not being able to keep his family close. His own family is spread out. It would clearly be a loss to this applicant to deny and he sees no gain to the public.

As pointed out, you can't see it. It is well within the density requirements of the district. By granting so the applicant does not subdivide, granting would be a gain to the public.

J. Dargie – agreed with Kevin.

L. Harten – agreed with Kevin. Believes if this request for variance was denied the loss to the applicant would be outweighed by gain to the general public.

M. Thornton – agreed with Kevin. Only thing he can see is loss to the applicant by denying; can't see gain to anyone by denying.

J. Plourde agreed. Doesn't see gain to the public by denying.

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

J. Dargie – could be granted. Can't see it from abutting properties.

L. Harten – this application if approved would improve value of surrounding properties. Doesn't know how many are familiar with property prior to applicants' ownership of it. It was more of a campground than anything else. Has seen property as it exists today. It is far improved over what it was. Substantially well constructed, well maintained. Can't believe any diminishment of surrounding property value.

J. Plourde agreed. Doesn't see any surrounding property losing value. It is far enough off the road. Keeping residential structures close to each other. No runoff or drainage issue. Unique situation. It is very large property.

M. Thornton believes the parcel is large and with the construction this much to the interior there can be no diminishment of value to adjacent properties. Yes.

K. Johnson agreed. Couldn't find any potential cause that this particular variance could diminish surrounding value. Only way is if they deny variance and applicant had a subdivision.

### **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.**

J. Plourde – it would result in unnecessary hardship to the applicant. Glad they are not subdividing the property. Looking at uses and traffic generation compared with other allowed uses. Talking about one cottage. Would be unnecessary hardship.

M. Thornton – would be unnecessary hardship with nothing to offset it as an advantage to any person or entity.

J. Dargie – would result in unnecessary hardship, going to 5A, 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, and ii, the proposed use is a reasonable one.

L. Harten believes denial would be an unnecessary hardship. It is unique property. Doesn't know of any other property in town to compare it to. It is distinguished because of the property itself. If they denied, would be unnecessary hardship.

K. Johnson agreed with the others. Cited RSA 674.33.1(b)(5)(A) on page II-12 of the Handbook (the relationship test) and Paragraph (ii) on page 11-13, the proposed use is a reasonable one. This is a unique property. Large property with small frontage on established road. Has conservation easement and has potential for development but applicant choosing very restricted form of development. Clearly meets requirements for variance. It is unique. No relationship to the public purposes of the ordinance and application to the property. It is reasonable to put in a residential house in a residential district. It is a reasonable use.

K. Johnson asked Board members for any other discussion or any conditions. None.

**Vote on Criteria:**

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

M. Thornton – yes; J. Dargie – yes; L. Harten – yes; J. Plourde – yes; K. Johnson - yes

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

J. Dargie– yes; J. Plourde – yes; L. Harten – yes; M. Thornton – yes; K. Johnson - yes

**3. Would granting the variance do substantial justice?**

L. Harten – yes; J. Dargie – yes; J. Plourde – yes; M. Thornton – yes; K. Johnson - yes

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

M. Thornton – yes; J. Dargie – yes; J. Plourde – yes; L. Harten – yes; K. Johnson - 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.**

J. Dargie – yes; M. Thornton – yes; L. Harten – yes; J. Plourde – yes; K. Johnson - yes

K. Johnson asked for a motion to approve the request for a variance.

M. Thornton moved to approve the applicant's request for a variance from Sec. 5.04.3 of the zoning ordinance to allow another detached cabin at the property shown on Tax Map 47, Lot 15 when only one is allowed.

L. Harten seconded.

J. Dargie asked about not being so specific.

K. Johnson said that would be discussed later in their meeting; it turns out they want to be exceedingly specific.

A yes vote is to approve, or grant, the variance requested in Case #2016-13.

**Final Vote:**

**M. Thornton – yes**

**J. Plourde – yes**

**J. Dargie – yes**

**L. Harten –yes**

**K. Johnson – yes**

**Variance unanimously granted by 5 to 0 vote.**

**K. Johnson reminded applicant of 30-day appeal period.**