

Newfields Zoning Board of Adjustment
February 28, 2024

Attendance: Chairman Kent Lawrence, Betsy Coes, Steve Yevich, and Bob Elliott. Jack Steiner and alternates Catherine Tarnowski and Scott Sakowski were absent from the meeting.

Guests: Rowen Prescott and the owner of Map 102, Lot 79

Chairman Lawrence called the meeting to order at 7pm and introduced the Board Members above. Chairman Lawrence offered Mr. Prescott the opportunity to wait for a full board to vote even though he didn't think he would need to. He explained that for the variance to pass, it needs 3 votes out of 4, as opposed to 3 out of 5 with a full board. Mr. Prescott agreed to proceed this evening. Chairman Lawrence introduced tonight's case:

1. Case #24-02-28-01- Rowen & Katie Prescott—Variance Request for relief from Article 3, Schedule II-Dimensional Regulations of the Newfields Zoning Ordinance. The applicants intend to convey a portion of Map 101, Lot 79, with existing acreage of .884, to Map 101, Lot 72, with existing acreage of .214 acres. The area being conveyed is .388 acres. The property is located at 8 Maple St. in the Residential Village District.

Betsy asked how this came about. Mr. Prescott explained that he and his wife purchased the property in 2015, and Chairman Lawrence added they went to the Planning Board first, but the Planning Board can't grant this.

Rowen Prescott, the owner of Map 102, lot 72, the smaller of the two lots, presented the case. He explained they're proposing a lot line adjustment between Lot 72 and Lot 79. Both lots are nonconforming, and they are looking to enlarge Lot 72 and reduce the size of Lot 79. The ending acreage will be about a half an acre or a little bit more on each lot. They initially went to the Planning Board, but they don't have the authority to grant a variance to reduce the size of a nonconforming lot; that's an issue for the Zoning Board. So, that's why they are here to seek a variance to reduce the size of a nonconforming lot while increasing the size of another nonconforming lot.

Betsy said it almost sounds like a textbook exercise on how and why you do a variance. Chairman Lawrence agreed. He added the only issue he sees is that it changes where setbacks would fall on the lot, and it changes the area of the little lot as they relate to other building ordinances. He asked if Mr. Prescott had plans for the lot. He said right now the only plan for the next year or two is to garden and maybe plant fruit trees, but nothing building-wise at this point and they would apply in the future if any building permits did come up. Chairman Lawrence asked Mr. Prescott to read in his answers on the application for the record.

VARIANCE REQUIREMENTS NARRATIVE

1. Describe the unnecessary hardship created on the property based on the existing zoning ordinances: We are seeking a variance to perform a lot line adjustment between two existing nonconforming lots. The residential lot size of each lot is less than the 1-acre minimum lot area. We

are seeking a variance to make one of the lots more nonconforming while making the other lot more conforming.

2. Explain how granting the variance will result in substantial justice (Mr. Prescott wasn't sure he understood the question): The larger of the two lots will become more nonconforming while the smaller of the lots will become more conforming. Both lots are grandfathered into their current nonconforming state. The land to be transferred is at a much lower elevation than the residence of Lot 79 and is at a similar elevation to Lot 72, making it more accessible for use.
3. Explain how a variance would be consistent with the spirit and intent of the ordinance: Granting the proposed variance would be consistent with the spirit and intent of the ordinance by increasing the size of a very small residential lot. The proposed lot line adjustment would transfer under-utilized land from the far back of Lot 79 to the side yard of Lot 72. This will provide our family with more space for outdoor activities.
4. Explain how the variance will not result in a diminution in value of surrounding properties: There will be no diminution of surrounding property value because the use of the lots will not change. Both lots will remain for residential use, and we will continue to maintain the property.
5. Discuss how the variance would not be contrary to public interest: The uses of each lot will not be changing by granting the variance. The land to be transferred is much more accessible from Lot 72, making it well-suited to be a part of that lot.

PUBLIC COMMENT

None.

ZBA DISCUSSION

Chairman Lawrence said hardship in this case comes from the larger lot, Lot 79, not being able to divide some of its property off, and that's where the Planning Board had trouble moving forward with this. They needed to go through the Zoning Board. Bob added we must look at what's the purpose of zoning and does the variance do something to minimize what the zoning is trying to create in a harmful way in terms of everything it says and how you test it—health and safety. Will this create a condition where there's less health and safety than there is currently? Ultimately, that's what we're looking at. In what way would creating a variance eliminate, destroy, or minimize health and safety, i.e., can a fire truck or an ambulance still get in there? The other thing is does granting a variance lead to conditions that would be adversarial in the future that could create more problems. Chairman Lawrence said we have a situation where both lots will continue to be undersized. Mr. Prescott added that they will continue to be single-family residential lots because that's how it's zoned.

Chairman Lawrence said the proposed lot would give the applicant more space to do family activities like gardening and that sort of thing. Steve said the rear of Lot 79 is down the hill and is very unutilized, such that it's not a useful part of the property. The owner agreed. Steve added that Lot 72 is currently very small, and he thinks it enhances the value of the lot and it doesn't hurt the value of Lot 79.

Mr. Prescott said the Martin's told him Lot 79 was so long because when Maple St. was being put in, there used to be another lot next to Lot 72, and Maple St. used to connect to Summer St. all the way through the woods. Mr. Prescott said that people on Main St. bought the lots behind them that would have been on Maple St. because they didn't want neighbors behind them. Chairman Lawrence said there was at some time a reorganization of some of that land that's behind Maple St., between Maple St. and Summer St., behind Main St. and above Pleasant St. He asked if they have looked at deeds such

that there's no restraints based on that reorganization that may affect use. Mr. Prescott said not that he knows of, and that the surveyor had an interesting time locating down there. He was out there 5 or 6 times trying to find things.

Betsy asked for clarification on the changes to the frontage of the lot. Chairman Lawrence clarified that should the owner want to build in the future, the setbacks and area will change. Mr. Prescott provided a color version of the map that clearly showed the proposed lot line changes.

Chairman Lawrence said he thinks this is like a case they heard on Railroad Avenue. In that case, it didn't change the potential of that lot as much as this changes this lot. The down slope makes that property from Lot 79 a little harder to access, and in Lot 72, it gives them a big yard. Or a yard, added Betsy. Betsy said doesn't think that the applicant really answered the questions correctly, and Bob agreed it should be on record that if we just went on the way it was answered, it would be a no. The real hardship wasn't demonstrated. Chairman Lawrence said he thinks the hardship in this case is that the Planning Board doesn't have the authority to do a balancing act in this case. Betsy said she thinks the elevation is a hardship for the larger lot. Bob said it's the special condition of the lot that becomes a hardship. Bob said we have to look at what makes this lot any different than the surrounding lots. Betsy said it's a steep hill. Steve said it's very narrow and an unusual lot to do things with besides a house.

Chairman Lawrence moved to deliberate and vote on the case.

VOTE

Variance requirements:

1. The variance will not be contrary to the public interest: proposed use must not conflict with the explicit or implicit purpose of the ordinance. It must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure public rights. As it is in the public interest to uphold the spirit of the ordinance, these two criteria are related.

VOTE Yes-4, No-0

2. The spirit and intent of the ordinance is observed. VOTE Yes-4, No-0
3. Substantial justice will be done by granting the variance. VOTE Yes-4, No-0
4. Granting the variance will not diminish surrounding property values. VOTE Yes-4, No-0
5. Literal enforcement of provisions of the ordinance would result in unnecessary hardship. Betsy said she does think there's a hardship on the lot—the hill. Chairman Lawrence said there are two parts to this. The first is if the special conditions of the property distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship. There is a fair and substantial relationship between the general public purpose of the ordinance and the specific application of that provision to the property. This form is really asking for it to be spelled out here—elevation in this case. Part two is proposed use is a reasonable one because this allows a balance of two nonconforming lots for the recipient to have access to a little more space. VOTE Yes-4, No-0

Chairman Lawrence made a motion to approve the variance. Bob seconded. VOTE Yes-4, No-0

Mr. Prescott said he still must go back to the Planning Board. Chairman Lawrence said the process for a variance seems a little awkward, but Mr. Prescott said this is how it works and it's the checks and balances system. Chairman Lawrence said Newfields adopted zoning in 1957, and some of these regulations are probably based on some of that. And there are changes along the way, and he sees them continuously being tweaked.

Bob asked to discuss what Betsy brought up about the application. The Planning Board passed a new regulation or protocol where the Town Planner is supposed to review applications before they come to the Board. Bob and Betsy both said it obviously didn't happen for this case based on the answers in the application. Chairman Lawrence said he spoke to Mr. Greenwood about another application where the answers were not high quality. Chairman Lawrence asked if he saw the way the answers were written, and Mr. Greenwood said yes, but that his job is to make sure the application is complete. It's not his job to coach the applicant when the answers are inadequate. Chairman Lawrence said we had the guy come back three or four times, and he still hasn't put the information to the building inspector for the building inspector to write the letter that he meets the condition for the Chairman to sign upon the completion of that application. Chairman Lawrence also mentioned the motion for a rehearing, and how long do we let that go before the rehearing happens. Because the Selectmen's Office asked for the rehearing, there is no standard for how long it takes for the rehearing to get done; the response was just that he needs a lawyer now. Betsy wondered about the status of the case, which is that nothing is happening. Bob said the good thing is he stopped building.

Bob said in general, our purpose of changing our procedure to include the Town Planner to review applications was so the applicant doesn't get here and get turned away, as could have happened tonight just based on the application. Chairman Lawrence added because it doesn't answer the questions. The question is really what's the hardship on the larger lot to make it smaller. Bob said we had to intuit that, and that's not our job. Betsy was wondering why he was coming in for this, probably because they are making a nonconforming lot more nonconforming. And Chairman Lawrence clarified that's why he noted what the changes will allow on the smaller lot. It changes the area, so the 10% rule in our building regulations: he has more space, and it changes the setbacks. Those are the only things he saw that it changes on the lot. And once he has the larger lot, he can do whatever he wants. The future potential is the change and gardening would be wonderful.

Bob said he wanted to get back to our expectations so that we are clear. Is Mr. Greenwood saying he's not able to say whether they had an adequate answer to the question? Chairman Lawrence said he can't help the applicants find the right words or correct phrases; he can only make sure that it's complete. The best ones come in with an attorney. Bob asked if we heard from Mr. Greenwood that this application was complete, and no one is sure that the Board was notified. Chairman Lawrence said he leaves that more to the bookkeeping department, Sue and Mr. Greenwood. Chairman Lawrence thinks Mr. Greenwood knew what this case was, erasing a line and redrawing a line, and he might have felt like a variance might be the proper manner which to work this out. Bob said if we have it in our regulations that the preview must occur, and we vote in an unfavorable way to the citizen, they could challenge it. He added that all we need is word back from Mr. Greenwood saying application complete. So, in the absence of doing that, we're not following our regulations. If we're going to have regulations, we must either follow them or we don't. Betsy said we struggle with determining variances, so giving this to a layperson is difficult. Selectman Sununu added that a lot of the language used - hardship, substantial justice, public interest - is beyond most people's knowledge and they don't understand what we're asking for.

Selectman Sununu and the Board had a debate over the hardship in this case, including that a variance is a judgment. The commonsense solution is what ideals of zoning ordinances were based on, when society wasn't as litigious, as well as other options available to landowners like a perpetual easement. It's about balancing the rights of the town with the rights of the individual.

Chairman Lawrence said one of the ways he thinks of this is that the people voted for the original ordinances, and all the modification and changes that have come along since. Bob said the ordinances represent the collective interest, and that's why a ZBA was created because there's going to be conflict. Selectman Sununu said the whole purpose of the test is to say here's where the interest of the landowner supersedes the interest of the town. With a lot line adjustment, restrictions are loosened to an extent. Bob said is that where a Town Planner comes in and says have you considered something like that, and Chairman Lawrence asked if that would be appropriate to come out in a Planning Board meeting. Selectman Sununu said they couldn't accept it for discussion in a public hearing because it was in violation of an ordinance for lot line adjustments.

Besty made a motion to close the meeting, and Bob seconded at 7:49 pm.

Kent Lawrence, Chairman