



TOWN OF LITCHFIELD

LITCHFIELD ZONING BOARD OF ADJUSTMENT

Litchfield, New Hampshire January 13, 2021

DRAFT

Regular meetings are held at the Town Hall at 7:00 pm on the 2nd Wednesday of each month.

ZBA Members in Attendance (indented if absent):

Richard Riley, Chairman

Albert Guilbeault

John Devereaux

Thomas Cooney (alternate)

Eric Cushing (alternate)

Greg Lepine (alternate)

Mark Falardeau (alternate)

Kyle D'Urso (alternate)

Laura Gandia, Vice Chairman

I. CALL TO ORDER AND ROLL CALL

Richard Riley called the meeting to order at 7:07 pm. Richard Riley indicated there are five members present and took a roll call attendance.

II. CHAIRPERSON OPENING REMARKS

Richard Riley reviewed the schedule for hearings.

Case Number: 2021-01

Name of Applicant: Seth Miller

Address: 275 New Boston Rd, Candia, NH 03034

Owner of Property: Heidi E. Hale Miller

Location of Property: Garden Drive at Grove Court, Litchfield, NH 03052, Map 18, Lot 68

Appeal Requested

The Applicant seeks a variance from LZO Section 310.00 to allow construction of a single-family home on Property Map 18, Lot 68. The property will have 50 ft. of frontage where 150 ft. is required.

Richard Riley indicated that there is a five member Board this evening, which is a quorum.

III. PUBLIC HEARING AND DELIBERATION

Notices of the Public Hearings were posted and published in the Union Leader. Notice of the meeting and agenda were posted at the town hall and public library.

Case Number: 2021-01

Name of Applicant: Seth Miller

Owner of Property: Heidi E. Hale Miller

Location of Property: Litchfield, NH 03052, Map 18, Lot 68

Appeal Requested

The Applicant seeks a variance from LZO Section 310.00 to allow construction of a single-family home on Property Map 18, Lot 68. The property will have 50 ft. of frontage where 150 ft. is required.

Seth Miller presented supporting facts for the request:

The property is a family lot passed down to he and his wife and he has been working with the town since March/April 2020 to determine the steps to complete to settle out the property and heirs. Two unequal lots were split with access created to the other lot as it originally had one right of way. This was addressed by the Planning Board. There was direction from the Planning Board, Town Administrator, Select Board and Town Attorney regarding the use of the right of way to the proposed single family home. A plan to restore the Garden Drive right of way that exceeded the driveway standards (more like a private road) was presented and unanimously approved by the Select Board. A release letter was signed and received from the Town pending approval of a variance stating the owners will maintain the right of way with no liability to the Town. There is 50 feet of road frontage where it touches the paper street according to the Town records, noting there are a number of these 'paper streets' in the Town. The right of way was originally approved in 1999 with no improvements made by any development bordering the lot. There are right of ways along Homestead Court and Grove Court that were approved for future subdivisions. There is 100 feet of frontage where it touches Homestead Court.

Mr. Miller reviewed the criteria for requesting a variance.

- 1) The variance will not be contrary to the public interest because allowing access to the property does not contradict the intent of statute nor does it alter the character of the neighborhood or threaten health, safety or general welfare of public.
- 2) The spirit of the ordinance is observed because there is no other access point to the property and the lot exceeds all other requirements. It is utilizing an approved future access point by the abutting subdivision plan.
- 3) Substantial justice is done because the land would otherwise be landlocked by surrounding subdivisions/properties and inaccessible.
- 4) Values of surrounding properties are not diminished because the property will be used one single family home, built with like square footage and value to the surrounding abutters and with similar characteristics.
- 5) Literal enforcements of the provisions of the ordinance would result in an unnecessary hardship because the property only has one access point created by surrounding subdivisions and created with less than minimum lot frontage.

Richard Riley mentioned that two letters have been emailed to the Zoning Board:

Richard Gamache at 1 Homestead Court, dated November 30, 2020, who supports the intention of the Millers to build their home, supports the restoration of the right of way and supports the request for the variance requested by the Millers.

Heidi Hale Miller at 2 Grove Court, who expresses the same support as Mr. Gamache.

Mr. Miller commented that forestry management has been performed on the property within the timeframe required. He noted over 25 acres remains wooded. He indicated that he has just learned of the open space development frontage requirement of 90 feet.

Richard Riley commented that the map shows 50 feet where the paper road touches the property and the other road has 100 feet. He asked if the request for the variance is based on the 150 foot frontage requirement or the 90 foot frontage requirement.

Mr. Miller was unsure. He indicated that he is not presenting a new subdivision and the letter from the Town dated September 22, 2020, states that the requirement to build a single family home on this property requires a frontage of 150 feet on a public right of way and that our property has 50 feet of frontage on an undeveloped public right of way.

Richard Riley commented technically you would only end up with 50 feet of frontage and are looking for a variance of 100 feet from the 150 feet requirement.

Richard Riley read into the record the Exhibits presented:

Exhibit 3: an email from Town Administrator Troy Brown, dated January 13, 2021, 2:53 pm, to the Litchfield Zoning Board of Adjustment stating the Millers have been working with the Town regarding the right of way mentioned in this case.

Exhibit 4: an agreement and release referred to in the minutes of the Select Board meeting where the matter was discussed and a unanimous vote was taken to grant permission to the Millers to construct the 'private drive'; agreement from the Town to permit construction of a single family home on the property with the responsibility for maintaining the road belonging to the property owners, releasing the Town of liability for services to the road; a hold harmless agreement by the landowners to the Town for the legality of use and maintenance of the road; responsibility of the landowner to maintain and repair the road as a use of access to the single family home.

Laura Gandia asked about approval from the fire department regarding the materials used for the driveway and concerns of emergency vehicles driving on that driveway.

Mr. Miller indicated that they presented that the construction of the section from Homestead Court/Grove Court would exceed all regulations for standard driveways with over 12 inches of aggregate and a 16 foot apron and shoulders. He noted there will be large turnarounds for larger vehicles. He commented that the section will exceed driveway standards, but would not be enough to be classified a Class V road. He indicated they proposed naming the road Hale Court for identification for emergency services and were advised by the fire department that there are standard names for private drives, such as this, and asked if we would consider naming the drive Hale Way.

Mr. Miller noted that in doing research on this project, he found a property built in 2016 on Maple Court that mimicked the access we have proposed.

Hearing no further discussion, Richard Riley opened public input.

Jorge and Filomena Gomez, 3 Homestead Court, abutters, testified they are in favor of the applicants' request.

Hearing no further public input, Richard Riley asked for motion to close public input.

Laura Gandia made a motion to close public input. John Devereaux seconded. The motion carried 5-0-0.

Richard Riley indicated the Board would deliberate through the criteria.

1) The variance will not be contrary to the public interest:

Richard Riley commented the applicant maintains to allow access to the property and the home and private drive will not alter character of neighborhood. He indicated that he does not see how granting this variance would have a negative impact. The Board agreed.

2) The spirit of the ordinance is observed:

Richard Riley commented based on what we see on the tax maps there is no other access to the property. He indicated the Millers have worked with the Planning Board and abutters to make this possible. He noted there is no impact on the spirit of the ordinance. The Board agreed.

3) Substantial justice is done because:

Richard Riley indicated without the variance the property would be landlocked by surrounding subdivisions and inaccessible. The Board agreed.

4) Values of surrounding properties are not diminished because:

Richard Riley commented the property will contain one single family home built with like surrounding property characteristics. The Board agreed.

5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:

Richard Riley indicated the primary issue is that there is only one access point and the applicant is seeking to have access for the single family home. He noted the uniqueness of property is where it is situated, it does meet hardship requirements. The Board agreed.

Laura Gandia was concerned with the viability of first responders and emergency vehicles. She recommending adding a stipulation to grant right of way to the fire department and to have in writing from the fire department approval of the road width, slope and materials of the driveway.

Laura Gandia made a motion to grant a variance from LZO Section 310.00 to allow construction of a single-family home on Property Map 18, Lot 68. The property will have 50 ft. of frontage where 150 ft. is required, with the condition that the road width, slope and materials of the driveway to be approved by the Litchfield Fire Department in writing with a copy of the letter sent to the Litchfield Zoning Board of Adjustment. Mark Falardeau seconded. The motion carried 5-0-0.

The variance was granted.

Richard Riley asked Mr. Miller to contact the fire department for the conditional letter mentioned in the motion and to send it to the Zoning Board of Adjustment.

IV. COMMUNICATIONS AND OTHER BUSINESS

There were no communications or other business.

V. ADJOURNMENT

John Devereaux made a motion to adjourn the meeting and Thomas Cooney seconded the motion. The motion passed 5-0-0.

The meeting was adjourned at 7:48 p.m.

Respectfully submitted,
Michele E. Flynn