

Westmoreland Zoning board of Adjustment
Unapproved minutes of May 20, 2015
These minutes are unapproved until voted on by the Board.

The Westmoreland Zoning Board met on Wednesday, May 20, 2015 at 7:00 pm at the Westmoreland Town Hall to conduct any business before the Board and to continue the hearing on an application by Walter Derjue for two Variances in regard to his property at 819 River Road, Map R 10, Lot 17. The property consists of four deeded parcels and the applicant would like to adjust the lot line between two parcels. The resulting parcels will need Variances according to Table 505 of the Westmoreland Zoning Ordinances as they do not conform to the minimum lot size requirement nor the minimum frontage requirement.

Present: Chairman, Peter Remy; oVice-Chairman, Barry Shonbeck; Brian Merry; Nancy Ranson; Ernie Perham.

Chairman Remy opened the meeting by asking the Board to review the minutes of the April 15, 2015 hearing.

Mr. Shanbeck made a motion to approve the minutes, as read. Mr. Merry seconded the motion and all voted in favor.

At 7:30 Chairman Remy opened the hearing on the application by Walter Derjue which had been continued from April 15th in order to have a full board consider the application. Mr. Derjue asked his attorney, J.R. Davis to speak to the issue. Attorney Davis began by withdrawing one of the maps he had submitted to the Board at the previous hearing because it contained an error.

He then discussed the correct maps which the Board members had in front of them. The maps were drawn by Russ Huntley of SVE Associates of Keene on March 2, 2015. The Derjues live in a historic brick house on the Connecticut River side of River Road. Across the road from the brick house they own four non-conforming lots of record of varying sizes. Tract one is called the 'hill lot' and contains approximately 8 acres. Tract two contains 3.22 acres, more or less, as a tree described in the original deed is no longer there. Tract 3 is called the 'ranch house lot' because a rental property stands on this lot. Tract 4 is the smallest lot at .96 acres.

The Derjues propose to move the lot line separating tracts three and four closer to the ranch house, resulting in the ranch house lot diminishing in acreage and frontage and the smallest Tract four lot increasing in acreage and frontage.

The reasons for moving the lot line are two fold. The main reason is to protect the brick house from development across the road. The Derjues are going to sell the ranch house and they believe it would be in the interest of the buyer to have a smaller lot which would not have

covenants or easements attached and the Derjues would be assured that they would not face any outbuildings or eyesores directly across the road from their house.

Mr. Merry asked whether evening out the size and frontage of the lots had been considered. Attorney Davis said that the Derjues wanted to insure that the whole area across from the brick house was all on one lot.

Attorney Davis then addressed the criteria for granting a Variance, the first being that there would not be a lessening of the value of properties in the neighborhood. Attorney Davis said that moving the line should not affect property values at all. There will be the same number of lots. The point of the Variance is to protect the brick house from development across the street. No one would be aware of the adjusted lot line

The Derjues have listed the ranch house property with Bill Arnott of Masiello Real Estate who said that buyers want either a lot of acreage or just a house lot. The ranch house lot has a water source and septic system which will not be affected by this proposal.

Attorney Davis said the Palitz Estate which abuts a good deal of the property surrounding the brick house and across from the lots in question had no objection to the proposed lot line adjustment. Mr. Palitz died about eighteen months ago and Attorney Davis spoke to his son.

Chairman Remy clarified that the lots are in the Rural Residential zone Table 505 and not in Table 503 the Forestry Residential Zone as advertised. The clerk apologized for the error.

The second criteria is that this proposal would be of benefit to the public interest. There would be no change to the public interest as the Derjues want to keep it as undeveloped land but should the lot ever be developed in the future it would more likely be a larger structure and more accommodating to a well and septic system which would be in the interest of the public.

The third criteria is that denial would result in unnecessary hardship to the owner seeking it because of the unique features of the land. Attorney Davis explained that the unique feature of the land is that it rises very sharply behind the lots which are not deep. The Tract 4 lot is less than an acre and has few uses. A lot of record must have a full acre to be a building lot. By moving the lot line the land is made more useable.

The fourth criteria states that by granting the Variance substantial justice would be done. Attorney Davis said that the proposed use is in balance with the needs of the neighborhood.

Nancy Ranson asked if the ranch house would be put in a conservation easement. Attorney Davis said that the Derjues had considered it but felt it would make the ranch house harder to sell.

Chairman Remy asked Attorney Davis to say more about the unique feature/s of this land. Attorney Davis spoke about the permitted uses according to the Table for that Zone.

Attorney Davis said that the main feature is the depth of the lots. Also there is a wetland pond on the property that is a secondary source of water for the brick house. Lack of depth, lack of size, and the lack of a practical use amount to a hardship without the Variances. He said that the NH supreme Court says that the historic use of the land may not be practical. The uses permitted by Table 505 are not practical for a lot less than an acre in size.

The issue of the property taxes on the property was raised. Attorney Davis said that the tax situation is a disaster. The town has taxed the four lots as one property even though a merger was never filed. Much of the land is in current use.

The secondary water source across the road is necessary to the brick house. When they first acquired the property they had a very dry summer and immediately ran out of water. They had to have 2000feet of hose to bring it to them. Someone recently bought that 2000 feet of hose.

Theresa Russell, representing Andy Russell, an abutter, submitted a letter from him to the Board. He was out of town on business. Chairman Remy asked the clerk to read it aloud. A copy of the letter is attached.

Dear Westmoreland NH Zoning Board of Adjustments,

I would like to take this opportunity to express my concerns for the application submitted by Walter Derjue regarding the property located at 819 River Road, Map R10 Lot 17. I would like for the board to review this information before making any decisions regarding this application. If any questions arise from this information please contact me using the information provided at the bottom of this letter.

As Walter and June Derjue have been very vocal and aggressively against any variances in the past submitted by other town's people, I feel that they should receive the same scrutiny to the town's ordinances and laws as they posed against other town's people.

As I understand from the prior zoning board meeting they would like to adjust one boundary line between two tracts of land that are inside of the said lot. This would not and should not be considered a lot line adjustment as it is not changing the shape or size of the lot. As I am sure the zoning board is aware the State of NH website <https://www.nhmunicipal.org/TownAndCity/Article/222> describes a lot line adjustment as follows: "The boundary line dividing two parcels of land may, from time to time, be moved in its location. Such a move is typically made by agreement between the owners of the parcels. The owners may desire to straighten out a "jog" in the property line or may wish to exchange acreage so that both lots are more useful in shape and/or size to the respective owners. Change in the location of the boundary line effectively creates two "new" parcels or lots with new dimensions." If the town allows this variance everyone with multiple tracts of land within a lot could adjust the boundary lines to create new lots.

After looking at the provided map with the new boundary lines I have the following concerns:

1. It would create 4 nonconforming lots
2. It does not included the proper setbacks
3. The barn on the house lot is located on two boundary lines
4. The spring for the house lot is not clearly defined and is located on two boundary lines
5. They said they wanted to keep the northern most tract of land with the barn to protect the brick house however this would do the exact opposite. If this variance was approved and this tract of land became a new lot another house would be built directly across from the brick house as they will not always be the owners of the tract of land.

I do not feel the Zoning Board should grant this variance for the following reasons:

1. The application does not conform to the town ordinances.
2. Adjusting a tract of land's boundary doesn't change the lot or make new lots.
3. This would set precedence that these laws are not important and right for the town and its people.
4. This would allow everyone in town with multiple tracts of land within a lot to subdivide these properties and make nonconforming lots.

Please provide me paper copies or E-mail copies of all submitted documentation, Zoning Board of adjustments meeting minutes, and all follow up meeting minutes regarding this application.

Best Regard's,
Andy Russell
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Westmoreland, NH 03467

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In response to the letter these comments were made:

The Municipal Organization is not a governmental Agency.

The moving of a lot line is allowed.

Moving one lot line is allowed.

Moving the lot line does not create four new lots.

Attorney Davis did not understand the letter's comment about setbacks.

The shed/barn is in very bad shape. If it is an issue for the Board the Derjues would remove it.

The spring for the ranch house is on the ranch house lot and will remain there.

A Variance by its very nature says, "As applied to my land"

The Derjues are not 'making' non-conforming lots. They are just adjusting the non-conformity.

Theresa Russell spoke to the letter. She said that Andy used his own maps and they don't match the maps the Derjues provided for the Board so he was concerned. For purposes of land law and the Zoning Ordinances, there can only be a merger of lots if the town is notified in writing. Theresa Russell asked if the terms lot and tract are interchangeable.

Mr. Shonbeck said in regard to Mr. Russell's fourth point, the Zoning board of Adjustment cannot make non-conforming lots.

Brian Merry asked if the .96 acre lot could be sold as a building lot. Attorney Davis said it could not.

Has the town been taxing it as a building lot? Taxing and zoning are two different animals. What is being proposed could enlarge a .96 acre into a building lot.

Theresa Russell asked if moving the lot line would make the land less valuable because decisions are being made now perhaps voiding the grandfathered lot as a building lot. Attorney Davis said they consciously did not seek to make a building lot but the potential is there. For the record the ranch house lot and the Walla lot are not in current use.

Ms. Russell asked about the water for the ranch house. The Churchills who sold to the Derjues told the m that the water fluctuated according to what happened at Spofford Lake.

Chairman Remy closed the public session for the Board's deliberation on meeting the criteria for granting the Variances.

Mr. Remy said that they have a total of 929 feet of frontage. Barry said they need 1000 feet in order to be conforming.

Mr. Remy said that the issue is that the line change would make tract 4, a non-conforming lot even more non-conforming, of course understanding that there is no way to make them conforming. As a general rule the Board does not make a non-conforming lot more non-conforming. He polled the Board members for their opinions. Mr. Merry said he did not really see a problem because none of the lots are conforming.

Chairman Remy reminded the board that they do not set precedents. Every matter that comes before them is decided on a case by case basis. He polled the Board on each of the criteria.

1. Granting the Variance would be in the public interest. Attorney Davis said that The Supreme courts asks it this way, "Would granting this make a difference to the public interest?" All the board members agreed that it would not make a difference.

2. Would it be contrary to the Spirit of the Ordinance? All agreed it would not be.
3. Would granting the variances give substantial justice? Attorney Davis said that not granting them would result in a hardship for the owners. Mr. Perham said that it would not make a difference to anyone else. All agreed.
4. There would not be a diminution of property values. All agreed.
5. Denial would result in hardship to the owner because of the unique features of the land.
Attorney Davis said that the Supreme Court says that this criteria asks the Board to balance the unique features of the land with hardship caused by taking action or not taking action. Chairman Remy suggested a condition that the lot never have a residential dwelling. The applicants acceded to that request. All agreed that the hardship criteria had been met.

Chairman Remy asked for a motion. There was discussion of how the motion should be phrased during which a Board member objected to the imposed condition and the condition was eliminated. Attorney Davis pointed out that the matter would still have to go before the Planning Board and suggested that the motion include Planning Board approval.

The final version of the motion was read out by the clerk. "To approve the Variances applied for, subject to Planning Board approval with minor adjustments, if any, required by the Planning Board, resulting in the modification of the frontage and acreage of two existing non-conforming lots of record as shown on the boundary line adjustment on the survey map of March 2, 2015 regarding the Durjue 1990 Property Trust."

Mr. Perham proposed the motion as read and Mr. Merry seconded. All voted in favor.

Ms. Ranson made a motion to adjourn at 10:00 pm. Mr. Merry seconded. All voted in favor.