MEMBERS PRESENT:
Chairman Foster Peverly                        Center Sanders
Sandy Plessner

OTHERS PRESENT:
Joe Plessner                                         Russ Pearl
David Schaeffner                                  Robert Bollinger
Allen Gray

AGENDA:
7:00 PM         Call to order
    Minutes of August 20, 2002
    Correspondence
    Any other business

Case ZBA#02-06-Thomas & Concetta Benvenuto- Variance-
Applicant is seeking a Variance to Article VII Section 1 to allow
the construction of a home into the side setbacks of the
property. Property is located at 308 Lancaster Hill Road, Tilton,
NH 03276. Tax Map R-6 Lot 3 in the Rural Agricultural District.

7:05 PM           Call to order. Chairman Peverly asked alternate Sandy
Plessner to sit as a full member for the meeting and explained to the
applicant that they could continue the case until the next meeting to have
the advantage of a full Board but the applicant declined.

Chairman Peverly asked the Board members if they had read the minutes
of August 20, 2002. Sandy Plessner made a motion to approve the
minutes of August 20, 2002. Center Sanders seconded the motion. No
further discussion. All voted in favor.

Case ZBA#02-06 for Thomas & Concetta Benvenuto for a Variance.

Robert Bollinger, authorized by the owner to present the case, told the
Board he had a deposit to buy the land from the Benvenutos provided he could get a variance approval. Mr. Bollinger explained to the Board that the lot was 100 foot wide and by the standards of the current zoning, the side setbacks were 40 foot but when the lot was approved, the setbacks were 20 foot. Mr. Bollinger state that in order to place a home on the lot, they would have to encroach into the side setbacks.

Chairman Peverly asked where the owner of the property was and was told the owner lived in New York but there was a letter of authorization in the application file.

Mr. Bollinger stated the proposed home would be 56 feet long including the garage, which would leave 22 feet for setbacks on each side.

Mr. Bollinger went through the criteria for a variance.

1. The proposed use would not diminish surrounding property values because;

   The lot has homes around it. Building a single family home with a garage would not diminish surrounding values.

2. Granting the variance would be of benefit to the public interest because;

   The granting of the variance would allow a single-family home to be built increasing the tax value of the lot.

3. Denial of the variance would result in unnecessary hardship to the owner because;

   a. A zoning restriction as applied to the applicant’s property interferes with the owner’s reasonable use of the property, considering the unique setting of the property in its environment;

      The owner would only be able to build an 18 foot wide house on the lot with the current setbacks.

   b. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property;

      This is a lot of record but current zoning makes the property useless in this district.
c. The variance would not injure the public or private rights of others.

The variance would not injure anyone’s rights as it would be a single-family home surrounded by single-family homes.

4. Granting the variance would do substantial justice because;

The lot would become buildable for a single-family home with a variance.

5. The use or proposed use is not contrary to the spirit of the ordinance because;

The lot is a lot of record.

Sandy Plessner asked if it would be possible to turn the home sideways on the lot. Mr. Bollinger replied the home would not be as aesthetically pleasing turned sideways. Mr. Bollinger stated the proposed home was a two-story garrison type home and would look more appealing facing the road. Mr. Bollinger continued by saying the other lots in the area had single-family homes on them so he felt his proposed home would not look out of place.

Chairman Peverly asked if they had gotten a driveway permit and Mr. Bollinger replied they had not done so yet. The Chairman explained to the applicant that Lancaster Hill Rd. was a state road and would require a curb cut approved by the state. Joe Plessner stated he would see to it that Mr. Bollinger was given the phone number for the Department of Transportation in Gilford.

Center Sanders added that his only concern was there was a little knoll between Autumn Drive and the applicants lot and felt the State would look at the knoll and the proposed location and the knoll to determine where the driveway entrance should be.

Center Sanders asked if Mr. Bollinger would be living in the proposed home and Mr. Bollinger replied he would not be. He was building the home as a spec home and they would be selling it when it was completed.

Chairman Peverly asked about the well and septic and Mr. Bollinger stated the well location and the septic design had been approved
by the State.

7:20 PM Meeting was opened to public comment.

Joe Plessner stated the lot would have 20-foot setbacks on each side, which would match all of the other residential zones.

7:20 PM Close to public comment.

Center Sanders asked Mr. Plessner if at the time the lot was created it was in compliance with the zoning regulations. Mr. Plessner stated it was. Mr. Plessner stated the side setbacks in all of the other residential districts today were 20 feet. It was only the rural agricultural district that they were 40 feet.

Sandy Plessner told the Board that an abutter had come into the office the first week in October and voiced his concern about allowing a home to be built in the setback area of this lot. Ms. Plessner stated she told the abutter to write a letter stating his concerns and it would be read into the record. Ms. Plessner stated she had not received any letter.

The Board filled out finding of facts sheets.

1. There would/would not be a decrease in value of surrounding properties by granting this variance.

   All Board members agreed there would not be a decrease in value to surrounding properties.

2. Granting this variance would/ would not be contrary to the public interest because;

   Sandy Plessner stated it would not be contrary because the area was single-family homes and the applicant would be building a single-family home.

   Center Sanders stated it would not be contrary as he concurred with the reasons the applicant had given.

   Chairman Peverly stated it would not be contrary as what was proposed was a single-family home. No abutters had objected.

3. Denial of this variance would /would not result in unnecessary hardship to the owner seeking it. With the Simplex ruling, “unnecessary hardship” requires applying a new process of
analysis. An applicant for a variance may establish “unnecessary hardship” by proof that;

a. A zoning restriction as applied to the applicant’s property interferes with the owners reasonable use of the property, considering the unique setting of the property in its environment;

b. No fair and substantial relationship exists between the general purposes of the Zoning ordinance and the specific restriction on the property; and

c. The variance would not injure the public or private rights of others.

Sandy Plessner stated it would create a hardship and;

a. When the lot was created it was in compliance.

b. The lot of record cannot meet the standards of current zoning.

b. Variance would allow the lot to be utilized by building a home on the lot.

Center Sanders stated it would create a hardship and he concurred with the reasons given by the applicant.

Chairman Peverly stated it would create a hardship as the lot was grandfathered.

4. By granting the variance, substantial justice would /would not be done because;

Sandy Plessner stated justice would be done as the lot was originally in compliance and the home could have been built. The applicant was not asking for anything not already located in the area.

Center Sanders stated justice would be done as he concurred with the applicant’s reasons.

Chairman Peverly stated justice would be done as the lot had been in compliance and was grandfathered.

5. The use or proposed use would /would not be contrary to the spirit and intent of the ordinance because;
Sandy Plessner stated it would not be contrary as it was a lot of record and the applicant should be able to build.

Center Sanders stated it would not be contrary as he concurred with the applicant’s reasons.

Chairman Peverly stated it would not be contrary as it was a lot of record and was grandfathered.

Hearing no further comments, Sandy Plessner made a motion to grant the Variance. Center Sanders seconded the motion. No further discussion. The Chairman called for a vote. All voted in favor.

CORRESPONDENCE:


   The Board discussed various items including an appeal to the court written by Attorney Mark Puffer concerning a variance that had been denied.

7:45 PM Meeting adjourned.

Minutes prepared by, Sandy Plessner