

Danville Zoning Board of Adjustment
Feb. 17, 2015
7:30 pm

Members present: Chris Stafford-chairman, Tara Burkhardt-vice chairman, Jason Holder, Joe Luna, Michelle Cooper-selectmen's rep, Janet Denison-clerk

Excused members: Curt Springer, Roger Denison

Others Present: Jane Sheeran, Barbara Brown, Tina Cote, Sheila Sileski

Case #2015-1 regarding the variance from Zoning Ordinance Articles IV.C for the Jane Sheeran Revocable Trust, Jane Sheeran trustee, property known as Danville Tax Map and Lot 4-183, to permit the use as stated in article IV section A for Residential/Agricultural Zone.

Chris explained that all five criteria of the variance request needs to be favorably met in order for the request to be granted. Jason Holder was designated a voting member for this hearing.

Jane Sheeran introduced herself and her sister, Barbara Brown, and gave a brief history of the subject property. She said the 600' long, 50' wide right-of-way (ROW) off of Olde Road was purchased many years ago by her father because he did not expect to ever receive a curb cut from the state off of Route 111.

Ms. Sheeran reviewed each of the criterions in order.

1. Public Interest:

She reviewed the town's Master Plan which states the desire to maintain a rural nature and to protect wetlands. She does not want to exclude a commercial use for this property but wants to be able to use it for residential. She has no interest in developing the property but thinks it will be more marketable if it can be used for residential. She stated this request is in line with the Master Plan, is not contrary to the town's wishes, and is not harmful to the abutters as the abutting properties are all residential. She stated if there is access granted off Route 111, the property will probably be even more valuable.

2. Observe Spirit of Ordinance:

Mr. Sheeran said the Highway Commercial Light Industrial zone is the only zone in Danville that excludes residential uses. She stated another zone, the Village District, allows a mix of commercial and residential, therefore a mixture of the two uses is in line with the spirit of the Ordinance.

3. Substantial Justice:

The lot was purchased in 1985 and it was zoned residential at that time. She pointed out the assessing records state this is a 1F lot, meaning a single family. Chris said the assessing cards are informational only; this particular instance was an error that has since been corrected.

4. Surrounding Property Values:

Ms. Sheeran explained the abutting properties are residential. A value diminution can occur when abutting properties have different uses, not when similar uses are in place. She said the neighbors may have strong feelings about a commercial venture as a neighbor.

5. Hardship:

Chris said this is the most difficult to prove, as the applicant needs to demonstrate their property is unique. Ms. Sheeran said the property has topography that would be difficult to develop. There is wetland throughout and the footprint of a commercial venture won't fit here. Ms. Sheeran said they have had an informal plan drawn and they estimate 16 condominium units can fit on this parcel based on soil tests. This would be a cluster development with shared septic.

Chris said if houses can be put on the property then it can be used for commercial purposes even if it is one country store. If the cluster plan can hold 16 units, this means at least 16 acres of usable land, which can hold a lot of commercial uses.

Ms. Sheeran said the hardship is in the ROW. The entrance off Olde Road is not good for any commercial use. She stated she is not looking to have the parcel rezoned, but to allow multiple uses. She said the town took away their rights as property owners and they are asking for them back.

Tina Cote asked why the zoning changed for this property. It was explained that the town was previously zoned as residential throughout. There was a building boom and in order to preserve space for possible commercial uses, the current zoning districts were put to a town vote. This led to the commercial zone along Route 111 being 1000' feet from the centerline of the highway. Later, the Rockingham Planning Commission helped revise all the zones in town and suggested amending this zone to follow property lines, rather than have some parcels be in two different zones. All parcels captured within the 1000' of the centerline were designated as commercial.

There was a short discussion about a proposed commercial venture across the highway and to the east of the subject property. Joe pointed out the Board of Selectmen were granted a curb cut, so it is possible to work with the Department of Transportation and get access from Route 111.

Chris asked about the property to the north of the subject parcel. Ms. Sheeran said the owners had asked for a ROW across her land but she denied them, stating they were interested in a commercial use and she didn't think that was in the best interest of Danville.

Tara stated that 16 houses could mean 32 cars along Olde Road. Ms. Cote said she never knew there was a ROW next to her property until this evening. She said the condition of Olde Road could be a concern for the amount of traffic that may occur if the ROW were used.

As there were no other questions, the public portion of the meeting was closed. All in attendance were invited to stay; Ms. Sheeran and Ms. Brown stayed. The Board discussed each point of the application, starting with the second.

2. Observe Spirit of Ordinance:

Chris asked what the purpose of the ordinance is? The Master Plan states the economic development and the development of new businesses need to be balanced with the rural character

of the town. The town is making an effort to promote more businesses. There are three new businesses within the past few years along Main Street.

It was calculated that if 16 homes were built here, each having one child in the school district, this would put a quarter million dollar burden on the taxpayers, while the town would only receive about \$100,000 in taxes from the homes.

The Board agreed the spirit of the ordinance would not be observed if the variance were granted.

3. Substantial Justice:

Jason said the change of zoning after the parcel was purchased can be seen as a hardship. It was agreed there may be some loss to the individual but the town would lose this area that has been designated as commercial. The property to the north, which is zoned commercial, would have an even more difficult time developing any commercial ventures if this were used as residential.

4. Surrounding Property Values:

It was agreed that granting the variance would not diminish surrounding property values.

5. Hardship:

It was reiterated that the point of designating this land as commercial was the proximity to Route 111. Even if the only access were from Olde Road, there is visibility from the highway. There may be some access issues but nothing that would preclude it from being used commercially. It was agreed that to allow residential at this parcel, it is setting a precedent for other commercial properties that would not be good for Danville.

It was agreed the proposed use is reasonable, as there are other residential uses near this parcel, but the relief cannot be granted without frustrating the ordinance. The same access hardships will exist for this property whether it is commercial or residential.

1. Public Interest:

It was agreed the variance would not alter the character of the neighborhood or be harmful, but it would violate the basic objectives of the Zoning Ordinance.

Joe made and Jason seconded a **motion that the application be denied based on the discussion and conclusions of the five criteria**. Michelle abstained. The motion **passed**. Chris said he will forward a notice of decision to the applicant.

At 9:10pm Joe made and Tara seconded a **motion to adjourn**. The motion **passed** unanimously.

Respectfully submitted,

Janet S. Denison-clerk