

TOWN OF HENNIKER
ZONING BOARD OF ADJUSTMENT

JUNE 17, 2009
Approved Minutes

Members Present: Doreen Connor, Chairwoman; Bob Stamps; Roni Hardy; Jeff Connor; Gigi Laberge

Members Excused: Joan Oliveira

Others Present: Mark Fougere, Town Planner; Katharine Anderson; Woonda (Pat) Gould; Jennifer Astholz, Recording Secretary

Chairwoman Connor called the meeting to order at 7:00 pm. She stated that Gigi Laberge would be voting in place of Joan Oliveira.

Public Hearing

Case 2009-101: A request has been made by S. Katharine Anderson for a Variance from Article X, Sections 133-39C & 133-40, to allow for the development of a lot fronting in Henniker, but with the majority of land area in Hillsborough (the existing lot is split by the Town boundary). A total of four lots are proposed, with two of the lots in Henniker meeting all Zoning requirements. Proposed Lot 3 fronts in Henniker with 250 feet of frontage, but lacks the required area of 10 acres. Proposed Lot 4 is in the Town of Hillsborough. The property is located at 160 Bear Hill Road (Henniker Map 1 Lot 559-B1 in the Rural Residential District & Hillsboro Map 12 – Lot 136).

Katharine Anderson presented the application. She stated that the Town boundary line bisects the property in an awkward way, making lots almost impossible; therefore, she is seeking a variance for this proposed subdivision. She stated that proposed Lots 3 & 4 will remain over twice the size of Hillsborough's zoning requirements, though she was not certain whether is that is two or five acre minimum lot size. Mr. Stamps stated that the applicant will have to present the application to the Town of Hillsborough. Ms. Anderson stated that the end result was to have one lot of record in each town that meets both Town's requirements.

Gigi Laberge stated that Lot 2 has most of the land in Hillsborough with its frontage in Henniker. Ms. Anderson showed on the plans where the best place to build a house would be. She stated that her house is on Lot 1. Mark Fougere stated that the applicant will need approval from both Henniker and Hillsborough Boards before anything can happen.

Chairwoman Connor opened the public hearing at 7:10 and asked if anyone in the audience wanted to speak in favor or against this application.

Mr. Woonda Gould, an abutter to the property in Henniker (Lot 137), stated that he lives downhill from the applicant and is very much against this proposal. He stated that it is only a five-minute walk from her property to his, and he is concerned about additional water runoff into his dug well. He stated that runoff affected his well after the applicant did some logging on her property last fall; and it has taken quite a while for the well to begin clearing up. Mr. Gould stated that his life partner, Mary Katz, could not attend the meeting tonight but is also against this proposal.

Ms. Anderson stated that the logging occurred in the area of proposed Lots 3 & 4, and she showed where she gave the loggers the right of way. She stated that any future logging could be made from another access point.

Ms. Laberge asked if the applicant had ever been contacted by anyone from the State about problems with water after the logging. Ms. Anderson stated that she has never heard about this problem before.

Chairwoman Connor closed the public hearing and called for Board deliberations. Bob Stamps clarified that the reason for asking for the variance is because Lots 3 & 4 are in Henniker but do not meet the 10-acre minimum requirement. Mr. Fougere stated that only Lot 3 is below the minimum standard. He stated that Lot 3 meets the frontage requirement, and since it is in this community, it technically should have 10 acres.

Ms. Connor asked why she created this proposal instead of combining Lots 3 & 4 which would meet the requirements. Ms. Anderson stated that this proposal provides for two more reasonably-sized lots. She stated that people own large pieces of land which she hopes will be divided up over time. She stated that Bear Hill is a through road between Hillsborough and Henniker and people often do not drive safely through the area. She stated that this would be helpful to have more people travelling on that road and would help the area not to be so remote.

Roni Hardy stated that the only reason that the case needed to come before the ZBA is because the proposed lots will be 5+/- acres. She stated that the purpose of this zoning requirement was to keep 10-acre minimum lot sizes in designated rural areas.

Mr. Stamps stated that the 10-acre minimum requirement was put in place to decrease traffic along certain roads.

Ms. Anderson stated that she would like to see the area more built up into a nice neighborhood area. Mr. Stamps stated that could be accomplished with three lots as opposed to four. He stated that changing the plans to a three-lot subdivision also avoids the long, bowling alley-shaped lot configuration.

Mr. Gould asked if there is a way to test the water if this gets approved. Chairwoman Connor stated that the public session is closed, and the Board is deliberating the application at this time.

Jeff Connor stated that because the frontage of Lot 3 is in Henniker, it is considered a Henniker lot and must meet this Town's requirements.

Chairwoman Connor reiterated that the ZBA's purpose is to determine if there is anything about this lot that makes the application of the 10-acre minimum lot size requirement unreasonable.

Ms. Laberge stated that the applicant could create frontage and a driveway access on the Hillsborough side of the lot, thereby making it a Hillsborough lot instead of a Henniker lot. Mr. Fougere said that there is the possibility of creating frontage access from the Hillsborough side on Lot 4, but that would be up to the other town. He stated that frontage that lies entirely in Hillsborough would be able to access both of the lots.

Ms. Anderson stated that changing the plans would create an awkward, triangular boundary line which would be considered a hardship. She stated that the deed or covenants could be written in such a way that the driveway can come in but the house would be built in Hillsborough.

Chairwoman Connor stated that does not really affect Henniker, since this ordinance calls for 10-acre lots in the Rural Residential area.

There was some discussion about steep slopes on Lots 3 & 4. Ms. Anderson described the basic topography of the property. She stated that Peter Mellen knows the property and has assured her that there is enough buildable area on the lots.

Mr. Gould again stated that he is very concerned about water runoff onto his property. He asked who would be liable for problems with his well and septic systems. Jeff Connor explained that there is a difference between logging and construction projects; such as specific barrier requirements that must be put in place during construction to protect the land. He stated that he understands Mr. Gould's concerns, but he cannot assume that there would be direct disruption because of this.

Ms. Anderson stated that she knows that the area at the bottom end of the property is sand.

Chairwoman Connor asked for the Board to vote on the five criteria used in determining the area variance.

1) The variance would not be contrary to the public interest.
Ms. Laberge – Yes (It will not be contrary to public interest.)

Mr. Connor - Yes

Ms. Connor – Yes

Mr. Stamps – Yes

Ms. Hardy – Yes

Vote: 5 Yes – 0 No

2A) The area variance is needed to enable the proposed use of the property given the special conditions of the property.

Ms. Laberge – Yes; She stated that this is needed because of the location of the Town boundary lines.

Mr. Connor – Yes. He agreed with the issue caused by the Town boundary lines.

Ms. Connor – No. She stated that there is nothing about the condition of the property that makes the 10-acre zoning unreasonable since frontage is in Henniker. She stated that not upholding the requirement could lead to trouble enforcing minimum acre limits in other cases.

Mr. Stamps – No. He stated that there are no special conditions about this property.

Ms. Hardy – No. She stated that the proposed use could be accomplished by other means.

Vote: 2 Yes – 3 No

2B) The proposed use cannot be achieved through some other reasonable method other than an area variance.

Ms. Laberge – Yes. She stated that there are always other options, but this is the most reasonable method. She thinks the landowner has tried to create the total area for each lot in the town where it is located.

Mr. Connor – No.

Ms. Connor – No.

Mr. Stamps – No.

Ms. Hardy – No. She stated that the proposed use could be accomplished by other means.

Vote: 1 Yes – 4 No

3) Granting the variance would be consistent with the Spirit of the Ordinance.

Ms. Laberge – Yes. She stated that she thinks the landowner is working with the Spirit of the Ordinance.

Mr. Connor – No.

Ms. Connor – No.

Mr. Stamps – No.

Ms. Hardy – No.

Vote: 1 Yes – 4 No

4) Granting the variance will ensure that substantial justice is done.

Ms. Laberge – Yes. She stated that she thinks the landowner has tried to create the total area for each lot in the town where it is located.

Mr. Connor – No. He stated that the applicant's argument is based on frontage not where the majority of the land is located.

Ms. Connor – No.

Mr. Stamps – No.

Ms. Hardy – No.

Vote: 1 Yes – 4 No

5) Granting the variance will not diminish surrounding property values.

Ms. Laberge – Yes

Mr. Connor – Yes

Ms. Connor – Yes

Mr. Stamps – Yes

Ms. Hardy – Yes

Vote: 5 Yes – 0 No

Bob Stamps **MOVED TO DENY** the request for area variance in Case 2009-101 for the following reasons: 1) subdivision of the property could be achieved by having three, 11-acre lots; 2) the reason for the ordinance is to decrease traffic on roads not designed for it; 3) this proposal results in smaller, bowling alley-shaped lots; 4) the spirit of the ordinance is to maintain 10-acre minimum lot sizes on roads of this nature; 5) the applicant did not present any special conditions to the real estate that makes the ordinance, as applied to this application, unreasonable. Roni Hardy **SECONDED** the motion.

Motion **PASSED, 4** (Ms. Connor, Mr. Connor, Mr. Stamps, Ms. Hardy) – **1** (Ms. Laberge).

The applicant asked for further guidance. Mr. Fougere stated that if Lots 3 & 4 were combined, she would not need an area variance to subdivide the property. Ms. Laberge stated that she could pursue getting a variance from Hillsborough by creating frontage and a shared driveway access on the Hillsborough side of the lots.

Review and Approve May 20, 2009 Meeting Minutes

As the minutes were not included in the Board's packet, this item will be continued to the next meeting.

New Business

The next meeting is scheduled for July 15, 2009. If nothing is put on the agenda by the deadline, that meeting will be cancelled.

Bob Stamps **MOVED** to adjourn at 7:50 pm; Ms. Hardy **SECONDED** the motion.
Motion **PASSED UNANIMOUSLY**.

Respectfully submitted,

Jennifer Astholz
Recording Secretary