

SUP10-2, Mr. Leroy Miller Special Use Permit Application for a Single-family Dwelling in a B1 Zoning District

Location and Proposed Use

The applicant, Mr. Leroy Miller, has applied for a special use permit to construct a single-family dwelling on a B1 (general business) zoned parcel. In the B1 zoning district, a single-family dwelling is a use allowable by special permit.

The subject lot is located on the unimproved “Nunn Lane” (see attached map). Tax and digital maps indicated that the unimproved Nunn Lane is parallel, and lies approximately 100 yards south, to East Main Street; Nunn Lane extends for approximately 750 yards (.42 miles), beginning at Canaan Street, intersecting Hilldale Drive, and terminates at an unnamed right-way-way slightly to the west of Dry Run Road. Only a small portion of Nunn Lane has been graded and graveled so to allow for vehicle access.

Mr. Miller’s lot is located ~ 185 yards (550 feet) east of Nunn Lane’s intersection with Canaan Street. The tax records indicate that the subject lot is just under 10,000 square feet in size.

Background

Mr. Miller’s lot – and other adjacent lots/tracts - were originally platted in the early 1920s. An attached plat details the original development of these lots.

In 1971, land records indicate that the applicant purchased four (4) platted lots in the “V.L. Nunn subdivision”. These lots were numbered 11, 12, 77 and 78. In 1995, land records indicate that Mr. Miller sold “lots 11 and 12 and the northern fifty (50) feet of lots 77 and 78”. Presently, Mr. Miller retains ownership of lot 77 – the subject of this request.

Public Streets/Town Code Requirements

As noted above, Mr. Miller originally purchased four (4) lots in 1971, with two (2) lots having road/street frontage. In regard to public streets/street frontage, the Town Code states the following:

Appendix B (Subdivisions) Section 404 (Lots): (a) Each lot shall abut on a street dedicated by the subdivision plat, or on an existing public street which has been accepted by the governing body. If the existing streets are not constructed in accordance with the state department of transportation standards, the subdivider shall make provisions in the deeds to the lots for all buildings to be so constructed as to permit the widening by dedication of such roads or streets to such a required width.

Further, the definitions of the term “lot” states the following:

Lot: A parcel of land adjacent to a public street, either occupied or to be occupied by a main building and its accessory buildings or by a use and its accessory uses together with such open spaces as are required under the provisions of this ordinance having at least the minimum area required by this ordinance for a parcel of land in the zone in which such parcel of land is situated, and having its principal frontage on an officially approved

means of ingress and egress. Each lot shall either be shown on a plat of record or considered as a unit of property and described by metes and bounds.

These two portions of the Town Code appear to contain a subtle amount of contradictory language. For instance, the subdivision ordinance states “*each lot shall **abut** on a street dedicated by a subdivisions plat, or an existing public street which has been accepted by the governing body*”, and the definition of the term lot describes a lot as “*a parcel of land **adjacent** to a public street*”.

Though it appears the standard definition for “adjacent” generally means “touching or abutting” – a somewhat liberal interpretation could be “lying close or next to”. Regardless, given that Mr. Miller’s lot is approximately 185 yards from an improved existing public street, nuanced interpretations of these terms (as related to this request) appears to be moot.

Though Mr. Miller’s lot does front a publically dedicated right-of-way, it has not been improved to Town standards; and therefore not accepted into the Town’s public street/road network. As a matter of policy, the Town requires the dedication and construction of streets prior to the commencement of development. Although there are examples of dwellings/development located on unimproved streets/roads within the Town, their numbers are few, and their development generally the result of an anomaly.

Summary

Mr. Miller originally purchased four (4) lots totally approximately 21,000 square feet, and subsequently sold three (3) of the lots. Today, Mr. Miller retains ownership of one (1) lot totaling just less than 10,000 square feet in area.

Because the subject lot does not abut a publically improve street, it does not appear to meet Town Code requirements deemed necessary to be considered a “buildable” lot. Although the subject lot does abut a publically dedicated right-of-way – which was platted in the early 1920 - it was never improved.

Because the lot is zoned B1 (generally business), a special use permit is required. Independent of the lack of an improved public street, locating a single-family dwelling on the subject lot appears to be a compatible and an appropriate use of the land.

Town policy has consistently dictated that the developer/subdivider improved and dedicate public streets to the Town prior to the commencement of development. This applicant, or any individual for that matter, is well within their rights to request a variance from this policy. Nevertheless, it is believed that development should be done so according to Town Code requirements in order to maintain the safe, convenient, and consistent development pattern within Town limits.