



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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## **MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES WEDNESDAY, DECEMBER 27, 2023**

### **Members Present:**

- Ben Niles (Vice Chair)
- Patrick Dwyer
- Brian Dano
- Charles Mower (Alternate)

### **Members Absent:**

- Richard Conescu (Chair)
- Lynn Christensen
- Wolfram von Schoen (Alternate)

### **Staff Present**

- Colleen Olsen, Assistant Planner

### **1. Call to Order & Roll Call**

Vice Chair Niles called the meeting to order at 6:30 p.m. Brian Dano read the preamble.

Vice Chair Niles led the Pledge of Allegiance and swore in members of the public who would be testifying. Vice Chair Niles seated Charles Mower for Lynn Christensen.

- 2. PMG Northeast, LLC (petitioner) and Blue Hill Fuels LLC (owner)** – Variance under Section 17.10.3 (b) of the Zoning Ordinance to permit a ground sign within two feet of the edge of the public right-of-way whereas 20 feet is required. The parcel is located at 1 Continental Blvd in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 4D, Lot 54-1. Case # ZBA 2023-37.

Attorney Megan Carrier of Sheehan Phinney presented the petition. Ms. Carrier explained that they are seeking a variance to allow a ground sign to be placed within two feet of the public right-of-way. The project involves replacing an existing gas station and convenience store with an updated gas station and convenience store. The petitioner is proposing to locate the new sign close to the location of the previous sign which was removed from the property during construction. She noted that the Zoning Board previously granted this same variance in 2020, however, the approval lapsed which has led the petitioner to seek the same variance again. Ms. Carrier then read through the variance criteria.

Mr. Dwyer expressed concern about the location of the proposed sign. He said it may have a thicker post and was concerned it could be visual hindrance for drivers. After a brief explanation from Michael Montgomery, general contractor of the project, he felt his concerns were adequately addressed.

No public comment was received.

**The Board voted 4-0-0 to find that the petitioner's responses to the statutory criteria are sufficient, proved each criterion is met, and the Board adopts the petitioner's responses as the Board's findings of fact, and further, to grant the variance under Section 17.10.3 (b) of the Zoning Ordinance to permit a ground sign within two feet of the edge of the public right-of-way whereas 20 feet is required, on a motion made by Patrick Dwyer and seconded by Brian Dano.**

*Findings of Fact:*

**1. Granting the variance would not be contrary to the public interest because:**

*The New Hampshire Supreme Court, in Chester Rod & Gun Club V. Town of Chester, 152 N.H. 577 (2005), has held that, "to be contrary to the public interest or injurious to the public rights of others, the variance must unduly, and in a marked degree conflict with the ordinance such that it violated the ordinance's basin zoning objectives." In Harborside associates v. Parade Residence Hotel, 162 N.H. 508, 514 (2011), the Court also noted that "[m]ere conflict with the terms of the ordinance is insufficient. The New Hampshire Supreme Court has determined that a variance violated an ordinance's basic zoning objectives under two circumstances: (1) where granting the variance would "alter the essential character of the neighborhood"; or (2) where granting the variance would "threaten the public health, safety, or welfare." Harborside, 162 N.H. at 514.*

*Here, a decision to grant the Applicant's requested variance would not alter the essential character of the neighborhood. In fact, the approved site plan is to construct an improved gasoline station and convenience store on the site to replace an existing gasoline station and convenience store. The neighborhood is solidly commercial, with fast food and pizza restaurants abutting the site. Moreover, a decision to grant the variance would not threaten the public health, safety, or welfare. The proposed sign is located in almost the same location as the existing sign at the site, which has proven to not raise a threat to the public in any way.*

**2. The spirit of the ordinance is observed because:**

*"The requirement that the variance not be contrary to the public interest is related to the requirement that [it] be consistent with the spirit of the ordinance." Harborside, 162 N.H. at 514 (citations omitted; brackets in original). As noted above, granting the variance would be consistent with the spirit of the ordinance because it would not alter the essential character of the neighborhood and would benefit the public health, safety, and welfare.*

*Section 17.01 of the Ordinance provides that "[t]he purpose of this article is to encourage the effective use of signage to direct movement, advertise, and inform the public while protecting public safety, preserving neighborhood character and minimizing visual clutter." The proposed location of the ground sign, at the corner of the intersection of Continental Boulevard and Camp Sargent Road will do just that – ensuring that drivers on both sides of the roads are informed about the location of the gasoline station and convenience store.*

**3. Granting the variance would do substantial justice because:**

*The “substantial justice” prong of the variance analysis is met when, without the variance, the applicant would suffer a loss that is not outweighed by a gain to the general public. Harborside, 162 N.H. at 515. It is also appropriate to consider, when analyzing this factor, whether the proposed use is consistent with the present use. Id.*

*Here, the public would not enjoy any significant gain as a result of a denial of the requested variance. In fact, the signage set back further from the Continental Boulevard and Camp Sargent Road intersection would result in a less clearly marked gasoline station and convenience store, running counter to the purpose of the Ordinance. A decision to grant the variance would not have any significant impact on any other property, in that it represents essentially no change from existing conditions.*

**4. Granting the variance would not diminish the values of surrounding properties because:**

*The site already houses a gasoline station and convenience store, with a ground sign in essentially the same location as is proposed by this variance application. Granting the requested variance will not have any impact on the values of the surrounding lots.*

**5. Unnecessary hardship:**

**a. Owing to special conditions of the property that distinguish it from other properties in the area, explain how no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property:**

*Due to the location of the property at the corner of Continental Boulevard and Camp Sargent Road, specific application of the Ordinance provision would not promote the public purpose of the Ordinance. As detailed above, the purpose of the provision is “to direct movement, advertise, and inform the public while protecting public safety, preserving neighborhood character and minimizing visual clutter.” 17.01. The proposed sign location – near the corner of the two abutting roads – actually better serves the purpose of the Ordinance than would a sign set back twenty feet from the roads. A sign that was constructed in accordance with the Ordinance would actually leave the public less informed about the location of the gasoline station and convenience store as it would be more difficult to see.*

**b. The proposed use is a reasonable one because:**

*The proposed sign location is reasonable because it makes the most effective use of the site’s location at the busy corner of Continental Boulevard and Camp Sargent Road. As the sign currently at the property is located in roughly the same location as the proposed sign, and has demonstrated that the location makes the best use of the space at the property, while informing the public as to the location of the gasoline station and convenience store, it is evident that the proposed location is reasonable.*

*-OR-*

**a. Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how the property cannot be reasonably used**

***in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of the property:***

*Due to the size and location of the property, compliance with the Ordinance provision would require the ground sign to be set so far back from the roads that the utility of the site would be greatly diminished. As such, it would be unreasonable for the Applicant to utilize the property in strict conformance with the Ordinance under these circumstances, and a variance is therefore necessary to enable reasonable use of it.*

**3. Discussion/possible action regarding other items of concern**

*None*

**4. Approval of Minutes – November 29, 2023**

**The Board voted 3-0-1 to approve the minutes of November 29, 2023 as drafted, on a motion made by Brian Dano and seconded by Ben Niles. Patrick Dwyer abstained.**

**5. Adjourn**

**The Board voted 4-0-0 to adjourn at 6:45 p.m., on a motion made by Brian Dano and seconded by Patrick Dwyer.**