



Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

Fax 603 424-1408

Town Hall - Lower level - East Wing

www.merrimacknh.gov

Planning - Zoning - Economic Development - Conservation

Memorandum

Date: July 20, 2016
To: Fran L'Heureux, Chair, & Members, Zoning Board of Adjustment
From: Robert Price, Assistant Planner
Subject: **Gregory Michael, Esquire of Bernstein Shur, Sawyer & Nelson, P.A. (petitioner) and Cathy L. Worthen & Steven B. Worthen (owners)** – Variance under Section 3.05 of the Zoning Ordinance to permit a garage 34 feet from the rear property line whereas 40 feet is required. The parcel is located at 5 Sheridan Way in the R (Residential) District. Tax Map 6A-1, Lot 066. Case # 2016-28.

The following information is provided to aid in your consideration of the above referenced cases. Additional background and application materials are included in your packet.

Background:

Map 6A-1, Lot 066 is located at 5 Sheridan Way. The parcel is located in the R (Residential) District (R-2 by soils) and is 0.98 acres in size. It is serviced by a private well and septic system. The lot qualifies as legal non-conforming, meaning the setback requirements are reduced per Section 3.05 to 30 feet front, 15 feet sides and 40 feet rear. The lot is abutted by association land to the west and south and residences to the north and east. It is also bisected by Sheridan Way, which is a private drive serving four single-family homes.

The applicant is proposing to raze the existing single-family dwelling and construct a new home with an attached garage to the rear that will sit 34 feet from the rear property line whereas 40 feet is required.

Staff notes that the provided plan contains a number of typographical errors and confusing or conflicting information. However, these issues will not impede the ZBA from being able to perform its job in reviewing and acting on the application.

Staff also notes that an existing shed on the property is located entirely within the rear setback, which appears to remain following construction of the new home. The Town of Merrimack does not require building permits for sheds less than 160 square feet. The Town's Assessing database indicates that the shed is 192 square feet (and the shed, as depicted on the plan also calculated to 192 square feet, 12' x 16'). The Building Department has indicated that no permit was ever issued for this shed. Staff was not provided any information pertaining to the actual size of the shed and can only rely on what exists in the assessing database and on the presented plan.

Standard of Review:

It is the burden of the petitioner to demonstrate that the five criteria for the granting of the variance under Section 2.02.4(B) of the Zoning Ordinance have been met to permit a garage 34 feet from the rear property line whereas 40 feet is required.

Should the Board vote to grant the Variance, Staff recommends that it be granted with the following conditions attached:

1. Petitioner to verify with the Building Department if a building permit should have been issued for the existing shed. If so, then within 90 days the petitioner is to either:
 - a. Relocate the shed entirely out of the setback and provide confirmation to the Community Development Department that this was completed; or
 - b. Seek the necessary relief for its present location.
2. NHDES Shoreland Permit (if necessary) shall be obtained prior to the issuance of a building permit or construction of any proposed improvements within the 250 foot Shoreland Protection Area.

Should the Board vote to deny the variance, then the location of the shed will be dealt with as an enforcement issue and the ZBA need not attach the above recommended conditions to such action.

Cc: Zoning Board File
Correspondence

Ec: Gregory Michael, Bernstein, Shur, Sawyer & Nelson, P.A.
Michael Klass, Bernstein, Shur, Sawyer & Nelson, P.A.
Building Department Staff
Captain John Manuele, Merrimack Fire Department