



# Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

## **MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES WEDNESDAY, DECEMBER 29, 2021**

**Board members present:** Patrick Dwyer (Vice Chair), Ben Niles, Rod Buckley and Chuck Mower (alternate).

**Board members absent:** Richard Conescu (Chairman), and Lynn Christensen

**Staff present:** Robert Price, Planning & Zoning Administrator

### **1. Call to Order**

Patrick Dwyer called the meeting to order at 7:00 p.m.

### **2. Roll Call**

Patrick Dwyer announced that there are only 4 members of the Board present this evening and made note that a minimum of three affirmative votes is required for a motion to pass. He noted that all petitioners have the option to request continuance to the next meeting to allow for a full Board to be present before their petition is heard.

Patrick Dwyer swore in those that intended to testify. Rod Buckley read the preamble. Patrick Dwyer appointed Charles Mower to sit for Lynn Christensen.

- 3. Robert A. Curry & Karen J. Curry (petitioners/owners)** – Variances under Section 3.02 of the Zoning Ordinance to permit the conversion of an existing single-family dwelling to a two-family dwelling in the R-1 (Residential) District whereas two-family dwellings are not permitted, and to permit a two-family dwelling, post conversion, to remain approximately 30 feet from the front property line whereas 50 feet is required (this setback variance is only necessary if the variance to permit the 2-family dwelling is granted). The parcel is located at 4 County Road (formerly 2 County Road) in the R-1 (Residential, by map) & Aquifer Conservation Districts. Tax Map 3A, Lot 65. Case # ZBA 2021-39. **This item is continued from the November 17, 2021 ZBA meeting.**

**At the petitioner's request, the Board voted 4-0-0 to continue this item to the January 26, 2022 meeting, on a motion made by Rod Buckley and seconded by Ben Niles.**

- 4. Don Mendell (petitioner/owner)** – Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a shed 17 ½ feet from the rear property line whereas 40 feet is required. The parcel is located at 4 Tanglewood Way in the R-4 (Residential) District. Tax Map 5C, Lot 211. Case # ZBA 2021-40.

Don Mendell, (petitioner/ owner) was present to discuss the request with the Board. Mr. Mendell explained that he is seeking approval to reconstruct a pool shed on his property that, when completed, will encroach into the rear setback. He advised the Board that due to the location of the existing pool, anything that is constructed near it will encroach because the pool is only 38 feet

from the rear property line. Mr. Mendell then read through his responses to the statutory criteria (outlined below) and answered a question from the Board regarding the size of the new shed, which he stated is going to be 16'x20'.

#### Public Comment

Joseph Strigle (109 Baboosic Lake Road) asked how the shed will impact his property and Chairman Dwyer advised him that it won't impact his property at all, Mr. Mendell is just asking for a variance to construct the shed closer to his rear property line than what is allowed.

**The Board voted 4-0-0 to grant the variance on a motion made by Rod Buckley and seconded by Charles Mower.**

#### ***Case #2021-40 - Findings of Fact***

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

It does not alter the character of the neighborhood, change the natural environment or impact wetlands.

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

It does not impact private rights of others, or crowding of land.

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

It is consistent with the surrounding area and does not harm the general public, or any individual neighbor. The proposed use is reasonable.

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

The proposal is to rebuild an existing structure.

***5. Unnecessary Hardship***

***a. Owing to the following 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:***

The property as it sits with the existing pool, does not allow room to replace the existing structure of adequate size no matter the placement. The new structure would offer adequate room for storage and protection of personal belongings and the best use of the property.

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

It is replacing an existing structure that is falling apart and unsafe. The new structure would offer enough room to store belongings and protect from the elements and would also allow for better use of the existing pool area.

**6. Aaron & Angela Lavespere (petitioners/owners) – Variance under Section 3.02 of the Zoning Ordinance to permit an existing porch to remain in place with a side setback of 19 feet whereas**

20 feet is required. The parcel is located at 39 Ingham Road in the R-4 (Residential) & Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 3C, Lot 25-1-1. Case # ZBA 2021-41.

Aaron Lavespere, (petitioner/ owner) spoke on behalf of this request. He advised the Board that the house is newly constructed and that the stairs off of the deck were added after the building permits were issued, and once they were in place it was discovered that one of the steps encroaches into the side setback. Mr. Lavespere read through his responses to the statutory criteria (outlined below) and paused to answer questions from the Board.

Public Comment was received via letters from: Carolyn Frederick (38 Ingham Road) and Keith & Lisa Walli (1 Aldrich Circle). Both letters were in favor of granting the variance and copies of these letters can be found in the project file in the Community Development Department at the Merrimack Town Hall.

**The Board voted 4-0-0 to grant the variance on a motion made by Rod Buckley and seconded by Ben Niles.**

***Case #2021-41 - Findings of Fact***

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

The main house and deck are within setback limits; only the lower stair extends past it.

This stair does not cause the home to appear closer to the neighboring property.

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

The main structure of the home and deck are within setback limits.

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

Removing the stair would require additional construction and would require a railing to be placed around the deck which would alter the appearance of the home.

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

The lower step which wraps around the deck is only 7 inches high and has little to no visual impact from the street or neighboring properties. Open space between our home and the neighboring property is minimally affected. The location of this stair has no adverse effect on surrounding properties.

***5. Unnecessary Hardship***

***a. Owing to the following 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:***

Because of the narrowness of our lot in the front, we positioned our home further back to allow more buildable space. Unfortunately, due to a miscalculation during construction, the wraparound stair to the deck fell outside of the setback limit. Removing that stair and

modifying the deck at this point in construction would require additional labor and time, and would result in no benefit to the neighborhood.

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

There is no negative impact from this small encroachment.

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

**8. Approval of Minutes – November 17, 2021**

**The Board voted 2-0-2 to approve the minutes of November 17, 2021 as submitted, on a motion made by Bed Niles and seconded by Charles Mower. Patrick Dwyer & Rod Buckley abstained.**

**9. Adjourn**

**The Board voted 4-0-0 to adjourn at 7:25 p.m. on a motion made by Rod Buckley and seconded by Charles Mower.**