



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

MERRIMACK ZONING BOARD OF ADJUSTMENT

APPROVED MINUTES

WEDNESDAY, FEBRUARY 22, 2017

Members present: Patrick Dwyer, Fran L'Heureux, Tony Pellegrino, Richard Conescu, Lynn Christensen, and Alternate Leonard Worster.

Staff present: Assistant Planner Robert Price and Recording Secretary Zina Jordan.

1. Call to Order

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

2. Roll Call

Patrick Dwyer led the pledge of allegiance and swore in members of the public who would be testifying. Richard Conescu read the preamble.

3. Barlo Signs for St. Joseph's Hospital (petitioner) and KJB Ventures, LLC. (owner) - Variance under Section 17.10.4 of the Zoning Ordinance to permit the addition of 17.53 s.f. to an existing wall sign whereas 126.25 s.f. is allowed per previous variance. The parcel is located at 4 Dobson Way in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 3D, Lot 003-003-02. Case # 2017-04.

The applicant proposes to revamp the existing wall sign to add an additional 17.53 square feet of new signage in order to accommodate a name change to the facility from "St. Joseph Hospital Family Medicine" to "St. Joseph Hospital Family Medicine & Specialty Services".

Paul Martin, Barlo Signs, said the new sign area would be closer to 13 square feet, but due to the shape, it becomes 17.53 square feet. He read the statutory criteria into the record.

There was no public comment.

The Board voted 5-0-0 to grant the Variance, on a motion made by Richard Conescu and seconded by Fran L'Heureux.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the proposed addition to the fascia sign is minimal and within the scale of the existing storefront. This addition would not significantly alter the viewership of this site to the public. The public appreciates signage that is in harmony with its surroundings and that assists them in identifying St. Joseph Hospital's services in a clean, clear way;

2. The spirit of the Ordinance is observed because the proposal would not adversely affect the surrounding properties of St. Joseph's nor would it threaten public safety or welfare. The sign would be updated to let the public know the property now has specialty services and would clarify what they are.
 3. Granting this variance would do substantial justice because the public needs the viewing time this sign would allow motorists traveling the very busy and fast moving thoroughfare adjacent to St. Joseph's storefront and would clear up what it offered on site in the same viewing plane.
 4. The values of the surrounding properties would not be diminished because St. Joseph Hospital Family Medicine is located on a highly traveled thoroughfare and is surrounded by businesses. The neighbor directly to the left enjoys a sign larger than permitted by Zoning Ordinance and larger than the proposed sign. The proposal would add minimal signage that helps motorists to identify the services of this location quickly and to enter the property safely.
 5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
 - 1) 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 the setback of St. Joseph Family Medicine & Specialty Services from Dobson Way and beyond makes it difficult for motorists to locate this property easily. The Merrimack Sign Ordinance does not speak to building fascias that are unique due to setback or orientation to main thoroughfares. Not all motorists visiting this site will know the area or be from Merrimack.
 - 2) The proposed use is a reasonable one because St. Joseph's Family Medicine & Specialty Services shares its parcel with an additional medical service. It is imperative that the public can easily locate their destination as they navigate Camp Sargent Road and Dobson Way. The added setback of the business storefront coupled with the parcel's lack of freestanding identification (monument or ground sign) will create a visual hardship for the business.
- 4. Rochette's Oil Service, Inc. (petitioner) and Willey Real Estate, LLC. (owner) -** Variance under Section 2.02.3(B) of the Zoning Ordinance to permit the expansion of an existing non-conforming fuel storage and distribution business. The parcel is located at 658 Daniel Webster Highway in the C-2 (General Commercial) and Aquifer Conservation Districts and Wellhead Protection area. Tax Map 6E-2, Lot 013. Case # 2017-05.

The petitioner seeks a variance to permit the expansion of an existing non-conforming fuel storage and distribution business, to replace an existing 500 gallon propane tank with a 1,000 gallon tank and utilize the new tank for retail propane sales.

Matthew Buckley, Rochette's Oil Service, Inc., said the 500 gallon tank noted on the application is actually only 250 gallons, and is in front. Along with the 1,000 gallon tank, there would be a dispensing/pumping station to fill portable propane tanks for retail customers. He read the statutory criteria into the record.

As to #2, spirit of the Ordinance, Richard Conescu asked how the applicant could prevent a motorist from driving into the station and causing an explosion. Matt Buckley said there would be additional crash protection and a locked chain link fence. The tank is made of ½" thick steel and has a shut-off device. Richard Conescu's concern is that the larger tank would add a security risk and/or health hazard to someone pumping the tank. Matt Buckley replied that each employee must be trained and certified as a propane technician. Richard Conescu's concern is that a vehicle could hit the tank while an employee is pumping it or that it might cause an explosion because the dispenser is close to the road. Matt Buckley explained that the pipe would be double the usual diameter and meets the NFPA explosion-proof code. He explained how the shut-off system would work.

Fran L'Heureux asked about Rye Energy's purchase of Rochette Oil. Ralph Freeman, Rochette's Oil Service, Inc., said the name would remain the same, noting that the transaction completed a few years ago.

Patrick Dwyer asked how many cars could be accommodated. Ralph Freeman said there would be 3-4 parking spaces in front of the building plus 3-6 on the side. Employees park in the rear. A certified technician would be on site all the time. No one else can dispense propane. Matt Buckley explained how the site would be set up and said that everything would be concealed.

Robert Price explained that the applicant must appear before the Planning Board because of the parking and traffic concern, and because the pre-existing non-conforming use is being changed.

Matt Buckley said the old tank would be removed. Ralph Freeman said that Rochette Oil customers have requested this type of service (tank refilling).

Tony Pellegrino asked if there would be a cage for tanks left by customers who could not pick them up before closing. Matt Buckley said rather than a cage, the tank would be locked in back and returned to the customer the next business day. This and one truck would be the only source of propane on the property. The site does not have a tank large enough to fill a home tank. The largest portable tank on the property would be 100 gallons. Tanks would be filled and not exchanged.

There was no public comment.

Richard Conescu opined that it is hard to assess the security of the pump facing the parking lot from the documentation. What if a vehicle crashed into the lot or landed there from an accident on the street? Matt Buckley repeated that there would be crash protection on every tank and where vehicles would go. The code would be observed.

The Board voted 4-1-0 to grant the Variance, with the condition that the petitioner shall obtain Planning Board approval for the proposed expansion of the existing legal non-conforming use, on a motion made by Tony Pellegrino and seconded by Lynn Christensen. Richard Conescu voted in the negative.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because Rochette Energy is looking to upgrade its existing 500 gallon propane tank that supplies fuel to the office building to a 1,000 gallon tank and to add a pumping station to the system. It would allow retail propane sales from the office building to Rochette customers in the community.
2. The spirit of the Ordinance is observed because all local mechanical codes and setbacks are currently met and would not change when upgrading the tank and adding a fuel dispenser.
3. Granting this variance would do substantial justice because it would allow Rochette Energy to continue to service its customers and to dispense propane gas safely in the community. It would also give Merrimack residents another retail option to fill portable propane tanks.
4. The values of the surrounding properties would not be diminished because the proposal would only add value and exposure to the surrounding buildings and businesses by increasing awareness of adding additional foot traffic.
5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
 - 1) 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 Rochette Energy Company is an existing full service oil and propane company that currently has retail petroleum storage on site. Upgrading the existing tank size and adding a dispensing pump would continue to build on Rochette's core business model.
 - 2) The proposed use is a reasonable one because Rochette Energy Company is simply looking to improve its facility and improve the service it provides to the community. It currently delivers propane gas to customers' homes, but it would also like to be able to dispense propane safely to retail customers at its facility.
6. **Gregory E. Michael, Bernstein, Shur, Sawyer & Nelson, P.A. and Student Transportation, Inc. (petitioners) and John T. Zyla (owner)** - Variance under Section 2.02.3 of the Zoning Ordinance to permit a school bus operation facility. The parcel is located at 534 Daniel Webster Highway and 6 William Street in the C-2 (General Commercial) and Aquifer Conservation districts and Wellhead Protection area. Tax Map 6D, Lots 001-01 & 001-02. Case # 2017-08.

This agenda item was discussed before agenda item #5.

Chairman Dwyer explained that, if this agenda item were approved, the administrative appeal of agenda item #5 would be moot.

The applicant is proposing to remove part of the existing structure and construct a two-bay maintenance addition for use as Student Transportation Inc.'s (STI) local office and to use the remainder of the site for their school bus parking and dispatch facility. The proposal includes space in the existing structure for other additional commercial uses as well.

Attorney Michael Klass, Bernstein Shur, said the applicant wants to use the premises as a full dispatch facility. Gregg Stinson, Student Transportation, Inc., said the company has a contract with the Merrimack School District until 2021. Attorney Klass said there is an existing building on Lot 6D/1-1. As part of the proposed development, a portion of that structure would be removed and a two-bay maintenance addition would be constructed to exist alongside a portion of the existing building, which would remain in place. The remaining structure would be used for STI's local office and is expected to have additional space and available parking for additional commercial use as appropriate. A state-of-the-art above-ground fueling station for the exclusive use of the bus fleet is also proposed. A parking area large enough to accommodate approximately 55 school buses is proposed for the back portion of Lot 6D/1-2 with additional parking located on the front of the property. The proposal would include ingress and egress on both Daniel Webster Highway and William Street. The proposal would decrease the fleet's mileage, fuel use and labor costs. The two parcels comprise 4.25 acres.

Attorney Klass read the statutory criteria into the record.

As to #1, public interest, Tony Pellegrino asked about the above-ground fuel tank. Attorney Klass explained that several State permits and Planning Board review would be needed. Since the facility would be in a Wellhead Protection Area and Aquifer Conservation District, an above-ground tank is safer than an underground tank.

Gregg Stinson said employee parking is included in the application. There would be 55 buses and four full-time employees. There are 40 drivers currently.

Patrick Dwyer noted the proposal would increase morning traffic in an area with heavy traffic, but also noted that it would be a central location for the facility.

Public comment

Carol Footer, 1 William Street, said three homes abut the site and William Street is the only entry. She suggested using an entrance on the other side. Carol Footer asked how so many buses would get in and out, noting morning traffic and customers for the shops in the existing building. The applicant will have to fill a wet area to create a parking lot. A pipe under the road drains onto her land and Zyla's land. Some of the wetland was filled many years ago, so when it rains, water comes onto hers and Zyla's land. She asked where water would go if the remaining wetlands were filled. Chairman Dwyer informed Carol Footer that these are Planning Board issues; the ZBA must decide whether this is an allowed and reasonable use for the parcel. Fran L'Heureux was of the opinion that there are more residential homes than those discussed or shown on the plan. Attorney Klass said this is a commercial district with pockets of residential use. The applicant will work with the neighbors to accommodate them. Even though STI is housed in the south of Merrimack, buses disperse from D.W. Highway now. Gregg Stinson explained that this site is more centrally located and there is not enough

capacity in the existing location. STI can grow on this location. It looked at other Merrimack locations, but wanted to be near D.W. Highway and a commercial zone. Richard Conescu noted that this is commercial land.

The Board voted 3-2-0 to grant the Variance, with the condition that the applicant shall obtain approval from the Planning Board for the proposed school bus operation facility, on a motion made by Richard Conescu and seconded by Lynn Christensen. Fran L'Heureux and Tony Pellegrino voted in the negative.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the proposed facility would serve a local service need by enabling school bus service for the Merrimack School District. The use is consistent with other allowed uses within this district, including parking lot areas for motor vehicles, which are allowed by right, and gas/automobile stations and public facilities, which are permitted with special exception. The use is reasonable and appropriately sited, given the property's central location within the Town and in light of the fact that it abuts the Everett Turnpike and enjoys multiple points of access from Daniel Webster Highway and William Street. The proposed use is consistent with the Ordinance's goal of promoting the Town's health, safety, convenience, and general welfare.
2. The spirit of the Ordinance is observed because the proposed development would provide a necessary service for the Town and one that is consistent with the character of the neighborhood and its zoning district. The use is consistent with similar uses that are permitted on the property.
3. Granting this variance would do substantial justice because denial would not result in an appreciable gain to the public, given that the proposed use would allow an upgraded and more efficient school bus service in Town. The development would be consistent with the character of the neighborhood and with other permitted uses. Denial would result in a substantial loss to the applicant by preventing the safe and reasonable redevelopment of an underutilized parcel and in a loss to the Town by preventing an upgrade in the local school bus facility.
4. The values of the surrounding properties would not be diminished because the character of the neighborhood includes various commercial uses along the central corridor of Town and in between two heavily traveled main roads (Everett Turnpike and D.W. Highway). The proposed development would be used in a manner consistent with the neighborhood.
5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
 - 1) 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 the property is special and unique in its size, central location

in town and in the C-2 Zoning District, along with its specific location abutting Everett Turnpike and enjoying access from both D.W. Highway and William Street. These specific attributes come together to create a parcel that is particularly well suited for the proposed school bus facility. The proposal seeks to redevelop an underutilized parcel of land in a manner that is consistent with the allowed uses and character of the neighborhood. It would enable a facility upgrade and a more efficient school bus facility, which will ultimately benefit the town;

- 2) The proposed use is a reasonable one because it seeks to redevelop an underutilized parcel of land in a manner that is consistent with the allowed uses and character of the neighborhood.

- 5. Gregory E. Michael, Bernstein, Shur, Sawyer & Nelson, P.A. and Student Transportation, Inc. (petitioners) and John T. Zyla (owner) - Appeal of Administrative Decision under Section 2.02.3 and RSA 674:54 of the Zoning Ordinance to justify the proposed use (school bus operations facility) falls within RSA 674:54's zoning exemption as a "governmental use". The parcel is located at 534 Daniel Webster Highway and 6 William Street in the C-2 (General Commercial) and Aquifer Conservation districts and Wellhead Protection area. Tax Map 6D, Lots 001-01 & 001-02. Case # 2017-07.**

This agenda item was discussed after agenda item #6.

The applicant withdrew the petition without prejudice.

7. Discussion/possible action regarding other items of concern

None.

8. Approval of Minutes – January 25, 2017

The minutes of December 28, 2016, were approved as submitted, by a vote of 3-0-2, on a motion made by Lynn Christensen and seconded by Fran L'Heureux. Tony Pellegrino and Richard Conescu abstained.

The minutes of January 25, 2017, were approved as submitted, by a vote of 4-0-1, on a motion made by Lynn Christensen and seconded by Tony Pellegrino. Fran L'Heureux abstained.

9. Adjourn

The meeting was adjourned at 8:10 p.m., by a vote of 5-0-0, on a motion made by Lynn Christensen and seconded by Fran L'Heureux.