



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT

APPROVED MINUTES

WEDNESDAY, FEBRUARY 25, 2015

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

Member absent: Tony Pellegrino.

Staff present: Planning and Zoning Administrator Jillian Harris and Recording Secretary Zina Jordan.

1. Call to Order

Fran L'Heureux called the meeting to order at 7:00 p.m. and designated Leonard Worster to sit for Tony Pellegrino.

2. Roll Call

Richard Conescu led the pledge of allegiance. Lynn Christensen read the preamble. Fran L'Heureux swore in members of the public who would be testifying.

3. Stephen and Eileen Prevost (petitioners) and Jonathan and Shayla Anderson (owners) – Special Exception under Section 2.02.1(B)(2) of the Zoning Ordinance to permit an Accessory Dwelling Unit (ADU) in the R (Residential) and Aquifer Conservation Districts located at 3 French Court. Tax Map 6B, Lot 087-070. Case # 2015-07.

Eileen Prevost, 3 French Court, read the statutory criteria into the record. She explained that the owners would share the use of the new garage, which would be under the ADU. The stairs of the second garage would go into the home. Entry into the ADU would be either through the dining room or the garage stairs.

There was no public comment.

The Board voted 5-0-0 to approve the Special Exception, with the following conditions, on a motion made by Patrick Dwyer and seconded by Richard Conescu.

1. Execution of Declaration of Covenants for the Accessory Dwelling Unit (form will be provided by Staff);

2. Payment of the Hillsborough County Registry of Deeds recording fee for recording of the Declaration of Covenants for the Accessory Dwelling Unit.

Findings of Fact

1. The site is an appropriate location for the proposed use in terms of overall community development because it is in a residential neighborhood and will add to the value of the property and of the neighborhood;
 2. The use as developed will not adversely affect the neighborhood and shall produce no diminution of real estate values in the neighborhood because the value of the property will be increased and the size of the home will be more in line with those currently in the area;
 3. There will be no nuisance or serious hazard to pedestrians because the ADU will not exceed appropriate lot boundaries, increase traffic, or present any hazards to pedestrians;
 4. Adequate parking will be provided for motor vehicles on the premises because there is adequate parking for the existing residents' vehicles and the ADU will include a two-car garage;
 5. The ADU is will be an addition to an existing single-family detached dwelling with direct access from the dining room of the existing single-family dwelling in to the ADU;
 6. The ADU contains one bedroom;
 7. The ADU does not exceed 1,000 square feet in area or fifty per cent (50%) of the area of heated living space within the principal dwelling unit in area, whichever is smaller. The proposed ADU will be 924 square feet or 44% of the 1,851 square-foot heated living space within the principal dwelling unit;
 8. The ADU is connected internally to the principal dwelling unit via glass doors in the dining room;
 9. The ADU occupancy will be restricted to family members only, with the term "family" as defined as individuals related by blood, marriage or adoption to the fee simple owner-occupant(s) of the principal dwelling unit. The residents will be the occupants' parents;
 10. The ADU is designed to remain functionally dependent on the principal unit and will not have provisions for separate utilities, garages, driveways, yards and other similar amenities.
- 4. Nelson R. Disco Family Trust (petitioner/owner) –** Variance under Section 3.02 of the Zoning Ordinance to permit the construction of a single family home on a lot with 84,927 s.f. whereas 100,000 s.f. is required and 100 ft. of frontage whereas 250 ft. is required. The parcel is located at 38 Wilson Hill Road in the R-1 (Residential) and Aquifer Conservation Districts. Tax Map 4B, Lot 095. Case # 2015-08.

Lynn Christensen recused herself from discussing and voting on this item.

Nelson Disco, 38 Wilson Hill Road, read the statutory criteria into the record. He explained that he would have had frontage on Horseshoe/Disco Lane had it been built.

He acquired the property before the R.O.W. was discontinued. The lot is the result of merging two one-acre lots from a previous subdivision that was approved before the Zoning Ordinance was changed in 1976 to require 100,000 square foot lots in this zone. The subdivision was never finished, but an existing right-of-way exists from the property to Wilson Hill Road, which precludes the need for any additional curb cuts for the proposed residential use.

Public comment

Robert McCabe, 30A Wilson Hill Road, was concerned about the possibility that Nelson Disco could sell the lot and the rest of his property to a developer who could use the driveway/curb cut and build a subdivision behind his house. Chair L'Heureux explained that the ZBA could not consider future possibilities. Patrick Dwyer said the Board could not deal in "hypotheticals". Someone could buy property anywhere in Merrimack and build a subdivision. That is a Planning Board issue. Robert McCabe said there is a lot of frontage on Wilson Hill Road. It would be a bad choice to build three houses and driveway access. He wanted assurance that there would be only one house on the lot, but Chair L'Heureux stated that neither he nor the ZBA could tell Nelson Disco what to do with his property. The Board can vote only on what he submitted. Patrick Dwyer opined that three houses could not fit into the lot. Robert McCabe said that his utilities are under the right-of-way. He has no problem with one driveway. Leonard Worster noted that, if Nelson Disco also applied for a variance or special exception for a driveway on Wilson Hill Road, there would be no question on line of sight. That is another option and it is Nelson Disco's decision. Nelson Disco said he applied only for a single-family lot; anything else is speculation.

The Board voted 4-0-0 to approve the Variance, on a motion made by Richard Conescu and seconded by Leonard Worster.

Findings of Fact

1. *The granting of the variance would not be contrary to the public interest because the lot is intended for residential use and is larger than many other lots in this residential neighborhood. It is not contrary to the public interest in this generally quiet rural residential neighborhood to allow another residence on a lot that is only slightly undersized with a shortage of road frontage;*
2. *The spirit of the Ordinance to promote the health, safety, convenience and general welfare is observed by using this lot as a building lot for a single-family home. Due to the shape of the lot, the home would be built at least 125' back from the road, in keeping with the rural atmosphere of the neighborhood;*
3. *Granting this variance would do substantial justice because the owner purchased this lot in an approved subdivision with the expectation that it would become a building lot when Horseshoe/Disco Lane was constructed. This expectation was extirpated when the road frontage was discontinued in 1998. As mitigation for this loss, the owner purchased an addition acre of land. The Town has assessed and taxed the property for many years as if it were a "buildable" residential lot. Justice would require that this lot's use as a residential building lot should not be denied;*

4. *The values of the surrounding properties would not be diminished because, due to the shape of the lot's, the proposed building will be set back at least 125' from Wilson Hill Road, whereas other nearby buildings are located much closer to the road;*
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.* This property with frontage on Wilson Hill Road is located on an outside curve on the road bending away from the pie-shaped lot, necessitating shorter frontage on the road in order to make full use of the land adjacent to the road;
 - 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 it is intended to use the land residentially as zoned. The lot size is commensurate with other lots in the neighborhood;*
 - 2) *The proposed use is a reasonable one because the Ordinance allows only residential use of this property. Obtaining the required frontage and area to conform to the letter of the Ordinance is not possible without harm to neighboring residential enterprises. Allowing use of this lot as a residential building lot will create no new curb cuts on Wilson Hill Road.*

Lynn Christensen returned to the Board.

5. Discussion/possible action regarding other items of concern

Richard Conescu questioned whether a person could sit on two Town boards simultaneously. Lynn Christensen, who is also a Planning Board member, responded that it is allowed by State law. She explained that only 1 person may do so under the law for land use boards.

6. Approval of Minutes – January 28, 2015

The minutes of January 28, 2015, were approved with one correction, by a vote of 4-0-1, on a motion made by Leonard Worster and seconded by Lynn Christensen. Richard Conescu abstained.

7. Adjourn

The meeting adjourned at 7:38 p.m., by a vote of 5-0-0, on a motion made by Patrick Dwyer and seconded by Lynn Christensen.