



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, JANUARY 28, 2015

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

Members absent: Tony Pellegrino and Richard Conescu.

Staff present: Assistant Planner Donna Pohli and Recording Secretary Zina Jordan.

1. Call to Order

Fran L'Heureux called the meeting to order at 7:00 p.m., designated Leonard Worster to sit for Tony Pellegrino, and introduced new full member Lynn Christensen.

2. Roll Call

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

3. NH1 Motorplex, LLC, (petitioner) and Apple Development Ltd. (owner) – Special Exception under Section 2.02.3(C)(1)(e) of the Zoning Ordinance to permit an indoor racetrack using electric racing carts with supporting administrative/function rooms as a commercial recreational use located at the former Shaw's Supermarket and CVS stores. The parcel is located at 360 D.W. Highway in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 4D-3, Lot 001. Case #2015-01.

Attorney Andrew Prolman, Prunier & Prolman, read the statutory criteria into the record.

The 40,000 square foot facility will be renovated. The only residential abutters, East Ridge condo residents immediately to the south of the plaza, have not expressed concerns. Electric car batteries will be kept in a fire-rated safety/mechanical area. Staff will review safety rules with customers before they go into the carts. They are electric cars, not gas cars, and do not race to a finish line. Hours of operation will most likely be 11:00 a.m.-10:00 p.m. Monday-Thursday, 11:00 a.m.-11:00 p.m. Friday-Saturday, and 11:00 a.m.-8:00 p.m. Sunday. A big use will be private parties and corporate events, who may bring in a caterer, subject to a strict no-alcohol policy. There will be vending machines for soft drinks and snacks. Deliveries will be typical of a small business, e.g., Staples and Fedex. The business will buy 32 cars to start and use a maximum of eight per race while the others are parked and charging. The hope is to open by summer or fall.

There was no public comment.

The Board voted 4-0-0 to grant the Special Exception, with the following condition, on a motion made by Patrick Dwyer and seconded by Leonard Worster:

That Administrative Approval for the change of use (retail to commercial recreation) shall be required from the Community Development Department prior to issuance of any building permits for the project.

FINDINGS OF FACT

1. The specific site is an appropriate location for the proposed use in terms of overall community development because it will bring back to life a long dormant site and improve overall community development with no adverse impact to neighbors;
 2. The proposed use, as developed, will not adversely affect the neighborhood because indoor electric cart racing will produce no noise, fumes, odors, or other negative neighborhood impacts. Residential neighbors have not expressed concern. The proposed use is surrounded by commercial uses;
 3. There will be no nuisance or serious hazard to vehicles or pedestrian because the applicant will not generate more traffic than the prior Shaws Supermarket and CVS store. The use is far under capacity for what was originally designed. Access to the site is controlled by an existing traffic light with proper turning lanes in both directions;
 4. Adequate and appropriate facilities will be provided for the proper operation of the proposed uses because the operation will be entirely indoors, with all building renovations complying with current building and life safety codes.
- 4. Eugene C. Ordway (petitioner/owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit three lots with less than the required minimum lot area. The parcels are located at 28, 28A and 28B Shore Drive in the R-2 (Residential) and Flood Hazard Conservation Districts. Tax Map 6A-2, Lots 014, 015 & 016. Case #2015-02.

Eugene Ordway, 28A Shore Drive, read the statutory criteria into the record.

He owns Lots 15 and 16 at 28 and 28A Shore Drive and has rental tenants in the latter. Melissa and Scott Ordway reside on Lot 14, which is 28B Shore Drive.

The following information was offered in answer to Board questions: Melissa and Scott Ordway would fix the stairs in order to refinance and to remain on the property. There are three sets of steps, one of which goes directly from Eugene Ordway's house to the lake. He wants to own the steps used by the Lot 15 tenants, who have no easement to use them. Eugene Ordway provided steps for his tenants, who do not have direct access to the lake and must go through his property. Those steps are also on Melissa and Scott Ordway's property. They would be moved to Eugene Ordway's property so the tenant will not have to use them on Melissa and Scott Ordway's property. The shed will remain on Lot 15. The lots use Town water. Melissa and Scott Ordway's proposed berm to deflect runoff from their home would not create runoff to other houses. There

has always been a dock at Lot 15. It was rebuilt 20 years ago and will not be moved. Tenants would use the dock on Melissa and Scott Ordway's property and the stairs on Eugene Ordway's property.

Lynn Christensen noted that the third set of stairs going to the dock would be removed. Because there is no easement, there is no unconstrained access at Lot 15. Access could stop were Eugene Ordway to change his mind or to sell. Access is at his convenience.

There was no public comment.

The Board voted 4-0-0 to grant the Variance, on a motion made by Patrick Dwyer and seconded by Leonard Worster.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because these are three lots out of nearly 300 in Pine-Knoll Estates, each of which is non-conforming to current zoning requirements. The lots in question conform with the standards of the neighborhood;
2. The spirit of the Ordinance is observed because the community will not be harmed, no standard will be lowered, no neighbor will be impacted, and much good will accrue to the owners of the affected properties;
3. Granting this variance would do substantial justice because it will set things right. Creating Lot A and moving official ownership of the steps and stairs to Eugene Ordway creates no hardship for Melissa and Scott Ordway, since they already have their own steps and stairs located more conveniently to their residence and leading to the lake. Creating Lot B will make Melissa and Scott Ordway the owners of the parking area;
4. The values of the surrounding properties would not be diminished because the movement of the lines associated with creating Lots A and B are relevant only to the owners of Lots 14, 15, and 16. There is no impact on surrounding properties or the public at large;
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. Denying the request to create Lot A would create a hardship because Eugene Ordway would have to build new steps and stairs for his tenants only a few feet from the existing steps and stairs. Denying the request to create Lot B would create a hardship because Eugene Ordway could rescind permission for Melissa and Scott Ordway to park on his property if there is a change of ownership. Where to park a second vehicle would become an issue.
 - 2) The proposed use is a reasonable one because creating Lot A would allow the owners to continue the common practice of the vast majority of waterfront lot

owners on Baboosic Lake to have steps and stairs leading to the waterfront and unconstrained access to the lake and dock provided by Eugene Ordway. Parking for two cars is a reasonable expectation for the owner of any residence. Creating Lot B would ensure that Melissa and Scott Ordway will not have to depend on the kindness of neighbors to continue to park a second vehicle.

- 5. Eugene C. Ordway (petitioner/owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit three lots with less than the required minimum frontage. The parcels are located at 28, 28A and 28B Shore Drive in the R-2 (Residential) and Flood Hazard Conservation Districts. Tax Map 6A-2, Lots 014, 015 & 016. Case #2015-03.

Melissa Ordway read the statutory criteria into the record.

There was no public comment.

The Board voted 4-0-0 to grant the Variance, on a motion made by Patrick Dwyer and seconded by Lynn Christensen.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the two public access roads on either side of Lots 14, 15 and 16 are 240' long and 15' wide and extend from Shore Drive to the high water mark of Baboosic Lake. They are neither Town roads nor private property. The access roads serve the same purpose as "frontage" and meet the interest the public has in ensuring that every habitable property has sufficient frontage;
2. The spirit of the ordinance is observed. It is not possible for Lots 14 and 16 to have any frontage because they do not intersect Shore Drive, but Lot 15 does so at a point. Public access roads running from Shore Drive to the high water mark to Baboosic Lake serve all three properties as "frontage";
3. Granting this variance would do substantial justice because the lack of required frontage is not relevant to the variance;
4. The values of the surrounding properties would not be diminished because the lack of conventional frontage and the movement of the lines associated with creating Lots A and B are relevant only to the owners of Lots 14, 15 and 16. They are immaterial to abutters on either side, who are shielded by two public access roads. No property lines intersect any other privately held property. There is no impact on surrounding property owners nor the public at large;
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 denying the request to create Lot A creates a hardship for Eugene Ordway. In order for his tenant at 28 Shore Drive/Lot 15 to have unfettered access to the lake, Eugene Ordway will have to build new steps and

stairs only a few feet from the existing ones. Denying the request to create Lot B means that, although Melissa and Scott Ordway have Eugene Ordway's permission to continue to park on his property, permission can easily be rescinded if there is a change in ownership. Where to park a second vehicle would become a real issue;

- 2) The proposed use is a reasonable one because creating Lot A would allow the owners of Lot 16 to continue the common practice of the vast majority of waterfront lot owners on Baboosic Lake to have steps and stairs and unconstrained access leading to the dock and waterfront. Creating Lot B would ensure the Melissa and Scott Ordway would not have to depend on the kindness of neighbors to continue to park a second vehicle.

6. Turn Cycle Solutions, LLC. (petitioner) and Peter Wyman (owner) – Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a 23'x12' enclosed porch 28 feet from the rear property line whereas 40 feet is required. The parcel is located at 3 Dolly Road in the R (Residential) and Aquifer Conservation Districts. Tax Map 6D-1, Lot 119-01. Case #2015-04.

Brendan McGrail, Turn Cycle Solutions, LLC, read the statutory criteria into the record.

He explained that the 12'x16' summer deck in back would be removed and replaced by a three-season room with the same dimensions. Mike Turcotte, Turn Cycle Solutions, LLC, said the lot is non-conforming. The deck already existed when the owner bought the house. The new structure will be more stable.

Discussion about dimensions ensued. Lynn Christensen noted that the Town says the room would be 12'x14'. Donna Pohli said that 2' difference is not an issue for the Zoning Board and that the Town will correct the record after the Assessing Department investigates. Mike Turcotte said the new deck would measure 7'x7.6'. It would act as a porch and storage for a grill, shovels, etc., with three steps leading to it. Brendan McGrail added that the 23'x12' measurement on the staff memo includes the extra 7' deck. The enclosed area would measure 12'x16'.

Public comment

Sandra Joel-Phillips, 11 Pine Street, is the rear abutter and opposes the Variance. She objected to the height of the windows and the wall facing her property, for which no dimensions were provided. She is concerned that her rear deck faces the Wyman deck. Both lots have storage buildings and a 6'-high stockade fence, which is not high enough for privacy. She suggested either moving two windows to the sides or denying the Variance. A variance from the setback was granted when the deck was built in 1982. It would be no hardship to fit a porch into that setback. Sandra Joel-Phillips worried about the impact on the resale value of her home. Her deck would be much lower than the proposed room.

Mike Turcotte replied that the frieze board would be the same height and the floor would be at the same elevation as they are now. The room would be a step down from inside the house. The abutter claimed that there is not enough information about wall height and that the wall would be moved 12' closer to her property. Lynn Christensen

repeated that the edge would be no closer to the abutter's home than the deck is now. Fran L'Heureux explained that the Zoning Board of Adjustment (ZBA) has no control over design/window placement. Leonard Worster noted that most neighboring properties substantially violate the code. This house is legal without the deck. Donna Pohli reminded the Board that the current deck received a variance in 1982.

When making his motion, Patrick Dwyer, spelled out the measurements of both the porch and the enclosure.

The Board voted 4-0-0 to grant the Variance to permit construction of a 12'x16' enclosed porch and a 7.5'x7' deck, 28' from the rear property line whereas 40' is required, on a motion made by Patrick Dwyer and seconded by Leonard Worster.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the three-season room will enhance the use of the home and be consistent with the improvements completed in the area;
2. The spirit of the ordinance is observed because the room would improve the use of the home and enhance its value;
3. Granting this variance would do substantial justice because the room would enhance the value of the home and enable the owner to enjoy the enhanced rear yard;
4. The values of the surrounding properties would not be diminished because the owner has made significant improvements to the home to help further enhance the property's appearance;
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 it is a legal non-conforming lot. It is older and smaller, which creates the hardship of fitting the proposed three-season room within the setbacks. The proposed plan would not affect the public;
 - 2) The proposed use is a reasonable one because it would be a hardship for the owner not to have reasonable enjoyment of the home with the three-season room.

7. APMK Ventures, LLC. (petitioner/owner) – Special Exception under Section 2.02.2(C)(1)(c) of the Zoning Ordinance to permit a two-family residence in the Commercial District. The parcel is located at 332 Daniel Webster Highway in the C-1 (Limited Commercial) and Aquifer Conservation Districts. Tax Map 4D-4, Lot 032. Case #2015-05.

Peter McClintick, Manager, APMK Ventures, LLC, read the statutory criteria into the record.

The petitioner proposes to convert the site back from a two-family and office space to a two-family use. The previous dog grooming space would be used for storage.

Public comment

Tim Hogan, 3 Hoyt Street, owns the property to the rear. He supports the Special Exception as long as the third unit will become a storage unit rather than a living unit.

The Board voted 4-0-0 to grant the Special Exception, on a motion made by Patrick Dwyer and seconded by Lynn Christensen.

Findings of Fact

1. The specific site is an appropriate location for the proposed use in terms of overall community development because it will not alter the character and feel of the area;
2. The use as developed will not adversely affect the neighborhood because there are similar properties in the area and exterior improvements will enhance the property;
3. There will be no nuisance or serious hazard to vehicles or pedestrians because the residential units are well buffered from abutting properties and access onto D.W. Highway is easy. There are walkways from the parking lot to unit entrances;
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use because units will be renovated and updated to current building codes and there is ample parking with more space available if needed.

8. APMK Ventures, LLC. (petitioner/owner) – Variance under Section 3.02 of the Zoning Ordinance to permit a two-family residence with less than the required area, frontage and front, side and rear setbacks. The parcel is located at 332 Daniel Webster Highway in the C-1 (Limited Commercial) and Aquifer Conservation Districts. Tax Map 4D-4, Lot 032. Case #2015-06.

Peter McClintick, Manager, APMK Ventures, LLC, read the statutory criteria into the record.

There was no public comment.

The Board voted 4-0-0 to grant the Variance, on a motion made by Patrick Dwyer and seconded by Leonard Worster.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because a two-family residence is a permitted use within the C-1 Zone and there are others in the immediate area. The main house was previously used as a two-family prior to becoming vacant;
2. The spirit of the ordinance is observed because the proposed use would not change the character of the neighborhood;

3. Granting this variance would do substantial justice because it would allow reasonable use of the property and provide rental housing to the marketplace. The property has been vacant for over a year;
4. The values of the surrounding properties would not be diminished because the character of the building will not change and the planned improvements will enhance its value and that of the surrounding homes;
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 any use for the existing property in C-1 would require variances;
 - 2) The proposed use is a reasonable one because it would allow continued use of the property as a residential use with significant improvements.

9. Discussion/possible action regarding other items of concern

Donna Pohli informed the Board that the petition for a cell tower at Joppa Road has been withdrawn and will not return for a rehearing.

10. Approval of Minutes – December 17, 2014

The minutes of December 17, 2014, were approved as submitted, by a vote of 3-0-1, on a motion made by Leonard Worster and seconded by Patrick Dwyer. Lynn Christensen abstained.

11. Adjourn

The meeting adjourned at 8:45 p.m., by a vote of 4-0-0, on a motion made by Patrick Dwyer and seconded by Lynn Christensen.