



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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## **MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES WEDNESDAY JULY 26, 2017**

**Zoning Board members present: Patrick Dwyer, Tony Pellegrino, Richard Conescu, Lynn Christensen, and Alternate Leonard Worster**

**Zoning Board members absent: Fran L'Heureux**

**Staff present: Assistant Planner Robert Price**

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

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

### **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. Synergy Self Storage, LLC. (petitioner/owner) — Variance under Section 2.02.7(A)(7) of the Zoning Ordinance to permit an encroachment of pavement, fill and grading within the 25 foot wetlands buffer. The parcel is located at 403 Daniel Webster Highway in the I-1 (Industrial), Aquifer Conservation and Elderly Housing Overlay Districts. A portion of the parcel is subject to the Flood Hazard Conservation District. Tax Map 4D-3, Lot 084-01. Case # 2017-25.**

Chris Ross, Synergy Self Storage stated during the site plan approval process, the Fire Department requested that an emergency access road be installed which connected to Wright Avenue. He explained that in order to install the access road, a variance would have been required since the road encroaches into the wetland buffer. This step in the process was inadvertently missed which is why they are before the Board tonight. He stressed that they have not encroached into the wetlands themselves, only the buffer.

Joel Sikkila read the statutory criteria into the record.

### **Public Comment**

No public comments were made on this application.

**The Board voted 5-0-0 to grant the Variance, with the condition that site plan approval from the Planning Board is obtained for the proposed paved access road and commercial use of the access road, in order to rectify the violation of the approval previously granted, on a motion made by Richard Conescu and seconded by Lynn Christensen.**

### **Findings of Fact**

1. *Granting the variance would not be contrary to the public interest because: The variance will provide for aesthetic improvements to the area, and allow the landowner to maintain the roadway to provide continued access for emergency vehicles.*
2. *The spirit of the ordinance is observed because: The variance is only to provide for improvements to an existing roadway, and affects only minor locations of the irregular shaped buffer.*
3. *Granting the variance would do substantial justice because: The greater portion of the affected area is due to the necessary fill required to install an access ramp, to allow for emergency vehicles and other traffic to descent from the facility parking lot down onto the access road, and ultimately, out to Wright Avenue. The minor, remaining affected areas are necessary to allow for the improvements to the rest of the roadway.*
4. *For the following reasons, the values of the surrounding properties will not be diminished: The subject area is located in an otherwise inaccessible area, and behind the abutter's property. Further, the addition of security lighting, security fencing, and 24/7 video surveillance will only serve to enhance the value of the abutting properties.*
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 existence of the 25' wetlands buffer restricts access to the property, as the buffer encroaches into the access easement from the main portion of the lot out to Wright Avenue. This limitation placed on the easement area prevents the landowner from enjoying the full benefits of the property as was originally intended.*
  2. *The proposed use is a reasonable one because: As it is inherent in the nature of the subject landowner to consistently go above and beyond what*

*is required, and to expend more effort and resources that would otherwise be required, denial of the waiver would nullify the significant expenditures that the landowner has put forth to provide a fully serviceable, access roadway. This roadway as currently installed will continue to provide safe, convenient access for emergency vehicles for years to come.*

- 4. NH Signs (petitioner) and Global Companies, LLC. (owner)** — Variances under Section 17.10.3 of the Zoning Ordinance to permit a sign with a front setback of 2 feet whereas 20 feet is required and a sign of 52 s.f. whereas a maximum of 32 s.f. is required. The parcel is located at 468 D.W. Highway in the C-2 (General Commercial) the Elderly Overlay & Aquifer Conservation Districts. Tax Map 5D-3, Lot 125. Case # 2017-26.

Peter March, NH Signs stated that the existing sign, which is outdated by Mobil's branding standards, has been hit by a vehicle two times in the last three years, noting that part of the sign overhangs the parking lot. He stated the goal is to replace the existing sign with a new sign that is approximately 15% larger, but happens to be the smallest possible stock design in Mobil's signage catalog. He noted that the new sign will also have an LED pricing display as opposed to the manual display featured on the current sign.

Peter March explained that the justification document in front of the Board contains some errors which he needs to correct. First, he noted the existing sign is 45 square feet, not 49 square feet. Second, the setback being requested is 2 feet, not 1 foot.

Peter March read the statutory criteria into the record.

Lynn Christensen asked for clarification as to the exact placement of the new sign post. Peter March replied it will be moved slightly further away from the road to allow for the sign panel to be in the same place as the current sign.

#### **Public Comment**

No public comments were made on this application.

Robert Price noted that Section 17.10.3.c of the Zoning Ordinance indicates that "no ground sign may exceed in height the distance of any portion of the sign to the center of the adjoining public right-of-way". He stated if the applicant does not comply with this section, then an additional variance would be needed in the future. Peter March responded that the sign is only 15 feet high and the center of the roadway is 33 feet away from it, meaning they comply with this section. Peter March also noted that the staff memo indicated the property address number needed to be shown on the sign, and that it has been added to the design.

**The Board voted 5-0-0 to grant the Variances, on a motion made by Lynn Christensen and seconded by Tony Pellegrino.**

## **Findings of Fact**

1. *Granting the variance would not be contrary to the public interest because: This portion of the test requires us to merely show that there will be no harm to the public interest if granted. For the variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?*

*The code recognizes this; per Section 17.01 of the Code:*

*“The purpose of this article is to encourage the effective use of signage to direct movement, advertise, and inform the public while protecting public safety, preserving neighborhood character and minimizing visual clutter.”*

*The new sign differs from the old in 2 ways:*

1. *It has LED price changers – these are allowed*
2. *The shape of the sign is different – it is rectangular as opposed to the old sign which has a center mounted pole*

*It is 15% bigger, maintains the same colors, and lights the same way and to essentially the same intensity.*

*The proposed LED sign simply replaced manual changers – it is static at all times unless the prices change. The proposed sign makes it easier for the public to read gas prices, and as such improves traffic safety when approaching this busy station.*

*The proposed sign replaces an old, decrepit sign that has been hit by vehicles on the forecourt several times in the last three years. It is neater, newer and will be much less likely to be damaged if hit. It will have no adverse effect on the character of the area – indeed, it is a new sign and a new design that will improve the appearance of the site.*

*The code has no interest in limiting businesses ability to upgrade old signage to newer better signage; it has an interest in improving signage and modernizing it so as to reduce clutter and improve effectiveness. This sign does both.*

2. *The spirit of the ordinance is observed because: This requires that the effect of the variance be evaluated in light of the goals of the zoning ordinance, which might begin, or end, with a review of the premises upon which the ordinance is based.*

*The existing sign was approved in a site plan review when the site was originally built; logically then, the planning authorities of the time considered the size appropriate for this location. The new sign offers an improvement over the original sign which has become decrepit over the intervening years. It also maintains the setback. The spirit and purpose of the sign ordinance is called out above; this sign – essentially to the passerby the same size as the existing one, but offers clearer visibility, a better, newer design and more effective communication.*

3. *Granting the variance would do substantial justice because: The size of the existing sign is 45 sq. ft., and was thus legal when it was built. Essentially, we have argued that the increase in the size of the new sign is so small that few people, except maybe the very informed, would notice any difference between the existing sign and the proposed sign. The fact that the sign is pre-existing and non-conforming allows it certain protections, including a modest expansion in size.*

*The new sign incorporates 2 panels not shown on the existing sign:*

- a. *Synergy is a new brand uplift from Mobil and represents a global marketing campaign. Ultimately this will involve an amount of forecourt architecture designed to improve the customer experience, the Synergy panel on the sign directs customers to this aspect*
- b. *The site has recently moved to Circle K, a convenience store brand that is well known in this area.*

*If the owner was forced to eliminate one of the panels to bring the sign to 45 sq. ft., one of the other panels above would have to be eliminated. Allowing this station to use a stock Mobil sign and to show the above would be just and fair.*

4. *For the following reasons, the values of the surrounding properties will not be diminished: The sign proposed is new and more visually appealing and will replace an old, damaged sign that has been hit several times. The approved Mobil Sign vendor has been unable to replace the price sign – which was damaged most recently by being hit with a truck – with a like for like replacement, thus, the site owner has been stuck waiting for a Mobil replacement.*

*Allowing the owner to upgrade to a newer more recognizable format would not result in a change in the essential character of the neighborhood, or harm to health, safety and welfare.*

*We submit that this type of sign offers several benefits to stakeholders at the gas station and to the general public and cannot be construed as being substantially more detrimental than the existing nonconforming use to the neighborhood.*

*The top of the old sign is 96" wide; the new sign is 75" wide – though the sign is longer, it is less obtrusive.*

*Secondly, as concerns the LED Price units, almost all new images from Gas companies include these devices because they look cleaner and better than the old technology and they do not age as quickly as the conventional signs.*

*We submit that there is no evidence that this well thought out design would negatively impact surrounding property values.*

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: This property is clearly unique in this area; the question is, can relief be granted to this property without frustrating the purpose of the ordinance? In other words, is the full application of the ordinance to this particular property necessary to promote a valid public purpose?*

*The Special Conditions of the Property that distinguish it from other properties in the area are as follows:*

1. *It has a legally non-conforming sign at present –the code calls for 32 sq. ft., the current is 45 sq. ft.*
2. *It is a gas station, and signage for a gas station is especially critical as they have a unique need to post prices and change the prices regularly, sometimes as much as daily*
3. *The property is configured such that the required setback is impossible to implement – this would put the sign under the gas station canopy.*

*The special circumstances that relates to the property are surely unique enough that the same questions are unlikely to come before the board*

*again, thus a precedent is unlikely to be made. The ordinance it is submitted was not written to take account of this situation – for example, the Planning Board has already allowed a setback that was non-confirming – so the argument is made that denial of this variance would not serve any reasonable purpose either for this owner or for the Town in its goal of regulating signage.*

- 2. The proposed use is a reasonable one because: In conclusion, we argue that the proposal is reasonable and not overly aggressive. In the justice test, there is no benefit to the public that would outweigh the hardship on the application if the variance(s) were denied.*

- 5. Chris Payne (petitioner) and Scott & Renee Cavanaugh and Eleanorose Vachon (owners)** — Variance under Section 3.02 of the Zoning Ordinance to permit a lot line adjustment including lot 042-022 which results in a lot containing approximately 144.14 ft. of frontage on Cramer Hill Road and 91.89 ft. (total of 236.03 feet) of frontage on Greenleaf Street whereas 250 feet is required. The parcel is located in the R (Residential) District. Tax Map 2A, Lot 042-022. Case # 2017-27.

Gregory Michael, Bernstein, Shur, Sawyer & Nelson, P.A. stated the lot line adjustment plan has already been approved by the Planning Board, conditioned upon receipt of the variance being sought tonight. He explained that the lot line between Lot 042 and Lot 042-022 has been adjusted to give Lot 042-022 frontage on Greenleaf Street. The frontage on Cramer Hill Road was originally intended to be used as an access point, but the topography in that area does not allow for a feasible access to be constructed, whereas the topography at Greenleaf Street is much more suitable. As such, the Planning Board prohibited construction of an access to Cramer Hill Road as a part of their approval.

Michael Klass read the statutory criteria into the record.

Regarding criterion #2, the spirit of the ordinance is observed, Rich Conescu noted that the frontage for Lot 042 has decreased to 200 feet. Gregory Michael replied that 200 feet of frontage is still conforming as the two lots, despite their proximity to one another, have different soils classifications and thus, different frontage requirements.

#### **Public Comment**

No public comments were made on this application.

**The Board voted 5-0-0 to grant the Variance, on a motion made by Lynn Christensen and seconded by Rich Conescu.**

#### **Findings of Fact**

1. *Granting the variance would not be contrary to the public interest because: As the courts have said, to be contrary to the public interest, the variance must unduly and in a marked degree conflict with the Ordinance such it violates the Ordinance's basic zoning objectives and the primary purpose of minimum frontage requirements is to ensure appropriate access to lots.*

*The proposed lot would have approximately 91 feet of frontage along Greenleaf Street, which is more than adequate to provide safe access for residential use on the Property.*

*Access from Greenleaf Street is preferable from an engineering perspective because it avoids having to travel up and down the existing slope and maintain the requisite driveway from the buildable portion of the Property to Cramer Hill Road.*

*Unlike many applications before you, the applicant has already obtained contingent planning board approval.*

*Moreover, as the variance request simply allows for a small portion of one of the Property's lot lines to be adjusted, the request will not be contrary to the character of the neighborhood.*

*In light of the above, the requested variances do not conflict with the purpose of the Ordinance or its basic objectives and granting the requested relief will not be contrary to the public interest*

2. *The spirit of the ordinance is observed because: This analysis is similar to the above so I acknowledge this may be slightly redundant. Again, the rationale for minimum frontage is to ensure safe and appropriate access to homes.*

*Here, because of the unique orientation of the property, the proposed lot will contain sufficient frontage on Greenleaf Street to provide ingress and egress from the adjacent public way to a residence on the Property, and such frontage will be preferable to access from Cramer Hill Road as a result of the Property's topography.*

*The proposed new lot configuration will be consistent with the character of the existing neighborhood.*

*As such, the spirit of the ordinance, which ultimately seeks to promote the health, safety, convenience, and welfare of the Town, is observed in the requested variance.*



3. *Granting the variance would do substantial justice because: Substantial justice is done when the loss of denying a variance exceeds the gain to the general public in strictly enforcing the ordinance.*

*In this case, denying the requested variances will not result in an appreciable gain to the general public given that the proposed lots are designed to ensure safe and appropriate use and that the request does not seek to add another lot – simply change the driveway location to a more level grade. The proposed lots will be used consistently with the district's permitted uses and in line with the surrounding neighborhood. Furthermore, the proposed lots will not threaten public health, safety, or welfare.*

*On the other hand, denying this application will result in a substantial loss to the applicant by preventing a safe and reasonable use of property and requiring access from an elevation that will require use and maintenance of a sloped driveway. In doing so, the loss of denying the variance greatly exceeds any public gain and warrants granting this application.*

4. *For the following reasons, the values of the surrounding properties will not be diminished: The requested variance will not diminish the character of the neighborhood. The proposed lots will be used in a manner consistent with these neighboring lots and, thus, should not produce different or significant traffic, noise, or odors or other detrimental impacts to the surrounding area.*
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 here is special and unique in its size, shape, topography, and orientation between and connection to both Cramer Hill Road and Greenleaf Street.*

*Again, the primary purpose for minimum frontage requirements is to ensure safe and appropriate lot access. This request seeks to access the Property from Greenleaf Street, by means of approximately 91 feet of frontage, from grades that are more reasonable than the slopes of the Property adjacent to Cramer Hill Road.*

*This proposal is more than adequate to support a residential driveway and related residential infrastructure. Moreover, it is important to note that this request would not add an additional lot; rather, it would simply allow for*

*the adjustment of a small portion of an existing lot line which the Planning Board has already conditionally approved. As such, there is no substantial relationship between the general public purpose of the ordinance and its application to the property at issue.*

2. *The proposed use is a reasonable one because: It contemplates a use that is permitted under the Ordinance – single family residential.*

## **6. Discussion/possible action regarding other items of concern**

Robert Price noted that the Board's annual meeting will be August 30, where election of officers and bylaw review will take place.

## **7. Approval of Minutes – June 28, 2017**

The minutes of June 28, 2017, were approved as presented, by a vote of 4-0-1, on a motion made by Lynn Christensen and seconded by Tony Pellegrino. Leonard Worster abstained.

## **8. Adjourn**

The meeting was adjourned at 7:47 p.m., by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Leonard Worster.