



Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED VIRTUAL MEETING MINUTES TUESDAY JUNE 2, 2020

Board members present: Richard Conescu, Kathleen Stroud (joined virtual meeting at 7:15 p.m.), Patrick Dwyer, Lynn Christensen and Alternates & Drew Duffy and Ben Niles.

Board members absent: Rod Buckley and Alternate Leonard Worster

Staff present: Community Development Director, Tim Thompson

Due to the COVID-19 crisis, and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Zoning Board of Adjustment is authorized to meet electronically.

As stated on the agenda, the meeting was aired live on Merrimack TV and the Merrimack TV Facebook Live page (<http://www.facebook.com/merrimacktv>). Telephone access was available for members of the public wishing to speak during the Public Hearing or provide public comment. Also identified on the agenda was the opportunity for general public comment to be submitted leading up to the start of the meeting via email to CommDev@MerrimackNH.Gov.

Members of the Board and Town Staff were participating via Zoom. In accordance with RSA 91-A:2 III, each member of the Board was asked to state, for the record, where they were, and who, if anyone, was with them.

1. Call to Order

Richard Conescu called the virtual meeting to order at 7:00 p.m. He then read the procedures and processes for the virtual meeting.

2. Roll Call

Richard Conescu

Stated he was participating electronically from home in Merrimack and alone in the room he was in.

Drew Duffy

Stated she was participating electronically from home in Merrimack and alone in the room she was in.

Patrick Dwyer

Stated he was participating electronically from home in Merrimack and alone in the room he was in.

Lynn Christensen

Stated she was participating electronically from home in Merrimack and alone in the room she was in.

Ben Niles

Stated he was participating electronically from home in Merrimack and alone in the room he was in.

Community Development Director Tim Thompson

Stated he was participating electronically from home in Concord and alone in the room he was in.

Richard Conescu appointed Ben Niles to sit for Rod Buckley and Drew Duffy to sit for Kathleen Stroud. Patrick Dwyer read the preamble.

3. **Streif, LLC (petitioner/owner)** – Special Exception under Section 2.02.3(C)(1) of the Zoning Ordinance to allow for a residential use in the C-2 (General Commercial) District. The parcel is located at 406 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 5D-4, Lot 099. Case # 2019-41.

At the petitioner's request, the Board voted 5-0-0 to continue this item indefinitely (until in-person meetings resume and with re-notification of abutters), on a motion made by Lynn Christensen and seconded by Ben Niles.

4. **Streif, LLC (petitioner/owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit a density of 3 multi-family residential units in the C-2 (General Commercial) District whereas 1 per 40,000 square feet is allowed. The parcel is located at 406 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 5D-4, Lot 099. Case # ZBA 2020-03.

At the petitioner's request, the Board voted 5-0-0 to continue this item indefinitely (until in-person meetings resume and with re-notification of abutters), on a motion made by Lynn Christensen and seconded by Drew Duffy.

5. **Streif, LLC (petitioner/owner)** – Variance under Section 3.02, Note 6 of the Zoning Ordinance to permit the construction of a 2,950 sq. ft. building 22 feet from the Daniel Webster Highway right-of-way whereas 50 feet is required. The parcel is located at 406 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 5D-4, Lot 099. Case # ZBA 2020-04.

At the petitioner's request, the Board voted 5-0-0 to continue this item indefinitely (until in-person meetings resume and with re-notification of abutters), on a motion made by Lynn Christensen and seconded by Ben Niles.

Kathleen Stroud joined the virtual meeting (stated that she was participating electronically from home in Merrimack and alone in the room she was in) and Drew Duffy returned to alternate status.

6. **Christopher Ross, LLC (petitioner/owner)** – Special Exception under Section 2.02.2(C) of the Zoning Ordinance to allow a residential use in the C-1 (Limited Commercial) District. The parcel is located at 401 Daniel Webster Highway in the C-1 (Limited Commercial), Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 083. Case # ZBA 2020-06.

Christopher Ross, petitioner/owner and Joel Sikkila, Synergy Self Storage participated electronically to present the project. Mr. Ross began by giving a brief history of the property and showed pictures of the current state with retail tenants, making reference to the limited

parking that is available at that location. The leases have now expired for all of the tenants so instead of adding new retail tenants and continuing to deal with the parking issues, they would like to convert the space into 12 one bedroom residential units for short term leasing. Mr. Ross is also the owner of Synergy Self Storage which abuts the property and in speaking with the storage customers, believes there is a need for short term leasing options for residents who are between homes.

Tim Thompson clarified that the case being discussed is just the Special Exception request to allow a residential use in a commercial zone. There are two additional cases that will discuss density and setbacks. Mr. Sikkila added that the next two cases are contingent upon the approval of the Special Exception.

Mr. Ross read through the Special Exception criteria (see below) and Mr. Sikkila answered a question from the Board regarding parking explaining that the storage use only needs about 5-6 spots total and the rest are available for use between both locations.

There was no public comment.

The Board voted 5-0-0 to grant the Special Exception on a motion made by Patrick Dwyer and seconded by Lynn Christensen with the following conditions:

1. The petitioner shall also obtain the variance in Case #2020-07; and
2. The petitioner shall obtain site plan approval from the Planning Board for the proposed use (residential).

Case #2020-06 Findings of Fact:

a) The specific site is an appropriate location for such a use or uses in terms of overall community development because:

There is a current lack in the availability of short-term, transient housing in Merrimack. The majority of all available residential properties for rent/lease require a minimum 1 year lease term. There exist a large number of homeowners and/or renters who are in transient in nature due to selling a home, moving, etc. Many of these individuals require only a short-term housing solution (3-6 months), while a new home is under construction or awaiting availability. These individuals are the same type of individuals who currently utilize a self-storage facility.

b) The use as developed will not adversely affect the neighborhood because:

The current neighborhood is a mix of residential and commercial/retail businesses. Therefore, the proposed use will not adversely affect existing residences and businesses.

c) There will be no nuisance or serious hazard to vehicles or pedestrians because:

The proposed use will instead reduce the daily traffic to the site and also eliminate the existing vehicle parking inadequacies.

d) Adequate and appropriate facilities will be provided for the proper operation of the proposed uses or uses because:

The existing structure is currently serviced by town water/sewer, provides ample vehicle parking, and the overall design and aesthetics of the structure are well suited to a residential usage.

- 7. Christopher Ross, LLC (petitioner/owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit a density of 12 multi-family residential units in the C-1 (Limited Commercial) District whereas 1 per 40,000 square feet is allowed. The parcel is located at 401 Daniel Webster Highway in the C-1 (Limited Commercial), Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 083. Case # ZBA 2020-07.

Joel Sikkila summarized the request by explaining that the current size of the building is roughly 14,000 square feet and once the addition is added, will become 15,000 square feet. The plan is to convert the building to 12 one bedroom units. This variance request is also contingent upon the approval of the variance for the side setbacks (Case # ZBA 2020-08) which would allow for an addition to be built, if granted.

Chris Ross read through the Findings of Fact (outlined below) and addressed a question from the Board regarding the anticipated parking following conversion from retail to residential use. The Board questioned whether or not the tenants renting the units could have visitors that would take up multiple parking spaces. Mr. Ross responded that he will watch the parking situation carefully and would not allow that to happen. Mr. Ross also confirmed that the units will be about the size of a hotel room.

There was no public comment.

The Board voted 5-0-0 to grant the Variance on a motion made by Patrick Dwyer and seconded by Kathleen Stroud with the following condition:

1. The petitioner shall obtain site plan approval from the Planning Board for the proposed use (residential).

Case #2020-07 Findings of Fact:

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

The regeneration of the existing structure, when converted to a residential usage, will allow for the continued preservation of a local landmark, which has significant historical value, and to allow for the restoration of the structure to its original Colonial style and design. This is achieved while at the same time significantly reducing the daily traffic to and from the site, which was proven to be extremely problematic with commercial usage.

2. The spirit of the ordinance is observed:

The spirit of the ordinance is to preserve the existing “small town” look, feel, and appeal, by keeping urban sprawl and overcrowding to a minimum. This is observed by utilizing an existing structure, without the need for additional land-clearing, curb cuts or asphalt pavement.

3. Granting the variance would do substantial justice:

It has become apparent that the traffic volume generated by a commercial usage is greater than the subject property can safely accommodate.

Granting the variance will reduce the impact of vehicular traffic while also providing a short-term, transient housing solution for customers of the abutting self-storage facility.

4. The values of the surrounding properties will not be diminished because:

As with any renovation or improvement, the value of the property in question increases. Likewise, as the value of the property increases, the natural tendency is for the neighboring properties to also benefit and increase in value. Restoration of the structure to its former classic beauty and charm will create visual appeal for the abutting properties. Further, granting the variance will have no negative impact on the livelihood of the neighboring businesses.

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 in question has suffered from the excessive wear and tear of commercial business and their associated customer base. Also, a significant portion of the structure has remained vacant since 2003, as the lack of adequate onsite parking has limited the potential usages.

Granting the variance will provide the opportunity to finally and fully utilize the entire structure.

B. The proposed use is a reasonable one because:

Granting the variance will provide an ancillary service to the storage facility on the abutting property. Currently, there exists a lack of short-term housing for individuals in transition. The proposed use will provide an all-in-one location where individuals can place their items in storage, and procure a short-term residence while in between selling and buying a home.

- 8. Christopher Ross, LLC (petitioner/owner) –** Variance under Section 3.02 of the Zoning Ordinance to allow the construction of an addition 12.33 feet from the side property line whereas 20 feet is required. The parcel is located at 401 Daniel Webster Highway in the C-1 (Limited Commercial), Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 083. Case # ZBA 2020-08.

Mr. Ross and Mr. Sikkila explained that they would like to add the addition to make the building architecturally accurate to its original time period and more appealing to the eye. They feel that the addition, in combination with moving the utilities to an underground connection would achieve this.

Mr. Ross read through the Findings of Fact (see below).

There was no public comment.

The Board voted 5-0-0 to grant the Variance on a motion made by Patrick Dwyer and seconded by Kathleen Stroud with the following condition:

1. The petitioner shall obtain site plan approval from the Planning Board for the proposed use (residential).

Case #2020-08 Findings of Fact:

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

The granting of this variance would not be contrary to public interest because the Ordinance discourages building within setbacks so as to create uniform standards and maintain distances between abutters' buildings for all new developments. The subject property is grand-fathered. It was constructed long before the current zoning regulations and is adjacent to an abutter's paved parking area. The one -story addition will not encroach on any abutter's existing structure, nor impede the views of any abutter's existing structure.

2. The spirit of the ordinance is observed:

The spirit of the ordinance is to preserve the existing "small town" look, feel, and appeal, by keeping urban sprawl and overcrowding to a minimum. This is observed by utilizing an existing structure, without the need for additional land-clearing, curb cuts or asphalt pavement. The addition to the structure will both preserve and enhance the classic Colonial style of the structure.

3. Granting the variance would do substantial justice:

The abutting property is aged and of utilitarian design, and granting the variance will inject t new life into the immediate area. Construction of the addition will allow for the removal of the existing utility pole, relocation of the electrical and fire service equipment to an indoor location, and relocation of the ground mounted HVAC equipment to a hidden location on the roof of the structure. These modifications will serve to increase the aesthetics of the property as viewed from the abutting property and passerby.

4. The values of the surrounding properties will not be diminished because:

The renovations and improvements on the property will enhance the curb appeal of the structure, and restore the Colonial nature and design. Additionally, the granting of the variance will have no negative impact on the livelihood of the neighboring businesses.

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 is a historical property, and the structure was built long before any zoning ordinances were enacted. Therefore, adequate modern buffer areas and structure setbacks are non-existent. Granting the variance will provide the opportunity to properly address the needs of the intended use, as opposed to it remaining a commercial usage and enduring the associated traffic problems and parking inadequacies.

B. The proposed use is a reasonable one because:

Currently, there exists a lack of short-term housing for individuals in transition. The intended use will allow for the structural renovations necessary to provide an all-in one location where individuals can place their items in storage, and procure a short-term residence while in between selling and buying a home.

- 9. Vincent Pirozzi, III (petitioner/owner)** – Variance under Section 2.02.7 (A) (6) of the Zoning Ordinance to allow an existing retaining wall to remain within the 40 foot wetland setback. The parcel is located at 12 Laurel Street in the R-1 (Residential, by soils), and Aquifer Conservation Districts. Tax Map 4C, Lot 153. Case # ZBA 2020-09.

Vincent Pirozzi and Lisa Fernandez, petitioners & owners were in attendance to discuss the request. Ms. Fernandez began by explaining that she began building a retaining wall on their property in order to beautify the land and prevent leaves from collecting in the culvert and blocking the water flow. Tim Thompson added that this particular request was initiated based on a resident complaint. Community Development Staff received a complaint that work was being done on the property that was potentially violating the wetland setback regulations. Upon investigation, staff learned that the Highway Foreman (who was unfamiliar with the wetland setbacks) gave the property owners the ok to build the culvert so the construction of the wall is almost complete. This variance is now being requested to rectify the situation and address the violation. He also clarified that since the wall is considered a structure under the Building Code, the property owners are required to meet the 40 foot wetland setback and this wall encroaches on that.

The Board asked whether or not the Highway Department employees should be aware of the wetland setbacks. Tim Thompson clarified that there is no reason for them to be familiar with them and also added that the wall barely meets the requirements to be considered a structure because it is exactly 3 feet high, which is the minimum height for something to be considered a structure.

Public Comment

Shari Hastings Lucey (8 Laurel St) spoke in opposition of the wall stating that her property abuts the one in question and there have been piles of dirt left near the brook since the beginning of the wall construction. She also stated that when she built a structure on the other side of the brook she needed to get approvals from DES and build barriers to protect the brook, neither of which were done by Mr. Pirozzi. Ms. Hastings Lucey also stated that she is also not in favor of granting the variance if it leads to the construction of a driveway for the numerous cars located at the property.

Tim Thompson addressed the concerns by explaining that the Town would only have jurisdiction on the construction of a driveway, which would require a right-of-way permit from the Highway Division of Public Works.

Vincent Pirozzi and Lisa Fernandez also assured Ms. Hastings Lucey that they do not intend on building a driveway and that the dirt piles are going to be used as back fill to complete the wall.

Chairman Conescu closed the public hearing.

The Board voted 4-0-1 to grant the Variance, with conditions, on a motion made by Kathleen Stroud and seconded by Lynn Christensen. Patrick Dwyer abstained.

Case #2020-09 Findings of Fact:

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

The wall will not alter the essential character of the locality because it will stand approximately 3 ½ feet high and it allows us to have a beautiful level yard to compliment with other homes on Laurel Street. The wall will increase the appearance of the property and neighborhood once the grade of the yard is graded and lawn maintenance is completed.

2. The spirit of the ordinance is observed:

The wall promotes the general welfare of the town because it makes the area more attractive to view. This will also be substantial in helping make the town more attractive.

3. Granting the variance would do substantial justice:

The wall will be a safe and attractive structure that will relieve the wind-blown leaves from settling and clogging the culvert.

4. The values of the surrounding properties will not be diminished because:

I as the property owner have contacted the town asking to obtain a permit to construct the wall beginning in the early spring of 2018. First going into the Town Clerk's office, who in turn told me to speak to the Highway Department, located on Turkey Hill Road. At that point, I had numerous contacts with Jeff from the Highway Department who reviewed my plans for the area and after three ideas, granted his ok, as long as I did not disturb the culvert, water flow from drainage, and was not within 12 feet of the roadway.

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:

What distinguishes this property is that the water flow through the culverts is caused from water drainage from Laurel Street. The water does not flow to other water, spring, brook, river, pond or lake. Preventing the wall would not increase health, safety or attractiveness to the area.

B. The proposed use is a reasonable one because:

The purpose of the wall will be reasonable because the wall will beautify the area, allow less debris from collecting in front of the culvert openings and create no additional use of the area.

(Upon request of the Board, the second hardship criterion was also read into the record)

A. Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the property:

Due to prior communications with the town, of Merrimack, the construction of the wall has been done with the exception of the wall cap and back fill, due to waiting for the frost to subside.

10. Discussion/possible action regarding other items of concern

Chairman Conescu asked Tim Thompson if there are any updates on when Town Hall will be open to the public again. Tim Thompson stated that the last update he received was that parts of the Town Hall may open on or around June 15th. Town staff is currently working on installing Plexiglass and making other safety changes to prepare for re-opening. He also stated that in-person meetings will not likely resume until the 10 person maximum restriction has been lifted by the Governor and the Town Council modifies or sunsets the Town's Emergency Ordinance.

11. Approval of Minutes – February 26, 2020

The minutes of February 26, 2020 were approved as submitted, by a vote of 4-0-1, on a motion made by Lynn Christensen and seconded by Patrick Dwyer. Ben Niles abstained.

12. Adjourn

The meeting was adjourned at 8:39 p.m. by a vote of 5-0-0, on a motion made by Drew Duffy and seconded by Patrick Dwyer.