



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 JUNE 28, 2017

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

Staff present: Planning and Zoning Administrator Jillian Harris 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. Apple Development Limited Partnership (petitioner/owner) —** Variance under Section 17.08.4 of the Zoning Ordinance to permit the construction of two temporary ground signs whereas one temporary sign is permitted, to permit the temporary signs for longer than 30 days, and for signs of 80 s.f. and 137.50 s.f. respectively whereas 32 s.f. is allowed. The parcel is located at 360 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Planned Residential Development Overlay and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 001. Case # 2017-19.

Attorney Derek Lick, Sulloway & Hollis, said the applicant seeks a temporary ground sign in the large parking lot in front that would be visible from Route 3 and another in the back that would be visible from the F.E. Everett Turnpike. The intent is to attract customers and tenants to the proposed redevelopment project. Attorney Lick read the statutory criteria into the record.

Robert Barsamian, Apple Development Limited Partnership, said the project would have 8-10 units. The back sign would be placed atop the hill in order to be seen from the Turnpike.

There was no public comment.

The Board voted 5-0-0 to grant the Variance, with one condition, 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 signs are sized proportionally to the large retail development (77,000 square feet of building with two pad sites of 4,000 square feet and 650 square feet) in a lesser known and lesser traveled area of town. The signs would be removed when the development is fully leased. Larger signs are needed to draw the public's attention; otherwise they would go unnoticed in the mostly empty store fronts. The sign on the back would not be visible from the front. The temporary signs do not threaten public health, safety or welfare and would be sturdy and stable;
2. The spirit of the Ordinance is observed because this older and now-dated commercial site is precisely the type of development envisioned by the Ordinance;
3. Granting this variance would do substantial justice because it would allow the redevelopment of the now dated and significantly vacant retail and commercial space. The size is proportional to the large site and the signs would be temporary. The public interest in the successful redevelopment of a vacant building that formerly hosted a major anchor tenant and the filling of the other empty retail and commercial space outweigh the interest in keeping run-of-the-mill temporary signs around town smaller and less visible;
4. The values of the surrounding properties would not be diminished because redevelopment of the site would increase rather than diminish property values. The parcel now contains significantly vacant buildings, including a large space that formerly contained a grocery store. Redeveloping the site would revitalize and bring services to the area. The signs would let the public, including those who might be interested in purchasing real estate in the area, know that investment is being made in the future of the neighborhood. The design of the signs is tasteful and consistent with the applicant's desire to bring much-needed aesthetic improvement to the parcel;
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 only two temporary signs are proposed. The parcel is unique because it is a large retail and commercial lot in a commercial district that contains a very large building that is suffering from long-term high vacancy and is in the process of once-every-few-decades major redevelopment. The temporary signs are necessary to obtain interest in the project so that the now-vacant portions of the former anchor tenant space and other space can be filled and benefit the residents of the town. The parcel is unusual for larger retail and commercial uses because it is not located immediately off an exit of the Everett Turnpike. The sign in back that would be visible from the Turnpike is important because it would inform prospective customers and tenants who would otherwise be unaware of the redevelopment;

- b) The proposed use is a reasonable one because it requires only two signs that serve the unique function of providing notice of a once-every-few-decades redevelopment of a major retail and commercial building in town. The sign in back must be larger than typical because it would be seen by vehicles traveling at highway speed on the Everett Turnpike.

3. **Apple Development Limited Partnership (petitioner/owner)** — Variance under Section 17.10.3 of the Zoning Ordinance to permit the construction of two permanent signs of 210.32 and 253 s.f. respectively whereas 32 s.f. is allowed. The parcel is located at 360 Daniel Webster Highway in the C -2 (General Commercial), Aquifer Conservation, Planned Residential Development Overlay and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 001. Case # 2017-20.

Attorney Lick said that one sign would be at the northerly Route 3 entry, and the other would be facing the turnpike. Both will be lit. The other sign on Route 3 will be subject of the next case. They would be visually distinctive and have the same architectural scheme as the buildings. 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 signs are sized proportionally to the large retail development (77,000 square feet of building with two pad sites of 4,000 square feet and 650 square feet). The signs would not clutter the area. One sign would be located at each of the two entrances to the property from Route 3, which are located on opposite ends of the parcel and approximately 800' apart. The sign in back would be unobtrusive because it would be removed from neighborhood traffic and most noticeable to those traveling on the Everett Turnpike. The size of the signs is appropriate for the large size of the development and the multiple tenants and it needs to be large enough to be read easily by passing motorists. The signs would not threaten public health, safety or welfare. The design is distinctive, attractive and aesthetically pleasing;
2. The spirit of the Ordinance is observed because this older and now-dated commercial site is precisely the type of development envisioned by the Ordinance. These are larger commercial properties that are home to multiple tenants serving the needs of the town's residents;
3. Granting this variance would do substantial justice because it would allow the redevelopment of the now dated and significantly vacant retail and commercial space. The size is proportional to the large site and the large number of tenants. The signs are aesthetically pleasing and not obtrusive because they are located only at the entrances for maximum clarity and queuing of drivers and at the back of the site for viewing by those on the Everett Turnpike. Sufficiently sized signage allows the driving public to readily and easily identify the tenants in the development,

minimize the time necessary to search the signs and maximize the time to identify their destination safely and turn into the development or to proceed;

4. The values of the surrounding properties would not be diminished because the parcel now contains significantly vacant buildings, including a large space that formerly contained a grocery store. Redeveloping the site would revitalize and bring services to the area. The signs would let the public know which services are provided. The design of the signs is tasteful and consistent with the applicant's desire to bring much-needed aesthetic improvement to the parcel;
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:
 - a) 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 parcel is unique. It is a large retail and commercial lot in a commercial district that contains a very large building that is suffering from long-term high vacancy and is in the process of once-every-few-decades major redevelopment. The parcel is unusual for larger retail and commercial uses because it is not located immediately off an exit of the Everett Turnpike. Signage is important to entice tenants to lease the retail and commercial space and to inform customers of what businesses are located on the site. The redevelopment and its signage would enhance the streetscape and revitalize the area;
 - b) The proposed use is a reasonable one because easily readable signs benefit the public by fostering the successful redevelopment of an older property and allowing drivers quickly to identify the tenants in this large development without diverting their attention to read the fine print. The sign in back must be larger than typical because it would be seen by vehicles traveling at highway speed on the Everett Turnpike. The signs would be constructed of high quality materials that are aesthetically pleasing.
6. **Apple Development Limited Partnership (petitioner/owner)** — Variance under Section 17.10.3 of the Zoning Ordinance to permit the construction of a replacement ground sign of 210.32 respectively whereas 64 s.f. is allowed. The parcel is located at East Ridge Road in the C-2 (General Commercial), Aquifer Conservation, Planned Residential Development Overlay and Elderly Housing Overlay Districts. Tax Map 4D-4, Lot 067. Case # 2017-21.

Attorney Lick said the applicant has an easement for the sign at the south entry to be located on the abutter's property. The ground sign would replace the existing sign and would be identical to the sign at the north entry. The signs would be approximately 800' apart. Traffic could use both entries, although the northerly entry is meant for southbound traffic only. The pre-existing sign is 150 square feet, which is more than the Ordinance allows. Attorney Lick read the statutory criteria into the record.

There was no public comment.

Lynn Christensen noted that there would be only a 25% increase over what already exists.

The Board voted 5-0-0 to grant the Variance, on a motion made by Richard Conescu and seconded by Tony Pellegrino.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the sign would replace an older, less attractive sign that already exists on site that serves the abutting property. The sign is proportional to the large retail development (77,000 square feet of building with two pad sites of 4,000 square feet and 650 square feet) and would not clutter the area. One sign would be located at each of the two entrances to the retail development on Route 3, located on opposite ends of the retail parcel and approximately 800' apart. The sign would notify the public which tenants are located in the development. The size of the sign is appropriate for the large size of the development and the multiple tenants and it needs to be large enough to be read easily by passing motorists, but it is not so large as to change the nature of the commercial area. The sign would not threaten public health, safety or welfare. The design is distinctive, attractive and aesthetically pleasing;
2. The spirit of the Ordinance is observed because the sign is a replacement. This older and now-dated commercial site is precisely the type of development envisioned by the Ordinance. These are larger commercial properties that are home to multiple tenants serving the needs of the town's residents;
3. Granting this variance would do substantial justice because it would allow the redevelopment of the now dated and significantly vacant retail and commercial space. The size is proportional to the large site and the large number of tenants. The sign is aesthetically pleasing and not obtrusive because it is located only at the entrance for maximum clarity and it replaces the one already on site. Sufficiently sized signage allows the driving public to readily and easily identify the tenants in the development, minimize the time necessary to search the signs and maximize the time to identify their destination safely and turn into the development or to proceed;
4. The values of the surrounding properties would not be diminished because the sign replaces an older, less attractive sign already on site. The design is tasteful and would bring much-needed aesthetic improvement to the parcel. Redevelopment of the abutting site served by the sign would increase rather than diminish property values. The abutting parcel now contains significantly vacant buildings, including a large space that formerly contained a grocery store. Redeveloping the site would revitalize and bring services to the area. The sign would let the public know which services are provided;
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:
 - a) 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 parcel is unique. It is a large retail and commercial lot in a commercial district that contains a very large building that is suffering from long-

term high vacancy and is in the process of once-every-few-decades major redevelopment. The parcel is unusual for larger retail and commercial uses because it is not located immediately off an exit of the Everett Turnpike. Signage is important to entice tenants to ease the retail and commercial space and to inform customers of what businesses are located on the site. The redevelopment and its signage would enhance the streetscape and revitalize the area;

- b) The proposed use is a reasonable one because it replaces a pre-existing sign, would have adequate and easily-readable signage that benefits the public by fostering the successful redevelopment of an older property and allow drivers quickly to identify the tenants in this large development without diverting their attention to read the fine print.

- 6. **NH Hydraulics Inc. (petitioner/owner)** — Variance under Section 3.02 of the Zoning Ordinance to permit a 9,600 s.f. addition to an existing structure within 47.8' of the front property line whereas 50 feet is required. The parcel is located at 3 Columbia Circle in the I-1 (Industrial), and Aquifer Conservation and Elderly Housing Overlay Districts. Tax Maps 4D -3, Lot 025 and 026. Case # 2017-22.

Jason Lopez, KNA Associates, Inc., said the 1.6- and the 1.7-acre parcels would be combined into a 3.3-acre lot with 400' of frontage. On June 20, 2017, the Planning Board granted conditional site plan approval for the proposed addition. The applicant wants to expand a growing business. The 9,600 square foot addition on the side of the building would match it. The roof would be peaked in the center. The building would be 2.2' within the setback. The setback requirement was increased when Columbia Circle was rezoned from commercial to industrial. Chairman Dwyer stated that the setback for the existing structure is grand-fathered because the building was constructed before the current Zoning Ordinance. Jason Lopez 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 Lynn Christensen and seconded by Tony Pellegrino.

Findings of Fact

- 1. The granting of the variance would not be contrary to the public interest because this is a permitted use in the Industrial District. Expansion of the facility would increase the Town's tax base and benefit its residents;
- 2. The spirit of the Ordinance is observed because the existing building was constructed using the appropriate front setback distance when the area was zoned for commercial use. Since then the zone has been changed to industrial and the existing office space and front façade of the building fall within the 50' front setback area. Since the existing structure was constructed prior to the current zoning setbacks, those areas are permissible existing non-conforming uses. The proposed addition would require a 2.2' reduction in the current front setback of 50' due to the location of the existing structure. The 47.8' setback would meet the intent of the 50' setback. The addition would not look out of place compared to other structures in the park;

3. Granting this variance would do substantial justice because it is reasonable for a business to expand within the proper zoning district;
4. The values of the surrounding properties would not be diminished because Columbia Circle has a variety of commercial and industrial uses. The expansion of NH Hydraulics would not adversely affect their value. The expansion would enable the materials stored outside to be relocated inside the building addition and improve site conditions;
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:
 - a) 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 plans for the interior setup of the storage, racking and work flow patterns are a driving factor for the required size of the proposed addition. The placement in relation to the existing structure is driven by the structural column locations and roof line connection. Keeping the structural components of the two buildings in line would have a significant impact on the cost of building construction. Denial of the variance would be a significant hardship for the owner, since it would impair the effective utilization of the existing and proposed buildings. Complicating the buildings' connection would impact the construction budget and decrease the size of the addition;
 - b) The proposed use is a reasonable one because a decrease in size would limit the amount of outdoor racking that could be brought inside and under cover.
7. **Hotel at Daniel Webster, LLC. (petitioner/owner)** — Special Exception under Section 2.02.4(E)(3) of the Zoning Ordinance to permit an on-site caretakers residence. The parcel is located at 248 Daniel Webster Highway in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 3D-2, Lot 005-01. Case # 2017-23.

Todd Wilson, Hotel at Daniel Webster, LLC, said the applicant would convert the meeting room closest the office to an on-site caretaker residence. Creating an extended stay hotel means eliminating night staff. A caretaker is needed for security at night. Jillian Harris added that it is considered a residential unit in the industrial zone rather than a hotel unit. Todd Wilson read the statutory criteria into the record.

There was no public comment.

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

Findings of Fact

1. The specific site is an appropriate location for the proposed use in terms of overall community development because it is consistent with the current operation;
2. The proposed use, as developed, will not adversely affect the neighborhood because the property is a 129 room hotel with guests staying overnight;

3. There will be no nuisance or serious hazard to vehicles or pedestrians because the hotel already has overnight guests. Since the front desk is not staffed 24/7, a caretaker residence would be a great security/stability factor;
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed uses because the hotel was originally designed to have full-time overnight staff.

8. Tobin Farwell (Petitioner) of Farwell Engineering Services and Crystal Scott (owner) — Variance under Section 3.05 of the Zoning Ordinance to permit a building addition to a single-family dwelling 6 feet from the side property line whereas 15 feet is required and 32.50 feet from the rear property line whereas 40 feet is required. The parcel is located at 3 Loop Road in the C-1 (Commercial) and Aquifer Conservation and Town Center and Elderly Housing Overlay Districts. Tax Map 5D-4, Lot 068-01. Case #2017-24.

Tobin Farwell, Farwell Engineering Services, said this is a tiny lot in the residential portion of the commercial district. Part of the house would be removed to create a 52' x 18' foot addition. There would be a garage with a walk-out basement and a single structure above. Tobin Farwell read the statutory criteria into the record.

Travis Pelletier, 3 Loop Road, had circulated an approval form for abutters to sign. They had no problem with the proposal. The addition would be within the frontage and away from their homes.

Public comment

Chairman Dwyer read a letter from Paul C. English, 5 Loop Road, stating that he has no objection to the project.

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

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the proposed request does not create a safety issue or a public nuisance, since all work is on private land;
2. The spirit of the Ordinance is observed because the residential lot is in the Limited Commercial District. The Ordinance indicates that the setbacks are meant to provide a buffer from the commercial uses to the residential uses, but this unique lot is not directly adjacent to a commercial use. It is residence-to-residence;
3. Granting this variance would do substantial justice because it would allow the family to expand the house to a reasonable size. The addition would include a garage to allow the owners to keep the vehicle out of the snow and make it more accessible. Most residential lots have these benefits;
4. The values of the surrounding properties would not be diminished because the addition would increase the value of the property;
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:

- a) 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 Ordinance states the setbacks are meant to provide a buffer from commercial uses. The setback encroachment is toward town land. Since there is no commercial use on that land, less of a buffer is warranted. This is a small lot with little area to expand. Some relief for an addition is required;
- b) The proposed use is a reasonable one because it would allow the normal use of a residential lot.

9. Discussion/possible action regarding other items of concern

Jillian Harris announced that elections for Board officers would be held either in July or August 2017.

10. Approval of Minutes: May 31, 2017

The minutes of May 31, 2017, were approved as presented, by a vote of 4-0-1, on a motion made by Lynn Christensen and seconded by Richard Conescu. Fran L'Heureux abstained.

11. Adjourn

The meeting was adjourned at 8:02 p.m., by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Lynn Christensen.