



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, MARCH 30, 2016

Members present: Fran L'Heureux, Patrick Dwyer, Tony Pellegrino (arrived 7:05 p.m.), Richard Conescu, and Alternate Leonard Worster.

Member absent: Lynn Christensen.

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 Lynn Christensen.

2. Roll Call

Leonard Worster led the pledge of allegiance. Richard Conescu read the preamble. Patrick Dwyer swore in members of the public who would be testifying.

- 3. Bernstein, Shur, Sawyer & Nelson, PA. (petitioner) and 427 DW Highway, LLC. (owner)** - Variance under Section 3.02 to permit the creation of a third dwelling unit in an existing detached garage on a property with 15,200 square feet whereas 120,000 square feet is required. The parcel is located at 427 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly and Town Center Overlay Districts. Tax Map 5D-4, Lot 76. Case #2016-011. **This agenda item is continued from the February 24, 2016 meeting.**

Tony Pellegrino arrived at 7:05 p.m.

The applicant requested a continuance to April 27, 2016 in order to finalize a parking plan, which has taken longer than anticipated.

At the applicant's request, this item was continued to April 27, 2016, at 7:00 p.m., in the Matthew Thornton Room, by a vote of 5-0-0, on a motion made by Patrick Dwyer and seconded by Richard Conescu.

- 4. Fieldstone Land Consultants, PLLC and College Bound Movers (petitioners) and Sam A. Tamposi, Harold Watson and Benjamin & Clegg Bosowski (owners)** – Variance under Section 3.02 of the Zoning Ordinance to permit the construction of a 4,800 square foot building addition with a front setback of 39 feet whereas 50 feet is required. The parcel is located at 14 Continental Boulevard in the

I-1 (Industrial) and Aquifer Conservation Districts and Wellhead Protection Area.
Tax Map 3C, Lot 089. Case #2016-013.

Chad Branon, Project Manager, Fieldstone Land Consultants, PLLC, explained that the applicant decided to modify the proposal in order to add a second story internally to the existing 22,400 square foot warehouse building. Unit 1 would be utilized by a moving, portable storage and truck rental company as well as a self-storage facility. It would consist of 53,400 square feet of climate controlled self-storage and 1,000 of the 4,800 square feet will be office space. While the application amends the February 24, 2016 variance by making the addition larger, it would not encroach farther into the front setback than was previously approved. The horizontal length of the encroachment would be larger due to the increased size of the addition.

Chad Branon read the statutory criteria into the record.

As to #4, values of surrounding properties, Richard Conescu asked how Units 1 and 2 would be symmetrical. Chad Branon explained that office space would be provided for both units, which would be an equivalent distance from Continental Boulevard. The piece that sticks out would be two stories with a glass façade rather than solid concrete block and would be longer than in the original plan. There is enough ceiling height for a second story that is appropriate for a climate-controlled business. The MiBox side of the business would be located elsewhere. All MiBoxes in the rear would likely be removed. This is a new vision for the property. In order to make it succeed, 40,000 square feet are necessary. The building has 56,000 square feet less hallway space, which barely meets the threshold.

Patrick Dwyer asked whether the applicant would return to the Board with more changes. Chad Branon answered he was not aware of any further changes being proposed. The construction company will remain in Unit 2. This is a new business in Merrimack. The applicant incorporated comments from all Town departments, such as landscaping, installing an infiltration and leach basin area in front and not using fertilizers.

Leonard Worster asked about the width of the Continental Boulevard right-of-way, which Chad Branon said is 60'. Leonard Worster noted that the right-of-way used to be 50' on a two-lane road that was subsequently widened to four lanes. That is why the catch basin and manholes are under the road rather than in the correct location.

There was no public comment.

The Board voted 5-0-0 to grant the Variance, with the condition that the petitioner shall obtain site plan approval for the proposed project from the Planning Board, on a motion made by Patrick Dwyer and seconded by Richard Conescu.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because it would allow for the productive use of the existing property. The proposed addition would enhance the visual appearance from the street, be consistent with what

currently exists in front of Unit 2 and with the surrounding properties. The project would substantially improve the aesthetics of the parcel and its surroundings. It would be a substantial investment in an area of town that is reserved for this type of use. The investment would add value to the tax base while requiring very few services in return. The proposal would not alter the essential character of the neighborhood nor threaten the health, safety or general public welfare;

2. The spirit of the Ordinance is observed because the proposal is consistent with the surroundings and with what currently exists on site and would substantially improve the aesthetics of the parcel. The proposed addition would enhance the visual appearance from the street and would be consistent with what currently exists in front of Unit 2 and the adjacent lots. The use is permitted in the zoning district. The addition is consistent with existing development on the parcel and in this area of town. There is adequate space on the properties to support this development. The proposal would not alter the essential character of the neighborhood nor threaten the health, safety or general public welfare;
3. Granting this variance would do substantial justice because it would allow a local business to grow and address an increasing demand. The applicant wants to grow in this location; it is desirable considering the proximity to the highway. The proposal would have no negative impacts to the neighborhood, as this property has always been occupied by a commercial or industrial use that is consistent with its surroundings. The project would have no negative impacts on local services and would increase the town's tax base. Granting the variance would allow productive use of the property while providing responsible growth in the community;
4. The values of the surrounding properties would not be diminished. The proposal would consist of expanding the existing building with a 4,800 square foot addition for Unit 1. Unit 2 already has a 3,000 square foot addition that encroaches into the front setback. The proposal would simply provide each unit with usable space and provide symmetry and curb appeal from Continental Boulevard. It would improve the property and associated values and the local tax base, which is a positive impact on the community. The construction of the addition and its associated use would be consistent with the surrounding uses and is a permitted use in the zoning district. New construction and development often increase the value of surrounding properties. The project would have a positive impact on surrounding property values because it would rejuvenate the site and its surroundings;
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 proposed addition would enhance the visual appearance from the street. It would be situated to be consistent with what currently exists for Unit 2, which would offer visual symmetry from Continental Boulevard. The proposed addition would have no negative impact on the general public;

- 2) The proposed use is a reasonable one because the development would not alter the essential character of the neighborhood nor threaten the health, safety or general public welfare. It would rejuvenate an existing parcel in town, which would substantially improve the aesthetics of the parcel and its surroundings. There is adequate space on the properties to support this redevelopment. The proposal would improve the neighborhood, be consistent with the surroundings and have no negative impacts to the public.
6. **David Sanderson (petitioner/owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit a multi-family dwelling in the R-2 (Residential) District. The parcel is located at 81 Seaverns Bridge Road in the R-2 (Residential) District. Tax Map 3A, Lot 029. Case #2016-014.

David Sanderson, owner of 81 Seaverns Bridge Road, read the statutory criteria into the record. He currently lives at 13 Taconic Drive in Amherst and intends to move to this location. The detached four-car garage would become his home, once he adds a dwelling to a portion of it.

Public comment

Fran L'Heureux read into the record a letter from Lynda and Ken Taylor, 81 Seaverns Bridge Road, Amherst, whose address has been confused with the same one in Merrimack for over 30 years. If they can be assured that any contractors David Sanderson employs are made fully aware of the difference and do not mis-identify or violate their property, the Taylors have no objections to the proposed project.

Fran L'Heureux clarified that David Sanderson is not erecting a building, as the Taylors claim, but only renovating the garage.

The Board voted 4-0-1 to grant the Variance, with the condition that the petitioner shall obtain site plan approval from the Planning Board for the proposed multi-family dwelling, on a motion made by Tony Pellegrino and seconded by Richard Conescu. Leonard Worster abstained.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the applicant is proposing only to change the use of an existing garage to his new personal residence. The footprint would not change;
2. The spirit of the Ordinance is observed because changing the structure's use would not jeopardize the health, safety, convenience, and welfare of the town;
3. Granting this variance would do substantial justice because it would help the applicant relocate his home to the proposed location. He would use the new residence in a safe and reasonable way. The harm to the applicant in denying the variance would greatly exceed any public gain;

4. The values of the surrounding properties would not be diminished because the proposal would not detract from the character of the property. The current garage looks like a ranch style house already and would not be changed. The property is and will be well kept;
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 variance would cause unnecessary hardship to the applicant, who must relocate his place of residence while trying to stay near his children, due to an impending divorce. This location is only two miles from his young children. It would greatly benefit him and his children financially;
 - 2) The proposed use is a reasonable one because the structure is already built and the footprint would not be altered. There would be no impact on the abutters.
6. **Richard Elliott (petitioner) and Toby & Lorrie Russell (owners)** – Special Exception under Section 2.02.1(B)(2) of the Zoning Ordinance to permit an Accessory Dwelling Unit (ADU). The parcel is located at 25 Scott Drive in the R-2 (Residential) District and Wellhead Protection Area. Tax Map 3C, Lot 094-10. Case #2016-015.

Richard Elliott, 25 Scott Drive, read the ordinance criteria into the record.

The Board had no questions.

There was no public comment.

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

1. Execution of Declaration of Covenants for the Accessory Dwelling Unit (form will be provided by staff);
2. Payment of 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 the ADU would provide a family-oriented environment and solve the problem of caring for an elderly parent as her needs increase in the future;
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 developed space would all be internal in a lower-level walk-out basement. There would be no external changes to the home;

3. There will be no nuisance or serious hazard to vehicles or pedestrians because the home is currently occupied by the same three adults who would live there if the ADU request were granted. The only change would be increased comfort and convenience to the family living in the home;
 4. An adequate parking area is provided for motor vehicles on the premises because the home currently has a three-car garage and off-site parking for at least another 10 vehicles. No changes to the property are required to maintain adequate parking;
 5. The ADU is contained within or will be an addition to an existing or proposed single-family detached dwelling. It would be contained inside the walk-out basement of the existing home and would be attached to it by a common staircase with its own egress through an exterior door;
 6. The ADU would contain 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 ADU would be approximately 665 square feet, which is under 25% of the existing home's heated space;
 8. The ADU is connected internally to the principal dwelling unit by a common staircase;
 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 occupant is the owner's mother;
 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. All utilities and services are supplied by the principal unit. There would continue to be only one meter servicing the home.
- 7. OM Shanti OM Realty Management, LLC (petitioner/owner)** – Variance under Section 3.02, Note 6 of the Zoning Ordinance to permit the replacement of a gasoline station canopy with a setback from Daniel Webster Highway of 30 feet whereas 50 feet is required. The parcel is located at 392 Daniel Webster Highway in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 4D-3, Lot 031. Case # 2016-16.

Steve Keach, Project Engineer, Keach-Nordstrom Associates, Inc., said the applicant bought the property in August 2015, but he knew that he would have to replace and upgrade the underground storage tanks and fueling equipment by January 1, 2016, according to the NH Department of Environmental Services (DES) rule changes. With the installation of new equipment, the applicant wants to expand the length of the 22' x 48' canopy that is 29' from D.W. Highway to 44' x 48' and install two additional gas pumps. The encroachment into the setback from the highway would diminish by 1 foot, but would be extended 22 feet.

Steve Keach read the statutory criteria into the record.

In answer to Board questions, Owner Dipak Bhagat, stated that he would sell unbranded gasoline and would use the old drive through area as storage. Steve Keach said the canopy height would be approximately 14'-15'. Storage tanks are not required to be within the setback and will remain in the current location, which is not near the structure. Next steps are to do a survey and a site plan for Planning Board approval at either its May 3 or May 17, 2016, meeting. Tanks are expected to arrive mid-May; the applicant has a DES permit to put them in the ground. Interior demolition would begin now and construction would hopefully begin June 1, 2016, and would take 5-6 weeks.

There was no public comment.

The Board voted 5-0-0 to grant the Variance, with the condition that the petitioner shall obtain site plan approval from the Planning Board for the proposed canopy and other site improvements as referenced on the provided plan, on a motion made by Patrick Dwyer and seconded by Richard Conescu.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because it is intended to facilitate modernization of a 32-year old commercial property, which not only needs owner reinvestment to comply with applicable code requirements, but also to remain competitive and viable under current economic conditions. The planned reinvestment also replaces previously existing storage tanks and equipment with those that are modern and code compliant to protect the new environment;
2. The spirit of the Ordinance is observed because environmental code compliance is the underlying reason for switching the storage tanks, dispensing equipment and the canopy structure at this time. It clearly serves to promote the health, safety, convenience, and general public welfare. By making the decision to purchase and reinvest in both the subject property and modern equipment necessary to continue an established use, the current owners have assumed financial risk. In order to offset that risk, the owners need to improve the function and appearance of the facility both to attract and to conveniently serve local customers. The enhanced environmental protection and improved aesthetics would comport well with the purpose of the Ordinance;
3. Granting this variance would do substantial justice because it would facilitate code-compliant modernization of a 32-year old facility and allow it to remain economically viable over the long term;
4. The values of the surrounding properties would not be diminished because the use of the premises was established 32 years ago. What is left now is an aged commercial facility in need of modernization. The extent of modernization required will come at significant cost to the owners, an investment they are willing to make based on anticipated business success. Success realized upon wise

reinvestment in one's business within any given commercial area often encourages others to do the same and can have the effect of revitalizing other properties in a district so as to maintain if not enhance nearby commercial property values. The true risk to surrounding property values is not the planned facility improvements but rather the affect a closed gasoline service station could have on the same properties if this property were to remain shuttered and fall farther into disrepair;

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. The owner seeks a variance to erect a modern canopy situated 30' from the westerly line of D.W. Highway, whereas the canopy structure it is intended to replace is located as close as 29' to the same line. A special condition in the form of an approved gasoline station use at this location was created in 1984 at the time the facility was constructed. Unlike many other businesses, the sale of petroleum products and the condition of equipment incidental to the same is not protected by "grandfathering" in a traditional sense. Rather, changes in code instituted for the benefit of the public good have necessitated the proposed modernization. Absent a variance from one code, the owner will not be afforded the opportunity to achieve compliance with a second code requirement that is currently preventing continued operation of the facility for a previously approved use;

- 2) The proposed use is a reasonable one because the use will not change. The only outcome will be modernization of equipment needed to conduct that use properly. The extent of front yard encroachment will not be exacerbated under this proposal.

7. **Ginnie Lutze (petitioner) and FMR Merrimack Realty Trust FID (owner)** – Variance under Section 17.09(3) to allow an illuminated sign of up to seventy (70) square feet in a residential zone whereas only non-illuminated signs up to six (6) square feet in a residential zone are allowed. The parcel is located at 1 Spartan Way in the R-1 (Residential), I-2 (Industrial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 3C, Lot 191. Case #2016-017.

Richard Conescu recused himself from discussing and voting on this item.

R. Gordon Leedy, Managing Director, Land Development, Vanasse Hangen Brustlin, Inc., read the statutory criteria into the record.

Gordon Leedy showed the map of the 554-acre/1.2 million square foot campus and presented the history of zoning in the area. The residential district is a remnant of the old residential zoning and is highly unlikely to be developed as a residential use. In this

split zoning situation, all access and frontage is in the residential district. The sign would be at the flagpole and lights at the Spartan Way entrance. Gordon Leedy showed how the quartz and steel sign and sculptural element would look. Externally illuminated low-level LED lighting would be sunk into the ground.

Ginnie Lutze, Senior Campus Director, Fidelity Investments, Inc., added that Fidelity is open 24/7. It has not been determined the hours the sign would be on. The lighting would shine onto the wall and the letters spelling “Fidelity”; there would be no interior lights on the sign. It is intended that all Fidelity facilities nation-wide would use the same sign.

Public comment

Mary Demers, 26 Thornton Road, is relieved that she would not see a 70'-tall tacky neon sign.

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

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the site identification elements would not only clearly identify the Fidelity Investments campus to the public, but it would also assist those seeking this location the ability to utilize these elements as a wayfinding tool in locating their destination. The campus identification sign is being specifically designed to complement the landscape and character of this area. These elements would be integrated into the existing landscape and utilize existing open space in order to achieve property identification. Those traveling to or through this area expect and desire the use of identification tools to assist in property identification and vehicular navigation. The proposed elements would accommodate the needs of this property as well as protect the interests of the public;
2. The spirit of the Ordinance is observed because the intent of the campus identification or gateway sign is to identify this 554-acre campus in a manner that would allow for clear and concise messaging to the motoring public. The clear/concise messaging in turn allows for safe vehicular movement through this corridor. The elements that are requested would not be visible from any other residentially-zoned property and would be consistent with the method in which the other large land developments (Premium Outlets, Atrium Medical) have been allowed to identify their property in the immediate neighborhood of Fidelity's campus. Fidelity Investments has approximately 5,500 employees working at this campus on roughly 1.2 million square feet of usable space, all of which is housed in this 554-acre property. Fidelity has occupied this property since 1996. There had previously been a strategy to keep the premises unbranded and void of notification to the public /community. This mindset is shifting and the gateway

element that is proposed to be located at the entrance to the campus off Industrial Drive would be a demonstration of that new philosophy. This request would not contribute to visual clutter, as the proposed element along Industrial Drive would be the only branded element along this entire frontage of the property;

3. Granting this variance would do substantial justice because Fidelity is not seeking relief that is out of character for this corridor, inconsistent with the type of use that is present on the property, or out of scale with the overall frontage along Industrial Drive. If this property were zoned commercial or industrial, Fidelity would be allowed the square footage and type of illumination for signage that is reflected in this variance request. The residential zoning classification of Fidelity's frontage along Industrial Drive makes this application necessary. The property owner desires to identify its location within the community in a manner that is in line with the purpose of the Ordinance;
4. The values of the surrounding properties would not be diminished because there would be no impact on them. Due to the size of this campus, the main element proposed along Industrial Drive would be centered along the overall Industrial Drive footage. The proposed gateway signage would be directly visible only to motorists traveling along this roadway and the very few properties on the north side of this frontage. Surrounding properties are predominantly located within industrial districts. The proposed signage would have no impact on their value. Due to the size of this property and the natural vegetation, properties along Continental Boulevard to the west of Fidelity's campus would not have a line of sight to this gateway element;
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 does not allow for the proper identification that is representative of the type of present use nor the scale of the existing development. Because virtually all the public right-of-way frontage of the Fidelity property remains in the residential district, only a six (6) square foot non-illuminated sign is allowed for this site along over its 1.5 miles of frontage on Industrial Drive and Continental Boulevard. A sign of that size placed along this frontage would be dramatically out of scale and would do a disservice not only to the property owner, as this sign would not be a viable identification tool, but also to those traveling on the busy roadway system trying to utilize the message on that sign as a source of wayfinding assistance;

- 2) The proposed use is a reasonable one because the overall use of the property would not be altered. It is reasonable to allow identification signage appropriate to one of the largest employers in the state at their flagship facility in New Hampshire. Currently the Fidelity Investments campus is void of identification to the public. This was an intentional policy, undertaken at the time Fidelity assumed ownership of the property. The only marker that is present at this time is a single flagpole that displays the American flag set behind a small stone wall. Fidelity is now undertaking a refresh of its corporate identification and branding at all its campus properties nation-wide. This proposal is consistent with the efforts undertaken at each of its other large properties.

9. Discussion/possible action regarding other items of concern

Richard Conescu returned to the Board.

Jillian Harris reminded the Board that it had asked staff to research why Worster Ave is gated at Freedom St., and bars access to the owner. She learned that the road is not built to standard. In order to minimize maintenance, the DPW made it a dead end road.

10. Approval of Minutes – February 24, 2016

The minutes of February 24, 2016, were approved as submitted, by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Richard Conescu.

11. Adjourn

The meeting adjourned at 8:35 p.m., by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Patrick Dwyer.