



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES WEDNESDAY, NOVEMBER 29, 2023

Members Present:

- Richard Conescu (Chair)
- Ben Niles (Vice Chair)
- Lynn Christensen
- Brian Dano
- Wolfram von Schoen (alternate)
- Charles Mower (alternate)

Members Absent:

- Patrick Dwyer

Staff Present

- Colleen Olsen, Assistant Planner

1. Call to Order & Roll Call

Chair Conescu called the meeting to order at 6:30 p.m. Brian Dano read the preamble.

Chair Conescu led the Pledge of Allegiance and swore in members of the public who would be testifying. Chair Conescu seated Charles Mower for Patrick Dwyer.

2. **James Sisson (petitioner/owner)** – Variance under Section 3.05 of the Zoning Ordinance to permit construction of a 30'x35' (1,050 square foot) metal structure 4 feet from side property line (at its closest location) whereas 15 feet is required. The parcel is located at 21 Pheasant Run in the R-2 (Residential, by soils) District. Tax Map 7D, Lot 299. Case # ZBA 2023-33.

James Sisson presented the petition. He stated he is looking to build a 30x35 square foot metal building. There is currently a wooden shed on the property from 1978 which is starting to fall apart. Mr. Sisson indicated that the shed is labeled on the certified plot plan he provided. He would like to replace it with the larger metal structure. However due to the size of the metal structure, it would not meet the 15-foot property line setback requirement.

Chair Conescu asked why the proposed structure was not being placed in the same location as the existing wooden shed. Mr. Sisson explained the existing shed is behind the house and his hope with the new structure is to allow for easier access to any stored materials. There would be a door facing the road and there is driveway access around the house leading to the structure. Chair Conescu asked if the structure would be used as a garage or if it would be used for storage of larger items. Mr. Sisson said it would mostly be used for storage of his lawn mower, snow blower, and occasionally his car if he needs to work in the garage. Ms. Christensen asked how the structure would be accessed. Mr. Sisson replied that there is a 10x10 square foot door on the

front and there would be a man door on the side. Ms. Christensen asked if the front door would face Pheasant Run, Mr. Sisson confirmed this was correct.

Mr. Niles asked if Mr. Sisson's driveway was currently paved, Mr. Sisson said it was. Mr. Niles questioned if the intention was to extend the pavement to the proposed structure. He said he was not currently planning to pave to the metal structure but he may place gravel or pavement in the future. Discussion also briefly touched on the height of the structure which Mr. Sisson said would be 14 feet tall. Mr. Dano asked if there was a fence between the property in question and the neighboring parcel. Mr. Sisson said there is not. Chair Conescu asked if it is possible at all to build the structure within the property setbacks. Mr. Sisson said yes if it was behind the dwelling, but it would require quite a bit of excavation and impede access. Chair Conescu then asked if there would be a foundation. Mr. Sisson stated there would be a monolithic concrete slab foundation.

Public comment

Joe Coughlin (23 Pheasant Run) spoke in favor of the petition. He said he had worked extensively with Mr. Sisson on the placement of the structure. He has no issue with the structure or its placement.

The Board voted 5-0-0 to find that the petitioner's responses to the statutory criteria are sufficient, proved each criterion is met, and the Board adopts the petitioner's responses as the Board's findings of fact, and further, to grant the variance under Section 3.05 of the Zoning Ordinance to permit construction of a 30'x35' (1,050 square foot) metal structure 4 feet from side property line (at its closest location) whereas 15 feet is required, on a motion made by Lynn Christensen and seconded by Brian Dano.

Findings of Fact:

- 1. Granting the variance would not be contrary to the public interest because:**
The chosen location is largely out of eyesight of neighbors and near an unused portion of neighboring properties.
- 2. The spirit of the ordinance is observed because:**
The proposed building would not abut any other structures, fence lines, or impeded access for any neighbors.
- 3. Granting the variance would do substantial justice because:**
Alternative locations would change the curb appeal and overall view of neighboring properties.
- 4. Granting the variance would not diminish the values of surrounding properties because:** *The proposed location is largely out of sight for neighbors and is in an otherwise unused portion of neighboring properties.*
- 5. Unnecessary hardship:**
 - a. Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how 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:**

The dwelling in lot 7D/299 is not square to the lot/property lines. Aligning the proposed building with the dwelling and the existing driveway causes the proposed building to extend beyond the 15-foot setback line to the neighboring property.

3. **Tom Sudol (petitioner/owner)** – Variance under Section 3.05 of the Zoning Ordinance to permit construction of a home addition 19.4 feet from the front property line whereas 30 feet is required. The parcel is located at 66 Baboosic Lake Road in the R-4 (Residential, by soils), Aquifer Conservation, and Elderly Housing Overlay Districts. Tax Map 5C, Lot 563. Case # ZBA 2023-34.

Tom Sudol presented the petition. He explained he is looking to construct a home addition. The addition would remove the existing three season porch and create additional living space as well as a heated entry way. Chair Conescu asked if the addition would have the same footprint as the existing three season porch. Mr. Sudol said no, it would be an expansion. Ms. Christensen said it would include the current footprint but the walls would be expanded as well.

Mr. Niles asked what the room layout of the addition would be. Mr. Sudol said the space that is currently the three season porch will be an extension of the kitchen and the living room. The part of the structure extending beyond the setback will be an entry way. Chair Conescu asked Mr. Sudol to clarify how the addition would be a substantial justice for him if it were granted. Mr. Sudol explained it would create a heated entry way and allow for additional kitchen and dining area which are currently very small for a family of six.

No public comment was received.

The Board voted 5-0-0 to find that the petitioner’s responses to the statutory criteria are sufficient, proved each criterion is met, and the Board adopts the petitioner’s responses as the Board’s findings of fact, and further, to grant the variance under Section 3.05 of the Zoning Ordinance to permit construction of a home addition 19.4 feet from the front property line whereas 30 feet is required, on a motion made by Brian Dano and seconded by Lynn Christensen.

Findings of Fact:

1. ***Granting the variance would not be contrary to the public interest because:***
The addition will not threaten the health, safety, or general welfare of the community.
2. ***The spirit of the ordinance is observed because:***
The home addition will be aesthetically pleasing and will lend itself to the overall character of the neighborhood.
3. ***Granting the variance would do substantial justice because:***
Other homes in the neighborhood have additions or garages past the required setbacks and have been granted variances.
4. ***Granting the variance would not diminish the values of surrounding properties because:***
The home addition will be aesthetically pleasing and will include plantings and landscaping to improve the overall look of the property, therefore increasing the property value of the home and those around it.

5. Unnecessary hardship:

- a. Owing to 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 double frontage lot with 2 front, 2 side, and no rear setbacks. The home faces the frontage on Baboosic Lake Rd. The proposed addition will extend towards the frontage on Currier Rd while maintaining ample space for Town and utility access to the area. Alerting the proposed addition to fit within the setback requirements by building either to the North or to the South would imposed unnecessary financial burden. Building to the South would also restrict direct access to the property's back yard area.

- b. The proposed use in a reasonable one because:**

The addition will create additional living space and a better entrance area to the home. The only driveway on the property is along Currier Rd., making that side of the house the main entrance for our family and for visitors, deliveries, etc.

- 4. Madi Choueiri (petitioner/owner) – Variance under Section 2.02.13.E.4 (b) of the Zoning Ordinance to permit a root cellar 12 feet from the side property line whereas 15 feet is required. The parcel is located at 480 Daniel Webster Highway in the C-1 (Limited Commercial), Aquifer Conservation, Elderly Housing Overlay, and Town Center Overlay Districts. Tax Map 5D-3, Lot 46. Case # ZBA 2023-35.**

Madi Choueiri presented the petition. He explained he is looking to construct a root cellar as a storage area for a restaurant at 480 DW Highway. Ms. Christensen asked where the root cellar was being constructed. Mr. Choueiri pointed out the location of the cellar on the plans provided in the Zoning Board's packets. The proposed root cellar is to be located on the northerly boundary of the property, behind the building. He then went through the variance criteria.

Ms. Christensen asked what would be stored in the root cellar. Mr. Choueiri responded that extra chairs, tables, and other large items that don't need to be used right away. Ms. Christensen said her understanding is that root cellars are typically used for storing vegetables. Mr. Choueiri said he would not be storing any vegetables; he has other areas for that near the kitchen. He confirmed the root cellar would be underground and would be used for storage of large items as he previously mentioned.

No public comment was received.

The Board voted 5-0-0 to find that the petitioner's responses to the statutory criteria are sufficient, proved each criterion is met, and the Board adopts the petitioner's responses as the Board's findings of fact, and further, to grant the variance under Section 2.02.13.E.4 (b) of the Zoning Ordinance to permit a root cellar 12 feet from the side property line whereas 15 feet is required, subject to the condition that the petitioner shall obtain approval for the proposed root cellar, as deemed appropriate by the Community Development Department, on a motion made by Lynn Christensen and seconded by Ben Niles.

Findings of Fact:

- 1. Granting the variance would not be contrary to the public interest because:**
It will not affect any surrounding properties.
- 2. The spirit of the ordinance is observed because:**
This will not threaten public health, safety, or welfare and will not injure public rights.
- 3. Granting the variance would do substantial justice because:**
There will be no harm to the general public as it will only be used a storage area.
- 4. Granting the variance would not diminish the values of surrounding properties because:** *It will not diminish any of the values surrounding the public, or any surrounding properties because they will not be impacted.*
- 5. Unnecessary hardship:**
 - a. Owing to 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 purpose is very straight forward, it serves in a very fair and substantial way. It will only be used as a storage area for the restaurant.
 - b. The proposed use is reasonable because:**
It will be used to store restaurant stock and supplies.

- 5. Mary Ann Picard and Rachel Cecile Picard Revocable Trust (petitioners/owners) –** Variance under Section 2.02.4.B of the Zoning Ordinance to permit a 3-unit multifamily residential building in the I-1 (Industrial) District. The parcel is located at 44 Daniel Webster Highway in the I-1 (Industrial), Aquifer Conservation, and Planned Residential Overlay Districts. Tax Map 2E, Lot 1. Case # ZBA 2023-36.

Morgan Hollis of Gottesman & Hollis presented the petition. He stated that the current house is 69 years old and is on an extremely small lot. The home currently serves as a rental home but needs quite a bit of work. Because of its size and location, it is not ideal as a single family home. The property doesn't have to match the current I-1 (Industrial) District setbacks since it is a pre-existing non-conforming lot. The lot allows for a building the size of 40x90 square feet, but there is not sufficient space for an industrial use.

The proposal is to construct three town-house units. These units would fit in the required building box and also allow room for adequate parking. Each unit would be 1,500 square feet with three bedrooms and 2 ½ baths and would comply with setbacks. However, a variance is required as residential uses are not permitted in the I-1 (Industrial) District. Mr. Hollis explained they do not believe the other permitted industrial uses are appropriate for this specific lot. Ms. Christensen asked for clarification if the petitioner is looking to raze the existing house and construct one building with three town-houses units in it. Mr. Hollis confirmed this was correct.

Mr. Niles asked about the planned rental rate for these units. Mr. Hollis said he wasn't sure, but believed it would be market-rate for a 3-bedroom unit. Mr. Hollis added that the petitioner was still not sure if they would be units for rental or for purchase. Mr. von Schoen asked for clarification. He said the way the application was written was confusing because it stated three multi-family units. Mr. Hollis confirmed the proposal is for three units within one building.

No public comment was received.

The Board voted 5-0-0 to find that the petitioner's responses to the statutory criteria are sufficient, proved each criterion is met, and the Board adopts the petitioner's responses as the Board's findings of fact, and further, to grant the variance under Section 2.02.4.B of the Zoning Ordinance to permit a 3-unit multifamily residential building in the I-1 (Industrial) District, subject to the condition that the petitioner shall obtain Planning Board approval for the proposed 3-unit multifamily dwelling, on a motion made by Brian Dano and seconded by Ben Niles.

Findings of Fact:

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

The public interest is to keep like kind interests together. This is a pre-existing non-conforming lot on DW Highway surrounded by condominiums, Dunkin', and self-storage units across the street. The uses which are permitted in the industrial zone would not be suitable for this lot given its proximity to residential units and the size of the lot. Granting the variance will not alter the character of the neighborhood as there are multi-family housing abutting the property nor create a threat to public or private health, safety, or welfare. Allowing multi-family housing on this lot is not contrary to the public interest.

2. The spirit of the ordinance is observed because:

The lot is zoned I-1, where allows for manufacturing, offices, churches, gas stations, repair shops, and other light industrial uses, not multi-family housing. However, this undersized non-conforming lot is currently occupied by a single family residence and surrounded on two sides by property owned by a condominium. The purpose of the Zoning Ordinance is to keep similar uses together to protect property values and protect against adverse impacts on neighbors. The proposed multi-family building will not alter the essential character of the neighborhood and will not threaten public health, safety, or welfare.

3. Granting the variance would do substantial justice because:

The lot is in an existing non-conforming lot with multi-family condominium development to the rear and self-storage and multi-family apartments across the street. If a variance to allow a three-unit multi-family building is granted, there will be no harm to the general public or any other individual. The proposed three-unit building would be in keeping with the essential character of the neighborhood and would not threaten public health, safety, or welfare. The building fits within the existing non-conforming use setback requirements and there is public water and sewer on site.

4. Granting the variance would not diminish the values of surrounding properties because:

Granting the variance will not cause any real change to the neighborhood. There is a Dunkin' on one side of the property, a multi-family condominium to the rear (with open space abutting the site) and a self-storage facility and multi-family apartments across Daniel Webster Highway. The property is currently an older single family home and the proposed

increased density will have no adverse effect upon the values of the surrounding properties as the proposed use will be similar in nature to the existing properties.

5. Unnecessary hardship:

- a. Owing to 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 unique in that it is an extremely small non-conforming parcel surrounding by a Dunkin', a condominium development behind and above it, and self-storage across Daniel Webster Highway. Enforcing the ordinance to require only uses permitted in industrial district which are not functional for this lot in this location has no fair and substantial relationship to the general welfare of the Town while making it an attractive place to live or the specific objectives of the Industrial I-1 District, to allow for establishment of manufacturing, employment opportunities, consider truck access and availability of utilities, with high density activities to be concentrated therein. The permitted uses do not belong on this lot, rather multi-family uses should be permitted to match the character of the neighborhood which is not industrial in nature, as this lot is well-suited for and surrounded by existing multi-family residential uses and it would be unreasonable to require a single family use to continue on this lot. The proposed use is similar to the residential uses which surrounds it and is a reasonable use.

OR

- 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:**

The lot is one of the few remaining single family homes in the neighborhood, and one of the only single family homes located close to Daniel Webster Highway with topography that slopes up to the condominium behind it. The abutting property is fully developed so it is not possible to acquire land to reduce or eliminate the non-conformity. None of the uses permitted in the industrial district are reasonable due to the size, location, topography, and surrounding uses. Relief is necessary and the proposed use is reasonable.

6. Discussion/possible action regarding other items of concern

Ms. Christensen noted the Zoning Board is in need of members and encouraged any members of the public watching to look into volunteering. Members need to be registered voters in the Town of Merrimack.

7. Approval of Minutes – October 25, 2023

The Board voted 4-0-1 to approve the minutes of October 25, 2023, on a motion made by Ben Niles and seconded by Brian Dano. Brian Dano abstained.

8. Adjourn

The Board voted 5-0-0 to adjourn at 7:15 p.m., on a motion made by Lynn Christensen and seconded by Brian Dano.