



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT

APPROVED MINUTES

OCTOBER 26, 2016

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

Members absent: Richard Conescu and Lynn Christensen.

Staff present: Planning and Zoning Administrator Jillian Harris.

1. Call to Order

Patrick Dwyer called the meeting to order at 7:00 p.m. and designated Leonard Worster to sit for Lynn Christensen.

2. Roll Call

Tony Pellegrino led the pledge of allegiance. Patrick Dwyer read the preamble and swore in members of the public who would be testifying.

- 3. Chad Brannon, PE of Fieldstone Land Consultants, PLLC. (petitioner) and Brett W. Vaughn Revocable Trust (owner) —** Variances under Section 3.02 of the Zoning Ordinance to permit an 12-lot subdivision with a lot with an area of 89,733 s.f. whereas 100,000 s.f. is required, a lot with a frontage of 107.80 feet whereas 250 feet is required, a lot with a frontage of 75 feet whereas 250 feet is required and a lot 8 with a frontage 89.20 feet whereas 250 feet is required. The parcel is located at 123 Wilson Hill Road in the R-1 (Residential) District by Zoning Map. Tax Map 4A, Lot 023. Case # 2016-32, 33, 34, and 35. ***This item is continued from the September 28, 2016 meeting.***

Attorney Greg Michael, Bernstein Shur, opted to proceed with only four Board members present. The approximately 60-acre parcel has one lot with a house on the northwest corner and 11 lots that would create a new subdivision. There is over 500' of frontage on Wilson Hill Road. A cul-de-sac would be built. The issue is that Lot 1 has slightly less acreage than required. It is a unique lot that abuts two roads. The subdivision lots would be serviced by well and septic systems. The Planning Board preferred not to have a flag lot and that this layout made more sense. Attorney Michael said a conservation easement of over eight acres would be created that would act as a further buffer for the abutters. The Planning Board also prefers the traditional layout here rather than a cluster design. The applicant could do that without appearing before the Zoning Board of Adjustment (ZBA), but it is better planning to get the variances. Attorney Michael showed why other possible plans are not as good, even though no

variances would be needed. Some buffer area would be lost. The applicant could create more conforming lots with a through road, but the petitioner considers Wilson Hill to be a scenic road where there should be no cut-throughs.

Attorney Michael read the statutory criteria into the record.

As to #1, public interest, Patrick Dwyer asked how it was decided to create 11 lots rather than fewer. Attorney Michael stated that it was to develop a better plan and to make reasonable use of the applicant's land. Eleven lots on 60 acres is reasonable; five lots is not.

Public comment

James Wood, 119 Wilson Hill Road, wants to limit problems between properties. The applicant worked hard on the water issues at the lower end. James Wood fully supports the property lines to give abutters space between wells. This is the best plan for the abutters.

Tony Cappuccio, 111 Wilson Hill Road, asked the rationale for requiring 100,000 square feet of contiguous upland area and 250' of frontage. The applicant should explain why the requirements do not apply. Jillian Harris said the requirements are primarily for soils-based zoning and buffering. Tony Cappuccio noted that this is the fourth plan. He has issues with water availability, runoff and quality in the new plan. The developer will not allow blasting or overbuilding septic systems. How could that become legally binding? This proposal and Planning Board concerns are linked. Chairman Dwyer explained that these are Planning Board issues.

Patrick Dwyer asked whether all homes would have wells. Attorney Michael replied in the affirmative. The applicant will try his best not to impact other peoples' wells. He needs a variance for area and frontage before returning to the Planning Board.

Leonard Worster said the application is pretty straightforward. A cul-de-sac would mean lots with less frontage, which the ZBA sees all the time. Tony Pellegrino said this is the best plan and the neighbors seem to agree. Fran L'Heureux said it is a great plan and the neighbors are not testifying against it.

The Board voted 4-0-0 to grant the variances, with the condition that the applicant shall obtain subdivision approval from the Planning Board for the proposed 12-lot subdivision, on a motion made by Fran L'Heureux and seconded by Tony Pellegrino.

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 property. Lot area and frontage are consistent with the surrounding area, as many of the lots along Wilson Hill Road possess closer to 100' feet of frontage with lot size ranging from 1.5-2.5 acres. The proposal would not alter the essential character of the neighborhood nor threaten the health, safety or general welfare of the public. The plan would provide additional buffering, less road and a reduced total footprint of land alteration versus other conforming subdivision concepts;

2. The spirit of the Ordinance is observed because the subdivision is reasonable in relation to the size of the parcel, as are the size of the lots and placement of the proposed building sites in relation to the surrounding lots. With an irregularly shaped parcel off a cul-de-sac, frontage becomes less critical, especially when there is adequate separation compared to that of a lot of conforming frontage. The proposal would not alter the essential character of the neighborhood nor threaten the health, safety or general welfare of the public;
3. Granting this variance would do substantial justice because it would allow for the productive use of the land and allow the applicant to develop his property in a fashion that would balance the interests of the neighbors. The plan reflects feedback from the Planning Board and the neighborhood. Many of the lots along Wilson Hill Road possess closer to 100' of frontage with lot sizes ranging from 1.5-2.5 acres. The proposal would not alter the essential character of the neighborhood nor threaten the health, safety or general welfare of the public. Denial would result in a loss to the applicant and provide no apparent gain to the general public, since it would ultimately result in consideration of other development plan options;
4. The values of the surrounding properties would not be diminished because new construction often has positive impacts on surrounding property values. This proposal would create larger lots, guarantee buffering and connectivity to nearby conservation land, maintain a large undeveloped corridor and maximize development potential 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:
 - 1) No fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property because the property's geometry and size are unique. Building sites for the lots with reduced frontages would be farther off the road where the lots are wide and would provide for spacing and buffering between homes that is consistent with conventional lots. This style of development is consistent with the surroundings. The proposal is in part being sought at the request of neighboring property owners and tries to provide substantial buffering to the surrounding properties. With an irregularly shaped parcel, frontage becomes less critical, especially when adequate sized lots with separation from the building site to adjacent lots are provided;
 - 2) The proposed use is a reasonable one because it would provide for safe access, reasonable size lots and adequate buffering. It would be consistent with its surroundings and would have no negative impact on the public. It would preserve more undeveloped land, provide buffering in the neighborhood, reduce overall impacts, propose less roadway and would not maximize the development potential for the property. Preserving large

acreage would be in the public interest, given other alternatives that contemplate a larger development with no variances.

- 4. Peter McClintick of McClintick Real Estate, Inc. (petitioner/owner)** — Variance under Section 2.02.13E.46 of the Zoning Ordinance to permit a Two-Family Residence 11 feet from the side property line whereas 15 feet is required. The parcel is located at 448 Daniel Webster Highway in the C-2(General Commercial), Aquifer Conservation and Town Center Overlay Districts. Tax Map 5D-4, Lot 053. Case # 2016-36.

Peter McClintick, McClintick Real Estate, Inc., opted to proceed with only four Board members present. He wants to demolish the existing dilapidated structure dated approximately 1850 and replace it with a two-story two-family 24'x56' residential duplex. He seeks a 4' variance on the north side of the property where only a 25'-wide structure is allowed. His building almost touches the one next to it. There would be six parking spaces, town water and natural gas. There would be a common foyer with stairs in the front and separate stairs in the back. Each unit would have egress from both front and back and access to half of the basement.

Peter McClintick read the statutory criteria into the record.

There was no public comment.

The Board voted 4-0-0 to grant the variance, with the condition that the applicant obtain an updated right-of-way permit from the Public Works Department (if determined applicable) for any modification to the access to D.W. Highway, on a motion made by Tony Pellegrino 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 proposal would reduce the existing non-conformity and increase the distance between the property and the abutting property to the south. The existing property is about 6' from the abutting property. Residential uses are permitted in the Town Overlay District. There are several multi-family homes in the area;
2. The spirit of the Ordinance is observed because the proposed property would enhance the appearance of the area, increase property values in the area and would not change the character of the neighborhood;
3. Granting this variance would do substantial justice because it would allow reasonable use of the property, provide more rental housing in the Town Center and replace an existing property that is in poor condition;
4. The values of the surrounding properties would not be diminished because the neighborhood contains multi-family homes. The proposed property would enhance the values in the area;
5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- 1) No fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property because the current side setback requirements severely restrict development of the lot, which is 50' wide. Side setback requirements would allow only a 20'-wide building, which is not a functional layout;
- 2) The proposed use is a reasonable one because it is allowed in the Town Overlay District.

5. Jenn Robichaud of Barlo Signs (petitioner) and Hotel at Daniel Webster, LLC. (owner) — Variance under Section 17.10.3 of the Zoning Ordinance to permit the addition of a 48 s.f. sign to an existing ground sign whereas the combined square footage of the existing signage already exceeds the permitted allowance by the sign ordinance. 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 # 2016-37.

Paul Martin, Barlo Signs, opted to proceed with only four Board members present. He said the applicant wants to advertise the restaurant at the Residences at Daniel Webster (former Residence Inn). The restaurant notice would be added to the sign, which would not be changed. Paul Martin read the statutory criteria into the record.

Fran L'Heureux was concerned about adequate parking space. Todd Wilson, Diversified Funding, Inc., said the lines would be restriped and more parking spaces created. Jillian Harris informed the ZBA the plan would meet parking requirements, as determined during the Planning Board hearing and waiver of full site plan review granted to the applicant this year.

There was no public comment.

The Board voted 3-0-1 to grant the variance, on a motion made by Tony Pellegrino and seconded by Leonard Worster. Fran L'Heureux abstained.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the proposed addition to the existing sign is minimal and within the scale of the existing pylon sign. The addition of two small panels would not significantly alter the viewership of this site to the public, which appreciates signage that is in harmony with its surroundings and assists in identifying the services of the Residence Inn site in a clean, clear way;
2. The spirit of the Ordinance is observed because the public would know that the property has a fully functioning restaurant. Clarifying what type of overnight services are provided does not contradict the spirit of the Ordinance and supports its attempts to help businesses identify their services;
3. Granting this variance would do substantial justice because the public needs the viewing time the sign would allow motorists travelling on the very busy and fast-

moving D.W. Highway. The sign would help motorists understand the uniqueness of the property that allows for extended services, which is different from hotels that provide minimal amenities, and that this site is offering an on-site restaurant that is open to the public. This is a special situation where a restaurant is being added to an existing business. Without identification, the public would not know this local business an option for their dining choices;

4. The values of the surrounding properties would not be diminished because the Residence Inn is located on a highly-traveled thoroughfare surrounded by businesses. The addition of minimal signage would help motorists to identify the services of this location quickly and to enter the property safely. A successful hotel and restaurant would benefit surrounding properties;
5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
 - 1) No fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property because the Residence Inn site is unique in that signs on the property attempt to attract motorists who typically are not Merrimack residents. The Inn's success thrives on its ability to attract the wayfinding public and identify this site's services. The sign would announce to the public that an on-site restaurant is available to them. It is a new business hoping to grow and prosper in Merrimack. Without signage motorist would not consider this site for their dining decisions. The restaurant could not thrive on catering exclusively to customers staying at the Residence Inn. The size of the property, its location on a high-speed, high-volume thoroughfare, its need to attract typically non-resident clientele, and the addition of a new restaurant are unique;
 - 2) The proposed use is a reasonable one because a large-scale extended stay hotel adding restaurant services wants to identify its new services. The majority of people traveling D.W. Highway already recognize the Residence Inn's location. They need to know that this site is a distinct away-from-home experience that now offers an on-site restaurant that is open to the public.

- 6. Skip John M. Moir, Jr. of Skippers Marine Corp. (petitioner/owner)** — Variance under Section 3.02.A (Note 3) of the Zoning Ordinance to permit parking within 50 feet of Daniel Webster Highway whereas a 50 foot setback is required. The parcel is located at 54 Daniel Webster Highway in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 2D, Lot 029. Case # 2016-38.

Skip John M. Moir, Jr., opted to proceed with only four Board members present and read the statutory criteria into the record.

As to #1, public interest, Tony Pellegrino asked if the parking is for boats or customers. Skip Moir explained that customers leave boats to be moved to storage. There is no

parking for sales; it is a service-oriented business. The business caters to seasonal needs; the yard is slow in some months. Skip Moir is now draining boats, repairing damage and storing boats for the winter. Sometimes he stores 10-15 boats and has some to fix. The numbers change yearly. He offers quality assurance and keeps safety in mind by not expanding. The interior is only for repairs. All boats are stored outside.

Leonard Worster and Patrick Dwyer asked if there is a definitive number of feet the parking is from D.W. Highway and a buffer right-of-way. Skip Moir said there is a gate. In 2009 he received approval to rearrange the yard up to that gate/fence line. He now needs more space (10'-20') for smaller boats. He is not sure where the 50' line is. He had been doing this since he opened the business and did not realize there was a violation. Jillian Harris explained that the variance would legitimize what the applicant has been doing for a while. Leonard Worster said the Planning Board can decide about the number of feet. Jillian Harris said the gate is approximately 30' from the ROW.

There was no public comment.

The Board voted 4-0-0 to grant the variance, with the condition that the petitioner shall obtain Planning Board approval for the proposed revisions to the site plan, on a motion made by Fran L'Heureux and seconded by Tony Pellegrino.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the public would benefit from the ability to see boats for sale and to allow them to have their boats brought in when needed to maintain their vessels properly. Quick service is needed to accommodate municipal boats, to keep customers from parking in the road and to manage boats in the yard;
2. The spirit of the Ordinance is observed because as much boat parking as possible is needed to maintain financial stability, to employ people and to pay bills. Customers drop their boats off in a circle and the applicant parks then on each side, keeping the circle open. Boats are stored in back of the building and service is in front. Extra space keeps the business organized. Customers and their children must be kept safe. The number of boats requested to be stored in the yard is essential to stay in business;
3. Granting this variance would do substantial justice because it would keep customers and workers safe and give the yard flexibility to organize. Boats come in many different sizes, widths and lengths. It is necessary to fit them wherever is best;
4. The values of the surrounding properties would not be diminished because the business has existed since 2004. Property value in the area is going up and having another quality of life service locally benefits the Fire Department, citizens and families who enjoy boating. The aging population in the community needs these services more than ever;

5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- 1) No fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property because the property is narrow and within four miles of others on the same road. There are vehicles for sale that are closer to D.W. Highway than what is proposed. This property is even narrower than those. Being closer is a great help in providing services. One-third of the lot is taken up by the building and the seasonal business. It has been set up this way for 11 years with no impact;
- 2) The proposed use is a reasonable one because it increases the opportunity to see where to get marine services. There is no impact to the visibility on the Highway. The variance would allow boat management in the yard sufficient to stay in business and look more like a boat yard.

7. Discussion/possible action regarding other items of concern

Tony Pellegrino was concerned that there are not enough alternates on the Board, and it should be advertised again.

8. Approval of Minutes — September 28, 2016

The minutes of August 31, 2016, were approved, by a vote of 3-0-1, on a motion made by Fran L'Heureux and seconded by Tony Pellegrino. Leonard Worster abstained.

The minutes of September 28, 2016, were approved, by a vote of 3-0-1, on a motion made by Fran L'Heureux and seconded by Leonard Worster. Tony Pellegrino abstained.

9. Adjourn

The meeting was adjourned at 8:25 p.m., by a vote of 4-0-0, on a motion made by Tony Pellegrino and seconded by Fran L'Heureux.