



Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

**MERRIMACK ZONING BOARD OF ADJUSTMENT
VIRTUAL MEETING APPROVED MINUTES
WEDNESDAY, SEPTEMBER 30, 2020
7:00 P.M.**

Board members present: Richard Conescu, Kathleen Stroud, Patrick Dwyer Rod Buckley and Alternate Ben Niles.

Board members absent: Lynn Christensen, and Alternate Drew Duffy.

Staff present: Assistant Planner, Casey Wolfe

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

As stated on the agenda, the meeting was aired live on Merrimack TV. Telephone access was available for members of the public wishing to speak during the Public Hearing or provide public comment. Also identified on the agenda was the opportunity for general public comment to be submitted leading up to the start of the meeting via email to CommDev@MerrimackNH.Gov.

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

1. Call to Order

Richard Conescu called the meeting to order at 7:04 p.m.

Richard Conescu read the procedures and processes for the virtual meeting. Patrick Dwyer read the preamble.

Richard Conescu appointed Ben Niles to sit for Lynn Christensen.

2. Roll Call

Richard Conescu

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

Ben Niles

Stated he was participating from home and that his wife and grandchildren were in the house with him.

Kathy Stroud

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

Patrick Dwyer

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

Rod Buckley

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

3. **RCL Realty, LLC (petitioner/owner)** – Appeal of Administrative Decision that determined pre-existing nonconforming lots of record are required to conform to current zoning requirements upon the modification of the lot following a lot line adjustment even though such adjustments would result in each lot becoming less nonconforming than presently constituted. The parcels are located at Elizabeth Drive, Charles Road and Squires Drive in the R-1 (Residential by soils) and R-2 (Residential) Districts. Tax Map 3A, Lots 010, 013, 014, 015, 025, and 026. Case # ZBA 2020-16. **This item is continued from the July 29 and August 26, 2020 meetings.**

At the petitioner's request, the Board voted 5-0-0, on a roll call vote, to continue this item until October 28, 2020 on a motion made by Kathy Stroud and seconded by Patrick Dwyer.

4. **As Life Goes On, LLC (petitioner) and Laura Benson (owner)** - Appeal of Administrative Decision that determined an assisted living group home is not exempt from the three-acre minimum lot area requirement of Section 2.02.9(b) (6) of the Zoning Ordinance. The parcel is located at 585 Daniel Webster Highway in the C-1 (Limited Commercial) and R-4 (Residential), Aquifer Conservation, and Elderly Housing Overlay Districts. Tax Map 6D-1, Lot 046. Case # ZBA 2020-23. **This item is continued from the July 29 and August 26, 2020 meeting.**

Withdrawn by petitioner.

5. **John Downie (petitioner/owner)** – Variance under Section 2.02.1.A.4.e of the Zoning Ordinance to permit the petitioner to request from the Planning Board a Conditional Use Permit to allow for the installation of an Accessory Dwelling Unit in an existing detached garage with 1,039 sq. ft. whereas 1,000 sq. ft is permitted. The parcel is located at 2 Landau Way in the R-2 (Residential) District. Tax Map 3A, Lot 089. Case # ZBA 2020-30.

John Downie (petitioner/owner) explained that he would like to add an Accessory Dwelling Unit above his existing detached garage to allow his elderly in-laws to live there. Mr. Downie added that the space is already partially finished and just needs to be converted to an apartment and by doing so, will allow his in-laws to eliminate their current mortgage.

Mr. Downie read through the statutory criteria (outlined below) and clarified that the substantial justice is to move his in-laws close to their home so they can help with their care. Casey Wolfe clarified for the Board that this project is for a detached ADU which is allowed in Merrimack via Conditional Use Permit. Patrick Dwyer asked if the ADU

could eventually be rented out as an apartment and Casey confirmed that yes, it could be. Mr. Downie responded by stating he only plans to use it for his in-laws. Casey Wolfe also clarified that separate utilities are not permitted for ADUs and the restrictive covenant that is signed by the owner and recorded at the Hillsborough County Registry of Deeds prevents the ADU from being sold separately from the primary residence.

There was no public comment.

The Board voted 5-0-0, on a roll call vote, to grant the variance, on a motion made by Kathy Stroud and seconded by Rod Buckley with the following condition:

- 1. The petitioner shall obtain approval from the Planning Board for the proposed detached ADU.**

Case #2020-30 Findings of Fact:

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

It will not alter the essential character of the locality or threaten public health, safety or welfare as the garage already exists.

2. The spirit of the ordinance is observed because:

There will be no adverse effect on the public interest, health, safety or welfare as the garage already exists.

3. Granting the variance would do substantial justice because:

This does not adversely affect the general public.

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

The garage already exists and will only be using the second level for the ADU.

5. Unnecessary Hardship

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 garage already exists therefore it can't be made smaller. It would have no impact on the general public, and has ample parking in the driveway and garages.

- 6. Michael LeCornec (petitioner/owner) –** Special Exception under Section 3.09 of the Zoning Ordinance to permit the construction of a second story onto an existing single family dwelling, constructed before June 29, 1953. The parcel is located at 154 Amherst Road in the R-1 (Residential, by map) District. Tax Map 4B, Lot 142. Case # ZBA 2020-31.

Michael LeCornec (petitioner/owner) explained that he is seeking a special exception to add an addition to his single family dwelling to add more living space for his family.

There was no public comment.

The Board voted 5-0-0 on a roll call vote to grant the Special Exception on a motion made by Patrick Dwyer and seconded by Kathy Stroud.

Case # 2020-31 Findings of Fact:

1. The additions, alterations or improvements are for a use currently permitted within the Zoning district because:

My house is currently legal non-conforming built prior to 1953.

2. The additions, alterations or improvements are ordinarily and customarily associated with the existing building and/or use because:

We will be adding a second floor and keeping the width of the house the same.

3. The additions, alterations or improvements would serve to promote the reuse, restoration, rehabilitation or otherwise enhance an existing building or structure, especially an historic or potentially historic building or structure because:

There will be a second floor on the house, enhancing the look of the property.

4. The additions, alterations or improvements would not result in increased hazards to vehicles or pedestrians; impair or impede emergency vehicle access or the provision of emergency services, or encroach on planned right of way corridors because:

The foundation is staying the same. Only second floor will be wider front to back, the width is not changing.

5. The additions, alterations or improvements would not result in unreasonable impacts to abutting properties by way of increased noise, visual blight, odor or other nuisance because:

The width of the house is staying the same size. Only the front and back are enlarging by 4 feet, which I have plenty of room on the setback requirement.

6. Adequate parking and other necessary support facilities would be provided for the existing building or structure as well as for the proposed addition, alteration or improvement because:

The addition is not imposing on any of the parking spaces in the driveway.

7. The proposed improvement would have been allowed by right prior to adoption of the zoning ordinance provision at issue because:

The house was built prior to 1953 when the ordinance was put in effect.

8. The proposed improvement cannot reasonably be constructed in a differing way or in a differing portion of the property so as to comply with existing setback requirements because:

The second floor is not wider than the current house and is not encroaching any closer with the addition.

- 7. Michael Ericsson (petitioner/owner)** – Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a covered entry and stairway with a front setback of 20 feet whereas 30 feet is required. The parcel is located at 4 Cathy Street in the R-1 (Residential, by soils), and Aquifer Conservation Districts. Tax Map 6D, Lot 094. Case # ZBA 2020-32.

Michael Ericsson (petitioner/owner) presented the project to the Board and explained that he is seeking the variance to replace the stairs and landing that lead to the entrance of his home because the current masonry stairs are dilapidated and unsafe.

There was no public comment.

The Board voted 5-0-0, on a roll call vote, to grant the variance on a motion made by Rod Buckley and seconded by Kathy Stroud.

Case #2020-32 Findings of Fact:

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

Literal enforcement of the ordinance will result in unnecessary hardship by not allowing access to our front entrance.

2. The spirit of the ordinance is observed because:

We are seeking a variance to replace an existing stairs and landing, not create a new entrance.

3. Granting the variance would do substantial justice because:

The variance provides reasonable access to the front entrance of the dwelling. Without the variance there is no way to construct stairs and a landing without encroaching on the front setback.

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

The construction of the entryway will not change or diminish the character of the surrounding properties. By replacing the existing dilapidated stairs it will improve the house and neighborhood.

5. Unnecessary Hardship

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 variance provides reasonable access to the front entrance of the dwelling. Without the variance, we would not be able to access our front door.

- 8. Executive Building Systems, Inc. (petitioner) and ANMI Merrimack Realty, LLC (owner)** – Variance under Section 2.02.1 of the Zoning Ordinance to permit professional offices in the R-1 (Residential, by soils) District. The parcel is located at 25 Craftsman Lane in the R-1 (Residential, by soils), Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 2A, Lot 005. Case # ZBA 2020-33.

Attorney David Campbell presented the project on behalf of the petitioner. Mr. Campbell explained that the petitioner (Executive Building Systems, Inc.) is an existing business within the Town of Merrimack and are looking to relocate to 25 Craftsman Lane. The variance in question is to allow the employees of Executive Building Systems, Inc. (a drywall business) to use part of the parcel on 25 Craftsman Lane as office space. Mr. Campbell walked the Board through the conceptual site layout to demonstrate the proposed location of the offices. He also pointed out that the parcel has historically been used as commercial space and cited several other commercial businesses that have been at that location in the past.

Mr. Campbell read through the statutory criteria (outlined below) and paused to answer questions from the Board. Patrick Dwyer asked if there is any manufacturing planned for the site. Mr. Campbell responded by explaining that it will be office and storage only and no manufacturing. The business typically gets one large delivery each quarter and the only other traffic would be the work trucks and employees coming and going from the site. He confirmed that the business operates Monday through Friday 7 a.m. until approximately 4 p.m.

There was no public comment.

The Board voted 5-0-0, on a roll call vote, to grant the variance on a motion made by Kathy Stroud and seconded by Rod Buckley with the following condition:

- 1) The petitioner shall obtain site plan approval from the Planning Board for the proposed uses.**

Case 2020-33 Findings of Fact:

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

The proposed commercial use is not contrary to the public interest since it is consistent with prior historical commercial uses on the property. The exterior of the building will be repaired and improved, which will improve the aesthetic of the site, but will not alter the essential character of the property or the surrounding neighborhood.

Approval of the variance is in the public interest because it will allow the Town of Merrimack to retain an on-going successful business that has been located on Star Drive for the past four years.

The use will not affect the safety, health and quiet enjoyment of the neighbor's property or the public.

2. The spirit of the ordinance is observed because:

The proposed professional office use is consistent with what has historically been a commercial property. The size and configuration of the existing building will easily accommodate offices, which make the use reasonable and appropriate for this site.

The use is keeping with the history of the parcel and the neighborhood and the exterior renovations will maintain and protect the property values of the surrounding properties.

3. Granting the variance would do substantial justice because:

Granting the Petitioner's variance application would provide substantial justice by allowing a reasonable use on a reoccurring commercial property consistent with its history, whereas strict adherence to the Zoning Ordinance would prohibit the proposed use.

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

The proposed office and warehouse uses both can be accommodated within the existing structure which will maintain the essential character of the neighborhood. Aesthetic improvements to the exterior will only enhance, not diminish property values. Additionally, the proposed office use generates far less traffic than prior retail use.

5. Unnecessary Hardship

a. Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property:

Given the property and the building are historically configured to operate a commercial use; strict conformance to the Zoning ordinance would create an unnecessary hardship and restriction on the proposed office use. Alternatively, strict adherence to the current Zoning Ordinance would require that a complete redevelopment of the building and site to accommodate residential use.

b. The proposed use is a reasonable one because:

It allows for the continued use of the site within a building that is appropriately sized, constructed and configured to accommodate the proposed use(s) while maintaining the current and essential character of the neighborhood.

- 9. Executive Building Systems, Inc. (petitioner) and ANMI Merrimack Realty, LLC (owner)** – Variance under Section 2.02.1 of the Zoning Ordinance to permit a warehouse use in the R-1 (Residential, by soils) District. The parcel is located at 25 Craftsman Lane in the R-1 (Residential, by soils), Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 2A, Lot 005. Case # ZBA 2020-34.

Attorney David Campbell also represented the petitioner for this variance and since it is almost identical to the previous case (2020-33), Chairman Conescu asked Mr. Campbell to just read through the statutory criteria. Mr. Campbell clarified that the only difference in the cases is that this variance is to allow for the warehouse use and indicated that the warehouse layout is shaded in green on the conceptual site layout plan.

There was no public comment.

The Board voted 5-0-0, on a roll call vote, to grant the variance on a motion made by Rod Buckley and seconded by Kathy Stroud with the following condition:

- 1) The petitioner shall obtain site plan approval from the Planning Board for the proposed uses.**

Case 2020-34 Findings of Fact:

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

The proposed commercial use is not contrary to the public interest since it is consistent with prior historical commercial uses on the property. The exterior of the building will be repaired and improved, which will improve the aesthetic of the site, but will not alter the essential character of the property or the surrounding neighborhood.

Approval of the variance is in the public interest because it will allow the Town of Merrimack to retain an on-going successful business that has been located on Star Drive for the past four years.

The use will not affect the safety, health and quiet enjoyment of the neighbor's property or the public.

2. The spirit of the ordinance is observed because:

The proposed warehouse use is consistent with what has historically been a commercial property. The size and configuration of the existing building includes a warehouse area, which make the use reasonable and appropriate for this site. The use is keeping with the history of the parcel and the neighborhood and the exterior renovations will maintain and protect the property values of the surrounding properties.

3. Granting the variance would do substantial justice because:

Granting the Petitioner's variance application would provide substantial justice by allowing a reasonable use on a reoccurring commercial property consistent with its history and the building's floor plan whereas strict adherence to the Zoning Ordinance

would prohibit the proposed use. It allows the Petitioner to move its successful and ongoing business to a permanent site within Merrimack.

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

The proposed warehouse and office uses both can be accommodated within the existing structure which will maintain the essential character of the neighborhood. Aesthetic improvements to the exterior will only enhance, not diminish property values. Additionally, the proposed warehouse and office uses generate far less traffic than prior retail use.

5. Unnecessary Hardship

a. Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property:

Given the property and the building are historically configured to operate a warehouse; strict conformance to the Zoning ordinance would create an unnecessary hardship and restriction on the proposed warehouse use. Alternatively, strict adherence to the current Zoning Ordinance would require that a complete redevelopment of the building and site to accommodate residential use.

b. The proposed use is a reasonable one because:

It allows for the continued use and a warehouse use on the site and within a building that is appropriately sized, constructed and configured to accommodate the proposed use(s) while maintaining the current and essential character of the neighborhood.

10. Garrett Burbee (petitioner) and 385 DW Hwy, LLC (owner) – Variance under Section 2.02.2 of the Zoning Ordinance to permit Mixed-Use (residential and contractor storage yard) in the C-1 (Limited Commercial) District. The parcel is located at 385 Daniel Webster Highway in the C-1 (Limited Commercial), Aquifer Conservation, and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 090. Case # ZBA 2020-35.

Matt Peterson (Keach Nordstrom Associates, Inc.) presented the project on behalf of the petitioner and began by providing a brief overview of the property in question (location, size layout, etc.). Mr. Peterson shared the site layout plan with the Board and explained that the petitioner is seeking a variance for mixed use of the property to allow for residential and commercial use. The petitioner's plan is to live in the single family home that is already in existence and use the back of the property as a contractor yard to store his HVAC work trucks and equipment in a garage yet-to-be constructed.

There was no public comment.

The Board voted 5-0-0, on a roll call vote, to grant the variance on a motion made by Patrick Dwyer and seconded by Rod Buckley with the following condition:

1. The petitioner shall obtain site plan approval for the proposed site modifications.

Case 2020-35 Findings of Fact:

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

The applicant is seeking relief from the allowable uses to allow a mixed use development in the parcel. The uses would be a residential use within the existing home and a proposed garage to be used as a contractor's yards. The applicant doesn't feel this is contrary to the public interest as its utilizing and existing residential structure to be used as a residential use while allowing commercial growth along D.W. Highway, which the applicant believes would be in the public's interest for this area of town.

2. The spirit of the ordinance is observed because:

The applicant believes that the spirit of the ordinance is to ensure proper development of residential and commercial properties in the Town of Merrimack and the applicant believes this proposal is very similar to other type residential/commercial operated properties along D.W. Highway and as such the applicant believes the request is within the spirit of the ordinance.

3. Granting the variance would do substantial justice because:

By the granting of this variance, substantial justice would be done by allowing the current owner to utilize an existing residential home for a residential use on the property as well as operating a commercial contractor's type company on the site.

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

The proposed variance in front of the board tonight is asking to allow the current owner to utilize the existing site basically as it sits today. The residential home as a residence and the backyard as a contractor yard for a contractor's type company and as such the applicant believes there would be no diminished values of surrounding properties if this variance were granted.

5. Unnecessary Hardship

a. Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property:

The property is currently a residential home that was converted to a business previously and the back yard was utilized for the previous commercial use and so the applicant sees no fair and substantial relationship that would exist between the general purpose of the ordinance provision and the application to use the existing home in front for a residence and the back yard as a contractor's yard, seeing that both of these proposed uses have existing on site at some point in the past.

b. The proposed use is a reasonable one because:

Lastly, the applicant believes using the home out front as a residence and the back yard as a contractor's yard is a very reasonable use in this area of Merrimack and along D.W. Highway.

11. Discussion/possible action regarding other items of concern

Kathy Stroud informed the Board that she is moving out of town and asked how she should submit her resignation. Casey Wolfe advised her to submit something in writing to either Community Development or Town Council.

12. Approval of Minutes – August 26, 2020

The Board voted 5-0-0, on a roll call vote, to approve the minutes of August 26, 2020, as amended, on a motion made by Patrick Dwyer and seconded by Rod Buckley.

13. Adjourn

The Board voted 5-0-0 to adjourn at 8:17 p.m. on a motion made by Kathy Stroud and seconded by Patrick Dwyer.