



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, FEBRUARY 28, 2024

Members Present:

- Ben Niles (Vice Chair)
- Patrick Dwyer
- Wolfram von Schoen (alternate)
- Charles Mower (alternate)

Members Absent:

- Richard Conescu (Chair)
- Lynn Christensen
- Brian Dano

Staff Present

- Colleen Olsen, Assistant Planner

1. Call to Order & Roll Call

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

Chair Conescu led the Pledge of Allegiance and swore in members of the public who would be testifying. Chair Conescu seated Wolfram von Schoen and Charles Mower for Lynn Christensen and Brian Dano, respectively.

2. **S.C. Development, LLC (petitioner/owner)** – Variance under Section 2.01.7 of the Zoning Ordinance to construct a proposed elderly housing development 1.6 miles from the Daniel Webster Highway and Baboosic Lake intersection whereas such developments are not permitted beyond a one-mile radius from same. The parcel is located at 29 Bedford Road in the R-1 (Residential, by soils) & Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 6D Lot 241. #ZBA 2024-01. ***This item is continued from the January 31, 2024 meeting.***

At the petitioner's request, the Board voted 5-0-0 to continue ZBA Case #2024-01 to March 27, 2024 at 6:30 p.m. in the Matthew Thornton room, with no further written notice to abutters, on a motion made by Patrick Dwyer and seconded by Ben Niles.

3. **S.C. Development, LLC (petitioner/owner)** – Variance under Section 2.02.9(B)(6) of the Zoning Ordinance to permit a proposed elderly housing development on a parcel having less than 100 feet of contiguous frontage on a public road. The parcel is located at 29 Bedford Road in the R-1 (Residential, by soils) & Aquifer Conservation District and Wellhead Protection Area. Tax Map 6D Lot 241. #ZBA 2024-02. ***This item is continued from the January 31, 2024 meeting.***

At the petitioner’s request, the Board voted 5-0-0 to continue ZBA Case #2024-02 to March 27, 2024 at 6:30 p.m. in the Matthew Thornton room, with no further written notice to abutters, on a motion made by Patrick Dwyer and seconded by Ben Niles.

4. **S.C. Development, LLC (petitioner/owner)** – Variance under Section 2.02.9(B)(1) of the Zoning Ordinance to permit a proposed elderly housing development to be serviced by private septic systems whereas public sewer is required. The parcel is located at 29 Bedford Road in the R-1 (Residential, by soils) & Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 6D Lot 241. #ZBA 2024-03. *This item is continued from the January 31, 2024 meeting.*

At the petitioner’s request, the Board voted 5-0-0 to continue ZBA Case #2024-03 to March 27, 2024 at 6:30 p.m. in the Matthew Thornton room, with no further written notice to abutters, on a motion made by Patrick Dwyer and seconded by Ben Niles.

5. **John Flatley Company (petitioner/owner)** – Variance under Section 17.10.3 table 17-1 of the Zoning Ordinance to permit a 96 square foot ground sign whereas a maximum allowable area of 64 square feet is permitted. The parcel is located at 685 Daniel Webster Highway in the I-1 (Industrial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 6E, Lot 3-4. Case #ZBA 2024-04.

Kevin Walker, John Flatley Company, and Chad Brannon, Fieldstone Land Consultants, presented the petition. Mr. Brannon explained that when they initially went through review with the Town of Merrimack there was an understanding that this property had four traffic lanes in front of the property, with two of those lanes being thru lanes. According to the Town's interpretation of the Zoning Ordinance, only the thru traffic lanes, not the turning lanes, are considered as traffic lanes for the purposes of ground sign size calculation. This interpretation would only allow for a 64 square foot sign. The petitioner is seeking a variance in order to permit the installation of a 96 square foot sign. He continued to state that the parcel is 44.45 acres in size and has just under 1,600 linear feet of frontage along Daniel Webster Highway.

Mr. Brannon then explained the approvals already in place for the parcel. He said that the speed limit along this section of Daniel Webster Highway is 35 mph. There are two lanes of thru traffic and two turning lanes at the intersection for this property. He explained there will be 26 units for lease when the development is complete. The size of the sign is ultimately due to the number of tenants they are proposing to include on the sign. They want to make sure the sign is legible for drivers since they are only requesting one sign and stated that for a development this size, with this much frontage, they would be allowed several monument signs since the parcel was subdivided into three lots. They believe the variance they submitted will allow for the safest option.

Mr. Dwyer asked which direction the sign would face. Mr. Brannon said it would be perpendicular to the road allowing visibility from both sides of the travel way. Mr. Dwyer was concerned with whether or not light may shine across DW Highway, or up and down the roadway. Mr. Brannon confirmed light would shine up and down DW Highway rather than going across the roadway.

Mr. Dwyer also asked if this would be the only sign for the entire property due to its size. Mr. Brannon said it would be the only monument sign, however each tenant would still be allowed a wall sign. They did not want to restrict any tenants from placing signs above their units as they wanted patrons to be able to locate those businesses.

Mr. Dwyer said there is only a certain amount of square footage allowed for total signage. Mr. Brannon confirmed that was correct, however the lot had been subdivided into three separate lots. One building was on each lot. Mr. Dwyer remarked that this specific lot and building had a total amount of square footage allowed for signage. He wanted to know whether the 96 square feet of the ground sign counted towards the maximum amount of signage allowed on the property. Mr. Brannon said it would count towards the maximum, otherwise they would need to request additional relief.

Mr. Dwyer asked for further clarification if it was total square footage for the entire property, or total square footage per tenant. If it's total square footage for the entire property, each tenant's sign would have to be very small. Ms. Olsen said that there is a restricted size limit for the ground sign only. Wall signs are calculated based on the width of their unit in feet. If a ground sign is present, the wall sign can be one times the unit width, in square feet. If no ground sign is present, then the wall sign can be two times the width in square feet. For example, with a ground sign present, if a unit is 20 feet wide, they are only entitled to a 20 square foot wall sign. She said each unit is entitled to their own wall sign.

Chair Conescu asked if the petitioner knew the size of the sign when they presented at the last hearing for this project. Mr. Brannon responded that it was not. He said staff was at the last meeting and stated that the sign design met all other criteria. This was the petitioner's understanding as well. When staff reviewed the number of lanes again they determined that they were not all thru lanes. They recommended that the petitioner apply for another variance to try to rectify this issue.

Chair Conescu clarified if the petitioner's original intent was always to place a 96 square foot sign. Mr. Brannon said yes. Mr. von Schoen asked if the sign was being placed in the median between the entry and exit lanes to the site. Mr. Brannon indicated this was correct. Mr. von Schoen said he had not seen the dimension from the edge of the sign to the edge of the driving lane and wondered what the clearance would be. He clarified he was not interested in the space between the sign and the right-of-way or blacktop. Mr. Brannon said that was detailed and critically evaluated during the meeting for their last variance. He said it is just shy of 43 feet from the travel lane to the front edge of the sign. Mr. von Schoen said this didn't seem enough because it wasn't even a car's length. Mr. Brannon asked if he meant from the stop bar to the sign. Mr. von Schoen said yes. Mr. Brannon said that distance would be 28 feet.

Mr. Mower asked when the petitioner anticipated to landscape the entire site and clean it up. Mr. Brannon said typically landscaping is completed in the spring. Mr. Walker said they are currently in the process of cleaning up the front of the lot. The last couple of utilities are being moved and this will allow the widening of DW Highway to be completed. They hope to complete the widening within the next month, if not sooner. They are actively working to schedule a pre-construction meeting with NHDOT and then they should be able to move forward. As far as the remainder of the site, they will complete the appropriate landscaping as soon as construction on the other two buildings begins. They did a lot of additional tree planting on site and will find out how the trees fare once it is spring. They will replace any trees that need to be replaced and will maintain those that are healthy.

Chair Conescu then asked if there were any moving parts or displays on the sign. Mr. Walker said there are no moving parts or displays on the sign. Chair Conescu asked how the sign would be illuminated. Mr. Walker said they hadn't decided yet, but they are open to it being backlit or up-lit. Mr. Dwyer then asked why they were counting four traffic lanes in the area. Unless they are

counting the shoulders of the road, there are only two lanes. Mr. Brannon said you have to consider the proposed improvements. There will be two thru lanes and two turning lanes at the intersection for the site for a total of four lanes in front of this site.

Mr. von Schoen asked if there were any plans to turn off the lights after a certain time or potentially dim them in consideration of the abutters. Mr. Walker said they could definitely dim them and possibly turn them off, but it would most likely depend on what businesses lease the space. Mr. Walker added that they had received questions on the existing lighting and are working on dimming it so it is not as harsh. Mr. Niles noted that if the sign is backlit, light will shine out directly from the sign and radiate further into surrounding areas. If it's lit from the front, the lights will illuminate the sign itself but have minimal impact to surrounding properties. He thinks this method of lighting would probably be a better option. Mr. Brannon said although he is not a sign professional, he has designed sites for many years. He said internally lit signs can be adjusted while spotlights shining on signs are typically brighter since the light reflects. He said he thinks it will be important for the lighting to meet the Town's regulations. The lighting design would be provided to staff for evaluation when the time comes.

Mr. von Schoen asked about a cylindrical structure shown on the site plans. Mr. Brannon said it was an old water tower which was there for St. Gobain. Mr. Walker confirmed it's a water tower on the Flatley property which was previously used by St. Gobain. In the last five or so years, St. Gobain tied into the water main on the Daniel Webster Highway and the tower is currently out of commission. Mr. Dwyer asked whether this sign would be for all three properties. Mr. Walker said it would be one ground sign for all three buildings. There was some back and forth regarding clarification for whether the ground sign would be for all three buildings even though the buildings would be on separate lots. Mr. Brannon said that if you added up the signage allowed for all three lots it would be under the amount of signage they were requesting.

Mr. Brannon said they are not here trying to threaten any residents. They are trying to explain the unique qualities of the property in question and how they can comply with regulations. Their intent is to clearly represent their plans. This is the same plan and design as what they had displayed at the last two Zoning Board meetings. His goal is to present facts showing why this request is a reasonable one. The location had been decided and construction of the sign base began before they realized there was an issue. Mr. Brannon acknowledged that as the abutters had stated, the space was very open right now. There is a significant amount of landscaping that has not yet occurred. The sign becomes more and more important as landscaping happens. He said while driving, he is usually looking for directional signs to help navigate, even when using a GPS. This is why they have always maintained that it's important to have a sign at the turnin location.

He continued to say that they don't want to place additional signs on the site and aren't threatening to do so, but were simply pointing out that it would technically be allowed. He respectfully disagrees with comments made regarding the size of the sign not being necessary. This project is unique and they have to design for the possibility of up to 26 sign slots for tenants. There were some comments made that weren't factual and he said they were trying to help individuals understand the conditions.

He reiterated that they hadn't changed the design of the sign and were trying to get the original intent approved. They are not trying to make any changes to the site plan approval which was already in place. Rather, they chose to request a variance. He explained while the site is actively under construction, it will look chaotic. Once landscaping is in place and things are dressed up,

the signage becomes more important. The orientation of the sign was intentional so travelers could easily see the sign. Lastly, their overall intent was to create a safe design.

Mr. von Schoen asked about a grey block on the visual depiction of the sign the Board had received. Mr. Brannon said this was a metal wrap covering the concrete foundation. The mulch, when placed, will be flush with this wrap. Mr. von Schoen asked if the 96 square foot measurement included the foundation and sign, or just the names of businesses and red wraparound portion. Mr. Brannon confirmed the measurement did not include the foundation. Mr. Dwyer expressed concerns regarding the language that there were four lanes in this area. He understands there are supposed to be turning lanes coming North and South, but he thinks the two actual traffic lanes should be the only considered traffic lanes for sign sizing purposes. For this reason, he wasn't sure if the spirit of the ordinance or substantial justice had been met.

Mr. von Schoen asked if there was a reason they only had one entrance to the site. Mr. Walker said NHDOT only allowed a certain number of entrances off of DW Highway. Five or six years ago when they began the process for this project, they had tried to get multiple entrances and a traffic signal. They were told it was too close to the St. Gobain traffic light. They were allowed only three additional accesses aside from the St. Gobain access way. Mr. von Schoen asked if he was correct in saying that they couldn't add two or three access roads or split it up into two or three signs if they were to put the signs next to the entrance road. Mr. Brannon and Walker confirmed this.

Mr. Brannon clarified that they initially felt that there were four lanes in this area. The interpretation has since changed. Even though there are not four thru lanes, the distance from the sign into the furthest travel lane is the same as it would be if there were four lanes.

Public Comment

Kendall Smith, 18 Kimberly Drive spoke in opposition to the variance. He read through the variance criteria and shared his comments. He did not believe that the increased sign size was within the public interest for the residents across the street. It is 1½ times larger than the sign size allowed in the Zoning Ordinance. He didn't feel the larger sign would be helpful for safety or business visibility as he believes most people would use their GPS to locate businesses. He commented that this property was located in the 1-1 Industrial District and he wasn't sure how many businesses in that category were open to the public. He had additional concerns regarding how many lanes were in front of the property and stated that turning lanes are not counted as traffic lanes. He wanted to know which location was being used to determine how many lanes were involved. He wasn't sure why turning lanes, particularly the one into Webster Green, would be used to determine sign size. The current turning lanes into Webster Green end before they reach the location of the sign.

Mr. Smith stated he felt a sign this large would have a visual impact to the neighborhood, noting that the sign would be almost 12 feet tall. He didn't feel the sign was needed for a productive use of the property since they already had some tenants. He also had concerns about whether the sign would diminish surrounding property values and didn't feel they could know this information until the sign was installed. He stated they chose the location for the sign, it wasn't mandated by any Town regulations. If they wanted it closer to the road they could install it as it is shown on their site plan. The sign will only be 5 feet from the location it could have been placed if the right-of-way was not in the way and he didn't think this could be considered a hardship. Other concerns included the sign altering the character of the neighborhood and the petitioner not making a good faith effort to install a sign within the regulations.

He then asked why a foundation was installed with dimensions for the proposed sign before a variance was granted. He also questioned if Chair Conescu had asked the petitioner if they had known the size of the sign previously. He had heard the petitioner say no and asked if he was correct. Chair Conescu said his question was regarding this specific sign and whether the applicant knew the sign was going to be 96 square feet. He said the applicant was well aware that this was the size of the sign.

He stated that if the turning lanes were considered traffic lanes for the purposes of size calculation, 96 square feet would have been completely within the expectation of the Zoning Ordinance. Because only two of those lanes happen to be thru lanes, the criteria are not met for a 96 square foot sign.

Mr. Smith stated that the more lanes there are the further traffic on the opposite side of the road is from the sign. Therefore, the larger the sign would have to be the grab the attention of drivers. He said this was always the plan for the sign which is why the base is already in place. He explained the term for lanes was interpreted as any lane during the original hearing. It has since been changed to mean only thru lanes, not turning lanes. The definition of a lane only counts as a thru lane, in terms of the Ordinance. There are two turning lanes which has changed the requirements the applicant needs to meet. Mr. Smith asked if Chair Conescu was referring to the meeting where the applicant requested to place the sign within one foot of the right-of-way. Chair Conescu said this was correct. Mr. Smith said he didn't recall any discussion regarding turning lanes at that meeting. Chair Conescu said there wouldn't have been because there's no need to bring up questions outside of the Boards scope.

Mr. Smith said he was confused. He asked if anyone had known the definition of traffic lanes since this regulation had been in place. Chair Conescu said this he would need discuss that with the Community Development Department. Mr. Smith said the Flatley Company was adamant that this location was the only one where they could place their sign at the last meeting. This evening they had mentioned there were three separate parcels. He also noted lighting as a concern.

Ashley Tenhave, 75 Shelburne Road spoke in opposition to the petition. She said that the sign for Bite Me Kupcakez is the only one other sign in Town close to 96 Square feet. There are four travel lanes in that area and there is a wide lane in between for turning and wide bike lanes. The property is pushed back from the road so they do need a fairly large sign to be seen. She mentioned a few other strip malls further down the road with three lanes and noted their signs were not anywhere close to the size the petitioner is looking to place. She said the petitioner noted visibility of the sign as an issue, but she contends that since so many trees were removed, there is no way to miss the property coming from either direction. There are no issues with sight lines, especially at night because of all the lighting. She noted most people also have GPS to find their destination, so she doesn't see the need for such a large sign.

She continued by stating there are currently two lines of traffic and their turning lanes end right at this site. You won't hit the turning lane heading north until very close to their property. Before you arrive you will have already seen the business and a 64-foot sign. Heading south, it is even easier to see before hitting the turning lane. There is no reason to have such a large illuminated sign directly across from their condos. They already have a lot of light pollution and a normal sized sign could handle all of the businesses. She also felt the petitioner had presented the project in a way that threatened to add more signs if their request was not granted. She noted concerns about the site plan approval changing.

Katie Poirier, 11 Kimberly Drive spoke in opposition to the variance. She said the sign would have a negative visual effect on the area. There aren't many businesses in this area of Daniel Webster Highway that use one sign to advertise multiple businesses. She didn't feel the size of the sign requested was necessary. She said the sign being larger wouldn't make a difference because individuals would be looking at the building, not the sign. All it would do is depreciate the surrounding residential property values. Chair Conescu asked if the abutters who spoke had seen the proposed sign. They confirmed they had.

Chair Conescu said in this particular case the individual sign slots would be about 7 ¼ inches tall which was not very large. There was some back and forth regarding where drivers were looking when passing businesses. Chair Conescu said he would be looking at the sign, not the building for safety purposes. Ms. Poirier said if this was approved, and there was available space for rent, it should be indicated on the corresponding individual sign slot. Chair Conescu said the Board wasn't able to enforce what was put onto signage. Ms. Poirier asked Chair Conescu if each business would have a sign 7 ¼ inches in size. He confirmed this was correct. The discussion continued regarding how many individual signs would go on the ground sign and what should be labeled. Mr. Dwyer asked if they could stick to the application before the Board this evening.

The Board voted 4-1-0 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 17.10.3 table 17-1 of the Zoning Ordinance to permit a 96 square foot ground sign whereas a maximum allowable area of 64 square feet is permitted, subject to the condition that the petitioner shall obtain a sign permit for the proposed ground sign, on a motion made by Ben Niles and seconded by Charles Mower. Patrick Dwyer voted in opposition.

Findings of Fact:

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

The square footage of the proposed sign will allow approaching vehicles to more easily identify the site and the businesses within the site. Easier visibility and identification will have the added benefits of increased safety for vehicles and pedestrians along Daniel Webster Highway. The proposed sign will not obstruct visibility or sight lines at the intersection. The design of the sign will not create any health or safety problems and will provide easily identifiable signage for the tenants and community. Good visibility on the proposed sign will help the incoming businesses thrive which is a benefit to the community. The proposed use will not alter the essential character of the neighborhood, threaten public health, safety or welfare, or otherwise injure public rights. For these reasons granting this variance would not be contrary to public interest.

2. The spirit of the ordinance is observed because:

We believe the purpose of the ordinance is to minimize the visual obstruction of signs located along roadways and to maintain the visual aesthetic of the Town and sage sign distance of roadways. The ordinance contemplates a larger permitted sign square footage for properties with four or more lanes of traffic. The location of the proposed sign effectively has four lanes of traffic; two thru lanes and two turning lanes. Due to the wider than typical road width at the proposed entrance and sign location, the oversized sign will still meet the spirit of the ordinance. The entrance will be landscaped for visual appeal and meets all the site distance requirements. Since this proposal will provide the above and will result in no negative impacts to the public, will not alter the essential character of the neighborhood, will not threaten

public health, safety or welfare we believe that granting the variance would observe the spirit of the ordinance.

3. Granting the variance would do substantial justice because:

Granting this variance for a ground sign exceeding 64 square feet will do substantial justice. The development of 685 Daniel Webster Highway allows for up to twenty-size businesses to be established with a single curb cut. The proposed sign will serve to identify the businesses located within the commerce park at a size that is legible to passing motorists. The subject property has 1,597± feet of frontage along the Daniel Webster Highway right-of-way, well exceeding the stipulation within the ordinance for a larger sign. Allowing the sign to be 96 square feet would not impact the visual appearance of the neighborhood or have negative impact on safety, and the spirit of the ordinance would be met. Granting this variance would do substantial justice because it would allow for the productive use of the property, as described above. In other words, a denial of this variance request would be an injustice to me client as there would be no apparent gain to the general public by denying this application.

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

The existing site is located in the Industrial District and is bordered by a mix of industrial and commercial properties, along with a residential development to the northwest. The commercial and industrial establishments in this area have similar signs to advertise their businesses and therefore the proposed sign for this project will match the visual appearance and essential character of the neighborhood and will not diminish the value of surrounding properties. There is no evidence that the proposed sign will have a deleterious effect on surrounding property values.

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 subject parcel 6E-3-4 is 45.44 acres, or 1,979,298 square feet. It is located in the I-1 Industrial district. The property has 1,597± feet of frontage along Daniel Webster Highway where the property is located is four lanes wide with an oversized right-of-way. The right-of-way along this property is disproportionate with others in the area, cutting 24.28 feet into the property. The general public purpose of the ordinance provision is to minimize the visual obstruction of signs located along roadways, to maintain the visual aesthetic of the Town and safe sight distance of roadways. The proposed sign will not obstruct safe sight distances. The proposed sign will be aesthetically similar to other signs in the area. Because of the special conditions of the property listed above, we do not believe that a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.

b. The proposed use is a reasonable one because:

We believe that the proposed use is a reasonable one for all of the reasons previously stated. The following is an outline of why we believe the proposed use is reasonable:

- *Granting this variance would allow for the installation of a sign that is legible to passerby.*

- *This project would have no measureable negative impacts on the surroundings or their property values.*
- *The sign location would not be contrary to the public interest.*
- *The proposed use, a 96 square foot sign, will not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public.*
- *This proposal would in our opinion observe the spirit and intent of the ordinance*
- *The sign will help new businesses in the recently constructed building grow and flourish.*
- *Since this proposal will provide the above and will result in no negative impacts to the public we believe to that the proposed sign is reasonable.*

-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 subject property has both an unusually long frontage and an over large right of way both an unusually long frontage and over large right-of-way along a four- lane section of Daniel Webster Highway. The property cannot be reasonably used as approved in strict conformance with the ordinance. A variance is needed to allow for a sign which legibly lists all businesses located on the site. Based on these reasons we believe a variance is necessary to enable a reasonable use of the property.

6. Discussion/possible action regarding other items of concern

Chair Conescu states that there is currently one alternate position open and the Board has a few candidates they need to interview. He added that they should have a full Board soon.

7. Approval of Minutes – February 28, 2024

The Board voted 4-0-1 to approve the minutes of January 31, 2024, on a motion made by Ben Niles and seconded by Wolfram von Schoen. Patrick Dwyer abstained.

8. Adjourn

The Board voted 5-0-0 to adjourn at 7:56 p.m., on a motion made by Wolfram von Schoen, and seconded by Patrick Dwyer.