



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

## MERRIMACK ZONING BOARD OF ADJUSTMENT

### APPROVED MINUTES

WEDNESDAY, APRIL 24, 2019

Board members present: Patrick Dwyer, Richard Conescu, Lynn Christensen, Kathleen Stroud, Rod Buckley, and Alternate Leonard Worster

Board member absent: Alternate Drew Duffy

Staff present: Assistant Planner Kellie Shamel and Recording Secretary Zina Jordan

#### 1. Call to Order

Patrick Dwyer called the meeting to order at 7:00 p.m.

#### 2. Roll Call

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

3. **Pam and Carl Belmonte (petitioners)** - Request for Re-Hearing regarding Case #2019- 03, in which the Board granted Variances under Section 3.02 of the Zoning Ordinance to permit a two-lot subdivision with one lot having 90 feet of frontage whereas 250 feet is required and having 61,160 sq. ft. of contiguous non-wetland area whereas 100,000 sq. ft. is required. The parcel is located at 85 Woodward Road in the R-1 (Residential, by map), Aquifer Conservation and Flood Hazard Conservation Districts. Tax Map 7A, Lot 007. Case # 2019-08. **This item is continued from the March 27, 2019 meeting.**

Kellie Shamel read the following statement into the record:

*The Zoning Board of Adjustment (ZBA) granted two variances on February 27, 2019, to Steven Chase & Robin Cousineau under Section 3.02 of the Zoning Ordinance to permit a two-lot subdivision with one lot having 90 feet of frontage whereas 250 feet are required and having 61,160 sq. ft. of contiguous non-wetland area whereas 100,000 sq. ft. are required. When the petitioners presented their case to the ZBA, they utilized an exhibit plan illustrating a potential subdivided layout for the lots. That plan also assumed the limits of wetlands because the petitioners did not want to spend the money on a formal survey until they at least knew they had variances in hand. Once the ZBA granted the variances, the petitioners surveyed the lot. Meanwhile, the abutters submitted the request for rehearing which remains before the ZBA awaiting final action.*

*Recently, Staff was informed by the petitioners' attorney that the survey had been completed. It revealed that the wetland limits on the property were in reality different*

*than what had been assumed when they were before the ZBA. The attorney explained that the exhibit plan they submitted to the ZBA was rendered inherently false and that they would need to re-apply for those variances based on the new surveyed information in order to make their subdivision plan represent what they had been granted by the ZBA. The attorney requested that the ZBA vote to nullify the variances it had granted, but the ZBA does not have the legal authority to do this.*

*With the request for rehearing still active before the ZBA, there is a path available to clean up everything. Staff advises that the ZBA vote to grant the request for rehearing. Such action puts the granting of the variances back on the table for reconsideration. Should the ZBA vote to grant the rehearing, the petitioner has agreed to immediately withdraw the original petitions, bringing everything back to square one. They cannot withdraw the petitions with the variances having been granted already, which is why the rehearing needs to be first granted by the ZBA. This frees up the petitioners to re-apply for their variances with corrected information, and also preserves the abutters' rights to appeal should the ZBA opt to grant the future variances when they're submitted.*

**The Board voted 5-0-0 to grant a re-hearing, on a motion made by Lynn Christensen and seconded by Richard Conescu.**

- 4. Robert Slater Sr. (petitioner) and Jeffrey & Samantha Slater (owners) –** Variance under Section 3.05 of the Zoning Ordinance to permit an attached garage 15 feet from the front property line whereas 30 feet is required. The parcel is located at 9 Beaver Brook Drive in the R-2 (Residential) District. Tax Map 6C, Lot 535. Case # 2019-09.

Eric Mitchell, Eric Mitchell & Associates, Inc., explained that the lot was created in 1982. The Slater home is a three-bedroom split-level with a septic system and no garage. The Slaters propose to add a 24'x34' garage addition at the end of the driveway with a family room and half bath.

Eric Mitchell read the variance criteria into the record.

Robert Slater, 9 Beaver Brook Drive, plans remove the old shed and get a permit to move the other shed back a little.

There was no public comment.

Patrick Dwyer stated that many houses in the neighborhood have garages.

**The Board voted 5-0-0 to grant the Variance, on a motion made by Kathleen Stroud and seconded by Rod Buckley.**

### **Findings of Fact**

1. Granting the variance would not be contrary to the public interest because adding a garage addition to an existing house will not threaten the health, safety or general public welfare;

2. The spirit of the Ordinance is observed because this is a corner lot and there is no existing garage. The variance would not alter the essential character of the neighborhood;
3. Granting this variance would do substantial justice because adding a garage to this lot is consistent with the neighborhood. Any gain to the owner is not outweighed by a loss to the public;
4. The values of the surrounding properties would not be diminished because adding a garage would provide more inside storage and increase the value of the existing home;
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 lot was approved in 1982 and is less than half an acre in size. It is a corner lot. It has a three-bedroom house but it does not have a garage. A garage cannot be placed on the opposite side of the house because of the location of the septic system;
  - 2) The proposed use is a reasonable one because it would provide a garage for storage, a family room and a half bath. Having additional living space and a garage is reasonable.

- 5. James Gadbois (petitioner/owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit a detached garage 30 feet from the front property line whereas 50 feet is required. The parcel is located at 85 Patten Road in the R-1 (Residential, by soils) and Aquifer Conservation Districts. Tax Map 6C, Lot 394. Case # 2019-12.

Staff notes that the plan provided by the petitioner is a mortgage survey and not a detailed boundary survey. It was not prepared or stamped by a licensed surveyor. It also bears the following note: “The right-of-way shown hereon for Patten Road is based on the line of occupation. A boundary survey of the premises may produce a different result”. In other words, the plan provided illustrates the location of the paved portion of the right-of-way, but it does not show its full extent. The petitioner based measurements off the edge of pavement, but the edge of pavement does not constitute the boundary line. The Town’s GIS system appears to show the right-of-way running through the existing house; however that system is not to be used for property line determinations. Without a plan prepared by a licensed land surveyor, the Board has no way to determine accuracy of the request. Accordingly, Staff strongly recommends that the Board continue the petition to the June 26, 2019, meeting to allow the petitioner time to obtain a certified plot plan from a licensed land surveyor that will accurately depict the property lines and the proper setback of the proposed garage.

James Gadbois, 85 Patten Road, said this is one of the oldest homes in Merrimack. He took down the garage that sat on a 50-year old slab, which is where he wants to build a new, larger garage.

Chairman Dwyer explained that the slab and garage were placed before there were zoning ordinances. They cannot be grandfathered because the garage was removed. The proposed garage must be considered as a new structure and come into compliance with today's standards. A certified plot plan would determine where the property lines are and then determine the setbacks. Chairman Dwyer added that, if the ZBA granted a variance at this meeting, it would be costly for the petitioner if he found out later that he was out of compliance with ordinances and regulations. If the ZBA were to deny the variance at this meeting, the petitioner would have no recourse if the survey produced different data. The ZBA does not want to make a decision without having all the facts.

**The Board voted 5-0-0 to continue this item to June 26, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Lynn Christensen and seconded by Kathleen Stroud.**

6. **Chestnut Hill Properties, LLC (petitioner/owner)** – Variance under Section 3.08.8 of the Zoning Ordinance to amend a previously approved cluster subdivision (permitted by previous variance to be allowed in the R-1 District) to be serviced by individual septic systems whereas municipal sewer is required. The parcels are located at Bannon Circle and Ritterbush Court (approved, not constructed roads) in the R- 1 (Residential, by map) District. Tax Map 5B, Lots 002, 005, 007, 008, 009-01 through 009-71. Case #2019-13.

**At petitioner's request, the Board voted 5-0-0 to continue this item to May 29, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Richard Conescu and seconded by Kathleen Stroud.**

**7. Discussion/possible action regarding other items of concern**

None.

**8. Approval of Minutes — March 27, 2019**

**The minutes of March 27, 2019, were approved as submitted, by a vote of 4-0-1, on a motion made by Lynn Christensen and seconded by Richard Conescu. Rod Buckley abstained.**

**9. Adjourn**

**The meeting was adjourned at 7:30 p.m., by a vote of 5-0-0, on a motion made by Richard Conescu and seconded by Rod Buckley.**