



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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MERRIMACK ZONING BOARD OF ADJUSTMENT

APPROVED MINUTES

WEDNESDAY, APRIL 25, 2018

Members present: Patrick Dwyer, Lynn Christensen, and Alternates Leonard Worster, Kathleen Stroud and Rod Buckley.

Members absent: Fran L'Heureux, Tony Pellegrino, and Richard Conescu.

Staff present: Planning and Zoning Administrator Robert Price and Recording Secretary Zina Jordan.

1. Call to Order

Patrick Dwyer called the meeting to order at 7:00 p.m. and designated Leonard Worster, Kathleen Stroud and Rod Buckley to sit for Fran L'Heureux, Tony Pellegrino and Richard Conescu, respectively.

2. Roll Call

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

3. Mark DePont (petitioner) and ZJBV Properties, LLC. (owner) — Variance under Section 2.02.4.B of the Zoning Ordinance to permit retail sales in an Industrial district. The parcel is located at 105 Daniel Webster Highway in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 2D, Lot 021-01. Case # 2018-08.

Attorney Mark Kanakis, Merra & Kanakis, P.C., said the site is the former location of the DCU Credit Union and has been vacant since 2012. The applicant intends to use the building for office space while also using the site for retail of new sheds, bird houses, wooden swing sets and playhouses, and for sales of landscaping materials.

Attorney Kanakis read the statutory criteria into the record.

Mark Depont said the swing sets would be assembled on the customers' properties and not on site. There would be only a minimal number of deliveries and no wood treatment. The business would have outdoor display. The petitioner might construct a manufacturing building addition, which would require Planning Board approval. It would be desirable to erect a building, but it is not necessary for his operations and not a part of his variance request.

There was no public comment.

Lynn Christensen said the justification makes sense, but the previous history of the site is not relevant because each case is judged anew. This is a reasonable use and fits other properties in the area.

The Board voted 5-0-0 to grant the Variance, with the condition that the petitioner shall obtain site plan approval from the Planning Board for the proposed business, on a motion made by Lynn Christensen and seconded by Kathleen Stroud.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because it would not threaten the health, safety, convenience and general welfare of the Town. The proposed use of a retail store and office space is low impact and would generate minimal traffic, noise and other detrimental effects to the surrounding area. The property would continue to be used in a manner similar to the previous use. It would be safe and reasonable, promote local business and be consistent with other uses in the area;
2. The spirit of the Ordinance is observed because the use is low impact and would not result in any negative effects on surrounding properties or the area as a whole. The use would be a minor change from the property's prior use and would generate minimal traffic, noise, and other detrimental effects to the surrounding area. Allowing a local business to open on the property would add a convenience and make Merrimack a more attractive place to live. The use is a mix of manufacturing (allowed), a contractor yard (allowed), office (allowed support use), and requested retail sales;
3. Granting this variance would do substantial justice because it would result in no appreciable harm to the public. The property would be used only in part as a retail store and office space and would allow the applicant to open a retail store for new sheds, bird houses, wooden swing sets, and playhouses, and the sale of mulch and crushed stone in conjunction with the retail use. The use is significantly more benign and of lower impact than the uses allowed in the I-1 Industrial District. Denial would require the property to be used for strictly industrial purposes, which bring health and safety risks, increased traffic, noise, odor, and air pollution. The benefits to the applicant significantly outweigh any harm to the general public;
4. The values of the surrounding properties would not be diminished. They include Thomas More College, BAE Systems, several restaurants, retail landscaping sales, and retail granite and marble sales. The request merely seeks to allow the property to continue to be used in a manner similar to the prior use. There would be no different or significant traffic, noise, odors, or other detrimental impacts to the surrounding area. Using the site would create a positive impact;
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 unique in that it has housed a bank or credit union for the past 45+ years;
- 2) The proposed use is a reasonable one because it is benign and low impact and would have no negative impact on the surrounding area. The use would not diminish the character of the neighborhood. It is a reasonable non-industrial use on a property that has been used as a support use to the I-1 Industrial District for the past 45+ years.

4. NeighborWorks of Southern NH (petitioner) and The Granite YMCA (owner) —
Variance under Section 3.02 of the Zoning Ordinance to permit the construction of multi-family residences with an approximate residential density of 5.5 units per acre whereas 1 unit per 40,000 square feet is permitted. The parcel is located at 315 Daniel Webster Highway in the R-4 (Residential) and Aquifer Conservation Districts and portions in the 100 and 500 Year Flood zones. Tax Map 4D-4, Lot 043-01.
Case # 2018-09.

Kevin Anderson, Meridian Land Services, Inc., said the variance is only for the lot that the YMCA is selling to Neighborworks. Multi-family residences are allowed on the property. Elderly housing zoning allows density of eight units per acre, or in the case of this specific property, up to 65 units. The previously approved plan was for an elderly housing development of 6.9 units per acre or 57 units. NeighborWorks proposes nine five-unit multi-family buildings of 5.5 units per acre or 45 units, which would all be outside the flood zone. Kevin Anderson showed other NeighborWorks projects whose style would be emulated in this development.

Robert Tourigny, NeighborWorks of Southern NH, said his organization is a private not-for-profit group that creates affordable housing and provides services and activities that empower people. The subject property would be owned by a limited partnership and would pay property taxes. He presented a history of NeighborWorks, which has built a total of 450 units for households making no more than 60% of the Area Median Income. Monthly rents would be \$1200 for a two-bedroom unit and \$1400 for a three-bedroom unit. The project would not be age restricted; 45 units is less than what was previously approved.

Attorney Susan Manchester, Sheehan Phinney, read the statutory criteria into the record. As to #1, public interest, Kevin Anderson clarified for the Board that the markings on the plan show an existing sewer easement, not a connection to Island Drive. As to #2, spirit of the Ordinance, Patrick Dwyer claimed that the character of the neighborhood would be greatly altered, especially since Daniel Webster Highway cannot be widened. Attorney Manchester noted that creating a development where there are woods is a change to the neighborhood; however, this is a residential use in a residential area. Lynn Christensen explained that the petitioner wants to build more units than is allowed for a non-elderly development. As to #3, substantial justice, Patrick Dwyer claimed that the rents cited by the petitioner are high for affordable

housing. Robert Tourigny repeated that rents are targeted to households making no more than 60% of the Area Median Income. Heat is included. There are no other rental units at that price in the area that include heat. The proposed rents are \$100-\$200 below market rates. As to #5, hardship, Attorney Manchester stated that the site is constrained by wetlands and its oddly shaped. It is a hardship because the applicant could build only eight units and not the project as proposed if the variance were denied.

Public comment

Christine Hugh, 333 D.W. Highway, is concerned about diminished property values for four abutters who would be sandwiched between a busy highway and an oversized development. Traffic is a concern on the already congested D.W. Highway.

Wayne Johnson, 79 Island Drive, spoke in support. He said this is the best proposal compared to past projects. One of the best features is that the connection to Island Drive was removed. Wayne Johnson wondered whether it would ever be connected. Patrick Dwyer said it would require Planning Board approval and Zoning Board of Adjustment (ZBA) variances. Lynn Christensen said nothing would be on the cul-de-sac, although the Fire Department could request a change to make room for its equipment to turn around.

George Baird, 82 Island Drive, asked for clarification about a possible emergency access. Patrick Dwyer explained that is not on the current plan. He repeated that connecting or extending the road in the future would require Planning Board approval and Zoning Board of Adjustment (ZBA) variances. Lynn Christensen added that chances of that happening are slim. George Baird is concerned that D.W. Highway is too narrow and that buildings would be too near the wetlands. He stated the culvert replacement work completed last year at King Kone was a traffic “nightmare”. Lynn Christensen explained that the ZBA is concerned only with the issue of density; all other issues are the purview of the Planning Board.

Kevin Anderson said Planning Board, Shoreland Protection and Alteration of Terrain approvals are still needed.

Patrick Dwyer claimed that with only one egress to the development, fire trucks at the end of the road would trap vehicles inside the development, creating a safety concern. Lynn Christensen repeated that is a Planning Board issue.

Rod Buckley asked about separating the development from the rear of the abutting residences along D.W. Highway. Kevin Anderson intends to address all abutter issues when he appears before the Planning Board.

Leonard Worster called the variance a “no brainer”; the only way to build the project is to approve the density.

Lynn Christensen noted that Master Plan talks a lot about affordable housing. She is pleased that elderly housing would be changed to a project with less density. There is a need for rental units in Merrimack. The pluses are that this is a more reasonable solution, the applicant listened to the abutters, the project was moved away from the wetlands, and there would be no access to Island Drive. However parking and one

access on D.W. Highway is a huge challenge that will be addressed by the Planning Board.

Patrick Dwyer was opposed on the grounds that he felt the petitioner did not meet the criteria of spirit of the Ordinance, substantial justice or hardship. He said the project would overcrowd the area.

The Board voted 4-1-0 to grant the Variance, with the condition that the petitioner shall obtain site plan approval from the Planning Board for the proposed multi-family residential development, on a motion made by Lynn Christensen and seconded by Rod Buckley. Patrick Dwyer voted in opposition.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the project would create an attractive, affordable rental housing community and bring tax revenue to the Town. The site has been designed to avoid wetlands and direct access to Island Drive;
2. The spirit of the Ordinance is observed because the project would be an attractive place to live. The property has already been approved for a more intensive use (57 units). The proposal is consistent with the surrounding areas and would not alter the essential character of the neighborhood nor threaten the health, safety or public welfare. The only difference is that the project is for families rather than the elderly. A dense elderly development would not need a ZBA variance and could be built here without explaining whether it would alter the character of the neighborhood;
3. Granting this variance would do substantial justice because denial would not result in a gain to the general public. The public would actually gain from good quality, affordable rental housing with services to be provided. This proposal would have fewer units than the 57 elderly units that have already been approved;
4. The values of the surrounding properties would not be diminished because the proposed project would be attractive and well maintained. The location and clustering of the buildings was done after listening to the neighbors. The proposal is less dense than the approved 57-unit elderly project. The use is residential, which is consistent with the surrounding area. There would be no driveway connection to Island Drive;
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 this is a permitted use with fewer units than were already approved;

- 2) The proposed use is a reasonable one because quality affordable housing would improve the general health and welfare of Merrimack. Because the rental rates are targeted toward households making no more than 60% of the Area Median Income, density is required in order to make the project viable. It is not reasonable to prohibit five family units.

5. Discussion/possible action regarding other items of concern

None.

6. Approval of Minutes – March 28, 2018

The minutes of March 28, 2018, were approved as submitted, by a vote of 4-0-1, on a motion made by Lynn Christensen and seconded by Kathleen Stroud. Rod Buckley abstained.

7. Adjourn

The meeting was adjourned at 8:03 p.m., by a vote of 5-0-0, on a motion made by Leonard Worster and seconded by Lynn Christensen.