



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

603 424-3531

Fax 603 424-1408

www.merrimacknh.gov

MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES WEDNESDAY, APRIL 27, 2022

Board members present: Patrick Dwyer; Rod Buckley; Ben Niles; Lynn Christensen and Alternate Charles Mower.

Board members absent: Chair Richard Conescu

Staff present: Robert Price, Planning & Zoning Administrator

1. Call to Order

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

2. Roll Call

Patrick Dwyer led the pledge of allegiance and swore in members of the public who would be testifying. Rod Buckley read the preamble. Patrick Dwyer appointed Charles Mower to sit for Richard Conescu.

- 3. Jonathan Chasseur (petitioner/owner) –** Variance under section 3.05 of the Zoning Ordinance to permit the construction of a garage 4 feet from the side property line whereas 15 feet is required. The parcel is located at 6 Lorraine Road in the R-4 (Residential, by soils) District. Tax Map 2B, Lot 316. Case # ZBA 2022-11.

Petitioner/Owner Jonathan Chasseur presented the petition to the Board. Mr. Chasseur explained that he is trying to build a garage on his property but cannot meet the side setbacks due to the size of his lot. He then read through his responses to the statutory criteria (outlined below). Mr. Chasseur confirmed that the use was to keep his vehicles and recreational vehicles out of the weather.

There was no Public Comment.

The Board voted 4-0-1 to grant the variance, on a motion made by Rod Buckley and seconded by Lynn Christensen. Charles Mower abstained.

Case #2022-11 Findings of Fact

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

It would greatly improve curb appeal.

2. The spirit of the ordinance is observed because:

It will increase values for homeowner and surrounding neighbors.

3. Granting the variance would do substantial justice because:

It would create a financial hardship to build in any other location.

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

It would not diminish the surrounding values, if anything it would help increase surrounding properties.

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:

b. The proposed use is a reasonable one because:

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 property is smaller than the new houses being built, therefore the town setbacks do not allow the petitioner room to do much. Unless or if the petitioner had to follow setbacks the garage would not have a nice curb appeal.

- 4. Jianmin Song (petitioner) and TW Bridge Associates LLC (owner) – Variance under Section 2.02.1.A of the Zoning Ordinance to permit a personal services establishment (massage therapy center) in the R-4 (Residential, by soils) District whereas such use is not permitted. The parcel is located at 10 Twin Bridge Road Unit 1B in the R-4 (Residential, by soils) District. Tax Map 5D3, Lot 115-1B. Case #ZBA 2022-12.**

Petitioner Chen Huang & Matt Peterson (acting individually, not as the petitioner's professional representative) presented the petition on behalf of the petitioner. Mr. Peterson read through the petitioner's responses to the statutory criteria (outlined below).

Mr. Huang confirmed that there will be 4 massage chairs available and their hours will be 9 am – 8/9 pm Monday through Saturday.

There was no Public Comment.

The Board voted 5-0-0 to grant the variance, with conditions, on a motion made by Ben Niles and seconded by Charles Mower. The following condition applies:

1. The petitioner shall obtain Administrative Approval from the Community Development Department for the proposed personal services establishment.

Case #2022-12 Findings of Fact

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

The use will have less traffic, neighborhood impact, environmental concerns, and noise than other recent previous and current uses. Property is within residential zone, however, residential use in this facility is not appropriate.

2. The spirit of the ordinance is observed because:

The area and other tenants are all commercial or industrial oriented and the approval of this service use would be completely within the spirit of uses that would be appropriate within this zone and area.

3. Granting the variance would do substantial justice because:

The facility was designed, approved and used for commercial uses for decades and adherence to the underlying residential zone would create very undesirable results. Granting this would provide justice to allow the property to be utilized as it was intended.

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

The use is less intensive than previous uses and would not impact any surrounding in any substantial (or even minor) way. The value of surrounding properties would not change in any way due to our proposed use versus any other previous use or any future use that would be equally appropriate for the property.

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 located in a residential zone, however, the property and associated commercial condo units are not residential structures and it would be entirely inappropriate to utilize this property or any condo units residentially. This property is completely different than other residential structures in the area.

b. The proposed use is a reasonable one because:

The property was designed for commercial use and our proposed use will not impact surrounding properties or increase any previous intensity already within the property.

- 5. Rodd R Ruland (petitioner) and Lori F Ruland and Rodd R Ruland, Trustees of the Lori F Ruland Revocable Trust (owner) –** Variance under section 2.02.1 of the Zoning Ordinance to permit the temporary occupancy of a travel trailer in the R-2 (Residential, by soils) District while construction of a new single-family dwelling is underway. The parcel is located at 312 Baboosic Lake Road in the R-2 (Residential, by soils) District. Tax Map 6A-2, Lot 159. Case #ZBA 2022-13.

Petitioner Rodd Ruland presented the petition to The Board. Mr. Ruland explained that they are in the process of building a new home on the lot in question and are seeking permission to utilize a travel trailer during the summer months to be able to enjoy the lake and oversee construction. He then read through the responses to the statutory criteria (outlined below).

Mr. Ruland confirmed that the trailer is 23 feet long and will possibly be hooked up to the water on site but not the septic. He also stated that they do not expect the new home to be finished construction until August 2023 but no one will be occupying the travel trailer during the winter months.

There was no public comment.

The Board voted 5-0-0 to grant the variance, with conditions, on a motion made by Rod Buckley and seconded by Lynn Christensen. The following conditions apply:

1. The existing single-family dwelling shall be razed prior to the issuance of a certificate of occupancy for the new single-family dwelling;
2. This variance shall only be valid until a new single family dwelling is constructed on the property, and it shall not permit more than 1 dwelling unit on the property after the new dwelling unit receives a certificate of occupancy.

Case #2022-13 Findings of Fact

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

It is not contrary to the public interest to permit, during construction of a new single family dwelling on a two-acre parcel in the Residential District, while its owners live onsite in a travel trailer. Allowing the owner and petitioner to remain at the property while the new single-family dwelling is being constructed, enhancing efficiencies of construction, monitoring of work and safety and security of the site is of benefit to the public interest.

2. The spirit of the ordinance is observed because:

A new single-family dwelling complies with the spirit of the ordinance. Upgrades and modernization of the property, consistent with the permitted uses in a zone, obviously meet the spirit of the ordinance. The travel trailer will not remain on the premises after the replacement home is built as required by the ordinance.

3. Granting the variance would do substantial justice because:

Permitting the owner/petitioner to live on the lot during the construction of the new single-family dwelling does substantial justice. It enables the Applicant to process efficiently construction on the single-family dwelling and related improvements, provide security to the site during construction and continue his existing living arrangements until completion and occupancy of the new single-family dwelling. There is no harm to the public in permitting these arrangements during construction, but there will be significant harm to the owner and petitioner by denying the lot's reasonable use to monitor their homes reconstruction.

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

It is obvious that the razing, removal and replacement of the existing home will not diminish the value of the surrounding properties. The surrounding properties are generally residential in nature. A new residential home only enhances the value of the surrounding properties and does not adversely affect them and the travel trailer will be removed once the home is complete.

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 general purpose of the Zoning Ordinance includes promoting health, safety, convenience and general welfare of the Town of Merrimack, consistent with it enabling legislation, RSA 674:16. In turn RSA 674:17 notes that zoning ordinances shall be designed to promote certain specific land use goals, and shall be made with reasonable consideration to the character of the area involved with its peculiar suitability for particular uses.

In this case, the specific ordinance provisions which conflict with these general purposes are the used provisions governing the Residential District (Section 2.02.1 of the Zoning Ordinance) which prohibits the placement of a travel trailer on the lot while the existing single-family dwelling is occupied. In this case, condition of the existing home and the need that it be replaced are special conditions that distinguish it from other properties in the area, which demonstrate, in this case, that no fair and substantial relationship exist between the general public purpose of the Zoning Ordinance and the specific application on the use provisions to the premises.

The premises easily accommodates a new single-family dwelling, fully complies with the setback requirements set forth in Section 3.05 of the Zoning Ordinance.

The premises are located in a residential section of Merrimack, not adjacent to fire, life safety or police resources. Accordingly, permitting construction of a new single family dwelling while the owner lives in a travel trailer provides efficiency of construction and security for the premises, given its particular location.

The general purpose of the Zoning Ordinance is not served by precluding the construction of a new single-family dwelling, merely because the travel trailer remains on site since the general purpose of the Zoning Ordinance and the purposes of the Residential District specifically include the development of harmonious residential uses, which purpose is fostered by construction of single-family dwelling and razing of the existent manufactured home.

Denial of the variance, in light of these special conditions of the premises, would result in unnecessary hardship because of the general public purpose of the Zoning Ordinance as noted above is frustrated unless the variance is granted.

- b. The proposed use is a reasonable one because:**

The proposed use (a new single-family dwelling) fits the character of the premises, their location and the nature of the immediate area, is compatible with the uses in the neighborhood and is permitted use contemplated in the Residential District. The proposed single-family dwelling is reasonable use for the premises.

- 6. Bernard Boucher Revocable Trust (petitioner/owner) –** Variance under section 3.02 (A) of the Zoning Ordinance to allow two lots to be created (requiring subdivision approval from the Planning Board) with one lot having 194.56 feet of frontage whereas 250 feet is required and the other lot having 67,261 square feet of contiguous upland area whereas 100,000 square feet is required. The parcel is located at 69 Bean Road in the R-1 (Residential, by map) and Aquifer Conservation Districts. Tax Map 6B, Lot 141. Case # ZBA 2022-14.

Robert Price provided some history of the project by explaining that the petitioner applied for a 3 lot subdivision on this property at the last meeting and it was denied by the Board. They are now seeking a two lot subdivision on the same property and staff has determined that the proposal is sufficiently different enough to be heard by the Board.

Bernard Boucher (petitioner/owner) and Matt Peterson (Keach-Nordstrom Associates, Inc.) were present to discuss the project with the Board. Mr. Peterson began by providing an overview of the property and using the plan to demonstrate how the property will be divided. He went on to explain the original proposal would have required 6 different variances but the new two lot proposal only needs two, one for frontage and one for contiguous upland area.

Mr. Boucher introduced himself and provided a brief history of his background and years spent in Merrimack. He explained that he is now retired and is hoping to subdivide the land to generate some income for his family and pay down some debt.

Mr. Peterson through the responses to the statutory criteria (outlined below).

Public Comment

Harold Brodell (71 Bean Road) spoke in opposition of the proposal stating that the founding members of the town created the Zoning regulations in order to avoid overcrowding and feels that the Board should uphold those decisions now. He expressed concerns with Merrimack turning into a city like Nashua and feels that taxpayers do not want properties wedged into every available space. He argued that the applicant does not have a hardship because they could sell their property as it presently sits to make a profit right now if they need money.

Vice Chair Dwyer expressed his beliefs that the zoning regulations do not necessarily fit with the progression the town has made over the last 50+ years or the direction in which the town is heading. He also added that the proposal is reasonable and argued that the petitioner could sell his lot and a developer could come forward with a concept to put a cluster development on the 15 acre lot. Mr. Brodell asked if the subdivision is approved if there is anything preventing the lot from being subdivided again and Vice Chair Dwyer indicated that no, there would be nothing stopping the new owner from requesting the necessary variances to subdivide or develop the land in some other way.

Rod Buckley pointed out that although the petitioner mentioned his finances as a reason for the subdivision, the only things the Board considers are the responses to the 5 criteria. The Board continued to discuss their thoughts on the Zoning regulations for a period of time before Mr. Buckley suggested that they return to public comments.

Evan McDonald (65 Bean Road) encouraged the Board to go take a look at the land because he feels that the buildable area is far less than what was stated because most of the land is Marsh. He feels that granting the variance will diminish the value of his home because he will lose some of the privacy he has had for over 25 years. He encouraged the Board to deny the variance to avoid harm to him, financially and through loss of privacy.

Mr. Peterson indicated that the proposed layout of the subdivision makes it almost impossible for someone to come in and develop the back half of the lot due to the cost of putting in a road long enough to get past the wetlands. He reiterated that the two lot subdivision is within the spirit of the neighborhood and the proposed two lots are both larger than what is required in the zoning regulations.

The Board voted 4-1-0 to grant the variance, with conditions, on a motion made by Rod Buckley and seconded by Ben Niles. Charles Mower voted in opposition. The following condition applies:

1. The petitioner shall obtain approval from the Planning Board for the proposed subdivision.

Case #2022-14 Findings of Fact

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

Granting the frontage and contiguous lot area variances will not be contrary to the public interest. More specifically, the requested variances will not unduly conflict with the basic purposes of the relevant zoning provisions as it will neither alter the essential character of the area nor threaten public health, safety, or welfare.

The existing neighborhood will remain largely unaffected by the subdivision of this property and subsequent construction of 1 (one) additional single-family home. The petitioner is requesting to subdivide the current 20-acre parent parcel into two lots. This parcel is located along Bean Road and is bisected by the Babossic Brook from east to west through the property. The parcels need 250' of frontage and 100,000SF of Contiguous land where building per Town regulations and the lots will have 194.56' of frontage for Lot 1 and 67,261SF of contiguous land for Lot 2. The petitioner believes these variances would not be contrary to the public interest in that the petitioner believes the public interest regarding this article is to ensure all parcels have adequate frontage to access the property and adequate width to ensure proper separation of homes on the proposed lots. As for access from the existing roadway system the new lot has plenty of site distance along the roadway due to the straight configuration of Bean Road. Regarding the contiguous area, the petitioner has oversized the lot and believe that the 250' of frontage for this lot leaves more than enough area for 1 extra lot out of the 20-acre parcel. As such the petitioner does not believe this variance would be contrary to the public interest.

2. The spirit of the ordinance is observed because:

Again, these are going to be oversized lots in the Town with substandard frontage for one and less contiguous land for the second lot. The petitioner feels that this is the exact type of variance request that would be consistent with the spirit of the ordinance for a 20-acres parcel that is bisected by Babossic Brook that yields similar lots when compared to surrounding homes. The spirit of this ordinance related to frontage and contiguous land is to ensure safe access to a building lot and ensure proper spacing between homes, both lots have adequate site access via Bean Road and have more than adequate overall lot area within the lot to build one more home.

3. Granting the variance would do substantial justice because:

As stated above by allowing the owner of this parcel to subdivide his current 20-Acre parcel into 2 lots would yield substantial justice to the landowner of this 20-acres in the Town of Merrimack, which is bisected by Babossic Brook, to be subdivision into 2 lots creating an extra building lot the town out of a substantially oversized lot.

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

Again, as stated in the previous case the proposed construction of one single family homes on this parcel with reduced contiguous land and leaving the current home with 194.56' of frontage would not diminish values of surrounding properties since they will be similar uses as the surrounding

properties and new construction. As such the applicant does not believe this variance would diminish the value of surrounding properties.

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:**

This petition has outlined the special conditions hardship case. As stated, prior in the presentation the petitioner believes that the special condition that exist for this parcel is the location and configuration of the parcel as it relates to Babossic Brook and Bean Road and the requirement in the Town for proper access and contiguous land for new lots. Due to the size of the parcel and the location of Babossic Brook running through this site it distinguishes it from other properties in this area and is why the Board feels that the general purpose of the ordinance and the specific violation being applied for create an unnecessary hardship for the property. Again, with the Brook location and the proposed size of the lots the applicant believes this relationship between the general purpose of the ordinance and the specific violation being applied to the property creates an unnecessary hardship of the petitioner. As such there is no substantial relationship between the general purposes of the ordinance and the specific violation being applied to the property for all variances being requested.

- b. The proposed use is a reasonable one because:**

The proposed use of single-family residence is allowed by right in this zoning district and therefore the Board feels that one (1) additional single-family residence would be a reasonable one.

7. Discussion/possible action regarding other items of concern

Mr. Price reminded the Board that the annual meeting is coming up on May 25th so they need to start thinking about who will be voted in as Chair and Vice Chair because Chairman Conescu has reached his term limit. Lynn Christensen asked if the term limit could be removed from the Rules of Procedure because no other board has that kind of restriction. Mr. Price explained that it could be proposed as an amendment to the Rules of Procedure and voted on at the annual meeting. The Board directed Mr. Price to prepare such amendment.

8. Approval of Minutes – March 30, 2022

The Board voted 4-0-1 to approve the minutes of March 30, 2022, as submitted, on a motion made by Rod Buckley and seconded by Ben Niles. Lynn Christensen abstained.

9. Adjourn

The Board voted 5-0-0 to adjourn at 8:41 p.m. on a motion made by Lynn Christensen and seconded by Rod Buckley.