



# 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, AUGUST 26, 2015

Members present: Fran L'Heureux, Patrick Dwyer, Tony Pellegrino, Richard Conescu, Lynn Christensen, and Alternate Leonard Worster.

Staff present: Planning and Zoning Administrator Jillian Harris and Recording Secretary Zina Jordan.

### 1. Call to Order

Fran L'Heureux called the meeting to order at 7:00 p.m.

### 2. Roll Call

Richard Conescu led the pledge of allegiance. Tony Pellegrino read the preamble and swore in members of the public who would be testifying.

### 3. Annual Election of Officers and Review of By-Laws

Tony Pellegrino thanked staff and committee members for their help during his term as Vice Chair. Fran L'Heureux thanked Tony Pellegrino for his help during her term as Chair.

**The Board elected Fran L'Heureux as Chair, by a vote of 4-0-1, on a motion made by Tony Pellegrino and seconded by Patrick Dwyer. Fran L'Heureux abstained.**

**The Board elected Patrick Dwyer as Vice Chair, by a vote of 4-0-1, on a motion made by Lynn Christensen and seconded by Tony Pellegrino. Patrick Dwyer abstained.**

**The Board voted 5-0-0 to review the by-laws after agenda item #11, on a motion made by Lynn Christensen and seconded by Patrick Dwyer.**

**4. Rob Lavoie (petitioner) and Gregg Kennedy (owner) – Appeal of an Administrative Decision under Section 3.02 of the Zoning Ordinance, seeking to overturn the Community Development Department Staff determination that soils-based lot sizing does not apply to a parcel located within the R-1 (Residential) District by Zoning Map. The parcel is located at Fuller Mill Road in the R-1 (Residential) District. Tax Map 4B, Lot 153. Case # 2015-24. This agenda item is continued from the July 29, 2015 meeting.**

Attorney Greg Michael, Bernstein Shur, said the original subdivision conformed to zoning regulations. There are 45,000 square feet of slight soils plus an additional 151,000 square feet, enough for a lot. In his opinion, there is no need for zoning relief.

In 1998-1999, when there was a plan to develop from Horse Hill Preserve, the owner asked to modify the sewer to be connected to the area and to build a cluster development. An uproar ensued. A new zoning provision creating the R-1 (Residential) District was immediately posted without time to make changes. It stopped everything and the project was not approved. The new district encompassed Horse Hill Preserve and the Town dump. No one wanted to appeal at that time. Attorney Michael has dealt with this issue several times before the Zoning Board of Adjustment (ZBA). The circumstances of the cases Community Development Director Tim Thompson cites in his July 22, 2015, memo differ from this one. The ZBA is reluctant to grant extra lots where a cluster makes sense and never faced the soils type issue.

Attorney Michael read out Sections 3.1 and 3.2 of the Zoning Ordinance. The former defines multiple soils. The latter does not exclude the R-1 District, which has severe soils limitations. However this lot has a mix of soils with a fair amount of slight soils. Section 3.02.5, which provides for multiple soils within lots, not only does not exempt the R-1 District, it even references it. Nor does it exempt the R-2 and R-3 Residential Districts, although lot size depends on soil type. It does not say that it does not apply to R-1 lots. The Ordinance lists exemptions based on soils. This plan meets the exemption for multiple soils. The Section makes no unequivocal statements about how much contiguous land is required for single-family homes with multiple soils in the R-1 District, although it does so for multiple-family homes.

Attorney Michael stated that the lot can support two single-family houses with no difficulty.

Richard Conescu asked what analysis or information support the accuracy of the map. Ken Clinton, President, Meridian Land Services, Inc., said he used the Town's GIS maps on May 15, 2015. He did not do a high intensity soil survey or take soil samples.

Jillian Harris said it is staff's interpretation that the intent of the warrant article in 1999-2000 was to require that R-1 lots by map comply with the R-1 lot and yard requirements of the Ordinance. Soils do not come into the equation.

Attorney Michael referred to a Bedford ordinance that merged all existing lots as of a certain date. In court, a judge said the Town meant "on or after" that date, but that was not what the wording stated. Although the appeal stood, Bedford immediately fixed the regulation. The intention of the Merrimack Ordinance is a myth; what is written in the Ordinance is what counts.

Richard Conescu agreed, but asked whether the ZBA would be taking another look at the Ordinance if it made a determination at this meeting. He said that an Administrative Appeal is not the way to rectify soil types. Attorney Michael noted that the Planning Board would ask the same questions. Jillian Harris repeated that the warrant article is clear that the R-1 District requires 100,000 square feet of land area and 250 ft. of frontage. The intent is clear and has been interpreted that way for 15 years. Overturning it tonight would reverse 15 years of interpretation as well as the definition of the R-1 (Residential) District on the Zoning map. Attorney Michael disagreed. It is not

in the Ordinance. It must state clearly what is intended. Sections 3.02 and 3.02.5 allow only single-family homes. The Planning Board allowed a cluster rather than a grid in that District in past cases and the ZBA granted Variances. The Appeal says that this proposal does not need a Variance, but Attorney Michael will ask for one if the Appeal is denied.

When Lynn Christensen asked what difference granting the Appeal would make, Jillian Harris replied it would set a precedent for interpreting lots in the R-1 (Residential) District. Attorney Michael agreed.

Fran L'Heureux was uncomfortable and preferred to table the item for one month so the ZBA could meet with Legal Counsel. Attorney Michael said this is a unique case and it is fair to seek legal opinion for a statutory analysis/definition issue. It was never discussed because he asked for a delay at the July 29, 2015, meeting. Fran L'Heureux said legal opinion was not sought when the case was continued.

Richard Conescu said that Attorney Michael's arguments are a perfect example for seeking a Variance and opposed postponement. Attorney Michael expressed his willingness to proceed with the request for a Variance as long as denial would not prejudice the Appeal. Patrick Dwyer was inclined to discuss a Variance rather than an Administrative Appeal because overturning staff's decision and setting a precedent for the entire Town would have a dramatic and negative effect on R-1 zoning. He preferred to review the Ordinance separately. Lynn Christensen said discussing a Variance would allow time to clarify and correct the Ordinance, but if it were denied, it would shut off the petitioner's options. She preferred to table the item.

**The Board voted 4-1-0 to deny the Appeal of Administrative Decision, on a motion made by Patrick Dwyer and seconded by Tony Pellegrino. Lynn Christensen voted in the negative. The reasons for this denial were stated by the Board as follows: The Staff's interpretation was correct in applying the ordinance given the written intent of the zoning amendment was that R-1 (Residential) lot and yard regulations apply to the areas noted in the warrant article on the zoning map. Overturning this administrative decision and therefore the lot and yard regulations pertaining to the R-1 District by map would have had a widespread effect on that portion of the town.**

**5. Robert Lavoie (petitioner) and Gregg Kennedy (owner) – Variance under Section 3.02 of the Zoning Ordinance to permit the subdivision of a lot with less than the required minimum lot area, frontage and lot depths. The parcel is located at 8 Fuller Mill Road in the R-1(Residential) District. Tax Map 4B, Lot 153. Case # 2015-31.**

Attorney Greg Michael, Bernstein Shur, said the plan is different. The smaller lot would be expanded. Lot 153-2 would consist of 70,300 square feet of contiguous uplands; Lot 153 would contain approximately 121,800 square feet and 100,100 square feet of uplands. The lot can support two residential dwellings.

Michael Klass, Bernstein Shur, said the lot was purchased in 1997, predating the Ordinance. He read the statutory criteria into the record.

Richard Conescu agreed that denial would cause the applicant unnecessary hardship.

There was no public comment.

**The Board voted 5-0-0 to grant the Variance, with the condition that the applicant shall obtain subdivision approval from the Planning Board for the proposed two-lot subdivision, on a motion made by Richard Conescu and seconded by Patrick Dwyer.**

### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because Lot 153 would have sufficient frontage and Lot 153-2 would have approximately 232' of contiguous frontage (requiring a modest frontage variance of 18'), which is more than adequate to provide safe ingress and egress from Fuller Mill Road. While the lots are not rectangular shaped, the proposed lot lines mirror the existing lot lines and are generally square with Fuller Mill Road. They are not inconsistent with neighboring lots, which consist of a wide variety of lot sizes and shapes. Both lots contain adequate contiguous uplands to protect against water pollution and to allow for wells and fully compliant septic systems (which will also require State review and approval prior to construction). There is sufficient lot area to provide for appropriate use and development and to minimize Town expenses. The Variance does not conflict with the purpose of the Ordinance;
2. The spirit of the Ordinance is observed because both lots contain enough frontage for safe access and enough area to allow for on-site wells and septic systems, which will protect against water pollution and unnecessary expenses to the Town. The proposed lots are similar to the surrounding neighborhood's lot sizes and shapes. The character of the neighborhood would not be altered. The lots would not threaten public health, safety or welfare;
3. The values of the surrounding properties would not be diminished because denial would not result in an appreciable gain to the public, given that the proposed lots are designed to ensure safe and appropriate use. The lots would be used consistently with the District's permitted uses and in line with the surrounding neighborhood. The lots would not threaten public health, safety or welfare. Denial would result in a substantial loss to the applicant by preventing a safe and reasonable use of the property. The loss greatly exceeds any public gain;
4. The value of the surrounding properties will not be diminished because the character of the neighborhood would not be altered. The neighborhood includes single-family lots of varying sizes and shapes. The proposed lot would be used in a manner consistent with these neighboring lots and should not produce different or significant traffic, noise, odor, or other detrimental impacts to the surrounding area;

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 dual frontage and on-site wetlands that impact its use. The lots are more than adequate to support residential dwellings and their related infrastructure (i.e., septic systems and wells). The proposed lot shapes and sizes are consistent with the surrounding neighborhood;
  - 2) The proposed use is a reasonable one because it contemplates a use permitted under the Ordinance – single-family residential.

6. **John and Dawn O'Neil (petitioner/owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit a two-family residence with a lot area less than the required 80,000 s.f.. The parcel is located at 203 Naticook Road in the R (Residential) District. Tax Map 2B, Lot 109. Case # 2015-26.

John O'Neil, 203 Naticook Road, said he would not change the property, except the addition of an electrical meter socket and gas meter on the side of the home. He wants to change the status of the existing home from a single-family home with an ADU to a two-family home he can rent to other than family. The ZBA granted a Special Exception for the ADU in March 2009 as well as a Variance because of a lot error. It would be simpler to sell the home in the future if there were no ADU. Jillian Harris explained that, if the home no longer meets the ADU criteria, it must be a two-family residence. This is a unique case. It will not set a precedent because every unique case must meet the same criteria. John O'Neil said that, in 2013, his mother-in-law decided not to live in the ADU. His mother would move there in about five years and wants to pay for her own utilities.

John O'Neil read the statutory criteria into the record. The Variance would not be contrary to the public interest because the R-4 Residential District allows two-family residences. The spirit of the Ordinance would be observed because an Area Variance was approved for a legal non-conforming lot. There would be no negative affect on the neighborhood or the community. The home's appearance would remain unchanged. The Variance would do substantial justice because renting to non-blood family members would allow the family sufficient income to remain in Merrimack. Otherwise they would have to move. The values of surrounding properties would not be diminished because there would be no outward change to the property or parking. Limiting rental only to family members is a hardship because John O'Neil's mother-in-law decided not to live in the ADU and his son will soon leave and no longer pay rent. It is not cost-effective to remove the ADU. Rental to non-family members would afford relief.

As to #2, substantial justice, Lynn Christensen noted that the applicant chose to have an ADU. John O'Neil replied that things have changed. His son, who is paying rent, will soon move out of the ADU and his mother will not move in for about five years. Fran L'Heureux noted that the cost of living has increased but the applicant is getting no financial help.

As to #5, hardship, Richard Conescu said that, if the applicant had added an apartment to a single-family home, the ZBA would use different criteria. It is hard to justify an in-law apartment. The ZBA is stacking variance on variance. John O'Neil replied that he made improvements to the home for an ADU; he never expected to have to do this. He received Variances because of the nature of the property. Fran L'Heureux asked if he built the ADU for his mother-in-law without asking her. John O'Neil said she paid to build it. Lynn Christensen asked why he cannot afford it now. John O'Neil explained that he has to pay her back. Lynn Christensen said it is not a hardship as far as the Town is concerned. If John O'Neil had asked the Board to approve a one-bedroom apartment, the ZBA would deny it. He is modifying the use of the property, which is not allowed on 20,000 square feet. Now others will come to the ZBA wanting to rent an ADU. Richard Conescu said that applicants usually claim that a feature of their property prevents meeting the Ordinance or that a neighbor already did what they want to do. This case is not what the ZBA considers to be a hardship. The ZBA must ask if it is setting a precedent and changing the Town. John O'Neil responded that this is a unique case. He used to serve on the ZBA and understands what is involved. The hardship is that he cannot tear out the ADU and return to a single-family home. There will be no impact on service on the Town, abutters or neighbors and no precedent will be set. Lynn Christensen said the ZBA has more control about who lives in an ADU whereas anyone can rent a two-family home. There is no hardship because an apartment would add value to the home.

### **Public comment**

Cindy O'Brien, 205 Naticook Road, asked whether future owners would keep the house as a two-family, whether they could add to the property without Planning Board permission and whether they would be subject to the same restrictions. She is concerned about parking, snow and noise. When the O'Neils widened their driveway and added an area of crushed stone for additional parking, it reduced visibility and made getting out of her driveway more difficult. Cindy O'Brien asked if there is a maximum number of cars allowed. The Town had to install dry wells on her property because of runoff from the road. Snow blocks the view getting out of her driveway. New owners might plow snow towards her yard and block the view totally. Cindy O'Brien wonders whether new owners must follow rules about noise. She asked whether the ADU would be turned into a studio apartment or finished to add another living area that could be rented and whether it would need another variance.

Fran L'Heureux said that ZBA members looked at the site before the meeting. It must vote on present rather than future circumstances. Lynn Christensen said it would be a one-bedroom apartment with a finished basement that could be an additional bedroom. There is not sufficient hardship according to the definition. John O'Neil said he would rent to a single person or to a childless couple. Locked fire doors would prevent their access to the downstairs.

**The Board voted 4-1-0 to deny the Variance, on a motion made by Lynn Christensen and seconded by Richard Conescu. Patrick Dwyer voted in the negative. The reasons for this denial were stated by the Board as follows: The applicant did not display sufficient evidence of a hardship to meet criteria 5, required for the granting of the variance. The evidence provided pertained to self-inflicted financial hardship and not special conditions of the property that distinguish it from other properties in the area.**

**7. Carolyn Parker of Pattison Sign, Inc. for Enterprise Rent-A-Car (petitioner) and Helios Investments, LLC. (owner) – Variance under Section 17.09(3) of the Zoning Ordinance to permit the installation of (2) 74.31 s.f. wall signs whereas (1) 6 s.f. is allowed. The parcel is located at 302 Continental Boulevard in the R (Residential) and Aquifer Conservation Districts. Tax Map 2B, Lot 032. Case # 2015-27.**

Carolyn Parker, Pattison Sign, Inc., for Enterprise Rent-A-Car, said the site received a Use Variance in 2004 to allow for general commercial use in the R (Residential) District and the property is used for AutoFair employees to park their cars. One 6' wall sign is allowed in the District; the applicant wants two signs of 74 square feet each, which would be allowed in a commercial zone.

Carolyn Parker read the statutory criteria into the record.

Richard Conescu said a 6' sign would never be noticed. Carolyn Parker said people coming from AutoFair would see it.

There was no public comment.

**The Board voted 5-0-0 to grant the Variance, on a motion made by Patrick Dwyer and seconded by Lynn Christensen.**

#### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because the site was granted a Use Variance to allow vehicle storage. The signs will not have an adverse effect on the public, since they are set back approximately 130' from the road and 260' from the nearest residence. The business operates from 8:00 a.m.-6:00 p.m. The signs will be on a timer and shut off when the Town

desires. The internally-illuminated signs are a standard size across the country. Most are opaque. Safety lights will be left on;

2. The spirit of the Ordinance is observed because a commercial use was allowed in the Residential District. A 6' wall sign would not allow the business to advertise itself properly. One sign would face the Toyota dealer and the other would face the road;
3. Granting this variance would do substantial justice because the site is currently zoned for a commercial use, which is surrounded to the left and across the street by other commercial uses. The property abuts a commercial property. Larger signs should be allowed because the business is in a commercial district;
4. The values of the surrounding properties would not be diminished because the site is mostly surrounded by other commercial properties. The sign will not be visible from the only house nearby, which is 260' from the rear of the Enterprise Rent-a-Car building;
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 a commercial use in a residential district requires the proper square footage to advertise the new business;
  - 2) The proposed use is a reasonable one because wall signs are reasonable for business and would be illuminated only during business hours. They would have no adverse impact on the health, safety and general welfare of the community.
7. **Crosswoods Path III, LLC. (petitioner/owner)** – Variance under Section 15.04(B) & Table I of the Zoning Ordinance to permit up to 21 multi-family residential units on a lot containing 83,397 s.f. whereas between 130,680 and 152,460 s.f. is required (depending on the mix of 1 & 2 bedroom units). The parcel is located at 1 Crosswoods Path Boulevard in the C-2 (General Commercial) and Aquifer Conservation Districts and Planned Residential Overlay. Tax Map 7E, Lot 046-053. Case # 2015-28.

Attorney Brad Westgate, Winer & Bennett, read the statutory criteria for a Density Variance into the record.

There are 90 parking spaces, whereas only 50-55 are needed. Some pavement may be reduced. There are no garages; all parking would be outside.

Fran L'Heureux said this is a good use because many families are looking for apartments. The proposed building is good looking.

Jerry Levin, Owner, Crosswoods Path III, LLC, said he would charge moderate rents: approximately \$1350 a month for a two-bedroom apartment and \$1050-\$1100 for a one-bedroom apartment.

### **Public comment**

Amy Fuller, 5 Crosswoods Path Boulevard, asked if the building would be larger than if it had condominiums. In her opinion, 21 units in three stories is a lot for the space. Traffic is very busy in rush hour, especially for turns. It is almost like an intersection, especially in the morning. There will be serious impacts from significantly more cars. Society Hill on the same road has a traffic light. Amy Fuller questioned why so many units are allowed in half the required space. She asked if there would be any green space and how it would be maintained.

Jerry Levin said he would turn some of the parking area into green space. The building is larger than the condominium buildings. Since the units are smaller than condominiums, he can charge less rent. Attorney Westgate explained that the Planning Board would discuss traffic and green space. Jerry Levin said there would be much more traffic (90 cars) if the building contained offices rather than apartments. There will be a maximum of 40 cars for the residential use. Attorney Westgate said the building would not be fully utilized and apartments would not be affordable with 9-11 units. The site can handle 21.

Fran L'Heureux said that more traffic goes south to Exit 12 on Route 3/D.W. Highway. Jerry Levin agreed with Amy Fuller that left turns in the morning are difficult.

**The Board voted 5-0-0 to grant the Variance, with the condition that the applicant shall obtain site plan approval from the Planning Board for the proposed conversion of the building to multi-family residential use, on a motion made by Tony Pellegrino and seconded by Richard Conescu.**

### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because there is more than adequate parking and the project is adjacent to and a component of an existing planned residential development. It has Town water and sewer. There will be no change in the structure of the building. The original office use has failed to attract sufficient tenants, especially since the premises are a component of a planned residential development. Converting the building from an office use to a residential use affords housing to the area. The Planning Board approved the development twice. There have been changes in 15 years.
2. The spirit of the Ordinance is observed because the conversion will not violate the Zoning Ordinance or the approved Crosswoods Path site plan. The Planning

Board is generally in favor of the conversion. The Ordinance does not want an underutilized building. Fewer units in the building will keep it underutilized and defeat its affordability, since fewer units would have to absorb all the costs of operation and would make insufficient use of the parking and site development;

3. Granting this variance would do substantial justice because the property is fully developed, with an existing building readily convertible to up to 21 residential units. It has more than adequate on-site parking and good access. It is adjacent to and a component of a Planned Unit Development (PUD). It is relatively flat, with minimal site work necessary to effect the conversion. There would be no harm to the public because the building already exists, the site improvements adequately service it and underutilization is detrimental to the public. There would be minimal outside changes and a maximum of 2 two-bedroom apartments and eight one-bedroom apartments;
4. The values of the surrounding properties would not be diminished because, since the premises are a component of a PUD, conversion will not adversely affect surrounding property values. The surrounding residential properties are similar to the premises. Multi-family buildings exist adjacent to the premises on Crosswoods Path. The surrounding non-residential properties would not be adversely affected. They might even be enhanced by the proximity of additional residents who may use nearby business services;
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 density constraints frustrate the general public purposes of the Ordinance – to see vitality in a PUD and the efficient use of the land. The use of the premises is not efficient if it either languishes in an underutilized office setting or includes only a small number of units that are less than sufficient to make full use of the existing building;
  - 2) The proposed use is a reasonable one because the premises are already part of a PUD and are situated adjacent to existing multi-family buildings.
8. **Daniel Mendenhall of ADM Vending Inc. (petitioner) and Nash, Bosowski, Clegg & Clegg, and Mitchell & Mitchell (owners)** – Variance under Section 2.02.4.B of the Zoning Ordinance to permit a commercial/retail use in the I-1 (Industrial) District. The parcel is located at 20 Continental Boulevard in the I-1 (Industrial) and Aquifer Conservation Districts and Wellhead Protection area. Tax Map 3C, Lot 086. Case # 2015-29.

The applicant received a violation notice of site plan approval for a storefront in a warehouse site. Mr. Mendenhall's attempts to bring the site into compliance failed to bring the application to the ZBA for a Variance at the time. The attempts were put on hold until a new service request was received in April 2015 for signs advertising ADM Vending that did not have proper permits on the site.

Daniel Mendenhall, ADM Vending, Inc., read the statutory criteria into the record. As to #1, public interest, Richard Conescu said the site is surrounded by commercial property. As to #4, diminished values of the surrounding properties, Fran L'Heureux noted that there is one coffee center in Merrimack, not just in Hooksett. Daniel Mendenhall said it has a limited selection of K Cups

There was no public comment.

**The Board voted 5-0-0 to grant the Variance, on a motion made by Patrick Dwyer and seconded by Tony Pellgrino.**

#### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because permitting ADM Vending & Coffee to operate a retail store front and market coffee products to both commercial and retail customers ensures that both sectors have a competitive local market to obtain these products. The store front helps drive commerce into Merrimack from residents and businesses from the surrounding towns, thus providing opportunity for many other businesses to feed off the draw.
2. The spirit of the Ordinance is observed because the business has been in Merrimack for more than 10 years. It is a model business and has supported many local schools, sports teams and charities;
3. Granting this variance would do substantial justice because the business contributes to the tax base with a high quality product at a fair price. The business needs visibility. It will continue to support local businesses and the community;
4. The values of the surrounding properties would not be diminished, rather they would increase in value since ADM provides a service that is currently offered only in Hooksett, thus sending businesses and residents out of Merrimack;
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 denial would cause the business to lose sales. That would result in its closing and defaulting on its financial obligations: a \$1 million loan and three more years on the lease;

- 2) The proposed use is a reasonable one because ADM would be another casualty in Merrimack and general business and residents would lose products available locally, thus increasing cost.

9. **429 DW Highway LLC. (petitioner/owner)** – Variances under Section 2.02.13.E(4)(a) of the Zoning Ordinance to permit the construction of a farmers porch 21.80 ft. from the front property line whereas 30 ft. is required. The parcel is located at 427 Daniel Webster Highway in the C-2 (General Commercial) District and Elderly, Aquifer Conservation, and Town Center Overlay Districts. Tax Map 5D-4, Lot 076. Case # 2015-30.

Chad Branon, Project Engineer, Fieldstone Land Consultants, read the statutory criteria into the record. As to #3, substantial justice, Patrick Dwyer asked whether the building would be multi-family. Chad Branon stated that it would be a duplex with a common front entry. As to #4, diminished values of the surrounding properties, Fran L'Heureux worried that children could run into the road from the porch. Mark Rivet, Owner, 429 D.W. Highway, said the porch would have a railing.

Chad Branon said the building was moved back a short distance, so it does not have the same footprint as the existing building. The only change is the front porch, which will be 22' long and 6' on the side.

Patrick Dwyer said the farmer's porch would add value and charm to the site. The applicant did a good job cleaning up the area. Fran L'Heureux added that the house is nice looking.

There was no public comment.

**The Board voted 5-0-0 to grant the Variance, on a motion made by Patrick Dwyer and seconded by Lynn Christensen.**

#### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because it would allow for the productive use of the existing property and provide housing for the community. The porch will substantially improve the aesthetics of the subject parcel and its surroundings. The use and proposed distance are permitted in the zoning and will be consistent with the surroundings;
2. The spirit of the Ordinance is observed because the project consists of redeveloping an existing parcel, which will substantially improve the aesthetics of the parcel and its surroundings. The use is permitted in the zoning and will be consistent with the surroundings. The existing building was in disrepair. There is

adequate space on the property to support this redevelopment. The proposed uses are permitted in the zoning district;

3. Granting this variance would do substantial justice because it would allow for the productive use of an existing lot and improve the area's aesthetics. The building is situated in this location due to site grading and to accommodate the necessary parking. The uses are permitted in the zoning and will be consistent with the surroundings. The project will provide quality housing for the community and increase the tax base for the Town. A Variance would allow for the productive use of the property while providing responsible growth in the community;
  4. The values of the surrounding properties would not be diminished because the condition of the existing property would be improved. The existing non-conforming structure was in disrepair and was razed. This development will clean up the existing lot and improve the aesthetics of the parcel and the surroundings. The uses are permitted in the zoning and will be consistent with the surroundings. New construction and development will increase the value of surrounding properties. The project will have positive impacts on surrounding property values and rejuvenate the site and its surroundings. Other surrounding properties encroach further;
  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 farmer's porch will enhance the visual appearance from the street. The building is situated in this location due to site grading and to accommodate the necessary parking. There will be no negative impact on the general public;
    - 2) The proposed use is a reasonable one because the project will substantially improve the aesthetics of the parcel and its surroundings. The use is permitted in the zone and will be consistent with the surroundings. There is adequate space on the property to support this redevelopment. It will improve the neighborhood and have no negative impacts to the public. The setback is larger than on many surrounding properties.
10. **Patricia M. Dumont (petitioner/owner)** – Special Exception under Section 2.02.1 (B)(2) of the Zoning Ordinance to permit an Accessory Dwelling Unit (ADU). The parcel is located at 26 Joey Road in the R (Residential) District. Tax Map 2B, Lot 052. Case # 2015-32.

Patricia Dumont, 26 Joey Road, read the ordinance criteria into the record.

There was no public comment.

**The Board voted 5-0-0 to grant the Special Exception, with the following conditions, on a motion made by Richard Conescu and seconded by Tony Pellegrino.**

1. Execution of Declaration of Covenants for the Accessory Dwelling Unit (form will be provided by staff);
2. Payment of the Hillsborough County Registry of Deeds recording fee for recording of the Declaration of Covenants for the Accessory Dwelling Unit.

### **Findings of Fact**

1. The site is an appropriate location for the proposed use in terms of overall community development because the ADU will provide the family-oriented environment and solution to the needs of an elderly parent and those in need in the future;
2. The use as developed will not adversely affect the neighborhood and shall produce no diminution of real estate values in the neighborhood because the neighboring home at 28 Joey Road has a circular drive. Other homes in the neighborhood on Kurt Road, Gail Road, Joey Road and other neighboring streets have ADUs of comparable size and function;
3. There will be no nuisance or serious hazard to vehicles or pedestrians because the ADU will be set off from the street;
4. An adequate parking area is provided for motor vehicles on the premises because the ADU is a two-car garage with living area above. Jeff Strong of the Highway Department viewed the site and agrees that a circular driveway may be installed on the property;
5. The ADU is contained within or will be an addition to an existing single-family detached dwelling attached by common rooms/areas of transition to include a utility room, deck and entry from the garage;
6. The ADU contains one bedroom.
7. The ADU does not exceed 1,000 square feet in area or fifty per cent (50%) of the area of heated living space within the principal dwelling unit in area, whichever is smaller. The ADU represents approximately 700 square feet or 45% of heated living space in the family home, which contains 1,570 square feet of heated living space;
8. The ADU is connected internally to the principal dwelling unit through a common room and common deck on the living area and a common entry point from the garage into the living area;
9. The ADU occupancy will be restricted to family members only, with the term "family" as defined as individuals related by blood, marriage or adoption to the fee simple

owner-occupant(s) of the principal dwelling unit. The initial occupant is the applicant's elderly father;

10. The ADU is designed to remain functionally dependent on the principal unit and will not have provisions for separate utilities, garages, driveways, yards and other similar amenities.

### **3. Review of By-Laws.**

Staff made minor amendments to reflect modifications to State Law regarding minutes and decisions: to reflect the August 26, 2015, Annual Meeting date; to replace the list of dates to state "revised through August 26, 2015; and to amend "144 hours" to "five business days". Lynn Christensen condensed ZBA members' suggestions for revisions to the preamble in a draft that she will forward to the Community Development Department.

**The Board voted 5-0-0 to approve the proposed By-Law amendments, on a motion made by Richard Conescu and seconded by Tony Pellegrino.**

### **12. Discussion/possible action regarding other items of concern**

Because Richard Conescu's work conflicts with some meeting dates, he offered to resign if alternates who can attend all meetings are found. Fran L'Heureux said resignation is his decision and that he could be a second alternate instead of a full member.

### **13. Approval of Minutes – July 29, 2015**

**The minutes of July 29, 2015, were approved, as submitted, by a vote of 4-0-1, on a motion made by Tony Pellegrino and seconded by Patrick Dwyer. Richard Conescu abstained.**

### **14. Adjourn**

**The meeting adjourned at 10:15 p.m., by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Lynn Christensen.**