



# 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**

**AUGUST 30, 2017**

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

Members absent: Tony Pellegrino and Lynn Christensen.

Staff present: Community Development Director Tim Thompson 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 to sit for Tony Pellegrino.

#### **2. Roll Call**

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

The Board agreed to move this agenda item until after item #9.

- 4. Abraham Zibolis (petitioner/owner) —** Variance under Section 3.05 of the Zoning Ordinance to permit an attached 28'x50' garage addition with a 5 foot side setback whereas 15 feet is required. The parcel is located at 13 Twin Bridge Road in the R(Residential) and Aquifer Conservation Districts. Tax Map 5D- 3, Lot 116-02. Case # 2017-28.

This agenda item was discussed after agenda item #2.

Abraham Zibolis, 13 Twin Bridge Road, wants to build a garage addition on an irregularly shaped lot. Due to the location of the house and the awkward shape of the lot, the exact dimensions and shape of the proposed garage cannot be determined, but it will be no larger than 28'x50'. There is only one place to put it. Without a variance, it would be on the property line.

Abraham Zibolis read the statutory criteria into the record.

#### **Public comment**

Charles McNulty, 11 Twin Bridge Road, supports the project because it would clean up the property. He would even support putting the garage addition on the property line. There is no other place to build it on the pie shaped property.

**The Board voted 4-0-0 to grant the Variance, on a motion made by Fran L'Heureux and seconded by Richard Conescu.**

**Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because making the home look better would increase the value of the other homes on the street. The neighbor at 11 Twin Bridge Road would be happy to see the garage instead of all the items and sheds outside. A large garage is needed because the current one is now crowded with family members' belongings;
2. The spirit of the Ordinance is observed because there are a sandpit and commercial property to the left and across the street. There is no home to object to the garage being close to it; #11 Twin Bridge Road is the only neighbor;
3. Granting this variance would do substantial justice because it would allow the growing family a place to store its items. Otherwise it would need portable garages that would look bad in the town;
4. The values of the surrounding properties would not be diminished because the addition would improve the surrounding property by removing two portable garages and one shed and store items inside that are currently outside, thus cleaning up the property;
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, due to the narrow and unique shape of the lot, the front left is the only place to add a garage. Ideally it would go all the way to the lot line so it would not cover the small garage, but the garage was redesigned to go only 10' into the setback and to leave a 5' buffer to the easement walking trail/sandpit. This is not ideal because not building against the property line means blocking the current small front entrance garage;
  - 2) The proposed use is a reasonable one because the current garage is very small and the family's vehicles and items do not fit. The garage would improve the surrounding properties by storing them out of sight.
5. **Toni Paul (petitioner) and David Paul (owner)** — Variance under Section 3.02 of the Zoning Ordinance to permit the construction of a dwelling unit on a lot without road frontage whereas 200 feet of frontage is required. The parcel is located at 312-B Baboosic Lake Road in the R (Residential) and Aquifer Conservation Districts. Tax Map 6A-2/156-09. Case # 2017-29.

**The applicant withdrew the petition.**

Tim Thompson explained that the petitioner is trying to rectify building without a permit. Town Counsel reviewed the deed and Planning Board restrictions and determined that

a variance is not the appropriate means to seek relief, since the lot already exists without frontage. Instead the petitioner will file an appeal of administrative decision under RSA 674:41, probably at the September 2017 ZBA meeting.

**6. Franklin Savings Bank (petitioner) and KRG Merrimack Village, LLC. (owner) —**  
Variance under Section 17.10.3 of the Zoning Ordinance to permit a modification to a previously approved (by Variance) free standing sign with an area of 54.41 s.f. whereas a maximum of 48 s.f. is permitted. The parcel is located at 1 Dobson Way in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 4D, Lot 080. Case # 2017-30.

Tim Thompson noted that, on January 25, 2017, the Board granted a variance for the additional freestanding sign and its setback. The Planning Board has approved the site plan. The petitioner now seeks additional sign square footage in excess of what the Zoning Ordinance permits because inclusion of signage for their financial advisors group was not included in the original design.

Richard Pilla, Paramount Partners, said the bank was placed at the entrance of the Merrimack Village Shopping Center in order to accommodate fire truck access. When it previously appeared before the ZBA it did not contemplate including "Independent Financial Advisors" in its branch. Now that it is obvious that there is a demand for wealth management services in Merrimack, the bank has decided to add an investment advisor to its Merrimack branch staff and to include additional signage to the pole sign to inform the public of this service.

Richard Pilla read the statutory criteria into the record.

Richard Conescu noted that the shape and design would not change and the sign would be the same size. Richard Pilla said only a plaque would be added and that only the text would change. Tim Thompson explained that the address does not count toward the size.

**There was no public comment.**

Patrick Dwyer added that the only change is converting the top to a plaque. Tim Thompson said the lot is small and was challenging from the site plan perspective. The sign would be 6 ½ square feet over what is allowed. The additional advertising and copy require a variance.

**The Board voted 4-0-0 to grant the Variance, on a motion made by Richard Conescu and seconded by Fran L'Heureux.**

### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because it would be a benefit due to the challenges that all families and households face in preparing for retirement;

2. The spirit of the Ordinance is observed because the type, design and messaging would make the public aware that this important service is provided in Merrimack;
  3. Granting this variance would do substantial justice because the bank's independent financial advisors would benefit the community. This service is not typically offered at most retail bank branches;
  4. The values of the surrounding properties would not be diminished because there would be no impact to any residence or business within the immediately surrounding environs. The design and construction of a professional business should increase values. The lot was vacant for a long time because of the limited number of uses that could be put on this site. A bank enhances the surrounding environment;
  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 an inability to inform the public that the services to be provided are conveniently located and easily accessible create an unnecessary hardship;
    - 2) The proposed use is a reasonable one because it is consistent with the products and services to be offered by Franklin Savings Bank at the 1 Dobson Way location and would provide convenience and a pleasant environment to conduct such business for the community.
- 7. Sean Lester (petitioner/owner) —** Variance under Section 1.03.A(3) of the Zoning Ordinance to permit the construction of a 2 bay garage (accessory structure) which is not subordinate to the Primary Dwelling Unit. The parcel is located at 3 Bretton Drive in the R (Residential) and Aquifer Conservation Districts. Tax Map 4D-3, Lot 066. Case # 2017-31.

The lot , 3 Bretton Drive, currently contains a single family residence and the remnants of a collapsed garage that was built by a prior landowner. There is no garage at present. Sean Lester wants to build a detached garage with a loft large enough for storage.

The existing home is 34'x23' (782 square feet); the new replacement garage/barn would be 24'x42' (1,008 square feet). Tim Thompson explained that a variance is necessary because the footprint of the house would be smaller than the proposed garage; thus the garage would not be "subordinate". The Planning and Zoning Administrator determined that it exceeds the definition of "Accessory Use" under the Ordinance.

**There was no public comment.**

**The Board voted 4-0-0 to grant the Variance, with the condition that the Zoning Board of Adjustment approve the setback variances (Case #2017-32), on a motion made by Fran L'Heureux and seconded by Richard Conescu.**

### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because the intended use is to replace a collapsed garage that was poorly built by the previous homeowner. The garage would be used strictly as a secondary building for storage of multiple vehicles, including cars, motorcycles, tractors, five kayaks, ladders, landscaping equipment and other items currently being stored outside and causing an eyesore to the neighbors. The structure would be used strictly as a non-inhabited detached garage;
2. The spirit of the Ordinance is observed because the previous garage was a "legal non-compliant" structure that encroached current setback regulations. The variance would allow replacement of a previous non-compliant garage with a new structure with marginally different encroachments;
3. Granting this variance would do substantial justice because the owner would retain use of previously existing garage space, the property would be greatly enhanced and storage of vehicles and other items would be out of view;
4. The values of the surrounding properties would not be diminished because the intended location, design and purpose of a replacement garage poses no burden on any of the surrounding properties. Without replacing the previous garage, the intended similarities in the design of the surrounding homes would differ substantially: this would be the only property in the entire neighborhood without a garage. Replacing the structure serves only to retain or improve neighboring property values;
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 there is no significant change in the intended use of the structure; it is to be used only as a garage. If the garage were placed closer to the property, the owner would lose reasonable access to the side entry of the home as well as the use of the fenced-in yard area where his children play. If a smaller garage were built, the owner would lose the ability to store multiple vehicles, landscaping equipment and additional storage to keep items secure and out of view and an eyesore to neighbors. Putting the garage forward on the property would create loss of driveway use and interference with the front yard. The neighborhood plots are small. Similar variances would need to be approved simply to build or replace similar structures;

- 2) The proposed use is a reasonable one because the use would not change. Replacing the garage with a smaller structure would cause significant loss to the property owner's ability to store multiple vehicles, outdoor maintenance equipment and sporting goods safely. The owner simply seeks to store these items out of view to maintain a clean and presentable property to conform to the neighboring properties.

8. **Sean Lester (petitioner/owner)** — Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a 2 bay garage (24'x42') with a 10 foot side setback whereas 15 feet is required and a 28 foot rear setback whereas 40 feet is required. The parcel is located at 3 Bretton Drive in the R (Residential) and Aquifer Conservation Districts. Tax Map 4D-3, Lot 066. Case # 2017-32.

On staff's recommendation, the ZBA's consensus was that, since the statutory criteria presented by the petitioner are identical to Case #2017-31 (above), it would waive the requirement that the petitioner read them again.

Sean Lester, 3 Bretton Drive, wants to build a two bay garage with access to the side of his house. To build closer to the setback would leave only 3' to get to the door of the house.

There was no public comment.

**The Board voted 4-0-0 to grant the Variance, on a motion made by Fran L'Heureux and seconded by Richard Conescu.**

#### **Findings of fact**

See Case #2017-31 above.

9. **Jason Byram (petitioner/owner)** — Variance under Section 2.02.1.A.2.a of the Zoning Ordinance to permit more than one non-resident employee as part of a Home Occupation. The parcel is located at 72 Davis Road in the R (Residential), Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 6D, Lot 421. Case # 2017-33.

Jason Byram, 72 Davis Road, owns a hardwood flooring company. His garage houses tools and vehicles. His employees go directly to their work site and not to the home. Tim Thompson explained that a variance is needed because this is a Home Occupation with two subcontractors (employees), whereas only one is allowed. The Ordinance allows one employee per home even if the employee does not come onto the property. The Planning Board has determined that subcontractors are the same as employees.

Jason Byram read the statutory criteria into the record.

There was no public comment.

**The Board voted 4-0-0 to grant the Variance, with the condition that the petitioner obtain Home Occupation approval from the Planning Board, on a motion made by Richard Conescu and seconded by Leonard Worster.**

### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because it would not alter the value and character of the neighborhood nor cause any diminution to the surrounding properties. There would be no visible signs of a business on the property, only a tasteful new garage;
2. The spirit of the Ordinance is observed because it would be an upgrade to the property. It would be used solely for non-visible contained storage of business tools and wood and provide space for personal vehicles to be parked inside for protection from the elements. The business is conducted solely at customers' homes and not at the residence at 72 Davis Road and would cause no inconvenience to the neighbors;
3. Granting this variance would do substantial justice because there would be no considerable effect on the neighbors or the purpose of the Ordinance. The upgrade to the property would allow tasteful storage of tools and supplies out of sight of the public, which is a requirement of a Home Occupation;
4. The values of the surrounding properties would not be diminished because the garage would likely increase the values due to the visual appearance that would maintain the character of the neighborhood;
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 of the variance would interfere with the reasonable use of the property, such as storing tools and materials and parking inside;
  - 2) The proposed use is a reasonable one because there would be no interference with traffic flow in the neighborhood, diminution of property values nor visible signs of storage. The site is at the end of the road where there is no traffic.

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

This agenda item was discussed after agenda item #9.

**The Board voted 3-0-1 to elect Patrick Dwyer as Chair, on a nomination made by Richard Conescu and seconded by Leonard Worster. Patrick Dwyer abstained.**

**The Board voted 2-0-2 to elect Fran L'Heureux as Vice Chair, on a nomination made by Richard Conescu. Patrick Dwyer and Fran L'Heureux abstained.**

**A motion by Patrick Dwyer to elect Richard Conescu as Vice Chair failed, 1-0-3 (since two members voted in favor of Fran L'Heureux). Fran L'Heureux, Richard Conescu, and Leonard Worster abstained.**

Tim Thompson explained that, under State law, the term “by-laws” does not appear in reference to land use boards. The terminology used is “rules of procedure”. Staff recommends that “by-laws” be retitled to “rules of procedure” and all mentions of “by-laws” be amended accordingly in the document.

**The Board voted 4-0-0 to adopt the proposed by-law amendments, on a motion made by Richard Conescu and seconded by Fran L’Heureux.**

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

Tim Thompson announced that Planning and Zoning Administrator Jillian Harris has taken a position in Portsmouth, NH and that Robert Price has been promoted to that position. Interviews will soon begin to fill his previous position of Assistant Planner.

#### **11. Approval of Minutes – July 26, 2017**

**The minutes of July 26, 2017, were approved as submitted, by a vote of 3-0-1, on a motion made by Richard Conescu and seconded by Leonard Worster. Fran L’Heureux abstained.**

#### **12. Adjourn**

**The meeting was adjourned at 8:10 p.m., by a vote of 4-0-0, on a motion made by Fran L’Heureux and seconded by Leonard Worster.**