



Town of Merrimack, New Hampshire

Community Development Department

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Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES WEDNESDAY, AUGUST 31, 2022

Board members present; Chair Richard Conescu; Patrick Dwyer; Ben Niles; Rod Buckley, Lynn Christensen and Alternate Charles Mower.

Board members absent: None

Staff present: Casey Wolfe, Assistant Planner

1. Call to Order

Chair Richard Conescu called the meeting to order at 7:01 p.m.

2. Roll Call

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

- 3. S.J. Torres (petitioner) and Orrin H. Connell Family Trust (owner) –** Variance under Section 17.10 of the Zoning Ordinance to permit three major sign types (ground, wall & roof) on a single lot whereas a maximum of two major sign types are permitted. The parcel is located at 454 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly Housing, and Town Center Overlay Districts. Tax Map 5D-4, Lot 54. ZBA Case # 2022-28.

Tony Basso (Keach Nordstrom Associates, Inc.) presented the petition on behalf of the petitioner. Mr. Basso spoke about all four of the variance requests generally by sharing pictures of them and stating that he feels that they do not meet the true definition of a sign and are being used as a means to beautify the outdoor dining area. He then went through the responses to the statutory criteria (outlined below).

No Public Comment

The Board determined that the petitioner's responses to the statutory criteria (outlined below) were sufficient, proved that each criterion was met, and adopted the responses as the Board's findings of fact.

The Board voted 5-0-0 to grant the variance on a motion made by Lynn Christensen and seconded by Ben Niles.

Findings of Fact:

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

The signs in question are not seen from the main road and are meant to be artwork for the outside dining area and to make the storage container look better than just a container. It's within the public interest because it beautifies the outdoor dining area.

2. The spirit of the ordinance is observed because:

The spirit and intent of the ordinance is to provide clarity for drivers and advertise for a business however, the intent of these extra signs is to decorate the outdoor area. They are not designed to bring traffic to the site and they are not cluttering the driving corridor with extra signage that is not needed.

3. Granting the variance would do substantial justice because:

The extra signs allows the applicant to beautify the outdoor dining area for his customers.

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

None of the signs in question face any abutting properties and they are only seen from the outdoor quad area in the back of the lot. Since none of the abutters can view the signs, there should be no impact to surrounding property values.

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:

There is no relationship between the ordinance and the variance being requested because the intent of these signs is not what the ordinance is trying to protect.

b. The proposed use is a reasonable one because:

The use is reasonable because the applicant should be allowed to decorate the outdoor area for the patrons to enjoy.

- 4. S.J. Torres (petitioner) and Orrin H. Connell Family Trust (owner) – Variance under Section 17.10.3 of the Zoning Ordinance to permit two additional ground signs (for a total of 3 ground signs) on a lot where one ground sign is permitted (based on existing conditions). The parcel is located at 454 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly Housing, and Town Center Overlay Districts. Tax Map 5D-4, Lot 54. ZBA Case # 2022-24.**

Tony Basso (Keach Nordstrom Associates, Inc.) presented the petition on behalf of the petitioner. Having already summarized the four variances being requested, Mr. Basso read through the responses to the statutory criteria (outlined below) and stated that his prior testimony applies to this case as well.

No Public Comment

The Board determined that the petitioner's responses to the statutory criteria (outlined below) were sufficient, proved that each criterion was met, and adopted the responses as the Board's findings of fact.

The Board voted 5-0-0 to grant the variance on a motion made by Lynn Christensen and seconded by Ben Niles.

Findings of Fact:

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

There is no effect on the public because the signs are intended to decorate the outdoor area and will not affect any of the public driving by.

2. The spirit of the ordinance is observed because:

The sign ordinance was written with drivers in mind and these signs are for the sake of the patrons enjoying the outdoor seating.

3. Granting the variance would do substantial justice because:

Allowing the signs to remain would grant substantial justice to the applicant because he can leave the area decorated for the patrons.

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

The surrounding property values will not be diminished because the signs are not visible to any of the abutters.

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:

There is no relationship between the ordinance and the variance being requested because the intent of these signs is not what the ordinance is trying to protect.

b. The proposed use is a reasonable one because:

The use is reasonable because the applicant should be allowed to decorate the outdoor area for the patrons to enjoy.

- 5. S.J. Torres (petitioner) and Orrin H. Connell Family Trust (owner) –** Variance under Section 17.10.4 of the Zoning Ordinance to permit two additional wall signs on a lot where zero are permitted (based on existing conditions). The parcel is located at 454 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly Housing, and Town Center Overlay Districts. Tax Map 5D-4, Lot 54. ZBA Case # 2022-29.

Tony Basso (Keach Nordstrom Associates, Inc.) presented the petition on behalf of the petitioner. Having already summarized the four variances being requested, Mr. Basso read through the responses to the statutory criteria (outlined below) and stated that his prior testimony applies to this case as well.

No Public Comment

The Board determined that the petitioner's responses to the statutory criteria (outlined below) were sufficient, proved that each criterion was met, and adopted the responses as the Board's findings of fact.

The Board voted 5-0-0 to grant the variance on a motion made by Lynn Christensen and seconded by Ben Niles.

Findings of Fact:

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

The two additional signs are for decoration purposes only for the outdoor dining space and are not used for what the ordinance was written for.

2. The spirit of the ordinance is observed because:

The ordinance was written for drivers to help avoid confusion and for advertising and that is not what they signs are for so the spirit of the ordinance is met.

3. Granting the variance would do substantial justice because:

Allowing the signs to remain would grant substantial justice to the applicant because he can leave the area decorated for his clientele.

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

The surrounding property values will not be diminished because the signs are not visible to any of the abutters.

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:

There is no relationship between the ordinance and the variance being requested because the intent of these signs is not what the ordinance is trying to protect. The purpose of these signs is not to direct passing motorists onto the site but rather to decorate the site so there is no relationship to the ordinance.

b. The proposed use is a reasonable one because:

The use is a reasonable one.

- 6. S.J. Torres (petitioner) and Orrin H. Connell Family Trust (owner) –** Variances under Section 17.10.3 of the Zoning Ordinance to permit two 320 square foot ground signs (if the variance in Case 2022-24 is granted) where the maximum allowable area per ground sign is 32 square feet. The parcel is located at 454 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly Housing, and Town Center Overlay Districts. Tax Map 5D-4, Lot 54. ZBA Case # 2022-35.

Tony Basso (Keach Nordstrom Associates, Inc.) presented the petition on behalf of the petitioner. He clarified that this request is specific to the signs on the storage containers and stated that the petitioner painted them to make them more decorative but they are classified as signs because they have the restaurant logo on them. Mr. Basso read through the responses to the statutory criteria (outlined below) and stated that his prior testimony applies to this case as well.

No Public Comment

Lynn Christensen stated she would feel differently about these signs if they were in the front of the plaza facing DW Highway but they are in the back of the lot so she sees no problem with them. She also agreed with Mr. Basso's testimony that the painted containers look better than if they were left plain. Vice Chairman Buckley agreed with Mrs. Christensen's comments.

The Board determined that the petitioner's responses to the statutory criteria (outlined below) were sufficient, proved that each criterion was met, and adopted the responses as the Board's findings of fact.

The Board voted 5-0-0 to grant the variance on a motion made by Lynn Christensen and seconded by Ben Niles.

Findings of Fact:

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

The signs do not create clutter on busy highways or places the public is going to see them.

2. The spirit of the ordinance is observed because:

The ordinance was written to direct drivers and these signs are used as art for an outdoor dining area so the spirit of the ordinance is observed.

3. Granting the variance would do substantial justice because:

Allowing the signs to remain would grant substantial justice because the artwork looks better than the plain containers would.

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

The signs are not visible to the abutters and they are dressing up storage containers so there is only a positive impact if any.

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:

There is no relationship between the ordinance and the variance being requested because the intent of these signs is not what the ordinance is trying to protect. The purpose of these signs is not to direct passing motorists onto the site but rather to decorate the site so there is no relationship to the ordinance.

b. The proposed use is a reasonable one because:

It's reasonable to paint the containers nicely for the patrons.

- 7. Michelle Karakaedos (petitioner) and GTONH, LLC (owner)** – Variance under Section 2.02.1 of the Zoning Ordinance to permit a daycare use in the Planned Residential Development Overlay District whereas such a use is not permitted. The parcel is located at 515 Daniel Webster Highway in the R-1 (Residential, by soils), Aquifer Conservation, Planned Residential Development Overlay, Town Center, and Elderly Housing Overlay Districts and Wellhead Protection Area. Tax Map 5D-2, Lot C002. ZBA Case # 2022-26.

Michelle Karakaedos (the petitioner) was present to discuss the variance with the Board. She began by explaining that she received an Administrative Approval to operate a before and after school program, as well as unit rental for recreational classes at the location in question but did not realize at the time that full day childcare was not included in that approval. The variance being requested is to allow her to conduct full day childcare, in addition to snow days, teacher workshops and vacation days.

Ms. Karakaedos read through the responses to the statutory criteria (outlined below).

No Public Comment

The Board determined that the petitioner's responses to the statutory criteria (outlined below) were sufficient, proved that each criterion was met, and adopted the responses as the Board's findings of fact.

The Board voted 5-0-0 to grant the variance on a motion made by Rod Buckley and seconded by Ben Niles.

Findings of Fact

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

It would fill a need working parents have in our community.

2. The spirit of the ordinance is observed because:

The childcare operations would be on select days, not all year round. School vacations, teacher workshop days, and snow days. We would operate per usual just longer hours on certain days.

3. Granting the variance would do substantial justice because:

It would fill parent's needs, but also allow continuity of care.

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

We would still hold regular operating standards. They have already cleaned up a lot of the area behind the building and feel that the childcare center will bring more business to the other tenants in the building.

5. Unnecessary Hardship

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:

Our space is not zoned for childcare. When the Administrative Approval was granted, I didn't realize it did not approve full days for vacations to accommodate parents. Via state standards of a before and after care, Looking to add some full days to accommodate parents schedules which would not be allowed without the variance.

- 8. Stewart's Ambulance Service (petitioner) and WB Properties, LLC (Owner) – Special Exception under Section 2.02.4 (E) 1 of the Zoning Ordinance to permit a limited residential use (accessory dormitory) to an existing ambulance service use. The parcel is located at 26 Columbia Circle, Unit D in the I-1 (Industrial), Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 24. ZBA Case # 2022-27.**

Donald Welford (Senior VP, Stewart's Ambulance Service) presented the petition to the Board. Mr. Welford began by explaining that Stewart ambulance is a non-emergency medical transportation service that took over the location on Columbia Circle from Life Line ambulance three years ago. An inspection of the facility was recently conducted by the Fire Department and revealed that the dormitory use was never approved and the space is not compliant with the Fire Code. Mr. Welford explained that since the discovery they have moved the overnight staff to a hotel while they seek the appropriate approvals to construct a dormitory that meets requirements in order to maintain an overnight staff.

Mr. Welford read through the responses to the Ordinance criteria (outlined below).

Vice Chairman Buckley asked why overnight service is needed if the business is non-emergency transportation. Mr. Welford explained that they service several hospitals that may need patient transportation in the middle of the night. Mr. Buckley then asked how many staff members are usually on overnight shifts and how many calls do they receive. Mr. Welford answered that there are five overnight staff members at the Merrimack facility and they average 3-4 calls overnight. The transports during the daytime are much more frequent because that is when a lot of the hospital discharges take place. Mrs. Christensen asked how many vehicles are on site and Mr. Welford responded that there are three.

Chairman Conescu clarified that the request is for a Special Exception and not a Variance and Mrs. Christensen noted that the petitioner is going to have to seek approval from the Planning Board as well as one of the proposed conditions of approval. Mr. Welford added that all of the construction will be internal and they are not adding any additional space for the dormitory. Mr. Buckley asked if the Special Exception is granted if it applies to the entire building or just this business. Casey Wolfe advised that the approval is specific to this business only (unit D).

No public comment.

The Board determined that the petitioner's responses to the ordinance criteria (outlined below) were sufficient, proved that each criterion was met, and adopted the responses as the Board's findings of fact.

The Board voted 5-0-0 to grant the Special Exception, on a motion made by Patrick Dwyer and seconded by Rod Buckley. The following conditions apply:

1. The petitioner shall obtain site plan approval from the Planning Board for the addition of the limited residential use (accessory dormitory) to the ambulance service use.

2. The petitioner shall be subject to all applicable building and fire code requirements and inspections that will be necessary following Planning Board approval.

Ordinance Criteria

a. The specific site is an appropriate location for such a use or uses in terms of overall community development because:

The location has been used for this purpose for over a decade. Unfortunately, there were several ownership changes prior to it being owned by Stewart's Ambulance and the first owner thought the use was allowed and represented such to the new owners. We only learned recently that there was an issue with our overnight staffing.

b. The use as developed will not adversely affect the neighborhood because:

The location has been used for this purpose without impacting real estate values and we have no reason to believe it would impact real estate values in the future.

c. There will be no nuisance or serious hazard to vehicles or pedestrians because:

Our employees are all specifically trained in operating emergency vehicles and there have been no issues over the last 10+ years.

d. Adequate and appropriate facilities will be provided for the proper operation of the proposed uses or uses because:

We have never had any problems with parking in our 10+ years of being located here.

9. **Gregory P. & Lynsay M. Hooven (petitioners/owners)** – Variance under Section 3.02 of the Zoning Ordinance to permit the construction of an accessory dwelling unit 12.66 feet from the front property line whereas 50 feet is required. The parcel is located at 5 Crestview Circle in the R-1 (Residential, by soils) and Aquifer Conservation Districts. Tax Map 7B, Lot 14-05. ZBA Case # 2022-30.

Tony Basso (Keach Nordstrom Associates, Inc.) and Gregory Hooven, owner, presented the petition to the Board. Mr. Basso began by explaining that the home owner is seeking a variance to permit the construction of an ADU 12.66 feet from the front property line whereas 50 feet is required. The location of the parcel (on a cul-de-sac) as well as the topography of the land and the location of wetlands, makes the placement of the addition difficult without obtaining a variance. Mr. Basso shared a ZBA exhibit of the property to demonstrate the location of the existing house and where the proposed addition is going to be.

Gregory Hooven (home owner) clarified that there is drainage at the end of the cul-de-sac so there are no plans for a road expansion and added that he does not have any neighbors to the right of his property. He also reiterated what Mr. Basso said about this being the only location that the addition can go because of the conditions of the property.

No public comment.

The Board determined that the petitioner's responses to the statutory criteria (outlined below) were sufficient, proved that each criterion was met, and adopted the responses as the Board's findings of fact.

The Board voted 5-0-0 to grant the variance on a motion made by Lynn Christensen and seconded by Ben Niles.

Findings of Fact

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

Granting the setback variance will not be contrary to the public interest. The reason for setbacks is to allow for future expansion, a natural progression of roads but this is a cul-de-sac so there is not anywhere else to go. There is still enough green space and there is not a short driveway or anything like that being created here, it's actually going to stay right where it is.

2. The spirit of the ordinance is observed because:

Granting the variance would allow the owner to construct an accessory dwelling unit designed to be cohesive with the style of the existing home. The spirit of this ordinance related to front building setbacks is to ensure safe access to the homes by limiting potential obstructions. Due to the home's orientation and driveway location along the cul-de-sac, adequate sight lines are expected to remain. Therefore, the applicant believes that the requested variance is consistent with the spirit of the ordinance.

3. Granting the variance would do substantial justice because:

Allowing the owner of this parcel to construct an accessory dwelling unit, consistent with the aesthetic style of the existing home, within the setback would result in substantial justice being done.

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

This is a substantial building addition that won't diminish values and there was a letter from a Real Estate agent that was provided that attests to this.

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 characteristics of the lot (steep slope going down to the wetlands, the cul-de-sac, the positioning of the home) make this the only location to construct the ADU so that it is cohesive to the existing home.

b. The proposed use is a reasonable one because:

The property is located on a cul-de-sac so all of the reasons front setbacks are required are not applicable here because the road will not be widened.

Mr. Basso also added that several neighbors submitted letters in favor of granting the Variance.

The Board combined items 10-13 into one public hearing.

10. Bowers Landing of Merrimack (petitioner/owner) – Equitable Waiver of Dimensional Requirements under Section 15.04.C of the Zoning Ordinance to permit an existing deck to remain 48.54 feet from the side property line whereas 50 feet is required. The parcel is located at Toby Circle in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 1D, Lot 1-4. ZBA Case# 2022-31.

Tony Basso (Keach Nordstrom Associates, Inc.) presented the petition to the Board. He began by explaining that during the construction of the condominiums at Toby Circle, 4 decks were constructed with minor side setback encroachments. The encroachments were discovered during the review of the As Built Plans and were a result of a building construction measurement error and were not done intentionally.

No public comment.

The Board determined that the petitioner's responses to the statutory criteria (outlined below) were sufficient, proved that each criterion was met, and adopted the responses as the Board's findings of fact.

The Board voted 5-0-0 to grant the Equitable Waiver of Dimensional Requirements on a motion made by Rod Buckley and seconded by Ben Niles.

Compliance with the statutory requirements of RSA 674:33-a:

1. Explain how the nonconformity was discovered after the structure was substantially completed or after a lot or other division of/and in violation had been transferred to a bona fide purchaser.

KNA discovered the encroachment when the As Built plans were created and at that time, the condos and decks were already built because the AS Built as done at the end of the process when everything is done.

2. Explain how the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.

The decks that overhang by less than 2 feet are in a fully cleared landscaped area so there is no impact on anyone or property values.

3. Explain how the cost of correction far outweighs any public benefit to be gained.

The public will not even see a difference because they are just off by a foot or two and it would cost a fortune to rebuild the decks now.

11. Bowers Landing of Merrimack (petitioner/owner) – Equitable Waiver of Dimensional Requirements under Section 15.04.C of the Zoning Ordinance to permit an existing deck to remain 48.05 feet from the side property line whereas 50 feet is required. The parcel is located at Toby Circle in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 1D, Lot 1-4. ZBA Case# 2022-32.

Tony Basso (Keach Nordstrom Associates, Inc.) presented the petition to the Board.

See agenda item #10 for additional comments pertaining to this case.

The Board determined that the petitioner's responses to the statutory criteria (outlined below) were sufficient, proved that each criterion was met, and adopted the responses as the Board's findings of fact.

No public comment.

The Board voted 5-0-0 to grant the Equitable Waiver of Dimensional Requirements on a motion made by Rod Buckley and seconded by Ben Niles.

Compliance with the statutory requirements of RSA 674:33-a:

1. Explain how the nonconformity was discovered after the structure was substantially completed or after a lot or other division of/and in violation had been transferred to a bona fide purchaser.

KNA discovered the encroachment when the As Built plans were created and at that time, the condos and decks were already built because the AS Built as done at the end of the process when everything is done.

2. Explain how the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.

The decks that overhang by less than 2 feet are in a fully cleared landscaped area so there is no impact on anyone or property values.

3. Explain how the cost of correction far outweighs any public benefit to be gained.

The public will not even see a difference because they are just off by a foot or two and it would cost a fortune to rebuild the decks now.

12. Bowers Landing of Merrimack (petitioner/owner) – Equitable Waiver of Dimensional Requirements under Section 15.04.C of the Zoning Ordinance to permit an existing deck to remain 48.2 feet from the side property line whereas 50 feet is required. The parcel is located at Toby Circle in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 1D, Lot 1-4. ZBA Case# 2022-33.

Tony Basso (Keach Nordstrom Associates, Inc.) presented the petition to the Board.

See agenda item #10 for additional comments pertaining to this case.

No public comment.

The Board determined that the petitioner's responses to the statutory criteria (outlined below) were sufficient, proved that each criterion was met, and adopted the responses as the Board's findings of fact.

The Board voted 5-0-0 to grant the Equitable Waiver of Dimensional Requirements on a motion made by Rod Buckley and seconded by Lynn Christensen.

Compliance with the statutory requirements of RSA 674:33-a:

1. Explain how the nonconformity was discovered after the structure was substantially completed or after a lot or other division of/and in violation had been transferred to a bona fide purchaser.

KNA discovered the encroachment when the As Built plans were created and at that time, the condos and decks were already built because the AS Built as done at the end of the process when everything is done.

2. Explain how the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.

The decks that overhang by less than 2 feet are in a fully cleared landscaped area so there is no impact on anyone or property values.

3. Explain how the cost of correction far outweighs any public benefit to be gained.

The public will not even see a difference because they are just off by a foot or two and it would cost a fortune to rebuild the decks now.

13. Bowers Landing of Merrimack (petitioner/owner) – Equitable Waiver of Dimensional Requirements under Section 15.04.C of the Zoning Ordinance to permit an existing deck to remain 48.11 feet from the side property line whereas 50 feet is required. The parcel is located at Toby Circle in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 1D, Lot 1-4. ZBA Case# 2022-34.

Tony Basso (Keach Nordstrom Associates, Inc.) presented the petition to the Board.

See agenda item #10 for additional comments pertaining to this case.

No public comment.

The Board determined that the petitioner's responses to the statutory criteria (outlined below) were sufficient, proved that each criterion was met, and adopted the responses as the Board's findings of fact.

The Board voted 5-0-0 to grant the Equitable Waiver of Dimensional Requirements on a motion made by Rod Buckley and seconded by Lynn Christensen.

Compliance with the statutory requirements of RSA 674:33-a:

1. Explain how the nonconformity was discovered after the structure was substantially completed or after a lot or other division of/and in violation had been transferred to a bona fide purchaser.

KNA discovered the encroachment when the As Built plans were created and at that time, the condos and decks were already built because the AS Built as done at the end of the process when everything is done.

2. Explain how the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.

The decks that overhang by less than 2 feet are in a fully cleared landscaped area so there is no impact on anyone or property values.

3. Explain how the cost of correction far outweighs any public benefit to be gained.

The public will not even see a difference because they are just off by a foot or two and it would cost a fortune to rebuild the decks now.

- 14. Keith Gorman (petitioner) and Kenneth & Calvin Ngoon & Vivian Price (owners) –** Variances under Section 3.02 of the Zoning Ordinance to permit the development of 2 single family residential lots (upon completion of required subdivision improvements) that do not meet the R-1 (Residential, by map) District dimensional standards. The parcels are located at 5 & 6 Ash Lane in the R-1 (Residential, by map) District. Tax Map 6A, Lot 9-1 and Tax Map 6A, Lot 9-2. ZBA Case # 2022-36.

Greg Michael, Esq., presented the case to the Board on behalf of the petitioner. Mr. Michael began by providing some history of the parcels by explaining that the lots in question were previously approved in 1989 were in the R-4 zone when they were approved. Mr. Michael shared a copy of the subdivision plan to demonstrate the location of the parcels and continued to explain that sometime after the subdivision was approved, the town changed the zoning requirements for the area of Ash Lane to R-1 (by map) and because the lots were not developed, they lost their grandfathered status to use the R-4 dimensional requirements. He shared a GIS screen shot of the area in question to demonstrate that the lots do not appear to be any smaller in size than the lots in the surrounding neighborhood.

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

Chairman Conescu asked for clarity on the change to the zoning that was done since the subdivision was approved. Mr. Michael explained that after the plan was approved, the town decided it wanted to preserve a lot of the larger parcels of land in the Southwest and Central Northwest regions of the town, so they created an R-1 (by map) zone that was voted on by the town. Lots in this R-1 (by map) zone, which these lots are in, need to meet the R-1 dimensional requirements regardless of the soil type and utilities.

Patrick Dwyer asked if the lots were going to be clear-cut to build a lot of houses and Mr. Michael clarified that each lot will have one single family home.

The Board determined that the petitioner's responses to the statutory criteria (outlined below) were sufficient, proved that each criterion was met, and adopted the responses as the Board's findings of fact.

No public comment was received.

The Board voted 5-0-0 to grant the variance, on a motion made by Patrick Dwyer and seconded by Rod Buckley. The following condition applies:

1. The petitioner shall, prior to the issuance of any building permits for the 2 lots, either construct (to the satisfaction of the Public Works Department) or provide a bond/surety for the completion of the roadway improvements to Ash Lane per the approved subdivision plan signed by the Planning Board on July 26, 1989 (HCRD Plan #23673).

Findings of Fact

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

Allowing these lots that were subdivided in 1989 to continue to exist and be built does not significantly alter the area nor does it threaten the health, safety of welfare of the public. The lots are both slight soils with approved septic designs and are each an acre and half in size. Since there is no threat to the health, safety of welfare of the public the petitioner believes the variance request is not contrary to the public interest.

2. The spirit of the ordinance is observed because:

The Courts ruled that public interest and the spirit of the ordinance are one in the same because if you meet the first criteria you meet the other because it's not within the spirit of the ordinance to impact public rights. The ordinance was designed to maintain large lot sizes and these are not small lots that were created so we don't believe the spirit of the ordinance is being violated by allowing this lots to be built out as they were approved. Under Haborside Associates v. Parade Residence Hotel, any loss to the individual that is not outweighed by a gain to the public is an injustice.

3. Granting the variance would do substantial justice because:

This is a balancing test between public rights and private rights. Is there a significant public gain or benefit by saying that the petitioner can't use these two lots? The answer is no there isn't, they are approved lots that are on the map and have never been revoked. The private rights are significant to the landowner who spent a lot of time and money getting the plans created and approved. They were confronted with lousy economic conditions at the time of the approval and was not able to complete the construction as planned but the subdivision was approved and recorded.

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

A residential use in a residential zone is considered a "reasonable use." Based on prior subdivision plan approval and nature of the surrounding area there will be no diminution of surrounding property values.

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:

Unlike other properties in this area, these parcels are akin to grandfathered lots. Statutory timing restrictions, not safety or other relevant considerations restrict development. There are no other lots in the area so burdened.

As a result there is no fair and substantial relationship between any public purpose of this restriction and its application to these two parcels of land. While there may be a remote "relationship" it is not "substantial" since any variance of any type represents a departure from the ordinance.

b. The proposed use is a reasonable one because:

As noted when discussing diminution of value, a use that is allowed in the zone is considered a reasonable use. Here single family residential dwellings are proposed which is a permitted use in the R-1 (by map) zone. Malachy Glen Associates v. Town of Chichester.

15. Tania Keefe (petitioner/owner) – Variance under Section 2.02.4.B of the Zoning Ordinance to permit a personal service establishment in the I-1 (Industrial) District. The parcel is located at 31 Railroad Ave in the I-1 (Industrial), Aquifer Conservation, Elderly Housing, and Town Center Overlay Districts. Tax Map 5D-4, Lot 087. ZBA Case # 2022-37.

Tania Keefe (petitioner/owner) and Lou Milano presented the petition to the Board. Ms. Keefe began by explaining that she recently purchased the property at 31 Railroad Ave and was approached by a local hair salon owner (who was recently displaced) about moving into her building. She stated that she would like to turn her existing breakroom into a salon use with one cutting and one hair washing station and was told by staff that a variance would be needed to permit a personal service use in the Industrial zone.

Ms. Keefe read through the responses to the statutory criteria (outlined below).

Mrs. Christensen mentioned that she drove by the lot and noticed that there seems to be a fence that was pushed down by some growing trees. Although it has nothing to do with the approval, she wanted to mention it so that it could be looked at.

No public comment.

The Board determined that the petitioner's responses to the statutory criteria (outlined below) were sufficient, proved that each criterion was met, and adopted the responses as the Board's findings of fact.

The Board voted 5-0-0 to grant the variance, on a motion made by Rod Buckley and seconded by Patrick Dwyer. The following condition applies:

1. The petitioner shall obtain administrative approval from the Community Development Department for the proposed personal service use.

Findings of Fact

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

The space already exists and her business has been established there for almost 15 years. She is trying to assist another business owner by proving her with one room which will not impact the public at all. The salon will have similar hours to the existing business (9-5) and will be by appointment only.

2. The spirit of the ordinance is observed because:

98% of the building is not changing use because it will remain the existing business and this will help a local business remain operational

3. Granting the variance would do substantial justice because:

The property is being improved as a result of this change.

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

The structure of the building is not being impacted by this change, the change will only impact about 300 square feet of a 10,000 square foot building. There is plenty of parking because there is approximately 25 spots and only 10 current employees.

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:

Having a tenant will help generate income for the owner of the building which will help to maintain the property. There is no impact to the public at all as this building is pretty well hidden and only has a logging company as a direct neighbor and another commercial company close by.

b. The proposed use is a reasonable one because:

No verbal response given, however by voting to grant the variance the Board determined that this criterion was met.

16. Discussion/possible action regarding other items of concern

No Discussion.

17. Approval of Minutes – July 27, 2022

The Board voted 5-0-0 to approve the minutes of July 27, 2022, as submitted, on a motion made by Rod Buckley and seconded by Lynn Christensen.

18. Adjourn

The Board voted 5-0-0 to adjourn at 8:46 p.m. on a motion made by Lynn Christensen and seconded by Rod Buckley.