



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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## **MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES WEDNESDAY, DECEMBER 28, 2022**

**Board members present;** Chair Richard Conescu; Vice Chair Rod Buckley; Ben Niles; Patrick Dwyer & Alternate Charles Mower

**Board members absent:** Lynn Christensen

**Staff present:** Tim Thompson, AICP, Community Development Director & Colleen Olsen, Assistant Planner

### **1. Call to Order**

Chair Rich Conescu called the meeting to order at 6:30 p.m.

### **2. Roll Call**

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

### **3. Keith Pasquale (petitioner) and KTK Realty Trust (Owner) – Variance under Section 2.02.4.B of the Zoning Ordinance to permit the sales and storage of used automobiles in the I-1 (Industrial) District. The parcel is located at 20 Star Drive in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 3D-1, Lot 12. Case # ZBA 2022-45.**

David Morin (Berkshire-Hathaway Verani Realty), and petitioner Keith Pasquale presented the petition to the Board. Mr. Morin gave a brief overview of his request and then read through his responses to the statutory criteria (outlined below).

Patrick Dwyer asked for clarification on the response to criteria 2 (see below) and the fact that no vehicles will be stored on site. Mr. Morin explained that Mr. Pasquale operates his business mostly online. He receives a request for a specific car, locates the car for the client and then arranges the sale. Occasionally, Mr. Pasquale will take possession of a vehicle for a day or two to inspect it, however that is not a frequent occurrence. Vice Chair Buckley asked if the current business that operates at this location is separate from this request and Mr. Morin confirmed that it is. The truck repair business already has conditional approval from the Planning Board and is separate from the request for used car sales. He also clarified that Mr. Pasquale may occasionally use the space for minor car repairs but that is an approved use.

Mr. Thompson interjected to inform the Board that the appeal that was being heard by the Court for the property was decided in the Town's favor. He advised that there may be future appeals that will come from it, but for now there is no stay on any local actions and the Planning and Zoning Boards are free to render decisions as they normally would. Mr. Thompson also informed

the Board that this variance application stemmed from a request to sign off on a dealer's license from the state and Staff was unable to sign the license because used car sales is not permitted in the Industrial zone. If the variance is approved by the ZBA then the applicant will also need to file an application with the Planning Board to amend their site plan to include the added use.

No public comment was received.

**The Board voted 5-0-0 to determine that the petitioner's responses to the statutory criteria are sufficient, proved each criterion is met, and the Board adopts the petitioner's responses as the Board's findings of fact, and further, to grant the Variance under Section 2.02.4.B of the Zoning Ordinance to permit the sales and storage of used automobiles in the I-1 (Industrial) District, conditioned upon site plan approval from the Planning Board for the used vehicle sales use on the property, on a motion made by Patrick Dwyer and seconded by Ben Niles.**

***Findings of Fact:***

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

*The proposed use would have no impact on the people of Merrimack. The business activity is primarily conducted over the internet. There will be no signage or public displace on the property.*

***2. The spirit of the ordinance is observed because:***

*This is not a used car lot in the I-1 District. No vehicles will be on display and activity limited to private transactions only.*

***3. Granting the variance would do substantial justice because:***

*The applicant has had a dealer's license in the State of NH for over ten years. He moved his primary business to Merrimack in 2021 and should be permitted to continue this activity. There will be no impact to abutters.*

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

*The property is located at the very end of Star Drive. There will be no visual impact as customer visits are by appointment only. The property is surrounded by Industrial uses, including truck repair and material storage.*

***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 ordinance for the I-1 district allows several automobile relates uses including gas stations, parking garages, enclosed service and repair, bulk fuel storage and*

*distribution. All of these uses create more traffic. The proposed use will be limited with no signage, no display and low traffic.*

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

*The applicant has a history of internet sales. He operates a trailer repair business in the same location. The proposed use will not overburden the site nor create any nuisance to abutters or the community.*

**4. Discussion/possible action regarding other items of concern**

Mr. Thompson introduced the new Assistant Planner, Colleen Olsen to the Board.

**5. Approval of Minutes – November 30, 2022**

**The Board voted 5-0-0 to approve the minutes of November 30, 2022, as submitted, on a motion made by Patrick Dwyer and seconded by Rod Buckley.**

**6. Adjourn**

**The Board voted 5-0-0 to adjourn at 6:47 p.m. on a motion made by Rod Buckley and seconded by Patrick Dwyer.**