



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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Town of Merrimack ZONING BOARD OF ADJUSTMENT DECEMBER 30, 2015 **MEETING MINUTES**

A regular meeting of the Merrimack Zoning Board of Adjustment was conducted on Wednesday, December 30, 2015 at 7:00 p.m. in the Matthew Thornton Room.

Chairman L'Heureux presided:

Members of the Board Present:

Lynn Christensen
Patrick Dwyer, Vice Chairman
Leonard Worster, Alternate

Members of the Board Absent:

Anthony Pellegrino
Richard Conescu

Also in Attendance:

Robert Price, Assistant Planner

1. CALL TO ORDER

Lynn Christensen led the Pledge of Allegiance. Patrick Dwyer read the Preamble. Patrick Dwyer swore in members of the public who would be testifying.

2. ROLL CALL

Chairman L'Heureux appointed Leonard Worster to serve as a voting member in the absence of Vice Chairman Pellegrino.

The next meeting of the Zoning Board of Adjustment will be conducted on January 27, 2016.

There being no objection, the Board went out of the regular order of business to take up Item #s 4 and 5.

- 4. Nikolaos Doulamis (petitioner/owner)** - Special Exception under Section 2.02.2 (C) of the Zoning Ordinance to permit the conversion of an existing legal non-conforming single-family dwelling into a multi-family dwelling. The parcel is located at 565 D.W. Highway in the C-1 (Limited Commercial), Aquifer Conservation, and Elderly Housing Overlay Districts, and Wellhead Protection Area. Tax Map 6D-1, Lot 123. Case #2015-47.

Joseph Mitchell, Esq. stated this coming year Mr. Doulamis will have owned the property for 30 years. When he took over the property its use was residential. The property is a single-level home with a cellar. The cellar was a two-bedroom apartment, which was believed to be an in-law apartment. At that time, there were five bedrooms; 3 up and 2 down. Since owning the property, Mr. Doulamis has continued the use as a five-bedroom residence. He has been renting out the first floor to one family, and now wishes to convert the cellar portion into two studio apartments primarily aimed at servicing low to middle income.

Chairman L'Heureux noted in August it was found that the property is in violation of Town Code. Attorney Mitchell stated it is believed a former resident of one of the two cellar units lodged a complaint with the Town stating the property was not permitted to have people residing in the cellar, and that it was approved only for a single-family dwelling.

Attorney Mitchell read the statutory criteria into the record:

Section 2.02.2(C)

- a) The specific site is an appropriate location for such a use or uses in terms of overall community development because the property has been, as far as they can tell, approved for residential use since sub-divided by a plan recorded in 1959. It is believed residential use is appropriate because abutters to the north (across Pine St.) and to the east (along Pine St.) are both residential. Historically, this house is residential in use. Adequate parking exists for three residential units. This has less vehicle traffic than either retail or office uses.

Member Christensen questioned if the plan recorded in 1959 was for a single-family residence or an in-law use. Attorney Mitchell responded the only information he has been able to locate is the plan that was recorded at the Registry of Deeds, which is a standard group of small rectangles that looks like it is meant for a residential sub-division.

Chairman L'Heureux remarked it didn't define who would reside in the residence, just laid out the plot. Attorney Mitchell stated, to his knowledge, it simply laid out the plot.

Chairman L'Heureux stated with only four (4) members of the ZBA present, if a vote were to result in a 2-2 outcome, the Petitioner's request would be denied. She questioned the will of the Petition with regard to proceeding. Attorney Mitchell stated his understanding, in the event of a tie vote the Petitioner would be afforded the opportunity to appear for a rehearing. Chairman L'Heureux stated that to be true. Attorney Mitchell stated the desire to proceed.

- b) The use as developed will not adversely affect the neighborhood because abutters to the north and east are both similar residential uses. The abutter to the south is the Merrimack House of Pizza.
- c) There will be no nuisance or serious hazard to vehicles or pedestrians because residential use has very low vehicular traffic on Pine St. or D.W. Highway.
- d) Adequate and appropriate facilities will be provided for the proper operation of the proposed use or uses because the house has adequate area for one apartment on the main floor and two studio apartments in the basement. The property currently has parking along the D.W. Highway in the front for use by the residents on the main floor and a relatively large parking area behind the unit to the east for those who would reside in the studio apartments.

Member Christensen questioned if the property is currently configured as a two-bedroom apartment in the cellar or was being used in that fashion. Attorney Mitchell responded it is being used as a two-bedroom apartment. Member Christensen asked for clarification the request is for a change in the cellar from a single two-bedroom apartment to two studio apartments. Attorney Mitchell responded the desire is to utilize the cellar portion as two studio apartments. He commented fire officials have stated concern with the likelihood of several occupants in the cellar area were it to be used as a two-bedroom apartment. He stated his belief the thought is if it is a studio apartment it is more likely to be occupied by a single individual.

Member Christensen stated her belief on the other side of Pine Street there is a similar residence with

living space upstairs and a separate unit downstairs. Mr. Doulamis stated that to be true. Attorney Mitchell reiterated it is believed allowing the property to remain a residential use will somewhat buffer the properties to the east, which are similar one-story smaller homes, from the D.W. Highway.

Chairman L'Heureux questioned the square footage of the apartments, and was told the northerly studio would be 25' x 21' and the southerly studio 22' x 25'.

Chairman L'Heureux opened the Public Hearing at 7:15 p.m.

Testimony in Favor - None

Testimony in Opposition - None

Chairman L'Heureux declared the Public Hearing closed at 7:16 p.m.

Member Dwyer commented on having visited the site. Although the studio will be small, it is intended for a single individual. Individual housing is not as easy to find around Merrimack as 2-3 bedroom apartments. He stated his only concern to be the potential for someone to use the large parking lot in some other manner. He stated agreement with the remarks regarding the property providing a buffer for those properties located behind it.

MOTION BY MEMBER DWYER TO GRANT THE SPECIAL EXCEPTION UNDER SECTION 2.02.2(C) OF THE ZONING ORDINANCE TO PERMIT THE CONVERSION OF AN EXISTING LEGAL NON-CONFORMING SINGLE-FAMILY DWELLING INTO A MULTI-FAMILY DWELLING SUBJECT TO GRANTING OF THE ASSOCIATED VARIANCES (CASE #2015-50) AND THE APPLICANT OBTAINING SITE PLAN APPROVAL FROM THE PLANNING BOARD FOR THE PROPOSED MULTI-FAMILY RESIDENCE. THE PARCEL IS LOCATED AT 565 D.W. HIGHWAY IN THE C-1 (LIMITED COMMERCIAL) AQUIFER CONSERVATION, AND ELDERLY HOUSING OVERLAY DISTRICTS, AND WELLHEAD PROTECTION AREA. TAX MAP 6D-1, LOT 123. CASE #2015-47.

MOTION SECONDED BY MEMBER WORSTER

4-0-0

- 5. Nikolaos Doulamis (petitioner/owner)** - Variances under Section 3.02 of the Zoning Ordinance to permit a lot with lot area of 8,712 s.f. whereas 40,000 s.f. is required; frontage of 80 feet whereas 125 feet is required; front set back of 28 feet whereas 30 feet is required; side set back of 15 feet whereas 20 feet is required; and depth of 110 feet whereas 125 feet is required. The parcel is located at 565 D.W. Highway in the C-1 (Limited Commercial), Aquifer Conservation, and Elderly Housing Overlay Districts, and Wellhead Protection Area. Tax Map 6D-1, Lot 123. Case #2015-50.

Joseph Mitchell, Esq., informed the Board it is believed the entire subdivision (13 lots) by a plan recorded in 1959, predates the Ordinance. This would not be allowed today under the current standards. The property has been in continuous residential use for as long as the Petitioner is aware. It appears as though it has been part of this neighborhood of 13 lots since 1959. He remarked the number of things that could be done in a commercial area on a lot this small is limited. The Petitioner believes it best to have the property remain in residential use.

Chairman L'Heureux opened the Public Hearing at 7:23 p.m.

Testimony in Favor - None

Testimony in Opposition - None

Chairman L'Heureux declared the Public Hearing closed at 7:24 p.m.

MOTION MADE BY MEMBER DWYER TO GRANT THE VARIANCES UNDER SECTION 3.02 OF THE ZONING ORDINANCE TO PERMIT A LOT AREA OF 8,712 S.F. WHEREAS 40,000 S.F. IS REQUIRED; FRONTAGE OF 80 FEET WHEREAS 125 FEET IS REQUIRED; FRONT SET BACK OF 28 FEET WHEREAS 30 FEET IS REQUIRED; SIDE SET BACK OF 15 FEET WHEREAS 20 FEET IS REQUIRED; AND DEPTH OF 110 FEET WHEREAS 125 FEET IS REQUIRED SUBJECT TO THE APPLICANT OBTAINING SITE PLAN APPROVAL FROM THE PLANNING BOARD FOR THE PROPOSED MULTI-FAMILY RESIDENCE. THE PARCEL IS LOCATED AT 565 D.W. HIGHWAY IN THE C-1 (LIMITED COMMERCIAL), AQUIFER CONSERVATION, AND ELDERLY HOUSING OVERLAY DISTRICTS, AND WELLHEAD PROTECTION AREA. TAX MAP 6D-1, LOT 123. CASE #2015-50.

**MOTION SECONDED BY MEMBER CHRISTENSEN
MOTION CARRIED
4-0-0**

FINDINGS OF FACT

1. Granting the variance would not be contrary to the public interest because providing housing for residents of all levels of income is in the public interest. This housing is for residents of low to medium income.
2. The spirit of the ordinance is observed because this area of town has historically been used for residential housing, and multi-family residences are appropriate for this area of Merrimack. No changes in building footprint are planned.
3. Granting the variance will achieve substantial justice because this house has been used for residential purposes as far back as 1958 or 1959.
4. The values of the surrounding properties would not be diminished. No external changes will be made. Two abutters to the north and east are both residential.
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. The size of this lot and the use of this building are believed to be grandfathered. This lot is more suitable to residential use than any other purpose for uses in the limited commercial area.
 2. The proposed use is a reasonable one because a lot of this size is more reasonable for residential use than limited commercial use.

Attorney Michael requested, and the Board agreed, to go out of the regular order of business to take up Item #s 6 and 7.

Chairman L'Heureux remarked Item #s 6 and 7 are pretty well tied together based on what occurred with the road. She questioned the will of the Board with regard to considering the items together.

The consensus reached was that the discussion could address both items, but action by the Board would be on each application separate from the other.

6. **Gregory E. Michael of Bernstein, Shur, Sawyer & Nelson, P.A. (petitioner) and Beverly D. Hilton Revocable Trust and George L. Hilton Revocable Trust (owners)** - Variances under Section 3.02 of the Zoning Ordinance to permit a lot with lot area of 52,985 s.f. whereas 100,000 s.f.

is required; contiguous upland area of 52,985 s.f. whereas 100,000 s.f. is required; and depth of 150 feet whereas 300 feet is required. The parcel is located on Tinker Road in the R-1 (Residential), and Aquifer Conservation Districts. Tax Map 2C, Lot 110. Case #2015-48.

- 7. Gregory E. Michael of Bernstein, Shur, Sawyer & Nelson, P.A. (petitioner) and Beverly D. Hilton Revocable Trust and George L. Hilton Revocable Trust (owners)** - Variances under Section 3.02 of the Zoning Ordinance to permit a lot with a lot area of 30,988 s.f. whereas 100,000 s.f. is required; contiguous upland area of 19,801 s.f. whereas 100,000 s.f. is required; frontage of 82 feet whereas 250 feet is required; front setback of 40 feet whereas 50 feet is required; and depth of 158 feet whereas 300 feet is required. The parcel is located on Tinker Road in the R-1 (Residential), and Aquifer Conservation Districts. Tax Map 2C, Lot 110-01. Case #2015-49

Attorney Michael provided a map for reference, and stated Lot 110 is the area to the north side of Tinker Road, and below that is Lot 110-1. He pointed out Lot 110-1 has frontage on both Leblanc Lane as well as Tinker Road. Both are Class V roads. Although they applied for one, he does not believe a frontage variance is required. He noted access is planned off the Leblanc Lane side.

Attorney Michael commented on being familiar with the history of the area. When Camp Sargent Road/Continental Boulevard was reconstructed, there were a number of discussions and amendments to the various plans. At the end of the day, the road was not supposed to be where it is, it was supposed to be north of the 110 parcel. The State ran the road right through the parcel, which was originally 2.875 acres in size. He commented another interesting aspect is that sewer was planned to be put down in this area. That did not happen in this specific location. Had sewer been in the area and had the State not proceeded the way it did. Four lots could have been created out of the parcel.

Attorney Michael stated the area is residentially zoned. Most of the lots in this particular area don't have the setback requirement of 50'. The parcels were surveyed, soils reviewed, etc. so that an understanding of current conditions could be gained. Attorney Michael stated they have in fact a defacto subdivision, but there is no plan. That is problematic if going for financing or discussing the legalities of the lot. The intent is to go before the Planning Board on January 5, 2016 seeking subdivision approval to formalize existing conditions.

Attorney Michael remarked part of the request involves utilization of the parcels. It is residentially zoned land. It is not a hardship the owners created. It was something that was done to a parcel they had owned for a number of years. It is their belief some relief is appropriate. Appropriate septic systems that will comply with State and Town standards can be designed for these parcels. Town water is available. The proposal is to locate single-family dwellings on each lot.

When asked, Attorney Michael commented there are very stringent State and Town standards for septic systems. There are appropriate areas for approvals for those systems. There are no variances or relief being requested for septic system installation. Member Dwyer commented with the upland and the wetlands by Leblanc Lane, he wished to understand where those might be proposed to avoid runoff going into the property of another or into wetlands. Attorney Michael responded those issues are important issues, and the State and Town regulations require installations that do not result in those scenarios. He stated the matter would be brought before the Planning Board. He reiterated they cannot do anything without appropriate approved septic installations, and they are not requesting any variances for those.

Chairman L'Heureux spoke of the roadway that split the property in two, and questioned if it was taken by eminent domain or if the property owners were compensated for that land. Attorney Michael responded it was taken by eminent domain. There was some compensation. The State took the land to relocate the road in this area, but that was not the original intent. He stated his recollection of the discussions at the time were that sewer would be in the area, and that would help solve the problem. He spoke of the abutting property to the side; the State took that property as part of the layout. There is a slight discrepancy with the GIS map and the layout map. On the GIS map it is shown as part of the Hilton

property, but it is not. Attorney Michael commented what is important is the likelihood of anything happening to this is pretty remote. For all practical purposes it is open land that isn't going to be developed by the State.

Chairman L'Heureux questioned if Tinker Road had been left alone, it would have been where Leblanc is now, and there would have been one large parcel of land that could have been sub-divided into 3-4 lots. What is being proposed is two lots. Attorney Michael stated that to be correct.

Attorney Michael commented Section 3.02 is an interesting part of the ordinances. It has been there for many years, and is really set up for when you develop and create lots. He remarked it is always difficult when you try to take it and apply it to this, yet we do. These lots have already been created, and as a result of the way they were created, the size, and where the State ran a road, the owners are stuck with the situation where we are talking about things that more appropriately apply to lots we would try to create.

Chairman L'Heureux opened the Public Hearing at 7:54 p.m.

Testimony in Favor - None

Testimony in Opposition - None

Chairman L'Heureux declared the Public Hearing closed at 7:55 p.m.

Member Dwyer echoed the comments made by Attorney Michael with regard to Section 3.02. He commented Merrimack has a lot of unique lots. In cases such as this it has to be taken into consideration; the fabric of that area is residential.

MOTION BY MEMBER DWYER TO GRANT THE VARIANCES UNDER SECTION 3.02 OF THE ZONING ORDINANCE TO PERMIT A LOT WITH LOT AREA OF 52,985 S.F. WHEREAS 100,000 S.F. IS REQUIRED; CONTIGUOUS UPLAND AREA OF 52,985 S.F. WHEREAS 100,000 S.F. IS REQUIRED; AND DEPTH OF 150 FEET WHEREAS 300 FEET IS REQUIRED. THE PARCEL IS LOCATED ON TINKER ROAD IN THE R-1 (RESIDENTIAL), AND AQUIFER CONSERVATION DISTRICTS. TAX MAP 2C, LOT 110. CASE #2015-48.
MOTION SECONDED BY MEMBER CHRISTENSEN
MOTION CARRIED
4-0-0

FINDINGS OF FACT

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

As the courts have said, to be contrary to the public interest, the variance must unduly and in a marked degree conflict with the Ordinance such that it violates the Ordinance's basic zoning objectives. The goal of minimum dimensional requirements is to ensure appropriate access to lots, govern the lot's size and shape, and prevent structures from encroaching too close to lot lines. Finally, minimum contiguous lot area in the residential district is intended to minimize water pollution, the misuse of sensitive lands, and excessive expenses to the Town.

Here, Lot 2C-110 has adequate frontage and Lot 2C-110-1 is proposed to gain access to a public way via Leblanc Lane, which connects to Tinker Road. Thus, it is clear that both lots have adequate frontage to provide safe ingress and egress. As to the shape and size of the proposed lots, these lots are the result of the taking and layout of Tinker Road, which the Applicant had no power or control over. Furthermore, the lots are not inconsistent with the neighborhood and, from a practical matter; these lots have existed in this fashion for decades, since the road split the property into two pieces.

Moreover, as shown on the plans, although undersized, both lots contain adequate uplands to protect against water pollution and fully compliant septic systems (which will also require State review and approval prior to construction). In other words, there is sufficient lot area to allow for appropriate use and development and to minimize Town expenses. Finally, the modest front setback (10') variance requested for Lot 2C-110-1 allows for the proposed structure to be sited further away from the wetlands and does so without encroaching on any neighbors. What is proposed is consistent with the character of the neighborhood.

In light of the above, the requested variances do not conflict with the purpose of the Ordinance and granting the requested relief will not be contrary to the public interest.

2. The spirit of the ordinance is observed.

Here, similar to the above, the rationale for minimum dimensional requirements is to encourage safe and appropriate residential development that protects against pollution, the misuse of land, and excessive costs to the Town. The proposed lots are consistent with this rationale and the spirit of the Ordinance.

Both lots contain enough frontage for safe access and enough area to allow for on-site septic systems, which will protect against water pollution and unnecessary expenses to the Town. Furthermore, the proposed lots have existed in this form for decades as a result of the Tinker Road taking and are not inconsistent with the neighborhood's character.

As such, the spirit of the Ordinance, which ultimately seeks to promote the health, safety, convenience, and welfare of the Town, is observed in the requested variances.

3. Granting the variance will achieve substantial justice.

Substantial justice is done when the loss of denying a variance exceeds the gain to the public in strictly enforcing the Ordinance. Denying the requested variances will not result in an appreciable gain to the public given that the proposed lots are designed to ensure safe and appropriate use. The proposed lots will be used consistently with the district's permitted uses and in line with the surrounding neighborhood. Furthermore, the proposed lots will not threaten public health, safety, or welfare. Substantial justice weighs in favor of this application in particular when the reason for the variances is the historic taking and layout of Tinker Road.

On the other hand, denying this application will result in a substantial loss to the applicant by preventing the safe and reasonable use of property. In doing so, the loss of denying the variance greatly exceeds any public gain and warrants granting the application.

4. The values of the surrounding properties would not be diminished.

The requested variance will not diminish the character of the neighborhood, which includes existing single-family lots of varying sizes and shapes. The proposed lots will be used in a manner consistent with these neighboring lots and, thus, should not produce different or significant traffic, noise, or odors 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.

In this case, the property at issue is unique in that both proposed lots were created decades ago as a result of the Tinker Road taking and layout. The over-riding purpose of the Ordinance is to control uses which are not suited for a particular zoning district. Here, that is to aim for safe and appropriate residential development.

In this case, the proposed lots are more than adequate to support residential dwellings and their related septic infrastructure. Moreover, from a practical perspective, the proposed lots have existed for years and are already part of the neighborhood's character. As such, there is not substantial relationship between the general public purpose of the Ordinance and its application to the property at issue.

2. The proposed use is a reasonable one.

It contemplates a use that is permitted under the Ordinance; single-family residential.

MOTION BY MEMBER DWYER TO GRANT THE VARIANCES UNDER SECTION 3.02 OF THE ZONING ORDINANCE TO PERMIT A LOT AREA OF 30,988 S.F. WHEREAS 100,000 IS REQUIRED; CONTIGUOUS UPLAND AREA OF 19,801 S.F. WHEREAS 100,000 S.F. IS REQUIRED; FRONTAGE OF 82 FEET WHEREAS 250 FEET IS REQUIRED; FRONT SETBACK OF 40 FEET WHEREAS 50 FEET IS REQUIRED; AND DEPTH OF 158 FEET WHEREAS 300 FEET IS REQUIRED. THE PARCEL IS LOCATED ON TINKER ROAD IN THE R-1 (RESIDENTIAL), AND AQUIFER CONSERVATION DISTRICTS. TAX MAP 2C, LOT 110-01. CASE #2015-49
MOTION SECONDED BY MEMBER WORSTER
MOTION CARRIED
4-0-0

FINDINGS OF FACT

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

As the courts have said, to be contrary to the public interest, the variance must unduly and in a marked degree conflict with the Ordinance such that it violates the Ordinance's basic zoning objectives. The goal of minimum dimensional requirements is to ensure appropriate access to lots, govern the lot's size and shape, and prevent structures from encroaching too close to lot lines. Finally, minimum contiguous lot area in the residential district is intended to minimize water pollution, the misuse of sensitive lands, and excessive expenses to the Town.

Here, Lot 2C-110 has adequate frontage and Lot 2C-110 is proposed to gain access to a public way via Leblanc Lane, which connects to Tinker Road. Thus, it is clear that both lots have adequate frontage to provide safe ingress and egress. As to the shape and size of the proposed lots, these lots are the result of the taking and layout of Tinker Road, which the Applicant had no power or control over. Furthermore, the lots are not inconsistent with the neighborhood and, from a practical matter; these lots have existed in this fashion for decades, since the road split the property into two pieces.

Moreover, as shown on the plans, although undersized, both lots contain adequate uplands to protect against water pollution and fully compliant septic systems (which will also require State review and approval prior to construction). In other words, there is sufficient lot area to allow for appropriate use and development and to minimize Town expenses. Finally, the modest (10') front setback variance requested for Lot 2C-110-1 allows for the proposed structure to be sited further away from the wetlands and does so without encroaching on any neighbors. What is proposed is consistent with the character of the neighborhood.

In light of the above, the requested variances do not conflict with the purpose of the Ordinance and

granting the requested relief will not be contrary to the public interest.

2. The spirit of the ordinance is observed.

Here, similar to the above, the rationale for minimum dimensional requirements is to encourage safe and appropriate residential development that protects against pollution, the misuse of land, and excessive costs to the Town. The proposed lots are consistent with this rationale and the spirit of the Ordinance.

Both lots contain enough frontage for safe access and enough area to allow for on-site septic systems, which will protect against water pollution and unnecessary expenses to the Town. Furthermore, the proposed lots have existed in this form for decades as a result of the Tinker Road taking and are not inconsistent with the neighborhood's character.

As such, the spirit of the Ordinance, which ultimately seeks to promote the health, safety, convenience, and welfare of the Town, is observed in the requested variances.

3. Granting the variance will achieve substantial justice.

Substantial justice is done when the loss of denying a variance exceeds the gain to the public in strictly enforcing the Ordinance. Denying the requested variances will not result in an appreciable gain to the public given that the proposed lots are designed to ensure safe and appropriate use. The proposed lots will be used consistently with the district's permitted uses and in line with the surrounding neighborhood. Furthermore, the proposed lots will not threaten public health, safety, or welfare. Substantial justice weighs in favor of this application in particular when the reason for the variances is the historic taking and layout of Tinker Road.

On the other hand, denying this application will result in a substantial loss to the applicant by preventing the safe and reasonable use of property. In doing so, the loss of denying the variance greatly exceeds any public gain and warrants granting the application.

4. The values of the surrounding properties would not be diminished.

The requested variance will not diminish the character of the neighborhood, which includes existing single-family lots of varying sizes and shapes. The proposed lots will be used in a manner consistent with these neighboring lots and, thus, should not produce different or significant traffic, noise, or odors 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.

In this case, the property at issue is unique in that both proposed lots were created decades ago as a result of the Tinker Road taking and layout. The over-riding purpose of the Ordinance is to control uses which are not suited for a particular zoning district. Here, that is to aim for safe and appropriate residential development.

In this case, the proposed lots are more than adequate to support residential dwellings and their related septic infrastructure. Moreover, from a practical perspective, the proposed lots have existed for years and are already part of the neighborhood's character. The 40' setback as opposed to the 50' is still effective in centering the development in the center of the lot and

providing neighboring lots with a buffer from any structures. As such, there is not substantial relationship between the general public purpose of the Ordinance and its application to the property at issue.

2. The proposed use is a reasonable one.

It contemplates a use that is permitted under the Ordinance; single-family residential.

The Board returned to the regular order of business.

3. **Gregory E. Michael of Bernstein, Shur, Sawyer & Nelson, P.A. (petitioner) and Vault Motor Storage (owner)** - Request for Re-Hearing regarding Case #2015-39, in which the Board voted to deny a Variance under Section 17.10.3 of the Zoning Ordinance to permit an additional 160 s.f. ground sign whereas a 63 s.f. ground sign was permitted at 526 D.W. Highway in 2014. The parcel is located at 526 D.W. Highway in the C-2 (General Commercial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 5D-2, Lot 001. Case #2015-46.

Chairman L'Heureux questioned if any new information has been submitted. Robert Price, Assistant Planner, responded the only information submitted was the letter provided with the agenda. Member Christensen noted language within the letter from Bernstein, Shur, which states: "At the request of the fire department, the third building was given a new address and is known as 528 D.W. Highway for that purpose." She stated her belief that is the rear building, which is currently under construction. Chairman L'Heureux stated her belief that is correct. Member Christensen asked for clarification the sign in question would be for the new building at the new address, and is not relevant to the sign that is at the existing building at the existing address. Chairman L'Heureux stated it to be the same company with the same verbiage. Member Christensen reiterated it is two different addresses. Member Dwyer questioned how the second building is accessed. Member Christensen questioned if each building should be entitled to a sign. Mr. Price stated zoning only allows the sign based off the individual property not the buildings that are on it. Despite the fact there are separate addresses for each of the buildings, it is reliant entirely on the fact that it is on that same property, and that property has already been granted a sign.

Member Christensen asked for clarification there is one Deed not two tracts. Mr. Price stated it to all be on one individual tract. Member Christensen stated that to be what she was seeking clarification on. Member Dwyer compared it to the mall where there are multiple addresses but one owner. Member Christensen noted that scenario has lots of different signs. Member Dwyer commented that is splitting hairs, and if the Board were to start to go down that road he would want verification by the Fire Department that is the case. Chairman L'Heureux requested Mr. Price seek clarification for the Board with regard to whether the Petitioner has a new address for the second building, and if the Town Code could be researched on signage by the same property owner, e.g., how many are allowed and what size.

Member Dwyer remarked it is the same property, same owner, same building, same business, and by putting a different number on the building there is question as to what affect that has. Member Dwyer stated agreement on that viewpoint, and commented he would like an answer to that.

Member Worster noted in the fourth paragraph on page 4 of the October 28, 2015 meeting minutes it states in part "Lynn Christensen asked if there are any State guidelines regarding billboards on the highway Jillian Harris said she was unaware of any, but she had counseled the applicant to contact NH Department of Transportation (DOT)." Member Worster questioned if the question has been posed and answered. He questioned if the DOT would be involved, and if so, would this become a moot issue.

Chairman L'Heureux requested the matter be tabled until next month. Mr. Price stated his belief a decision would have to be reached before that time. Member Christensen suggested it might be reasonable to grant the rehearing so that the Board could receive answers to its questions as part of the

rehearing after which a decision could be reached. Mr. Dwyer added with the understanding of the Petitioner that it could be denied again. He stated there to be a need to have definitive answers regarding the NH DOT's position on this, if the Fire Department made it another number, and what affect that has on the Ordinance. Member Christensen requested the Ordinance be researched to see if there are any other stipulations. Mr. Price stated what he is aware of is one ground sign being allowed per property that has 300' of frontage or less.

Member Dwyer stated there to be items identified in the communication, which were pointed out initially that were a little bogus, e.g., hardship, etc. He stated his understanding that was one of the reasons it was denied.

Member Christensen commented if there is suspected information that is coming to light that could affect the Board's decision, she believes it reasonable to grant a rehearing understanding the Board can still deny.

Chairman L'Heureux commented any additional information should have been provided for this discussion. Member Christensen stated her understanding the Petitioner is asking for a rehearing based on some things that are stated in the communication. No testimony is being taken. She stated her belief the rehearing is for the purpose of taking testimony.

Mr. Price stated the idea of going through a motion for rehearing is to consider the request based on the information that has been presented to you by the Applicant. However, if the Board has questions without answers that leads members to question the previous decision, the Board could err on the side of caution and grant the rehearing.

Member Christensen reiterated the Board may come to the same decision based on the criteria used previously. However, they have raised some issues, and she believes it reasonable that the Board would hear those issues in the form of testimony.

MOTION BY MEMBER CHRISTENSEN TO GRANT THE REHEARING REGARDING CASE #2015-39, IN WHICH THE BOARD VOTED TO DENY A VARIANCE UNDER SECTION 17.10.3 OF THE ZONING ORDINANCE TO PERMIT AN ADDITIONAL 160 S.F. OF GROUND SIGN WHEREAS A 63 S.F. GROUNDS SIGN WAS PERMITTED AT 526 D.W. HIGHWAY IN 2014. THE PARCEL IS LOCATED AT 526 D.W. HIGHWAY IN THE C-2 (GENERAL COMMERCIAL) AND AQUIFER CONSERVATION DISTRICTS AND WELLHEAD PROTECTION AREA. TAX MAP 5D-2, LOT 001. CASE #2015-46.
MOTION SECONDED BY MEMBER WORSTER
MOTION FAILED
2-2-0

Members L'Heureux and Dwyer voted in opposition

8. DISCUSSION/POSSIBLE ACTION REGARDING OTHER ITEMS OF CONCERN - None

9. APPROVAL OF MINUTES

Merrimack Zoning Board of Adjustment November 18, 2015

MOTION BY MEMBER CHRISTENSEN TO APPROVE AS PRINTED
MOTION SECONDED BY MEMBER DWYER
MOTION CARRIED

3-0-1

Member Worster Abstained

10. ADJOURNMENT

**MOTION BY MEMBER DWYER TO ADJOURN
MOTION SECONDED BY MEMBER CHRISTENSEN
MOTION CARRIED
4-0-0**

The December 30, 2015 meeting of the Merrimack Zoning Board of Adjustment was adjourned at 8:15 p.m.