



Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT VIRTUAL MEETING APPROVED MINUTES WEDNESDAY, DECEMBER 30, 2020 7:00 P.M.

Board members present: Richard Conescu, Patrick Dwyer (joined at 7:23 p.m.), Rod Buckley, and Alternates Ben Niles & Drew Duffy.

Board members absent: Lynn Christensen.

Staff present: Planning and Zoning Administrator, Robert Price.

Due to the COVID-19 crisis, and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Zoning Board of Adjustment is authorized to meet electronically.

As stated on the agenda, the meeting was aired live on Merrimack TV. Telephone access was available for members of the public wishing to speak during the Public Hearing or provide public comment. Also identified on the agenda was the opportunity for general public comment to be submitted leading up to the start of the meeting via email to CommDev@MerrimackNH.Gov.

Members of the Board and Town Staff were participating via Zoom. In accordance with RSA 91-A:2 III, each member of the Board was asked to state, for the record, where they were, and who, if anyone, was with them.

1. Call to Order

Richard Conescu called the meeting to order at 7:06 p.m. and appointed Ben Niles to sit for the vacant full member position and appointed Drew Duffy to sit for Lynn Christensen.

2. Roll Call

- **Richard Conescu:** Stated he was participating alone in the room he was in.
- **Ben Niles:** Stated he was participating alone in the room he was in.
- **Rod Buckley:** Stated he was participating alone in the room he was in.
- **Drew Duffy:** Stated she was participating alone in the room she was in.
- **Patrick Dwyer** Joined the meeting at 7:23 p.m. and stated he was participating alone in the room he was in.

Chairman Conescu advised the petitioners that since there are only four Board members present, a minimum of three affirmative votes were necessary for any petition to be granted. Additionally, Mr. Conescu informed the petitioners that it is their choice whether or not to proceed tonight with only 4 members, or request a continuance to the next meeting to allow a full Board to be present.

Rod Buckley read the preamble.

- 3. Craig Belhumeur (petitioner/owner) –** Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a detached garage with a side setback of 8.5 feet whereas 15 feet is required. The parcel is located at 12 Bradford Drive in the R-1 (Residential, by soils) & Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 6D, Lot 309. Case # ZBA 2020-39. **This item is continued from the November 18, 2020 Zoning Board meeting.**

Richard Conescu indicated there are only 4 Board members present and asked Craig Belhumeur if he wished to proceed with only 4 members, or request a continuance. Mr. Belhumeur replied he wanted to proceed.

Craig Belhumeur, (petitioner/owner) explained to the Board that he is seeking a variance to construct a detached garage in the rear of his property. He continued by explaining that the size of his yard and the location of his septic system limits his options but he feels the location he has chosen for the garage is the best option. He further explained that placing the garage on the side of the house would require more relief as there would only be five feet of space between his property line and his neighbors and he does not want to cause an eye-sore for his neighbor. Mr. Belhumeur read through his responses to the statutory criteria (outlined below).

There was no public comment.

The Board voted 4-0-0, on a roll call vote, to grant the Variance on a motion made by Rod Buckley and seconded by Drew Duffy with the following condition:

1. The petitioner shall obtain a Right Of Way permit from the Highway Division of Public Works prior to constructing any second driveway access for the lot.

Case #2020-39 Findings of Fact:

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

- *In the rear of the property.*
- *Decent space between the location and the neighbor's house.*
- *Will be a nicely constructed building.*
- *Many neighbors have garages and some are close to property lines.*

2. The spirit of the ordinance is observed because:

It will still be within 30 feet set back off side street boundary.

3. Granting the variance would do substantial justice:

It is a loss for us to not have a garage because we need the extra space; however it is not necessarily a gain to the public for us not to build the garage because we are only a few feet short of meeting the setback requirement, an amount that would not be noticed just by looking at it.

4. The values of the surrounding properties will not be diminished because:

Adding a garage to my property would increase property value which increases neighborhood values, it would still blend in in the neighborhood as many homes have garages around us. It would provide more privacy to my neighbor that directly abuts my back yard where the garage would be built if variance approved.

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:

There is no space a garage can be built without a variance on the property. We are a growing family that loves our home and neighborhood but we require more space for storage. We would like to build the garage in the rear so it will be away from the neighbors and in the least intrusive location to our yard and the neighbor's views. Many homes in our neighborhood have garages so it is not uncommon and several are close to property lines

b. The proposed use is a reasonable one because:

There is no space a garage can be built without a variance on the property. We are a growing family that loves our home and neighborhood but we require more space for storage. We would like to build the garage in the rear so it will be away from the neighbors and in the least intrusive location to our yard and the neighbor's views. Many homes in our neighborhood have garages so it is not uncommon and several are close to property lines.

Patrick Dwyer joined the meeting at 7:23 p.m.

- 4. Christopher McFarland (petitioner/owner) –** Variance under Section 3.02 of the Zoning Ordinance to permit the installation of a pool with a rear setback of 8.6 feet whereas 12 feet is required. The parcel is located at 12 Friar Tuck Court in the R-4 (Residential, Cluster Development) & Aquifer Conservation Districts. Tax Map 6C, Lot 593. Case # ZBA 2020-40.

Christopher McFarland, (petitioner/owner) began by explaining that he is requesting a rear setback variance in order to construct an in ground pool in his backyard. He further explained that he drew up the plans thinking that he had a five foot setback because he is in a cluster subdivision, however when he went to pull the permit, he learned that swimming pools have a twelve foot setback and his yard is not large enough to accommodate it without encroaching. Mr. McFarland read through his responses to the statutory criteria (outlined below).

There was no public comment.

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

Case #2020-40 Findings of Fact:

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

The pool will be located on my property therefore there will be no harm to the public interest.

2. The spirit of the ordinance is observed because:

There is an open space buffer between Little John Court and Friar Tuck Court. Due to the open space between the streets, I feel that I am not over-crowding the neighbors.

3. Granting the variance would do substantial justice:

It is a residential area and is consistent with the area's present use.

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

The pool will increase the value of my property and in turn increase the value of my neighbor's properties.

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:

The existing house/addition to the house are already in place and placing the pool within the 12 ft. setback set-back would put the water line too close to the buildings. By moving the pool into the 12 foot set-back area the desired pool size can be safely used.

- 5. Kodiak Veterinary Hospital, LLC (petitioner) and Karen Roy (owner) –** Variance under Section 3.02, Note 6 of the Zoning Ordinance to allow the construction of a building addition 19 feet from the Daniel Webster Highway right-of-way whereas 50 feet is required. The parcel is located at 255 Daniel Webster Highway in the I-1 (Industrial) & Aquifer Conservation Districts. Tax Map 3D-2, Lot 039. Case # ZBA 2020-41.

Andy Prolman, (Prunier & Prolman, P.A), and Dennis Barrett, (Kodiak Veterinary Hospital) were present to communicate the details of the project to the Board. Mr. Prolman began by explaining that Kodiak Veterinary Hospital is looking to move its business from Hudson to Merrimack and is interested in purchasing the property at 255 DW Highway. Since they are moving the business from Hudson they would also like to take the opportunity to expand it which will call for an addition to the existing building. They are seeking a variance to allow the addition to be 19 feet from the Daniel Webster Highway right-of-way whereas 50 feet is required. Mr. Prolman then walked the Board through the proposed changes to the site and read through the responses to the statutory criteria (outlined below).

Dennis Barrett gave a brief overview of Kodiak Veterinary Hospital and their clientele and stated they are looking forward to the move to Merrimack.

Public Comment was received via email from: Dorinne Whynott, 257 Daniel Webster Highway. A copy of this email is on file with the Community Development Department.

The Board voted 5-0-0, on a roll call vote, to grant the Variance on a motion made by Rod Buckley and seconded by Patrick Dwyer with the following condition:

1. The petitioner shall obtain site plan approval from the Planning Board for the proposed veterinary hospital.

Case #2020-41 Findings of Fact

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

The proposed use - a veterinary clinic, is a permitted use with the I-1 District. The front wing of the existing building currently encroaches into the 50 foot DW Highway front yard setback. The proposed expansion of the existing building will stay in line with the front wing of the existing building. The "squaring up" of the building will not decrease the site distance for vehicular traffic on DW Highway. The proposed building will not harm the public health, safety or welfare of Merrimack.

2. The spirit of the ordinance is observed because:

The I-1 District is intended to support a mix of business uses along the DW Highway corridor. Expansion of the existing building will allow Kodiak vet Center to serve the increasing demand for veterinary care of our pets using a holistic approach through integrative medicine. Allowing the expansion into the front yard setback will not be out of character for the neighborhood, nor alter the zoning for this stretch of DW Highway.

3. Granting the variance would do substantial justice:

The existing property owner has been trying to sell the property for some time. Kodiak Vet Center has been searching for years to move into a new location and grow their business. 255 DW Highway is an ideal location for the applicant provided that Kodiak Vet center can have enough room to serve their clientele. Meanwhile, we respectfully submit that allowing the expansion into the front yard setback will not impact the town. When we balance the gain to the current owner and the applicant against the lack of impact to the town, we have a clear case of substantial justice.

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

Our neighbors are a mix of businesses that will not be affected by the building expansion. Around us we have, a doggie daycare, a landscaping company, builder supply, an empty gas station, a long term hotel, and a supply distributor warehouse. Immediately South of us is a small apartment building which actually looks to sit closer to the DW Highway than the applicant is proposing. 255 DW Highway is currently assessed at \$384,50. Kodiak Vet Center expects to invest approximately \$300,000 to expand and update the property. We respectfully do not see that the proposed building expansion will diminish the value of the surrounding properties.

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:

The property is unique due to the shallow depth of the lot for the I-1 District, the deep setbacks as applied to this lot and the location of the existing building in the center of the site. (The setbacks

leave a building area of approximately 10' deep by 187' long.) An expansion in the rear of the building does not work because we could not maintain the requisite parking and keep a fire lane around the building. The property drops off steeply just beyond the rear parking spaces. Squaring up the building makes the most logical and aesthetic sense for the building and the site. The applicant intends to keep open lawn area along DW Highway and Star Drive. For this site, there is no fair and substantial relationship to prevent the proposed building expansion into the front yard setback and the general purposes of your Zoning Ordinance as described in Section 1.01, entitled Purposes. Further, as our use is allowed, in the I-1 District, it is considered reasonable.

6. **Granger Revocable Trust (petitioner /owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit the petitioner to apply to the Planning Board for a subdivision to create a lot with 150 feet of frontage whereas 250 feet is required. The parcel is located at 225 Naticook Road in the R-1 (Residential, by soils) & Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 2B, Lot 034. Case # ZBA 2020-42

Tom Carr, (Meridian Land Services, Inc.) represented the petitioner and began by giving an overview of the property and history of their application. Mr. Carr explained that the existing house on the lot is in the R-4 district as it is connected to public water via Merrimack Village District and sewer through the City of Nashua. He went on to explain that during their initial application process for the subdivision, they learned that Nashua is no longer allowing new sewer connections so any new lot that is created will need a private septic system. The Town of Merrimack has determined that the new lot created from the subdivision will be R-1 because public sewer is not available which means that the minimum frontage required is 250 feet and only 150 is available. Mr. Carr then read through the responses to the statutory criteria (outlined below) and took questions from the Board.

Ben Niles asked what the owner intends to do with the new lot, if the parcel is subdivided. Mr. Carr responded that at this time, the Granger family has no direct plans for the new lot. The intent of the subdivision is to cut off the land with the existing house so that the family member that lives there can retain their home while allowing the rest of the family to develop or sell the remaining property as they see fit.

Public Comment was received from: Patricia Dumont, 26 Joey Road. Ms. Dumont spoke in opposition of the project because she feels that granting the variance will open the door to allowing the new lot to be developed with multiple houses which will have a negative impact on the existing neighborhood.

Chairman Conescu clarified that if the variance is granted, the applicant will still need to gain approval through the Planning Board and then asked Mr. Carr to comment on Ms. Dumont's feedback. Mr. Carr made the point that the development potential of the land exists regardless of the outcome of the variance petition because ZBA approval is not needed for a subdivision to happen. The purpose of the variance is to allow a single family home on the proposed lot if that is the direction the family chooses to take. Ms. Dumont then asked for clarification on the zones and whether or not the Grangers were going to pursue the public sewer connection further with Nashua. Mr. Carr confirmed that the lot with the existing home will remain R4 because it is hooked up to public water and sewer and the new lot that is created will be R1 and will require a private septic system as they have no plans on continuing to pursue the sewer connection with Nashua.

Patrick Dwyer commented that he agrees with the abutter's concerns that this opens up the door for future development of the site even though he understands that the opportunity is

present now. He also added that he did not have any concerns with the petitioner's responses to the statutory criteria but he was not inclined to make a motion for approval.

The Board voted 3-0-2, on a roll call vote, to grant the variance, with conditions, on a motion made by Rod Buckley and seconded by Ben Niles. Patrick Dwyer and Drew Duffy abstained. The following condition applies:

1. The petitioner shall obtain approval from the Planning Board for the proposed subdivision.

Case #2020-42 Findings of Fact

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

Lot sizing by soil type and the associated frontages and setbacks are intended to create spatial distancing between house and particularly septic systems. In this case and geographic area, most of the abutting properties are on sewer and water so, these lots are not discharging sewer into surrounding soils. The proposed lot is also 59.686 acres and therefore spatially, meets the intent of the ordinance and will not be contrary to public interest.

2. The spirit of the ordinance is observed because:

The spirit of the ordinance is observed by creating a lot that has vast areas of land associated for one single family dwelling. As noted in 1 above, spatial distancing for septic leach fields is achieved by most of the surrounding lots being on sewer and water. The frontage is more than sufficient for access.

3. Granting the variance would do substantial justice:

This is a proposed two lot subdivision dividing one 71+acre lot into two lots. Lot 2B-34 (11.43 acres) is being gifted to a family member for permanent ownership and residence and is on sewer and water (R-4). The existing house location precludes the remainder parcel, 2B/34-1 (59.686 acres) from having the required 250ft. of frontage without a viable sewer hookup. This sewer restriction was unknown until advised by planning at the time of subdivision submission. All appropriate research and site planning were completed according to the current assumed R-4 zoning district, zoning map and zoning ordinance. Substantial monies have been invested in this proposal. Therefore, granting the waiver will do substantial justice to the Family.

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

The Granger Revocable Trust is not proposing a high-density subdivision with on-site septic on small lots in the default district. This proposal creates one single large lot for one single family dwelling. The property is surrounded by primarily residential development or commercial developments that are not visible or have buildings similar in appearance to residential dwellings. The subdivision of this one large lot with 150ft. of frontage cannot diminish the values of surrounding properties.

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:

This property has two primary special conditions and or circumstances that distinguish it from others in the area:

- *This property has sewer and water in the street and was assumed to be in the R-4 district, which requires 150ft. of frontage; we are requesting this variance to satisfy an administrative decision by planning staff and supported by the Planning Board that since sewer is not available for hook up, the property defaults to the R-1 district. Unknown to the Granger Family and Meridian Land Services, although we applied the correct zoning considerations to this subdivision and in fact sewer and water are in the Naticook Road, the sewer line is managed by the City of Nashua and has a moratorium for hook ups. We spent several months trying to get the Nashua Sewer Department to understand our predicament and allow a single hook up for the remaining vacant lot. We received no reasonable assistance and have given up. Therefore, this variance request is our primary route to approval with the Merrimack Planning Board.*

- *Given the Planning Staff and Boards position on dual zoning for this location, the existing house is located in a spot that precludes the proposed lot from having 250ft. of frontage. If we provided 250ft. of frontage to the remainder lot 2B/34-1, we would need a variance for the existing home to be situated within the sideline building setback. This is certainly contrary to zoning intent and spatial distancing of homes. Based on the special unique circumstances of the lot, the proposed size of the lot, that the proposed frontage is sufficient to allow safe and reasonable access and that the other provisions of this request are reasonable, the request is fair and will provide substantial justice to the Granger Family to allow the variance. Strict adherence and application of the administrative decision and therefore, zoning requirements does not have a fair and substantial relationship to the situation and application.*

b. The proposed use is a reasonable one because:

The proposed frontage is sufficient for access and will not cause unreasonable traffic congestion. The lot, as noted, is very large and will easily accommodate a single-family home that will meet the intent of lot sizing by soil type and/or the non-availability of sewer connections.

7. Discussion/possible action regarding other items of concern

Chairman Conescu asked if anyone had an update on the vacant Board positions. Robert Price responded that he spoke to the General Government office staff and was advised that they will be adding Ben Niles' appointment as a full time member to an upcoming Town Council agenda. No specific date was given. Robert Price also confirmed that the 30 day window to allow for other applicants has passed and no one else has applied. The discussion then turned to filling the Vice Chair position and the duties associated with the role. Rod Buckley nominated Patrick Dwyer for the position of Vice Chair.

The Board voted 5-0-0, on a roll call vote, to elect Patrick Dwyer as Vice Chair of the Zoning Board of Adjustment.

8. Approval of Minutes – November 18, 2020

The Board voted 4-0-1, on a roll call vote, to approve the minutes of November 18, 2020 on a motion made by Patrick Dwyer and seconded by Ben Niles. Drew Duffy abstained.

9. Adjourn

The Board voted 4-1-0 to adjourn at 8:37 p.m. on a motion made by Drew Duffy and seconded by Rod Buckley. Drew Duffy voted in opposition.