



# 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, FEBRUARY 22, 2023**

**Board members present;** Chair Richard Conescu; Vice Chair Rod Buckley; Ben Niles; & Lynn Christensen

**Board members absent:** Patrick Dwyer and Alternate Charles Mower

**Staff present:** Robert Price, Planning & Zoning Administrator & Colleen Olsen, Assistant Planner

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

Chair Rich Conescu called the meeting to order at 6:30 p.m. and Vice Chair Buckley read the preamble.

### **2. Roll Call**

Mr. Conescu led the Pledge of Allegiance and swore in members of the public who would be testifying. He then announced that there are only 4 members of the Board present at the meeting and a minimum of three affirmative votes is required for a motion to pass. He then stated that all petitioners have the option to proceed forward or request a continuance to the next meeting to allow for a full Board to be present before their petition is heard.

*The Board heard agenda items 3, 4, 5, and 6 together.*

- 3. Governor's Hill Corp (petitioner/owner)** – Equitable Waiver of Dimensional Requirements under Section 3.05 of the Zoning Ordinance to permit an existing leach field to remain 13 feet from the side property line whereas 20 feet is required. The parcel is located at 22 Constance Street in the R-1 (Residential, by soils) and Aquifer Conservation Districts. Tax Map 6D, Lot 104. Case # ZBA 2023-06. ***This item is continued from the January 25, 2023 Zoning Board of Adjustment Meeting.***
- 4. Governor's Hill Corp (petitioner/owner)** – Equitable Waiver of Dimensional Requirements under Section 3.02.4 of the Zoning Ordinance to permit an existing rock retaining wall to remain 1.6 feet, at its closest point, from the side property line whereas 15 feet is required. The parcel is located at 22 Constance Street in the R-1 (Residential, by soils) and Aquifer Conservation Districts. Tax Map 6D, Lot 104. Case # ZBA 2023-05. ***This item is continued from the January 25, 2023 Zoning Board of Adjustment Meeting.***
- 5. Governor's Hill Corp (petitioner/owner)** – Appeal from an Administrative Decision issued on December 13, 2022 that determined a newly installed (2022) leach field shall adhere to the Town's 20' property line setback despite being installed on a legal nonconforming lot of record. The parcel is located at 22 Constance Street in the R-1 (Residential, by soils) and Aquifer

Conservation Districts. Tax Map 6D, Lot 104. Case # ZBA 2023-03. ***This item is continued from the January 25, 2023 Zoning Board of Adjustment Meeting.***

6. **Governor's Hill Corp (petitioner/owner)** – Appeal from an Administrative Decision issued on December 13, 2022 that determined a rock retaining wall that is over 4' in height is considered a structure and is subject to setback requirements. The parcel is located at 22 Constance Street in the R-1 (Residential, by soils) and Aquifer Conservation Districts. Tax Map 6D, Lot 104. Case # ZBA 2023-04. ***This item is continued from the January 25, 2023 Zoning Board of Adjustment Meeting.***

The board voted 4-0-0 to deem the ZBA cases 2023-06, 2023-05, 2023-03 & 2023-04 as moot because of the two variances that were previously granted providing the relief necessary for these petitions, on a motion made by Rob Buckley and seconded by Lynn Christensen.

7. **Brianna Pelletier (petitioner) and Pennichuck Square, LLC (owner)** – Special Exception under Section 2.02.3 (C) 1 of the Zoning Ordinance to permit a dog grooming salon use in the C-2 (General Commercial) District. The parcel is located at 709 Milford Road, Suite 6A in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 2B, Lot 360. Case # ZBA 2023-09.

Brianna Pelletier (petitioner) presented the Special Exception request to the Board. She read through the responses to the Ordinance criteria (outlined below).

The Board had no questions for the petitioner.

**No Public Comment was received.**

The Board voted 4-0-0 to determine the petitioner's responses to the ordinance criteria are sufficient, proved each criterion is met, to adopt the petitioner's responses as the Board's findings of fact, and further, to grant the Special Exception under Section 2.02.3 (C) 1 of the Zoning Ordinance to permit a dog grooming salon use in the C-2 (General Commercial) District, with the condition that the petitioner shall obtain Administrative Approval from the Community Development Department for the proposed use, on a motion made by Lynn Christensen and seconded by Ben Niles.

***Findings of Fact:***

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

*There is a need for dog grooming in the area. In this plaza alone, there is an existing veterinary hospital. The location is easily accessible to several neighboring towns, bringing more business to the town of Merrimack overall.*

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

*The business will be a quiet one on one dog grooming service.*

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

*There are safety measures in place to prevent any incidences. There was a half door installed to further prevent any dogs from escaping outside of the salon.*

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

*Equipment and tools are required for the services offered. These include dryers, tubs, tables, and more.*

- 8. Merrimack Parcel A, LLC (petitioner) and Merrimack Park Place Condominium (owner) –** Extension request for a Variance under Section 2.02.4 (D) of the Zoning Ordinance for a mixed use development Conditional Use Permit (CUP) to be sought from the Planning Board at a higher residential density than was originally approved by Variance (in 2015) on a lot in the industrial district. This extension request relates to the variance granted on 3/31/21. The parcel is located at 10 Premium Outlets Blvd in the I-2 (Industrial) and Aquifer Conservation Districts and the Wellhead Protection Area Tax Map 3C Lot 191-02. Case # ZBA 2021-05.

Attorney Morgan Hollis (Gottesman & Hollis, P.A.) spoke on behalf of the petitioner to present the petition to the Board. Mr. Hollis began by explaining that the petitioner is seeking an extension to a variance that was granted on 3/31/21 that is about to expire. He then provided some background information on the project stating that the parcel of land is the last piece of a larger development and was granted a variance in 2015 to be developed via a mixed use development conditional use permit. The original design was intended to create a development in which a person could live, work and play all in the same area and was a new concept at the time it was presented. Since the original approvals were received, there has been an economic shift and the demand for office and retail space is no longer what it was. Because of this, the petitioner is currently before the Planning Board with a proposal to amend the Conditional Use Permit (CUP) to allow an additional 208 residential units in place of some of the office and retail space that was originally proposed. Since the amendment to the CUP has not been approved, the petitioner has not been able to begin the site plan approval process and to ultimately obtain site plan approval needed to vest the variance request. Mr. Hollis stated that according to Merrimack's Zoning Ordinance, in order to receive an extension to a variance, one must prove that it was "impossible or impractical to receive the necessary approvals to move forward" which is different than State law which indicates a variance can be extended for "good cause." He then read through the timeline of events that occurred since the variance was granted in 2021 to demonstrate that the petitioner has been attempting to move the project forward.

Mr. Buckley asked if the project is currently under construction and Mr. Hollis confirmed that the pieces of the project that have already received site plan approval are under construction.

### **Public comment**

Mike Mills (7 Arbor Street) spoke in opposition of the extension request. He shared his belief that this project is unreasonable because the petitioner is proposing to construct 208 apartments 200 feet from the adjacent neighborhood and is concerned that the lights coming from the new development will light up the entire neighborhood. He stated that the Planning Board has expressed their dissatisfaction with the proposed density and added that the town does not allow 40 units per acre, let alone 200 feet from someone's property line. He argued that the petitioner has had ample time to submit a reasonable proposal to the Board but have continually submitted

plans that do not work and are disruptive to the neighbors. Mr. Mills concluded his arguments by asking the Board to deny the extension request as he believes the variance never should have been granted in the first place.

Beth Burns (5 Spruce Street) also spoke in opposition of the extension request. She echoed some of the same concerns as Mr. Mills regarding the close proximity of the proposed building to her neighborhood and shared the same concerns regarding light pollution. Ms. Burns also commented on the traffic that will be generated from that site and how she feels that it still has not been addressed. She aired her frustration with what the neighbors have had to endure over the last eight years since this project was first proposed and walked around to each Board member to share a photo\* of the light that is coming from the development now with just the existing apartment complex nearly completed. She urged the Board to deny the extension request stating that the petitioner is asking for too much to be built in such a small area.

*\*A copy of the photograph that was shared by Ms. Burns can be found in the Planning Board Project file for the CUP Amendment request (Case # PB2023-05).*

Mr. Hollis addressed the public comments by stating that their arguments are exactly why the extension is needed because the petitioner needs more time to work the Planning Board on the proposal. He disagreed with a comment that was made that there has been no give and take in this project as the petitioner has tried to listen to the feedback of the Planning Board and has amended the plan several times. He also disagreed about the comments that this has been going on for 8 years. The development of the land may date back eight years but the issue at hand is the variance that was granted in 2021. He also argued that the points made during public comment do not have any relevance to whether or not the petitioner has met requirements to justify the need for an extension of the variance.

Chairman Conescu asked how many variations of the plan have been submitted and Mr. Hollis replied that there have been four. Two conceptual plans and one application that has since been revised with what he believes is a significant change, which will be presented to the Planning Board in the near future. Mr. Hollis also mentioned that the original approved plan also had development in the area of the proposed apartments so it is not as if nothing was ever going to be constructed in that location, and in fact the very first plan had the apartments that are now complete in that spot.

***Public comment was re-opened by Chairman Conescu***

Mr. Mills (7 Arbor Street) raised concerns about the number of stories in the existing apartment complex stating his believe that it was approved as 4 stories and not 5. He also argued that going from 208 units to 178 is not a significant change. He reiterated his feelings that 208 units on 5 acres of land is not reasonable and added that there is nothing in town that is close to that. He stressed that the Zoning Board has an obligation to represent the residents of the town and that they should deny the extension request to force the petitioner to propose something that is more reasonable.

Chairman Conescu asked Ms. Christensen for her opinion as she is also a member of the Planning Board. Ms. Christensen stated that the Planning Board has the same concerns as the abutters in that the density is too intense for the site. She went on to say that she understands the dilemma that the petitioner is in because market demand right now is for apartments and not commercial or office space but at the same time, agrees that amount of units being requested is too high for

the space. She added that she feels the applicant has demonstrated that they have attempted to obtain the necessary approvals since the variance was originally granted so she supports the extension request.

Mr. Buckley agreed with that he believes that petitioner has demonstrated that they have tried to obtain the necessary approvals within the last 2 years. Chairman Conescu shared that he feels differently and that they have had sufficient time to propose something that is compliant with the Ordinance and the wishes of the Planning Board. He added that he feels that if they grant the extension they will be re-hearing a request for another extension in two more years. Ms. Christensen reiterated that she believes the petitioner is listening to the feedback from the Planning Board but unfortunately has yet to propose something that is sufficiently different from what has already been presented. She added that revising plans does take a fair amount of time so she feels that the extension should be granted.

**The Board voted 3-1-0 to determine that the petitioner's has adequately demonstrated to the Zoning Board of Adjustment that it was impossible or impractical to receive the necessary approvals to move forward within two years of the variance being granted and to grant a two-year extension of the variance originally granted on March 31, 2021 as authorized under Section 8.04 of the Zoning Ordinance, on a motion by Lynn Christensen and seconded by Rod Buckley. Rich Conescu voted in opposition.**

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

**10. Approval of Minutes – January 25, 2023**

**The Board voted 3-0-1 to approve the minutes of January 25, 2023, as submitted, on a motion made by Rod Buckley and seconded by Ben Niles. Lynn Christensen abstained.**

**11. Adjourn**

**The Board voted 4-0-0 to adjourn at 7:27 p.m. on a motion made by Rod Buckley and seconded by Lynn Christensen.**