



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

603 424-3531

Fax 603 424-1408

www.merrimacknh.gov

MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES WEDNESDAY, FEBRUARY 23, 2022

Board members present: Chair Richard Conescu; Patrick Dwyer; Lynn Christensen; Rod Buckley; Ben Niles; 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 7:00 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. Home Health and Hospice Care (petitioner/owner) – Variance under Section 2.02.1.A of the Zoning Ordinance to permit the expansion of an existing hospice facility in the R-4 (Residential) District where not permitted. The parcel is located at 210 Naticook Road in the R-4 (Residential) & Aquifer Conservation Districts. Tax Map 2B, Lot 324 02-1. Case # ZBA 2022-02.

The Petitioner was represented by John Getts (Home Health and Hospice Care) and Jason Hill (TF Moran, Inc.). Mr. Getts began by providing an overview of the facility and its two locations (Merrimack and Concord) and explained that they are hoping to expand their Merrimack location. Mr. Hill shared the site plan and explained that the petitioner is looking to expand by adding two additions to the existing parcel. The first is 6,260 sf addition on the southeast wing that will be used for a patient care pod and will add 6 additional patient suites to the facility. The second addition will be 1,908 sf on the northwest wing and will be used as a support wing for the Hospice staff members. He shared the site plan to demonstrate the location of the two additions as well as the location of the fire access road. He spoke briefly about maintaining the existing buffer between the facility and the residential neighborhood that they abut. Mr. Hill then read through the responses to the statutory criteria (outlined below).

There was no Public Comment.

The Board voted 5-0-0 to grant the variance under Section 2.02.1.A of the Zoning Ordinance to permit the expansion of an existing hospice facility in the R-4 (Residential) District where not permitted, on a motion made by Patrick Dwyer and seconded by Lynn Christensen, subject to the following condition:

- 1. The petitioner shall obtain site plan approval from the Planning Board for the expansion of the use.**

Case # 2022-02 Findings of Fact

1. The variance will not be contrary to the public interest.

2. The Variance will observe the spirit of the Zoning Ordinance.

These two tests are usually considered together because observing the spirit of the ordinance is itself considered to be in the public interest. The public interest is infringed when a variance would unduly and in a marked degree conflict with the ordinance in such a way as to violate basic objectives of the ordinance. There are two methods to determine whether the variance violates basic zoning objectives:

- Would granting the variance “alter the essential character of the neighborhood?”

- Would granting the variance “threaten public health, safety, or welfare?”

The requested variance would do neither. The very nature of the facility is to provide quality hospice care in a residential setting. The facility is designed to look and function in a quiet and unobtrusive way that complements a residential neighborhood. It has been serving patients in this location for over twenty years, and in that time has become an accepted part of the neighborhood. The facility is well-screened, and generates little noise, lighting, waste, or traffic; and will not place any burden on public schools, public safety, public works, or other municipal services.

3. Granting the variance will result in substantial justice.

“Substantial Justice” in the context of a variance is guided by two rules:

- “Any loss to the individual that is not outweighed by a gain to the public is an injustice”, and

- “Is the proposed development consistent with the area’s present use?”

Granting the variance would enable the facility to expand its high-quality hospice services, representing a substantial gain to the applicant and to the community at large. The present use of the immediate area is single family homes on predominantly 3/4 acre lots. The proposed expansion remains consistent with the nature and density of single family homes in the following ways:

- The subject parcel is 4.5 acres. If developed as single-family homes, the parcel could support 6 individual homes. At the Merrimack average of 3.5 bedrooms per home, this would be six driveways and 21 bedrooms, where the facility is a single driveway and 16 bedrooms. As such the density of the development does not greatly exceed the surrounding neighborhood.

- The facility is an attractive single-story structure with peaked roofs, windows, and well maintained landscaping that is similar in quality than surrounding homes.

- The expansion design preserves the natural vegetated buffer that effectively screens the facility from abutting houses and the Continental Blvd.

4. The variance will not diminish the value of surrounding properties.

Redevelopment of Tax map 2B, Lot 324, Sub 2-1 will not diminish the value of surrounding lots because there is already a hospice on the site, and preservation of the extensive natural screening buffer ensures that the neighbors’ views of the facility will not be materially affected. Please see also attached letter from Keller Williams.

5. Unnecessary Hardship

(a) Owing to the following special conditions of the property that distinguish it from other properties in the area, no fair and substantial relationship exists between the general purposes of the ordinance provisions and the specific application of that provision to the property:

The subject property is unique due to its size (4.5 acres) and triangular shape, with approximately 800' of frontage along Continental Boulevard. The surrounding developed lots are generally less than an acre and rectangular. The shape of the lot and placement of structures on subject and surrounding lots allow substantial buffers to the surrounding homes, in most cases several hundred feet. These considerations support the granting of the original variance in 1999.

(b) The proposed use is a reasonable one because:

The existing hospice facility has been operating successfully at the site for over 20 years, demonstrating its compatibility within a residential setting. The proposed expansion is modest and does not materially reduce setback distances, or create any perceptible increase in noise, lighting, or traffic on surrounding homes, and thus does not alter the character of the neighborhood.

- 4. Christopher Poling (petitioner/owner) –** Variance under Section 3.02 of the Zoning Ordinance to permit the construction of a shed 42 feet from the rear property line whereas 60 feet is required. The parcel is located at 6 Harrington Drive in the R-1 (Residential, by map) District. Tax Map 5B, Lot 245. Case # ZBA 2022-03.

Christopher and Meghan Poling (owners) were present to discuss the variance request with the Board. Mr. Polling explained that when he purchased the house in 2015 there was already a shed on the property that was not in good condition. He removed the shed and purchased a new one, however, when he went to pull the building permit he was told that placing it in the same location as the previous shed would encroach on the rear property line setbacks. He went on to explain that due to the slope of the land and the construction of a pool, this is the only place on the land the shed can go. Mr. Poling then read through the responses to the statutory criteria (outlined below).

There was no Public Comment.

The Board voted 5-0-0 to grant the variance under Section 3.02 of the Zoning Ordinance to permit the construction of a shed 42 feet from the rear property line whereas 60 feet is required, on a motion made by Patrick Dwyer and seconded by Ben Niles.

Case # 2022-03 Findings of Fact

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

It does not alter the character of the neighborhood, change the natural environment or impact wetlands.

2. The spirit of the ordinance is observed because:

It does not impact private rights of others or crowding of land.

3. Granting the variance would do substantial justice because:

The new shed would be placed on top of the older shed footprint which would not require the homeowner to seek another location, endure extra excavation costs and payment penalty with the shed provider/installer.

4. Granting the variance would not diminish the values of surrounding properties because:
The shed will be placed where the older larger shed was. This would not visually impact the street nor the neighboring properties.

5. Unnecessary Hardship

(a) Owing to the following special conditions of the property that distinguish it from other properties in the area, no fair and substantial relationship exists between the general purposes of the ordinance provisions and the specific application of that provision to the property:

Due to the location of our existing pool and lack of level land and the fact that the shed will be located over the old footprint. This is the only location suitable to house the pool materials and lawnmower.

(b) The proposed use is a reasonable one because:

It is replacing an existing structure that was falling apart and unsafe. The new structure would supply enough room for the pool equipment and protect them from the elements.

5. Discussion/possible action regarding other items of concern

Lynn Christensen made a public plea to Merrimack residents to volunteer for the Zoning Board of Adjustment.

6. Approval of Minutes – January 26, 2021

The Board voted 4-0-1 to approve the minutes of January 26, 2022, as submitted, on a motion made by Lynn Christensen and seconded by Ben Niles. Richard Conescu abstained.

7. Adjourn

The Board voted 5-0-0 to adjourn at 7:29 p.m. on a motion made by Rod Buckley and seconded by Patrick Dwyer.