



Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES

WEDNESDAY, FEBRUARY 24, 2016

Members present: Fran L'Heureux, Patrick Dwyer, Tony Pellegrino (arrived 7:13 p.m.), Richard Conescu, and Alternate Leonard Worster

Member absent: Lynn Christensen

Staff present: Planning and Zoning Administrator Jillian Harris and Recording Secretary Zina Jordan.

1. Call to Order

Fran L'Heureux called the meeting to order at 7:00 p.m. and designated Leonard Worster to sit for Lynn Christensen.

2. Roll Call

Patrick Dwyer led the pledge of allegiance. Richard Conescu read the preamble. Patrick Dwyer swore in members of the public who would be testifying.

3. Philip Worster (petitioner/owner) - Variance under Section 3.02 of the Zoning Ordinance to permit the construction of a 22'x 24' two car garage 12 feet from the front property line whereas 30 feet is required. The parcel is located at 8 Freedom Street in the R (Residential) District. Tax Map 5C, Lot 471. Case # 2016-06.

Leonard Worster recused himself from discussing and voting on this item.

Philip Worster, 8 Freedom Street, said he cannot access his driveway easily because the Town blocked off the side road with a gate two years ago. He needs extra space for his daughters to park and a garage for storing cars in bad weather. Although his lot is classified as a corner lot, the two roads do not connect. It is just a dead-end cut-through. The Worsters' guests cannot figure out how to get into their driveway.

Jillian Harris explained that she believed the reason for closing the road is for Fire Department safety & emergency access reasons. Fran L'Heureux suggested postponing this item until the Fire Department could be contacted. Jillian Harris explained that a variance would still be needed.

Kristin Worster, 8 Freedom Street, read the statutory criteria into the record.

Tony Pellegrino arrived at 7:13 p.m.

Public comment

Fran L'Heureux read into the record a February 8, 2016, letter from Merrimack Fire Chief Michael Currier stating that he has no issues with changing the position of the

driveway and moving it to Freedom Street, which is the actual street address for the structure, and that it would be beneficial to all parties.

Fran L'Heureux read into the record a February 2, 2016, letter from Jeff Strong, Highway/Construction Inspection Foreman, Public Works Department, stating that there should be no issues with the proposal as long as the driveway is constructed where shown and any new garage is not constructed in a manner that would encroach on the utility easement. He, too, noted that the physical address is 8 Freedom Street.

Fran L'Heureux read into the record a letter from Sean Cobb, 5 Worster Avenue, stating that he has no issues with the project.

As to #5, Richard Conescu said the gate is a justifiable hardship. It was put in 10 years after the Worstors moved in and makes no sense. Fran L'Heureux noted the suddenness with which the gate was installed.

The Board voted 4-0-0 to grant the Variance, with the condition that the applicant shall obtain a Right-of-Way Permit from the Public Works Department for the relocated driveway, on a motion made by Patrick Dwyer and seconded by Richard Conescu.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because it would allow the Worstors to build a two-car garage and to relocate the driveway at 8 Freedom Street without posing a threat to public safety, health or welfare. Allowing an attached 22' x 24' garage to park vehicles indoors out of the weather and off the street would have a positive effect on public safety. There would be no negative effect on traffic flow, nor would there be any change to the character of the neighborhood. The garage would encroach only on a Town-owned dead-end street. Since this is the last house on the street, there would be no traffic flow past the home;
2. The spirit of the Ordinance is observed because the construction of a two-car attached garage for personal family use in a residential zone is appropriate. The proposed garage would be located to the left side of the existing house at 8 Freedom Street and would encroach only into the setback along a town-owned dead-end road known as Worster Avenue. It would have no adverse effects on abutting properties, nor would it give any impression of overcrowding. There would be no impact to any of the neighbors' outdoor space;
3. Granting this variance would do substantial justice because it is the only feasible way to alleviate the current predicament. There is not enough room for the two daughters to park safely off the street. Even though the property has frontage on both Freedom Street and Worster Avenue, the Worstors no longer have access between the two streets. The recent installation of a gate at the end of Worster Avenue has blocked access to the driveway from the legal address of 8 Freedom Street, causing a confusing situation for anyone visiting the home. This could pose a

problem for emergency personnel who may be called to the 911 address of 8 Freedom Street;

4. The values of the surrounding properties would not be diminished because the garage would be tastefully built to match the existing house and would look aesthetically pleasing as a residential structure. Relocating the driveway and building a garage is an upgrade to the property that should help to increase the value of surrounding homes. It would be attached to the side of the existing house and would encroach only on to a dead-end road. It would not affect the privacy of any adjacent properties nor cause a conflict with their use. Traffic flow to and from the Worster home would be shifted to Freedom Street. That should be positive for the properties on Worster Avenue, which is a small dead-end street that is not built up to today's standards. The Merrimack Highway Department favors lessening the amount of traffic on Worster Avenue and has no problems with the garage or the driveway;
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. Trying to locate a 22' x 24' attached garage addition to the home is a hardship because of the Town-owned gate between the two streets that border the property, a utility easement on the property, its geographic shape, and the placement of the utilities that service the home. The proposed location is the only feasible spot. Denial would create an unnecessary hardship because, given the limited footprint of construction of the garage with driveway access from 8 Freedom Street, no other option logically exists. It is a hardship and inconvenience not to be able to access the home from its legal address of 8 Freedom Street;
 - 2) The proposed use is a reasonable one because it would allow constructing a two-car garage attached to the side of the home in the best possible location to be accessed from 8 Freedom Street. A garage is a reasonable feature on a residential home that would not alter the character of the neighborhood. Relocating the driveway is reasonable because it makes sense that the property should be accessible from its legal street address. The Town Fire Department agrees that the property should be accessible from its legal 911 address.

4. **Hayner/Swanson (petitioner) and Pennichuck Water Works, Inc. (owner)** - Special Exception under Section 2.02.7(A)(4) of the Zoning Ordinance to permit the construction of a headwall and associated rip rap within the 25 foot Wetland Buffer. The parcel is located at 16 Daniel Webster Highway and Manchester Street in the I-1 (Industrial) and Aquifer Conservation Districts and 100-year and 500-year Flood Hazard Areas. Tax Map 1D, Lot 001-1. Case #2016-07.

Leonard Worster returned to the Board.

Jason Reimers, BCM Environmental Services, said Pennichuck Water Works proposes to install an overflow outlet, structure, pipe, and swale leading to Harris Pond within the 25' wetland no-disturb buffer. It is intended to act as a safety mechanism for the water line that they are installing. Constructing a headwall and rip rap requires a special exception in the Wetland District.

Jason Reimers read the statutory criteria into the record.

As to #b), prevention of degradation of natural wetlands, Tony Pellegrino asked how the headwall and rip rap would be restored "naturally" and how grass would be preventing from washing away. Steve Auger, Hayner/Swanson Project Manager, said no fertilizers that would cause contamination would be used. The present material would constitute the buffer. Rip rap would slow the water. Only minor grading would be needed to restore the land. There would be no slope degradation.

John Boisvert, Pennichuck Water Works Chief Engineer, said the project would provide an alternative/second source of water if Baboosic Brook were contaminated. He explained the pipelines, flow and pumping. Pennichuck does not want too much pressure to build. A relief structure would relieve the pressure without damaging the facility if not all the water in the pipeline is needed.

Fran L'Heureux asked whether both sources could be contaminated at the same time. John Boisvert said that is possible, but there is a low probability. The consequences (not being able to drink the water) would be extreme. Pennichuck is mitigating the risk in a cost-effective manner. This pipeline could still deliver water even if there were a problem with the primary water source.

Tony Pellegrino asked about Manchester Street. John Boisvert said it is low salt or salt free. NH Department of Transportation (DOT) mitigated it with controlled structures. The structures are not in the wetland. There would be a large concrete box culvert with pipes coming out of it. It would be simple and clean, with no valves or mechanical parts.

Steve Auger read a February 12, 2016, letter from NH Certified Wetland Scientist Robert Prokop of Wetland Consulting Services, stating, "Construction of a pressure relief structure is a necessary aspect of this project. The headwall and rip rap located at the end of the proposed box culvert will need to be constructed inside the 25' wetland buffer. This is a temporary impact to the buffer. While there will be some tree and shrub clearing within the 25' buffer, no wetlands will be impacted. . . There will be no or minimal environmental impact as a result of the buffer zone disturbance."

Steve Auger stated that Pennichuck received a Shoreland Permit, but it must amended and re-filed to include the amount of the area to be disturbed within the Shoreland during pipe construction.

Fran L'Heureux read into the record a February 4, 2016 e-mail from the Merrimack Conservation Commission (MCC), stating that it has no concerns with the disturbance in the buffer area nor with the project.

There was no public comment.

The Board voted 5-0-0 to grant the Special Exception, on a motion made by Patrick Dwyer and seconded by Richard Conescu.

Findings of Fact

- a) **To prevent the development of structures and other land uses on or adjacent to wetlands that would contribute to pollution of surface and ground water. The proposed use will not conflict with this purpose because** the buffer disturbance is merely to build a headwall and rip rap necessary for the outlet pipe from the overflow structure as part of Pennichuck's water main project to protect the Harris pond water supply;
- b) **To prevent the destruction and degradation of natural wetlands that provide flood protection. The proposed use will not conflict with this purpose because** the area surrounding the headwall and rip rap will be restored naturally. The rip rap will prevent any slope degradation resulting from water discharge;
- c) **To prevent unnecessary or excessive expenses to the Town to provide and maintain essential service and utilities which arise because of inharmonious use of wetlands and adjacent upland areas. The proposed use will not conflict with this purpose because** there will be no expense to the Town associated with this project. The water main construction completion will instead serve to provide a fail-safe measure to protect the water supply in the event of a Harris Pond contamination;
- d) **To encourage those uses that can be appropriately and safely located in and around wetland areas. The proposed use will not conflict with this purpose because** the proposed use will not impact any uses associated with wetlands. The overall scope of the project serves the community in a positive manner by ensuring the safety of the water supply in the event of a source contamination.

6. Meridian Land Services, Inc. (petitioner) and M. Robin Warren Revocable Trust (owner) - Variance under Section 3.02 of the Zoning Ordinance to permit a two-lot subdivision with one of the lots having 40 feet of frontage whereas 250 feet is required. The parcel is located at 17 Knollwood Drive in the R-1 (Residential) and Aquifer Conservation Districts. Tax Map 6C, Lot 292-2. Case #2016-08.

Mike Hammer, Land Surveyor, Meridian Land Services, Inc., read the points of law and said the lot with 40' of frontage contains an existing home with access via Knollwood Drive. The other proposed lot, where the applicant wants to build a separate residence, would have substantial frontage on Joppa Road. The frontage of the second lot would be on Joppa Road and would not require variances to build.

Public comment

Ken Paige, 6 Ridgewood Drive, has no problem with the proposal.

The Board voted 5-0-0 to grant the Variance, with the condition that the applicant shall obtain subdivision approval from the Planning Board for the proposed two-lot subdivision, on a motion made by Richard Conescu and seconded by Tony Pellegrino.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the proposed lot has an existing structure on it and is being accessed from only 40' of frontage. No public or private rights would be adversely affected, since the lot is already developed;
 2. The spirit of the Ordinance is observed because the proposed lot is larger than other lots in the vicinity and currently supports a residential dwelling;
 3. Granting this variance would do substantial justice because it would allow the property to be developed in a way that is consistent with surrounding lots in the neighborhood. Denial will not result in an appreciable gain to the general public, but will cause substantial loss to the applicant by preventing the best use of this property;
 4. The values of the surrounding properties would not be diminished because the proposed lot was developed for residential use, which is consistent with properties in the surrounding area, and is also substantially larger than the minimum required 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 because it is a 12.6-acre parcel in a zone that requires only 100,000 square feet. Residential development allows the most efficient and practical development of the property;
 - 2.) The proposed use is a reasonable one because residential development is allowed in the R-1 zone, is consistent with other lots in the area, can support individual residential septic systems and related residential improvements, and would not injure any public or private rights.
- 8. Bernstein, Shur, Sawyer & Nelson, PA. (petitioner) and 427 DW Highway, LLC. (owner) - Variance under Section 3.02 to permit the creation of a third dwelling unit in an existing detached garage on a property with 15,200 square feet whereas 120,000 square feet is required. The parcel is located at 427 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly and Town Center Overlay Districts. Tax Map 5D-4, Lot 76. Case #2016- 011.**

This agenda item was taken up after agenda item #5.

At the applicant's request, this item was continued to March 30, 2016, at 7:00 p.m., in the Matthew Thornton Meeting Room.

7. Fieldstone Land Consultants, PLLC. and College Bound Movers (petitioners) and Sam A. Tamposi, Harold Watson and Benjamin & Clegg Bosowski (owners) - Variance under Section 3.02 of the Zoning Ordinance to permit the construction of a 3,000 square foot building addition with a front setback of 39 feet whereas 50 feet is required. The parcel is located at 14 Continental Boulevard in the I-1 (Industrial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 3C, Lot 089. Case #2016-010.

This agenda item was taken up after agenda item #8.

Chris Guida, Wetland and Soil Scientist, Fieldstone Land Consultants, PLLC, said the applicant wants to build a 3,000 square foot addition to the front of Unit 1 within the front setback to house administrative office space associated with the moving and storage business.

Chris Guida read the statutory criteria into the record.

As to #3, substantial justice, Richard Conescu asked how the project would add to the Town's tax base, since someone is paying taxes on it now. Chris Guida replied there would probably be a tax adjustment for the building overall. Patrick Dwyer said that is not substantial justice.

Fran L'Heureux asked if the facility is rented. Chris Guida stated that he believed the applicant is in the process of buying the building.

Fran L'Heureux asked whether pods or trailers would be stacked outside that would attract break-ins. Chris Guida said there would be pods, but he is not sure how they would be managed. Most would be indoors, where the current warehouse space is. Jillian Harris explained that it was her understanding storage would be inside. The applicant did not specify whether there would be pods outdoors, but it would be on the site plan.

Chris Guida explained there is no office space available. The warehouse is needed for operations. The addition would be identical to the addition on Unit 2, with a walkway and spaces for the handicapped.

There was no public comment.

Patrick Dwyer said it is a good idea and the symmetry looks good.

The Board voted 5-0-0 to grant the Variance, with the condition that the petitioner shall obtain site plan approval for the proposed addition from the Planning Board, on a motion made by Patrick Dwyer and seconded by Richard Conescu.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because it would allow for the productive use of the existing property and allow for responsible and reasonable development and expansion. The proposed addition would enhance the visual appearance from the street and be consistent with the office space that currently exists in front of Unit 2 and with the surrounding

properties. It would substantially improve the aesthetics of the parcel and the surroundings. The proposal would not alter the essential character of the neighborhood nor threaten the health, safety or general welfare of the public;

2. The spirit of the Ordinance is observed because the proposal is consistent with the surroundings and with what currently exists on site and would substantially improve the aesthetics of the parcel. It would enhance visual appearance from the street and be consistent with the office space that currently exists in Unit 2. The use is permitted in the zoning district. The addition is consistent with existing development on the parcel and in this area of Merrimack. There is adequate space on the properties to support this development. The proposal would not alter the essential character of the neighborhood nor threaten the health, safety or general welfare of the public;
3. Granting this variance would do substantial justice because it would allow a local business to grow and address an increasing demand. The applicant wants to grow in this location, considering its proximity to the highway. There would be no negative impacts to the neighborhood, since the property has always been occupied by a commercial or industrial use, which is consistent with its surroundings. It would have no negative impacts on local services and would increase the Town's tax base. Granting the variance would allow for the productive use of the property while providing responsible growth in the community;
4. The values of the surrounding properties would not be diminished because Unit 2 already has a 3,000 square foot addition. This proposal would provide each unit with office space and provide symmetry and curb appeal from Continental Boulevard. It would improve the property, associated values and local tax base, which is a positive impact on the community. The construction would be consistent with the surrounding uses and is a permitted use in the zoning district. New construction and development often increase the value of surrounding properties, as it would rejuvenate the site and its surroundings;
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 because the proposed addition would enhance the visual appearance from the street. It has been situated to match (mirror) the office that currently exists for Unit 2, which would offer visual symmetry from the street;
 - 2) The proposed use is a reasonable one because it meets the spirit and intent of the Ordinance. The proposed development would not alter the essential character of the neighborhood nor threaten the health, safety or general welfare of the public. The project would rejuvenate an existing parcel and

substantially improve its aesthetics and those of its surroundings. There is adequate space on the properties to support this redevelopment, which will improve the neighborhood, be consistent with the surroundings and not result in negative impacts to the public.

- 9. Arthur D. King (petitioner/owner)** - Variance from Section 2.02.1.A.2(a) to permit a home occupation with more than one employee not residing at the premises whereas only one person not residing at the premises is allowed. The parcel is located at 43 Bates Road in the R-2 (Residential) District. Tax Map 3A, Lot 008. Case #2016-12.

This agenda item was taken up after agenda item #7.

Arthur King, 43 Bates Road, is part of a family-owned construction management firm whose office is in his elderly parents' Nashua home. He wants to build an office/garage on his Bates Road property and move the company there. Most of the work is done offsite; the office is only for design and bidding. The company has two part-time engineers and a part-time secretary.

Arthur King read the ordinance criteria into the record.

Patrick Dwyer asked how one would go from the home to the garage. Arthur King said there would be two driveways, one of which would go around the garage where there is now a gravel drive. He would not expand the business, although he does hire and train UNH interns.

There was no public comment.

The Board voted 5-0-0 to grant the Variance, with the following conditions, on a motion made by Richard Conescu and seconded by Patrick Dwyer.

1. The petitioner shall obtain Home Occupation approval from the Planning Board; and
2. Following Planning Board approval of the Home Occupation, the petitioner shall obtain all required permits from the Building Division for both the new garage/office and septic system proposed as part of the project.

Findings of Fact:

1. Granting the variance would not be contrary to the public interest because the lot is more than adequately sized to fit the new garage. The new garage area will not cause increased disturbance to abutters due to traffic or appearance. The proposed construction will be for engineering and office work only. No fabrication will be done on site.
2. The spirit of the ordinance is observed because all other zoning requirements are met. The plot contains adequate land and abutment distances to not disturb the abutters, and the construction is in similar design to the surrounding area, which means the area will not be adversely affected. No fabrication will be done on site, only engineering and office work will be performed.

3. Granting the variance would do substantial justice because it will not adversely affect the neighboring area, and does not threaten public health and safety
4. The values of the surrounding properties will not be diminished because the garage area is in the same general aesthetic design as the neighboring properties. With only office and engineering work being conducted the added traffic will be minimal.
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 because there will be no great increases in traffic, the garage area and proposed driveway will contain all vehicles needed. The design of the new construction is in accordance with the neighboring buildings. Rejection of the variance will result in the owner needing to pay rent for additional office space.
 - 2.) the proposed use is a reasonable one because the increase in number of non-resident employees will be kept to a minimum, an anticipated variance of two (2) engineers and a secretary is intended.

6. Meridian Land Services, Inc. (petitioner) and North View Homes & Development, Inc. (owner) - Variances under Section 1.03 (A) (25) of the Zoning Ordinance to permit a four-lot subdivision with two of the lots having frontage on a Class VI road. The parcel is located at 190 Baboosic Lake Road in the R-3 (Residential) District. Tax Map 5B, Lot 045. Case #2016-09.

This agenda item was taken up after agenda item #9.

Attorney Greg Michael, Bernstein Shur, said the property is unique. Approximately nine acres, it has frontage on Baboosic Lake road to the east and the unpaved Old Blood Road (a Class VI road) to the west. Both are Town roads. Subdivision frontage requires a Class V road. A portion of the property is wetland with slight soils. The petitioner intends to subdivide the property into four lots of 2+ acres, each with municipal water and private septic. The historic home would be kept on one lot. The stone wall would be retained. Two lots would have a common driveway. Several things could be done with the parcel. There is enough frontage, soils and area on Baboosic Lake Road for four lots, but that is not the best thing to do.

Richard Conescu asked why one would build on a road that could be gated at any time. Attorney Michael replied that anyone abutting the road could always access it. If there were a gate, the statute says they must be given a key. The Town will not maintain the road. An indemnity agreement would be filed stating that the abutters must plow and

maintain the driveway on Old Blood Road. An access cross-easement would require that both lots contribute to maintaining the road/driveway. It would be 400' long from Marty Drive.

Ken Clinton, President, Meridian Land Services, Inc., said Town Council approved another driveway on South Grater Road that was on a Class VI road. The Board's packet of materials includes a typical indemnity agreement document.

Attorney Michael said that, in the 1970s, a 50'-wide road dedication was made to bring Old Blood Road up to standards. The applicant wants to do the same along the Old Blood frontage so it would be available if the Town wanted to make it into a Class V road.

Ken Clinton said this use is less than what was intended. This is the last piece of road. There is no need for a Town through road. There would be no need for a variance if this were a Class V road.

Richard Conescu asked whether Town Council must approve. Attorney Michael and Ken Clinton explained that Town Council approval would be sought following Zoning Board of Adjustment (ZBA) approval.

Attorney Michael read the statutory criteria into the record.

Attorney Michael stated that this plan is superior to subdividing the entire parcel on Baboosic Lake Road. Richard Conescu agreed that it is a more logical design. Ken Clinton showed an alternative plan on a Class V road/Baboosic Lake Road with a cul-de-sac and six smaller house lots that would not require a variance/ZBA approval. The plan being proposed is less expensive and would have less impact.

In answer to Patrick Dwyer, Attorney Michael stated that only Planning Board, not ZBA, approval is needed for a subdivision.

Fran L'Heureux asked if the owners would automatically own the road after maintaining it for a certain number of years. Attorney Michael explained that it is a Town road and Town Meeting would have to vote to make it a private road. In answer to Richard Conescu, Attorney Michael stated that a Class VI road is not legal frontage for subdividing land (depending on the particular town). He repeated that a subdivision requires frontage on a Class V road or better.

Tony Pellegrino asked who would own the road in the six-lot plan. Ken Clinton replied that it would be a Town road, although the developer would build it. Richard Conescu asked why the applicant would not build six lots and have the Town maintain the road. Attorney Michael replied that some people "are not in it for the bucks".

Public comment

Donald Warner, 15 Marty Drive, said that the ZBA was being misled about Old Blood Road. One cannot go from Marty Road without sinking in mud. So much water runoff is a threat to the entryway. The road is not passable. The other end of Old Blood Road is wider.

Donald Warner read his February 23, 2016, letter of opposition into the record. To the right of Old Blood Road off Marty Drive is a group of trees that are mostly dead and are in standing water. One has fallen across the entry to Old Blood Road and another has snapped halfway up and is leaning over, creating a safety hazard. This issue is caused by the water table in that area and will continue. An incredible amount of water runoff comes through the Warner property and settles onto the lower part of Old Blood Road. It is uncertain how a developer can stop that from occurring without addressing the issue of excess water flowing through the Warner lot. Other Marty Drive neighbors have similar water issues that flow from the proposed subdivision area. The wildlife habitat in the proposed subdivision could be adversely affected and Old Blood Road could no longer be used recreationally. The proposed driveway will pass along the right side of the Warner property, then turn left and pass directly behind the lot within a few feet of the backyard. The proposed access way could have a negative economic impact on the future resale of the Warner property. The scale of the proposed subdivision does not clearly reflect the impact the project will have on neighboring properties. The ZBA should explore a second set of plans that accesses the lots from the other end of Old Blood Road off Baboosic Lake Road that would have far less impact on the neighboring properties. As to the statutory criteria, the project would alter the essential character of the neighborhood and the values of surrounding properties and would not sufficiently separate 11 and 15 Marty Drive.

Attorney Michael noted that the Warner house abuts a Class VI Town road. The road could be repaired without creating drainage issues and the trees could be chopped down. The road could be used because it is a Class VI road.

Noting that it would be shorter, Patrick Dwyer asked why not come in from Baboosic Lake Road? Ken Clinton said it is not as safe. The road curves and intersects Bean Road, necessitating a less safe four-way intersection. Full road design would have more wetland impact. The proposed driveway would not impact the wetland. The Warners bought a lot that is substantially wet. A 24" culvert was installed that the applicant would use as part of the design. The applicant must meet the Public Works Department (PWD) requirement that runoff not come onto the public road. A drainage system is already in place for the driveway that would have no impact. Most of the Warner runoff is not associated with Old Blood Road; it is from Baboosic Lake Road and the Warner property. This plan could improve the Warners' drainage. 1'-2' of soil would be removed and the 12" pipe replaced with a 15" pipe to fix the drainage and pave the driveway. That would improve the drainage. Ken Clinton showed the location of the culvert. He met with both PWD and with the Planning Board.

Janice Tibbetts, 1 Marty Drive, asked whether the road would be public and available for walking. Attorney Michael said it would be.

Leon Luksha, 1 Marty Drive, said it is a bike trail rather than a road. He has water issues in the cellar, especially since the new school was built. He asked how the proposal would affect his property.

Tony Pellegrino asked whether the road and culvert would be better maintained. Ken Clinton said the 12" culvert does not work as well as it should and would be replaced

with a 15" culvert at the proper elevation. It could possible remediate the Warners' drainage issues without impacting the flow. The project cannot increase runoff onto abutting properties; they would probably reduce it. they would sign a document stating that Old Blood Road would remain a public road for public use. Attorney Michael agreed that the road would be improved.

Donald Warner asked what would be done about the tree hazard. Patrick Dwyer said the applicant would have to remove them in order to create the driveway. Richard Conescu added that it is a Planning Board issue.

Donald Warner asked where the water would go if Old Blood Road were raised. Attorney Michael repeated that regulations state that the applicant is not allowed to change or increase runoff to abutters. Town consulting engineers will review the plan for the Planning Board, which will also deal with trees as part of the Driveway Permit. Patrick Dwyer said drainage is a Planning Board and not a ZBA issue. At this meeting, the ZBA is only being asked to approve a subdivision with lots fronting on a Class VI road. Attorney Michael and Ken Clinton agreed with Donald Warner that Marty Drive at the cul-de-sac is private property that is not on the Town right-of-way.

Leon Luksha said he owns 10' beyond the wall behind the property. Attorney Michael explained that the Planning Board requires survey data and the 10' strip would have no impact on the project. The lots are still of sufficient size, frontage, etc.

Nancy Warner, 15 Marty Drive, opposes using Marty Drive as an access road. She asked what would happen to the stone wall if the road were widened. One of them is along her property line and #11 Marty Drive. Their privacy would be gone. She asked why people would enter at the narrowest and wettest part of Marty Drive. She prefers that all homes access from Baboosic Lake Road. Ken Clinton said he evaluated the full length of Baboosic Lake Road. It is less safe for vehicles, although he could still do it. He would still need a variance. Richard Conescu explained that whichever way the ZBA votes, the applicant can still build. Patrick Dwyer noted there are many roads on corners like Baboosic Lake road, but that is not a ZBA issue.

Fran L'Heureux asked if there is a law that prevents demolishing old stone walls. Attorney Michael referenced state statutes regarding scenic roads, but this was not designated as such. He stated that the applicant would retain the walls as much as possible, even if he has to relocate them. He is trying to preserve what is there. Ken Clinton said he is committed to doing what the PWD recommends.

David Pauly, 9 Marty Drive, is concerned about water issues and runoff. He had to relocate his garage. He was not advised he had a water problem when he bought the house. His property is lower than the new road would be. He asked where the water would go when the new road is built.

Donald Warner said he asked the builder when he bought the lot if there was water and the builder denied there was. If Donald Warner knew, he would not have bought the house.

Patrick Dwyer stressed that there would be several more reviews after the ZBA's, which is deciding only whether the applicant can subdivide on that road. By law the petitioner is not allowed to make water runoff worse for abutters.

Richard Conescu was comfortable with the plan because something will be built, regardless. It is better to have a plan that requires Planning Board review.

Fran L'Heureux and Patrick Dwyer noted that the applicant could create four lots with four driveways on Baboosic Lake Road.

The Board voted 5-0-0 to grant the Variance, with the condition that the applicant shall obtain subdivision approval from the Planning Board for the proposed two-lot subdivision, on a motion made by Richard Conescu and seconded by Leonard Worster.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the residential use and configuration of proposed Lots 45-2 and 45-3 would not alter the essential character of the neighborhood. The health, safety or general welfare of the public would not be threatened as the resulting homes, infrastructure and driveway access would be constructed by modern design methods that would meet Town and State requirements. All surrounding lots are one acre, half the size of these 2+-acre lots. The driveway owners would be responsible for its maintenance;
2. The spirit of the Ordinance is observed because proposed Lots 45-2 and 45-3 would be consistent with the frontage requirements. Minimum frontage requirements in the residential zone both controls the density of the neighborhood and allows for sufficient separation of houses, driveways and especially water and sewage provisions. Frontage along a Class V road ensures adequate access to public roads and utilities. Class V vs. Class VI road is a legal technicality;
3. Granting this variance would do substantial justice because there is no apparent gain to the general public that would outweigh the loss to the applicant. Proposed Lots 45-2 and 45-3 are consistent with the area's present use and will have properly designed, approved and documented access. The public benefit is road maintenance and four well-designed large lots. The applicant's benefit is the ability to use his property;
4. The values of the surrounding properties would not be diminished because the proposed residential use is consistent with the residential zone. Proposed Lots 45-2 and 45-3 would otherwise meet or exceed the dimensional requirements of the Ordinance. Access to those lots would be *per* a properly endorsed and recorded agreement with the Town of Merrimack. The Old Blood Road right-of-way has been widened and includes appropriate drainage for future development of a new road that could access significantly more lots and homes. By comparison a single driveway would clearly be a minor impact. The public would

see only a single driveway from Marty Drive, which will appear less substantial than is typical of the neighborhood due to its separation and the lack of visible house and associated uses. The lot sizes are double those in the area, thus enhancing neighbors' property values;

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 because, although the parent lot has 715' of road frontage along Baboosic Lake Road, the lot narrows considerably to a width of 365'. A portion of the Baboosic Lake Road frontage is along a sharp curve, which prevents safe driveway access. The location of the existing house #190 is an impediment to efficient use of the Baboosic Lake Road frontage on either side of it. Compounding the lot width restriction is the existence of wetlands that bisect the property into two distinct areas. The parent lot has a unique secondary access along Old Blood Road that has been planned for access since the 1970s.
 - 2) The proposed use is a reasonable one because the special characteristics of the unique parent lot make it different from others in its immediate area. Granting the variance would allow the property to be used according to the residential zone requirements in a way that eliminates unnecessary environmental impact and protects the health, safety and welfare of the general public.

10. Discussion/possible action regarding other items of concern

Richard Conescu asked whether it was known that one ZBA member would be absent. Jillian Harris replied in the affirmative.

11. Approval of Minutes – January 27, 2016

The minutes of January 27, 2016, were approved as submitted, by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Richard Conescu.

12. Adjourn

The meeting adjourned at 10:12 p.m., by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Patrick Dwyer.