



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT

APPROVED MINUTES

WEDNESDAY, JANUARY 27, 2016

Members present: Fran L'Heureux, Patrick Dwyer, Tony Pellegrino, Richard Conescu, Lynn Christensen, and Alternate Leonard Worster.

Staff present: Assistant Planner Robert Price and Recording Secretary Zina Jordan.

1. Call to Order

Fran L'Heureux called the meeting to order at 7:00 p.m.

2. Roll Call

Tony Pellegrino led the pledge of allegiance. Richard Conescu read the preamble and swore in members of the public who would be testifying.

3. Michael Moquin (petitioner/owner) – Variance under Section 2.02.4 (B) of the Zoning Ordinance to permit a Multi-Family dwelling in the I-1 (Industrial) district. The parcel is located at 56 Daniel Webster Highway in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 2D, Lot 030. Case # 2016-01.

Michael Moquin, 56 Daniel Webster Highway, wants to put an addition (wrap-around porch) onto the garage and convert approximately 800 square feet of the 2,000 square feet into a small home for himself and his wife. Because the property's already a two-family home, that would create three dwelling units on the same property. It has water, sewer, electricity and heat. There is plenty of driveway space and frontage.

Michael Moquin read the statutory criteria into the record.

As to #4, diminution of property values, Richard Conescu noted that the property is surrounded by industrial uses. Since there are no other houses, there would be no effect on property values. Industrial property values are based on other industrial properties rather than on home values. There would be no impact to the values of the surrounding properties.

There was no public comment.

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

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the property has adequate frontage to gain access to a public way/D.W. Highway and to provide safe ingress and egress. The shape and size of the proposed lot would not change. The garage already has water and sewer, so there would be no pollution or cost to the town;
 2. The spirit of the Ordinance is observed because the lot contains enough frontage for safe access. It has water and sewer, so there is no chance of water pollution or unnecessary expense to the town;
 3. Granting this variance would do substantial justice because the lot would be used consistently with the district's permitted use and in line with the surrounding industrial area. Denying the application would result in a substantial loss to the applicant by preventing the safe and reasonable use of property. The loss would greatly exceed any public gain;
 4. The values of the surrounding properties would not be diminished because the character of the area would not change. It is zoned industrial; this is the only house among the abutting properties. It is well kept. The upkeep is better than the surrounding properties;
 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 three of the Moquins' parents recently and both sons have moved out. The Moquins would downsize by making an apartment out of part of the garage. One son and his family would move into the main house and care for the remaining parent, who would move into one of the main house units. This arrangement would allow the property to stay in the family for four generations of more;
 - 2) The proposed use is a reasonable one because the 17' added to the garage would be in the setback that was granted when the garage was built. There would no building closer to the property line nor anything added that would be a problem for the abutters.
- 4. Michael Moquin (petitioner/owner) – Variances under Section 3.02 of the Zoning Ordinance to permit a Multi-Family dwelling on a lot of 43,560 s.f. whereas 120,000 s.f. is required; frontage of 150 feet whereas 200 feet is required; side setback of 30 feet whereas 50 feet is required; rear setback of 30 feet whereas 60 feet is required. The parcel is located at 56 Daniel Webster Highway in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 2D, Lot 030. Case # 2016-02.**

The Board voted 5-0-0 to accept the testimony and statutory criteria that were presented in agenda item #3, as the applicant combined his presentations on a motion made by Lynn Christensen and seconded by Patrick Dwyer.

There was no public comment.

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

FINDINGS OF FACT

See those listed under Agenda item #3 above

- 5. Derek & Julie Locke (petitioner/owner) – Variances under Section 3.02 of the Zoning Ordinance to permit a 2-lot subdivision with lots containing 103.07 feet, and 101.93 feet of frontage whereas 150 feet is required. The parcel is located at 41 Ingham Road in the R-4 (Residential), and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 3C, Lot 025-01. Case # 2016-03 & 04.**

Derek Locke, 41 Ingham Road, wants to subdivide his property in order to raise capital to build a new home on the same lot.

Derek Locke read the statutory criteria into the record.

As to #3, substantial justice, Richard Conescu asked if neighboring homes really have only 40'-60' of frontage. Robert Price explained that the GIS shows that the proposed frontage of the subdivided lots would be larger than the existing lots.

As to #4, diminution of property values, Patrick Dwyer was of the opinion that dividing the land and building a home would increase the petitioners' home's value, but not the other homes on the street, which are not in disarray like the petitioners. Fran L'Heureux asked about the "disarray". Derek Locke said that removing an eyesore would improve the abutters' values. The home's framing and sill plates are rotten. He would have to knock half the house down to fix them. There is moisture because it does not have a full foundation. It is beyond repair; it is easier to start over. Richard Conescu said frontage is not a concern; the proposed size is better than that of the surrounding properties. It is not an issue, since this is a common situation.

Public comment

Mathew Kendall, 40 Ingham Road, said the project would improve the value of his and surrounding properties. The house is caving in and the lot is overgrown. He identified himself as the buyer of the subdivided lot. He intends to use it as an investment property.

Fran L'Heureux read a letter in opposition from Catherine and Robert Provencher, 35 Ingham Road, into the record. The Provenchers do not want anything that would decrease their property value or quality of life. They ask how many times the property could be subdivided. They were told that the prospective buyer would cut down all the trees and build a garage. They ask how big a garage structure could be built and how close to their property line, how much and what type of equipment would be visible every day, and whether more is allowed. Where would the debris including tree stumps go? Stumps from previous tree removal projects have been pushed onto the line and encroach onto the conservation land directly behind the Provencher residence.

The Board agreed that the questions are under Planning Board purview. The Ordinances state how big a garage could be built and how many times a property could be subdivided.

As to #4, diminution of property values, Patrick Dwyer said estimating a property value is subjective.

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

1. The applicant shall obtain subdivision approval from the Planning Board for the proposed two-lot subdivision;
2. Applicant shall obtain a Variance from the Zoning Board of Adjustment for structures to remain within the front setback (or remove the structures prior to issuance of any Building Permits for the two lots).

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because it would allow productive use of the existing property, which consists of creating a two-lot subdivision with frontages that are similar in size to the surrounding Ingham road lots. The Variance would not alter the essential character of the neighborhood;
2. The spirit of the Ordinance is observed because it is a residential neighborhood. The lot would be larger than most without overcrowding;
3. Granting this variance would do substantial justice because it would allow the owners the ability to build a new home and increase property values on that end of the street. The existing house is in disarray and needs major work. Many of the lots along Ingham Road have closer to 40'-60' of frontage. The Variance would not alter the essential character of the neighborhood nor threaten the health or safety of the public;
4. The values of the surrounding properties would not be diminished because the existing house needs major work. It is an eyesore that affects everyone's property values. Rebuilding it as a new home would help the property value of surrounding lots;
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 all the other lots in this residential neighborhood are much smaller. The minimum lot frontage is 150'. The proposed lots would be larger than most in the surrounding neighborhood;
 - 2) The proposed use is a reasonable one because it is consistent with the surrounding lots and would be larger than most of them.

6. John J. Flatley Company (petitioner/owner) – Special Exception under Section 2.02.7 (A)(4) of the Zoning Ordinance to permit a walking path & reconstruction of existing bridge to cross through the 25 foot Wetlands Buffer. The parcel is located at 645 Daniel Webster Highway in the I-1 (Industrial), and Aquifer Conservations Districts and Wellhead Protection Area. Tax Map 6E, Lot 003-01. Case # 2016-05.

Nathan Chamberlin, Fieldstone Land Consultants, corrected the agenda: Lot is 6E rather than 7E and not in either the Aquifer Protection or Wellhead Protection Districts.

Nathan Chamberlin explained that the proposed walking trail would circumvent the entire development and would be away from off-road paved areas. It would be part of the network of trails going onto the residential development. The Merrimack Conservation Commission (MCC) wanted to avoid the crossing, but Flatley wants to isolate/segregate the walkway from all traffic areas. The Planning Board agreed. There is a man-made wetland and dam at the edge of the field. Flatley would rebuild the bridge to cross the location and put down a 6'-wide gravel or stone dust path. The wetland buffer must be disturbed in order to get the path through, but the wetland would not be disturbed. Lynn Christensen noted that the MCC wants to move the walkway closer to the street.

Nathan Chamberlin read the statutory criteria into the record.

As to #a), prevent contributing to pollution of surface and ground water, Lynn Christensen asked whether the path would be plowed or salted in winter. Nathan Chamberlin said it would not be.

As to #b), prevent destruction and degradation of natural wetlands, Tony Pellegrino asked how far the trail would be from the wetland buffer. Nathan Chamberlin repeated that the trail would be in the buffer, but the wetland would not be disturbed nor the grade changed. Patrick Dwyer asked about damage from construction equipment. Nathan Chamberlin said Flatley would stabilize everything, reseed it and return it to its natural state. He would not fill the wetland nor remove its flood protection. He would remove stumps and provide erosion control.

As to #d), encourage uses that can be appropriately and safely located in and around wetland areas, Tony Pellegrino asked about the vehicle/snowmobile trail. Nathan Chamberlin explained that the existing snowmobile trail is used by nearby residents. Lynn Christensen repeated that the proposal is for walking trails only. Richard Conescu said the proposal would improve the use. Fran L'Heureux suggested posting the property to keep out ATVs.

There was no public comment.

The Board voted 4-0-1 to grant the Special Exception, on a motion made by Richard Conescu and seconded by Lynn Christensen. Patrick Dwyer abstained.

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 proposed walking path would be used only for foot traffic that would not contribute to the pollution of surface or ground water;
- 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 proposed disturbance is only to the buffer and not to the natural wetlands. The functions and values of the wetlands would not be altered as a result of the proposed path;
- c) To prevent unnecessary or excessive expenses to the Town to provide and maintain essential service and utilities that arise because of inharmonious use of wetlands and adjacent upland areas. The proposed use will not conflict with this purpose because the proposed walking path is a harmonious use of the adjacent upland area and would allow the residents of the development an opportunity for passive recreation at no expense to the Town of Merrimack;
- 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 walking path is an appropriate and safe use in and around the wetland area and would replicate an existing recreational vehicle trail.

7. Discussion/possible action regarding other items of concern

None.

8. Approval of Minutes – December 30, 2015

The minutes of December 30, 2015, were approved as amended, by a vote of 3-0-2, on a motion made by Patrick Dwyer and seconded by Lynn Christensen. Tony Pellegrino and Richard Conescu abstained.

9. Adjourn

The meeting adjourned at 8:02 p.m., by a vote of 5-0-0, on a motion made by Patrick Dwyer and seconded by Tony Pellegrino.