



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT

MINUTES

WEDNESDAY, JULY 25, 2018

Members present: Patrick Dwyer, Lynn Christensen (arrived 7:25 p.m.), and Alternates Leonard Worster, Kathleen Stroud and Rod Buckley.

Members absent: Fran L'Heureux and Richard Conescu.

Staff present: Planning and Zoning Administrator Robert Price and Recording Secretary Zina Jordan.

1. Call to Order

Patrick Dwyer called the meeting to order at 7:00 p.m. and designated Leonard Worster, Kathleen Stroud and Rod Buckley to sit for Lynn Christensen, Fran L'Heureux and Richard Conescu, respectively.

2. Roll Call

Patrick Dwyer led the pledge of allegiance and swore in members of the public who would be testifying. Kathleen Stroud read the preamble.

- 5. Daniel D. Jesseman (petitioner) & AMPK Ventures, LLC (owner)** – Variance under Section 2.02.3.B of the Zoning Ordinance to permit a contractor yard in the General Commercial District. The parcel is located at 702 Daniel Webster Highway in the C-2 (General Commercial). Tax Map 7E, Lot 023-01. Case # 2018-19.

This agenda item was considered before agenda item #3.

Attorney Greg Michael, Bernstein, Shur, Sawyer & Nelson, requested a continuance, as permitted under the Board's Rules of Procedure, because only four members were in attendance.

At the applicant's request, the Board voted 3-0-1 to continue this item to August 29, 2018, on a motion made by Kathleen Stroud and seconded by Rod Buckley. Leonard Worster abstained.

- 3. Jonathan & Nicole Kennedy (petitioner/owner)** – Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a 20' x 20' living room addition with a 12' 5" rear setback whereas 40 feet is required. The parcel is located at 8 Forest Drive in the R-4 (Residential) District. Tax Map 5C, Lot 288. Case # 2018-17.

This agenda item was considered after agenda item #5.

Jonathan Kennedy, 8 Forest Drive, wants to put an extension on the side of his home that would encroach closer to the abutting condominium open space, which is the treed/conservation area next door.

Nicole Kennedy, 8 Forest Drive, read the statutory criteria into the record.

There was no public comment.

The Board voted 4-0-0 to grant the Variance, on a motion made by Kathleen Stroud and seconded by Rod Buckley.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because making the home look better would improve the value of other homes on the street. With conservation land behind the home, it would not affect the neighbors. The addition would set 20' into the side yard and 20' into the backyard;
 2. The spirit of the Ordinance is observed because there is conservation land to the left and behind the home. The addition would go on the left. There is no home that would object to it being too close to them. The neighbor next to the proposed addition has no objection;
 3. Granting this variance would do substantial justice because it would allow for additional space for a growing family to expand and to stay in Merrimack;
 4. The values of the surrounding properties would not be diminished because this would allow the family to stay on its property. The family takes very good care of its yard. The addition would only improve the home's value;
 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, due to the shape of the lot and where the house is set, there is no other area to allow expansion;
 - 2) The proposed use is a reasonable one because the growing family needs additional living space. They want to stay in their home and in Merrimack.
- 4. Karen A. Gomes (petitioner/owner) –** Variance under Section 3.05 of the Zoning Ordinance to permit the construction of an 8' x 36' 6" farmer's porch with a 25' front setback whereas 30 feet is required. The parcel is located at 51 Brookside Drive in the R-1 (Residential) and Aquifer Conservation Districts. Tax Map 6C, Lot 068. Case # 2018-18.

Karen Gomes, 51 Brookside Drive, wants to construct a porch in front where the shrubbery is. Steps would go from the driveway and under the overhang. Mr. Gomes

needs an easy way to accept delivery of 30+ cases of dialysis fluid weekly that will keep it out of the elements.

Karen Gomes read the statutory criteria into the record.

There was no public comment.

The Board voted 4-0-0 to grant the Variance, on a motion made by Rod Buckley and seconded by Kathleen Stroud.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because it would add value and make the house look nicer. It would not depreciate any surroundings. The farmers porch would comply with the approved plan;
2. The spirit of the Ordinance is observed because a 5' setback would not interfere with any surrounding properties and would not be obtrusive to the neighborhood;
3. Granting this variance would do substantial justice because it would make it easier to bring the dialysis supply into the house, allow easier access for the owners to enter the home, create a nice area to relax, and allow them to use their home in a reasonable manner;
4. The values of the surrounding properties would not be diminished because this would add value to the house and would not affect any surrounding properties. It would beautify the neighborhood. The neighbors across the street and some others have no issues with the project;
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, when the house was built in 1972, there was no need for a farmer's porch. The front yard setback now needs to conform. The porch would not be overly sized;
 - 2) The proposed use is a reasonable one because the porch would be useful for deliveries of dialysis packages and safe both for delivery people, owners and the general public.
6. **Apple Development Limited Partnership (petitioner/owner)** – Variance under Section 17.10.4.g of the Zoning Ordinance to permit a parcel with more than one business establishment to have wall signs throughout the property measuring 2 square feet of sign face per linear foot of building façade whereas 1 square foot of sign face per linear foot is permitted where ground signage is also present. The parcel is located at 360 Daniel Webster Highway in the C-2 (General Commercial) Aquifer Conservation Planned Residential Overlay and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 001. Case # 2018-21.

Attorney Lick read the statutory criteria into the record. As to #1, public interest, Patrick Dwyer said a 1 square foot per linear foot of building façade sign can be seen from the road. Attorney Lick responded that one needs to be able to see the sign from the turning lanes; there is no second chance to do so.

Lynn Christensen arrived at 7:25 p.m. Patrick Dwyer designated Leonard Worster to sit for the vacant full member seat.

Robert Barsamian, Owner, Apple Development Limited Partnership, said that Planet Fitness currently has a sign installed that is just about 2 square feet per linear foot of width of their unit because it chose not to be included on the pylon sign. Small shop (narrow unit) signs would be hard to read. The design has spaces between signs. Each sign will be centered. It would not be overpowering.

Public comment

Stuart Hollander, 33 Pondview Drive, wrote a letter in opposition. Planet Fitness and Dollar General have adequate signage that is readily visible from any place on the road that has a line of sight to the buildings. Two proposed substantial buildings would be located much closer to the road and would have adequate signage without the variance. Using Google maps is misleading because they show a wider than normal view and make objects appear farther away than they actually are. Increased signs may be reasonable for smaller tenants. Double-sized signs would result in overwhelming and possibly garish signage.

Attorney Lick rebutted that he is getting half-size signs. Even Stuart Hollander says the Planet Fitness sign, which represents just under the maximum relief they're seeking, is adequate. Leonard Worster and Lynn Christensen said the rationale for the Ordinance that allows 1 square foot of sign face per linear foot where ground signage is also present is that, if there were two signs for one business, the second sign need not be so big.

The Board voted 5-0-0 to grant the Variance, on a motion made by Rod Buckley and seconded by Kathleen Stroud.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because due to the size and layout of the site, which has 800+' of frontage, there is no risk of cluttered, confusing, visually overwhelming signage that is out of character with the area. Travelers must quickly identify and locate the businesses in the development. Ground signs that identify the name of the development and a small sign for each tenant can be difficult to read quickly and associate with the businesses on site. Commuters are more likely to find their way based on the wall signs affixed to the building instead of relying on the ground signs. The building is located as much as 250'-300' back from the travel lanes on D.W. Highway and there would be up to nine retail units in the main building. Larger signs that consumers can be read quickly are an advantage and in the public interest. The ground signs and potential wall signs would be far apart and not

likely to create cluttered view or confusion. The ground signs near the road are roughly 250' from the nearest corner of the building and would be as much as 750' from the farthest corner of the building. The wall and ground signs would not affect each other;

2. The spirit of the Ordinance is observed because adequate and functional signage that supports wayfinding requires larger signage. There is no risk that the variance would result in signage that is cluttered, confusing or overwhelming. But for the existence of the ground signs, the larger wall signs would be allowed as a matter of right.
3. Granting this variance would do substantial justice because it would facilitate successful development of the property in an extraordinarily difficult retail market. There are no drawbacks or negative impacts because of the size and layout of the site. But for the existence of the ground signs, the larger wall signs would be allowed as a matter of right.
4. The values of the surrounding properties would not be diminished because nothing suggests that allowing larger wall signs on a site that has a ground sign would decrease property values in the area. The ground sign and larger wall signs are each individually allowed as a matter of right; the variance only seeks to allow them to exist concurrently. There is no argument that such signs would affect property values. The successful redevelopment of the site into an attractive vibrant site with services and amenities available to the community, as opposed to a largely unused aging building, is clearly a benefit to 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 this is a large property where the ground signs, building, entrances, and the abutting roadway are spread out. Larger signs would not be cluttered, confusing, overwhelming, or out of character. In several instances, larger signs are essential to allow the commuter on D.W. Highway to find his/her way to the establishment they are seeking;
 - 2) The proposed use is a reasonable one because of the size, layout and configuration of the property in relation to the vantage point experienced by the driver on D.W. Highway. Larger signage would not dominate the landscape and would benefit wayfinding.

7. Discussion/possible action regarding other items of concern

Chairman Dwyer announced that Tony Pellegrino has not sought reappointment by the Council. A full-member position on the Board is now vacant.

8. Approval of Minutes — June 27, 2018

The minutes of June 27, 2018, were approved as submitted, by a vote of 5-0-0, on a motion made by Kathleen Stroud and seconded by Lynn Christensen.

9. Adjourn

The meeting was adjourned at 7:43 p.m., by a vote of 5-0-0, on a motion made by Lynn Christensen and seconded by Rod Buckley.