



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MERRIMACK ZONING BOARD OF ADJUSTMENT

APPROVED MINUTES

WEDNESDAY, JULY 26, 2023

Members Present:

- Richard Conescu (Chair)
- Ben Niles (Vice Chair)
- Lynn Christensen
- Patrick Dwyer
- Brian Dano

Members Absent:

- Charles Mower (Alternate)

Staff Present:

- Colleen Olsen, Assistant Planner

1. Call to Order

Chair Conescu called the meeting to order at 6:30 p.m. Lynn Christensen read the preamble.

2. Roll Call

Chair Conescu led the Pledge of Allegiance and swore in members of the public who would be testifying.

3. Eck-Bro Company (petitioner/owner) – Variance under Section 3.02 (Note 6) of the Zoning Ordinance to permit a structure (an ADA compliant access ramp) 19 feet from the front property line whereas 50 feet is required. The parcel is located at 550 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly Housing Overlay Districts and the Wellhead Protection Area. Tax Map 6D-1 Lot 007. Case # ZBA 2023-24.

Attorneys Greg Michael and Eli Leino (Bernstein Shur) presented the petition to the Board. Attorney Michael began by advising the Board that the building in question was constructed prior to the Zoning Ordinance being put in place. He shared a site layout plan to demonstrate that a portion of the building itself is in the 50 foot front setback. He then used the same plan to show the Board the location of the proposed accessible parking spaces being added along with the ADA compliant ramp. He went on to quote NH RSA 674:33.V that states that "the hardship criteria does not apply when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises". Attorney Michael added that despite not having to prove a hardship, he feels that the applicant has one because the building entrance is where it is and they cannot pick up the building and move it to make the ramp compliant with the front setback.

Attorney Leino then read through the responses to the statutory criteria (outlined below) and took questions from the Board.

No public comment was received.

The Board voted 5-0-0 to find that the petitioner's responses to the statutory criteria are sufficient, proved each criterion is met, and the Board adopts the petitioner's responses as the Board's findings of fact, and further, to grant the Variance under Section 3.02 (Note 6) to permit a structure (an ADA compliant access ramp) 19 feet from the front property line whereas 50 feet is required, with a condition that the petitioner shall obtain appropriate approvals (either Administrative approval, Waiver of Full Site Plan approval, or Site Plan approval), as determined necessary by the Community Development Staff, on a motion made by Patrick Dwyer and seconded by Ben Niles. The following condition applies:

1. The applicant shall obtain the appropriate approval (either Administrative approval, Waiver of Full Site Plan approval, or Site Plan approval), as determined necessary by the Community Development Department.

Findings of Fact:

1. **Granting the variance would not be contrary to the public interest because:** Granting the variance is not contrary to the public interest for obvious reasons, as we are trying to increase the accessibility for the public. It is to benefit the public and will not generate revenue for the applicant or for the tenant. It is an opportunity to allow anyone that wants to enter the comic store to be able to do so.
2. **The spirit of the ordinance is observed because:** The setback reason is to prevent visible clutter and to ensure that vehicles entering and exiting the site have clear visibility. A handicap ramp is a relatively low structure, and will not have an impact on visibility. It will not have a negative effect on the spirit of the ordinance whatsoever.
3. **Granting the variance would do substantial justice because:** Substantial justice is the balancing test between the private rights of the Applicant against the public interest/neighborhood rights. This project will directly benefit the public so in looking at the balancing test, this project falls in favor of the public.
4. **Granting the variance would not diminish the values of surrounding properties because:** These types of ramps are not uncommon and will not diminish the values of the surrounding properties in the neighborhood.
5. **Unnecessary Hardship:**
 - a. **Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the property:** The existing building has been in the current location since at least 1970 and the building would have to be demolished in order to make the entrance compliant with the Zoning

Ordinance. This would be unreasonable when a variance can be granted for the setback relief.

- b. The proposed use is a reasonable one because:** The proposal allows people with mobility challenges to access the building.

Lynn Christensen commented that aside from the ramp, the addition of the striped spaces for the van accessible parking spots will allow people with mobility challenges to use them.

4. Discussion/possible action regarding other items of concern

Chair Conescu welcomed Brian Dano to the Board. Brian transitioned from the Planning Board where he was a member for 2 years.

Mrs. Christensen mentioned some training sessions being offered by NHMA and encouraged members to attend as the sessions are helpful, especially to new members.

5. Approval of Minutes – May 31, 2023

The Board voted 4-0-1 to approve the minutes of May 31, 2023 as submitted, on a motion made by Lynn Christensen and seconded by Patrick Dwyer. Brian Dano abstained.

6. Adjourn

The Board voted 5-0-0 to adjourn at 6:47 p.m., on a motion made by Lynn Christensen and seconded by Brian Dano.