



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, JULY 27, 2016

Members present: Patrick Dwyer, Tony Pellegrino, Richard Conescu, and Alternates Leonard Worster and Tom Mahon.

Members absent: Fran L'Heureux and Lynn Christensen

Staff present: Assistant Planner 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 Tom Mahon and Leonard Worster to sit for Fran L'Heureux and Lynn Christensen, respectively.

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. **Gregory Michael, Esquire of Bernstein Shur, Sawyer & Nelson, P.A. (petitioner) and Cathy L. Worthen & Steven B. Worthen (owners)** – Variance under Section 3.05 of the Zoning Ordinance to permit a garage 34 feet from the rear property line whereas 40 feet is required. The parcel is located at 5 Sheridan Way in the R (Residential) District. Tax Map 6A-1, Lot 066. Case # 2016-28.

Attorney Greg Michael, Bernstein Shur, said the existing home on the .98-acre lot that abuts Baboosic Lake is within the 40' rear setback. Access is from Four Seasons Lane and Sheridan Way. The legal non-conforming lot has a home built in 1945. The location of the "septic system" is not certain. There is an easement for access. There is very little traffic; Sheridan Way is really a private driveway that bisects the parcel.

It is proposed to move the well to the rear away from the lake and the assumed location of the septic system, install a new septic system and build a new home with an attached garage. There would be more space from the garage to Sheridan Way and safe access around the house. The old well would be closed. The only issue is that the garage would encroach 6' into the rear setback, but this is still less than the current encroachment.

Attorney Michael read the statutory criteria into the record.

Attorney Michael asked about the typographical errors and confusing or conflicting information on the plan noted by staff. Robert Price explained what they are.

Attorney Michael said the existing shed would be removed or made to conform to regulations and assured the Board that it would not be left non-conforming. Attorney Michael requested rewording the condition of approval that, prior to issuance of a Certificate of Occupancy, the petitioner bring the shed into compliance. The Board obliged.

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 Tony Pellegrino.

1. The petitioner to verify with the Building Department if a building permit should have been issued for the existing shed. If so, then prior to issuance of a Certificate of Occupancy, the petitioner is either to:
 - a. Relocate the shed entirely out of the setback and provide confirmation to the Community Development Department that this was completed; or
 - b. Seek the necessary relief for its present location.
2. NHDES Shoreland Permit (if necessary) shall be obtained prior to the issuance of a Building Permit or construction of any proposed improvements within the 250' Shoreland Protection Area.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the proposed garage would reduce the existing nonconformity and increase the distance between the property's structures and the neighboring dwelling to the north. The existing structure that is currently 30' from the rear lot line would be replaced with a structure that is not only shorter in length but also 34' from the rear lot line. The proposed three-family home would not alter the existing use or character of the residential neighborhood. The site work would improve the property by allowing for the construction of a modern septic system near the Lake. The variance would allow for the safe and reasonable use of the property by allowing a new house and garage to be constructed in a manner that is more conforming than what currently exists on the site;
2. The spirit of the Ordinance is observed because the variance would reduce the rear yard setback nonconformity and allow for increased yard space between the neighboring structures. A replacement single-family home would not negatively impact the use and character of the property and the neighborhood. The Town's health, safety, welfare and convenience would be furthered by the proposed site work and the Lake would be protected as the applicants propose to install a modern septic system on the property;
3. Granting this variance would do substantial justice because denial would not result in an appreciable gain to the public, given that the proposed house and garage would replace an existing house and the resulting rear yard setback encroachment would be made more conforming than what currently exists. The use would be consistent with historic use and in a manner that is consistent with nearby properties and is permitted

in the Residential Zoning District. The proposed site work includes a new and modern septic system that would ensure the Town's health, safety and welfare. Denial would result in a substantial loss to the applicant by preventing the safe and reasonable use of the property in a manner that not only reduces the existing nonconformity but also includes replacing older infrastructure with modern technology;

4. The values of the surrounding properties would not be diminished because the character of the neighborhood is residential. The proposed single-family house would be used in a manner consistent with how the property has been used historically and with the general use of the neighborhood. The use would not produce different or significant traffic, noise, odors, or other detrimental impacts to the surrounding 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 the property is special and distinct from others in the area. A historic non-conforming dwelling has existed on the property 30' from the rear lot line since 1945. The southerly and eastern portions of the property contain slopes that preclude reasonable development in those areas and the easterly portion contains wetlands that also reduce the building envelope. Sheridan Way (a private way) traverses through the middle of the property and provides access to and from Four Seasons Lane for three lots north of the property. The locations of the existing well and proposed septic system further minimize the effective buildable area of the property. The result of the unique characteristics and layout is a reduced buildable envelope located in the northeast portion of the property. Replacing an existing structure with a single-family home in the Residential District would reduce the existing setback nonconformity and increase the distance between the property's structure and the dwelling to the north. The northern boundary line is technically the rear line for zoning purposes. In practice the northerly side of the house and garage is effectively the property's side yard, which would be used less intensively than the other sides of the house. There is more than ample space between the proposed garage and the northerly boundary line.
 - 2) The proposed use is a reasonable one because it is allowed by right in the Residential District – single-family residential.

4. **Margaret M. O'Neill (petitioner/owner)** - Variance under Section 3.02.1 of the Zoning Ordinance to permit a front entrance staircase 28 feet from the front property line whereas 30 feet is required. The parcel is located at 60 Island Drive in the R (Residential), Aquifer Conservation, Elderly Overlay, and Shoreland Protection Overlay Districts and 100-Year Flood Hazard area. Tax Map 4D-2, Lot 010. Case # 2016-29.

Margaret O'Neill, 60 Island Drive, said the property was subjected to three major floods since 1979. The O'Neills received the flood insurance settlement stemming from the

May 2006 flood today. They propose to tear down the existing house, raise the land 8' and build another house on top. Two stairs in front sit within the setback. Because the porch would be 8' above ground, an 8' staircase is needed to come out the front door. The encroachment would be 1'-2'.

William O'Neill, 60 Island Drive, read the statutory criteria into the record.

Public comment

David Guerrett, 56 Island Drive, supports the variance for safety reasons. It would be easier for the Fire Department and would not upset the neighborhood.

The Board voted 5-0-0 to grant the Variance, on a motion made by Tom Mahon and seconded by Richard Conescu.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the front steps would have no impact on Town water, sewage or other containment management or sensitive Town lands. The staircase would enhance the look of the new home and allow easy access to the building. It would be consistent with "best practices" to fit with other property improvements in the area. The one-floor home would be handicap accessible. It is the last home on Island Drive to improve the property;
2. The spirit of the Ordinance is observed because the proposed front staircase would enhance the overall "look and street appeal" of the new home, enhance the property value, improve the use and access of the home, and be constructed commensurate with "construction best practices" to fit with other property improvements in the area;
3. Granting this variance would do substantial justice because it would enhance the property value, enable the property owners to have ingress and egress to the front of the home, substantially raise the grade level of the new home to get it out of the flood plain, complement the look of the neighborhood, and provide better access to the home because of height considerations;
4. The values of the surrounding properties would not be diminished because the proposed front staircase would enhance the look and street appeal of the home, enhance the property value, improve the access to the house, and be constructed commensurate with "construction best practices" to fit with all other property improvements in the 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 the proposed staircase would enhance the property value and street appeal. The overall lot size and frontage severely limit what a

homeowner can do to enhance the utility, economy and curb appeal of the property. A variance to the setback is necessary to install the front staircase. When the road was built, it was placed a distance to the left of the original plan, leaving more space between the house and the street, but the graded 8' stairs would still go into the setback.

- 2) The proposed use is a reasonable one because access to the front of the home has to be quite high as a result of the flood elevation requirements. This necessitates a gradual level staircase instead of a steep grade, which would result in enhanced property value and better curb appeal. Denial would create a hardship by denying reasonable use of the front entrance to the new home.

5. Discussion/possible action regarding other items of concern

The Board discussed its policy regarding unexcused absences.

6. Approval of Minutes - June 29, 2016

The minutes of June 29, 2016, were approved as submitted, by a vote of 4-0-1, on a motion made by Tom Mahon and seconded by Richard Conescu. Tony Pellegrino abstained.

7. Adjourn

The meeting was adjourned at 7:40 p.m., by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Richard Conescu.