



# Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

603 424-3531

Fax 603 424-1408

[www.merrimacknh.gov](http://www.merrimacknh.gov)

## MERRIMACK ZONING BOARD OF ADJUSTMENT

### APPROVED MINUTES

**WEDNESDAY, JULY 29, 2015**

Members present: Fran L'Heureux, Patrick Dwyer, Tony Pellegrino, Lynn Christensen (arrived 7:05 p.m., and Alternate Leonard Worster.

Member absent: Richard Conescu.

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 7:03 p.m. and designated Leonard Worster to sit for Richard Conescu.

#### **2. Roll Call**

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

- 5. Rob Lavoie (petitioner) and Gregg Kennedy (owner) –** Appeal of an Administrative Decision under Section 3.02 of the Zoning Ordinance, seeking to overturn the Community Development Department Staff determination that soils-based lot sizing does not apply to a parcel located within the R-1 (Residential) District by Zoning Map. The parcel is located at 8 Fuller Mill Road in the R-1 (Residential) District. Tax Map 4B, Lot 153. Case # 2015-24.

This item was taken up before agenda item #3.

Attorney Greg Michael, Bernstein Shur, explained that the applicant wants more time to study information provided by Community Development Director Tim Thompson.

**At the applicant's request, the Board voted 4-0-1 to continue this item to August 26, 2015, at 7:00 p.m. in the Matthew Thornton Meeting Room, on a motion made by Patrick Dwyer and seconded by Tony Pellegrino. Leonard Worster abstained.**

- 3. Charles Morgan (petitioner) and 526 DW Highway, LLC. (owner) –** Special Exception under Section 2.02.3(C)(1) of the Zoning Ordinance to permit an accessory retail and wholesale automobile and equipment auction use within the C-2 (General Commercial) District. The parcel is located at 526 D.W. Highway in the C-2 (General Commercial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 5D-2, Lot 001. Case # 2015-22.

This item was taken up after agenda item #5.

The petitioner is focusing on retail and wholesale auctioning of automobiles and equipment. Business hours are Monday-Friday. Auctions will be held once a week.

Rick Lavigne, Owner, Northeast Expositions, read the statutory criteria into the record.

As to 1), Patrick Dwyer asked whether the business would be similar to the Auburn auction house. Rick Lavigne explained that this would be smaller, with less than 100 vehicles. There would be no storage on site. Most auctions would be of small items, such as lawn tractors, motorcycles, ATVs and RVs. Many RV dealers would auction trade-ins. After an auction, the site would be cleared.

Although 3) states that there are no surrounding residences, Fran L'Heureux noted the apartments across the street. Rick Lavigne replied that no one crosses the road at this location, where there is minimal pedestrian traffic.

Fran L'Heureux asked whether vehicles would have dealer plates and how buyers would bring and remove vehicles. Rick Lavigne stated that buyers would use their own tow trucks and plates to bring vehicles to the lots and be responsible for removing vehicles and either driving or towing them away.

Fran L'Heureux doubted that the parking lot is large enough for all the wreckers she anticipates will have to park on Route 3. Rick Lavigne does not expect more than 100 people. Parking is more than adequate. The auctions are seasonal: they are held for six months. The other six months are used for storage. Most buyers will be dealers with their own plates. Cars will not be auctioned every weekend.

Fran L'Heureux questioned "retail and wholesale automobile and equipment" in the petition. Rick Lavigne said that is so the business can have an auto auction, which would be once or twice a month. One must have a dealer's license to run an auction. This is a six-month trial that will begin in 2016. It is hard to run weekly/Saturday auctions. If this location does not work, the business would move elsewhere.

There was no public comment.

**The Board voted 4-1-0 to grant the Special Exception, on a motion made by Lynn Christensen and seconded by Tony Pellegrino. Fran L'Heureux voted in the negative.**

## **FINDINGS OF FACT**

1. The specific site is an appropriate location for the proposed use in terms of overall community development because the use is designated for weekends and will bring non-local people to the area;
2. The proposed use, as developed, will not adversely affect the neighborhood because there will be no additional traffic that would demand changes to existing traffic patterns. The surrounding properties are commercial;
3. There will be no nuisance or serious hazard to vehicles or pedestrians because there will be no changes in traffic patterns. The general surrounding area has minimal pedestrian use, since there are no surrounding residences or retail properties nearby;

4. Adequate and appropriate facilities will be provided for the proper operation of the proposed uses because the entire site has recently undergone a major mechanical and cosmetic upgrade, both inside and outside, and will easily facilitate the intended use.

**4. Steven and Amanda Venezia (petitioner) and Maverick Development Corp., Inc. (owner)** – Special Exception under Section 2.02.1 (B)(2) of the Zoning Ordinance to allow an Accessory Dwelling Unit (ADU). The parcel is located at 2 Hamilton Court in the R (Residential) District. Tax Map 6D, Lot 047-06. Case # 2015-23.

Steven Venezia, 2 Hamilton Court, read the statutory criteria into the record. The ADU is intended for his mother.

Patrick Dwyer thought the ADU looks more like a rental apartment. Steve Febonio, Maverick Development Corp., Inc., said that the applicant's mother wants a front entrance. The ADU will have the same floor plan as the home next door except for a three-car garage and the ADU. Steve Venezia said the ADU will be an L-shape unit built behind the garage with connected basements.

**Public comment**

Speaking as a Merrimack resident, Attorney Greg Michael, Bernstein Shur, supported the application as an addition to the area.

**The Board voted 5-0-0 to grant the Special Exception, with the following conditions, on a motion made by Tony Pellegrino and seconded by Lynn Christensen.**

1. Execution of Declaration of Covenants for the Accessory Dwelling Unit (form will be provided by Staff);
2. Payment of Hillsborough County Registry of Deeds recording fee for recording of the Declaration of Covenants for the Accessory Dwelling Unit.

**Findings of Fact**

1. The site is an appropriate location for the proposed use in terms of overall community development because the property is .7 acres in a five-lot subdivision with similarly-designed homes. The ADU will be located behind the garage, so the street view of the home will not be impacted;
2. The use as developed will not adversely affect the neighborhood and shall produce no diminution of real estate values in the neighborhood because the design and nature of the house will likely make it the most valuable home in the subdivision, increasing neighboring property values;
3. There will be no nuisance or serious hazard to vehicles or pedestrians because the ADU will be located on a cul-de-sac with ample parking for all adults;

4. An adequate parking area is provided for motor vehicles on the premises because there will be an attached garage with three parking spaces and a driveway with at least 3-4 spaces. Only three cars will be parked on the property;
  5. The ADU is contained within or will be an addition to an existing or proposed single-family detached dwelling. The entire house, including the ADU, will be constructed together using one plan;
  6. The ADU contains no more than one bedroom.
  7. The ADU does not exceed 1,000 square feet in area or fifty per cent (50%) of the area of heated living space within the principal dwelling unit in area, whichever is smaller. The home will be approximately 2,500 square feet and the ADU 996 square feet;
  8. The ADU is connected internally to the principal dwelling unit;
  9. The ADU occupancy will be restricted to family members only, with the term “family” as defined as individuals related by blood, marriage or adoption to the fee simple owner-occupant(s) of the principal dwelling unit. The occupant is the applicant’s mother;
  10. The ADU is designed to remain functionally dependent on the principal unit and will not have provisions for separate utilities, garages, driveways, yards and other similar amenities.
- 6. Vasilios Gakis (petitioner/owner)** – Variance requested from Section 3.02(A) of the Zoning Ordinance to permit the creation of a lot with less than 100,000 s.f. of contiguous upland area. The parcel is located at 17 Beaver Brook Drive in the R (Residential) and Aquifer Conservation Districts. Tax Map 6C, Lot 406. Case # 2015-25.

Attorney Greg Michael, Bernstein Shur, said that Meridian Land Services scooped up all available upland soils for the proposed new lot. There are 82,750 square feet of contiguous upland area as well as another 21,750 square feet on a different corner of the lot. Although there are more than 100,000 square feet on the lot, they are not contiguous. The lot meets size and frontage requirements and abuts wetlands. There will be one house. The lot will have municipal water. There is enough room for a septic system that will be smaller than those currently in the area.

Attorney Mike Klass, Bernstein Shur, read the statutory criteria into the record.

Patrick Dwyer asked about elevations. Ken Clinton, Meridian Land Services, said he does not have them, since the applicant had not yet decided whether to seek a variance. He is confident that the location of the house and septic system is suitable and that the septic system can be designed appropriately.

Tony Pellegrino asked how close it would be to the wetland. Ken Clinton stated that the wetland is on the five-acre lot with a 40’ wetland setback and 50’ septic setbacks. According to the septic system designer, pretreatment will reduce the size of the leach field.

Attorney Michael said nothing in the proposal is near the wetland. Ken Clinton added that this lot has more upland than other lots in the area and is 2½ times greater than the lot next door.

There was no public comment.

**The Board voted 5-0-0 to grant the Variance, with the condition that the applicant obtain subdivision approval from the Merrimack Planning Board, on a motion made by Patrick Dwyer and seconded by Leonard Worster.**

### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because proposed Lot A would contain more than the minimum upland area, but due to the existing lot configuration, the upland is bifurcated by an abutting lot. However Lot A contains more than enough contiguous uplands to allow for the proposed residential dwelling and its septic system. Lot A will not cause the misuse of sensitive lands and will not cause unnecessary or excessive expenses to the Town. No public or private rights of others will be affected;
2. The spirit of the Ordinance is observed because Lot A would be fully compliant with all other dimensional zoning requirements. It contains adequate uplands to allow for reasonable residential use in a manner that will not contribute to pollution and is similar to the abutting residential lots;
3. Granting this variance would do substantial justice because it will be used consistently with the district's permitted uses and the surrounding neighborhood. The lot would not pose a threat to public health, safety or welfare that would outweigh the applicant's property rights. Denying the application would result in a substantial loss to the applicant by preventing the reasonable use of existing uplands adjacent to existing residences. The loss to the applicant of denying the variance greatly exceeds any gain to the public;
4. The values of the surrounding properties would not be diminished, nor will the character of the neighborhood of existing single-family residences. The lot will be used in a manner consistent with the neighboring lots and should not produce different or significant traffic, noise or odors. The proposed lot meets all other dimensional requirements;
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 lot is special and different from the other properties in the area due to its unique boundary with the existing residential lots and its wetlands. The proposed lot with its contiguous uplands is more than adequate to support a residential dwelling and septic system.

- 2) The proposed use is a reasonable one because it contemplates a use that is permitted under the Ordinance – single-family residential.

## **7. Discussion/possible action regarding other items of concern**

Patrick Dwyer wanted to add to the preamble that an applicant must read the statutory criteria aloud at the Zoning Board of Adjustment (ZBA) meeting. Lynn Christensen wanted to make the preamble more concise and will work on a draft to include ZBA members' suggestions. Jillian Harris will add that to the August 29, 2015, agenda, along with the annual election of officers and review of by-laws. Fran L'Heureux wanted the preamble to state that no additional materials would be accepted at the meeting. Jillian Harris explained that is because there is no time to review them at the meeting. Lynn Christensen opined that sometimes there may be an instance that warrants accepting legitimate last-minute materials, but her concern was allayed when Jillian Harris explained that the ZBA may either continue the item to another meeting or call a recess to review the materials.

## **8. Approval of Minutes – June 24, 2015**

**The minutes of June 24, 2015, were approved as submitted, by a vote of 3-0-2, on a motion made by Leonard Worster and seconded by Lynn Christensen. Fran L'Heureux and Patrick Dwyer abstained.**

## **9. Adjourn**

**The meeting adjourned at 8:03 p.m., by a vote of 5-0-0, on a motion made by Lynn Christensen and seconded by Patrick Dwyer.**