



Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

Fax 603 424-1408

Town Hall - Lower level - East Wing

www.merrimacknh.gov

Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES

WEDNESDAY, JULY 31, 2019

Board members present: Patrick Dwyer, Kathleen Stroud, Rod Buckley, Drew Duffy, and Alternates Leonard Worster and Ben Niles

Board members absent: Richard Conescu, Lynn Christensen

Staff present: Community Development Director Tim Thompson and Recording Secretary Zina Jordan

1. Call to Order

Patrick Dwyer called the meeting to order at 7:00 p.m., designated Drew Duffy and Ben Niles to sit for Richard Conescu and Lynn Christensen, respectively, and welcomed Ben Niles to an alternate position on the Board.

2. Roll Call

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

- 3. Pam and Carl Belmonte (petitioners)** - Request for Re-Hearing regarding Case #2019- 17, in which the Board granted Variances under Section 3.02 (A) of the Zoning Ordinance to permit a two-lot subdivision with one lot having 86,505 sq. ft. of contiguous non-wetland area and the second lot having 65,046 sq. ft. of contiguous non-wetland area whereas 100,000 sq. ft. is required. The parcel is located at 85 Woodward Road in the R-1 (Residential, by map) and Aquifer Conservation Districts. Tax Map 7A, Lot 007.

Kathleen Stroud, Rod Buckley and Drew Duffy were the members present who voted on the original petition. Kathleen Stroud said the Zoning Board of Adjustment (ZBA) heard considerable testimony. The letter from Attorney Robert Shepard claims that the ZBA did not discuss the negative impact that granting the Variance would have on the value of surrounding properties. There was testimony, but it was from a realtor. It was an opinion and not a fact. No further testimony is needed. Rod Buckley agreed. This is the third time the petition has been heard. One can find a real estate agent to support any opinion.

The Board voted 3-0-2 to deny the request for a re-hearing, on a motion made by Kathleen Stroud and seconded by Rod Buckley. Patrick Dwyer and Ben Niles abstained.

- 4. Curtis M. Wheeler, Jr. (petitioner/owner)** – Variances under Section 2.02.1.C.2.c of the Zoning Ordinance to permit a detached Accessory Dwelling Unit (ADU) with 1,078 sq. ft. whereas a maximum of 1,000 sq. ft. is permitted, and under Section 2.02.C.2.d, to permit a detached ADU on a lot comprised of less than 125% of the minimum lot area required by Section 3.02.A, Table 1. The parcel is located as 5 Lakeside Drive in the R-2 (Residential) District. Tax Map 6A -1, Lot 153. Case # 2019-16. **This item is continued from the June 26, 2019 meeting.**

At the petitioner's request, the Board voted to continue this item to August 28, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Drew Duffy and seconded by Kathleen Stroud.

- 5. Curtis M. Wheeler, Jr. (petitioner/owner)** – Variance under Section 3.05 of the Zoning Ordinance to permit an existing deck to remain within the side setback (exact distance from property line to be verified by a certified plot plan) whereas 15 feet is required. The parcel is located as 5 Lakeside Drive in the R-2 (Residential) District. Tax Map 6A-1, Lot 153. Case #2019- 16. **This item is continued from the June 26, 2019 meeting.**

Withdrawn by petitioner

- 6. Ted Jarvis (petitioner) and GTONH, LLC (owner)** - Variance under Section 17.08 of the Zoning Ordinance to permit a 230 square foot temporary sign whereas a maximum of 32 square feet is permitted, and to permit the display of the sign for longer than 30 days. The parcel is located at 515 D.W. Highway in the R-4 (Residential), Aquifer Conservation, Town Center Overlay, Elderly Housing Overlay and Planned Residential Development Overlay Districts, and Wellhead Protection Area. Tax Map 5D-2, Lot C002. Case # 2019-18.

Ted Jarvis, 95 Eddy Road, Manchester, stated the property owner is marketing the parcel to attract more tenants. He placed a temporary sign on the existing pylon, another on the clock tower and a third up against the guardrail near DW Highway. Because the parcel is far from the road, he wants a larger (230 s.f.) sign on the tower and a 120 s.f. sign attached to the existing freestanding sign for the plaza.

Tim Thompson explained that this petition is the result of an enforcement action. The sign against the road on the guard rail has been removed, and the petitioner seeks variances for the other two signs that were found to be in violation.

Ted Jarvis read the Variance criteria into the record for this item and for item #7.

There was no public comment.

Kathleen Stroud stated that the variance could help to develop a nearly-vacant retail property.

The Board voted 5-0-0 to grant the Variance, with the condition that the temporary sign shall be removed from the site within 30 days of the total occupancy of the plaza, on a motion made by Rod Buckley and seconded by Drew Duffy.

Findings of Fact

1. Granting the variance would not be contrary to the public interest because the two signs being proposed are sized proportionally to the large retail plaza's existing buildings. They would not clutter the area, as only one sign is proposed for the existing pylon sign along D.W. Highway. The purpose of the signs is to notify the public of the redevelopment of the site and to notify prospective tenants of leasing opportunities. The larger sign in the tower area is needed to draw the public's attention; otherwise it would go unnoticed because it is set so far back from the road. The signs would not threaten public health, safety or welfare. The sign would be fully secured to the pylon and building face;
2. The spirit of the Ordinance is observed because the parcel is located in a district whose primary function is to "serve regional and/or local shopping and service need". The proposed redevelopment of this older and now dated plaza is precisely the type of development envisioned by the Ordinance;
3. Granting this variance would do substantial justice because the signage would allow the development of the now dated and significantly vacant retail and commercial space. The public interest in the successful redevelopment of a vacant building and filling of the other empty retail and commercial space outweighs the installation of two signs;
4. The values of the surrounding properties would not be diminished because the redevelopment of this site would increase rather than diminish property values in the surrounding area. The site now contains significantly vacant retail space. Redeveloping this site would revitalize and bring services to the area. The signs would let the public, including those who might be interested in purchasing real estate in the area, know that investment is being made in the future of the neighborhood. The design of the signage is tasteful and consistent with the petitioner's desire to bring much-needed aesthetic improvement to the parcel;
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 only two signs are being proposed: one located on the existing pylon and the other on the clock tower set way back in the center of the plaza. This parcel presents a unique situation because it is a large retail/commercial lot that contains a very large building that is suffering from long-term high vacancy. The signage is necessary to obtain interest in the project so that the now-vacant portions of the plaza and other space can be filled and benefit the residents of the Town;
 - 2) The proposed use is a reasonable one because it requests only two signs visible to the main road (D.W. Highway) that abut the parcel. Though larger than normally allowed, they serve as an opportunity to fill spaces that would otherwise remain vacant and continue to struggle. The signage would be

placed on the property outside the necessary setbacks and would be aesthetically pleasing.

- 7. Ted Jarvis (petitioner) and GTONH, LLC (owner)** - Variance under Section 17.08 of the Zoning Ordinance to permit a 120 square foot temporary sign whereas a maximum of 32 square feet is permitted, and to permit the display of the sign for longer than 30 days. The parcel is located at 515 D.W. Highway in the R-4 (Residential), Aquifer Conservation, Town Center Overlay, Elderly Housing Overlay and Planned Residential Development Overlay Districts, and Wellhead Protection Area. Tax Map 5D-2, Lot C002. Case # 2019-19.

There was no public comment.

The Board voted 5-0-0 to grant the Variance, with the condition that the temporary sign shall be removed from the site within 30 days of the total occupancy of the plaza, on a motion made by Kathleen Stroud and seconded by Rod Buckley.

Findings of Fact: See Agenda item #6 above.

- 8. Scott Watkins (petitioner) and Paul Shea (owner)** – Variance under Section 3.05 of the Zoning Ordinance to permit a carport 13.5 feet from the front property line whereas 30 feet is required. The parcel is located at 10 Bigwood Drive in the R-4 (Residential) and Aquifer Conservation Districts. Tax Map 4D, Lot 030. Case # 2019-20.

Tim Thompson explained that according to State Statutes, the Board can determine that no hardship finding is necessary in the case of physical disability of the person residing on the property. The Board agreed that the hardship criterion was not necessary due to the physical disability of the property owner.

Scott Watkins, 11 Richard Road, said the carport would match the house. He read the Variance criteria (excluding hardship) into the record.

There was no public comment.

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

Findings of Fact

1. Granting the variance would not be contrary to the public interest because a literal enforcement of this provision would result in unnecessary hardship for Paul Shea because he is handicapped and moves about with a rolling walker;
2. The spirit of the Ordinance is observed because the new structure would be located on the property owner's driveway in front of the house. Prefab trusses for the carport would have the same pitch (5/12 and height 13') as the existing home. The carport would not impede light, air quality, view, or quality of life for neighbors/butters;
3. Granting this variance would do substantial justice because Paul Shea is 77 years old, is handicapped and uses a rolling walker to assist him in getting about. The carport would assist him in getting safe access back and forth to his vehicles

from his home, especially in winter. It would keep snow off his vehicles and the ground. When he walks he could possibly slip and fall;

4. The values of the surrounding properties would not be diminished because the carport would be built with heavy timber framing, prefab trusses and a black metal roof with complete trim kit. The tops of both gable ends as well as 4' up on both sides of the carport would be vinyl sided to match the existing home. It would look nice when completed.

9. 17 Premium Outlets LLC (petitioner/owner) - Variance under Section 2.02.4.D of the Zoning Ordinance to permit a personal services business within the I-2 (Industrial) District. The parcel is located at 17 Premium Outlets Boulevard in the I-2 (Industrial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 3C, Lot 191- 03. Case # 2019-21.

Chris Csendey, 2 Tabor Hill Road, Lincoln MA, said that access to the site is provided along the northerly portion of the property via Premium Outlets Boulevard. The nail salon would occupy the former Sprint Wireless store.

Chris Csendey read the Variance criteria into the record. As to #4, value of surrounding properties, Patrick Dwyer questioned the size and amount of parking. Chris Csendey stated that there would be six pedicure and six manicure stations with 4-5 employees working at a time. Tim Thompson stated that the site has sufficient parking. This use requires less parking than a retail store. Rod Buckley noted that the parking lot behind Starbucks is almost always empty.

There was no public comment.

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

Findings of Fact

1. Granting the variance would not be contrary to the public interest because the property is at the entrance to one of the largest retail centers in the State. It is already a destination for many more people every day than could be served by the salon. It would not noticeably increase traffic to the site, if at all. The parking should be less than what would be required for a restaurant, as the salon would not be able to serve as many clients simultaneously. The salon would not open earlier or close later than the adjacent restaurants. The salon is benign in nature and would not negatively affect the surrounding properties with which it would hopefully be mutually beneficial;
2. The spirit of the Ordinance is observed because the nail salon would act almost as an accessory to the predominantly retail and restaurant uses in the immediate vicinity and would increase convenience to people seeking to improve their appearance;
3. Granting this variance would do substantial justice because the abutters are Merrimack Premium Outlets (MPO) and Fidelity Office Park. Malls frequently have personal care services, such as salons;

4. The values of the surrounding properties would not be diminished because the property has already been constructed. The exterior appearance and site improvements would not change except for signage. The covenants limit the nature of any businesses to ones that would be compatible with MPO. The nature and volume of traffic to the site would not noticeably change due to the change of use;
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 closest abutter, MPO, is almost entirely retail in nature. If this property were to be used as many uses allowed by zoning, it would detract from the MPO experience, potentially making it less successful. The other abutter, Fidelity, is a large office campus with probably no industrial use and only accessory storage use, if at all. The structures on that site are not visible from this site;
 - 2) The proposed use is a reasonable one because people often visit MPO as an outing. They go to shop, of course, but some also go to feel good, to see and to be seen. Shopping is often a social activity; therefore it makes sense to locate a salon in such an area to give people a convenient place to relax and improve their appearance.

10. Nathan Demers (petitioner/owner) – Variances under section 3.02 of the Zoning Ordinance to allow for all 3 lots in a proposed three lot subdivision to have approximately 169 feet of frontage whereas 250 feet is required. The parcels are located at 26 and 30 Thornton Road West in the R-1 (Residential), and Aquifer Conservation Districts. Tax Map 2C, Lots 068 & 068-03. Cases # 2019-22, 23, & 24.

The petitioner proposes a combination of a lot line adjustment and subdivision of the properties, which would result in a total of three single-family residential lots. Tim Thompson explained that while there are three variances, the items have been combined into one agenda item.

Attorney Greg Michael, Bernstein Shur, Sawyer & Nelson, said this is a better use of the eight-acre plot. Both the larger and smaller parcels are developed; a larger size is needed for the third lot because of the current soil based lot sizing requirement, which was adopted by the Town after the lots were originally developed. The variance is a soils issue. All three lots can adequately and safely have wells and septic systems and meet all local and State requirements. The lot size regulations are meant to prevent overcrowding. The new lot would be the largest - over three acres. All three lots' size and setbacks would conform. The existing buildings would be razed to make the lots conform. Two houses exist and a third would be built. Frontage is the only issue, but in Attorney Michael's opinion, it is not a meaningful measurement.

Ben Niles noted that the houses on the street are set well back and are heavily treed for good privacy. It is a semi-rural neighborhood typical in Southern New Hampshire.

Attorney Brett Allard, Bernstein Shur, Sawyer & Nelson, read the Variance criteria into the record. As to #5, hardship, Attorney Michael added that the abutting lots are substandard and that the project fits the area. Attorney Allard added that the parcel is at least six acres larger than the largest surrounding property.

There was no public comment.

The ZBA decided to vote on all three variances in one motion.

The Board voted 5-0-0 to grant the three Variances, with the condition that the petitioner obtain subdivision approval from the Planning Board, on a motion made by Ben Niles and seconded by Kathleen Stroud.

Findings of Fact

1. Granting the variance would not be contrary to the public interest because single-family residential is a permitted use in the R-3 District. Due to the substantial size of the proposed lots, there would be no overcrowding or congestion if frontage variances are granted. The existing lots have for many years have adequately accommodated two independent dwellings and related infrastructure on 7.88 acres of land with the majority of the area left undeveloped. All three proposed lots would comply with the Zoning Ordinance's area requirements such that the three independent dwellings and related infrastructure would be safely accommodated. There are two existing driveways on over 500' of frontage. There would be no congestion or safety hazards along Thornton Road West if a third driveway were added between the two existing driveways. There would be sufficient spacing between each driveway. There would be no threat to public health, safety or welfare and no adverse impact or injury to any public rights;
2. The spirit of the Ordinance is observed because all lots otherwise comply with all setback and area requirements. The westerly lot would be converted from non-conforming to a conforming lot of record: it would be expanded from 85.456 s.f. to 100,000 s.f.;
3. Granting this variance would do substantial justice because there is no injury to the public but a significant gain to the public. The loss to the petitioner when balancing public and private rights outweighs any loss or injury to the general public. There is no gain to the public if the variances are denied;
4. The values of the surrounding properties would not be diminished because the westerly and easterly lots are both already improved with single-family dwellings. The only new buildable lot would be the center lot. Any new development would occur between the petitioner's existing, improved properties. There is substantial undeveloped wooded area to the rear of the property; thus there would be no effect on the northerly abutter. The petitioner must seek Planning Board subdivision approval, which would further ensure that surrounding property values would not be diminished;

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 significantly larger than other properties in the area. Due to the substantial amount of area on the three lots, there is no threat of overcrowding or congested development. Each lot would have its own driveway that would be adequate to facilitate vehicles. The Planning Board would ensure safety measures during its subdivision review process;
 - 2) The proposed use is a reasonable one because the proposed single-family residential use is permitted by right in the R-3 District.

11. Apple Development Limited Partnership (petitioner/owner) – Special Exception under Section 2.02.3 of the Zoning Ordinance to allow for a residential use in the C-2 (General Commercial) District. The parcel is located at 360 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Planned Residential Development Overlay and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 001. Case # 2019-25.

Tim Thompson explained that the petitioner has two paths to achieve its goal. The first would be to utilize the site's location within the Planned Residential Development Overlay District that would permit the residential use without a Special Exception requirement, but would complicate the future tenant mix at the existing commercial plaza. Indoor or outdoor recreational facilities or open spaces, sales or leasing offices for properties within a Planned Unit Development (PUD) and commercial, retail, office and personal/professional services are permitted. The existing tenant mix consists of several tenants (all restaurants, Planet Fitness, Altitude Trampoline Park and the forthcoming credit union) that are not compliant with this section. Conversion of the site to a PUD would render all those units/uses as legal non-conforming uses. As the existing tenants change over time, each future non-compliant use would require variance relief at that time. Staff has suggested and the petitioner has opted to pursue a Special Exception and density variance to achieve the development goal for the site. Should both petitions be granted, the retail plaza can continue to utilize the broader mix of permitted uses in the C-2 District as opposed to the limited list for a PUD.

Attorney Peter Imse, Sulloway & Hollis, said the plan in the packets is just a concept plan, more detailed and updated site plans have been filed with the Planning Board, which will continue review of the project after the Zoning Board makes its decision. The shopping center has shared access with the East Ridge Condominiums. There is significant elevation behind the shopping center where the access road and 40 residential units would be located.

In response to an inquiry from Patrick Dwyer, Tim Thompson explained that there is sufficient right-of-way if the Turnpike were to be widened without any taking any land from this property owner.

Robert Barsamian, Apple Development Limited Partnership, said the Planning Board accepted the site plan application for review. Peer review is in progress. All stores are expected to be open by the end of 2019. It is a live-play-stay concept. The road would be shared with the residential development.

Attorney Imse read the Special Exception criteria into the record. As to #2, effect on the neighborhood, Ben Niles asked about the grade of the proposed sidewalk. Robert Barsamian said the current design indicates 10%, but the petitioner is trying to reduce it to 8%. He is sensitive to the pitch of the sidewalk and will comply with all regulations. Peer review would probably change some things. As to #3, hazard to pedestrians or vehicles, Patrick Dwyer said the driveway would dump pedestrians into the parking lot and that they would have to cross the lot to get to the front of the building. Robert Barsamian will discuss that with the Planning Board and peer reviewers. The road would be longer with the access point outside the parking lot. It would dump into the road behind the parking lot. The retaining wall would be longer and access would improve.

Public comment

Richard Foote, 129 Indian Rock Road, was concerned about how many apartments are being erected in Merrimack and wanted more buffers. Tim Thompson explained that, although there is no buffer requirement for a single-family residence, this project is subject to buffer requirements.

Alicia Flanders, 50 Pond View Drive, who lives across the street. Traffic to the plaza is staggered, but 80 more cars would all go to and return from work at the same time. The only access is on D.W. Highway. She is concerned about extra cars and traffic. Chairman Dwyer explained that traffic is a Planning Board issue.

Stuart Hollander, 33 Pond View Drive, asked for an explanation about the number of units and the approval procedure. His concerns are location and density. The area behind the plaza could be a magnet for illicit teenage activity. Cars speeding by is a continual issue. He is not convinced that a second road would not interfere with the parking area and that the residences would not affect the neighborhood or if they are an appropriate use. He objected to the sign. Stuart Hollander claimed that he did not receive the first notice of either the Planning Board meeting or this one. Perhaps not all concerned residents were notified. Stuart Hollander therefore asked the ZBA to postpone its decision until the August 28, 2019, meeting. Tim Thompson stated that the petitioner and the Town met all statutory requirements.

Robert DeFreitas, 9 Colonial Drive, is concerned about the turn from D.W. Highway and appreciates the proposed sidewalk. He wondered about safety and how to negotiate the cluster where all traffic goes in and out. Chairman Dwyer said that is a Planning Board issue.

Robert Barsamian said he will meet with the Pondview Board in two weeks (before the August 20, 2019, Planning Board meeting) to hear their concerns, and expressed a willingness to do the same with Eastridge.

Patrick Dwyer stated that the petitioner met the criteria and proposed a good plan. Rod Buckley agreed, stating the public's concerns are mostly Planning Board issues.

The Board voted 5-0-0 to grant the Special Exception, with the following conditions, on a motion made by Rod Buckley and seconded by Kathleen Stroud:

1. The petitioner shall obtain the associated variance to permit 40 multi-family residential units on the parcel in the C-2 (General Commercial) District whereas 1 per 40,000 square feet is allowed; and
2. The petitioner shall obtain site plan approval from the Planning Board for the proposed apartment building.

Findings of Fact

1. The specific site is an appropriate location for the proposed use in terms of overall community development because the unused portion of the parcel is optimal for residential units. To the north and south, residential units have been placed between commercial buildings and the Everett Turnpike. The combination of residential and commercial use in the development provides excellent access by future residents to restaurants, shops, services, and businesses in the shopping plaza area. Such "walkable" amenities are highly desirable for tenants and are supported by the Merrimack Master Plan. This specific location is not ideal for further commercial pursuits as any new building would be placed directly behind a commercial development and beyond the sight of passersby. New residential units in an apartment building are ideal for developing this community;
2. The proposed use, as developed, will not adversely affect the neighborhood because residential units in a walkable development with commercial uses are highly desirable. There are other residential units nearby and adjacent to the parcel. The proposed units would be contained in a single building and tucked away behind the commercial buildings on the parcel with pedestrian and vehicular access to commercial uses. The nearby parcels contain a mix of commercial and residential buildings, so combining both uses on this parcel is consistent with the neighborhood's character. This highly sought after walkable design enhances the character of the neighborhood;
3. There will be no nuisance or serious hazard to vehicles or pedestrians because the new building would include a new access road with pedestrian access via a sidewalk. The new road would access D.W. Highway at a pre-existing and well-maintained intersection. The conceptual plan includes a sidewalk to accommodate the tenants of the apartment building, thus enhancing the ability to utilize the nearby commercial resources;
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed uses because the site plan is only the conceptual design. The final plan must be approved by the Merrimack Planning Board. The apartment building would comply with all applicable laws, ordinances and regulations. The building would include necessary and property water and sewage system

access, ample parking, sufficient lighting, and pedestrian and Fire Department access. The Planning Board will review and approve the final plans for the project.

12. Apple Development Limited Partnership (petitioner/owner) – Variance under section 3.02 of the Zoning Ordinance to permit a density of 40 multi-family residential units in the C -2 (General Commercial) District whereas 1 per 40,000 square feet is allowed. 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 # 2019-26.

Attorney Peter Imse, Sulloway & Hollis, read the Variance criteria into the record.

Public comment

Alicia Flanders, 50 Pond View Drive, repeated her comments (see above).

Stuart Hollander, 33 Pond View Drive, objected to the petitioner's answers to the Variance criteria. Without a variance, the petitioner could erect 15 units. The area behind the plaza could become a hangout/magnet for teenage crime, which is contrary to the public interest. Chairman Dwyer countered that there would be more lights, people and police presence than now when there is nothing there. Stuart Hollander said that more than doubling the 15-unit density is not within the spirit of the Ordinance. Fifteen units is a reasonable use and would do substantial justice. Tim Thompson reiterated that the petitioner could still erect 40 units through a PUD if the variance was denied, but it would hamstring any future tenant changes of the property.

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 apartment building, on a motion made by Kathleen Stroud and seconded by Ben Niles.

Findings of Fact

1. Granting the variance would not be contrary to the public interest because the 40 units would be housed in an attractive New England style three-story building with ample parking. The building would be screened from surrounding parcels by trees and by its location behind the commercial buildings on the parcel. Pursuing this variance and a special exception instead of seeking a PUD would allow residential use on the parcel. A PUD would entitle the petitioner to much greater residential density, but the petitioner is forgoing the greatest density for optimal density. Health and safety are not a concern because the applicant is still required to comply with setback, water, sewage, and Planning Board requirements. The apartments would be tucked away behind the commercial buildings and buffered by trees. The buffering would in no way inhibit pedestrian access to the nearby restaurants and shops. Instead of encroaching on a Merrimack neighborhood, the apartments would be conveniently non-disruptive as they would exist in a new and self-contained area. The Town is growing and needs additional areas for its newest residents to live. The Variance would benefit the Town by safely and conveniently expanding housing options for is

growing population. The units would be walkable, which is a priority set forth in the Master Plan. The proposed additional units would be an *attractive* addition to the Town. The petitioner has demonstrated its ability to build and *maintain* quality projects in Merrimack and will continue to do so with these new apartments. The new occupants would join a thriving community on a stretch of D.W. Highway that was measurably improved by the petitioner's success with the parcel. The new units would only enhance the essential character of this community with its mix of highly desirable residential units and commercial buildings;

2. The spirit of the Ordinance is observed because new developments enhance a community without disrupting it. The addition of 25 units is reasonable for this site and advances the priorities in the Master Plan for affordable, walkable housing. The units would not clutter or overwhelm the community, as they would be far removed from the road and tucked away behind the commercial buildings on the property. The parcel is near and adjacent to residential developments and is consistent with and would enhance the community without detracting from it;
3. Granting this variance would do substantial justice because a landowner would be permitted the reasonable and full use of its property and when land is not utilized. Permitting 40 rather than 15 apartment units would enable the petitioner full use of the property. The parcel is near and adjacent to residential units, so these additional 25 units are consistent with the surrounding area's present use. If the Special Exception for residential units is granted and the Variance is not granted, then 15 apartments could be built. Compact, walkable and affordable housing is much needed, in demand and enhances the community. The public receives no benefit by denying the addition of 25 extra apartment units; however the petitioner's loss of income from 25 units is great. The Variance enables a reasonable and full (although not maximum) use of the parcel;
4. The values of the surrounding properties would not be diminished because there is no evidence to suggest that 25 additional apartment units would do so. On the contrary the addition of these units would add to the vibrancy and economic strength of this area. Local businesses would directly benefit from additional residents who are apt to visit local offerings. These would be 25 additional, highly desirable apartment units within walking distance of local businesses. Merrimack's population continues to grow; even with these units there is not an overabundance of apartments in this 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 addition of 25 highly desirable apartment units within walking distance of local businesses is not unreasonable, given that the petitioner could have pursued higher density through a PUD. The units would be tucked away behind the commercial buildings and would not clutter the

neighborhood. Ample parking would be afforded to the new residents, which might otherwise be a concern for a proposed location closer to adjacent apartments and commercial buildings. The units would be housed in a single building to minimize the footprint of this project. There are numerous residential units nearby and in similar proximity to the Everett Turnpike. To the north and south are several residential units built between the commercial buildings on Columbia Circle and the Turnpike. This community is already making reasonable use of the space between D.W. Highway and the Everett Turnpike with residential units.

- 2) The proposed use is a reasonable one because of the size, layout and configuration of the property. The substantial unused open space behind the commercial buildings on the parcel is well suited for the proposed apartments. The addition of 25 units is not the maximum amount the petitioner could request, but it is a reasonable amount. By limiting the residential units on this parcel to 40, the petitioner would house all the units in a single building to minimize the project's footprint.

13. Discussion/possible action regarding other items of concern

The ZBA thanked Recording secretary Zina Jordan, who is relinquishing her position after almost 16 years of service.

14. Approval of Minutes — June 26, 2019

The minutes of June 26, 2019, were approved as submitted, by a vote of 3-0-2, on a motion made by Drew Duffy and seconded by Rod Buckley. Patrick Dwyer and Ben Niles abstained.

15. Adjourn

The meeting was adjourned at 9:07 p.m., by a vote of 5-0-0, on a motion made by Drew Duffy and seconded by Rod Buckley.