



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT JUNE 24, 2015 MEETING MINUTES

A regular meeting of the Merrimack Zoning Board of Adjustment was conducted on Wednesday, June 24, 2015 at 7:00 p.m. at the Matthew Thornton Room.

Vice Chairman Anthony Pellegrino presided:

Members of the Board Present: Richard Conescu
Lynn Christensen (arrived at 7:03 p.m.)
Leonard Worster, Alternate

Members of the Board Absent: Fran L'Heureux, Chairman
Patrick Dwyer

Also in Attendance: Jillian Harris, AICP, Planning & Zoning Administrator

1. CALL TO ORDER

Vice Chairman Pellegrino led in the Pledge of Allegiance. Mr. Conescu read the Preamble. Vice Chairman Pellegrino swore in members of the public who would be testifying.

2. ROLL CALL

Vice Chairman Pellegrino appointed Alternate Leonard Worster to serve as a voting member in the absence of Patrick Dwyer.

3. **Tamsab Realty, LLC. (petitioner/owner)** – Special Exception under Section 2.02.2(C) of the Zoning Ordinance to permit the conversion of a single family residence to a two family residence. The parcel is located at 633 D.W. Highway in the C-1 (Limited Commercial) and Aquifer Conservation Districts and Wellhead Protection area. Tax Map 6E-2, Lot 024. Case # 2015-18.
This agenda item was tabled from the May 27, 2015 meeting.

Mr. Naga Tamragouri, Tamsab Realty, LLC informed the Board he applied for the Special Exception to convert a single-family home into a two-family home. The intent is to utilize the basement to convert the property into a two-family dwelling.

Vice Chairman Pellegrino spoke of the septic system design, which would be required to cover the total number of bedrooms for the proposed two-family residence. Mr. Tamragouri stated the septic was redone in 2011. Vice Chairman Pellegrino noted staff has indicated there is no record of any septic system on file. Mr. Tamragouri stated he did it himself. When asked to provide clarification, he stated it was dug up, the leach field was put in, and the existing tank cleaned of debris. When asked if that work was permitted, he stated it was not. He explained further the tank was clogged causing backflow into the residence.

Member Worster commented in-kind replacement of an individual system can sometimes be done without a new permit. It is possible that is what occurred 4 years ago.

Mr. Tamragouri read the statutory criteria into the record:

Section 2.02.2(C)

- a) The specific site is an appropriate location for such a use or uses in terms of overall community development because the use will not adversely affect the proper use in terms of community development and will not alter the look and feel of the area.
- b) The use as developed will not adversely affect the neighborhood because there will not be any new addition added and will not affect the neighborhood.

When asked, Mr. Tamragouri stated there are currently two individuals residing at the property. If the project is approved, it is anticipated four individuals would occupy the property.

Member Christensen noted the number of people residing at the property would be doubled. Mr. Tamragouri suggested there could be four individuals residing in the residence as a single-family home.

- c) There will be no nuisance or serious hazard to vehicles or pedestrians because the entry and exit already exist and the driveway is also there. There won't be any new nuisance or hazard to vehicles or pedestrians since it is well buffered from abutting properties.
- d) Adequate and appropriate facilities will be provided for the proper operation of the proposed use or uses because appropriate and adequate facilities will be provided for proper operation and use and everything will be up to date with code. The adequate parking space is available.

Mr. Tamragouri informed the Board he has an easement to the abutting property to access Town sewer. It was recorded (NHDES #060711), but not implemented as he did not believe it was financially feasible as no one was residing at the residence at the time it was recorded.

Vice Chairman Pellegrino opened the Public Hearing at 7:13 p.m.

Testimony in Favor - None

Testimony in Opposition

Pat Wolfendale, 4 Allen Road

Stated the subject property is up on the highway, and her residence is below. Her main concern is related to the septic tank. The prior owner approached her and several other neighbors requesting an easement. Each denied the request. He then approached the owner of the property across the street from the residence (his partner).

She informed the Board the septic tank smelled terribly. She spoke of having visited Fred Kelley, Building Department, who stated it to be an environmental hazard. During their discussion, Mr. Kelley noted in order for the property owner to convert the property to a two-family, there would have to be a septic design for a two-family home. She stated the current tank is old, outdated, and she has never seen it pumped out.

Ms. Wolfendale commented the owner has stated he would get an easement; however, she is unsure who he would get that from.

Member Christensen questioned when the smell was last an issue. Ms. Wolfendale responded it was when the previous owner's son resided at the address. When asked if she has experienced that issue since the property changed hands, Ms. Wolfendale remarked she has difficulty with her sense of smell, but her Son makes mention of it when visiting. Member Christensen asked for clarification if the smell has been noticed since the Petitioner took ownership. Ms. Wolfendale stated that problem has not been experienced during the time the Petitioner has owned the property. She reiterated if allowed to be converted to a two-family, there will be an issue.

Patricia Cadegan, 6 Hilton Drive

Stated the desire to ward off a potential future disaster, commenting she is unaware of what occurs when a septic tank overflows. She suggested if the tank were to overflow, it would travel down onto her property.

Pat Wolfendale, 4 Allen Road

Reiterated, in the absence of an easement, there is the requirement for a two-family septic tank. Member Christensen stated there to be an existing easement. Ms. Wolfendale questioned who the easement is with, and was informed it is with the dog day-care facility located next door. Member Christensen reiterated the Petitioner has an easement; however, has not opted to connect to it. The Petitioner has stated he has the easement, therefore, has the ability to connect to it, but has not committed nor indicated he would. In fact, he has indicated he is not going to because it is not financially feasible.

Ms. Wolfendale stated, according to Mr. Kelley, the only other option would be for a septic tank designed for a two-family home. She reiterated the existing tank is for a single-family home, and is old and outdated.

Member Conescu questioned if the issue of a septic system is required to be addressed through the Planning Board.

Jillian Harris, AICP, Planning & Zoning Administrator, stated the matter would not be required to go before the Planning Board. It is a two-family home, and does not fall under the jurisdiction of the Planning Board. If it were multi-family (3 or more), it would.

Member Conescu questioned how the Board would attach a condition to approval. Ms. Harris informed the Board, if the Petitioner were to gain approval for the special exception and variance, he would proceed to Mr. Kelley to acquire a Building Permit. Mr. Kelley would want to see the septic system design for a two-family home before a permit would be approved.

Member Christensen questioned, if approved, is there a way to avoid a re-design on the septic. Ms. Harris responded "not according to what I heard from Fred Kelley." Member Christensen questioned the Board's ability to make approval subject to a two-family septic system, and was informed the Board could attach reasonable conditions to the approval.

Vice Chairman Pellegrino declared the Public Hearing closed at 7:23 p.m.

MOTION BY MEMBER WORSTER TO GRANT THE SPECIAL EXCEPTION UNDER SECTION 2.02.2(C) OF THE ZONING ORDINANCE TO PERMIT THE CONVERSION OF A SINGLE-FAMILY RESIDENCE TO A TWO FAMILY RESIDENCE.

MOTION SECONDED BY MEMBER CONESCU

ON THE QUESTION

Member Worster stated with an acre and a half, if the Petitioner has to do an onsite liquid disposal system, it is doable. There is the need to satisfy the requirements of the Building Department in order to gain a permit.

AMENDED MOTION BY MEMBER CHRISTENSEN TO GRANT THE SPECIAL EXCEPTION UNDER SECTION 2.02.2(C) OF THE ZONING ORDINANCE TO PERMIT THE CONVERSION OF A SINGLE-FAMILY RESIDENCE TO A TWO FAMILY RESIDENCE SUBJECT TO THE BUILDING INSPECTOR CONDUCTING A FULL REVIEW OF AN APPROPRIATE SEPTIC DESIGN FOR A TWO-FAMILY HOME WITH THE APPROPRIATE NUMBER OF BEDROOMS

MOTION SECONDED BY MEMBER CONESCU

**MOTION CARRIED
4-0-0**

- 4. Tamsab Realty, LLC. (petitioner/owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit a two family residence. The parcel is located at 633 D.W. Highway in the C-1 (Limited Commercial) and Aquifer Conservation Districts and Wellhead Protection area. Tax Map 6E-2, Lot 024. Case # 2015-20.

Mr. Naga Tamragouri, Tamsab Realty, LLC read the statutory criteria into the record.

Member Conescu requested clarification on how the proposed use would help the Town.
Mr. Tamragouri stated taxes may increase on the property if converted to a two-family home.

Member Christensen commented when the property was purchased it was as a single-family home. She questioned if the Petitioner believed it reasonable to purchase it as a single-family home.
Mr. Tamragouri stated he purchased the property with the intent of making it into a strip mall, but did not pursue that due to unfavorable market conditions.

Member Conescu stated, should the variance be granted, the Building official would require a septic system designed to cover the total number of bedrooms of the proposed two-family residence when a permit is requested for expansion or change of the dwelling.

When asked if he understood the statement, Mr. Tamragouri stated he did.

Vice Chairman Pellegrino opened the Public Hearing at 7:30 p.m.

Testimony in Favor - None

Testimony in Opposition

Pat Wolfendale, 4 Allen Road

Questioned the comment made regarding a strip mall, and was informed the Petitioner stated he had purchased the property with the intent to convert it into a strip mall, but found that to be unfavorable due to market conditions.

Vice Chairman Pellegrino declared the Public Hearing closed at 7:32 p.m.

Member Christensen questioned if the Petitioner has to meet all of the criteria in order for approval to be granted. Ms. Harris stated that would be required.

MOTION BY MEMBER CONESCU TO GRANT THE VARIANCE UNDER SECTION 3.02 OF THE ZONING ORDINANCE TO PERMIT A TWO-FAMILY RESIDENCE, WITH THE UNDERSTANDING THE BUILDING OFFICIAL WILL REQUIRE THE SEPTIC SYSTEM DESIGN TO COVER THE TOTAL NUMBER OF BEDROOMS FOR THE PROPOSED TWO-FAMILY RESIDENCE WHEN A PERMIT IS REQUESTED FOR EXPANSION OR CHANGE AT THE DWELLING.

MOTION SECONDED BY MEMBER WORSTER

**MOTION CARRIED
4-0-0**

FINDINGS OF FACT

1. Granting the variance would not be contrary to the public interest because there will not be any additional building work other than to make use of the basement, which is not being utilized now.
2. The spirit of the ordinance is observed because the proper utilization of the building will help the spirit of the ordinance.
3. Granting the variance will achieve substantial justice because it will reduce the economic burden on the owner, and provide accommodation for 2-3 more people or a family.
4. The values of the surrounding properties would not be diminished. Since the property is located in the C-1 zoning and since there is no new addition put up, it will not affect the values of surrounding properties.
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. It will not create any extra unnecessary hardship to the general public and will not create extra traffic since adequate facilities like driveway and parking are already available on the property.
 2. The proposed use is a reasonable one because it will reduce the economic burden on the property owner, and help the Town.
5. **Global Montello Group Corp. (petitioner) and 736 Milford Road, LLC. (Owner)** – Special Exception under Section 2.02.3(C)(1) of the Zoning Ordinance to permit a gasoline station and convenience store use within the C-2 (General Commercial) and Aquifer Conservation Districts and Wellhead Protection area. Tax Map 2B, Lot 008. Case # 2015-21.

The application was withdrawn.

6. DISCUSSION/POSSIBLE ACTION REGARDING OTHER ITEMS OF CONCERN

Member Conescu stated the need for two additional members.

Anyone interested in serving in this capacity should make that interest known by submitting a letter of interest to the Town Manager's Office. The letter should include qualifications, personal characteristics,

length of residency, previous positions held, either elected or appointed, and intent or experience related to the position.

The current list of volunteer positions available and the Town Council's Appointment Policy can be viewed [on](#) the Town website.

7. APPROVAL OF MINUTES

Merrimack Zoning Board of Adjustment March 25, 2015

MOTION BY MEMBER WORSTER TO APPROVE AS PRINTED

MOTION SECONDED BY MEMBER CHRISTENSEN

MOTION CARRIED

4-0-0

Merrimack Zoning Board of Adjustment April 29, 2015

MOTION BY MEMBER CHRISTENSEN TO APPROVE AS PRINTED

MOTION SECONDED BY MEMBER WORSTER

MOTION CARRIED

4-0-0

Merrimack Zoning Board of Adjustment May 27, 2015

MOTION BY MEMBER CHRISTENSEN TO APPROVE AS PRINTED

MOTION SECONDED BY MEMBER CONESCU

MOTION CARRIED

3-0-1

Member Pellegrino Abstained

8. ADJOURNMENT

MOTION BY MEMBER CONESCU TO ADJOURN

MOTION SECONDED BY MEMBER CHRISTENSEN

MOTION CARRIED

4-0-0

The June 24, 2015 meeting of the Merrimack Zoning Board of Adjustment was adjourned at 7:39 p.m.