



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES WEDNESDAY, JUNE 29, 2022

Board members present; Chair Richard Conescu; Patrick Dwyer; Ben Niles; Rod Buckley and Alternate Charles Mower.

Board members absent: Lynn Christensen

Staff present: Casey Wolfe, Assistant Planner

1. Call to Order

Chair Richard Conescu called the meeting to order at 7:00 p.m.

2. Roll Call

Richard Conescu led the pledge of allegiance and swore in members of the public who would be testifying. Patrick Dwyer read the preamble. Rich Conescu seated Chuck Mower for Lynn Christensen.

- 3. Black Diamond Development, LLC. (petitioner) and 744 DW LLC (owner) –** Variances under Section 2.02.3.B of the Zoning Ordinance to permit an industrial warehouse use in the C-2 (General Commercial) District and Section 3.02 to allow for a rear setback of 5 feet whereas 40 feet is required. The parcel is located at 744 DW Highway in the C-2 (General Commercial) District. Tax Map 7E, Lot 35. Case # ZBA 2022-16. **This item is continued from the May 25, 2022 ZBA meeting.**

Withdrawn by the Petitioner.

- 4. Black Diamond Development, LLC (petitioner) and MM Reality Trust (owner) –** Variance under Section 2.02.3.B of the Zoning Ordinance to permit an industrial warehouse use in the C-2 (General Commercial) District. The parcel is located at 734 DW Highway in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 7E, Lot 31. ZBA Case # 2022-17. **This item is continued from the May 25, 2022 ZBA meeting.**

At the petitioner's request, the Board voted 5-0-0 to continue the public hearing to July 27, 2022 at 7:00 p.m. in the Matthew Thornton Room, on a motion made by Patrick Dwyer and seconded by Rod Buckley.

- 5. Robert & Susan Brittain (petitioners) and Trevor & Haley Sprague (owners) –** Variance under Section 3.02 of the Zoning Ordinance to permit two homes on one lot in the R-2 (Residential, by soils) District. The parcel is located at 20 Trowbridge Drive in the R-2 (Residential, by soils) District. Tax Map 5A, Lot 22. ZBA Case # 2022-22.

This item was heard simultaneously with agenda item #6.

- 6. Robert & Susan Brittain (petitioners) and Trevor & Haley Sprague (owners)** – Variance under Section 4.01 of the Zoning Ordinance to permit the placement of a travel trailer outside of a manufactured housing park. The parcel is located at 20 Trowbridge Drive in the R-2 (Residential, by soils) District. Tax Map 5A, Lot 22. ZBA Case # 2022-23.

Robert Brittain presented the petitions to the Board. He began by explaining that he and his wife Susan are retired and are going to travel the country in their travel trailer. When they are in New Hampshire, they would like to park & reside in the trailer at their daughter's house on Trowbridge Drive while they are in town.

Rod Buckley asked why this is different than a relative coming to visit and staying in their travel trailer on a temporary basis and Case Wolfe explained that the petitioner is proposing to connect their utilities to the home during their stays so staff is considering this a permanent structure even though it will not be there year round. Mr. Buckley asked if the utilities will be shared or separate Mr. Brittain confirmed they will be shared. Mr. Buckley expressed concerns that if the variance is granted there is nothing preventing the petitioners from living in the trailer full time. Mr. Brittain assured the Board that it is not their intention and if they decide to move back to NH permanently, they would construct an in-law apartment onto their daughter's home.

Mr. Brittain then read through the responses to the statutory criteria (outlined below).

Mr. Niles asked how far the house is set back from the road. Mr. Brittain did not know for sure but guessed that it's approximately 30 feet from the road.

Chuck Mower expressed concerns that this request may need setback relief for at least the front setback if they are trying to park a 42 foot trailer in the front of the property. Ms. Wolfe stated that the setbacks were not the immediate concern of staff and agreed to determine what this property's setbacks are to determine if there is a potential encroachment issue. Mr. Mower also stated that since a variance stays with the land, what is preventing this owner or a future owner from renting the space to other travel trailers that are not owner by her parents. Chairman Conescu asked Ms. Wolfe if any conditions could be made to the approval to prevent this from happening and she stated that unless they had something specific in mind she could not really answer the question but staff does feel that a condition should be added to stipulate that only a travel trailer is allowed as the second dwelling unit.

Public Comment

Kyle Decosta (438 South Baboosic Lake Road) asked how long construction will last and how many trees are going to be removed.

Mr. Brittain stated that the excavation work should take no more than a week and they are removing some small 4 inch trees and shrubs but have no plans on removing large trees. He also stated that they can push the pad for the trailer back more if necessary and asked how far back it needs to be. Ms. Wolfe stated that she will look into the setbacks for the parcel but if it's considered a legal lot of record the front setback is 50 feet from the property line and if it is legal non-conforming it's a 30 foot setback so either way it cannot be placed in the proposed location because it encroaches into the front setback. She also reiterated that the variances being decided are for the use and not setback relief so if relief is necessary, a separate variance request will be needed.

Mr. Mower stated that he feels that although the Board members may be sympathetic towards the applicant, they should tread carefully because a decision like this could set a precedent for

future requests. He suggested that the application be continued so that everything can be considered and they do not make a rush decision.

Patrick Dwyer made the argument that he is not concerned with the owner or future owners building a second dwelling on the property because they would need to get variance relief first and the Board could then deny the request as it was not the intended approval. Mr. Buckley agreed with Mr. Dwyer's assessment. Mr. Mower continued to urge the Board to consider a continuance so that they can make an informed decision.

Board determined that the applicant's responses to the statutory criteria (outlined below) were sufficient, proved that each criterion was met, and adopted the responses as the Board's findings of fact.

The Board voted 4-1-0 to grant the variance on agenda item #5, with conditions, on a motion made by Patrick Dwyer and seconded by Rod Buckley. Charles Mower voted in opposition. The following conditions apply:

1. The petitioner shall obtain the variance sought under ZBA Case #2022-23.
2. If ZBA Case # 2022-23 is granted, the secondary dwelling unit shall only be a travel trailer as requested therein.

The Board voted 4-1-0 to grant the variance on agenda item #6 on a motion made by Patrick Dwyer and seconded by Rod Buckley. Charles Mower voted in opposition.

Findings of Fact:

1. Granting the variances would not be contrary to the public interest because:

For a variance to be contrary to the public interest, the proposal has to conflict with the ordinance so much that it violates the ordinances' basic zoning objectives. The relevant tests are (1) whether the proposal will alter the essential character of the neighborhood; and (2) whether it threatens the public health, safety or welfare.

Granting these variances will not alter the essential character of the neighborhood. The proposed plan will allow a brand new travel trailer to be located on a gravel pad vs concrete. Minimal tree remove will happen allowing for the trailer to be less noticeable from the existing neighbors in the back and to the sides of the property. The plan is to maintain the original residential environment as much as possible. Thus, from an external perspective, the character of the neighborhood will remain relatively unchanged by this proposal and the space would only be occupied when family is in town. The existing septic is sufficient to support any increased usage associated with the travel trailer being on the property. And there is or will be sufficient parking in the driveway to accommodate one or two additional vehicles.

Furthermore, it needs to be reminded that this will not be a "permanent" site for the travel trailer and that it will most likely only be on the property for weeks to one or two months at a time. There will be no adverse impacts or injury to any public rights if the variances are granted. Accordingly, granting the variances would not be contrary to the public interest.

2. The spirit of the ordinance is observed because:

It is in the public's interest to uphold the spirit of the ordinance; therefore, courts have held that these two criteria are related. If you satisfy one test you almost certainly satisfy the other. In

addition, to the above stated *reasons*, which are incorporated herein by reference, granting the variances will not result in additional or undue congestion or overcrowding in the area. The area already has a second "driveway" that existed when the home was purchased. This is the area that will be slightly expanded, while maintaining as much of the existing trees and shrubs as possible. This would not encroach on the current setback of the boundary. We must continue to remember that this will only be occupied when family is not traveling. Therefore the spirit of the ordinance is observed.

3. Granting the variances would do substantial justice because:

The Supreme Court has held that measuring substantial justice requires balancing public and private rights. "Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 515 (2011). There is no injury to the public if the variances are granted. There is no gain to the public if the variances are denied. There is only loss to the Applicant if the variances are denied. Therefore, when balancing public and private rights, the loss to the Applicant if the variances are denied outweighs any loss or injury to the public if the variances are granted. Additionally the "parking" of the same travel trailer on one's own property is a right. The only difference would be that someone would be living in it part time. Therefore, granting the variances would do substantial justice.

4. Granting the variance would not diminish the values of surrounding properties because:

If the variances are granted, this property will remain consistent with the residential character of other lots in the surrounding area such that there will be no adverse effect on surrounding property values. As discussed above, while there is an existing stone driveway the changes to that driveway will be done in such a way as to maintain the original natural rustic character of the area. The travel trailer will only be used by family members and therefore will not lead to an increase in noise, substantial traffic or visual blight for the surrounding properties. There will not be any overcrowding or congestion if the variances are granted. No additional hazards or safety issues will arise.

5. Unnecessary hardship.

a. Unnecessary hardship will be found when the subject property has special conditions or circumstances that distinguish it from other properties in the area and the proposed use is reasonable. The Applicants property currently has an existing gravel driveway that was present when purchased and will be used to park the travel trailer. The actual area around the driveway and the front yard will undergo a renovation that will actually improve curb appeal of the property. To the extent the purpose of the Zoning Ordinance's restriction on two-family dwellings and manufactured homes is to prevent congestion and overcrowding, those issues are not present here in light of the minimal changes to the current property. The use would only be on a part time basis and the changes to the property are minimal. The tie in to the existing septic is no problem as the current system can support the additional use. The Applicants desire is to keep the property looking as residential as it does now. There already is existing parking that will meet the needs going forward. The purposes that the Zoning Ordinance seeks to protect are not in any way threatened if these variances are granted.

b. The proposed use is a reasonable one because:

There will be minimal changes made to the property while keeping with the original residential feel and look of the area. A brand new travel trailer will be placed on the property only being used

for limited time while family is in the area. There will be no additional burden on the area traffic and will not affect any other property values.

7. Annual Meeting – Election of Officers (postponed from May 25)

The Board voted 4-0-1 to re-elect Richard Conescu as Chair on a motion made by Patrick Dwyer and seconded by Rod Buckley. Richard Conescu abstained.

The Board voted 4-0-1 to elect Rod Buckley as Vice Chair on a motion made by Patrick Dwyer and seconded by Ben Niles. Rod Buckley abstained.

8. Discussion/possible action regarding other items of concern

Ms. Wolfe reminded the Board to review the email from the Community Development Director regarding abstaining from votes. It is appropriate to abstain from a vote if you are nominated as an elected Board member or voting on the minutes if you did not review them and you were absent from the meeting in question. It is not appropriate to abstain from a vote if you participate in the conversation.

Mr. Conescu read the email from Director Thompson.

Mr. Mower added that he does not feel that it is necessary to abstain from the vote for approving minutes of a meeting you did not attend. The minutes are a record of the meeting and can be reviewed by the Board member regardless of attendance.

9. Approval of Minutes – May 25, 2022

The Board voted 4-0-1 to approve the minutes of May 25, 2022, as submitted, on a motion made by Patrick Dwyer and seconded by Charles Mower. Rod Buckley abstained.

10. Adjourn

The Board voted 5-0-0 to adjourn at 8:12 p.m. on a motion made by Rod Buckley and seconded by Ben Niles.