



Town of Merrimack, New Hampshire

Community Development Department

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Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES

WEDNESDAY, MARCH 25, 2015

Members present: Patrick Dwyer, Tony Pellegrino, Richard Conescu, and Alternate Leonard Worster.

Members absent: Fran L'Heureux and Lynn Christensen.

Staff present: Planning and Zoning Administrator Jillian Harris and Recording Secretary Zina Jordan.

1. Call to Order

Tony Pellegrino called the meeting to order at 7:00 p.m. and designated Leonard Worster to sit for Fran L'Heureux.

2. Roll Call

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

- 3. 429 DW Highway LLC. (petitioner/owner)** – Variances under Section 2.02.13.E(4)(b) and Section 2.02.13.E(4)(c) of the Zoning Ordinance to permit the construction of a three-car garage 2.3 ft. from the side property line whereas 15 ft. is required and 5 ft. from the rear property line whereas 40 ft. is required. The parcel is located at 427 Daniel Webster Highway in the C-2 (General Commercial) District and Elderly, Aquifer Conservation, and Town Center Overlay Districts. Tax Map 5D-4, Lot 076. Cases # 2015-09 and 2015-10.

Chad Branon, Project Manager, Fieldstone Land Consultants, PLLC, said the business name is incorrectly listed as 429 D.W. Highway, LLC. because of an attorney error. The business is located at 425 D.W. Highway, and the subject property is located at 427 D.W. Highway. The 0.35 acre property is abutted by a multi-family residential building to the northwest, Rivet's Funeral Home to the southeast, vacant land to the north/rear and Prime Gas Station across street. It is serviced by municipal sewer and water. The intent is to redevelop the property by razing the house, garage and shed and constructing a new duplex residence with a three-car garage. Chad Branon read the statutory criteria into the record.

Public comment

Gary Bruggemann, 12 Liberty Lane, West Yarmouth, MA, sent an e-mail stating that he does not want the garage to be located adjacent to his property at 429 D.W. Highway. Mark Rivet, 429 D.W. Highway, LLC. said that when he explained that it would not be on the south side but on the opposite side, Gary Bruggemann had no objection.

The Board voted 4-0-0 to grant the Variance for the side yard setback, with the condition that the petitioner obtain Administrative Approval or Planning Board

approval (whichever is deemed appropriate by staff) prior to building permits being issued, on a motion made by Patrick Dwyer and seconded by Richard Conescu.

The Board voted 4-0-0 to grant the Variance for the rear yard setback, with the condition that the petitioner obtain Administrative Approval or Planning Board approval (whichever is deemed appropriate by staff) prior to building permits being issued, on a motion made by Patrick Dwyer and seconded by Richard Conescu.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because it would allow for productive use of the property. The existing non-conforming residence and shed would be razed and a new residential duplex in conformance with zoning setbacks would be constructed. The separation to D.W. Highway would be increased. The new development would provide for site improvements and amenities such as paved access and parking as well as garage space and indoor storage for future tenants. The garage and storage space would be provided in the new three-car garage on the east corner of the parcel. This location will provide vehicle storage in the lower level for the Rivet Funeral Home. It takes advantage of the existing topography, which will permit access to the lower level from adjacent Lot 5D-4-77. The redevelopment will provide additional housing for the community while addressing a storage need for a local business. It will substantially improve the aesthetics of the parcel and surroundings. The uses are permitted and consistent with the surroundings. There are no chemicals or negative impacts to the public;
2. The spirit of the Ordinance is observed because the project will substantially improve the aesthetics of the parcel and surroundings. The use is permitted and consistent with the surroundings. The existing building is in disrepair. The new building will be situated farther from the front boundary, thereby increasing the separation to D.W. Highway. The new garage will be shared between the parcel and the adjacent funeral home and has been situated to accommodate the existing topography for access to the lower level. There is adequate space to support this redevelopment. The intent of the 15' side yard setback is to provide adequate separation and buffering between land owners and uses. Since the proposed garage will be shared between properties for storage purposes, there should be no separation or buffering requirement. There will be no negative impacts to the public. The property to the rear is undeveloped;
3. Granting this variance would do substantial justice because it would allow for the productive use of an existing lot and needed storage for a long-standing local business. The garage would be situated appropriately with the existing topography to provide access from the funeral home property. The uses are permitted and consistent with the surroundings. The project will provide quality housing for the community, address a storage need for the adjacent funeral home, and increase the Town's tax base;
4. The values of the surrounding properties would not be diminished because the project will improve the existing conditions. The existing non-conforming structure is in disrepair and will be razed, thereby cleaning up the existing lot and substantially improving the aesthetics of the parcel and its surroundings. The uses are permitted

and consistent with the surroundings. The project will have a positive impact on surrounding property values and rejuvenate the site and its surroundings;

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 intent of the side- and rear-yard setbacks is to provide adequate separation and buffering between land owners and uses. Since the proposed garage will be shared between properties for storage purposes, there should be no separation or buffering requirement. The location of the garage is required to take advantage of the existing topography for access to the lower level. The property to the rear is undeveloped. There will be no negative impact to the public;
2. The proposed use is a reasonable one because the redevelopment project will substantially improve the aesthetics of the parcel and its surroundings. The use is permitted and consistent with the surroundings. The existing building is in disrepair. The new building will be situated farther away from the front boundary, thereby increasing the separation to D.W. Highway. The new garage will be shared between the parcel and the adjacent funeral home and has been situated to accommodate the existing topography for access to the lower level. There is adequate space to support the redevelopment. There will be no negative impacts to the public.

4. **526 DW LLC. (petitioner/owner)** – Variance under Section 2.02.3.B of the Zoning Ordinance to permit an industrial use (light manufacturing) in the C-2 (General Commercial) District and Elderly, Aquifer Conservation, and Wellhead Protection Overlay Districts. The parcel is located at 526 Daniel Webster Highway. Tax Map 5D-2, Lot 001. Case 2015-11.

Eric C. Mitchell, Eric C. Mitchell & Associates, Inc., said the 8.3 acre parcel is serviced by municipal sewer and water. He read the statutory criteria into the record. AirMax is an assembler of vinyl tubes for custom-designed ventilation systems for industrial and commercial buildings/large warehouses. AirMax does assembly only; it sews sheet metal. It does no manufacturing and uses no petroleum. The scrap from the cut material is disposed of or recycled and is not hazardous. Nothing can be heard outside. There are currently 10 employees. That number may increase slightly. There will be a 1,500 square foot office area, one loading dock for a tractor-trailer and one ramp into the building. Four vehicles will unload weekly. Traffic will be nominal.

There was no public comment.

The Board voted 4-0-0 to grant the Variance, with the following conditions, on a motion made by Richard Conescu and seconded by Patrick Dwyer.

1. Petitioner to obtain Planning Board site plan approval for the proposed use of the subject parcel, incorporating any review comments from Merrimack Conservation Commission and Merrimack Village District for impacts to the Aquifer Conservation District and Wellhead Protection Area;
2. Petitioner to provide an updated “ZBA Exhibit Plan” correcting the error in Note #1 regarding the size of the proposed self-storage building addition (note indicates 44,000 square feet, plan indicates 11,520 square feet).

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because AirMax is an environmentally safe facility that creates little traffic or noise. The site will not be greatly visible to the public and will add to the Town's tax base;
2. The spirit of the Ordinance is observed because the use is clean, produces little traffic, is not highly visible to the public and is in an appropriate location;
3. Granting this variance would do substantial justice because the site is located to the rear of the existing buildings (Zyla's) and abuts route 3 and the PSNH easement line. The site is limited for permitted C-2 uses because of its location. The gain to the landowner is greater than any perceived loss to the public;
4. The values of the surrounding properties would not be diminished because the site is remote, with a minimum of noise and traffic;
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 location of the proposed building is behind the existing building (Zyla's) next to Route 3 and the PSNH easement line. It is a permitted commercial use that is not visible to the public. Parking is discouraged because of the Aquifer Conservation District;
 - 2) The proposed use is a reasonable one because it is environmentally safe, creates minimal traffic and noise, and helps the Town's tax base.

5. Discussion/possible action regarding other items of concern

None.

6. Approval of Minutes – February 25, 2015

The minutes of February 25, 2015, were approved, with one change, by a vote of 3-0-1, on a motion made by Richard Conescu and seconded by Patrick Dwyer. Tony Pellegrino abstained.

7. Adjourn

The meeting adjourned at 7:45 p.m., by a vote of 4-0-0, on a motion made by Leonard Worster and seconded by Patrick Dwyer.