



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, MARCH 29, 2023

A regular meeting of the Merrimack Zoning Board of Adjustment was conducted on Wednesday, March 29, 2023 in the Matthew Thornton Room.

Members Present:

- Richard Conescu (Chair)
- Rod Buckley (Vice Chair)
- Patrick Dwyer
- Ben Niles
- Lynn Christensen

Members Absent:

- Charles Mower (Alternate)

Staff Present: Colleen Olsen, Assistant Planner

1. Call to Order

Chair Rich Conescu called the meeting to order at 6:30 p.m. and Vice Chair Buckley read the preamble.

2. Roll Call

Mr. Conescu led the Pledge of Allegiance and swore in members of the public who would be testifying.

3. Jonathan & Patricia Schippani (petitioners/owners) and Matthew & Theresa Fletcher (owners) – Variance under Section 3.02 (A) of the Zoning Ordinance to permit a four-lot subdivision with one proposed lot having reduced contiguous non-wetland area of 38,326 square feet whereas 100,000 square feet is required. The parcel is located at 12 Harrington Drive in the R-1 (Residential, by map). Tax Map 5B Lot 242. Case # ZBA 2023-10.

Matt Peterson (Keach Nordstrom and Associates) presented the petition to the Board. Mr. Peterson presented an aerial view of the lots in question to demonstrate the existing layout. He then shared the ZBA exhibit plan to show the proposed lot line configuration and where the two new lots will be located. He shared that the two proposed lots will have frontage on Old Blood Road and that only one of the two lots requires a variance. The variance being requested is for proposed lot 242-1 as it only has 38,326 square feet of contiguous non-wetland area and 100,000 square feet is required. He pointed out that all other dimensional requirements and setbacks will be met for the four lots and shared a mockup plan to demonstrate where houses could potentially be placed on the two new lots. He also called attention to the fact that water connectivity was recently made available to this neighborhood due to a new development being constructed in the

area (Chestnut Hill Subdivision). Mr. Peterson then read through the responses to the statutory criteria (outlined below) and took questions from the Board.

Patrick Dwyer questioned the use of more public water as proving substantial justice because the Town already has water issues. Lynn Christensen clarified that the Town does not have water availability issues and the annual odd/even ban is a proactive measure intended to even out the draw.

Ben Niles asked for clarification on where the upland is on the property. Mr. Peterson referred back to the ZBA Exhibit plan to demonstrate the location of the upland area. Mrs. Christensen clarified that if the wetlands were not located on the land then the variance would not be needed at all.

Public comment was received from:

Greg Deneill (9 Harrington Drive) asked for clarification on if the new lots will front on Harrington Drive or Old Blood Road and where the construction vehicles will be coming and going from. The Board advised him that the two new lots will have frontage on Old Blood Road so everything will take place on that road, and nothing will be on Harrington Drive. Mr. Deneill also asked what size houses will be built and Mr. Peterson said that is undetermined at this time and advised that his mockup used a 4 bedroom house but it could be two or three.

Doris Dubois (21 Old Blood Road) asked for clarification on where the lots are in relation to her property. Mr. Peterson used the ZBA Exhibit plan to show Ms. Dubois where the lots are and where the proposed driveways are. Mrs. Christensen reminded Ms. Dubois that the houses are just proposed at this time and stated that the petitioner will still have to gain approval from the Planning Board in order to have the subdivision granted.

Jason Dufoe (23 Old Blood Road) spoke in opposition of granting the variance. He bought his house because of the rural setting and has recently dealt with years of blasting and construction as the road was paved and the water lines were put in and now he is going to lose his view as well.

Doris Dubois (21 Old Blood Road) spoke again and agreed with Mr. Dufoe's remarks. She also does not want to lose the rural feeling of the neighborhood.

The Board voted 3-2-0 to determine that the petitioner's responses to the statutory criteria are sufficient, proved each criterion is met, to adopt the petitioner's responses as the Board's findings of fact, and further, to grant the Variance under Section 3.02 (A) of the Zoning Ordinance to permit a four-lot subdivision with one proposed lot having reduced contiguous non-wetland area of 38,326 square feet whereas 100,000 square feet is required, with the condition that the petitioner shall obtain approval from the Planning Board for the proposed lot line adjustment & subdivision, on a motion made by Lynn Christensen and seconded by Rod Buckley. Patrick Dwyer and Ben Niles voted in opposition.

Findings of Fact:

1. **Granting the variance would not be contrary to the public interest because:** The requested variance will not unduly conflict with the basic purposes of the relevant zoning

provisions as it will neither alter the essential character of the area nor threaten public health, safety, or welfare. The applicant believes that the public interest in requiring the 100,000SF of contiguous land is to ensure every parcel of land in the Town of Merrimack has enough area to locate a home, yard, and septic on site and give a potential home owner enough land around the house for family or life activities. In this case the applicant has over 100,000SF of upland but just not contiguous, however the layout of the lot (as shown on the plans) is large enough for a house, yard and septic and this variance would fill in the existing town roadway with two new homes similar to the 4 on the other side of the roadway and as such the applicant believes this request is not contrary to the public interest.

2. **The spirit of the ordinance is observed because:** The applicant believes that the spirit of the ordinance is to ensure similar size lots and upland for all residential lots in Merrimack, NH. The applicant believes a proposed lot that is 3.659 acres in size and a total of 120,357SF of upland is consistent with the area being proposed and consistent with the spirit of the Ordinance.
 3. **Granting the variance would do substantial justice because:** In this case the substantial justice for the Town to not allow this variance would limit the Town's water system by two homes, whereas granting the variance for the applicant would allow the homeowner to subdivide off the extra land attached to their lots which is bisected by a wetland. This variance would then add two more homes and two more tax bills to the Town of Merrimack inventory on a roadway that the Town has water on and this variance would allow the fill in of homes along the existing roadway which the applicant believes also creates substantial justice.
 4. **Granting the variance would not diminish the values of surrounding properties because:** Allowing the applicant to create 2 new lots on Old Blood Roadway would not diminish the values of surrounding properties and as an engineer for 27 years and having held my real estate license in the State of NH the most likely result of 2 new homes would be an increase to the value of surrounding properties and not a diminish of values.
1. **Unnecessary Hardship:**
 - a. **Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the property:** The special conditions that relate to this parcel and distinguish it from others are the following: First these lots have frontage on two separate town roadways, Harrington Drive (500' of frontage) and Old Blood Road with over 900' of frontage. Second there is a wetland corridor that splits Lot 5B-242 from Old Blood Road and the existing house. The applicant doesn't see the relationship between 1,000,000 SF of contiguous and the application being presented with 120,357SF of upland and is why the applicant believe there is an unnecessary hardship that exists for this lot in Town.
 - b. **The proposed use is a reasonable one because:** The proposed use of residential homes is a reasonable one in this area of Town, which is zoned for this.

The Board took up agenda items 4, 5, 6 & 7 simultaneously.

4. **526 DW, LLC (petitioner/owner)** – Variance under Section 17.07.3 of the Zoning Ordinance to permit a billboard sign to be erected in the (C-2) General Commercial District. The parcel is located at 526 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly Housing Overlay Districts and the Wellhead Protection Area. Tax Map 5D-2 Lot 001. Case # ZBA 2023-11.
5. **526 DW, LLC (petitioner/owner)** – Variance under Section 2.02.7 (A) (6) of the Zoning Ordinance to permit the placement of a structure (two sign posts) to be located 28.2 feet and 33 feet from a wetlands boundary whereas 40 feet is required. The parcel is located at 526 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly Housing Overlay Districts and the Wellhead Protection Area. Tax Map 5D-2 Lot 001. Case # ZBA 2023-12.
6. **526 DW, LLC (petitioner/owner)** – Variance under Section 17.10.3 (b) of the Zoning Ordinance to permit placement of a ground sign to be setback 3 feet from the edge of a public right-of-way whereas a 20 foot setback is required. The parcel is located at 526 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly Housing Overlay Districts and the Wellhead Protection Area. Tax Map 5D-2 Lot 001. Case # ZBA 2023-13.
7. **526 DW, LLC (petitioner/owner)** – Variance under Section 17.10.3 of the Zoning Ordinance to permit a ground sign with a maximum area greater than 100 square feet and visible from the F.E. Everett Turnpike in an area with a posted speed limit of 65 miles per hour. The parcel is located at 526 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly Housing Overlay Districts and the Wellhead Protection Area. Tax Map 5D-2 Lot 001. Case # ZBA 2023-14

The Board voted 5-0-0 to continue the public hearings for ZBA Cases #2023-11, #2023-12, #2023-13 and #2023-14 to April 26, 2023 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion made by Lynn Christensen and seconded by Rod Buckley.

8. Discussion/possible action regarding other items of concern

None.

9. Approval of Minutes – February 22, 2023

The Board voted 4-0-1 to approve the minutes of February 22, 2023, as submitted, on a motion made by Lynn Christensen and seconded by Rod Buckley. Patrick Dwyer abstained.

10. Adjourn

The Board voted 5-0-0 to adjourn at 7:03 p.m. on a motion made by Rod Buckley and seconded by Patrick Dwyer.