



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 30, 2022

Board members present: Chair Richard Conescu; Patrick Dwyer; Rod Buckley; Ben Niles; 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. Rod Buckley read the preamble. Richard Conescu appointed Charles Mower to sit for Lynn Christensen.

3. Michael Lewis (petitioner/owner) – Variance under section 2.02.1.A.3.c of the Zoning Ordinance to permit an exterior access way to be located to the front of an Accessory Dwelling Unit (ADU) whereas the side or rear is required. The parcel is located at 12 Haise Way in the R-1 (Residential, by soils) and Aquifer Conservation Districts. Tax Map 6C, Lot 200. Case # ZBA 2022-04.

Michael Lewis (petitioner/owner) presented the petition to the Board. Mr. Lewis began by explaining that he converted an addition in his home to an in-law apartment for his mother and was unaware that he needed to seek approval from the town. The addition had an existing door in the front of the house that was kept as the entrance to the ADU but according to the zoning criteria, an ADU entrance needs to be on the side or the rear of the house. Mr. Lewis explained that he is seeking a variance to allow him to keep the door where it is because his handicapped mother needs to park in front of the house.

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

There was no Public Comment.

The Board voted 5-0-0 to grant the variance, with conditions, on a motion made by Patrick Dwyer and seconded by Rod Buckley. The following condition applies:

- 1) The petitioner shall obtain administrative approval from the Community Development Department for the ADU.**

Case #2022-04 Findings of Fact

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

This is an existing door since 1983.

2. The spirit of the ordinance is observed because:

No written response provided on the application.

Verbal response from the petitioner was “The spirit of the ordinance is observed because the town is trying to make sure the house does not look like a duplex or two family.”

3. Granting the variance would do substantial justice because:

The person occupying the ADU (which is the petitioner’s mother) is handicapped and would not be safe to enforce criteria #3 in this matter.

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

The residence is setback a couple hundred feet from the road and the door has been located there since 1983.

5. Unnecessary Hardship

a. Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how 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:

No written response provided on the application.

Vice Chairman Dwyer provided a hardship, stating that the fact that his handicapped mother needs access in the front of the building would be a hardship. Chairman Conescu added that the cost of moving the door since it was pre-existing would also be a hardship. The petitioner stated that he would consider that his hardship response.

b. The proposed use is a reasonable one because:

It has been an existing condition since 1983 and the petitioner would like to keep the accessible conditions for his handicapped mother.

- 4. Ronald W Ketchie & Linda M Ketchie (petitioners/owners)** – Variance under section 3.02 of the Zoning Ordinance to permit an existing two-family residence to remain in the R-1 (Residential, by soils) District whereas only single family residences are permitted. The parcel is located at 6 Brookside Drive in the R-1 (Residential, by soils) and Aquifer Conservation Districts. Tax Map 6C, Lot 21. Case #ZBA 2022-05.

Ronald Ketchie introduced himself as the home owner, was sworn in again and then read through the responses to the statutory criteria (outlined below).

Chairman Conescu commented that he can definitely see that the hardship here is that there is no gain to the public and the residence is not going to change if the variance is denied.

Chuck Mower added that he believes substantial justice is served in the many years of service Mr. Ketchie has given the town as a member of the Merrimack Police Department.

Public Comment

Timothy Westley (4 Brookside Drive) stated he has been neighbors with Mr. Ketchie for 27 years and couldn't ask for better neighbors. He is in favor of granting Mr. Ketchie the variance he needs.

The Board voted 5-0-0 to grant the variance on a motion made by Rod Buckley and seconded by Patrick Dwyer.

Case #2022-05 Findings of Fact

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

The petitioner moved to Merrimack when the property was a cow pasture. The house was built in 1970 and he moved into the residence in 1970.

2. The spirit of the ordinance is observed because:

Allow the variance because it became an issue when the petitioner refinanced his mortgage with a new company to reduce payments.

3. Granting the variance would do substantial justice because:

It would allow the mortgage company to okay the new contract agreement.

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

Two family dwellings were never brought up as an issue when the prior owner built the house 52 years ago.

5. Unnecessary Hardship

a. Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how 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:

If the variance is not granted the new mortgage company with a good financial deal will cancel the deal.

b. The proposed use is a reasonable one because:

The petitioner intends to remain and live in Merrimack and stay as is in the Brookside neighborhood.

- 5. Governor's Hill Corp (petitioner/owner) –** Variance under section 3.02 of the Zoning Ordinance to permit construction of a single-family dwelling approximately 32 feet from the front lot line whereas 50 feet is required. The parcel is located at 33 Constance Street in the R-1 (Residential, by soils) District. Tax Map 6D, Lot 136. Case # ZBA 2022-06.

The petitioner was represented by Brett Allard, Esq. and Dana Finn (Lamontagne Builders). Mr. Allard began by explaining that the lot in question (6D/136) is part of the Level Acres subdivision that was originally approved by the Planning Board in the 1960's. He went on to explain that a lot line adjustment that was granted in 2020 took the lot out of its grandfathered status so now it needs to adhere to today's zoning regulations which require a 50 foot setback from the front property line. He argued that if the house had been built prior to the lot line adjustment occurring, this variance would not be needed because the front setbacks at the time the subdivision was approved were only 30 feet. Mr. Allard indicated that all other setbacks can be met and that the petitioner is only seeking a variance for the front setback.

Mr. Mower asked if boundary markers were set when the lot line adjustment was done. Mr. Allard and Mr. Finn both agreed that they believe they were set but stated they would look into it. Mr. Allard then read through the responses to the statutory criteria (outlined below).

Public Comment

Kenneth Sanborn (34 Cathy Street) began by stating that the only lot markers he has seen has been wooden stakes. He then expressed concerns that he has never seen the plans that are being presented and has not received any communication from the developer about the construction in the neighborhood. Mr. Sanborn also expressed frustration with roadwork that was done in front of his property that tore up his driveway and impacted the drainage of his lot. Ms. Wolfe suggested he contact Public Works regarding his concerns about the road construction. He asked about the excavation of the lot in question because there is a hill behind his house that is already eroding and he wants to know what measures are being put in place to stop it from eroding further. Mr. Dwyer stated he believes the building plans will be available at either Public Works or Community Development, Ms. Wolfe clarified that building plans will be submitted to the Building Department.

Carie Iilonda Kawayia (35 Constance Street) expressed concerns with the property stakes that were placed on the property adjacent to his being moved and possibly losing land. He also stated that the construction that is happening in the neighborhood has caused water to puddle in his yard.

Howard Burgess (32 Cathy Street) questioned how the lots were able to keep their grandfathered stats from the 1960s. He also spoke about how the clearing of the trees has caused problems in the neighborhood with wind and a tree fell on his property. He asked where the septic is being placed for the lot in question and Chairman Conescu stated that they will ask the petitioner.

Mr. Allard responded to the public comments by explaining that most of the concerns had nothing to do with the variance being requested so he did not have anything to offer in rebuttal. Chairman Consescu asked him if he knows where the septic is going to be placed and he replied that it has not been determined at this time. He added that an approved septic design plan will be required through the State and any excavation work and construction will require building permits through the Building Department. Ben Niles asked if the proposed construction is going to change the topography in a way that will negatively impact the neighbors. Mr. Allard responded that he is not a construction expert or an engineer but the petitioner is not going to intentionally create a situation that is adverse for the neighbors of the lot in question. He also reminded the Board that there will be other permits required before any construction can begin.

The Board voted 3-2-0 to grant the variance, with conditions, on a motion made by Charles Mower and seconded by Rod Buckley. Ben Niles and Patrick Dwyer voted in opposition. The following condition applies:

- 1) The petitioner shall, as required by the Subdivision Regulations, provide all boundary monuments and provide a certified plot plan prior to the issuance of a Certificate of Occupancy.

Case #2022-06 Findings of Fact

1. Granting the variance 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 ordinance's 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 the variance will not alter the essential character of the neighborhood because many other homes in the neighborhood, including the above-mentioned abutting lot, have dwellings within the 50- foot front yard setback. Nor will granting the variance threaten the public health and safety because, as shown on the enclosed plan, there will still be 32 feet between the proposed dwelling and the front lot line to serve as a sufficient buffer between the street and structure.

As such, granting the variance will not be contrary to the public interest, will preserve the essential character of neighborhood, and will not jeopardize public health and safety.

2. The spirit of the ordinance is observed because:

Because it is in the public's interest to uphold the spirit of the ordinance, the Supreme Court has held that these two criteria are related. If you meet one test you almost certainly meet the other. See *Farrar v. City of Keene*, 158 N.H. 684 (2009). In addition to the reasons stated above, which are incorporated herein by reference, granting the variance will be consistent with the spirit of the ordinance. The purpose of front yard setbacks is to minimize overcrowding and congested development, provide a buffer area between structures and motorists traveling on roadways, and ensure sufficient area for snow removal and road maintenance. There will not be any overcrowding if the variance is granted because, as shown on the enclosed plan, there is more than enough upland area to support the new dwelling. Moreover, there is no threat to motorists because there will still be 32 feet between the proposed dwelling and the front lot line to serve as a sufficient buffer between the street and structure. The proposed location of the dwelling will not impede snow removal or maintenance activities on Constance Street. Accordingly, granting the variance will be consistent with the spirit of the ordinance.

3. Granting the variance 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 variance is granted because it will allow the Applicant to realize reasonable property rights without (1) harming abutters; (2) hindering the ability of the Town to maintain or plow the road; or (3) developing the property in a manner out-of-character with other residences in the neighborhood. Additionally, there is no gain to the public if the variance is denied. There is only loss to the Applicant if the variance is denied. Therefore, when balancing public and private rights, the loss to the Applicant if the variance is denied outweighs any loss or injury to the public if the variance is granted. Indeed, the proposed location of the dwelling in 2 light of the building envelope and location of other dwellings in the neighborhood is "appropriate for the area". See *U-Haul Co. of New Hampshire & Vermont v. City of Concord*, 122 N.H. 910, 913 (1982). In other words, the benefit to the Applicant outweighs the slight encroachment into the front yard road setback that

does not pose any conceivable harm to the abutters, neighborhood, or motorists. Accordingly, granting the variance would do substantial justice.

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

The values of the surrounding properties will not be diminished. The proposal is in harmony with the neighborhood. Additionally, the proposed single-family residential use of the property is permitted by right, and uses permitted by right are per se reasonable. See *Malachy Glen Assocs. Inc. v. Town of Chichester*, 155 N.H. 102, 107 (2007) (permitted uses are per se reasonable). It is presumed that a reasonable use will not diminish the values of surrounding properties. Moreover, the Applicant is not seeking a side or rear setback variance to build closer to abutters than is otherwise allowed under the Zoning Ordinance such that the value of their properties could be impacted. Therefore, surrounding property values will not be diminished if the variance is granted.

5. Unnecessary Hardship

a. Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how 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:

Unnecessary hardship will be found when the subject property has special conditions or circumstances that distinguish it from other properties in the area and (1) there is no substantial relationship between the purpose of the ordinance and the specific application of the ordinance as applied to the property; and (2) the proposed use is reasonable. See RSA 674:33. The Applicant's property is distinguishable from other properties in the area. The lot is part of a vested subdivision. However, unlike other lots in the subdivision, it is subject to application of current zoning regulations due to the reconfigured boundary which was redrawn in order to resolve a shed encroachment. This situation results in a narrow, peculiar building envelop with very little buildable area. Other lots in the area do not share these unique features. Indeed, the proposed dwelling is fully compliant with the older zoning regulations that apply to most other lots in the subdivision, demonstrating the hardship to the Applicant under these unique circumstances. Owing to these special conditions, there is no fair and substantial relationship between the purpose of the Zoning Ordinance's 50-foot front yard setback and its application here. As discussed above, the purpose of front yard setbacks is to minimize overcrowding and congested development, provide a buffer area between structures and motorists traveling on roadways, and ensure sufficient area for snow removal and Town road maintenance. However, there will not be any overcrowding if the variance is granted because there is more than enough upland area to support the proposed dwelling and more than enough distance between the dwelling and structures on abutting lots. Moreover, there is no threat to motorists because there will still be 32 feet between the proposed dwelling and the front lot line to serve as a sufficient buffer between the street and structure. Nor will the proposed location of the dwelling impede snow removal or maintenance activities on Constance Street. Accordingly, the purposes that the Zoning Ordinance seeks to protect is not in any way threatened if the variance is granted. Indeed, granting the variance will allow the Applicant to realize reasonable, constitutional property rights without (1) harming abutters; (2) hindering the ability of the Town to maintain or plow the road; or (3) developing the property in a manner out-of-character with other residences in the neighborhood. Therefore, the Applicant has demonstrated unnecessary hardship and the variance should be granted.

b. The proposed use is a reasonable one because:

For all of the foregoing reasons, which are incorporated herein by reference, the proposed use is reasonable. Moreover, the proposed use is single-family residential, which is permitted by right, and uses permitted by right are per se reasonable. See *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102, 107 (2007).

- 6. Barlo Signs (petitioner) and VFW (owner)** – Variance under section 17.10.3.b of the Zoning Ordinance to permit a ground sign approximately 12 feet from the front property line whereas 20 feet is required. The parcel is located at 282 DW Highway in the I-1 (Industrial), Aquifer Conservation and Planned Residential Overlay Districts. Tax Map 3D-2, Lot 12. Case # ZBA 2022-07.

Brandon Currier (Barlo Signs) and Paul Roy (Commander, Merrimack VFW) were in attendance to present the proposal to the Board. Mr. Currier explained that the owner is looking to replace an existing pylon sign with a new electronic message sign that will be more conforming than the existing sign. Mr. Currier then read through the responses to the statutory criteria (outlined below).

There was no Public Comment.

The Board voted 5-0-0 to grant the variance on a motion made by Patrick Dwyer and seconded by Rod Buckley.

Case #2022-07 Findings of Fact

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

The VFW has enjoyed a pylon sign adjacent to Daniel Webster highway for over 40 years. Recent proposal to update said sign has exposed the need for any new signs to meet today's ordinance. Public interest is met as the wayfinding public wants signage that directs safely, and this property on a very busy roadway needs proper identification.

2. The spirit of the ordinance is observed because:

Spirit of the ordinance will be met as we are only seeking a small waiver for setback-if not for the VFWs odd shaped lot which parallels a state row, setback would not be so difficult to meet.

3. Granting the variance would do substantial justice because:

Substantial justice will be met, granting of the variance will allow the VFW to update their existing sign, to a more modern form of identity and maintain the site recognition they have benefited from with their current Sign-which must be removed due to its current location within the state Row.

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

Surrounding properties are entirely commercial- proposed sign is an improvement to the existing sign conditions and will affect surrounding properties, positively.

5. Unnecessary Hardship

a. Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how 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:

The current VFW sign has very quietly existed without issue: a sign that has aided the wayfinding public. Upon recent sign application to replace the existing sign it was discovered the current sign could not be altered and maintain its existing location, but must be replaced in an entirely different location. The VFWs oddly shaped lot does not make it feasible for placement of a new sign at 20' setback from the front property line, without positioning their new sign deep into their parking area.

b. The proposed use is a reasonable one because:

The existing row width at the front of this property's property line gives the appearance that our proposed sign will meet the setback requirement. It is reasonable for the VFW to request that they are able to maintain site identification, with the removal and upgrade of their existing sign. Identification they have enjoyed for many years.

7. **Bernard Boucher Revocable Trust (petitioner/owner)** – Variances under section 3.02.A to allow three lots to be created (requiring subdivision approval from the Planning Board) with frontages of 145.52, 150.02, and 150.03 feet respectively whereas 250 feet is required, and contiguous upland areas of 81,328, 59,000, and 33,767 square feet respectively whereas 100,000 square feet is required. The parcel is located at 69 Bean Road in the R-1 (Residential, by map) and Aquifer Conservation Districts. Tax Map 6B, Lot 141. Case # ZBA 2022-08.

Matt Peterson (Keach-Nordstrom Associates, Inc.) presented the project to the Board on behalf of the petitioner. Mr. Peterson began by sharing an overview of the existing lot and reviewing the dimensions and topography sharing that Baboosic Brook runs directly through the 20+ acre lot. He then spoke briefly about a previous plan that proposed dividing the land into 5 lots but indicated that he felt that the plan did not fit into the character of the neighborhood so they came up with the three lot plan that is being presented now. The plan divides the 20+ acre lot into three lots of the following sizes; 5.15, 5.27 and 10.13. Mr. Peterson also shared a proposed layout for where the houses may sit on the two new lots, indicating that the septic systems will be in the front of the houses to protect the brook. He also argued that the reduced frontages still fit within the character of the surrounding area as this parcel is surrounded by several examples of lots with frontages of 150 feet or less. Mr. Peterson then read through the responses to the statutory criteria and took questions from the Board.

Mr. Mower asked how wide Baboosic Brook is and Mr. Peterson provided the approximate measurements based on the plan at its smallest and widest points. Mr. Mower also expressed his belief that the land on the opposite side of the brook is being relied upon to fulfill the minimum lot size requirements despite the fact that it is inaccessible. The Board discussed the number of variances needed with a three lot proposal versus a two lot proposal and Mr. Mower shared that he believes that the applicant does not have a hardship because there are other configurations to the lot that can be considered without the need for so many variances. Mr. Peterson explained that any configuration of the lot will require variances due to the location of the brook. He added that if a two lot configuration was approved it would allow for a much larger house to be built on the new lot which would not fit the character of the neighborhood so this is why they are proposing three lots with smaller houses.

Mr. Niles stated that he is leaning in favor of the proposal because there is a need for more three bedroom houses in town however he stated that he would be upset if the inaccessible land is later sold or donated to the town to reduce the taxes for the new homeowners.

Harold Brodell (71 Bean Road) questioned when the regulations were put in place and Ms. Wolfe replied that an answer would require researching the Zoning regulation history and that she could provide an answer but not immediately. He then shared with the Board that when he purchased his home, he did so because of the location and was told at that time that the lot in question could not be developed because of the Brook. He pointed out that he has been a Merrimack resident for 32 years and that the new owner of 69 Bean road has only owned the property for 2 years and lives in Florida for a good part of the year and that he never even personally approached him about his plans. He urged the Board to uphold the requirements that were put in place because they were established for a reason.

Evan McDonald (65 Bean Road) expressed concerns because the buildable area of the proposed lots is smaller than the size of his lot (which is 1.4 acres) and if they build a house next door to him, it will be very close to his driveway. Like Mr. Brodell, Mr. McDonald was also discouraged that the neighbor didn't talk to him about what his plans were for the lot. He stated that the majority of the land is wetlands because of the proximity to the brook and encouraged the Board members to go out and take a look at it. As a longtime resident he stated he is concerned that Merrimack is turning into a city and he feels that allowing two houses to be built on the lot is unreasonable, he could possibly understand one but not two.

Mr. Peterson reiterated that the initial proposal called for access across the bridge to make 5 lots but he encouraged his client to opt for three lots instead of five in an effort to maintain the character of the neighborhood. He apologized to the abutters that they were not contacted directly but explained that in this day and age it simply isn't always safe to approach strangers. He also apologized that the owner was not there in person but he does spend winters in Florida so he encouraged him not to fly back for the hearing because he was going to represent him.

Mr. Niles asked how close the wetland is to the proximity to the houses being proposed and Mr. Peterson used the plan to demonstrate the wetlands location as well as the required 40 foot wetland setback and 250 foot shoreland setback from the brook.

Mr. Buckley shared that he is leaning towards a denial and chairman Conescu expressed that he feels that there is no hardship demonstrated to substantiate the need for three lots.

The Board voted 5-0-0 to deny the variances because the petitioner failed to demonstrate that the request meets the substantial justice criterion on a motion made by Charles Mower and seconded by Ben Niles.

- 8. 8 Jennifer Dr LLC (petitioner/owner) –** Variance under section 2.02.4.B of the Zoning Ordinance to permit the expansion of an existing non-conforming assisted living facility in the I-1 (Industrial) District where the use is not permitted. The parcel is located at 8 Jennifer Drive in the I-1 (Industrial), Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 4D-4, Lot 64. Case # ZBA 2022-09.

Matt Peterson, Keach-Nordstrom Associates, Inc. presented the project on behalf of the petitioner. He began by sharing an aerial photo of the site to demonstrate the current location of the property. He provided a brief history of the Rose Haven facility including the fact that it was shut down during COVID but is now looking to re-open with new owners. He conveyed that when the facility first opened, a variance for the use was not necessary, however, since the owner is looking to expand the beds from 28 to 40, the current zoning regulations will come into play and a variance is required to permit the use. He added that the existing structure will be used for the

expansion and additions are not planned at this time. Mr. Peterson then read through the responses to the statutory criteria (outlined below).

Public Comment

Jim Flis (6 Jennifer Drive) stated he owns the only residential property in the neighborhood and he supports the petitioner's efforts to re-open the assisted living facility.

The Board voted 5-0-0 to grant the variance, with conditions, on a motion made by Rod Buckley and seconded by Charles Mower. The following condition applies:

- 1) The petitioner shall obtain site plan approval from the Planning Board for the expansion of the assisted living facility use.

Case #2022-09 Findings of Fact

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

Granting the use variance will not be contrary to the public interest. More specifically, 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 existing neighborhood will remain unaffected by this expansion, as the increase from 28 to 40 assisted living beds will all be accomplished within the existing building within the industrial zone. The purpose of the zoning and ordinance is to ensure similar uses throughout an existing zone and where this has been an operating assisted living facility for decades there would be no character change to the area and as such the applicant believes this variance would not be contrary to the public interest.

2. The spirit of the ordinance is observed because:

Again, the applicant believes that the spirit of the ordinance is to ensure similar uses throughout the industrial zone and this use has been operating for decades and as such the applicant believes this variance would be consistent with the spirit of the ordinance.

3. Granting the variance would do substantial justice because:

As the board may or may not know this assisted living facility was set to close their doors a few months ago when this applicant came along and purchased it and has gotten it back up and operating again and substantial justice would be done for the applicant and the town if he was allowed to increase the beds from 28 to 40 within the existing structure from a financial standpoint and by being able to assist extra families in the area.

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

Again, this is an existing facility and the only thing being asked for is to increase/reuse the existing space to add 12 extra beds to the facility which would not make any changes to the outside look of the property which should ensure that there would be no diminish of value to surrounding properties.

5. Unnecessary Hardship

a. Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how 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:

Lastly this is an existing facility that is looking to add 12 extra beds to the inside of the facility and as such there is no substantial relationship that exists between the general purpose of the ordinance and the specific use, to add 12 beds, of the property.

b. The proposed use is a reasonable one because:

The proposed use is existing and if 28 was reasonable the applicant believes added 12 extra beds is also a reasonable request

9. **Merrimack Smiles (petitioner) and SIAM04 Realty Inc. (owners)** – Variance under section 2.02.4 of the Zoning Ordinance to allow a dental office in the I-1 (Industrial) District where the use is not permitted. The parcel is located at 75 Daniel Webster Highway in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 2D, Lot 28. Case # ZBA 2022-10.

The petitioner was represented by Meera Cousens (Civil Design Consultants, Inc.). Ms. Cousens began by providing an overview of the lot in question and explained that the petitioner is seeking a variance to allow for the construction of a dental office in the Industrial District. She continued by noting the existing restaurant that is located on the site will be razed to allow for the construction of a one-story, ±4,500-SF professional dental office.

There was no Public Comment.

The Board voted 5-0-0 to grant the variance, with conditions, on a motion made by Rod Buckley and seconded by Ben Niles. The following condition applies:

- 1) The petitioner shall obtain site plan approval from the Planning Board for the proposed dental office use.

Case #2022-10 Findings of Fact

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

The granting of the variance would not be contrary to the public interest because it would not threaten the health, safety, and general welfare of the Town. The proposed development provides adequate access and will generate minimal traffic during business hours. The proposed building complies with all zoning setbacks.

2. The spirit of the ordinance is observed because:

The I-1 zone permits vet clinics and offices; therefore, a proposed dental office in the 1-1 zoning district is reasonable. The proposed dental office will not result in negative impacts caused by light, noise, pollution, odor, vibration or other nuisance.

3. Granting the variance would do substantial justice because:

The proposal would not alter the character of the neighborhood nor threaten the health, safety, or general welfare of the public. Denial would result in a loss to the applicant and will provide no gain to the public.

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

The proposed dental office building will be a more attractive building and will enhance the surrounding property values.

5. Unnecessary Hardship

a. Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how 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:

Medical offices, including dentist offices, are only allowed through special exception in the Town Center Overlay District or as a Home Occupation Use in the Residential zoning district. The result of this very limited allowance for medical office is a significant hardship to the Applicant. Dr. Morris, the founder of Merrimack Smiles, lives and works in Merrimack, NH and has been a supporter of youth sports for years. He currently works at his office located at 22 Greeley Street but has outgrown this current location. Dr. Morris wants to keep his successful practice in Merrimack but was unable to locate a viable property in the TCOD and a home occupation use in the Residential zone is not practical. The lack of this allowed use, and the lack of available parcels within the TCOD, are a significant and unnecessary hardship that can be remedied by the issuance of this use variance.

b. The proposed use is a reasonable one because:

The proposed use is a dentist's office which consists of operatories, offices for support staff, and storage. The underlying zoning currently allows for similar uses including professional offices, animal hospital/ veterinary clinic and storage facilities. These uses are essentially identical to the proposed use (with the exception of the patients), and therefore, the proposed use of medical office in the 1-1 zoning district is "reasonable."

10. Discussion/possible action regarding other items of concern

Chairman Conescu reminded the Board that the annual meeting is coming up in May so they need to start thinking about who will be voted in as Chair and Vice Chair.

11. Approval of Minutes – February 23, 2021

The Board voted 5-0-0 to approve the minutes of February 23, 2022, as submitted, on a motion made by Patrick Dwyer and seconded by Rod Buckley.

12. Adjourn

The Board voted 5-0-0 to adjourn at 9:38 p.m. on a motion made by Rod Buckley and seconded by Patrick Dwyer.