



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

## MERRIMACK ZONING BOARD OF ADJUSTMENT

### APPROVED MINUTES

**WEDNESDAY, MAY 25, 2016**

Members present: Fran L'Heureux, Tony Pellegrino, Richard Conescu, and Alternate Leonard Worster.

Members absent: Patrick Dwyer and Lynn Christensen.

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

#### **1. Call to Order**

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

#### **2. Roll Call**

Leonard Worster led the pledge of allegiance. Richard Conescu read the preamble and swore in members of the public who would be testifying.

- 4. Richard Elliot (applicant) and Michael and Rae Ann Dopson (owner)** — Special Exception under Section 2.02.1(B)(2) of the Zoning Ordinance to permit an Accessory Dwelling Unit (ADU). The parcel is located at 4 Sunnydale Drive in the R (Residential) and Aquifer Conservation Districts. Tax Map 5D-3, Lot 099. Case # 2016-22.

This agenda item was taken up after agenda item #2.

**At the applicant's request, the Board voted to continue this item to June 29, 2016, by a vote of 4-0-0, on a motion made by Tony Pellegrino and seconded by Richard Conescu.**

- 5. Jeffrey Kibbie (applicant/owner)** — Variance under Section 2.02.2(B)(3) of the Zoning Ordinance to permit vehicle sales in the C-1 (Limited Commercial) and Aquifer Conservation Districts. The parcel is located at 407 Daniel Webster Highway. Tax Map 5D-4, Lot 097. Case # 2016-23.

#### **The applicant opted to proceed with a (4) four member Board.**

James Kibbie, 407 DW. Highway, said the petitioner, who is the owner of Custom Electric, seeks to establish a vehicle sales business at the property. The vehicles proposed for sale would be limited to off highway recreational vehicles (OHRV). Existing office space would be utilized. The vehicle display area would occupy two



existing parking spaces, which would still leave enough parking spaces available to satisfy the parking requirements of both businesses located within the C-1 portion of the property.

James Kibbie read the statutory criteria into the record.

In answer to Board questions, he stated that off highway recreational vehicles are dirt bikes, snowmobiles and the like. There would be only sales and no repairs on the property. Vehicles would be purchased from auctions, Craigslist and other sources. Since 3 dirt bikes can be put in one space, a maximum of six vehicles could be displayed in the two spaces. Business hours would be 8:00 a.m.-6:00 p.m., Monday-Friday. In response to the question, Jillian Harris noted that the possibility of weekend hours is not regulated per the Zoning Ordinance.

### **Public comment**

Donald Lewis, Sr., 407 D.W. Highway, did not learn about the proposal until he was notified two days ago. The neighbors never spoke to him about it. He is concerned that noise from the business would disturb his tenants, who live next door. Jillian Harris stated that the applicant did not discuss the number of vehicles, but presented to the Community Development Department that they would not take up more than two spaces. Donald Lewis, Sr., did not want snow or people on his property and fears the business will become a junkyard. He does not want to lose tenants because of his neighbor's changes. Fran L'Heureux explained that the sales would be only of OHRVs and not passenger vehicles. Jillian Harris suggested it could be made a condition of approval, in response to the question.

Donald Lewis, Jr., 407 D.W. Highway, wanted a full site plan review to go to the Planning Board. Where the site now houses a small electrical business, OHRV customers would come onto the single-lane driveway. Should there be a traffic study? Where would the oil go? Fran L'Heureux said a condition of approval could stipulate that there be two spaces with a maximum of six OHRVs. Jillian Harris stated that the Community Development Department review found that there is enough parking for both businesses as well as display spaces. Fran L'Heureux added that one cannot estimate how many vehicles would be there at one time.

Jeffrey Kibbie, 407 D.W. Highway, said he followed the abutter notification rules. He has made a substantial investment to improve the property and will continue to do so. Jillian Harris stated that abutter notices were sent on Friday, May 13, 2016, which is within the legal time.

As to #4, values of surrounding properties, Richard Conescu asked what abutting properties #1-#5 are. The applicants stated that #1 is their own at 407 D.W. Highway; #2 was D.J. Willey's and is now Merrimack Tax Associates; #3 is a hazardous waste site; #4 is the Lewis property; and #5 is a vacant PSNH lot.

Fran L'Heureux asked for dirt bike measurements, which James Kibbie said are 6' long and 1½'-2' wide. A snowmobile is 8'-10' long and 3'-4' wide, depending on the width of the skis.



Diane Lewis, 409 D.W. Highway, said the change of use is from electrical to full retail. Even though the business would be closed on weekends, people would pull over to look at them and would park on D.W. Highway. She wanted a site plan showing where people would park. Lighting would inhibit the use of the abutting residential property. Fran L'Heureux explained that is a Planning Board issue. Jillian Harris said the proposal underwent administrative review by the Community Development Department and need not go to the Planning Board. Fran L'Heureux suggested either placing an "open/closed" sign that would be turned off at 6:00 p.m. or one telling customers to pull into the lot to look at vehicles. Jeffrey Kibbie said there would be no additional lighting. Richard Conescu said retail is allowed in the C-1 (Limited Commercial) District with no guideline about hours of operation. The issue is that the business is called "automotive", but there are no automobile sales. Diane Lewis said that people would rev the motors and test drive the vehicles and create a danger to the aquifer. Jeffrey Kibbie said the vehicles would not be used on the property. The business would be unit sales only. James Kibbie added that is because of insurance rules. Vehicles would be transported elsewhere for testing. Fran L'Heureux suggested making a condition of approval that there be no test driving on the property. Richard Conescu suggested that, if there is no test driving, this is not an automotive use but rather "retail sales", which does not require a variance. Leonard Worster suggested that posting a "no parking" sign on the frontage is a Planning Board issue.

**The Board voted 3-1-0 to grant the Variance, with the following conditions, on a motion made by Richard Conescu and seconded by Tony Pellegrino. Fran L'Heureux voted in the negative.**

1. The petitioner shall obtain site plan approval from the Planning Board for the proposed change of use;
2. The approval is limited to off-highway recreational vehicles (OHRV) only;
3. No more than 2 parking spaces can be used for display with a maximum of 6 total OHRV's displayed at any one time;
4. No OHRV Use or testing may be conducted on the property.

#### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because it would not alter the essential character of the neighborhood nor threaten public health, safety or general welfare. Within 524.8' of the property there is an auto dealership (Neat Auto Sales) and 14 other automotive-related businesses are within 0.5 miles south and 0.9 miles north of the property. The business would not perform vehicle repairs nor would any fuel be stored on the property;
2. The spirit of the Ordinance is observed because the business would not alter the essential character of the locality nor threaten public health, safety or welfare. The business would not impose any disruptions different from those caused by similar businesses in the neighborhood;



3. Granting this variance would do substantial justice because it is consistent with the area's present use and with the allowances made for the other businesses in the vicinity;
4. The values of the surrounding properties would not be diminished because abutting property #1 is owned by the applicant and currently has a commercial business that has been operating for over 30 years; abutting property #5 is a vacant hillside owned by PSNH/Eversource. The existing building is not being modified. The proposed hours of operation are normal hours from 8:00 a.m.-6:00 p.m.;
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 Ordinance is meant to protect well developed, "attractive residential neighborhoods" that abut commercial properties. No such neighborhood abuts or is in the general vicinity of the property;
  - 2) The proposed use is a reasonable one because the area has many automotive sales and repair businesses but none that deal specifically in OHRVs. The business would not cause any disruptive competition to any of the existing automotive dealerships in the area because of its separate and distinct niche: displaying OHRVs.

- 3. Cellco Partnership dba Verizon Wireless (petitioner) and Merrimack Village District (owner)** — Special Exception under Section 2.02.1(B)(3) of the Zoning Ordinance to allow a Telecommunications Tower within the R (Residential) District. The parcel is located off of Turkey Hill Road. Tax Map 5C, Lot 004. Case # 2016-21.

This agenda item was taken up after agenda item #5.

Tony Pellegrino recused himself from discussing and voting on this item.

The applicant opted to proceed although only three Board members remained.

Victor Manougian, McLane Middleton, read the ordinance criteria into the record.

He explained that a 50'x50' fenced-in area with a 10'x12' concrete pad are needed for the tower. Nowadays smaller slab foundations are used. The tower would be a 100' "monopine". In answer to Board questions, Victor Manougian said that Verizon always promotes co-locations and could add three more carriers below its own, which is at 96' elevation. He will ask the Planning Board's permission to reduce the setback. Hudson Design Group's letter describes how monopines are designed. The tower would bend in half and collapse upon itself in the event of a catastrophe. It would fail before the foundation would, ensuring that the "fall zone" is limited to a distance less than the monopine height. Although it would fall on Merrimack Village District (MVD) land, there are no structures it could possibly hit. A tower is needed in this part of Merrimack because of the topography of the land and the volume of mobile traffic. There is not



enough coverage and capacity in central Merrimack areas. The north end of town would also benefit. Victor Manougian listed the areas and the number of vehicles per day that pass through them. He showed photographs of the balloon test, explained how it is done and what a monopine would look like. A monopine works when the tower is within a natural forest setting and cannot be seen from a distance. The trees, the water tower and the 8' high fence (more than the required 6') screened with slats would act as camouflage. There would be no traffic, no parking, no municipal services, and no lighting. A maintenance truck would visit once or twice a month.

Keith Valente, Radio Frequency Engineer, C<sup>2</sup> Systems, showed maps of the existing and proposed coverage and facilities, the tower, and the capacity needs for each site and how they would be met. The proposal would improve coverage and support the demand for data usage. Topography determines site locations. This site is intended for Merrimack's central areas, although it would benefit other areas.

Fran L'Heureux said the photographs were helpful and that a monopine fits in. She asked what would happen if hurricane winds knocked off the limbs or if they were damaged or destroyed. Victor Manougian replied that Verizon would repair and replace them. Verizon is responsible for maintenance and stands by its work. He explained that a "monopole" is a monopine without branches, whereas a "lattice" is a metal construction tower.

Keith Valente explained that the four discs on top are antennas. There are four per sector pointing in the same direction.

### **Public comment**

Joseph Parrinello, 41 Turkey Hill Road, owns land under MVD's right-of-way. Although he has no problem with the proposal, he asked how to work it into the construction tower and how everything would get up and down without crossing his land. The area is bare now, so they would have to plant shrubs on his property. The water tank is on the fenced-in section.

Victor Manougian acknowledged that the Parrinellos identified an error in the acreage measurements he took from the Assessing Department's plans. 209'x209' = 1.936 acres. He will work with the Parrinellos on access. Verizon has the right because it pays MVD to use the property. Their 40' right-of-way access easement comes onto the water tank property. There is another easement with the Parrinellos where the road comes in. The applicant can either put in another gate on the left or, preferably, negotiate a fee for an easement with the Parrinellos that would be the same it has with MVD.

Janice Parrinello, 41 Turkey Hill Road, said the two deeds to the Town are for access to the 600' road for the MVD only. It is a limited access easement for repairs; MVD cannot give anyone else access. The Parrinellos brought the deed showing that the entire 600' road to the tower is on their property. Fran L'Heureux asked whether the MVD gave authority to use their access road. Victor Manougian said it did. McLane Middleton did the title search. Verizon has the right to get to the property on one deed but not on the second deed. Verizon will pay the Parrinellos in order not to have to build



a new road, but first it must get federal and other approvals, which could take a few months. Fran L'Heureux stated that would give time for Verizon to work out something with the Parrinellos. Janice Parrinello said there is an issue with the setback going onto their land. Jillian Harris said the Planning Board has the authority to permit a lesser setback. Janice and Joseph Parrinello agreed to work with Verizon on the right-of-way access.

Despite the Parrinellos claim, Victor Manougian was confident about the size/acreage of the lot and saw no dimension or setback issues. Jillian Harris said the Community Development Department would research the matter with the Assessing Department. Richard Conescu asked if the Assessing Department's database could be incorrect. Fran L'Heureux said that is why she asked the Community Development Department to check it.

Richard Conescu suggested that a condition of approval be that the Special Exception be contingent on accurate information. Victor Manougian agreed that the parcel is 200'x200', or one acre, and that 1.9 acres is not accurate.

**The Board voted 3-0-0 to grant the Special Exception, with the following conditions, on a motion made by Richard Conescu and seconded by Leonard Worster.**

1. Site Plan inaccuracies must be corrected;
2. Petitioner shall obtain Planning Board site plan approval for the telecommunication tower use of the subject parcel;

### **Findings of Fact**

1. This site substantially complies with Section 2.02.1(B)(1) of the Zoning Ordinance:
  - a. The specific site is an appropriate location for such a use or uses in terms of overall community development. Currently the .9-acre parcel houses a large concrete reservoir tank surrounded by a chain link and barbwire fence. Placing a wireless telecommunications tower alongside this reservoir enables Merrimack to use the reservoir as a camouflage while grouping multiple non-residential uses in one residential location, thereby reducing community impact while providing needed services to community members living in the surrounding area. Specifically this facility would allow Verizon to provide wireless coverage in a residential zone plagued with erratic wireless service, increasing the "safety, convenience and general welfare" by connecting Merrimack's residents and visitors to a stable wireless network;
  - b. The use as developed will not adversely affect the neighborhood or diminish real estate values in the neighboring area. Real estate values are not diminished by wireless telecommunication facilities. In the last 20 years, site valuation reports assessing telecommunication tower impact on property values in New Hampshire, New England and the United States have consistently concluded that residential real estate values are not affected by



- tower construction. Increased residential wireless connectivity raises real estate values and provides a substantial benefit to the public, evidenced by mounting proof that homes lacking a wireless signal are harder to sell. The benefit of increased coverage in and around the property's neighborhood is bolstered by the fact that Merrimack has never received a tax abatement request for diminution of property values based on proximity to one of the town's 12 cell towers from any resident;
- c. There will be no nuisance or serious hazard to vehicles or pedestrians. Verizon will perform infrequent maintenance visits to the facility, which will remain unmanned after construction. There would be no adverse impact to Merrimack's infrastructure;
  - d. That an adequate parking area is provide for motor vehicles on the premises. Adequate and substantial motor vehicle parking exists on the property;
  - e. A buffer shall be erected and maintained to screen existing residential uses. Buffers may be fence screens, dense plantings of suitable trees and shrubbery, or naturally occurring shrubs and trees. Naturally occurring vegetation combined with the reservoir tank's large footprint provide a substantial buffer;
2. This facility complies with Section 2.02.1(B)(3) of the Zoning Ordinance:
- a. The applicant shall meet the approval criteria set forth in a-e of B.1 above. See Section IV(1) above;
  - b. The applicant meets the criteria set forth in section 2.02.4.B.22.a. (New Towers). See Section IV(3) below;
  - c. Proposed towers shall be disguised through the use of camouflage technologies such as trees, flagpoles, steeples, etc. The proposed tower employs camouflage techniques and is disguised as a tree or "monopine";
  - d. Written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna if the applicant is proposing to build a new tower. This evidence can consist of an analysis of the location, height, strength, and potential interference which would make co-location impractical. See enclosed Radio Frequency Report;
3. This proposal substantially complies with Section 2.02.4(B)(22)(a) of the Zoning Ordinance:
- a. Towers shall be set back from the property line by a distance equal to the height of the tower. The Planning Board may permit a lesser setback where alternative protections to abutting properties are provided by way of easement, covenant or other adequate deed restriction or where the proposed tower is designed in full compliance with all applicable building codes and building/construction plans submitted to the building inspector are certified and stamped by a licensed structural engineer prior to the issuance of a building permit. Prior to the issuance of a building permit, the tower



design and plans shall be reviewed by a structural engineer designated by the Town. The facility is designed an internal collapse monopine tower and in full compliance with applicable building codes;

- b. Accessory facilities must satisfy the minimum zoning district setback requirements. Verizon respectfully requests a setback variance to locate this facility on the property and remedy an existing coverage gap in Merrimack;
- c. Tower shall maintain a neutral, non-reflective color so as to reduce visual obtrusiveness. The facility will be camouflaged as a pine tree;
- d. For security purposes, towers and ancillary facilities shall be enclosed by a minimum six (6) foot fence. The facility will be enclosed by an eight (8) foot fence;
- e. All utility buildings and structures accessory to a tower shall be screened from view by suitable vegetation from any residentially zoned property or public roads. The equipment enclosure will be screened by the chain-link fence, the large reservoir tank and the existing foliage;
- f. Any proposed communications tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least three (3) additional users if the tower is over 100 feet in height or for at least one (1) additional user if the tower is less than 100 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights. The proposed tower is designed to accommodate four (4) carriers;
- g. Twice yearly inspections and bonding required: a) the structural integrity of all towers, whether in use, abandoned or unused, shall be inspected at least twice a year; b) copies of inspection reports shall be filed with the Community Development Department within thirty (30) days of the inspection; c) all owners of commercial wireless telecommunication towers shall obtain and maintain a bond to cover the cost of removal of abandoned, unused towers or portions of towers; d) the amount of said bond shall be reviewed by the Town every five (5) years to ensure the amount of security is adequate and may be increased if necessary; e) failure to file the required biannual inspection report with the Community Development Department within the specified timeframe shall constitute sufficient grounds to cause the bond to be called. Verizon will fully comply with this requirement;
- h. Permit required: a) building permits shall be obtained for all towers, accessory structures and antennae; b) the number of users and the total number of antennae on any individual tower shall not exceed that which is permitted under the site plan approved by the Merrimack Planning Board. Verizon will fully comply with this requirement;

Tony Pellegrino returned to the Board.



**6. Discussion/possible action regarding other items of concern**

Jillian Harris announced that Town Council would vote on the confirmation of Tom Mahon as a ZBA alternate member at its May 26, 2016, meeting.

**7. Approval of Minutes – April 27, 2016**

The minutes of April 27, 2016, were approved, with one change, by a vote of 3-0-1, on a motion made by Tony Pellegrino and seconded by Leonard Worster. Fran L’Heureux abstained.

**8. Adjourn**

The meeting adjourned at 8:47 p.m., by a vote of 4-0-0, on a motion made by Tony Pellegrino and seconded by Richard Conescu.