



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

603 424-3531

Fax 603 424-1408

www.merrimacknh.gov

MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES WEDNESDAY, MAY 27, 2015

Members present: Fran L'Heureux, Patrick Dwyer, Richard Conescu, Lynn Christensen (arrived 7:03 p.m.), and Alternate Leonard Worster.

Member absent: Tony Pellegrino.

Staff present: Planning and Zoning Administrator Jillian Harris, Planning Intern Emily Edwards, 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 Tony Pellegrino.

2. Roll Call

Richard Conescu led the pledge of allegiance. Patrick Dwyer read the preamble and swore in members of the public who would be testifying. Lynn Christensen arrived at 7:03 p.m.

3. Ben Forleo (petitioner) and Leo Bosse Rev. Trust (owner) – Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a single-family home 22.9 ft. from the front property line whereas 30 ft. is required and 35.8 ft. from the rear property line whereas 40 ft. is required. The parcel is located at 3 Sunset Drive in the R (Residential) District, Aquifer Conservation District and Wellhead Protection Area. Tax Map 3C, Lot 008. Case # 2015-12. *This item is continued from the April 29, 2015 Zoning Board meeting.*****

Chris Guida, Soil and Wetland Scientist, Fieldstone Land Consultants, PLLC, read the statutory criteria into the record

Regarding #1, public interest, Richard Conescu asked how far the home would be from Naticook Lake. Chris Guida replied that the lake is the rear setback. When moving the house forward, he will meet as many setbacks as possible. Fran L'Heureux noted that the applicant does not want to walk out the back door into the lake.

There was no public comment.

Chris Guida said he designed the home to fit the lot, which slants to the roadway. He would have to erect a very small building to make it fit the setback requirements. NHDES (Department of Environmental Services) advised him how to proceed with a non-conforming lot. Rainwater from the roof and driveway will infiltrate before going into

the lake. Leonard Worster questioned the differences in the Board's copy of the map and the one being displayed at the meeting. Chris Guida explained that he showed the 50' State Shoreland Protection setback line, which is more restrictive and takes precedence over the 40' local setback requirement.

The Board voted 5-0-0 to grant the Variance, on a motion made by Patrick Dwyer and seconded by Richard Conescu, with the condition that the applicant provide a copy of the NHDES Shoreland Permit to the Community Development Department file.

Findings of Fact

1. *The granting of the variance would not be contrary to the public interest because a minor encroachment of 7' toward the roadway and 4.2' toward the rear setback will not affect public safety or endanger the public in any way. It will allow for reasonable use of an existing non-conforming lot of record. It allow the parcel to maintain its inherent value as a waterfront property, which will help to maintain the local land value in the community and contribute to the overall tax base. Allowing the dwelling to be built farther away from Naticook Lake helps to maintain the waterfront buffer and water quality. The proposed use is permitted and will be consistent with the surroundings. The proposal will allow for more environmentally responsible development;*
2. *The spirit of the Ordinance is observed because the proposed dwelling will be located to minimize the disturbance to existing vegetation and strikes a balance between the shoreland setback requirement, the rear setback line and the front building setback requirements. The front setback encroachment of 7' still provides 22.9' from the property line to the dwelling. The rear setback encroachment of 4.2' does not adversely affect abutting properties, since the rear line is the edge of the lake. The proposed setback still allows for adequate areas to park a vehicle off the roadway and not encumber the town right-of-way. Maintaining the side setback requirement will provide abutting properties with as much room as possible while allowing for reasonable use. Moving the dwelling back to comply with the front setback would encroach farther into the rear setback line and the shoreland woodland buffer and require cutting additional trees. The location utilizes as much of the existing non-vegetated areas as possible while maintaining reasonable and useful shoreland, rear and front property line setbacks;*
3. *Granting this variance would do substantial justice because it would allow reasonable use of an existing non-conforming lot of record while still complying with the zoning setback requirements as much as possible. The lot was created for the purpose of allowing construction of a residential dwelling. The proposed variance would only affect the front and rear building setback of the distance to the town roadway, would allow for a more environmentally responsible building location and would be similar to many of the house locations within the neighborhood that also appear to be within the front and/or rear building setbacks. Encroachment to the front setback would allow the building to be farther away from the lake, minimize the rear setback encroachment and allow for typical reasonable use of the property;*

4. *The values of the surrounding properties would not be diminished because the proposal improves the existing condition of the property. The proposed house will be tastefully done and designed to fit into the landscape and surround architecture. The proposed single-family residential use is permitted and will be consistent with the surroundings. New construction typically improves the value of surrounding properties. This will fit the character of the neighborhood and community. It will have positive impacts on surrounding property values, as it will remove an old shed and replace it with a quality single-family residential dwelling with environmental and stormwater provisions that will reduce stormwater and erosion of gravel materials from the road from washing directly into the lake. A substantial woodland and waterfront buffer in compliance with SWQPA and NHDES rules will be integrated into the design to maintain a viable natural buffer to the lake and the watershed. The proposed encroachments are for a few feet to the front and rear, neither of which abuts other private properties. They abut Naticook Lake and Sunset Drive which are publicly owned. The lot is serviced by municipal sewer and water;*
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 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 general purpose of the building setback Ordinance does not take into account site-specific hardship conditions of the lot, such as sloping topography and proximity to a water body. The proposed residential use is permitted by the zoning and will be consistent with the surroundings. The proposed dwelling will not encroach any closer to the boundaries than many of the existing dwellings and structures in the neighborhood. Literal enforcement of the provision would not encourage responsible development with the Shoreland zone. NHDES Shoreland Department has approved a permit for the building in its proposed location. It agreed that moving the building toward the lake to comply with the front setback would be unlikely to result in any additional benefit to the environment or the neighborhood. This proposal will be more beneficial to the surrounding environment and properties.*

4. **Mona Paquette (petitioner/owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit the construction of a 10 x 20 ft. pool deck 15.25 ft. from the rear property line whereas 60 ft. is required. The property is located at 4 Lawrence Road in the R-1 (Residential) District. Tax Map 7C, Lot 001-01. Case # 2015-14.

Mona Paquette, 4 Lawrence Road, read the statutory criteria into the record. The property is abutted by residential uses on all sides and is serviced by private well and septic. Richard Conescu said it is a tough parcel on which to place a pool.

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 Richard Conescu.

Findings of Fact

1. *The granting of the variance would not be contrary to the public interest because it would allow the applicant to locate a 10' x 20' deck without altering the*

character of the surroundings. It will not pose a threat to public safety, health or welfare;

2. *The spirit of the Ordinance is observed because* it will result in a setback of 15.3 from wetland/wall as opposed to a 60' setback, will not impact or harm wetlands and will allow full and proper use of the property;
3. *Granting this variance would do substantial justice because* the property is an irregular triangular-shaped parcel with limited buildable area due to the shape of the lot.
4. *The values of the surrounding properties would not be diminished because* none of them can see the backyard. The abutters are far away. The back is all wetlands. The applicant can see only woods and no homes from the backyard, which is fenced;
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 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 property is unique and has a limited footprint for construction. This is the best location to build the 10' x 20' pool deck that will allow the Paquettes to get to their pool in the safest and most convenient manner. The deck does not interfere with the wetlands. Special conditions prevent access from any other location on the property to the already-approved pool location.

6. **Mona Paquette (petitioner/owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit the construction of a 4 x 10 ft. extension of a deck and stairs 42 ft. from the rear property line whereas 60 ft. is required. The property is located at 4 Lawrence Road in the R-1 (Residential) District. Tax Map 7C, Lot 001-01. Case # 2015-15.

Mona Paquette, 4 Lawrence Road, read the statutory criteria into the record and corrected it to show that the extension would be 4' x 10' rather than 4' x 16'.

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 Richard Conescu.

Findings of Fact

1. *The granting of the variance would not be contrary to the public interest because* locating a 4' x 10' deck with stairs will not alter the character of the surroundings nor pose a threat to public safety, health or welfare;
2. *The spirit of the Ordinance is observed because* a setback of 42' to a 4' x 10' deck with stairs as opposed to a 60' setback will not impact or harm wetlands and will allow full and proper use of the property;

3. *Granting this variance would do substantial justice because there is no other way to get to the backyard or to get access to the deck and pool from the house;*
4. *The values of the surrounding properties would not be diminished because the deck extension will add value the house;*
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 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 property is unique and has a limited footprint for construction. This is the best location to build the 4' x 10' deck and stairs that will allow the Paquettes to get to their pool in the safest and most convenient manner. The deck does not interfere with the wetlands. Special conditions prevent access from any other location on the property to the already-approved pool location.*
6. **Psalm 24:1, LLC. (petitioner) and TW Bridge Associates, LLC. (owner) –** Variance under Section 2.02.1(A) of the Zoning Ordinance to permit a light manufacturing use in the R (Residential) and Town Center Overlay Districts. The parcel is located at 10 Twin Bridge Road, Units 2A & 2B. Tax Map 5D-3, Lot 115. Case # 2015-16.

Pastor Jeff Muster, Psalm 24:1, LLC, read the statutory criteria into the record. Regarding #3, substantial justice, Richard Conescu noted that being situated in the middle of commercial rather than residential space is a valuable point. Jeff Muster said what is unique is that Integrity Laser does not produce anything. It is a service that runs low-power laser imaging systems to decorate, personalize and etch company logos on parts for individuals and companies that cannot afford the marking systems themselves. The business will lease space for the church.

There was no public comment.

The Board voted 5-0-0 to grant the Variance, on a motion made by Richard Conescu and seconded by Patrick Dwyer, with the condition that the petitioner shall obtain Administrative Approval for the change of use from the Community Development Department prior to the use of the unit as a light manufacturing business.

Findings of Fact

1. *The granting of the variance would not be contrary to the public interest because Integrity Laser, which is a small growing business that currently rents space in Nashua, seeks to purchase a more fitting and professional building in a safer community. It is a clean business that will bring future jobs to Merrimack;*
2. *The spirit of the Ordinance is observed because the business consumes nothing more than electrical power and disposes of its cardboard boxes and "household" garbage. Traffic is not disrupted because there are only five employees and,*

other than a daily UPS pickup and 1-2 deliveries a week, it receives few visitors. The existing building has provision for adequate meeting space for a church of around 25 people, who will also meet in the building. The greatest traffic impact would consist of only 10-15 cars on a Sunday morning, when other businesses are closed. The units have parking for 81 cars;

3. *Granting this variance would do substantial justice because a growing small business will bring above-minimum-wage jobs to unskilled workers in Merrimack. Its mission is to hire and train people to become valued employees with transferrable skills. It is a clean business with no EPA concerns. The business and the accompanying church care about people in the community who are out of work and in need. The property is in a residential zone, yet the building and facility would never be appropriate for residential use. The proposed use is completely in line with the construction and design of the building. Forcing the use to conform to the zone rather than the area and facility would not serve “justice”;*
4. *The values of the surrounding properties would not be diminished because other than the few delivery trucks and UPS pickup, the business stays inside its walls. It will occupy a building that is currently empty and that has been for sale since 2009. Integrity Laser is conscious of how it impact other properties. The use is similar to other uses that have operated at the property for 20+ years. There would be no noticeable change;*
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 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 there are no other “two-unit” properties like this one that can meet the needs of both the business and the church. It is unique in that it serves the dual purpose of helping people by giving them good work at a good wage. It needs a building it can afford in the 5,000-7,000 square foot range that would not require additional money and work to be made “move-in” ready.*

- 7. Psalm 24:1, LLC. (petitioner) and TW Bridge Associates, LLC. (owner) –** Special Exception under Section 2.02.1(B) and 2.02.13(D)(1) of the Zoning Ordinance to permit a church use in the R (Residential) and Town Center Overlay Districts. The parcel is located at 10 Twin Bridge Road, Units 2A & 2B. Tax Map 5D-3, Lot 115. Case # 2015-17.

Pastor Jeff Muster, Psalm 24:1, LLC, read the statutory criteria into the record.

Patrick Dwyer asked why a diagram rather than a plan was submitted. Jeff Muster explained that the property is zoned for two condominiums, with 2,000 square feet for

the church. The diagram more closely matches the interior and is more accurate than the plan for the manufacturing use, which states that “all dimensions are approximate”.

Regarding #6 Special Exception, Fran L’Heureux asked if the church hall could be rented as a commercial venue. Jillian Harris explained that it is allowed as an accessory church use.

There was no public comment.

The Board voted 5-0-0 to grant the Special Exception, on a motion made by Richard Conescu and seconded by Patrick Dwyer with the condition that the petitioner shall obtain Administrative Approval for the change of use from the Community Development Department prior to use of the unit as a church.

Findings of Fact (Town Center)

1. *The site is an appropriate location for the proposed use in accordance with the Town Center Plan because the unit has ample meeting space for the congregation. The parking available is 4-5 times more than needed. None of the surrounding businesses are open Sunday mornings;*
2. *The proposed use would not result in significant increased hazards to vehicles or pedestrians by way of traffic congestion, ingress or egress because the number of cars for those attending services would be 10-15. The property was designed to accommodate more than 80 cars;*
3. *The proposed use would not result in unreasonable impacts to abutting properties by way of increased noise, odor, visual blight or other nuisances because church services would be conducted indoors and there would be only 10-15 cars on Sunday mornings;*
4. *The proposed use is designed in harmony with the overall goals of the Town Center plan with respect to building, transportation corridor, and site design and arrangement because a church is one of the uses approved for this property, available parking is more than needed, and abutting properties will not be negatively impacted.*

Findings of Fact (Special Exception: church)

1. The specific site is an appropriate location for such a use in terms of overall community development;
2. The use as developed will not adversely affect the neighborhood and shall produce no diminution of real estate values in the neighboring area;
3. There will be no nuisance or serious hazard to vehicles or pedestrians;
4. An adequate parking area is provided for motor vehicles on the premises;
5. *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. It is not possible to plant trees because the driveway abuts a major highway. This is not a residential use;*

6. The use as developed with be restricted for church purposes only. No commercial use of a church within the residential zone will be allowed.

8. **Tamsad Realty, LLC. (petitioner/owner)** – Special Exception under Section 2.02.2(C) of the Zoning Ordinance to permit the conversion of a single-family residence to a two-family residence. The parcel is located at 633 D.W. Highway in the C-1 (Limited Commercial) and Aquifer Conservation Districts and Wellhead Protection area. Tax Map 6E-2, Lot 024. Case #2015-18.

Naga Tamragouri, Tamsab Realty, LLC, read the statutory criteria into the record.

Regarding #2, affect on the neighborhood, Lynn Christensen asked if there would be a change in building size. Naga Tamragouri stated that there are no proposed building additions planned as part of the project. Fran L'Heureux asked if it would be a duplex. Naga Tamragouri stated that there would be an upstairs and a downstairs apartment that would be rented. There would be two bedrooms and one bathroom each upstairs and downstairs. The in-law apartment/ADU in the basement is not being used. The staircase would be blocked to make two separate units.

Public comment

Pat Wolfendale, 4 Allen Road, spoke for herself and Patricia Cadegan, 6 Hilton Drive. She said the previous owner wanted an easement on both their properties to connect the house to the sewer in front of their properties, which was not granted. They are concerned that the septic would flow downhill into their area. Pat Wolfendale said septic overflow and odor have been issues. Two families in the house are worse than one. All property owners denied an easement to the previous owner. The septic system was a big issue.

Jillian Harris explained that, if the Special Exception is approved, the applicant must seek a Variance for lot area. In answer to Lynn Christensen, she said that the Community Development Department does not have the septic design.

Lynn Christensen asked whether sewer is available to this property. Jillian Harris said it would have to go through the abutting properties to the rear. The sewer does not come to this property. Patrick Dwyer asked about regulations for a two-family septic system. Jillian Harris would have to ask the Building Official. Patrick Dwyer said that, if there are any criteria for improving the septic system, the Zoning Board of Adjustment (ZBA) would have to learn about them from the Building Department. Richard Conescu agreed that they are not relevant to this petition. If a Special Exception is denied, the owner can still rent the house to two families, creating a situation with more people and more sewage than currently. Lynn Christensen asked whether a multi-family home must have town sewer. Jillian Harris said it must, but a multi-family dwelling is defined as having three or more units.

The Board voted 4-1-0 to continue this item to June 24, 2015, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Patrick Dwyer and seconded by Leonard Worster. Richard Conescu voted in the negative.

9. **Mario Fortin and Nitrof Investments, LLC. (petitioner/owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit a 18'x60' storage shed 2 feet from

the side property line where as 20 feet is required. The parcel is located at 82 D.W. Hwy in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 2D, Lot 040. Case # 2015-19.

Chris Fortin, Nitrof Investments, LLC, read the statutory criteria into the record. Mario Fortin, Nitrof Investments, LLC, said he is remodeling the entire inside as well as redoing the outside. The roof where he put materials is falling down and cannot be used in winter. Trash he brings from a job site can be seen from D.W. Highway. He will enclose it so it cannot be seen and can be inside in winter. There is no vehicle storage; just materials from the drywall business.

Public comment

Frank Lagana, 4 John Tyler Street, is concerned about how a building that size would look on his property line. Mario Fortin said he would use efface/Styrofoam stucco/plaster effect on the entire building. It will look beautiful. The outside will be finished. No metal will be used. Frank Lagana said he has no problem if it will not be a warehouse with materials on top.

The Board voted 5-0-0 to grant the Variance, on a motion made by Richard Conescu and seconded by Patrick Dwyer, with the condition that the petitioner shall obtain site plan approval from the Planning Board prior to commencement of any construction on the site.

Findings of Fact

1. *The granting of the variance would not be contrary to the public interest because there would be no substantial increase in traffic entering or leaving the property;*
2. *The spirit of the Ordinance is observed because the land is zoned as commercial and would be used as such;*
3. *Granting this variance would do substantial justice because the use would not disrupt traffic and the surrounding neighborhoods would not be impacted by noise;*
4. *The values of the surrounding properties would not be diminished because the land and small structure would be impeccably maintained. Any equipment kept at the site would be placed inside the structure when not in use so as not to distract from the aesthetic of the area;*
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 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 a Variance will still allow a reasonable distance between the property and the neighbor on the property line, allowing the 18' x 60' storage structure to attach to the warehouse and to be added to the property.*

10. Discussion/possible action regarding other items of concern

This item was discussed after item #11.

Richard Conescu reported on the OEP meeting he attended. The rate of New Hampshire families with children declined 7% annually in the last decade. That means the value of single-family homes could decline for lack of demand. The NH Legislature is considering loosening ADU (Accessory Dwelling Unit) requirements, which have potentially more positive impact on property values. Richard Conescu suggested making approval of an ADU an Administrative Decision. Although the ZBA approves most ADU requests, Patrick Dwyer wanted it to continue to hear them because some look more like an apartment than an ADU. He cited agenda item #8, an owner who wishes to convert an ADU into a rental apartment. A duplex or two apartment home would set a precedent. Richard Conescu countered that an in-law apartment is different. Tonight's agenda item is not what he is discussing. Perhaps apartments should require a Variance rather than a Special Exception. Staff can approve ADUs, as is done in other towns. Fran L'Heureux was agreeable to an Administrative Decision for an ADU that meets requirements and coming to the ZBA for a Variance if it does not. She cited a previous problematic case. Patrick Dwyer did not want the ZBA to relinquish its ability to decide. He, Fran L'Heureux and Richard Conescu were agreeable to allowing an Administrative Decision only for "cookie-cutter" applications. A discussion about requiring a Variance vs. a Special Exception ensued.

11. Approval of Minutes – April 29, 2015

This item was discussed before item #10.

Only two members present had attended the April 29, 2105, meeting.

The minutes of April 29, 2015, were continued to June 24, 2015, at 7:00 p.m., in the Matthew Thornton Meeting Room, by a vote of 4-0-1, on a motion made by Leonard Worster and seconded by Richard Conescu. Patrick Dwyer voted in the negative.

The minutes of March 25, 2105, were continued to June 24, 2015, at 7:00 p.m., by a vote of 5-0-0, in the Matthew Thornton Meeting Room, on a motion made by Richard Conescu and seconded by Patrick Dwyer.

12. Adjourn

The meeting adjourned at 8:38 p.m., by a vote of 5-0-0, on a motion made by Richard Conescu and seconded by Patrick Dwyer.