



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES WEDNESDAY, MAY 31, 2023

A regular meeting of the Merrimack Zoning Board of Adjustment was conducted on Wednesday, May 31, 2023 in the Matthew Thornton Room.

Members Present:

- Richard Conescu (Chair)
- Ben Niles
- Patrick Dwyer
- Lynn Christensen
- Charles Mower (Alternate)

Members Absent:

- Rod Buckley (Vice Chair)

Staff Present: Colleen Olsen, Assistant Planner

1. Call to Order

Chair Rich Conescu called the meeting to order at 6:30 p.m. Lynn Christensen read the preamble. Rich Conescu appointed Alternate Charles Mower to sit for Rod Buckley.

2. Roll Call

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

3. Annual Meeting – Election of Officers & Review of Rules of Procedure

Chair Conescu tabled the annual meeting until end of the meeting.

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. ***This item is continued from the March 29, 2023 and April 26, 2023 meetings.***

Attorney Eli Leino (Bernstein Shur) and Charlie Morgan (property owner) presented the petition to the Board. Mr. Leino began by sharing an overview of the parcel in question and demonstrating the location of the proposed billboard. He added that they received permission from the State to erect the billboard adjacent to the F.E. Everett Turnpike and also received DES

1 relief for the proximity to the wetlands. Mr. Leino read through the responses to the statutory
2 criteria (outlined below) and took questions from the Board.

3
4 Chair Conescu asked if the advertising would be limited to Merrimack businesses and Mr. Leino
5 replied that it would not be limited to Merrimack businesses but would most likely be
6 businesses in the surrounding area. There was some discussion about whether or not the sign
7 could advertise for on-site and off-site businesses but they decided to table the discussion until
8 agenda item six. Chair Conescu stated that Billboard signs are not permitted in Merrimack and
9 asked how the spirit of the ordinance is being upheld. Mr. Leino responded that the spirit of the
10 ordinance is to decrease visual clutter and if placed in the wrong location, the sign would
11 certainly be visual clutter. This sign is being proposed in the rear of the property that facing the
12 Turnpike so it's the appropriate size for traffic on the Turnpike.

13
14 Chair Conescu shared his beliefs that he does not feel that the spirit of the ordinance is being
15 met since billboards are prohibited in town. Mr. Leino argued that something that is prohibited
16 everywhere in town has an inherent hardship and that all of the factors should be considered
17 when making a determination because this site has unique features. Chair Conescu then
18 expressed concerns that any residential neighborhoods on the other side of the highway may
19 be negatively impacted by the brightness of the electronic sign, Lynn Christensen stated that
20 the Mallard Point neighborhood is on the opposite side of the Turnpike and there is a large
21 buffer between the houses and the turnpike so she does not feel they will be impacted at all.

22
23 Ben Niles commented that there are several criteria to meet for an electronic sign (and read a
24 few from the Zoning Ordinance) and asked the petitioner if all of the other criteria would be
25 met and Mr. Leino responded that all criteria will be met.

26
27 *Public Comment*

28
29 State Rep Tim McGough (5 Bowers Landing Drive) spoke in favor of granting the variance and
30 talked about the improvements Mr. Morgan has made to the site and how conscientious he is
31 about adhering to EPA regulations. He also commented that he has walked the site and feels
32 that the proposed billboard will not have a negative impact on any residents of Merrimack.

33
34 Donna Przybyszewski (15 Sarah Drive) spoke in favor of the petition and commented that his
35 business (Vault Motor Storage) has generously donated to her various charities by either
36 providing cash donations or allowing the use of the Vault parking lot.

37
38 State Rep Bill Boyd (139 Joppa Road) spoke in favor of granting the variance, as he feels that
39 the petitioner has met all of the requirements. He also mentioned that the Merrimack Public
40 Library's electronic sign functions admirably despite the fact that it is located at a major
41 intersection.

42
43 Charles Mower offered his understanding of the intent of the "Spirit of the Ordinance" criterion
44 and spoke in favor of granting the variance as the petitioner is just trying to maximize the use
45 of his property.

46
47 **The Board voted 3-2-0 to find that the petitioner's responses to the statutory criteria are**
48 **sufficient, proved each criterion is met, and the Board adopts the petitioner's responses**
49 **as the Board's findings of fact, and further, to grant the Variance under Section 17.07.3**
50 **of the Zoning Ordinance to permit a billboard sign to be erected in the (C-2) General**

Commercial District on a motion made by Lynn Christensen and seconded by Ben Niles. Patrick Dwyer and Rich Conescu voted in opposition.

Findings of Fact:

1. **Granting the variance would not be contrary to the public interest because:** The area on the lot is significantly removed from the property's frontage on the Daniel Webster Highway (Route 3), and will only be visible to vehicles travelling on the F. E. Everett Turnpike. The Everett Turnpike is a major thoroughfare featuring other signs of the type proposed. Granting the variance allows for a sign of sufficient size to be seen by vehicles travelling at highway speeds, and will not negatively impact the public health, safety, or welfare, nor alter the essential commercial character of the site and area.
2. **The spirit of the ordinance is observed because:** The goal of the ordinance is to prevent visual clutter that would reduce the attractiveness of Merrimack and increase risk to motorists or pedestrians by causing distractions or reduced visibility. The proposed location is inaccessible to pedestrians, has no vehicular access to the Turnpike, and is already affected by a neighboring overhead transmission line. Granting this variance enhances the lot's commercial use without negatively impacting the neighbors or the public. As such, the spirit of the ordinance is observed.
3. **Granting the variance would do substantial justice because:** In balancing the rights of the lot owner with the rights of the public, installation of the sign will materially benefit the Applicant while having a *de minimus* effect on the town at large. Based on the uniqueness of the site, namely its gap in the forest buffer caused by the transmission line, it is an ideal location for this type of sign. A denial of this variance would not be outweighed by any gain to the public.
4. **Granting the variance would not diminish the values of surrounding properties because:** The location of this site in the commercial zone, along with significant natural buffering, mean that this request should have almost no effect on surrounding properties. Signs on the Everett Turnpike and similarly sized highways are common in New Hampshire and elsewhere, and when properly located, as this proposal is, are beneficial.
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 Everett Turnpike is significantly buffered by trees as demonstrated in the photo provided in the petition. This location is one of an exceedingly small number in Merrimack that a) is zoned commercial, b) borders the Turnpike, and c) features a significant break in the natural buffer (due to the power line), making it ideal for a larger billboard sign.
 - b. **The proposed use is a reasonable one because:** A hardship exists when special conditions of the land render the use for which the variance is sought "reasonable." See *Rancourt v. City of Manchester*, 149 N.H. 51, 54 (2003). A confluence of factors makes this unique lot a prime location for a sign, a use common on the Everett Turnpike and similar New Hampshire highways, and therefore reasonable.

- 1 **5. 526 DW, LLC (petitioner/owner)** – Variance under Section 17.10.3 of the Zoning Ordinance
2 to permit a second ground sign (520.8 square foot billboard sign) to be erected with less than
3 300 feet of contiguous frontage along the same right-of-way. The parcel is located at 526 Daniel
4 Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly Housing
5 Overlay Districts and the Wellhead Protection Area. Tax Map 5D-2 Lot 001. Case # ZBA 2023-
6 **15. *This item is continued from the April 26, 2023 meeting.***
7

8 Attorney Eli Leino (Bernstein Shur) and Charlie Morgan (property owner) presented the
9 petition to the Board. Mr. Leino began by explaining that the Zoning Ordinance allows a second
10 ground sign when there is an additional 300' of contiguous frontage, which this property has,
11 however, the existing ground sign is larger than what is allowed so it negates the allowance of
12 a second sign which is why relief is needed. Mr. Leino read through the responses to the
13 statutory criteria (outlined below) and took questions from the Board.
14

15 *Public Comment:* None
16

17 **The Board voted 4-1-0 to find that the petitioner's responses to the statutory criteria are**
18 **sufficient, proved each criterion is met, and the Board adopts the petitioner's responses**
19 **as the Board's findings of fact, and further, to grant the Variance under Section 17.10.3**
20 **of the Zoning Ordinance to permit a second ground sign (520.8 square foot billboard**
21 **sign) to be erected on a site that has already utilized its frontage advantage by having a**
22 **single, oversized ground sign, on a motion made by Lynn Christensen and seconded by**
23 **Charles Mower. Patrick Dwyer voted in opposition.**
24

25 *Findings of Fact:*
26

- 27 **1. Granting the variance would not be contrary to the public interest because:** The area on
28 the lot is significantly removed from the property's frontage on the Daniel Webster Highway
29 (Route 3), and will only be visible to vehicles travelling on the F. E. Everett Turnpike. The
30 Everett Turnpike is a major thoroughfare featuring other signs of the type proposed. Granting
31 the variance allows for a sign of sufficient size to be seen by vehicles travelling at highway
32 speeds, and will not negatively impact the public health, safety, or welfare, nor alter the
33 essential commercial character of the site and area.
34
- 35 **2. The spirit of the ordinance is observed because:** The purpose of Section 17 is to encourage
36 the effective use of signage to direct movement, advertise, and inform the public while
37 protecting public safety, preserving neighborhood character and minimizing visual clutter.
38 (§17.01). The proposed location is inaccessible to pedestrians, has no vehicular access to the
39 Turnpike, and is already affected by a neighboring overhead transmission line. Granting this
40 variance enhances the lot's commercial use without negatively impacting the neighbors or the
41 public. As such, the spirit of the ordinance is observed.
42
- 43 **3. Granting the variance would do substantial justice because:** In balancing the rights of the
44 lot owner with the rights of the public, installation of the sign will materially benefit the
45 Applicant while having a *de minimus* effect on the town at large. Based on the uniqueness of the
46 site, namely its gap in the forest buffer caused by the transmission line, it is an ideal location
47 for this type of sign. A denial of this variance would not be outweighed by any gain to the public.
48
- 49 **4. Granting the variance would not diminish the values of surrounding properties because:**
50 The location of this site in the commercial zone, along with significant natural buffering, mean

1 that this request should have almost no effect on surrounding properties. Signs on the Everett
2 Turnpike and similarly sized highways are common in New Hampshire and elsewhere, and
3 when properly located, as this proposal is, are beneficial.
4

5 **5. Unnecessary hardship:**

6
7 a. **Owing to the following special conditions of the property that distinguish it from**
8 **other properties in the area, explain how no fair and substantial relationship exists**
9 **between the general public purpose of the ordinance provision and the specific**
10 **application of that provision to the property.** The Everett Turnpike is significantly
11 buffered by trees as demonstrated in the photo provided in the petition. This location is one
12 of an exceedingly small number in Merrimack that A) is zoned commercial, B) borders the
13 Turnpike, and C) features a significant break in the natural buffer (due to the power line),
14 making it ideal for an off-premise sign.
15

16 b. **The proposed use is a reasonable one because:** A hardship exists when special
17 conditions of the land render the use for which the variance is sought "reasonable." See
18 *Rancourt v. City of Manchester*, 149 N.H. 51, 54 (2003). A confluence of factors makes this
19 unique lot a prime location for a sign, a use common on the Everett Turnpike and similar
20 New Hampshire highways, and therefore reasonable.
21

22 **6. 526 DW, LLC (petitioner/owner) – Variance under Section 17.11 of the Zoning Ordinance to**
23 **permit a sign devoted to off-premise advertising where a sign advertising the on premise uses**
24 **already exists. The parcel is located at 526 Daniel Webster Highway in the C-2 (General**
25 **Commercial), Aquifer Conservation, Elderly Housing Overlay Districts and the Wellhead**
26 **Protection Area. Tax Map 5D-2 Lot 001. Case # ZBA 2023-16. *This item is continued from the***
27 ***April 26, 2023 meeting.***
28

29 Attorney Eli Leino (Bernstein Shur) and Charlie Morgan (property owner) presented the
30 petition to the Board. Chair Conescu asked for clarification on if the sign will be used for both
31 on-site and off-site advertising and Mr. Leino responded that the way the Ordinance is being
32 interpreted, it can only be one or the other so they may eventually have to seek relief to allow
33 for on-site advertising. Mr. Morgan expressed his frustration and asked the town to work with
34 him because he has turned an eye-sore of a property into something beautiful and he pays a lot
35 of taxes for his property. He also commented that the sign in question is very expensive and
36 that he needs to generate revenue from it but is also willing to work with the town to use it for
37 emergencies when necessary. Mr. Morgan then added that he went “way over the top” with
38 landscaping for the front of the building and plans to do the same with the back of the lot this
39 year.
40

41 *Public Comment:* None
42

43 **The Board voted 5-0-0 to find that the petitioner’s responses to the statutory criteria are**
44 **sufficient, proved each criterion is met, and the Board adopts the petitioner’s responses**
45 **as the Board’s findings of fact, and further, to grant the Variance Section 17.11 of the**
46 **Zoning Ordinance to permit a sign devoted to off-premise advertising where a sign**
47 **advertising the on premise uses already exists, on a motion made by Lynn Christensen**
48 **and seconded by Charles Mower.**
49

50 *Findings of Fact:*

- 1
2 **1. Granting the variance would not be contrary to the public interest because:** The area on
3 the lot is significantly removed from the property's frontage on the Daniel Webster Highway
4 (Route 3), and will only be visible to vehicles travelling on the F. E. Everett Turnpike. The
5 Everett Turnpike is a major thoroughfare featuring other signs of the type proposed. Granting
6 the variance allows for a sign of sufficient size to be seen by vehicles travelling at highway
7 speeds, and will not negatively impact the public health, safety, or welfare, nor alter the
8 essential commercial character of the site and area.
9
- 10 **2. The spirit of the ordinance is observed because:** The purpose of Section 17 is to encourage
11 the effective use of signage to direct movement, advertise, and inform the public while
12 protecting public safety, preserving neighborhood character and minimizing visual clutter.
13 (§17.01). The proposed location is inaccessible to pedestrians, has no vehicular access to the
14 Turnpike, and is already affected by a neighboring overhead transmission line. Granting this
15 variance enhances the lot's commercial use without negatively impacting the neighbors or the
16 public. As such, the spirit of the ordinance is observed.
17
- 18 **3. Granting the variance would do substantial justice because:** In balancing the rights of the
19 lot owner with the rights of the public, installation of the sign will materially benefit the
20 Applicant while having a *de minimus* effect on the town at large. Based on the uniqueness of the
21 site, namely its gap in the forest buffer caused by the transmission line, it is an ideal location
22 for this type of sign. A denial of this variance would not be outweighed by any gain to the public.
23
- 24 **4. Granting the variance would not diminish the values of surrounding properties because:**
25 The location of this site in the commercial zone, along with significant natural buffering, mean
26 that this request should have almost no effect on surrounding properties. Signs on the Everett
27 Turnpike and similarly sized highways are common in New Hampshire and elsewhere, and
28 when properly located, as this proposal is, are beneficial.
29
- 30 **5. Unnecessary hardship:**
31
 - 32 a. **Owing to the following special conditions of the property that distinguish it from**
33 **other properties in the area, explain how no fair and substantial relationship exists**
34 **between the general public purpose of the ordinance provision and the specific**
35 **application of that provision to the property.** The Everett Turnpike is significantly
36 buffered by trees as demonstrated in the photo provided in the petition. This location is one
37 of an exceedingly small number in Merrimack that a) is zoned commercial, b) borders the
38 Turnpike, and c) features a significant break in the natural buffer (due to the power line),
39 making it ideal for a larger billboard sign. The Applicant's property has over 600' of
40 contiguous frontage on the Daniel Webster Highway but the existing sign is dimensionally
41 large enough that the installation of a second sign requires the requested zoning relief.
42 Additionally, the proposed second sign will not be located abutting "frontage along the
43 same right-of-way" as is required by Section 17.10.3 of the ordinance.
44
 - 45 b. **The proposed use is a reasonable one because:** A hardship exists when special
46 conditions of the land render the use for which the variance is sought "reasonable." See
47 *Rancourt v. City of Manchester*, 149 N.H. 51, 54 (2003). A confluence of factors makes this
48 unique lot a prime location for a sign, a use common on the Everett Turnpike and similar
49 New Hampshire highways, and therefore reasonable.
50

- 1 **7. 526 DW, LLC (petitioner/owner)** – Variance under Section 2.02.7 (A) (6) of the Zoning
2 Ordinance to permit the placement of a structure (two sign posts) to be located 28.2 feet and
3 33 feet from a wetlands boundary whereas 40 feet is required. The parcel is located at 526
4 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly
5 Housing Overlay Districts and the Wellhead Protection Area. Tax Map 5D-2 Lot 001. Case # ZBA
6 2023-12. ***This item is continued from the March 29, 2023 and April 26, 2023 meetings.***
7

8 Attorney Eli Leino (Bernstein Shur) presented the petition to the Board. Mr. Leino read through
9 the responses to the statutory criteria (outlined below) and took questions from the Board.
10

11 Mr. Leino clarified that nothing will be placed in the wetlands themselves, and instead the two
12 posts will be within the wetland buffer.
13

14 *Public Comment:* None
15

16 **The Board voted 5-0-0 to find that the petitioner's responses to the statutory criteria are**
17 **sufficient, proved each criterion is met, and the Board adopts the petitioner's responses**
18 **as the Board's findings of fact, and further, to grant the Variance Section 17.11 of the**
19 **Zoning Ordinance to permit a sign devoted to off-premise advertising where a sign**
20 **advertising the on premise uses already exists, on a motion made by Lynn Christensen**
21 **and seconded by Charles Mower.**
22

23 *Findings of Fact:*
24

- 25 **1. Granting the variance would not be contrary to the public interest because:** Ordinance
26 prescribes a 40' buffer around wetlands for four primary reasons: 2.02.7.2. Purpose: In the
27 interest of public health, convenience, safety and welfare, the regulations of this District are
28 intended to guide the use of areas of land with extended periods of high water tables:
29

- 30 a) To prevent the development of structures and other land uses on or adjacent to wetlands
31 that would contribute to pollution of surface and ground water.
32
33 b) To prevent the destruction and degradation of natural wetlands that provide flood
34 protection.
35
36 c) To prevent unnecessary or excessive expenses to the Town to provide and maintain
37 essential service and utilities which arise because of inharmonious use of wetlands and
38 adjacent upland areas.
39
40 d) To encourage those uses that can be appropriately and safely located in and around wetland
41 areas.
42

43 "To be contrary to the public interest or injurious to the public rights of others, the variance
44 must 'unduly, and in a marked degree,' conflict with the ordinance such that it violates the
45 ordinance's 'basic zoning objectives.'" *Chester Rod & Gun Club v. Town of Chester*, 152 N.H.
46 577, 581 (2005) Here, the proposed use, namely siting two billboard sign poles a significant
47 distance from the wetlands boundary, will not negatively affect the public interest as
48 demonstrated by the proposal's general conformance with the four Ordinance considerations
49 listed above. The sign will not contribute to pollution. It is a passive use that once installed will

1 have nearly no effect on the wetlands. The town will not be required to provide any services in
2 support of the sign. And finally, this passive use can be safely located in the proposed area.

3
4 **2. The spirit of the ordinance is observed because:** Because it is in the public interest to uphold
5 the "spirit of the ordinance," the New Hampshire Supreme Court has held this both and the
6 previous criteria are related. Thus, if an application meets one, it almost certainly meets the
7 other. See *Farrar v. Keene*, 158 N.H. 684 (2009). The goal of the Ordinance is to prevent harm
8 to the wetlands. The proposed location is nearly to the edge of the required buffer and will not
9 contravene any of the four purposes listed in the Ordinance. As such, the spirit of the ordinance
10 is observed.

11
12 **3. Granting the variance would do substantial justice because:** In balancing the rights of the
13 lot owner with the rights of the public, installation of the sign will materially benefit the
14 Applicant while having a *de minimus* effect on the wetlands or the town at large. Based on the
15 uniqueness of the site, namely its gap in the forest buffer caused by the transmission line, it is
16 an ideal location for this type of sign. A denial of this variance would not be outweighed by any
17 gain to the public including additional wetlands protection.

18
19 **4. Granting the variance would not diminish the values of surrounding properties because:**
20 The location of this site in the commercial zone, along with significant natural buffering, mean
21 that this request should have almost no effect on surrounding properties. Signs on the Everett
22 Turnpike and similarly sized highways are common in New Hampshire and elsewhere, and
23 when properly located, as this proposal is, are beneficial.

24
25 **5. Unnecessary hardship:**

26
27 a. **Owing to the following special conditions of the property that distinguish it from**
28 **other properties in the area, explain how no fair and substantial relationship exists**
29 **between the general public purpose of the ordinance provision and the specific**
30 **application of that provision to the property.** The Everett Turnpike is significantly
31 buffered by trees as demonstrated in the photo provided in the petition. This location is one
32 of an exceedingly small number in Merrimack that A) is zoned commercial, B) borders the
33 Turnpike, and C) features a significant break in the natural buffer (due to the power line),
34 making it ideal for a larger billboard sign. Additionally, the New Hampshire DES has been
35 consulted on this location, and has issued a permit allowing relief from the state wetlands
36 standards.

37
38 b. **The proposed use is a reasonable one because:** A hardship exists when special
39 conditions of the land render the use for which the variance is sought "reasonable." See
40 *Rancourt v. City of Manchester*, 149 N.H. 51, 54 (2003). A confluence of factors makes this
41 unique lot a prime location for a sign, a use common on the Everett Turnpike and similar
42 New Hampshire highways, and therefore reasonable.

43
44 **8. 526 DW, LLC (petitioner/owner) – Variance under Section 17.10.3 (b) of the Zoning**
45 **Ordinance to permit placement of a ground sign to be setback 3 feet from the edge of a public**
46 **right-of-way whereas a 20 foot setback is required. The parcel is located at 526 Daniel Webster**
47 **Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly Housing Overlay**
48 **Districts and the Wellhead Protection Area. Tax Map 5D-2 Lot 001. Case # ZBA 2023-13. *This***
49 ***item is continued from the March 29, 2023 and April 26, 2023 meetings.***

1 Attorney Eli Leino (Bernstein Shur) presented the petition to the Board. Mr. Leino began by
2 explaining that the main reason for the variance is to ensure safety because if the sign were
3 placed within the setbacks, motorists would have to turn their heads to read it. Mr. Leino read
4 through the responses to the statutory criteria (outlined below) and took questions from the
5 Board.

6
7 *Public Comment:* None
8

9 **The Board voted 5-0-0 to find that the petitioner's responses to the statutory criteria are**
10 **sufficient, proved each criterion is met, and the Board adopts the petitioner's responses**
11 **as the Board's findings of fact, and further, to grant the Variance Section 17.11 of the**
12 **Zoning Ordinance to permit a sign devoted to off-premise advertising where a sign**
13 **advertising the on premise uses already exists, on a motion made by Lynn Christensen**
14 **and seconded by Charles Mower.**
15

16 *Findings of Fact:*
17

- 18 **1. Granting the variance would not be contrary to the public interest because:** The area on
19 the lot is significantly removed from the property's frontage on the Daniel Webster Highway
20 (Route 3) and will only be visible to vehicles travelling on the F. E. Everett Turnpike. The Everett
21 Turnpike is a major thoroughfare with significant breakdown lanes and additional gravel and
22 grass buffer from the subject property. Granting the variance allows for the sign to be seen by
23 vehicles travelling at highway speeds, and will not negatively impact the public health, safety,
24 or welfare, nor alter the essential commercial character of the site and area.
25
- 26 **2. The spirit of the ordinance is observed because:** Because it is in the public interest to uphold
27 the "spirit of the ordinance," the New Hampshire Supreme Court has held this both and the
28 previous criteria are related. Thus, if an application meets one, it almost certainly meets the
29 other. See *Farrar v. Keene*, 158 N.H. 684 (2009). The goal of the Ordinance is to prevent harm
30 to the wetlands. The proposed location is nearly to the edge of the required buffer and will not
31 contravene any of the four purposes listed in the Ordinance. As such, the spirit of the ordinance
32 is observed.
33
- 34 **3. Granting the variance would do substantial justice because:** In balancing the rights of the
35 lot owner with the rights of the public, installation of the sign will materially benefit the
36 Applicant while having a *de minimus* effect on the wetlands or the town at large. Based on the
37 uniqueness of the site, namely its gap in the forest buffer caused by the transmission line, it is
38 an ideal location for this type of sign. A denial of this variance would not be outweighed by any
39 gain to the public including additional wetlands protection.
40
- 41 **4. Granting the variance would not diminish the values of surrounding properties because:**
42 The location of this site in the commercial zone, along with significant natural buffering, mean
43 that this request should have almost no effect on surrounding properties. Signs on the Everett
44 Turnpike and similarly sized highways are common in New Hampshire and elsewhere, and
45 when properly located, as this proposal is, are beneficial.
46
- 47 **5. Unnecessary hardship:**
48
 - 49 **a. Owing to the following special conditions of the property that distinguish it from**
50 **other properties in the area, explain how no fair and substantial relationship exists**

1 **between the general public purpose of the ordinance provision and the specific**
2 **application of that provision to the property.** The Everett Turnpike is significantly
3 buffered by trees as demonstrated in the provided in the petitionbelow. This location is one
4 of an exceedingly small number in Merrimack that A) is zoned commercial, B) borders the
5 Turnpike, and C) features a significant break in the natural buffer (due to the power line),
6 making it ideal for a larger billboard sign. Additionally, the New Hampshire DES has been
7 consulted on this location, and has issued a permit allowing relief from the state wetlands
8 standards.

- 9
10 b. **The proposed use is a reasonable one because:** A hardship exists when special
11 conditions of the land render the use for which the variance is sought "reasonable." See
12 Rancourt v. City of Manchester, 149 N.H. 51, 54 (2003). A confluence of factors makes this
13 unique lot a prime location for a sign, a use common on the Everett Turnpike and similar
14 New Hampshire highways, and therefore reasonable.

- 15
16 9. **526 DW, LLC (petitioner/owner)** – Variance under Section 17.10.3 of the Zoning Ordinance
17 to permit a ground sign with a maximum area greater than 100 square feet and visible from the
18 F.E. Everett Turnpike in an area with a posted speed limit of 65 miles per hour. The parcel is
19 located at 526 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation,
20 Elderly Housing Overlay Districts and the Wellhead Protection Area. Tax Map 5D-2 Lot 001.
21 Case # ZBA 2023-14. ***This item is continued from the March 29, 2023 and April 26, 2023***
22 ***meetings.***

23
24 Attorney Eli Leino (Bernstein Shur) and Charlie Morgan (property owner) presented the
25 petition to the Board, He began by explaining that the sign is going to be 520.8 square feet and
26 the typical highway sign is 672 square feet. Signs along the highway need to be large enough
27 for passing vehicles to read safely. Mr. Leino read through the responses to the statutory
28 criteria (outlined below) and took questions from the Board.

29
30 Chair Conescu asked if all billboards are the same size and Mr. Leino replied that they are not
31 but in Merrimack anything greater than 150 square feet is considered a billboard and is
32 typically not allowed but the Board just granted a variance to allow it.

33
34 *Public Comment:* None

35
36 **The Board voted 5-0-0 to find that the petitioner's responses to the statutory criteria are**
37 **sufficient, proved each criterion is met, and the Board adopts the petitioner's responses**
38 **as the Board's findings of fact, and further, to grant the Variance under Section 17.10.3**
39 **of the Zoning Ordinance to permit a ground sign with a maximum area greater than 100**
40 **square feet and visible from the F.E. Everett Turnpike in an area with a posted speed**
41 **limit of 65 miles per hour, on a motion made by Lynn Christensen and seconded by**
42 **Charles Mower.**

43
44 *Findings of Fact:*

- 45
46 1. **Granting the variance would not be contrary to the public interest because:** The area on
47 the lot is significantly removed from the property's frontage on the Daniel Webster Highway
48 (Route 3) and will only be visible to vehicles travelling on the F. E. Everett Turnpike. The Everett
49 Turnpike is a major thoroughfare with significant breakdown lanes and additional gravel and
50 grass buffer from the subject property. Granting the variance allows for the sign to be seen by

vehicles travelling at highway speeds, and will not negatively impact the public health, safety, or welfare, nor alter the essential commercial character of the site and area.

2. The spirit of the ordinance is observed because: Because it is in the public interest to uphold the "spirit of the ordinance," the New Hampshire Supreme Court has held this both and the previous criteria are related. Thus, if an application meets one, it almost certainly meets the other. See *Farrar v. Keene*, 158 N.H. 684 (2009). The goal of the Ordinance is to prevent harm to the wetlands. The proposed location is nearly to the edge of the required buffer and will not contravene any of the four purposes listed in the Ordinance. As such, the spirit of the ordinance is observed.

3. Granting the variance would do substantial justice because: In balancing the rights of the lot owner with the rights of the public, installation of the sign will materially benefit the Applicant while having a *de minimus* effect on the wetlands or the town at large. Based on the uniqueness of the site, namely its gap in the forest buffer caused by the transmission line, it is an ideal location for this type of sign. A denial of this variance would not be outweighed by any gain to the public including additional wetlands protection.

4. Granting the variance would not diminish the values of surrounding properties because: The location of this site in the commercial zone, along with significant natural buffering, mean that this request should have almost no effect on surrounding properties. Signs on the Everett Turnpike and similarly sized highways are common in New Hampshire and elsewhere, and when properly located, as this proposal is, are beneficial.

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 Everett Turnpike is significantly buffered by trees as demonstrated in the photo provided in the petition. This location is one of an exceedingly small number in Merrimack that A) is zoned commercial, B) borders the Turnpike, and C) features a significant break in the natural buffer (due to the power line), making it ideal for a larger billboard sign. Additionally, the New Hampshire DES has been consulted on this location, and has issued a permit allowing relief from the state wetlands standards.

b. **The proposed use is a reasonable one because:** A hardship exists when special conditions of the land render the use for which the variance is sought "reasonable." See *Rancourt v. City of Manchester*, 149 N.H. 51, 54 (2003). A confluence of factors makes this unique lot a prime location for a sign, a use common on the Everett Turnpike and similar New Hampshire highways, and therefore reasonable.

10. Drop One Portables, Inc. (petitioner) and Strategic Acquisition & Real Estate Holdings, LLC (owner) – Variance under Section 2.02.3 of the Zoning Ordinance to permit a contractor's yard in the C-2 (General Commercial) District where the use is not permitted. The parcel is located at 658 Daniel Webster Highway in the C-2 (General Commercial) and Aquifer Conservation Districts and the Wellhead Protection Area. Tax Map 6E-2 Lot 13. Case # ZBA 2023-17.

1 Attorney Eli Leino (Bernstein Shur) and Brian LaBrie (Drop One Portables) presented the
2 petition to the Board. Mr. Leino began by explaining that a variance is being requested so that
3 the petitioner can continue to run his portable toilet business from the location in question. He
4 continued by explaining that the commercial zone allows for personal service establishments,
5 however, the Planning and Zoning Administrator (Robert Price) has determined the use to be
6 a Contractor's Yard.

7
8 Chair Conescu asked if the business is currently operating at the site and Mr. Leino replied that
9 it is and explained the layout of the site. He also added that the site was formerly used by a fuel
10 company and the underground fuel storage tanks have been safely removed. Mr. Leino clarified
11 that the portable toilets are not cleaned onsite and then read through the responses to the
12 statutory criteria (outlined below).

13
14 Mr. Dwyer spoke in favor of granting the variance because he feels that there are already a
15 bunch of contractors along that stretch of DW Highway. He also likes what Mr. LaBrie has done
16 with his neighboring property. Chair Conescu also stated that he supports the variance and
17 added that he feels the Zoning Ordinance should be updated to define a contractors yard.

18
19 *Public Comment*

20
21 State Representative Bill Boyd (139 Joppa Road) spoke in favor of granting the variance as he
22 feels the criteria has been met and that Mr. LaBrie has already turned the adjacent property
23 which was a dilapidated pink house into a nice landscaping business.

24
25 Ron Ketchie (6 Brookside Drive) is an employee of Mr. LaBrie's and said that he is very
26 conscientious and take's care of his employees, customers and property. He is safety minded
27 and upgrades his equipment regularly.

28
29 **The Board voted 5-0-0 to find that the petitioner's responses to the statutory criteria are**
30 **sufficient, proved each criterion is met, and the Board adopts the petitioner's responses**
31 **as the Board's findings of fact, and further, to grant the Variance under Section 2.02.3 of**
32 **the Zoning Ordinance to permit a contractor's yard in the C-2 (General Commercial)**
33 **District where the use is not permitted, with the condition that the petitioner shall**
34 **obtain approval from the Planning Board for the proposed contractor's yard, on a motion**
35 **made by Patrick Dwyer and seconded by Charles Mower.**

36
37 *Findings of Fact:*

- 38
39 **1. Granting the variance would not be contrary to the public interest because:** The purpose
40 of the C-2 zone as defined in the ordinance is the establishment of retail businesses and to serve
41 a regional and/or local shopping and service needs. This use is primarily retail/rental;
42 however, the storage of the units on site also gives rise to a potential classification as
43 "contractor's yard," and thus the need for a variance. This use will not alter the essential
44 character of the neighborhood nor negatively affect the public health, safety or welfare.
45
46 **2. The spirit of the ordinance is observed because:** The C-2 zone was primarily established to
47 promote retail and service uses. This use is fundamentally retail/rental with storage of product
48 screened at the back of the lot. It is in the public interest to uphold the spirit of the ordinance.
49 This proposal will not negatively impact the public or neighbors, will provide an essential

1 service necessary for many gatherings in and around Merrimack, and will comply with the
2 spirit of the ordinance.

3
4 **3. Granting the variance would do substantial justice because:** In balancing the rights of the
5 lot owner and Applicant with the rights of the public, this proposal will provide a public benefit
6 a tax-paying business employing 5-8 people, while not negatively affecting the neighborhood
7 or the town broadly. There are a variety of uses in the area, ranging from Landscape Company,
8 to church, to residence, to septic company, to farm stand, to hot tub store, etc., so allowing this
9 use to occupy the unusual existing building on site will greatly benefit the applicant without
10 public harm.

11
12 **4. Granting the variance would not diminish the values of surrounding properties because:**
13 As noted, this area of Merrimack is home to a wide variety of uses. The Applicant's proposed
14 storage of portable units will be screened from view, and the existing building and general site
15 layout will not change. Only clean, sanitized portable units will be kept on site for sale and
16 rental, so there is no risk of nuisance from sound or smell associated with the use. The proposed
17 use is not expected to have an effect on local property values. Additionally, the removal of the
18 existing fuel storage tanks will reduce potential environmental risks on site.

19
20 **5. Unnecessary hardship:**

21
22 a. **Owing to the following special conditions of the property that distinguish it from**
23 **other properties in the area, explain how no fair and substantial relationship exists**
24 **between the general public purpose of the ordinance provision and the specific**
25 **application of that provision to the property.** The existing building and layout on the lot,
26 as well as the size of the lot make the site unsuitable for many of the uses allowed by right
27 in Section 2.02.3 (e.g. traditional retail and services, professional offices, or restaurant
28 uses). The previous use was a heating oil/ propane products establishment. As such, the
29 building and site are laid out for the sale of a product to be delivered off-site. A Contractor's
30 Yard generally means a yard of any building trade or contractor where equipment and
31 material are stored or where a contractor performs shop or assembly work but does not
32 include any retail or public component. The Applicant is storing product used in its
33 retail/rental operation, but is not operating a traditional contractor's yard. Without the
34 requested relief, the Applicant will be forced to close the operation at this site, and the
35 owner will likely need to reconfigure and reconstruct the site at great expense for a new
36 use.

37
38 b. **The proposed use is a reasonable one because:** The proposed use of the site will likely
39 result in less traffic than the previous use, does not emit more noise or odor than other
40 commercial uses in the area, and provides a necessary service in support of many other
41 uses in town, ranging from weddings to construction sites. The Applicant's vehicles will be
42 garaged at night in the existing garage bays, adding to the orderly appearance of the site.
43 The use is reasonable and allows the use of an existing building that is otherwise
44 significantly limited in its potential, and is generally less intense than the previous
45 commercial use.

46
47 **11. Michael & Carolanne Caron (petitioners/owners) – Variance under Section 2.02.1.c.2 (d) to**
48 **permit a detached Accessory Dwelling Unit on a lot with 20,691 square feet whereas at least**
49 **125,000 square feet of lot area is required. The parcel is located at 12 Collins Ave in the R-1**

(Residential, by soils), Aquifer Conservation, and Elderly Housing Overlay Districts. Tax Map 6D Lot 564. Case # ZBA 2023-18.

Michael Caron (property owner) presented the petition to the Board. Mr. Caron began by explaining that the space in question is the second floor of a garage/workshop that is already constructed. When the building was constructed, they had no immediate use for the space but added it because it was cheaper to do at the time of construction. They have since decided to turn the area into an Accessory Dwelling Unit. Mr. Caron then read through the responses to the statutory criteria (outlined below).

Ben Niles asked how many bedrooms are in the ADU and Mr. Caron stated it is a studio apartment. Mr. Dwyer asked if it is going to have a kitchen and bathroom and Mr. Caron responded that it will. Chair Conescu asked for the square footage of the unit and Mr. Caron responded that it is just over 1,000 square feet and they have a second variance request that addresses that. Mr. Niles asked about the means of ingress and egress and Mr. Caron explained that there is an exterior door that leads to a stairwell for the unit.

Public Comment

State Representative Bill Boyd (139 Joppa Road) spoke in favor of granting the variance and cited similar detached ADUs that were approved in town.

John Marks (15 Collins Ave) spoke against the variance indicating that he is concerned that the homeowner will try to turn the bottom half of the garage until residential units too and that the current homeowners will have their daughter living there but that might not be true if the house ever gets sold.

Various Board members explained that the area is not zoned for multi-family use so only one ADU would be allowed and Ms. Olsen further clarified that the either the house or the ADU can be rented by a non-family member but the homeowner must reside on the property.

Jean Marks (15 Collins Ave) asked if the existing building is going to change at all and where the entrance will be added. Lynn Christensen clarified that the existing building will not be changing on the outside and the entrance is already constructed in the rear of the building.

The Board voted 5-0-0 to find that the petitioner's responses to the statutory criteria are sufficient, proved each criterion is met, and the Board adopts the petitioner's responses as the Board's findings of fact, and further, to grant the Variance under 2.02.1.c.2 (d) of the Zoning Ordinance to permit a detached Accessory Dwelling Unit on a lot with 20,691 square feet whereas at least 125,000 square feet of lot area is required, with a condition that the petitioner shall obtain the associated variance for the ADU size (Case #2023-21); and the petitioner shall obtain Conditional Use Permit approval from the Planning Board for the proposed detached ADU, on a motion made by Patrick Dwyer and seconded by Lynn Christensen.

Findings of Fact:

- 1. Granting the variance would not be contrary to the public interest because:** There is already an existing building with existing parking, there is no other buildings being constructed or additional parking being requested.

2. **The spirit of the ordinance is observed because:** The existing building will not cause any additional traffic. The occupant of the ADU will be a family member and is intended to give her more privacy than she would have living at home.
3. **Granting the variance would do substantial justice because:** The ADU will give their adult child to become more independent and have their own space and it's not adding another person to the property because she already lives in the house.
4. **Granting the variance would not diminish the values of surrounding properties because:** The building has already been constructed and permitted and has been up and running long before they decided to turn it into an ADU. There is no visual change to the surrounding neighbors, because all of the changes were made to the interior of the building.
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.** When the building was constructed they did not attach it to the house because they had no intentions at the time to turn it into an ADU. Now that they want to use the space as an ADU, a variance is necessary to make that happen.
 - b. **The proposed use is a reasonable one because:** There are to changes being made to the footprint of the building, the parking or the sewage load. The same three people will be living on the property but one will be in the new space.

12. **Michael & Carolanne Caron (petitioners/owners) – Variance under Section 2.02.1.c.2 (c) to allow a detached Accessory Dwelling Unit with 1,120 square feet of living space whereas a maximum of 1,000 square feet of living space is permitted.** The parcel is located at 12 Collins Ave in the R-1 (Residential, by soils), Aquifer Conservation, and Elderly Housing Overlay Districts. Tax Map 6D Lot 564. Case # ZBA 2023-21.

Michael Caron presented the petition to the Board. Mr. Caron began by explaining that the external measurements are 1120 square feet and the actual living space is 989.25 square feet (*note: staff calculated the living area to be between 1,000 and 1,120 s.f., necessitating the variance*). He then read through the responses to the statutory criteria (outlined below).

The Board voted 5-0-0 to find that the petitioner's responses to the statutory criteria are sufficient, proved each criterion is met, and the Board adopts the petitioner's responses as the Board's findings of fact, and further, to grant the Variance under Section 2.02.1.c.2 (c) of the Zoning Ordinance to permit a detached Accessory Dwelling Unit with 1,120 square feet of living space whereas a maximum of 1,000 square feet of living space is permitted, with a condition that the petitioner shall obtain Conditional Use Permit approval from the Planning Board for the proposed detached ADU, on a motion made by Patrick Dwyer and seconded by Lynn Christensen.

Findings of Fact:

- 1 **1. Granting the variance would not be contrary to the public interest because:** The building
2 was previously permitted and they only changes have been interior changes to add a laundry
3 room and galley kitchen. No additional living space or parking is being added.
4
- 5 **2. The spirit of the ordinance is observed because:** When the existing building was constructed
6 it was not intended to be used as an ADU so they did not know that the square footage of the
7 upstairs would eventually matter. The ADU will be used by a family member that already lives
8 at the property so there will be no additional water or sewer use.
9
- 10 **3. Granting the variance would do substantial justice because:** The ADU will give their adult
11 child a space of her own with the support of family close by to offer aid if a medical issue were
12 to arise.
13
- 14 **4. Granting the variance would not diminish the values of surrounding properties because:**
15 The building has already been constructed and permitted there are no alterations being made
16 to the building itself or parking.
17
- 18 **5. Unnecessary hardship:**
19
 - 20 **a. Owing to the following special conditions of the property that distinguish it from**
21 **other properties in the area, explain how no fair and substantial relationship exists**
22 **between the general public purpose of the ordinance provision and the specific**
23 **application of that provision to the property.** The square footage is under 1,000 square
24 feet when you factor out interior walls and stairways however since the measurement does
25 not exclude those things, the variance is needed.
26
 - 27 **b. The proposed use is a reasonable one because:** There are to changes being made to the
28 footprint of the building, the parking or the sewage load. The same three people will be
29 living on the property but one will be in the new space.
30
- 31 **13. Bill Norling (petitioner) and Merrimack Memorial Post #98 (owner) –** Variance under
32 Section 17.09.3 to permit a nonresidential electronic graphic display sign in the R (Residential)
33 District where not permitted. The parcel is located at 43 Baboosic Lake Road in the R-4
34 (Residential, by soils), Aquifer Conservation, Elderly Housing Overlay, and Town Center
35 Overlay Districts. Tax Map 5D-3 Lot 1. Case # ZBA 2023-20.
36
37 Ed Kenney (Watchfire Sign) and Bill Norling (American Legion, post 98) presented the petition
38 to the Board. Mr. Kenney began by sharing a picture of the exiting signs on site and a rendering
39 of the electronic sign that is being proposed. He then read through the responses to the
40 statutory criteria (outlined below).
41
42 Lynn Christensen asked if the height of the new sign will be similar to what is there now and
43 Mr. Kenney responded that it will be. Mr. Dwyer asked if the sign will be lit on both sides and
44 whether or not it will be viewable to any residents nearby. Mr. Kenney explained that it is lit on
45 both signs but the nearest residential neighbor is well over 500 feet away and will not be able
46 to see it.
47

48 *Public Comment*
49

1 State Representative Bill Boyd (139 Joppa Road) spoke in favor of the variance and stated that
2 the recent sign upgrade at the VFW has improved their own site. The Legion is part of the Center
3 of Town and the new sign will help to make it look better. He also mentioned the widening of
4 the turnpike which will include a new Baboosic Lake Road bridge and wanted to mention it
5 because he would not want them to place the new sign in a location that would need to be
6 moved.

7
8 State Representative Tim McGough (5 Bowers Landing) spoke in support of granting the
9 variance.

10
11 Dick Peterson of the Legion, stated that the Legion approved the sign 2 years ago and it has
12 taken this long to come to fruition. He added as someone that climbs the ladder to change the
13 letter board sign, he is happy the new sign will be electronic. He also talked about how much
14 easier it will be to update when a request is made to recognize a community member being
15 deployed or returning from deployment.

16
17 Kevin Loftin (18 Harwich Ct) is the commander at post #98 and he stated that the sign will be
18 a game changer for them and is the first of several remodeling projects they have planned.

19
20 **The Board voted 5-0-0 to find that the petitioner's responses to the statutory criteria are**
21 **sufficient, proved each criterion is met, and the Board adopts the petitioner's responses**
22 **as the Board's findings of fact, and further, to grant the Variance under Section 17.09.3**
23 **to permit a nonresidential electronic graphic display sign in the R (Residential) District**
24 **where not permitted, on a motion made by Charles Mower and seconded by Lynn**
25 **Christensen.**

26
27 *Findings of Fact:*

- 28
29 **1. Granting the variance would not be contrary to the public interest because:** While the
30 parcel in question is in a residential zone, there are no residential abutters within 500 ft. of the
31 parcel with direct or indirect visibility to the proposed sign. The American Legion is proposing
32 signage that is similar in scope to like organizations (VFW) that have illuminated signs. The
33 proposed signage will be installed in a manner to maintain the overall look and feel of
34 neighboring businesses. The Legion is a community based organizations run by Veterans and
35 are known for their humanitarian work. They will advertise community events that will benefit
36 the town.
37
38 **2. The spirit of the ordinance is observed because:** The signage will comply with all existing
39 ordinances for illuminated signage for commercially zoned businesses. The Zoning Ordinance
40 is in place to ensure Merrimack has the best community possible and there is no better example
41 of community than what these folks do.
42
43 **3. Granting the variance would do substantial justice because:** The existing sign is in disrepair
44 and needs to be replaced. The new sign will also allow the Legion to have the newest technology
45 and will allow them to compete with like businesses (like the VFW).
46
47 **4. Granting the variance would not diminish the values of surrounding properties because:**
48 Updated, better looking signage will not diminish the value and if anything will only increase
49 property values.
50

1 **5. Unnecessary hardship:**
2

- 3 a. **Owing to the following special conditions of the property that distinguish it from**
4 **other properties in the area, explain how no fair and substantial relationship exists**
5 **between the general public purpose of the ordinance provision and the specific**
6 **application of that provision to the property.** The business is primarily a social club so
7 it has unique circumstances and there are no residential dwellings nearby.
8
9 b. **The proposed use is a reasonable one because:** The ordinance allows for illuminated
10 signage in other zones, which in many cases are very similar to the Legion in terms of
11 abutting properties.
12

13 **14. Bill Norling (petitioner) and Merrimack Memorial Post #98 (owner) – Variance under**
14 Section 17.09.3 to permit a nonresidential sign 31.9 square feet in size whereas a maximum of
15 six square feet is permitted. The parcel is located at 43 Baboosic Lake Road in the R-4
16 (Residential, by soils), Aquifer Conservation, Elderly Housing Overlay, and Town Center
17 Overlay Districts. Tax Map 5D-3 Lot 1. Case # ZBA 2023-19.
18

19 Ed Kenney (Watchfire Sign) and Bill Norling (American Legion, post 98) presented the petition
20 to the Board. Mr. Kenney began by explaining that the new sign is larger than what is allowed
21 in the residential zone but it is a decrease in square footage to what is there now when you
22 combine the three existing signs together. Mr. Kenney then read through the responses to the
23 statutory criteria (outlined below).
24

25 *Public Comment:* None
26

27 **The Board voted 5-0-0 to find that the petitioner's responses to the statutory criteria are**
28 **sufficient, proved each criterion is met, and the Board adopts the petitioner's responses**
29 **as the Board's findings of fact, and further, to grant the Variance under Section 17.09.3**
30 **to permit a nonresidential sign 31.9 square feet in size whereas a maximum of six square**
31 **feet is permitted, on a motion made by Patrick Dwyer and seconded by Lynn Christensen.**
32

33 *Findings of Fact:*
34

- 35 1. **Granting the variance would not be contrary to the public interest because:** The sign will
36 advertise community events that will benefit the town.
37
38 2. **The spirit of the ordinance is observed because:** There are no residential neighbors nearby
39 that will be negatively impacted by the sign and it is similar to other signs in the area.
40
41 3. **Granting the variance would do substantial justice because:** The sign will be used to
42 advertise community events and the electronic sign eliminates the need for someone to climb
43 a letter to change the letter board sign.
44
45 4. **Granting the variance would not diminish the values of surrounding properties because:**
46 Updated, better looking signage will not diminish the value and the square footage of a sign
47 should have no bearing on property values.
48

49 **5. Unnecessary hardship:**

1 a. **Owing to the following special conditions of the property that distinguish it from**
2 **other properties in the area, explain how no fair and substantial relationship exists**
3 **between the general public purpose of the ordinance provision and the specific**
4 **application of that provision to the property.** The maximum square footage for a sign in
5 the residential zone is only 6 square feet which is useless for a business.

6
7 b. **The proposed use is a reasonable one because:** The ordinance allows for EMC's in other
8 zones, which in many cases are very similar to the Legion in terms of abutting properties.
9 The Legion is requesting a simple upgrade over the existing manual changeable copy
10 display.

11
12 **15. S.J. Torres (petitioner) and Orrin H. Connell Family Trust (owner)** – Variance under
13 Section 2.02.7.A.6 to allow two storage container structures/ground signs to remain 18 feet
14 from a jurisdictional wetland whereas 40 feet is required. The parcel is located at 454 DW
15 Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly Housing Overlay, and
16 Town Center Overlay Districts. Tax Map 5D-4, Lot 54. Case # ZBA 2023-22.

17
18 Matt Peterson (Keach-Nordstrom Associates) and S.J. Torres (Tomahawk Tavern Owner)
19 presented the petition to the Board. Mr. Peterson provided a summary of how the structure
20 encroachment was found and shared an aerial view of the site to demonstrate the location in
21 question. He commended SJ on the work he has done to clean up the area and read through the
22 responses to the statutory criteria (outlined below).

23
24 *Public Comment*

25
26 State Representative Tim McGough (5 Bowers Landing Drive) spoke in favor of granting the
27 petitions as the signs are artwork and people stop by just to take their picture with them.

28
29 State Representative Bill Boyd (139 Joppa Road) spoke in favor of the project as he feels the
30 petitioner has satisfied the criteria. He added that Mr. Torres has done a great job with the
31 property.

32
33 **The Board voted 5-0-0 to find that the petitioner's responses to the statutory criteria are**
34 **sufficient, proved each criterion is met, and the Board adopts the petitioner's responses**
35 **as the Board's findings of fact, and further, to grant the Variance under Section 2.02.7.A.6**
36 **to allow two storage container structures/ground signs to remain 18 feet from a**
37 **jurisdictional wetland whereas 40 feet is required, on a motion made by Patrick Dwyer**
38 **and seconded by Lynn Christensen.**

39
40 *Findings of Fact:*

41
42 **1. Granting the variance would not be contrary to the public interest because:** Granting the
43 variance will not be contrary to the public interest. More specifically, the requested variance
44 will not unduly conflict with the basic purposes of the relevant zoning provisions as it will not
45 contribute to the pollution or degradation/destruction of the wetlands, nor threaten public
46 health, convenience, safety, or welfare. There is no effect on the public because the container
47 trailers, intended for beauty and storage, are not expected to negatively impact the adjacent
48 wetlands. If anything, the improvements made to place the container trailers in this location
49 have had a more positive impact on the wetlands than the previous conditions by reducing the

1 likelihood of possibly contaminated (snow melt and garbage) runoff from flowing toward the
2 wetlands.
3

4 **2. The spirit of the ordinance is observed because:** The spirit of the ordinance can be
5 determined based on the purposes set forth in this section of the regulations. In this case, the
6 purposes, as defined in Section 2.02. 7.2 of the Town of Merrimack Zoning Ordinance include,
7 but are not limited to, the prevention of structures or uses that would contribute to the
8 pollution of surface and ground water, and the prevention of the destruction of wetlands. The
9 current location of the container trailers is an area that was previously disturbed and consisted
10 mainly of scrub brush. This area was also previously used for snow storage and trash collection
11 with multiple dumpsters and recycling bins adjacent to the paved access way. The
12 improvements made to place the container trailers in this location have actually had a positive
13 impact on the environment when compared to the prior site condition. Runoff that was
14 potentially contaminated by snow melt and garbage, would be more harmful to the adjacent
15 wetlands than the container trailers with dry goods storage. No portion of the container trailers
16 are located within the wetlands themselves. These sign "structures" are not expected to
17 contribute pollution to or destroy the adjacent wetlands. Therefore, the spirit of the ordinance
18 is observed.
19

20 **3. Granting the variance would do substantial justice because:** Substantial justice is
21 synonymous with fairness. If granting the variance would allow relief of a reasonable request
22 by the Applicant while not adversely impacting the general public, then substantial justice has
23 been done. The existing container trailers are located in the rear of the parcel and were painted
24 to make them more decorative for the restaurant patrons who will be utilizing this space for
25 outdoor dining and occasional fundraising events held onsite. Additionally, the container
26 trailers are anticipated to be used to store temporary event items that are susceptible to poor
27 weather conditions. Improvements to the area were made in order to place the container
28 trailers in this location. The subject area was previously disturbed consisting mainly of scrub
29 brush and utilized for both snow storage and trash collection. Runoff, potentially contaminated
30 by snow melt and garbage, flowing toward the wetlands would be more harmful than container
31 trailers storing dry goods. Allowing these containers to remain in their current location is both
32 convenient for the Applicant and attractive for patrons while not negatively impacting the
33 wetlands from pollution or destruction. Therefore, substantial justice would be done by
34 granting this variance.
35

36 **4. Granting the variance would not diminish the values of surrounding properties because:**
37 The current location of the container trailers does not diminish the value of the surrounding
38 properties. In fact, placing the container trailers in this location has improved the area. This
39 area was previously disturbed, and its condition was less than desirable. The scrub brush area
40 was being used for snow storage and trash collection. The container trailers, which are not
41 visible to the abutting properties, were painted to be "signs" to beautify an otherwise
42 unattractive area. Additionally, the improvements in this area have a more positive impact on
43 the environment as runoff adjacent to the container trailers storing dry goods is favorable to
44 the potentially contaminated runoff from the snow melt and garbage flowing toward the
45 wetlands. The smaller wooded buffer still exists between the container trailers and the
46 wetlands themselves. No negative impacts to the wetlands are anticipated.
47

48 **5. Unnecessary hardship:**
49

1 a. **Owing to the following special conditions of the property that distinguish it from**
2 **other properties in the area, explain how no fair and substantial relationship exists**
3 **between the general public purpose of the ordinance provision and the specific**
4 **application of that provision to the property.** There is no substantial relationship
5 between the general purposes of the ordinance and the specific violation being applied to
6 the property. There is no relationship between the ordinance and variance being requested
7 because the ordinance was written to protect the wetlands, and the container trailers are
8 not expected to negatively impact these wetlands. The container trailers are actually an
9 improvement to the previous site condition.

10
11 b. **The proposed use is a reasonable one because:** to provide convenient storage and
12 artwork to an otherwise unattractive area onsite. The area had already been disturbed, and
13 the wetlands themselves remain protected by the smaller wooded buffer that exists. The
14 continued use of the container trailers is expected to improve, not negatively impact the
15 wetlands.

16
17 **16. S.J. Torres (petitioner) and Orrin H. Connell Family Trust (owner) –** Variance under
18 Section 2.02.7.A.7 to allow two storage container structures/ground signs to remain within the
19 non-disturbance wetland buffer area whereas a 25 foot buffer is required. The parcel is located
20 at 454 DW Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly Housing
21 Overlay, and Town Center Overlay Districts. Tax Map 5D-4, Lot 54. Case # ZBA 2023-23.

22
23 Matt Peterson (Keach-Nordstrom Associates) and S.J. Torres (Tomahawk Tavern Owner)
24 presented the petition to the Board. Mr. Peterson stated that his responses to the statutory
25 criteria are the same as agenda item #15.

26
27 *Public Comment:* None

28
29 **The Board voted 5-0-0 to find that the petitioner's responses to the statutory criteria are**
30 **sufficient, proved each criterion is met, and the Board adopts the petitioner's responses**
31 **as the Board's findings of fact, and further, to grant the Variance under Section 2.02.7.A.7**
32 **to allow two storage container structures/ground signs to remain within the non-**
33 **disturbance wetland buffer area whereas a 25 foot buffer is required, on a motion made**
34 **by Patrick Dwyer and seconded by Lynn Christensen.**

35
36 *Findings of Fact:*

37
38 **1. Granting the variance would not be contrary to the public interest because:** Granting the
39 variance will not be contrary to the public interest. More specifically, the requested variance
40 will not unduly conflict with the basic purposes of the relevant zoning provisions as it will not
41 contribute to the pollution or degradation/destruction of the wetlands, nor threaten public
42 health, convenience, safety, or welfare. There is no effect on the public because the container
43 trailers, intended for beauty and storage, are not expected to negatively impact the adjacent
44 wetlands. If anything, the improvements made to place the container trailers in this location
45 have had a more positive impact on the wetlands than the previous conditions by reducing the
46 likelihood of possibly contaminated (snow melt and garbage) runoff from flowing toward the
47 wetlands.

48
49 **2. The spirit of the ordinance is observed because:** The spirit of the ordinance can be
50 determined based on the purposes set forth in this section of the regulations. In this case, the

purposes, as defined in Section 2.02. 7.2 of the Town of Merrimack Zoning Ordinance include, but are not limited to, the prevention of structures or uses that would contribute to the pollution of surface and ground water, and the prevention of the destruction of wetlands. The current location of the container trailers is an area that was previously disturbed and consisted mainly of scrub brush. This area was also previously used for snow storage and trash collection with multiple dumpsters and recycling bins adjacent to the paved access way. The improvements made to place the container trailers in this location have actually had a positive impact on the environment when compared to the prior site condition. Runoff that was potentially contaminated by snow melt and garbage, would be more harmful to the adjacent wetlands than the container trailers with dry goods storage. No portion of the container trailers are located within the wetlands themselves. These sign "structures" are not expected to contribute pollution to or destroy the adjacent wetlands. Therefore, the spirit of the ordinance is observed.

3. Granting the variance would do substantial justice because: Substantial justice is synonymous with fairness. If granting the variance would allow relief of a reasonable request by the Applicant while not adversely impacting the general public, then substantial justice has been done. The existing container trailers are located in the rear of the parcel and were painted to make them more decorative for the restaurant patrons who will be utilizing this space for outdoor dining and occasional fundraising events held onsite. Additionally, the container trailers are anticipated to be used to store temporary event items that are susceptible to poor weather conditions. Improvements to the area were made in order to place the container trailers in this location. The subject area was previously disturbed consisting mainly of scrub brush and utilized for both snow storage and trash collection. Runoff, potentially contaminated by snow melt and garbage, flowing toward the wetlands would be more harmful than container trailers storing dry goods. Allowing these containers to remain in their current location is both convenient for the Applicant and attractive for patrons while not negatively impacting the wetlands from pollution or destruction. Therefore, substantial justice would be done by granting this variance.

4. Granting the variance would not diminish the values of surrounding properties because: The current location of the container trailers does not diminish the value of the surrounding properties. In fact, placing the container trailers in this location has improved the area. This area was previously disturbed, and its condition was less than desirable. The scrub brush area was being used for snow storage and trash collection. The container trailers, which are not visible to the abutting properties, were painted to be "signs" to beautify an otherwise unattractive area. Additionally, the improvements in this area have a more positive impact on the environment as runoff adjacent to the container trailers storing dry goods is favorable to the potentially contaminated runoff from the snow melt and garbage flowing toward the wetlands. The smaller wooded buffer still exists between the container trailers and the wetlands themselves. No negative impacts to the wetlands are anticipated.

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. There is no substantial relationship between the general purposes of the ordinance and the specific violation being applied to the property. There is no relationship between the ordinance and variance being requested

1 because the ordinance was written to protect the wetlands, and the container trailers are
2 not expected to negatively impact these wetlands. The container trailers are actually an
3 improvement to the previous site condition.
4

- 5 **b. The proposed use is a reasonable one because:** to provide convenient storage and
6 artwork to an otherwise unattractive area onsite. The area had already been disturbed, and
7 the wetlands themselves remain protected by the smaller wooded buffer that exists. The
8 continued use of the container trailers is expected to improve, not negatively impact the
9 wetlands.

10
11 *The Board took up agenda item 3 after item 16.*
12

13 **3. Annual Meeting – Election of Officers & Review of Rules of Procedure**
14

15 *The Board voted 5-0-0 to elect Ben Niles as Vice Chairman on a motion made by Patrick*
16 *Dwyer and seconded by Lynn Christensen.*
17

18 **The Board voted 5-0-0 to elect Rich Conescu as Chairman on a motion made by Patrick**
19 **Dwyer and seconded by Lynn Christensen.**
20

21 **The Board voted 5-0-0 to approve the proposed amendments to the Rules of Procedure,**
22 **on a motion made by Lynn Christensen and seconded by Patrick Dwyer.**
23

24 **17. Discussion/possible action regarding other items of concern**
25

26 None
27

28 **18. Approval of Minutes – April 26, 2023**
29

30 **The Board voted 3-0-2 to approve the minutes of April 26, 2023, as submitted, on a**
31 **motion made by Lynn Christensen and seconded by Charles Mower. Ben Niles and**
32 **Patrick Dwyer abstained.**
33

34 **19. Adjourn**
35

36 **The Board voted 5-0-0 to adjourn at 9:15 p.m. on a motion made by Lynn Christensen and**
37 **seconded by Richard Conescu.**