



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

## **MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES**

WEDNESDAY, MARCH 27, 2013

MATTHEW THORNTON ROOM

Members present: Phil Straight, Fran L'Heureux, Tony Pellegrino, Patrick Dwyer, Kevin Shea, and Alternates Nathan Barry and Richard Conescu.

Members absent: Alternate Leonard Worster.

Staff present: Assistant Planner Jeff Morrisette and Recording Secretary Zina Jordan.

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

Phil Straight called the meeting to order at 7:00 p.m.

### **2. Roll Call**

Patrick Dwyer read the preamble. Phil Straight swore in members of the public who would be testifying. Fran L'Heureux led the pledge of allegiance.

**3. North View Homes and Development Inc. (applicant) and Carl A. Quimby Revocable Trust (owner)** – Variances under Section 3.02 of the Zoning Ordinance to permit five lots in a proposed 13-lot subdivision to have less than the required 250 feet of frontage. The parcels are located at 164 Amherst Road, 8 Pollard Road and an unnumbered parcel in the R-1 (Residential) District. Tax Map 4B, Lots 146, 146-1 & 152-1. Case # 2013-05.

Attorney Greg Michael, Bernstein Shur, said the subject properties total approximately 30 acres in area and are shown as only three parcels by the Assessing Department for taxation purposes but that they were never merged. The parcels are part of the preliminary plan for Wildwood Acres Subdivision originally recorded in 1949. Birch Hill Road is really a driveway that was partially built but is not an accepted town road. Some lots were sold. The landowner owns the roadways. Some of the older grand-fathered lots have less lot size than required or less than 250' of frontage. Fifteen lots on the Wildwood plan could be used. Even though the petitioner can build out the existing lots now, he proposes to create 13 new lots that would conform more to zoning. They would be the required size with individual septic systems and MVD water. Moving the lot lines would cause the existing lots to lose their grand-fathered status and leave five lots (4, 5, 6, 10, 11) at the end of cul-de-sacs with the appropriate area but not enough frontage. There would be plenty of room for driveways. The plan avoids or reduces wetland impacts. The road would be brought up to town standards. There would be appropriate drainage to prevent adverse impact on abutting properties. The conceptual plan was presented to the Planning Board during a pre-submission hearing on March 26, 2013.

Attorney Michael read the points of law into the record.

## **POINTS OF LAW**

#1 Public Interest: Kevin Shea asked how much road frontage Lot 4B-147 would have. Attorney Michael said there is none there now. It has just a driveway to service the lot. Since it was never built as a town road, the lot has no road frontage. Either an access easement to the road system will be granted or a lot line adjustment will be deeded. Then the lot would have frontage on a town road. It is not yet definite where everything will be located.

Jeff Morrisette cautioned the Board that tonight's discussion is only about granting variances to the five lots in question. If the plan creates a zoning violation, the petitioner will either have to revise the plan or return to the Zoning Board (ZBA). Phil Straight added that is also true for any major changes to the five lots. Nathan Barry said there might be a violation if the frontage for Lot 4B-147 is made smaller. Jeff Morrisette said that may be so, but is not part of the five lot discussion. Any other zoning issues must and will be addressed later.

#2 Spirit of the Ordinance: Nathan Barry said there is sufficient access to each lot except Lot 4, which is wet. Attorney Michael said it does have access. The applicant would seek a Dredge and Fill Permit if a driveway were installed. He will limit and help reduce impacts by using an easement over an abutting lot for access to Lot 4. There will be road frontage and a driveway could be installed. Ken Clinton, Meridian Land Services, said the driveway easement for Lot 4 is the same as the 1949 plan for Lot "R".

Chairman Straight cautioned the ZBA not to discuss Planning Board issues, but only the five lots in question.

#4 Values of Surrounding Properties: Nathan Barry asked about abutters' letters, which Jeff Morrisette said were sent to the Planning Board. Attorney Michael stated they concerned drainage, snowmelt and other Planning Board issues.

## **Questions from the Board**

Kevin Shea stated that he was once a magician and this appears to him to be smoke and mirrors. He is of the opinion that the proposal does the opposite of what is stated concerning frontage for Lot 4B-147. Frontage for 13 lots is fine, but the value of Lot 4B-147 will diminish with less frontage. Attorney Michael said the proposed town road would be brought closer to the parcel. It is not Class V road frontage now, just a long driveway. There will be some Class V road frontage and easement rights to maintain access to the town-maintained road. It may have significant frontage if there is a lot line adjustment. That is not the subject of this meeting; the five lots are the agenda item. Attorney Michael assured the ZBA that the proposal will enhance zoning and access rights to Lot 4B-147.

Fran L'Heureux asked if any abutters' letters are about zoning issues. Jeff Morrisette stated that most concern serious drainage issues, traffic and development in general. None are about frontage. The Planning and Zoning Administrator studied the lot and determined that the proposed right-of-way alignment renders Lot 4B-147 non-conforming

for frontage. She and the Planning Board will scrutinize that lot. Frontage of that lot is not being discussed tonight.

Chairman Straight said it is right to have reservations about the values of surrounding properties, but the only criterion the ZBA must consider is diminution of values of surrounding properties. Kevin Shea said that is his concern. Chairman Straight said the ZBA generally accepts that new construction increases property values. Kevin Shea said that would be so if there were frontage from an easement or lot line adjustment. His concern is not the five lots but Lot 4B-147. Attorney Michael said there would be no improvement for Lot 4B-147 if the project does not move ahead. He showed again where an access easement to the public road and/or a lot line adjustment would be for frontage on the proposed town road. Ken Clinton said there are a myriad of other solutions. Other lots have frontage on easements. Keeping the easement intact means nothing will change. A variance to reduce frontage for five lots is reasonable and will not diminish abutters' property values.

Patrick Dwyer noted that the plan, and therefore the frontage, could change, so what is the point of discussing it now? Ken Clinton explained that where the road should be and how the lots would be configured will be discussed at the Planning Board. Attorney Michael said the frontage would not change much. Ken Clinton said he would adhere to the minimum frontages on the plan. Staff has the leeway to decide whether something is a material change requiring another appearance before the ZBA. Even with the current plan, the lot lines can be moved. Patrick Dwyer was satisfied that his question was answered. Chairman Straight noted the proposed staff condition (see below) if the variances are granted.

### **Public comment**

Shannon Duval-Grooms, 5 Pollard Road (Lot 4B-147), is concerned about the road, which is now private and which she maintains. She is concerned about the road at the bend/jug handle and about frontage. It will not be her road and the piece beyond the proposed bend will be of no value or benefit to her. Attorney Michael said the town would maintain the road to her property boundary. Chairman Straight asked whether that would be inconvenient. Shannon Duval-Grooms said there could be a big snow bank where the town will plow. The applicant communicated with her only last night at the Planning Board meeting. Fran L'Heureux asked if she would still be concerned if there were an easement connecting her to the jug handle and giving her a driveway going in. Shannon Duval-Grooms said that would be fine. There are many cars at the jug handle each day and there is a lot of water there. There will be more traffic on the new road. Ken Clinton explained that her road is an easement to benefit all lots, even though Shannon Duval-Grooms maintains it. It will be publicly maintained. The part after the new road bend is her private driveway like all others in town and is her responsibility. The easement would remain. Only Shannon Duval-Grooms can release it.

### **Deliberations of the Board**

Patrick Dwyer reminded the Board that they are to be concerned only with the five lots. Plowing roads and traffic are not the ZBA's concern. Richard Conescu asked if it is possible for the ZBA to require maintenance of frontages. Chairman Straight replied in the negative, stating that the only ZBA issue is whether this is the proper use of the land.

Staff recommends one condition (see below) if the Board votes to grant the variance.

**The Board voted 3-2-0 to grant the Variances, with the following condition, on a motion made by Fran L’Heureux and seconded by Phil Straight. Patrick Dwyer and Kevin Shea voted in the negative.** Any significant revisions to the plan, as determined by Staff, shall require the Petitioner to return to the Zoning Board. Staff shall have the authority to determine whether a modification to the current application vs. submission of a new application is appropriate.

### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because it will result in a more conforming layout of lots. Each lot will be located on cul-de-sacs, thereby providing safe access despite having less than the required 250’ of frontage. The essential character of the area will not be altered other than to clean up the existing awkward subdivision. The number of lots will be reduced and will meet modern standards.
2. The spirit of the ordinance is observed because it will increase the conformity of the subdivision and will not alter the essential character of the neighborhood. Eliminating undersized and landlocked lots will make them more conforming.
3. Granting this variance would do substantial justice because it would eliminate numerous undersized lots and lots without adequate frontage. To deny the variance would mean the Applicant would be unable to develop the existing awkward and non-conforming lots.
4. The values of the surrounding properties would not be diminished because the surrounding undersized properties would be improved with single-family residences. Improving the property with a conventional subdivision is consistent with the surrounding 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 the property consists of a unique group of existing lots of record dating to 1949. There is nothing similar in the area. Many of those lots are oddly shaped, undersized and lack adequate frontage. The platted roadway providing frontage to the existing lots was never constructed. The property includes one lot with no frontage on either an existing Class V road or a platted roadway. The property is surrounded on three sides by town-owned land.
  - 1) No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the proposed five lots with less than the required 250’ of frontage will be located on cul-de-sacs that provide safe and adequate access for emergency vehicles. The five lots are all adequately sized and will have appropriate/significant setbacks and will not result in overcrowding.
  - 2) The proposed use is a reasonable one because single-family residences are permitted in the R-1 Residential District. Permitted uses are considered reasonable uses. The lots meet or exceed 100,000 square feet.

#### **4. Discussion/possible action regarding other items of concern**

Chairman Straight announced the Office of Energy and Planning 19<sup>th</sup> Annual Spring Planning and Zoning Conference scheduled for May 11, 2013, at the Radisson Hotel in Manchester. Chairman Straight asked if any ZBA member wanted to chair the next meeting, per the by-laws. With the Board's agreement, Kevin Shea volunteered to do so, depending on the agenda items. He will meet with the Chairman and staff to prepare.

#### **5. Approval of Minutes – February 27, 2013**

**The minutes of February 27, 2013, were approved, with changes, by a vote of 4-0-1, on a motion made by Tony Pellegrino and seconded by Kevin Shea. Patrick Dwyer abstained.**

#### **6. Adjourn**

**The meeting adjourned at 8:05 p.m., by a vote of 5-0-0, on a motion made by Fran L'Heureux and seconded by Patrick Dwyer.**