



Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

Fax 603 424-1408

Town Hall - Lower level - East Wing

www.merrimacknh.gov

Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT

APPROVED MINUTES

WEDNESDAY, MAY 28, 2014

Members present: Fran L'Heureux, Patrick Dwyer, Phil Straight, Tony Pellegrino and Alternate Richard Conescu.

Members absent: Alternates Leonard Worster and Nathan Barry.

Staff present: Community Development Director Tim Thompson, Planning and Zoning Administrator Jillian Harris, and Recording Secretary Zina Jordan.

1. Call to Order

Fran L'Heureux called the meeting to order at 7:00 p.m. and designated Richard Conescu to sit for the vacant full member position.

2. Roll Call

Tony Pellegrino led the pledge of allegiance. Richard Conescu read the preamble. Fran L'Heureux swore in members of the public who would be testifying.

Tim Thompson introduced and welcomed Planning and Zoning Administrator Jillian Harris, who listed her education and related experience.

Agenda item #4 was taken up before agenda item #3.

- 4. New Cingular Wireless PCS, LLC. (petitioner) and Alan & Erin Walsh (owners)** – Special Exception under Section 2.02.1(B)(3), Section 2.02.1(B)(1)(a-e), and Section 2.02.4(B)(21)(a) of the Zoning Ordinance to allow the construction of a Telecommunication Tower in the R (Residential) and Aquifer Conservation Districts. The parcel is located at 121 Joppa Road. Tax Map 6C, Lot 329. Case# 2014-16.

Tim Thompson explained that there was an error with two abutter notices and the five-day notice required by RSA 676:7 cannot be met.

At the applicant's request, the Board voted 5-0-0 to continue this item to June 25, 2014, and require re-notification of abutters, in the Matthew Thornton Meeting Room, at 7:00 p.m., on a motion made by Tony Pellegrino and seconded by Patrick Dwyer.

- 3. SMC Management Corporation (petitioner) and New Stream RE Funding 17, LLC. (owner)** – Request for Re-Hearing of Case # 2014-10, which requested a Special Exception under Section 2.02.3(C)(1)(b) of the Zoning Ordinance (Case # 2014-10) to allow multi-family residential use in the C-2 (General Commercial) and Aquifer Conservation Districts. The parcel is located at 4 Executive Park Drive. Tax Map 4D, Lot 076. Case # 2014-15.

Patrick Dwyer said there is no reason for a rehearing because the April 23, 2014, letter from Attorney Greg Michael states nothing new or specific and does not contradict what the Zoning

Board (ZBA) said at its last meeting. Phil Straight concurred, saying the Special Exception was decided not solely based on traffic concerns, but was based on the original zoning. Tony Pellegrino and Fran L'Heureux agreed.

The Board voted 5-0-0 to deny the request for a rehearing, on a motion made by Patrick Dwyer and seconded by Richard Conescu.

5. **Raquel Perez (petitioner)** – Request for Appeal of an Administrative Decision under Section 2.02.1(A)(3) of the Zoning Ordinance regarding the interpretation of the Community Development Staff, that a dump trailer in a residential district does not constitute external evidence of a Home Occupation. The parcel is located at 46 Bean Road in the R (Residential) District. Tax Map 6B, Lot 101. Case # 2014-17.

Raquel Perez, 48 Bean Road, said a roofing contracting business is being run out of 46 Bean Road. She has been battling it for a long time. In his April 22, 2013, letter to the Planning and Zoning Administrator, Steve D'Eramo stated, "the storage equipment is almost entirely within the structure", but Raquel Perez said there should be no external evidence. Raquel Perez added that this is the only dump trailer or plow outside a residence from here to the Bedford Target. Photographs show debris hanging from the trailer. She filed an accident report with the Police Department because the trailer hit her fence when the owner tried to put it between the two properties. He loads and unloads it at all hours of the morning.

Fran L'Heureux reported that, when she and another ZBA member went there today, both houses were immaculate. She saw no problem. Raquel Perez replied that the owner cleaned it up for this meeting. Raquel Perez urged the ZBA to look at the entire file of photos and to visit the property several times. Tim Thompson explained that the Community Development Department provided the Board with the five photos submitted as part of the petition. The other files are available to the Board. Patrick Dwyer and Tony Pellegrino wanted to see them.

Raquel Perez said the dump trailer is parked at 46 Bean Road. It is apparent that it is used at a job site to haul debris. Sometimes it is not covered and tarps blow in the wind. She had to pick debris from her yard. The driveway is only 10' 6" away from the side property line. Plowing the trailer out damaged her fence and removed the boundary monument, which she had to replace. The dump trailer is parked either on the driveway or on the side of the house. It would be fine if the trailer was parked in the garage and there was no evidence of a business outside the home. Bean Road is a beautiful street where the neighbors care for their properties.

Tim Thompson reminded the Board that the ZBA's issue is whether the dump trailer alone constitutes exterior evidence of a Home Occupation. Raquel Perez said that, if the items are part of a business advertised on the Internet at 46 Bean Road, it is a violation. Richard Conescu and Patrick Dwyer opined that, if the Board overturns staff's interpretation, any home with a dump trailer would become a Home Occupation. Tim Thompson said there is no definition of a dump trailer. A dump trailer alone is not external evidence of Home Occupation because the owner of another residence could park a trailer on that property. If staff's interpretation is overturned, it must investigate whether every dump trailer in every driveway in Merrimack constitutes evidence of a Home Occupation and if staff would potentially have to investigate each one.

Richard Conescu asked why this is a ZBA matter. Raquel Perez replied that it is a zoning issue. She is calling attention to the business at 46 Bean Road.

Tim Thompson said that a Home Occupation is allowed in Merrimack if it meets the criteria. Steve D'Eramo is complying with the Ordinance. If the ZBA overturns the administrative determination, Steve D'Eramo would no longer comply and would have to go to the Planning Board for a Home Occupation and approval for the dump trailer to stay. Raquel Perez said that,

even with a Home Occupation Permit, there must be no external evidence of the business. Tim Thompson said that staff disagrees with the interpretation.

David Prunier, 48 Bean Road, contended that a trailer with ladders, etc., is evidence of a business. The pallets lean over his fence. Richard Conescu opined that, if the Board overturns staff's interpretation, some other issue would arise. Tim Thompson said the other items are enforcement issues.

Fran L'Heureux asked if the petitioner spoke to Steve D'Eramo. Raquel Perez said she tried, but he uses "colorful" language and gets angry when she calls the police. Phil Straight said that is a civil case rather than a zoning case. On several occasions, the Community Development Department, Building Department, Public Works Department, and Police Department were contacted by Raquel Perez and did not find evidence of violation of applicable codes, regulations, ordinances and laws.

Public comment

Steve D'Eramo, 46 Bean Road, said he goes to great lengths to keep his property clean. He was never asked to remove anything on his property. The fence incident was the result of plowing. He sometimes leaves the dump trailer overnight for his personal use. It is his personal trailer. Raquel Perez and other neighbors on the street also have trailers. There is no more he can do. The place looks great except for the fence that Raquel Perez erected. He will still bring the trailer home even if he moves the business elsewhere. If the dump is closed when he comes home from work, he unloads materials the next morning.

Tim Thompson read from Assistant Planner Donna Pohli's April 7 2014, letter: "While Mr. D'Eramo may be using the subject trailer for his work off site, that does not mean that visitors driving by would look at his trailer and immediately know that a business is being run from the residence. There are numerous homes in Merrimack that have trailers visible from the street that do not operate a contracting business. Also company vehicles are often parked at residences (i.e., Comcast contractors, school bus drivers, and other business vehicles). The mere existence of "advertising" or a company name on a vehicle or trailer is not sufficient to meet the criterion of 'external evidence'."

Phil Straight said the ZBA must follow the opinion of Community Development staff and of other Town departments. The ZBA cannot resolve every situation.

Raquel Perez said the Town asked Steve D'Eramo to build a fence and conceal the dump trailer, but Tim Thompson said it is a request and it is not required by Ordinance. Raquel Perez was of the opinion that the request shows there is an issue.

The Board voted 4-0-1 to deny an appeal of an administrative decision, on a motion made by Phil Straight and seconded by Richard Conescu. Patrick Dwyer abstained.

6. David and Michelle LaCreta (petitioners/owners) – Special Exception under Section 2.02.1(B)(2) of the Zoning Ordinance to permit an Accessory Dwelling Unit (ADU) in the R (Residential) and Aquifer Conservation Districts located at 34 Patten Road. Tax Map 6C, Lot 017. Case # 2014-18.

Michelle LaCreta, 34 Patten Road, read the points of law into the record and stated that she would be the occupant of the ADU.

Patrick Dwyer questioned whether a backyard egress as opposed to a shared egress is allowed. Phil Straight said the Zoning Board wants to discuss that with the Planning Board and Legal Counsel. Richard Conescu said there could be no other egress if there is an entry in the front. Phil Straight said the courts and the State Fire Marshal ruled that they want to have a separate

egress. Merrimack's zoning laws are archaic. Safety outweighs the Town's restriction. Tim Thompson added that Health and Safety Code requirements trump zoning requirements. The egress is fine if it is not physically obvious from the roadway. Michelle LaCreta said there is an existing egress. She changed the bulkhead to a doghouse type of entry. Phil Straight explained that she is just expanding the living space. No other relative will live there. The argument does not pertain, since the egress already exists.

There was no public comment.

The Board voted 5-0-0 to grant the Special Exception, with the following conditions, on a motion made by Patrick Dwyer and seconded by Tony Pellegrino.

1. Execution and Declaration of Covenants for the Accessory Dwelling Unit (form will be provided by staff); and
2. Payment of the Hillsborough County Registry of Deeds recording fee for recording of Declaration of Covenants for the Accessory Dwelling Unit.

Findings of Fact

1. The site is an appropriate location for the proposed use in terms of overall community development because the ADU will exist completely within the current single-family structure and be used by family;
2. The proposed use, as developed, will not adversely affect the neighborhood because the current structure/home is not being modified externally. Inside renovation will increase the property value of the existing dwelling and in turn, that of neighboring homes;
3. There will not be a nuisance or serious hazard to pedestrians because no changes are being made to the driveway or land bordering the roadway;
4. Adequate parking will be provided for motor vehicles on the premises because the current driveway accommodates approximately five vehicles. The household currently has only two. There are no plans to add more;
5. The ADU is contained within or will be an addition to an existing or proposed single-family detached dwelling. The ADU is a basement renovation contained completely within the existing single-family detached dwelling;
6. The ADU contains one bedroom;
7. The ADU does not exceed 1,000 square feet in area or fifty percent (50%) of the area of heated living space within the principal dwelling unit in area, whichever is smaller. The ADU is approximately 425 square feet and the principal dwelling unit is approximately 1,977 square feet;
8. The ADU is connected internally to the principal dwelling unit through the shared laundry area, which is open to the workshop with existing stairs leading up to the principal dwelling unit;
9. The ADU occupancy will be restricted to family members only, with the term "family" as defined as individuals related by blood, marriage or adoption to the fee simple owner-occupant(s) of the principal dwelling unit. The ADU will be occupied by the principal dwelling unit owner;
10. The ADU is designed to remain functionally dependent on the principal unit and will not have provisions for separate utilities, garages, driveways, yards and other similar amenities. No separate utilities will be added. The existing driveway and yard will be left as is and shared.

- 7. Peter McClintick (petitioner/owner)** – Variance under Section 3.05 of the Zoning Ordinance to allow the construction of a (26'x 36') single family dwelling approximately 22'+/- from the front property line whereas 30' is required. The parcel is located at 15 East Chamberlain Road in the R (Residential) and Aquifer Conservation Districts. Tax Map 4D-3, Lot 081. Case # 2014-19.

Peter McClintick, 16 Acacia Street read the points of law into the record. He said that he widened the footprint 10' from the present house. There is a big dip and rough terrain in back and it is difficult to bring in fill. The old house was 20'x30'; the new house will be 26'x36'. The setback will be the same, but the house will be wider.

There was no public comment.

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

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the proposed home will be built at the same front setbacks as the previous home. It will not alter the character of the surrounding neighborhood and it will increase the values of other homes in the neighborhood;
2. The spirit of the ordinance is observed because the proposed home will enhance the neighborhood. Strict adherence to the Ordinance would make it very difficult to develop the lot because of the sloping topography to the rear;
3. Granting this variance would do substantial justice because it will allow a new home to be built on the lot and will enhance the neighborhood;
4. The values of the surrounding properties would not be diminished because the proposed home will be worth substantially more than the previous home on the lot;
5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
 - 1) No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because of the lot's topography. Adhering to the required front setback would make it very difficult to build a new home. The new home will increase the values in the neighborhood
 - 2) The proposed use is a reasonable one because single-family homes are permitted in the area and it will not change the character of or negatively affect the neighborhood.

- 8. Peter McClintick (petitioner/owner)** – Variance under Section 3.05 of the Zoning Ordinance to allow the construction of a deck (10'x 10') approximately 17'+/- from the rear property line whereas 40' is required. The parcel is located at 5 John Lane in the R (Residential) and Aquifer Conservation Districts. Tax Map 4C, Lot 265. Case # 2014-20.

Peter McClintick, 16 Acacia Street, read the points of law into the record.

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 Tony Pellegrino.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because it is a private dwelling. The proposed deck will not alter the character of the surrounding neighborhood. It will enhance the appeal of the home, thus increasing its value and the values of other homes in the neighborhood;
2. The spirit of the ordinance is observed because the proposed deck will enhance and improve a residential home;
3. Granting this variance would do substantial justice because it will enhance the livability of the home as well as providing an additional egress out of the home;
4. The values of the surrounding properties would not be diminished because the deck will add value to the home, thus increasing values of other homes in the neighborhood. A deck is a feature that is typical of homes in 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
 - 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 foundation and existing lot conditions after demolition would allow a deck to be built only off the rear of the home;
 - 2) The proposed use is a reasonable one because it is a permitted use and will not affect the surrounding properties.

9. Discussion/possible action regarding other items of concern

Tim Thompson said the Master Plan has recommendations about ADUs that will be discussed with the Planning Board, including common egress and whether staff rather than the Zoning Board can make a decision about whether an ADU conforms. The Master Plan recommends eliminating the family member restriction, so that it could be a rental or a Workforce Housing alternative approved by the Planning Board. Previous ADUs would be grand-fathered because they would still be limited by the requirements in the recorded covenants. Legal Counsel has not yet reviewed the proposal because it has yet to be developed. Because of its differences with Department of Transportation (DOT) recommendations, the Planning Board's current primary focus is on the Sidewalk and Pedestrian Master Plan. Until the Ordinance is amended, the ZBA will continue to vote on ADUs.

Tim Thompson and Fran L'Heureux announced that the ZBA would hold a joint meeting with the Planning Board at a date to be determined.

Tim Thompson said filling the vacant full-time position is the responsibility of the General Government Department. Town Council has an appointment policy. He expects it will take up reappointments and new appointments at the end of June 2014. Phil Straight noted that members whose terms expire must continue to serve until they are replaced.

10. Approval of Minutes – April 23, 2014

The minutes of April 23, 2014, were approved, as submitted, by a vote of 4-0-1, on a motion made by Tony Pellegrino and seconded by Phil Straight. Richard Conescu abstained.

11. Adjourn

The meeting adjourned at 8:15 p.m., by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Patrick Dwyer.