



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, JUNE 25, 2014

Members present: Patrick Dwyer, Phil Straight, and Alternates Leonard Worster and Richard Conescu.

Members absent: Fran L'Heureux, Tony Pellegrino, and Alternate Nathan Barry.

Staff present: Community Development Director Tim Thompson and Recording Secretary Zina Jordan.

1. Call to Order

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

2. Roll Call

Patrick Dwyer led the pledge of allegiance. Richard Conescu read the preamble. Patrick Dwyer swore in members of the public who would be testifying.

Patrick Dwyer explained that petitioners are entitled to have five members vote on their petitions. Since only four members are present at this meeting, three votes will be required to grant a petition. Therefore a petitioner may ask for a continuance to a later date.

3. **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 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. **This item is continued from the May 28, 2014 meeting.**

Applicant was represented by: Brian Grossman, Anderson & Kreiger, LLC. Atty. Grossman informed the Board that his client prefers to defer the application until a full Board is present.

Because of a lack of a full Board and as was the applicant's right and request, the Board voted 4-0-0 to continue this item to July 30, 2014, in the Matthew Thornton Meeting Room, at 7:00 p.m., on a motion made by Richard Conescu and seconded by Phil Straight.

4. **Meridian Land Services, Inc. (petitioner) and Oliver & Claire Cadran (owners)** – Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a single-family residence on an existing non-conforming lot within 11 ft. and 10 ft. of the front property line whereas 30 ft. is required and a garage within 8.8 ft. of the rear property line whereas 40 ft. is required. The parcel is located at 30 Lakeside Drive in the R (Residential) District. Tax Map 6A-1, Lot 114. Case # 2014-21.

Tim Ferwerda, Meridian Land Services, Inc., informed the Board that his client prefers to move forward tonight and understands that there is not a full Board present. He explained that the existing house does not meet the required setback distances. It will be razed and a new house with a detached garage will be constructed. The petitioner will apply for Shoreland and Dredge and Fill Permits to get back to the original lakeshore. The existing house will be pulled away from the rear property line/road perpendicular to the lake, but will encroach farther on the front property line.

Tim Ferwerda read the points of law into the record.

Phil Straight noted that it is a common problem in that area. The home will not look out of place.

There was no public comment.

The Board voted 4-0-0 to grant the Variance for the house setback, on a motion made by Richard Conescu and seconded by Phil Straight.

The Board then voted 4-0-0 to grant the Variance for the garage setback, with the following conditions applicable to both the house and garage setbacks, on a motion made by Richard Conescu and seconded by Phil Straight.

1. Prior to issuance of a Building Permit for the proposed home and garage, a copy of the NHDES Shoreland Permit shall be submitted to the Building Department and the Community Development Department for filing;
2. Review by the Merrimack Conservation Commission and satisfaction of any comments;
3. Petitioner to obtain Zoning Board Approval for the Variance to permit the construction of a single-family residence and garage on an existing non-conforming lot within 23 ft. of the wetland boundary whereas 40 ft. is required. (Case #2014-22)

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because it allows a new structure and detached garage that will not alter the essential character of the neighborhood to be constructed on the lot. This is an existing lot of record with an existing structure that does not meet the required setback distances. The existing structure will be razed and the new structure will be more conforming with the side and wetland setback distances. The detached garage is similar to other buildings in the area that do not meet setback distances;
2. The spirit of the ordinance is observed because the proposal to rebuild the house on this lot will move it farther back from the lakeshore. The proposal will not injure the health, safety and welfare of the public because the lot will continue to be used as a residential structure similar to others in the area;
3. Granting this variance would do substantial justice because it will allow the property to be used for its intended purpose as a building lot. The house and garage are at the end of a dead end road. The existing travel way is skewed. The house will still maintain over 50' and the garage over 30' from the traveled way. The house will appear farther from the road than it actually is;
4. The values of the surrounding properties would not be diminished because the proposed use is consistent with the other residential uses in the neighborhood. The structure will be new construction with modern techniques. It will increase the value of this lot and be an improvement to the neighborhood;
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, due to the limited area and odd shape of the lot and the drainage easement that bisects it, there is very limited area in which to place the structures. No area exists on the property where the setback distances can be achieved;
- 2) The proposed use is a reasonable one because it allows the continued use of the property as a residential use with an updated structure and the addition of a garage. Due to the position of the road, there will still be a significant setback distance from the road. The sideline or rear setback distance will be increased for the proposed house from the distance that exists from the existing house.

5. **Meridian Land Services, Inc. (petitioner) and Oliver & Claire Cadran (owners)** – Variance under Section 2.02.7(6) of the Zoning Ordinance to permit the construction of a single-family residence and garage on an existing non-conforming lot within 23 ft. of the wetland boundary whereas 40 ft. is required. The parcel is located at 30 Lakeside Drive in the R (Residential) District. Tax Map 6A-1, Lot 114. Case # 2014-22.

Tim Ferwerda, Meridian Land Services, Inc., said the petitioner would move forward and understood that there is not a full Board present. He said proposal would make the existing house, which is close to the water, more conforming by placing it 23' from the water. The petitioner will apply for a Wetland Permit and remove the retaining wall that juts out into the lake to get back to the original shoreline. The variance would place it less than where the shoreline actually is. If a Wetland Permit is not granted, the setback will be greater than 23'.

Tim Ferwerda read the points of law into the record.

There was no public comment.

The Board voted 4-0-0 to grant a Variance, with the following conditions, on a motion made by Phil Straight and seconded by Richard Conescu.

1. Prior to issuance of a Building Permit for the proposed home and garage a copy of the NHDES Shoreland Permit shall be submitted to the Building Department and the Community Development Department for filing;
2. Review by the Merrimack Conservation Commission and satisfaction of any comments.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because it allows the house to be reconstructed in a location that is farther from the lakeshore than the existing structure and will be more nearly conforming with the Ordinance;
2. The spirit of the ordinance is observed because rebuilding the house on this lot will move the house farther back from the lakeshore. It will not injure the health, safety and welfare of the public because the lot will continue to be used as a residential structure similar to others in the area;
3. Granting this variance would do substantial justice because it will allow the property to remain in use as a residential building lot with the house more nearly conforming with the Ordinance;
4. The values of the surrounding properties would not be diminished because the proposed use is consistent with other residential uses in the area. The structures will be new construction with modern techniques and will increase the value of this lot and be an improvement to the neighborhood;

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, due to the limited area and odd shape of the lot and the drainage easement that bisects it, there is very limited area in which to place the structures. No area exists on the property where the required setback distances can be achieved;
 - 2) The proposed use is a reasonable one because it allows the continued residential use of the property with an updated structure that more nearly conforms to the Ordinance.

6. **Glen Acres Revocable Trust, Carol R. Maggio, Trustee (petitioner/owner)** – Equitable Waiver of Dimensional Requirements from Section 3.05 of the Zoning Ordinance to permit the construction of a single family residence with a front setback dimension of 29.80 +/- ft. whereas 30 ft. is required. The parcel is located at 18 Valleyview Drive in the R (Residential) and Aquifer Conservation Districts. Tax Map 5C, Lot 148. Case # 2014-23.

Tony Basso, Land Surveyor, Keach-Nordstrom Associates, stated that the petitioner wishes to move forward and understands that there is not a full Board present. He said that, when the building was constructed, it was skewed toward the lot lines. The corner of the garage is 2.4" over the setback line. The petitioner was made aware of the encroachment only during a survey of the property for the purposes of creating a certified plot plan as required for the issuance of a Certificate of Occupancy (CO). It may have been an accident that happened when the foundation was set.

Tony Basso read the points of law into the record.

Tim Thompson said the Legislature created this statute for situations like this so that there would be an alternative to requiring a variance.

There was no public comment.

The Board voted 4-0-0 to grant the Equitable Waiver, on a motion made by Leonard Worster and seconded by Richard Conescu.

Findings of Fact

1. *Explain how the nonconformity was discovered after the structure was substantially completed or after a lot or other division of land in violation had been transferred to a bona fide purchaser:* The non-conformity was discovered at the time of preparation of a certified plot plan required prior to issuance of a Certificate of Occupancy;
2. *Explain how the violation was not an outcome of ignorance of the law, failure to inquire, obfuscation, misrepresentation or bad faith, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in Ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which the official had authority:* The owner suspects installation of the building foundation 0.2' too close to the front line of the subject parcel was the result of an error in measurement made by the foundation installer. The owner was unaware of the error until a recent discovery by a Licensed Land Surveyor;
3. *Explain how the physical or dimensional violation does not constitute a public or private nuisance nor diminish the value of other property in the area nor interfere with or adversely affect any present or permissible future uses of any such property:* The 0.2' error is not noticeable to the naked eye;

4. *Explain how the cost of correction far outweighs any public benefit to be gained. It is estimated that the cost of correction would be measured in tens of thousands of dollars:*
Encroachment on the front yard is limited to only a fraction of the foundation wall thickness and creates no adverse affect to public or private interests.

7. Discussion/possible action regarding other items of concern

Tim Thompson said the Planning Board seeks volunteers for the Pedestrian and Bicycle Subcommittee. The next meeting is scheduled for July 15, 2014.

Patrick Dwyer said that the ZBA would like a training session with Legal Counsel about ADUs. Tim Thompson said that revising the Zoning Ordinance would be discussed at a joint meeting with the Planning Board at some point in the future. Phil Straight also wanted Legal Counsel to report on recent court cases.

8. Approval of Minutes – May 28, 2014

The minutes of May 28, 2014, were approved as submitted, by a vote of 3-0-1, on a motion made by Phil Straight and seconded by Richard Conescu. Leonard Worster abstained.

9. Adjourn

The meeting adjourned at 7:47 p.m., by a vote of 4-0-0, on a motion made by Richard Conescu and seconded by Leonard Worster.