



# Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

## MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES WEDNESDAY, NOVEMBER 17, 2021

**Board members present:** Richard Conescu, Ben Niles, Lynn Christensen and Chuck Mower (alternate).

**Board members absent:** Patrick Dwyer (Vice Chair) and Rod Buckley

**Staff present:** Casey Wolfe, Assistant Planner

### 1. Call to Order

Richard Conescu called the meeting to order at 7:00 p.m.

### 2. Roll Call

Chairman Conescu led the pledge of allegiance, swore in members of the public who would be testifying and appointed Charles Mower to sit for Patrick Dwyer. Lynn Christensen read the preamble. Chairman Conescu also made a general announcement to all of the petitioners that there are only four board members present so in order for a motion to pass, it will need at least a 3 votes. He explained that all petitioners have the option to ask for a continuance until the next meeting to allow for a full Board to be present.

*The Board took up item 4 prior to item 3.*

- 4. Robert A. Curry & Karen J. Curry (petitioners/owners)** – Variances under Section 3.02 of the Zoning Ordinance to permit the conversion of an existing single-family dwelling to a two-family dwelling in the R-1 (Residential) District whereas two-family dwellings are not permitted, and to permit a two-family dwelling, post conversion, to remain approximately 30 feet from the front property line whereas 50 feet is required (this setback variance is only necessary if the variance to permit the 2-family dwelling is granted). The parcel is located at 4 County Road (formerly 2 County Road) in the R-1 (Residential, by map) & Aquifer Conservation Districts. Tax Map 3A, Lot 65. Case # ZBA 2021-39.

**At the petitioner's request, the Board voted 4-0-0 to continue this item to the December 29, 2021 meeting.**

- 3. 260 DWH, LLC (petitioner/owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit construction of a materials storage building 22.3 feet from the rear property line whereas 40 feet is required. The parcel is located at 17 Smith Road in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 3D-2, Lot 09-02 Case # ZBA 2021-37. This item is continued from the October 27, 2021 ZBA meeting.

Chad Branon (Fieldstone Land Consultants) was present to discuss the project on behalf of the petitioner. Mr. Branon explained that the property in question is currently home to L&W Supply

(formerly known as Merrimack Building Supply) and are seeking a variance for the rear setback to allow for the construction of an additional building. Mr. Branon shared an aerial image of the property and demonstrated the location of the proposed building explaining that the variance is needed to allow enough room in the parking lot for large trucks to maneuver. Mr. Branon quickly touched upon a few other site modifications that are planned by the property owner and then read through the responses to the ordinance criteria (outlined below).

There was no Public Comment.

***The Board voted 4-0-0 to grant the variance, with the following condition, on a motion made by Ben Niles and seconded by Lynn Christensen:***

- 1) The petitioner shall obtain site plan approval from the Planning Board for the proposed storage building and related site improvements.

***Case # 2021-37 Findings of Fact***

***1. Granting the variance would not be contrary to the public interest because:***

Granting this variances would allow for the productive use of the existing property. The rear of the property abuts the Everett Turnpike. The proposed building will not be visible from the Turnpike as the subject parcel is at a substantially lower elevation and a large landscaped buffer separates the areas. The uses proposed are permitted in the underlying zoning and will be consistent with the surroundings. This proposal will allow a growing business to remain in Town and grow responsibly in the same location. The area on-site could be regraded to increase the outdoor storage but the most efficient use of the space is accomplished by constructing a building to the rear of the site with the building built partially into the slope as depicted on the attached plan. This will allow the access around the existing building to line up with the access in front of the proposed storage building which will result in improved traffic movement and operations on site. This proposal will not alter the essential character of the neighborhood or threatening the health, safety, or general welfare of the public and will therefore not be contrary to the public interest. Based on this we believe granting this variance would not be contrary to the public interest.

***2. The spirit of the ordinance is observed because:***

This project consists of redeveloping an existing parcel in town which will substantially improve the aesthetics of the subject parcel and the surroundings. The use proposed for the property is permitted in the underlying zoning and will be consistent with the surroundings. We believe that the intent of this ordinance is to provide adequate separation and buffering between land owners and uses. Since the property to the rear of the site is a highway and is at an elevation substantially higher than the subject parcel with a wide landscaped buffer, the new building will not be an obstruction or hindrance for any abutting properties. This proposal will provide the above while observing the spirit of the ordinance as it will not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public.

***3. Granting the variance would do substantial justice because:***

Granting this variance would allow for the productive use an existing lot and allow a local business to grow responsibly, stay in town and to keep providing a local service to the community. This project will provide much needed building supply storage to meet the demand for building materials and will result in local investment and improvement to the subject properties. This variance will allow the storage building to be situated in a location that will improve traffic flow

and improve business operation on site. The location allows for large trucks to make deliveries as they currently do as well as safe pedestrian access to the buildings. Granting this variance would do substantial justice because it would allow for the productive use of the property, as described above, while providing responsible growth in the community. We believe that a denial of this variance would be an injustice to our client, as there would be no apparent gain to the general public.

**4. *Granting the variance would not diminish the values of surrounding properties because:***

This proposal will consist of improving the existing conditions of the subject property. The parking area will be more clearly delineated from storage areas and improve pedestrian access to the building. The building layout and location will not visually impact adjacent properties. The additional shelves and storage will create a cleaner appearance to the site by allowing materials to be stacked vertically. It has also been our experience that new construction and development will actually increase the value of surrounding properties. As a result we would expect this project to have positive impacts on surrounding property values as it will rejuvenate the site and the surroundings.

**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:***

Section 3.02 of the Merrimack Zoning Ordinance requires that a 40 foot rear yard setback be provided. We believe that the intent of this ordinance is to provide adequate separation and buffering between land owners and uses. Since the property to the rear of the site is a highway the new building will not impede in any buffer areas or be an obstruction or hindrance for any abutting properties. For this reason there should be no requirement for separation or buffering. The location of the building location takes advantage of the existing topography and access ways to allow traffic to flow unchanged from existing conditions. The location of the storage building will have no negative impact on the general public. Based on the above, we do not believe that a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property. We also believe that the property does have special conditions as the property is situated along the highway system, is developed with an existing building and does have topographic constraints along the rear. This proposal accounts for these conditions and provides the best design to improve traffic, safety, visual aesthetics and operations on-site.

**b. *The proposed use is a reasonable one because:***

This project consists of partially redeveloping an existing parcel in town which will substantially improve the aesthetics of the subject parcel and the surroundings. The use proposed for the property is permitted in the underlying zoning and will be consistent with the surroundings. The existing gravel storage area is currently cluttered with materials as there is a lack of space to address the storage needs for the existing business. The new building will be situated away from the front boundary thereby maximizing the separation to Daniel Webster Highway. Since this proposal will provide the above and will allow a local business to grow and stay in town while meeting the spirit and intent of the ordinance we believe the proposed use is reasonable. This is further supported by the fact that this proposal will result in no negative impacts to the public.

**5. Discussion/possible action regarding other items of concern**

The Board members made a plea to the public for volunteers to join the Zoning Board.

**6. Approval of Minutes - September 29, 2021 and October 27, 2021**

**The Board voted 3-0-1 to approve the minutes of September 29, 2021 and October 27, 2021 respectively as submitted, on a motion made by Richard Conescu and seconded by Ben Niles. Charles Mower abstained.**

**7. Adjourn**

**The Board voted 4-0-0 to adjourn at 7:31 p.m. on a motion made by Lynn Christensen and seconded by Ben Niles.**