



# Town of Merrimack, New Hampshire

Community Development Department

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Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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## MERRIMACK ZONING BOARD OF ADJUSTMENT

### APPROVED MINUTES

**WEDNESDAY, NOVEMBER 18, 2015**

Members present: Fran L'Heureux, Patrick Dwyer, Tony Pellegrino, Richard Conescu, Lynn Christensen, and Alternate Leonard Worster.

Staff present: Planning and Zoning Administrator Jillian Harris, Assistant Planner Robert Price and Recording Secretary Zina Jordan.

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

Patrick Dwyer called the meeting to order at 7:00 p.m.

#### **2. Roll Call**

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

- 3. Morgan Hollis of Gottesman & Hollis on behalf of Ralph & Jeanne Reed and Sunrise Homes, LLC (owners) - Request for Rehearing regarding Case # 2015-35,** in which the Board voted to deny a Variance under Section 3.02 of the Zoning Ordinance to permit a subdivision of one lot into two lots with less than the required minimum lot areas (70,385 and 43,571 sf. whereas 100,000 sf. is required) and frontages (150' and 133.03' whereas 250' is required). The parcel is located at 50 Wilson Hill Road in the R-1 (Residential) and Aquifer Conservation Districts. Tax Map 4B, Lot 105. Case # 2015-40.

In Richard Conescu's opinion, the applicant's submission contains no new information. Lynn Christensen said that the realtor's letter contains one significant piece of information: "The lots would be consistent with the neighborhood and there would be no impact upon the value of the surrounding neighborhood properties." The reasons in the attorney's letter are compelling. Had this information been previously available, Lynn Christensen would have voted differently. Patrick Dwyer agreed, although he did not feel that the Chester Rod & Gun Club case applied. Tony Pellegrino agreed that he would have voted differently had he seen the realtor's letter. Fran L'Heureux wanted letters from a cross-section of realtors rather than one letter from one realtor. Patrick Dwyer agreed.

**A vote to grant the Rehearing failed, by a vote of 2-3-0, on a motion made by Lynn Christensen and seconded by Tony Pellegrino. Fran L'Heureux, Patrick Dwyer and Richard Conescu voted in the negative.**

**The Board voted 3-2-0 to deny a Rehearing, on a motion made by Richard Conescu and seconded by Patrick Dwyer** because the reasons for denial still stand. The new information is loosely connected to what the ZBA is reviewing. **Lynn Christensen and Tony Pellegrino voted in the negative.**

- 4. 53 Pearson Street Realty Trust, Joshua Naughton, Trustee (petitioner/owner) -** Variance under Section 2.02.7(A)(4) of the Zoning Ordinance to permit a residential dwelling to be constructed 36.3 feet from a wetland area whereas 40 feet is required. The parcel is located at 53 Pearson Road in the R (Residential) District. Tax Map 7D, Lot 011-01. Case # 2015-41.

Jeffrey Burd, Agent, RJP Engineering, said the dwelling would go 3.7' into the 40' setback. In 2013 the previous owner was granted a variance, but the new owner closed on the property after the variance expired. The expiration was discovered when he sought a Building Permit in September 2015. The applicant seeks the same variance for the same reasons as the 2013 variance. It was a minor oversight by the builder that would have minor impact. The house would be smaller than on the plan.

Jeffrey Burd read the statutory criteria into the record.

There was no public comment.

Lynn Christensen said the hardship criterion was met when the variance was previously granted. There was a lapse of only one month. Fran L'Heureux and Tony Pellegrino agreed.

**The Board voted 5-0-0 to grant the Variance, on a motion made by Tony Pellegrino and seconded by Fran L'Heureux.**

### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because an encroachment of 3.7' would not alter the essential character of the neighborhood nor threaten public health, safety or welfare. The small building encroachment would have no impact on the surrounding area or any abutters;
2. The spirit of the Ordinance is observed because, due to the nature of the wetlands and because the encroachment is small, the wetland scientist (Sandford Surveying and Engineering) clearly stated that there would be no impact to the wetland area;
3. Granting this variance would do substantial justice because this has been a lot of record since 1978. When this lot was subdivided, there were no "wetlands setbacks". The only prohibition was building within the wetlands. Recent assessments on the lot have varied from \$170,000 to the present \$147,000. Fairness dictates that the lot be approved for a single-family residential dwelling;
4. The values of the surrounding properties would not be diminished because the proposed use is consistent with zoning in this area, specifically single-family residential. The lot is over four acres and can readily support the proposed use;

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 there will be no wetlands impact, since the encroachment is not a request to “build within the wetlands”, but merely within the 40’ setback associated with them.
  - 2) The proposed use is a reasonable one based on the current assessment of the parcel and the fact that the proposed use is permitted. Every effort has been made to create a design that minimizes any wetland encroachment.
6. **The Monahan Companies (petitioner) and Merrimack Premium Outlets, LLC. (owner)** - Variances under Section 2.02.4(D) of the Zoning Ordinance to permit a mixed use development Conditional Use Permit (CUP) to be sought from the Planning Board on a lot in the I-2 District; Section 2.02.4(D)(1)(a) to permit a mixed use CUP to be sought from the Planning Board on a lot with less than 50 acres, and Section 2.02.4(D)(1)(d) to permit a mixed use CUP to be sought from the Planning Board on a lot without 500 feet of contiguous frontage on the State maintained portions of Daniel Webster Highway. The parcel is located on 10 Premium Outlets Boulevard in the I-2 (Industrial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 3C, Lot 191-02. Case # 2015-42.

Gordon Leedy, Managing Director Land Development, Vanasse Hangen Brustlin, Inc., said the approximately 20-acre lot was originally intended for a 200-room hotel along with three stand-alone restaurants. It is surrounded on three sides by other industrial uses. More than 8,000 employees work within ¼ mile of the property. Merrimack’s Master Plan calls for expanding mixed use to smaller lots in districts other than the I-1 District, however there has yet to be such zoning amendment. Except that it is not located on D.W. Highway, this parcel meets all the mixed-use criteria. This form of development is allowed except for the residential component and is the highest type of development from a tax base standpoint. The applicant is asking the Zoning Board of Adjustment (ZBA) to allow him to engage in a dialogue with the Planning Board, which has the authority to review the 10 Conditional Use Permit (CUP) criteria. The plan is still in the conceptual stage until a CUP is approved.

Patrick Dwyer did not want to grant a variance based on the conceptual plan presented only to discover that the applicant later built something else. Gordon Leedy said that Planning Board may want modifications, but the applicant intends to stick generally to this plan. A Conditional Use Permit (CUP) has 10 criteria. After it is granted, the Planning Board must approve a site plan and engineering details.

Attorney Thomas Leonard, Welts, White & Fontaine, clarified that the I-2 zone does not allow mixed-use development, although the I-1 zone does. The applicant is asking the ZBA to authorize mixed-use development and will go the Planning Board for a CUP once it has a variance.

Patrick Dwyer asked why the applicant did not appear before the Planning Board before the ZBA and what would happen if the ZBA denies the variance. Attorney Leonard said the applicant must first get approval to present a mixed use development in this zone to the Planning Board. It does not have the authority to approve it without the variance. Lynn Christensen explained that, if the applicant developed the plan without the residences, it would not have to appear before the ZBA. The residences make the project a mixed use. One of the goals of the Master Plan is for Merrimack to expand mixed use into other areas. If there were a zoning ordinance provision in place, appearing before the ZBA would not have been necessary.

Fran L'Heureux had a problem granting *carte blanche* for three variances: mixed use in the I-2 Industrial zone on a lot with less than 50 acres and without 500' of contiguous frontage on the State-maintained portions of D.W. Highway. Attorney Leonard explained that it would bring a live-work-play synergy and diverse housing that is not available in Merrimack, keep young people in Town, and support surrounding uses. He read the relevant ordinance.

Attorney Leonard read the statutory criteria into the record.

As to criterion #1, public interest, Fran L'Heureux asked what type of residence is not provided in Merrimack. Attorney Leonard said buildings with retail on the first floor and residences on the upper floors. Gordon Leedy added that the uses are not segregated. This would be a walkable environment, so residents would not need a car to get to work, shopping or entertainment. The market for this now is hot.

### **Public comment**

Chris Ross, 401 & 403 D.W. Highway, supports the variance. The applicant did a great job developing the Merrimack Premium Outlets land into a beautiful site and paid attention to detail. Merrimack has properties that need attention. Mixed use is the latest, new and upcoming trend. It will build a community that is not desolate at night. Residents will keep an eye on things. There is nothing like this in Merrimack. It will do well and increase the tax base. There is no reason not to discuss it with the Planning Board.

Nancy Harrington, 1 Spruce Street, noted that the project was already approved except for the residences. They will be upscale and high class, but would they affect abutters' property values? All the trees have lost their leaves, so the existing buffer would not provide protection from headlights shining into homes. The project is too dense. Traffic from cars, trucks and service vehicles will have an impact. There must be a method to protect houses from noise and lights. Lynn Christensen explained that these are Planning Board issues. This is just an idea rather than an actual plan. The ZBA is not deciding on the plan but only on whether to allow a residential component.

Barbara Amaral, 1 Spruce Street, asked whether there would be access onto Camp Sargent Road. It would make traffic a disaster. She wondered whether the Thornton Ferry School could handle the additional children. Patrick Dwyer explained that these are Planning Board issues.

Charles Parenteau, 3 Spruce Street, asked whether this would be low-income housing and how night activity would affect abutters' home values. This area does not need housing; other areas do. This will add to what is already a lot of traffic from Merrimack Premium Outlets. Can the infrastructure support more school children? Charles Parenteau doubts that many employees will live there.

Fran L'Heureux asked about the frontage. Gordon Leedy said there **is** over 1,000' of frontage Industrial Drive and on Continental Boulevard. "Controlled access"/intersection is already dictated by zoning ordinances and the NH Department of Transportation (DOT) to be at the signal at Premium Outlets Boulevard. The applicant has a Driveway Permit. Gordon Leedy said that analysis determined that additional traffic does not require any off-site improvements. There is sufficient capacity on the roadways.

Lynn Christensen added that regional and State studies show a housing need for young professionals. They do not buy; they rent. They delay having families and have few children. The Tara Heights apartments in Nashua are upscale. This age group demands it, but Merrimack does not have it. Merrimack wants to attract them. Gordon Leedy agreed. These would be market rate rental apartments with a mix of one and two bedrooms. This is not expected be family housing and there should be very few school children. There is a need for this type of environment to attract and keep talented young professionals. He explained the preliminary traffic analysis. The applicant will need a DOT permit for additional traffic and will submit detailed studies to the Planning Board.

Fran L'Heureux asked when the traffic study was done. Gordon Leedy replied that traffic counts were done in August 2015 at the Saturday mid-day peak and Thursday or Friday evening.

**The Board voted 5-0-0 to grant the Variances, with the following conditions, on a motion made by Richard Conescu and seconded by Lynn Christensen.**

1. The petitioner shall obtain approval for a Conditional Use Permit from the Planning Board to allow the site to be developed in accordance with the Mixed Use Conditional Use Permit requirements of Section 2.02.4(D) of the Zoning Ordinance; and
2. The petitioner shall obtain all necessary site plan and subdivision approvals from the Planning Board that are necessary following approval of the Mixed Use Conditional Permit.

### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because the proposed mixed use development is on a lot that is zoned for commercial and industrial use and is a site appropriate for infill development. The transportation and utility infrastructure available to the site supports the proposed use. The proposed uses are all permitted uses except the residential component. The zone permits hotel uses and perhaps long-stay hotel uses, but it does not allow for more

typical residential uses. The proposed residential component is a mixed-use building where the residences are on the upper floors. It is a use that is new to the Town of Merrimack, but in demand.

The 2013 Merrimack Master Plan supports the idea of diverse housing and the notion of both tax base and diversity of use through the development of additional mixed-use projects in the Town.

The parcel is an “out parcel” of a larger project, which has ample footage and size to accomplish the purposes of the Ordinance.

The project will provide enhanced tax revenue to the Town, a variety of residential units not currently provided in the Town and a substantial amenity to the more than 8,000 employees working in the immediate vicinity of the property.

The proposal will not alter the essential character of the locality because all uses are permitted except apartments. The proposal will not threaten public health, safety or welfare because of the sufficient and appropriate supporting infrastructure.

2. The spirit of the Ordinance is observed because it meets the goals of Town zoning. But for the residential component, other uses on the property would be allowed in the I-2 Industrial District. The siting of significant development in areas that are supported by transportation and utility infrastructure is a principal tenet underlying the zoning ordinance. The proposal is a modern mixed-use concept that is particularly complementary and appropriate to this area.
3. Granting this variance would do substantial justice because the uses are consistent with the present neighborhood and the surrounding infrastructure. The mixed-use project is the highest and best use of the property. The loss to the property and property owners would not be outweighed by any gain to the general public. There is no reason to apply and enforce the frontage and lot size requirements, since it is a portion of the original Merrimack Premium Outlets development.
4. The values of the surrounding properties would not be diminished because the setbacks and buffers of residential properties will protect the existing residential properties from any adverse impacts. The value of adjacent residential properties will not decrease. The value of adjacent commercial and industrial properties will likely increase somewhat by providing amenities available to employees at those facilities.
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 property meets the criteria of mixed use development on undeveloped parcels where adequate transportation and utility infrastructure

exist to serve them, creating diversity of both commercial and residential development in Merrimack. The Master Plan supports the notion of increasing both tax base and diversity of use through the development of additional mixed-use projects in all commercial and industrial portions of Merrimack.

- 2) The proposed use is a reasonable one because mixed-use development is permitted by Conditional Use Permit in other industrial districts with characteristics similar to this property. Other dimensional and density provisions of the district would be met. The development will be similar in appearance to other allowed uses in the district.

**The Board recessed from 8:30-8:38 p.m.**

- 6. Shawn Farrell (petitioner) and Brett W. Vaughn Revocable Trust (owner) -** Variance under Section 3.02 of the Zoning Ordinance to permit a subdivision with a lot containing 209.90 feet of frontage whereas 250 feet is required. The parcel is located on Wilson Hill Road in the R-1 (Residential) and Aquifer Conservation Districts. Tax Map 4A, Lot 004. Case # 2015-43.

Chad Branon, Fieldstone Land Consultants, PLLC, said the property consists of approximately 28.03 acres of land with 709.9' of frontage along Wilson Hill Road. Single-family lots must have a minimum lot size of 2.3 acres (100,000 square feet of contiguous upland area) with a minimum of 250' of frontage on a Class V or better road. The proposed subdivision will create a three-lot subdivision. The proposed lots will consist of approximately 2.44 acres with 250' of frontage, 3.19 acres with 250' of frontage and 22.4 acres with 209.9' of frontage. The Farrells want to purchase the subject property so they can build their dream home on the 22+-acre parcel. To do so, they must create the two additional front lots. Although the current proposal requires a variance to subdivide the property into three frontage lots, the parcel could be subdivided into five residential lots that conform to regulations if someone purchased the property and wanted to build a short public road onto the parcel. What is proposed is a reasonable and responsible development.

Chad Branon read the statutory criteria into the record.

Fran L'Heureux noted two addresses that are the same but two different lot numbers. Jillian Harris said this is not 50 Wilson Hill Road. The subject parcel does not yet have a number.

Patrick Dwyer asked why two other homes would be built. Chad Branon replied that, for financial reasons, two lots must be created to sell for income.

#### **Public comment**

James Wood, 119 Wilson Hill Road, opposes the variance. He asked if the frontage were being reduced so the Farrells could afford to buy the property. Patrick Dwyer said that is the case. James Wood said the property is unique: most of it is unbuildable with raw land and wetlands. Water runs off the hill. The 250' standard should be kept. This rural area should not be turned into a subdivision that will affect the neighborhood.

Patrick Dwyer agreed. Drainage issues would have to be addressed and might improve drainage on the entirety of Wilson Hill Road.

Chad Branon said the applicant's reason is not financial burden, but to ask why 250' of frontage are required. That is typically required for a two-acre lot to have an adequate buffer between lots. Given the parcel's geometry, a buffer of more than 250' would be provided. The applicant could have developed the parcel with a higher density. The entire property slopes away from Wilson Hill Road. Drainage is a Planning Board issue. Test pits demonstrate that space and soils are adequate to support three lots. The subdivision will maintain the rural character with a 22+-acre lot. The home on the larger lot would not be seen from Wilson Hill Road.

Patrick Dwyer asked whether a variance would be necessary if the parcel were not subdivided into three lots. Chad Branon said there are 709' of total frontage and 28 acres, meaning it could support a five-lot subdivision with a small road. Rather than doing that, the Farrells would maintain the back lot and the current owner would maintain the front two lots.

Fran L'Heureux suggested coming to an agreement with the abutter.

Lynn Christensen said the proposal makes a lot more sense density-wise and maintains the rural atmosphere. The abutters would see only two houses, not three. Patrick Dwyer and Richard Conescu agreed.

**The Board voted 4-1-0 to grant the Variance, on a motion made by Fran L'Heureux and seconded by Richard Conescu. Patrick Dwyer voted in the negative.**

### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because it would allow for the productive use of the existing property. The proposal is consistent with the surroundings, as many of the lots along Wilson Hill Road possess closer to 100' of frontage with lot sizes ranging from 1.5-2.5 acres. The subdivision would not alter the essential character of the neighborhood nor threaten public health, safety or general welfare. There would be no negative impacts to the public. Developing a 28+-acre parcel into three lots while preserving large acreage would be in the public interest given other alternatives with a more intense development of up to five residential properties and a public roadway with no variances.
2. The spirit of the Ordinance is observed because, when there is an irregularly-shaped parcel, frontage becomes less critical, especially when it can provide for large lots with significant separation from the proposed building site to adjacent lots. The building site on the proposed reduced frontage lot is located to the rear of the property and would provide significant buffering to surrounding properties. The proposal is consistent with its surroundings.
3. Granting this variance would do substantial justice because it would allow for the productive use of the land and allow the Farrells to build their dream home on a 22+-acre parcel with lots of privacy and river frontage. The subdivision would have no impact on the general public and would be consistent with its surroundings. The



reduction from 250' to 209.9' is 40.1'. Many lots along Wilson Hill Road possess closer to 100' of frontage with lot sizes ranging from 1.5-2.5 acres. The subdivision would not alter the character of the neighborhood nor threaten public health, safety or general welfare. There would be no negative public impacts. Developing a 28+-acre parcel into three lots while preserving large acreage would be in the public interest, given other development alternatives that could yield a public roadway and up to five residential properties with no variances.

4. The values of the surrounding properties would not be diminished because the use is consistent with the zoning and the surroundings and would have no negative impacts on the surrounding properties. It may actually increase the surrounding property values and would create larger lots and buffers. It would preserve a 22+-acre lot along the river without maximizing the development potential.
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 geometry and size of the property are unique. Granting the variance would allow for the productive use of the existing property. Development of this 28+-acre property into three residential lots is reasonable and fair. The same parcel could be developed differently, with a public road into five residential lots. Such a development option would meet the Ordinance, but it would result in significant land alteration. The development of the subject parcel would provide more space and buffering between homes than the alternative five-lot development with a road. The property's geometry is unique. This style of development is consistent with its surroundings.
  - 2) The proposed use is a reasonable one because it will provide for safe access, large lots and adequate buffering. It is consistent with the surroundings and would have no negative public impact. The applicant could have constructed a Town road with smaller lots. The subdivision would create larger lots, preserve a 22+-acre parcel along the river and would not maximize the development potential of the property.

7. **Mark Rivet of 427 D.W. Highway, LLC. (petitioner/owner)** - Variance under Section 2.02.13(E)(4)(b) of the Zoning Ordinance to permit the construction of an additional 24'x32' two-car garage 2.3 feet from the side property line whereas 15 feet is required. The parcel is located at 427 D.W. Highway in the C-2 (General Commercial) and Aquifer Conservation, Elderly and Town Center Overlay Districts. Tax Map 5D-4, Lot 076. Case # 2015-44.

Chad Branon, Fieldstone Land Consultants, PLLC, said the applicant received a variance in March 2015 to construct a 24'x36' three-car garage 2.3' from the side property line whereas 15' are required and 5' from the rear property line whereas 40' are required. During the course of construction, the applicant discovered that the initial

design for the garage was not feasible and the redesign now includes the addition of a two-car garage onto the front of the three-car garage in order to address the property's storage needs. The additional two-car garage will also be 2.3' from the property line and requires a variance to expand forward. Chad Branon explained that the height requirements were misrepresented. The floor header underneath the decking had not been discussed. The applicant could not drive underneath because the grade would be too steep. The situation is unexpected.

Chad Branon read the statutory criteria into the record.

Lynn Christensen asked if there would be an easement. Chad Branon responded that there would be either an easement or something in the deed about right to access.

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 Fran L'Heureux.**

### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because it would allow for the productive use of the existing property. The existing non-conforming residential structure and shed were razed and a new residential duplex in conformance with local zoning setbacks was constructed. The new development provided for site improvements and amenities such as a paved access and parking as well as garage space and indoor storage for future tenants. A garage and storage space for the new duplex are provided for in the new three-car garage located in the east corner of the parcel. The garage was originally positioned to provide storage and access to the lower level from the adjacent funeral home. The final design yielded the drive-under option and associated storage space unfeasible, thereby requiring the expansion of the garage. The expansion takes advantage of the existing topography and features, permitting access from Lot 5D-4-77. The design of the site will not create any health or safety problems, will provide additional housing for the community and address a storage need for a local business. It will substantially improve the aesthetics of the parcel and its surroundings. The uses are permitted in the zoning and would be consistent with the surroundings. There would be no negative public impacts.
2. The spirit of the Ordinance is observed because the redevelopment would substantially improve the aesthetics of the parcel and surroundings. The use is permitted in the zoning and is consistent with the surroundings. The new garage would provide needed storage for the adjacent funeral home and would be situated to accommodate the existing topography. There is adequate space on the properties to support the redevelopment. Since the proposed structure would be shared between properties for storage purposes, there should be no requirement for separation or buffering. The proposal would have no negative public impacts.
3. Granting this variance would do substantial justice because it would allow for the productive use of an existing lot and provide needed storage for a long-standing

local business. A variance is required in order to situate the garage appropriately with the existing site improvements and to permit access from the funeral home property. The uses are permitted in the zone and would be consistent with the surroundings. The project would provide quality housing for the community, address a storage need for the adjacent funeral home, and increase the local tax base. Granting the variance would allow for the productive use of the property and provide responsible growth in the community.

4. The values of the surrounding properties would not be diminished because the project has consisted of improving the existing conditions of the property. Its development has improved the aesthetics of the parcel, which should have a positive impact on the surroundings. The uses are permitted in the zoning and are consistent with the surroundings. New construction and development actually increase the value of surrounding properties and have a positive impact on surrounding property values.
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, since the structure will be shared between properties for storage purposes, there should be no requirement for separation or buffering. The location of the garage is required to take advantage of the existing topography and site improvements for access to the structure from the adjacent parcel. There will be no negative public impact.
  - 2) The proposed use is a reasonable one because the project will substantially improve the aesthetics of the parcel and the surroundings. The proposed use is permitted in the zoning and would be consistent with the surroundings. The new garage would be shared between the subject parcel and the adjacent funeral home and has been situated to accommodate the existing features for access. There is adequate space to support the redevelopment. The proposal would have no negative public impacts.

- 8. Thomas L. Werst (petitioner/owner)** - Variance under Section 3.05 of the Zoning Ordinance to permit the placement of solar panels approximately 3 feet from the side property line whereas 15 feet is required and 30 feet from the rear property line whereas 40 feet is required. The parcel is located at 3 Laurel Street in the R (Residential) and Aquifer Conservation Districts. Tax Map 4C, Lot 139. Case # 2015-45.

Thomas Werst, 3 Laurel Street, said he wants to place solar panels approximately 3' from the side property line and 30' from the rear property line. A ledge slopes up to the neighboring property. The proposed placement would blend better into the environment and be as far on the ledge as possible.

Thomas Werst read the statutory criteria into the record.

Fran L'Heureux asked about the size of the panels, which Thomas Werst said would be 40"x66" each for a total of 17'x31.5'.

Patrick Dwyer asked why they would be on the ground rather than on the roof. Thomas Werst replied that the shingles are old and need replacing and he wants to add dormers in the front.

### **Public comment**

Michael Phillips, 1 Laurel Street, opposes the variance. The panels would be close to his property line, where there is ledge. It would have a negative effect on his property value because the panels would be too close. Electromagnetic radiation is a health hazard. His child might walk too close and fall and hit its head on a corner of the panel or get an electric shock.

Thomas Werst said that claims about health hazards due to electromagnetic radiation are unsubstantiated. He said that if the variance is denied, he is going to install a solar panel array in another location. He is willing to plant a hedge or install a fence or angle higher next to the Phillips property. Fran L'Heureux said a 3'-high fence would keep a child away. Richard Conescu opined that some radiation might be possible, depending on the installation, but that is not a ZBA issue.

Thomas Werst said the array would be installed by the Hillsborough Area Renewable Energy Initiative.

Lynn Christensen stated that she believes there is no hardship if the applicant can install the panels without encroaching on the setback. Patrick Dwyer and Richard Conescu agreed.

Lynn Christensen asked if it is a structure. Jillian Harris cited the section of the Ordinance calling it one.

Richard Conescu asked if the array would be approximately 3' from the property line. Thomas Werst said it would be at least 3' away.

**The Board voted 5-0-0 to deny the Variance, on a motion made by Lynn Christensen and seconded by Fran L'Heureux.**

### **Finding of Fact**

There is no unnecessary hardship because the applicant can place the array elsewhere on the property without seeking a variance.

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

Jillian Harris introduced Assistant Planner Robert Price.

Fran L'Heureux thanked Patrick Dwyer for assuming the chair at the October and November 2015 ZBA meetings.

### **10. Approval of Minutes – October 28, 2015**

**The minutes of October 28, 2015, were approved as submitted, by a vote of 3-0-2, on a motion made by Lynn Christensen and seconded by Tony Pellegrino. Fran L’Heureux and Richard Conescu abstained.**

#### **11. Adjourn**

**The meeting adjourned at 9:50 p.m., by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Richard Conescu.**