



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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## MERRIMACK ZONING BOARD OF ADJUSTMENT

### APPROVED MINUTES

NOVEMBER 19, 2014

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

Member absent: Richard Conescu.

Staff present: 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 Leonard Worster to sit for Richard Conescu.

#### 2. Roll Call

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

3. **Lynn M. Waller (petitioner)** – Variance under Section 3.02 of the Zoning Ordinance to permit a single-family residential lot without the required 250 feet of Frontage. The parcel is located at 9 Lester Road in the R-1 (Residential) District. Tax Map 4B, Lot 014. Case # 2014-48.

**At the applicant's request, the Board voted 5-0-0 to continue this item to December 17, 2014, in the Matthew Thornton Meeting Room, at 7:00 p.m., on a motion made by Phil Straight and seconded by Patrick Dwyer.**

4. **Mark McDonough (petitioner) and 641 DW Highway, LLC. (owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit the construction of a 12'x16' storage shed within 3 feet of the side property line whereas 20 feet is required. The parcel is located at 641 D.W. Highway in the C-1 (Limited Commercial) and Aquifer Conservation Districts. Tax Map 6E-2, Lot 022. Case #2014-49.

Mark McDonough, Owner, Homestead Restaurants, wants to build a storage shed for wood for the restaurant fireplaces. It will be marginally larger than the 160 square feet allowed and will match the restaurant's color and design.

Mark McDonough read the points of law into the record.

Phil Straight noted that the shed would be close to the Fire Department property line and asked whether they were contacted. Jillian Harris replied that they were not specifically, but the Building Department was. The Fire Department was notified as an abutter. Mark

McDonough said the shed would not be a permanent structure and could be relocated if the Fire Department needs the space. He did not realize that the setback rather than the size of the building is the issue, so the points of law do not directly address it. Fran L'Heureux said that the large trees act as a buffer.

There was no public comment.

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

**Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because sheds of this nature are a permitted use and the minimal increment of 32 square feet will not impact the community;
2. The spirit of the ordinance is observed because there is only a marginal increase in the square footage from the allowable 160 square feet to 192 square feet;
3. Granting this variance would do substantial justice because there is only a marginal increase in the square footage from the allowable 160 square feet to 192 square feet;
4. The values of the surrounding properties would not be diminished because the storage building will be constructed utilizing materials consistent with the existing Homestead Restaurant in appearance and will maintain a consistent overall curb appeal of this historic property. The temporary shed will be located behind the building and can be relocated elsewhere on the property;
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 not allowing the Variance would result in erecting an additional building that would take up additional square footage and result in greater expense as well as reduce the curb appeal of a historic property;
  - 2) The proposed use is a reasonable one because wood storage will secure the material from theft as well as keep it out of the elements. It will not create an unappealing wood pile at the place of business.
5. **Kevin Duggan of Metro Sign & Awning for Go Wireless, LLC. (petitioner) and KRG Merrimack, LLC. (owner)** – Variance under Section 17.10(4)(g) of the Zoning Ordinance to permit a wall sign to be 47 s.f. whereas 29 s.f. is required. The parcel is located at Unit H at 7 Continental Boulevard in the I-1 (Industrial), C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 3D, Lot 003-01. Case # 2014-50.

This agenda item was considered after agenda item #6.

**At the applicant's request, the Board voted 5-0-0 to continue this item to December 17, 2014, in the Matthew Thornton Meeting Room, at 7:00 p.m., on a motion made by Tony Pellegrino and seconded by Phil Straight.**

- 6. Christopher Ross, LLC. (petitioner/owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit the construction of a 9'x 9' egress within 11 feet of the side property line whereas 20 feet is required. The parcel is located at 401 D.W. Highway in the C-1 (Limited Commercial), Aquifer Conservation and Flood Hazard Districts. Tax Map 4D-3, Lot 083. Case #2014-51.

This agenda item was considered before agenda item #5.

Christopher Ross, 401 D.W. Highway, wants to add another egress at the south end of the building. The top floor is an unfinished caretaker unit with only one egress.

Chris Ross read the points of law into the record.

Phil Straight asked why a 9' cover is needed rather than just a door and steps. Chris Ross wants to keep the characteristics of the building. He may enclose it with exterior wall with siding and a window for appeal. He does not want people to see a metal staircase.

Jillian Harris stated that no abutters responded to the notice. Chris Ross said he has a long-standing relationship with the medical building.

There was no public comment.

Phil Straight suggested the condition of approval below.

**The Board voted 5-0-0 to grant the Variance, with the condition that that the petitioner obtain a signed letter from the property owner at 399 Daniel Webster Highway stating approval of the egress within the side setback and provide a copy to the Community Development Department, on a motion made by Patrick Dwyer and seconded by Phil Straight.**

### **Findings of Fact**

1. There would not be a diminution of value of surrounding properties as a result of the granting of this variance because the property is in a C-1 commercial zone and the addition/renovation will not obstruct the view of any residential or commercial abutters;
  - a) The granting of this variance would not be contrary to the public interest because the Ordinance discourages building within setbacks so as to create uniform standards and maintain distances between abutters' buildings. The property is grand-fathered. It was constructed long before the establishment of the current zoning regulations and is adjacent to an abutter's paved parking area. The addition of a secondary egress from the upper floor will not encroach on any abutter's existing structure;
2. That by granting this variance substantial justice would be done because the abutting properties have structures that are aged. Their aesthetics and maintenance/upkeep are below the level found at 401 D.W. Highway. The new secondary egress will in no way detract from the current value of the abutting properties;
3. Denial of the Variance would result in unnecessary hardship to the owner because the existing structure was built long before the implementation of the current Life Safety Codes and was not provided with secondary egress from the upper floor;

4. Granting the Variance would do substantial justice because the abutting properties currently have structures that are aged. Their aesthetics and maintenance/upkeep are below the level of 401 D.W. Highway. The new secondary egress will not detract from the value of the abutting properties;
5. The use contemplated by the petitioner is not contrary to the spirit and intent of the Ordinance because, due to the historic nature of the existing structure and the lack of egress required by current Life Safety Codes, the denial of this Variance would limit the functionality and potential safety factor of the upper level of the structure.
7. **College Bound Movers (petitioner) and Benjamin M. Bosowski, Jeffrey L. Clegg, Jessica L. Clegg, Jacob J. Mitchell and Ethan L. Mitchell (owners)** – Re-hearing regarding Case # 2014-40, for a variance under Section 2.02.1.A of the Zoning Ordinance to permit parking for employees, customer vehicles and temporary mobile storage units located in the I-1 (Industrial), R (Residential) and Aquifer Conservation Districts and Wellhead Protection Area at 22 Continental Boulevard. Tax Map 3C, Lot 085. Case # 2014-47.

Attorney Greg Michael, Bernstein Shur, explained that the property is in a split zone: 20,000+ square feet are zoned industrial and 19,000+ square feet are zoned residential, but the area is predominantly industrial. It is proposed to construct the self-storage building in the industrially zoned portion, which is permitted, and the outdoor storage of Mi-Box portable storage units and parking primarily in the residentially zoned portion, which requires a Variance.

The public interest is served because the temporary use is low intensity, will not alter the essential character of the locality and will not threaten public health, safety or welfare. It does not unduly or in marked degree conflict with the Ordinance. Other uses have outdoor parking. The spirit of the Ordinance is observed because the warehouse will be in the industrial zone and the residential area will be used for parking for employees, customers and mobile storage units. Split zoning created the problem. In many towns, the use of the majority of a split lot is the primary use. Denying the use would be a significant loss to the applicant with no gain to the public. The lot has been unused for 40 years; no other plans materialized. Surrounding property values will not be diminished because the storage facility will produce little traffic, noise, odor or other impacts. The applicant could erect a building with no need for a Variance. No significant traffic will be created. Storage and a parking area is an accessory to the industrial use. Hours will be limited to general office hours. There will be nine employees. The regulation requires more than enough parking than is needed, but that is a Planning Board decision, as are buffers, traffic and lighting. The applicant will meet whatever buffer the Board requires. The use is consistent with those on Continental Boulevard. This is a reasonable use for a property that has been unused for 40 years.

The re-hearing mainly concerns the hardship criterion. Almost any use would require a variance. A residence cannot be constructed because it would require 40,000 square feet. A building would require parking and egress. When the Town ran the zoning line through this property, it made it difficult to create a development that works. The zoning may have been changed in order to build Continental Boulevard. The intent of the Ordinance is to prevent an unsuitable mix of uses. The proposed use will not significantly

change this predominantly industrial area. Storage and office space are permitted. The zoning line puts the parking and portable storage units in a residential area. It is as low key a use as possible in an industrial area. There will be few trucks or delivery vehicles. There will be some movement of portable storage units, perhaps one per day. Customers will remove and then return them. The hardship is the area, split zoning, and location that is mostly in the industrial zone.

Attorney Michael read the points of law into the record.

Phil Straight questioned how the public interest is met by putting the use in the Wellhead Protection Area, which the Merrimack Conservation Commission (MCC) wants to keep clear. Attorney Michael replied that there would be no chemicals or processes and the use is allowed. It would not violate the Wellhead Protection Area. Phil Straight objected that the applicant would not know what customers put in the containers. Attorney Michael explained that College Bound Movers rather than the customer would pack the containers. It does not pack hazardous chemicals, waste or gasoline containers. Any activity could be problematic; this one poses very little danger.

Tony Pellegrino asked if lights would be on all the time. Attorney Michael stated that they would not. Security lights might be, but they would be shielded.

Fran L'Heureux asked about business hours, which Attorney Michael said would probably be 9:00 a.m.-7:00 p.m., Monday-Saturday. That is a Planning Board issue.

### **Public comment**

Christopher Ross, 401 D.W. Highway, said that there are no chemicals in self-storage units. He spent a lot of money on a security system for Synergy Self-Storage, which is monitored 24/7. The proposed business delivers a truck that customers load. They then remove the enclosed box and drop it on the property. So there is no monitoring of what is happening on the property. A bunch of containers on a big parcel of land are unsightly. Chris Ross spent a lot of time and money rectifying his lot, which was split 3% commercial and 97% industrial. He had to twist the building to get approval. He would be disappointed if this plan goes through without doing what he did. Chris Ross predicted that, in 1-2 years, there will be no Town inspection and this property will no longer look like what was approved. It must be maintained. Chris Ross was not allowed to erect a metal building. Box containers are metal and belong in a completely industrial area.

Gary Petas, 3 Tallant Road, said Continental Boulevard is not long and continuous, but makes a very sharp corner with no room to turn. The buffer was cleared and lights shine through. This was leftover property when Continental Boulevard was built. It was unusable because of the residential section. The line should have been drawn differently. There is no access. Fencing and trees will not hide the noise from traffic on Continental Boulevard. There is also a shooting range in the Wellhead Protection Area. The encroachment will "kill" his property value and would allow any residential parcel to become commercial. It must stop somewhere. The pods will not be small; they will be more like lined up semi trucks and will require security lights. The frontage is only 3' of grass. It is Gary Petas rather than College Bound Movers who has a hardship. The noise increased when the trees were removed and the project will make it worse. Gary

Petas will lose more than half the value of his home. Sam Tamposi, Jr., never erected the 120' required stockade fence after removing the trees.

Attorney Michael said that Chris Ross is not an abutter and is at the meeting because he fears competition with his facility. He does not know the architectural construction or what the facility is about. The Planning Board will place restrictions to prevent an eyesore. Most of Gary Petas' issues are Planning Board issues. There will be a proper buffer. The applicant has the right to use this property. This is one of the most benign uses. It is the property owner's right to cut trees and develop his land in accordance with Town regulations. He is not encroaching on anyone. There will be no undue burden on others. Property rights do not mean not developing or changing anything. Other uses would produce more lights, noise and problems than this one would. It is a service that will use a property reasonably. Abutters can speak at a Planning Board meeting. The proposal meets the standard for a Variance. The Town, not the applicant, created this issue. It is unique and unusual and merits ZBA relief.

Gary Petas accused the applicant of wanting to convert a residential property because he wants to use it for a commercial purpose and claimed that everyone on the street will suffer. Any ZBA member who lived here would care as much about damage to his/her home. The area used to be completely residential. This portion was left residential to protect residents from a commercial use.

Chris Ross said he never hid his ownership of Synergy Self-Storage, but it is not a competitor of College Bound Movers. Synergy is high-end, fully enclosed and secure self-storage. Mi-Box is a storage box with no humidity control. A parking lot affords a tax advantage. There will be a noise problem from trucks entering and exiting. College Bound Movers should go through the same process that Chris Ross did.

Fran L'Heureux asked if there would be storage of filled boxes/pods. Attorney Michael said there might be. Most would be packed for short-term storage by College Bound Movers or by a moving company. Some would be unloaded into the building. College Bound Movers is a moving company, not a self-storage company. There will be security. Chris Ross does not know what is in the Synergy boxes. The potential for problems is low and is the same in either type of facility. There will be no stacking more than one high.

Attorney Michael reiterated that the use is allowed by regulation. Many boxes will stay on site; some will be moved to other sites, then will be returned as a transition before being moved elsewhere.

Jillian Harris said the MCC would consider the proposal if it goes to the Planning Board.

Phil Straight said he originally voted in favor because he wanted the Planning Board to look into the proposal and make appropriate restrictions. This time he is against it because of the Wellhead Protection Area. He wants to hear the MCC's opinion.

In Patrick Dwyer's opinion, the real question is the traffic and the road rather than the type of business or hardship.

**The Board voted 4-1-0 to deny the Variance, on a motion made by Phil Straight and seconded by Tony Pellegrino. Patrick Dwyer voted in the negative. — The denial**

**was based on the petitioner not sufficiently meeting the criteria of permitted uses in the Aquifer Conservation District and Wellhead Protection Area.**

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

Patrick Dwyer noted that there is one open alternate seat on the ZBA. Phil Straight said that, when he leaves the Board at the end of December 2014 after more than 10 years of service, a second seat will be open.

Fran L'Heureux asked ZBA members for suggested discussion topics for the December 2, 2014, joint meeting with the Planning Board.

**9. Approval of Minutes – October 29, 2014**

**The minutes of October 29, 2014, were approved, with one change, by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Patrick Dwyer.**

**10. Adjourn**

**The meeting adjourned at 8:35 p.m., by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Patrick Dwyer.**