



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

WEDNESDAY, NOVEMBER 20, 2019

Board members present: Richard Conescu, Kathleen Stroud, Patrick Dwyer, Rod Buckley, Lynn Christensen (arrived at 7:18 p.m.), and Alternates Leonard Worster & Ben Niles

Board members absent: Alternate Drew Duffy

Staff present: Planning & Zoning Administrator Robert Price & Assistant Planner Casey Wolfe

1. Call to Order

Richard Conescu called the meeting to order at 7:00 p.m. and designated Alternate Ben Niles to sit for Lynn Christensen.

2. Roll Call

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

6. **Adam Gilmer (petitioner/owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit a two-lot subdivision with one lot having 66,816 sq. ft. of contiguous non-wetland area whereas 100,000 sq. ft. is required. The parcel is located at 7 Fuller Mill Road in the R-1 (Residential, by map) District. Tax Map 4B, Lot 167. Case # 2019-42.

This item was discussed before Item 3.

At the petitioner's request, the Board voted 5-0-0 to continue this item to December 18, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Patrick Dwyer and seconded by Kathleen Stroud.

3. **Streif, LLC (petitioner/owner)** – Variance under Section 3.02, Note 6 of the Zoning Ordinance to permit the construction of a 3,000 sq. ft. building 30 feet from Daniel Webster Highway whereas 50 feet is required. The parcel is located at 406 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 5D-4, Lot 099. Case # 2019-39.

This item was discussed after Item 6 and discussed simultaneously with Item 4.

4. **Streif, LLC (petitioner/owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit the construction of a retaining wall 10.88 feet from the front property line whereas 30 feet is required. The parcel is located at 406 Daniel Webster Highway in the C-2 (General

Commercial), Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 5D-4, Lot 099. Case # 2019-40.

Casey Wolfe (Assistant Planner) advised the Board that the first two cases (2019-39 and 2019-40) are both similar variance requests from the same petitioner for the same parcel so they can be heard together but voted on separately.

Matt Peterson (Keach Nordstrom Associates) began by summarizing the two setback variances being requested (see project description above) and explained that the proposed building is 68 feet from the DW Highway's edge of pavement and is in line with the other parcels on DW Highway. Mr. Peterson then read the five ordinance criteria into the record.

Robert Price (Planning & Zoning Administrator) addressed a question from the Board regarding the reference to widening DW Highway mentioned in the first criteria (see Findings of Fact #1 below). Mr. Price explained that it is not uncommon for the Department of Public Works to request extra width (via easement) for the Town's Right of Way when a plan is presented to allow for future road expansion projects.

The Board asked for clarification on when the Right of Way (ROW) easement was granted and what exactly is being proposed for the site. Mr. Peterson answered that the ROW dedication plan is dated December 4, 2017. He also explained the proposal is for a 3,000 s.f. office building. He noted that Case #2019-41, which is not yet open for discussion, is for a Special Exception to allow 3 studio apartments on the second floor.

Public Comment

Mike Malzone (8 East Chamberlain Road) voiced some general concerns about the project and stated that he does not feel the applicant meets the criteria outlined in # 4 (diminished property value) or #5 (unnecessary hardship). He also expressed concerns about landscaping and traffic/accidents in and around the area of the proposed development.

Mr. Peterson responded by indicating that the concerns raised all pertain to site plan requirements and he has taken notes to address them during that phase of the project.

Public Comment Session Closed

Patrick Dwyer expressed his concerns that several of the criteria are not being met. He feels that #1 (public interest) is not met because the town already has a lot of office space and residential units and feels that Merrimack does not need more. He also believes that the criteria for #4 (diminished property value) is not met because the property values have already been diminished because of the land being cleared.

Ben Niles asked about the landscaping plan and Mr. Peterson stated that a landscape plan that meets the town requirements will be presented as part of the site plan process. He also reminded the Board that the applicant re-graded East Chamberlain Road and made it safer and that was not part of the development in question (406 D.W. Highway).

Public Comment Re-Opened

Mike Malzone (8 East Chamberlain Road) disputed that the re-grading of East Chamberlain Road is a moot point because it is not any safer. They took it from a grade 12 road to a grade 10, which still does not meet town requirements. He feels that the development is going to add more traffic to Columbia Circle in the winter because all of the cars from the new development are not going to attempt to go down East Chamberlain Road in the winter because it's still too steep, so they will go the back way through Columbia Circle instead.

Public Comment Session Closed

Public Comment Re-Opened Again

Erin Naro (409 D.W. Highway) spoke against the project because the traffic on D.W. Highway is already terrible and she feels that adding more people to the road will just make it worse.

Mr. Peterson requested a continuance so that he could look into some of the concerns that are being brought up by the Board and abutters such as landscaping and traffic.

Kathleen Stroud reminded Mr. Peterson that traffic and landscaping are not things generally discussed by the Zoning Board. Mr. Peterson stated he understands that but since they were brought up at the Zoning Board meeting, he wants the opportunity to address them properly.

Patrick Dwyer also clarified his earlier comments by stating his concerns are mainly that he feels the public interest criteria is not being met because the town already had issues with traffic on that road (D.W. Highway) so he feels that it's a safety concern. Patrick also corrected his earlier statement about the diminished property values. He had originally stated that he feels the values were diminished due to the clearing of the trees; he retracted those comments and stated he feels the values will be diminished due to the increased traffic on the road.

Mr. Peterson stated that despite the clarification from the Board members, he would still like to pursue a continuance.

At the petitioner's request, the Board voted 4-1-0 to continue Case #2019-39 to December 18, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Patrick Dwyer and seconded by Kathleen Stroud. Rich Conescu voted in opposition.

At the petitioner's request, the Board voted 4-1-0 to continue Case #2019-40 to December 18, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Patrick Dwyer and seconded by Rod Buckley. Rich Conescu voted in opposition.

5. **Streif, LLC (petitioner/owner)** – Special Exception under Section 2.02.3 (C) (1) of the Zoning Ordinance to allow for a residential use in the C-2 (General Commercial) District. The parcel is located at 406 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 5D-4, Lot 099. Case # 2019-41.

At the petitioner's request, the Board voted 4-1-0 to continue this item to December 18, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Patrick Dwyer and seconded by Rod Buckley. Rich Conescu voted in opposition.

7. Discussion/possible action regarding other items of concern

No new items were discussed.

8. Approval of Minutes - October 30, 2019

The minutes of October 30, 2019 were approved as submitted, by a vote of 4-0-1, on a motion made by Patrick Dwyer and seconded by Ben Niles. Rod Buckley abstained.

9. Adjourn

The meeting was adjourned at 7:41 p.m. by a vote of 5-0-0, on a motion made by Kathleen Stroud and seconded by Rod Buckley.