



Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

Fax 603 424-1408

Town Hall - Lower level - East Wing

www.merrimacknh.gov

Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT MINUTES

WEDNESDAY, NOVEMBER 28, 2018

Members present: Patrick Dwyer, Richard Conescu, Lynn Christensen, Kathleen Stroud, and Alternates Leonard Worster, Rod Buckley and Drew Duffy.

Member absent: Fran L'Heureux.

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 Rod Buckley to sit for Fran L'Heureux.

2. Roll Call

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

- 4. Cellco Partnership d/b/a Verizon Wireless (applicant) and Brett W. Vaughn Revocable Trust (owner)** – Special Exception under Section 2.02.1 (B) (2) of the Zoning Ordinance to allow the installation of a telecommunications tower within the Residential District. The parcel is located at 123 Wilson Hill Road in the R-1 (Residential) District (by the Zoning Map). Tax Map 4A, Lot 023. Case #2018-41.

This agenda item was considered before agenda item #3.

The applicant requests a continuance to revise the petition to address criteria that were not included in the application, as well as submission of a related variance request.

At the applicant's request, the Board voted 5-0-0 to continue this item to December 19, 2018, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Lynn Christensen and seconded by Kathleen Stroud.

- 3. Lorraine A. LoRusso (applicant/owner)** – Request for Rehearing regarding Case # 2018-30, in which the Board denied a Variance under Section 2.02.7.6 of the Zoning Ordinance to permit the construction of a single family dwelling 23 feet from a wetland whereas 40 feet is required. The parcel is located at 12 Carrie Drive in the R-1 (Residential) and Aquifer Conservation Districts. Tax Map 5B, Lot 176.

This agenda item was considered after agenda item #4.

DRAFT – Subject to change

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The Board determined that enough new information was provided to warrant a rehearing.

The Board voted 5-0-0 to grant the rehearing, on a motion made by Lynn Christensen and seconded by Rod Buckley.

5. Silver Realty, LLC (applicant/owner) – Variance under Section 3.02 of the Zoning Ordinance to permit a two-lot subdivision with one lot having 145 feet of frontage whereas 250 feet is required. The parcel is located at 102 Bean Road R-1 (Residential, by the Zoning Map) and Aquifer Conservation Districts. Tax Map 6C, Lot 145. Case # 2018-42.

Attorney Gerald Prunier, 20 Trafalgar Street, Nashua, said the 7.5-acre lot would be halved, with one lot having 3 acres and the other 4.5 acres, for which a variance is requested for reduced frontage. Silver Realty purchased a partially built and renovated home at foreclosure. The old unused logging road is not necessary for use at the rear of the property. Responding to a question from Rich Conescu, Tim Thompson stated that the Town does not have any jurisdiction or rights associated with the logging road, since it is just a trail internal to the parcel rather than a public right-of-way.

John Pearson, Silver Realty, LLC, said that turning the logging road into a driveway would essentially utilize an “existing” curb cut on to Bean Road.

Attorney Prunier read the variance criteria into the record.

Public comment

The following neighbors and abutters submitted a letter stating that they have no problem approving the variance: Maureen Beaver, 4 Westcott Drive; Theresa & George Hadley, 115 & 119 Bean Road; Belinda & Brian Sawyer, 106 Bean Road; Pamela & Gary Smith, 95 Bean Road; Adriana & Christopher Mendes, 101 Bean Road; Natalie & Mark Boldeia, 2 Westcott Drive; Sandra & Todd Glover, 99 Bean Road.

The Board voted 5-0-0 to grant the variance, with the condition that the petitioner shall obtain Planning Board approval for the proposed subdivision, on a motion made by Richard Conescu and seconded by Rod Buckley.

Findings of Fact

1. Granting the variance would not be contrary to the public interest because there would be no measurable impact on existing traffic levels and patterns. A single-family residential use is consistent with the character of the neighborhood. There would be no threat to public health, safety or welfare and no adverse impact or injury to any public rights. There would be no measurable impact to abutters because the area is heavily wooded and the house would be in back with no frontage on the road;
2. The spirit of the Ordinance is observed because there would be 150' between the driveways and dwellings. The proposed lots satisfy all other zoning requirements and are sizable enough to sustain a single-family home on each. Proposed Lot 6C-

145 is already developed and would consist of three acres of land. There is an existing driveway from Bean Road to the dwelling. Proposed Lot 6C-145-1 is 4.5 acres. It contains a logging road that runs from Bean Road to the northern portion of the lot and was historically used by motor vehicles. There are over 100' between the two nearest access points, which is adequate spacing if the logging road is developed into a driveway. The two proposed lots meet all area requirements and are large enough that there would be no overcrowding of the land;

3. Granting this variance would do substantial justice because there would be a loss to the applicant if the variance were denied: the majority of the land on the existing lot would remain essentially vacant and the applicant would be unable to construct a new dwelling. 100,000 s.f. lots are larger than required. The loss to the applicant would not be outweighed by any gain to the general public;
4. The values of the surrounding properties would not be diminished because there is a thick wooded buffer between the existing lot and the abutting lots that would shield the properties from having a visual effect on each other. The properties in the area are spaced fairly far apart. The proposed use on Lot 6C-145-1 is single-family residential, which is consistent with the character of 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 the subject property is distinguishable from other properties in the area: a) There is an existing logging road that provides access to the northern portion of the lot that was historically used by motor vehicles. Other properties in the area do not have this existing feature; b) This is the only property in the area that is sizable enough in depth and width to support a two-lot subdivision for residential purposes.

The general public purpose of the frontage requirement is to prevent overcrowding of land and ensure adequate spacing between driveways for safety purposes. The proposed lots would be 3 and 4.5 acres and are zoned for single-family residential use. The applicant's property and the abutting properties are heavily wooded. The dense tree cover would provide a visual buffer between the lots. The proposed lots satisfy all area zoning requirements. There would be no overcrowding of land.

There are more than 100' between the nearest driveway and the existing logging road. The historic use of the logging road by motor vehicles has not posed any safety concerns.
 - 2) The proposed use is a reasonable one because it is a permitted use in the zone and is consistent with the character of the neighborhood.

6. Discussion/possible action regarding other items of concern

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None

7. Approval of Minutes — September 26 & October 31, 2018

The minutes of September 26, 2018, were approved as submitted, by a vote of 5-0-0, on a motion made by Lynn Christensen and seconded by Kathleen Stroud.

The minutes of October 31, 2018, were approved as submitted, by a vote of 3-0-2, on a motion made by Lynn Christensen and seconded by Kathleen Stroud. Richard Conescu and Rod Buckley abstained.

8. Adjourn

The meeting was adjourned at 7:21 p.m., by a vote of 5-0-0, on a motion made by Kathleen Stroud and seconded by Rod Buckley.