



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

## MERRIMACK ZONING BOARD OF ADJUSTMENT

### APPROVED MINUTES

**WEDNESDAY, OCTOBER 25, 2017**

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

Members absent: Tony Pellegrino and Richard Conescu.

Staff present: Planning and Zoning Administrator Robert Price and Recording Secretary Zina Jordan.

#### 1. Call to Order

Patrick Dwyer called the meeting to order at 7:00 p.m. and designated Leonard Worster to sit for Tony Pellegrino.

#### 2. Roll Call

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

- 4. William Lastowka and Land of Goshen, LLC. (petitioner/owner)** — Variance under Section 3.08.9 of the Zoning Ordinance to permit the existing improvements (barn, shed, home, etc.) to remain within a 100 foot landscape buffer proposed as part of a cluster subdivision. The parcel is located at 6 Watkins Road in the R (Residential) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 4C. Lot 449. Case # 2017-39. **This item is continued from the September 27, 2017, Zoning Board of Adjustment meeting.**

This agenda item was discussed before agenda item #3.

Attorney Greg Michael, Bernstein Shur, Sawyer & Nelson, P.A. opted not to postpone the public hearing because only four voting Board members were present.

**At the applicant's request, the Board voted to continue this item to November 29, 2017, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Fran L'Heureux and seconded by Lynn Christensen.**

- 3. Stephen and Dianne Bazzocchi (petitioners/owners)** — Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a new single family dwelling on lot 105 with a front setback of 6 feet whereas 30 feet is required and rear setback of 16.3 feet whereas 40 feet is required, and the construction of a new garage on lot 151 with a front setback of 5 feet whereas 30 feet is required and a rear setback of 26.6 feet whereas 40 feet is required, with the existing house and

garage to be razed. The parcels are located at 12 and 15 Lakeside Drive in the R (Residential) District. Tax Map 6A-1, Lots 105 and 151. Case # 2017-36. **This item is continued from the September 27, 2017, Zoning Board of Adjustment meeting.**

This agenda item was discussed after agenda item #4.

Attorney Michael Klass, Bernstein Shur, Sawyer & Nelson, P.A. said Lot 105 and Lot 151 are pre-existing non-conforming lots. Lot 105 is bisected by the Amherst town line. The petitioner proposes to raze the existing dwelling on Lot 105 and replace it with a new single-family dwelling to accommodate aging in-place (wide stairs, halls, doorways). He also proposes to raze the existing garage on Lot 151 and to raze the well shed while bringing the well casing up to grade. A new garage would be built directly across the street from the house. A new septic system would be constructed in back of the garage away from Baboosic Lake. The proposed setback dimensions would be more conforming than what currently exists.

Tom Carr, Meridian Land Services, Inc., showed where the septic system would be located, for which the State has granted a waiver. A septic tank and pump chamber would pump under the road to a leach field behind the garage. Town Council has granted a water and sewer line easement and the applicant has given the Town a road easement over the property.

Attorney Klass read the statutory criteria into the record.

There was no public comment.

**The Board voted 4-0-0 to grant the Variances, on a motion made by Lynn Christensen and seconded by Fran L'Heureux.**

### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because the project simply seeks to replace and modernize aging structures and infrastructure on pre-existing non-conforming lots. Property setback would increase and overcrowding would be prevented. The garage would be relocated closer to the house and away from the neighbors. A new septic system would be constructed and the well upgraded. The improvements would all be consistent with the character of the neighborhood and done in a manner to promote health, safety, convenience and general welfare;
2. The spirit of the Ordinance is observed because minimum setback requirements post-date the creation of the property and its structures. Yard setbacks would be increased and the garage relocate away from abutters and closer to the applicant's house. A variance would allow construction of a house that complies with modern safety requirements and a septic system that utilizes modern technology;
3. Granting this variance would do substantial justice because denial would not result in an appreciable gain to the general public. The public would gain from improved setbacks, modernized structures and a new septic system on land adjacent to

Baboosic Lake. Denial would result in a substantial loss to the applicant by preventing a safe and reasonable use of the property;

4. The values of the surrounding properties would not be diminished because the proposed structures would be used in a manner consistent with the existing house and garage. The proposal would not produce different or significant traffic, noise, odors, or other detrimental impacts to the surrounding area;
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 has a special and unique history, location and orientation with respect to Lakeside Drive; the Amherst town line bisects the lot; and current historic structures do not comply with setback requirements. The proposal seeks to modernize the structures while making the lot more conforming. It would slightly improve setbacks and relocate the garage closer to the house. Modernized building and a new septic system would improve general health, safety and welfare;
  - 2) The proposed use is a reasonable one because single-family residential use currently exists at the property and is permitted under the Ordinance.

- 5. BHL Real Estate Holdings, LLC. (petitioner/owner)** — Variance under Section 17.10(b) of the Zoning Ordinance to permit a sign zero feet from the front property line whereas 15 feet is required (as per a previously granted variance). The parcel is located at 660 Daniel Webster Highway in the C-2 (General Commercial) District. Tax Map 6E-2, Lot 014. Case # 2017-40.

Brian Labrie, Owner, BHL Real Estate Holdings, LLC, said the sign would be placed against the right-of-way for Daniel Webster Highway, which is much wider than the actual paved portion of the roadway. There is approximately 18' between the edge of pavement and the limit of the right-of-way. The sign would be 32 square feet. In 2011 the Zoning Board of Adjustment (ZBA) granted a variance to reduce the 20' setback to 15'. While the sign was never installed, the 15' setback became vested as part of the related site plan approval. The petitioner wants to make room behind the existing mulch bed for a lawn mower to cut the grass perpendicular to the house and 15' away from it.

Brian Labrie read the statutory criteria into the record.

There was no public comment.

**The Board voted 4-0-0 to grant the Variance, on a motion made by Fran L'Heureux and seconded by Lynn Christensen.**

### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because an approved and permitted business sign would be moved closer to D.W.

Highway. It would not affect neighbors' line of sight and would be in line with other signs in the area. There would be landscaping around it;

2. The spirit of the Ordinance is observed because the current site plan is not realistic and the sign would be too close to the building. Neighbors in this commercial neighborhood would not be affected;
3. Granting this variance would do substantial justice because customers must be able to see a business sign. Because the right-of-way is enormous, their line of sight would not be affected. The distance from the asphalt edge of D.W. Highway to the building is 44'. The row is 19' off the edge of pavement. The approved setback is 15' off of the row. That leaves 11' to put the sign, which is 8' long;
4. The values of the surrounding properties would not be diminished because the sign is new and attractive and would only enhance the property value of the septic and oil company on either side. Landscaping would enhance 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 a hardship would be created by leaving the sign as it is, touching the building and out of public view;
  - 2) The proposed use is a reasonable one because it would be in a location consistent with other signs in the area and would show where the commercial building is.

- 6. MET General Contracting Inc. (petitioner) and June Harrington (owner) —** Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a 24'x26' garage, a 14'x14' sunroom and a 6'x13'6" farmers porch with a 7'6" front setback whereas 30 feet is required. The parcel is located at 5 Beaver Brook Drive in the R-2 (Residential) and Aquifer Conservation Districts. Tax Map 6C, Lot 546. Case # 2017-41.

Mark Twardoski, President, MET General Contracting Inc., said the petitioner seeks to build several additions to the current single-family home located on the lot (garage, breezeway and farmers porch). If the garage were against the house, there would be no room for a second entry. Arthur Harrington has MS and might possibly need a handicap ramp into the home. The proposed encroachment is into the side yard, which qualifies for a front yard setback due to this being a corner lot.

Mark Twardoski read the statutory criteria into the record.

There was no public comment.

**The Board voted 4-0-0 to grant the Variance, on a motion made by Lynn Christensen and seconded by Fran L'Heureux.**

## Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the garage, breezeway and farmer's porch would neither impede nor add public, emergency vehicle or foot traffic. There would be no changes to the existing traffic patterns or to the driveway. The proposed garage/sunroom addition would be for single-family use only. The appearance of the new addition would conform to the current home and to neighborhood aesthetics;
2. The spirit of the Ordinance is observed because the proposed addition would adhere to the appearance of the existing single-family homes in the neighborhood. The landscape and woodscape would be minimally altered. The addition would be attached to the left-hand side of the existing house, leaving a substantial amount of land as a buffer between the abutters. Variances have previously been granted to homeowners in the surrounding area with similar setback requirements, thus this project would conform to the surrounding homes;
3. Granting this variance would do substantial justice because no harm would be created to other individuals/owners in the neighborhood. There is a minimal number of homes in the surrounding neighborhood that do not have attached two-car garages. The home in question is a corner lot with two 30' setbacks instead of one 30' front setback. The corner lot hinders construction of an attached garage due to the setbacks. The applicant is willing to do a certified foundation plan;
4. The values of the surrounding properties would not be diminished because the resale values would increase. The proposal would benefit the entire neighborhood as well as the owners of the property. Aesthetically the addition would match the current designs of the existing homes/garages in the area;
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 denial could result in an unnecessary hardship for the owner, as a disabled family member requests the garage to be able to park a vehicle inside to avoid snow removal and hazardous conditions on an icy and wet driveway. The disability makes it difficult to travel safely from the vehicle to the house. A covered garage would minimize hazardous conditions in winter months;
  - 2) The proposed use is a reasonable one because the garage/sunroom addition would match the characteristics and aesthetics of the neighborhood.
7. **Stephen Dion (petitioner/owner)** — Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a 24'x24' garage with an 8 foot side setback whereas 15 feet is required. The parcel is located at 121 Herrick Street in the I-1

(Industrial) and Aquifer Conservation Districts. Tax Map 3D-2, Lot 016-01. Case # 2017-42.

Stephen Dion, 121 Herrick Street, wants a two-car garage instead of the current portable tent garage for his truck and antique car. The existing side driveway is the only place wide enough to fit the garage and it is also where the side door is located. The peak would be used for storage. The garage would be detached from the home.

Stephen Dion read the statutory criteria into the record.

There was no public comment.

**The Board voted 4-0-0 to grant the Variance, on a motion made by Fran L'Heureux and seconded by Leonard Worster.**

### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because there would be no safety issues or nuisance. All work would be on private land. The garage would be aesthetically pleasing to the neighborhood. All garage construction would be within Building Code specs and permitting;
2. The spirit of the Ordinance is observed because the neighbor's home would still be 75' away from the applicant's home and 50' from the proposed building with a buffer of huge pine trees and a solid fence between the homes. The neighbor would not see it;
3. Granting this variance would do substantial justice because it would allow the applicant to park two cars side by side and to keep them out of the weather. It would look better than the portable garage. Most homes in the neighborhood have a garage to protect tools and vehicles;
4. The values of the surrounding properties would not be diminished because the house would be better looking and would increase surrounding property values. It would allow the applicant to use the property reasonably;
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 solid fence and no windows on that side mean there would be no effect on the neighbor's view. It would be better than the current temporary canvas garage. Huge pine trees separate the homes;
  - 2) The proposed use is a reasonable one because it would allow normal use of land for a normal size garage. The size is reasonable because it would house two vehicles. Most households have two vehicles. The applicant has a valuable antique car that he would like to store indoors.
8. **Brian Lacerte of Lacerte General Contracting, LLC. (petitioner) and Frank and Nanci Phillips (owners)** — Variance under Section 3.02 of the Zoning Ordinance to

permit the construction of a 24'x38' garage with a 23 foot side setback whereas 30 feet is required. The parcel is located at 44 Pearson Road in the R (Residential) and Aquifer Conservation Districts. Tax Map 7D, Lot 00 4-02. Case # 2017-43.

Brian Lacerte, Lacerte General Contracting, LLC, said the applicant wants to build a three-stall garage and use the third stall for storing lawn and snow removal equipment because the garage is being proposed in the location of an existing shed. The family has a physically handicapped daughter. The family has specialty equipment she requires that is kept in the existing attached garage. The specialty vans she requires do not fit in the existing garage. The goal is to be able to store the two specialty vans indoors in the proposed garage so as to maintain free and clear access to the existing ramp entrance to the home. The front is the smallest part of the trapezoid-shaped lot. A septic system and propane tanks are behind the garage. Both the gable of the existing garage and the proposed garage would face the street and look like twin buildings. The garage doors of the proposed garage would face the house.

Brian Lacerte read the statutory criteria into the record.

There was no public comment.

**The Board voted 4-0-0 to grant the Variance, on a motion made by Lynn Christensen and seconded by Leonard Worster.**

### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because the proposed structure would maintain the full setback requirement from the street. The design would match the look of the house and complement the look of the property;
2. The spirit of the Ordinance is observed because the proposed structures would still be over 100' from the nearest abutter with a large lawn and trees in between;
3. Granting this variance would do substantial justice because the family has a physically handicapped daughter. The specialty vans and equipment she requires do not fit in the existing garage. Snow removal from the vans is extremely taxing. This location is closest to the ramp entrance to the home;
4. The values of the surrounding properties would not be diminished because the existing home is a well maintained and attractive Colonial with stone walls and walkways as well as beautiful landscaping. The proposed garage design would mirror the house in architectural detail and add to the overall curb appeal;
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, although the property is large, the odd shape and position of the well and septic system eliminate options for other buildable areas with ready access to the handicap ramp;

- 2) The proposed use is a reasonable one because the proposed building would breach the setback requirements on only one corner, as shown on the plot plan.

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

Chairman Dwyer announced that there are two alternate seats vacant on the Board and encouraged the public to apply for those positions.

#### **10. Approval of Minutes - September 27, 2017**

The minutes of September 27, 2017, were approved as submitted, by a vote of 3-0-1, on a motion made by Leonard Worster and seconded by Lynn Christensen. Fran L'Heureux abstained.

#### **11. Adjourn**

The meeting was adjourned at 7:55 p.m., by a vote of 4-0-0, on a motion made by Leonard Worster and seconded by Fran L'Heureux.