



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, OCTOBER 28, 2015

Members present: Patrick Dwyer, Tony Pellegrino, Lynn Christensen, and Alternate Leonard Worster.

Members absent: Fran L'Heureux and Richard Conescu.

Staff present: Planning and Zoning Administrator Jillian Harris 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 Fran L'Heureux.

2. Roll Call

Lynn Christensen led the pledge of allegiance. Tony Pellegrino read the preamble and swore in members of the public who would be testifying.

- 3. Tim Sullivan of Barlo Signs International, Inc. (petitioner) and KJB Ventures, LLC. (owner)** _ Variance under Section 17.10.4 of the Zoning Ordinance to permit a 126.25 sf. illuminated wall sign whereas 85.30 sf. is allowed. The parcel is located at 4 Dobson Way in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 3D, Lot 003-003-02. Case # 2015-37.

Tim Sullivan, Barlo Signs International, Inc., explained that the site faces Route 3 and Continental Boulevard. The majority of patients come from that direction, but there is no sign there. The sign would be 50 square feet smaller than the sign at Convenient MD. Because it would be blue, it would not be as bright and would be muted at night.

Tim Sullivan read the statutory criteria into the record.

There was no public comment.

Lynn Christensen said the sign makes sense.

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

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because it would help the public to identify their destination easily. The public would benefit from an attractive to-scale sign;

2. The spirit of the Ordinance is observed because the proposed sign would direct, advertise and inform the public with no negative affect on adjacent properties;
3. Granting this variance would do substantial justice because it would allow the petitioner to identify itself properly while directing the public to the site;
4. The values of the surrounding properties would not be diminished because the surrounding properties are commercial and would be positively affected by a clean, clear and attractive sign;
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 setback of St Joseph Medical Center/Family Practice from Dobson Way and beyond makes it difficult for motorists to locate the property easily. The Merrimack Sign Ordinance does not speak to building fascias that are unique due to setback or orientation to main thoroughfares;
 - 2) The proposed use is a reasonable one because the proposal is neither imposing nor overpowering. The proposed sign is to scale with the client's north elevation and is a positive proposal for this site.

- 4. Patricia M. Panciocco, Esq. of Baroff P.A. (petitioner) and Carol Maggio, Valley View Revocable Trust (owner)** _ Equitable Waiver of Dimensional Requirements under Section 3.02(A) of the Zoning Ordinance to permit an existing front stoop along the front of a residence 47 ft. from the front property line whereas 50 ft. is required. The parcel is located at 15 Valleyview Drive in the R (Residential) District. Tax Map 5C, Lot 142. Case # 2015-38.

Steve Keach, Keach-Nordstrom Associates, Inc., explained that, in mid-October his office did an as-built for a Certificate of Occupancy (CO) for the new home. The builder had constructed a stoop that extended 3' over the front yard setback. It was not part of the original construction and was added because of the steep grade. It was not discovered until the plot plan was completed and the home substantially constructed. A good faith error was made in calculating the stairs, but the platform and extra step caused the violation.

Steve Keach read the statutory criteria into the record.

Lynn Christensen asked if the builder could have put in just one step without the stoop. Steve Keach replied that the builder could have and has no idea why he did not. The porch/stoop could be eliminated, but there would be a 20' grade difference between the sill and the street. Lynn Christensen said the stoop and overhang make a positive visual and provide safety in bad weather.

There was no public comment.

Leonard Worster said the building is setback a 53', but site conditions dictated a minor change. It is not part of the dwelling and was not intentional. Tony Pellegrino said

reconstruction would be more of a problem than leaving it alone. Patrick Dwyer disagreed with criterion #3, the house would not have to be dismantled to remove the violation. Lynn Christensen said leaving the violation is aesthetically better than removing it.

The Board voted 4-0-0 to grant the Equitable Waiver, on a motion made by Lynn Christensen and seconded by Tony Pellegrino.

Findings of Fact

1. *The non-conformity was discovered after the structure was substantially completed:* The encroachment of the front porch was discovered after a certified plot plan was completed. The porch was not completed until after the final grading was completed, which gave rise to the need for an additional step at the end of the finished walkway. These were not completed until after the structure was substantially completed.
2. *The violation was not an outcome of ignorance of the law, failure to inquire, obfuscation, misrepresentation or bad faith, but was instead caused by a good faith error in measurement or calculation made by an owner or owner's agent:* The certified plot plan shows the main structure more than meets the front setback requirement. The applicant made a good faith error in calculating the required stairs, but needed to provide a platform to keep the grade of walkway flatter.
3. *The physical or dimensional value does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property:* The modest reduction in the front setback requirement for an additional front stair will not be a public or private nuisance and is far outweighed by the added safety provided by the additional stair and will have no impact on the property's use or impact other properties in the area.
4. *The cost of correction far outweighs any public benefit to be gained:* To correct the error would require the whole house to be relocated towards the rear of the property, which is not cost effective and would not provide any additional public benefit.
5. **Hank Balch of Green Bear Signs & Graphics, LLC. (petitioner) and Vault Motor Storage (owner)** _ Variance under Section 17.10.3 of the Zoning Ordinance to permit an additional 160 sf. ground sign whereas a 63 sf. ground sign was permitted at 526 D.W. Highway in 2014. The parcel is located at 526 D.W. Highway in the C-2 (General Commercial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 5D-2, Lot 001. Case # 2015-39.

Hank Balch, Green Bear Signs & Graphics, LLC., read the statutory criteria into the record.

As to criterion #1, public interest, Tony Pellegrino noted the current sign that faces D.W. Highway. Hank Balch said the site is unique because both the Everett Turnpike and

D.W. Highway pass the property. Vault Motor Storage wants the Turnpike traffic to know that it is located in Merrimack. The current sign faces D.W. Highway rather than the Turnpike.

As to criterion #2, spirit of the Ordinance, Jillian Harris explained that the warehouse is for the same business. Hank Balch added that it would serve the same purpose as the other warehouse.

As to criterion #3, substantial justice, Patrick Dwyer noted that many buildings on the Turnpike have been rehabbed. Providing "dollars for Merrimack's Town coffers" is not substantial justice. Hank Balch said he meant it would add tax revenue. Lynn Christensen countered that a sign adds no increased tax revenue. Patrick Dwyer agreed.

As to criterion #4, values of surrounding properties, Lynn Christensen asked if there are any State guidelines regarding billboards on the highway, Jillian Harris said she was unaware of any, but she had counseled the applicant to contact NH Department of Transportation (DOT).

As to criterion #5, unnecessary hardship, Lynn Christensen stated that there is no hardship for a fully occupied building with an additional warehouse. The buildings were all filled with the current sign.

There was no public comment.

Patrick Dwyer disagreed with criterion #3, substantial justice, and #5, hardship. The building is fully occupied with the current 63 square foot sign. The requested 160 square foot sign is very large. Other businesses with frontage on the Turnpike have not asked for bigger signs. Tony Pellegrino agreed.

Hank Balch replied that the sign would not look so large because of its distance from the highway. The purpose is to draw attention to the business.

Lynn Christensen said the size is fine, but there is no reason for an additional sign. Everyone knows that Vault Motor Storage is there.

Leonard Worster said that this is a multi-building lot. The sign would target the Turnpike and would not be visible anywhere except the highway. The size is dictated by high-speed traffic. It is a reasonable and appropriate size for Turnpike traffic going by at 65 miles per hour.

Lynn Christensen said she believed that the Variance should be denied because there is no hardship. A sign already exists. The facility is at capacity, especially with a third building. Without a sign, the warehouse would still be built and filled, so there is no hardship.

The Board voted 4-0-0 to deny the Variance, on a motion made by Lynn Christensen and seconded by Tony Pellegrino.

Findings of Fact

1. The property already has a ground sign that meets the maximum allowed area per the Merrimack Zoning Ordinance.
2. The applicant did not present a compelling case for the criteria of substantial justice or unnecessary hardship as both arguments were based on advertising and finances and not special conditions of the property.

6. Discussion/possible action regarding other items of concern

Lynn Christensen informed the Board of pending legislation concerning Accessory Dwelling Units (ADU). Having an ADU would be the right of any single-family dwelling without requiring a variance or special exception. Occupants would not have to be family members, although one unit must be owner occupied. There would be no limits on the ADU's size or the number of bedrooms. When asked for staff opinion, Jillian Harris said that the legislation makes sense for many reasons and is consistent with recommendations from the Master Plan.

7. Approval of Minutes – September 30, 2015

The minutes of September 30, 2015, were approved as submitted, by a vote of 4-0-0, on a motion made by Lynn Christensen and seconded by Tony Pellegrino.

8. Adjourn

The meeting adjourned at 7:48 p.m., by a vote of 4-0-0, on a motion made by Tony Pellegrino and seconded by Leonard Worster.