



Town of Merrimack, New Hampshire

Community Development Department

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Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MERRIMACK ZONING BOARD OF ADJUSTMENT

APPROVED MINUTES

WEDNESDAY, OCTOBER 30, 2019

Board members present: Richard Conescu, Kathleen Stroud, Patrick Dwyer and Lynn Christensen, and Alternates Leonard Worster, Ben Niles & Drew Duffy

Board members absent: Rod Buckley

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 Rod Buckley.

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.

3. **Chestnut Hill Properties, LLC (petitioner/owner)** – Variance under Section 3.08.8 of the Zoning Ordinance to allow previously approved cluster subdivision lots (permitted by previous variance to be allowed in the R-1 District) to be serviced by individual septic systems whereas municipal sewer is required. The parcels are located at Bannon Circle and Ritterbush Court (approved, not constructed roads) in the R-1 (Residential, by map) District. Tax Map 5B, Lots 002, 005, 007, 008, 009-01 through 009-71. Case #2019-29. This item is continued from the September 25, 2019 meeting.

This item was withdrawn by the petitioner.

4. **Triangle Credit Union (petitioner) and Apple Development Limited Partnership (owner)** – Variance under Section 17.10.3 of the Zoning Ordinance to allow a third ground sign on the property whereas a maximum of two are permitted. The parcel is located at 360 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Planned Residential Development Overlay and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 001. Case #2019-30.

Mark Warner (Triangle Credit Union, Executive Vice President) and Dennis Maltais (Classic Signs) presented the proposal to the Board by explaining that the Credit Union is seeking a variance for a free-standing ground sign because the building is hard to see coming from the north and the existing mall pylon sign only allows a small space for tenants to advertise their

businesses. Mr. Maltais walked the Board through the petitioner's responses to the variance criteria which included an explanation that the free standing sign would be the only illuminated signage for that particular business because of the design of the building. The Board questioned why an illuminated sign could not be mounted to the front of the building facing DW Highway and Mr. Maltais explained that the section of the building that is flat is all glass and that research has shown that signs perpendicular to the road are more effective. Mr. Maltais also argued that the business sits high above the roadway and is set back quite a distance. He continued by explaining that he feels that the Credit Union is in a unique situation because it is not in the actual mall building but rather in the parking lot so it should be afforded the same rights as any other business on the DW Highway. Mr. Maltais concluded his walkthrough of the variance criteria and Chairman Conescu opened up the floor to questions from the Board.

Patrick Dwyer stated that he disagrees with the petitioner's responses to the hardship criteria. He feels that the business has good visibility from the road and that the design of the building itself makes it hard to miss. He also contended that the other stand-alone building on site (Hayward's Ice Cream) does extremely well without a free-standing sign and that the property owner has plans (and approval) for a large electronic reader board style freestanding sign at the rear of the site facing the Turnpike. Lynn Christensen agreed with Patrick's statements and added that the petitioner chose this location and that they do have options for an illuminated sign on the building itself.

Public Comment

Stuart Hollander (33 Pondview Drive) spoke in opposition of the sign stating that due to the nature of the business, he does not think an additional sign is warranted. Credit Union customers are generally members and will know the location of the business. Mr. Hollander also mentioned the highway sign and was reminded by the Board to please keep his comments to the petition being presented.

Mr. Warner and Mr. Maltais responded to the comments by clarifying that the Credit Union will not be leasing space on the sign facing the highway due to the additional cost and that their main objective in wanting the ground sign is to have an electronic reader board to promote their products and services. Paul Tripp (Classic Signs) also spoke in response to the public comments, stating that he does not think it is fair to consider the type of business because it is discriminatory. He also stated that the highway sign should not be considered for this case either because it is directed at a different demographic and is not even in existence yet.

Several other points were made by the Board members, some speaking in favor of the variance and others in opposition. Those in favor feel that the town should welcome new businesses and not be so stringent with the zoning regulations and those in opposition felt that the hardship criteria was not met to allow an additional ground sign on the property.

A motion to grant the Variance failed, 2-3-0, on a motion made by Ben Niles and seconded by Kathleen Stroud. Patrick Dwyer, Lynn Christensen and Richard Conescu voted in opposition.

The Board voted 3-2-0 to deny the Variance, because the petitioner failed to demonstrate a hardship inherent to the property as the property already contains existing number of ground signs that exceed the limits required by the ordinance (through grant of prior

variances) which provide sufficient signage for the users of the site, on a motion made by Lynn Christensen and seconded by Patrick Dwyer. Ben Niles and Kathleen Stroud voted in opposition.

- 5. Triangle Credit Union (petitioner) and Apple Development Limited Partnership (owner)** – Variance under Section 17.10.3 of the Zoning Ordinance to allow for construction of a 47.74 square foot ground sign whereas a maximum of 32 square feet is allowed. The parcel is located at 360 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Planned Residential Development Overlay and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 001. Case #2019-31.

This petition was made moot by the Board's denial of Item 4/Case #2019-30.

- 6. Curtis M. Wheeler, Jr. (petitioner/owner)** – Equitable Waivers of Dimensional Requirements under RSA 674:33-a and Section 3.05 of the Zoning Ordinance to permit the existing single-family dwelling and the southeasterly deck to remain 10.1 feet from the front property line whereas 30 feet is required; 10.4 feet from the side property line whereas 15 feet is required; and 22.7 feet from the rear property line whereas 40 feet is required. The parcel is located at 5 Lakeside Drive in the R-2 (Residential) District. Tax Map 6A-1, Lot 153. Case # 2019-32.

Planning & Zoning Administrator Robert Price summarized the project by explaining that the current property owner bought the property not realizing that the previous owners had converted the garage to a living space without proper approvals from the Town. Staff has been working with the petitioner and his legal counsel since the discovery of the violation and they have determined that equitable waivers are the appropriate means for relief so that is what is being sought.

Attorney Thomas Quinn represented the petitioner (Curtis Wheeler) and provided additional background about the original variance that was granted back in 1986 and explained that when the land was recently surveyed, it was discovered that the setbacks that were originally agreed to in that variance were not adhered to when the structure was built. Attorney Quinn also explained that the equitable waiver could be granted in this instance because the building has been erected for more than 10 years with no enforcement action being taken. He concluded by stating that due to the size of the lot, there is not a viable way to bring the structure into compliance and the financial impact would outweigh any benefits to the public.

Chairman Conescu reviewed the Equitable Waiver criteria with the Board and asked if anyone had any questions based on the information that Attorney Quinn provided. The Board had no questions so Chairman Conescu opened the floor to public comments.

Public Comment - No Public Comments were received.

The Board voted 5-0-0 to grant the Equitable Waivers, on a motion made by Patrick Dwyer and seconded by Lynn Christensen.

Compliance with the statutory requirements of RSA 674:33-a:

1. The violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the town:

The existing structure was constructed in 1986, per previously granted variances.

No enforcement action was brought by the Town until 2019 (and for a potential use violation, not the dimensional issues) which was well beyond 10 years after construction.

2. The physical or dimensional violation 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:

Neither the Town, any abutters nor any neighbor has ever lodged a complaint against the existing structure or its location as built in more than 30 years. The lot is partially wooded and surrounded by other wooded lots. The structure is close to the travelled way, but so are many of the homes in the neighborhood. The lots in the neighborhood were established about 100 years ago, and are small, so the neighborhood in general is fairly densely developed. The Premises as, developed, are consistent with the rest of the neighborhood.

Due to the degree of past construction or investment made in ignorance of the facts, constituting the violations, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected. The structure, consisting of a three door garage, a fully constructed apartment and the attached deck/landing, is fully constructed. It has been in existence for over 30 years. It is virtually impossible to move the structure without demolishing it and rebuilding. That would clearly require the expenditure of in excess of \$150,000.00. And it is clear that the structure could not be re-built in compliance with the setbacks set forth in Section 3.02. The lot is only 70', more or less, deep and 80' wide. With a 30' front setback required and a 40' rear setback required, there is no place on the lot where the structure could be rebuilt.

3. The cost of correction far outweighs any public benefit to be gained:

Moving the structure would be the epitome of economic waste and would not benefit the public. There is no benefit to the public in requiring the demolition and/or relocation of the structure. The structure is not out of place in its setting. It is located on a dead-end street over which there is virtually no occasion for the public to travel, so the appearance of the Premises and the location of the structure on the lot is of no consequence to the public. The structure has existed without objection by the Town, the public, abutters or neighbors for over 30 years.

- 7. Curtis M. Wheeler, Jr. (petitioner/owner)** – Variance under Section 3.05 of the Zoning Ordinance to permit an existing deck (northerly) to remain 20 feet from the rear property line whereas 40 feet is required. The parcel is located at 5 Lakeside Drive in the R-2 (Residential) District. Tax Map 6A-1, Lot 153. Case # 2019-33.

Attorney Thomas Quinn also represented the petitioner (Curtis Wheeler) for this case and provided some background on the lot before walking through the variance criteria. He explained that when the northerly deck was erected the owner was not aware that he needed a permit but applied for one after the violation was discovered. The building permit was denied because the setbacks were not met based on the location of the structure (see case #2019-32

above). Since the Equitable Waivers were granted, a variance for the deck is still needed because the rear setback is not being met (20 feet from the rear property line whereas 40 feet is required) and this deck was constructed after the original structure was built and is therefore not included in the equitable waivers. Attorney Quinn walked through the five variance criteria (see Findings of Fact) and the Board had no additional questions.

Public Comment - No Public Comments were received.

The Board voted 5-0-0 to grant the Variance, on a motion made by Patrick Dwyer and seconded by Lynn Christensen.

Findings of Fact

1. *Granting the variance would not be contrary to the public interest*

See response to “spirit of the ordinance,” below.

2. *The spirit of the ordinance is observed:*

The requirement that the variance not be contrary to the public interest is related to the requirement that it be consistent with the spirit of the ordinance and the two have for years been treated together by the State Supreme Court. See Malachy Glen Associates, Inc. v. Town of Chichester, 155 NH 102 (2007). Because the provisions of a zoning ordinance represent a declaration of public interest, any variance would be contrary thereto to some degree. Consequently, the Supreme Court has instructed that to determine whether a requested variance is not contrary to the public interest and is consistent with the spirit of the Ordinance, the Zoning Board of Adjustment (“ZBA”) must determine whether granting the variance “would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives”.

The Court has recognized two tests for determining whether granting a variance would violate an Ordinance’s basic zoning objectives. One is to determine whether the variance would “alter the essential character of the neighborhood”. The second is to determine whether granting the variance would “threaten the public health, safety or welfare.”

Granting the variance will not alter the essential character of the neighborhood. The neighborhood is located in the Residential District. Section 2.02.1.A.1. permits residential uses and customary, secondary accessory uses and structures. The deck is an accessory structure and use to the primary residential use of the residence. Although the deck does not comply with the rear setback requirements, it is not unreasonably close to the property of abutters, being set back at least 20’.

Nor would granting the variance threaten the public health, safety or welfare. The public health, safety and welfare of the public simply is not affected by the location of the deck. Neither the deck or its location, will generate significant traffic, noise, emissions, vibrations, or odor.

The existing deck is simply an accessory structure and use, used in connection with the use of the primary residential use in a residential neighborhood. It will not adversely affect the neighborhood.

3. *Granting the variance would do substantial justice:*

“Perhaps the only guiding rule in this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Malachy Glen Assoc., Ibid. As stated previously, the property is situated in the Residential District. Use of the property for a single-family dwelling and accessory structures is a permitted use. It is only the fact that the lot is small that necessitates a variance. The deck itself is a modest 12’ x 12’. The burden on the Applicant by losing the full use and enjoyment of the dwelling unit and accessory deck outweighs any benefit to the public by denying the Applicant the right to use and enjoyment of the existing deck simply due to the inability to comply with the rear setback requirements.

4. *The values of the surrounding properties will not be diminished*

The neighborhood is characterized by small, legally non-conforming lots. Many of these small lots are improved with residences. The size of the Applicant’s lot is consistent with the neighborhood. Construction within the neighborhood is necessarily tight. The deck in place is attractive and is not readily visible from any other properties in the neighborhood.

5. *Unnecessary Hardship*

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*

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 and*

2. *The proposed use is a reasonable one because:*

The Premises consists of two lots, being Lot 25 and Lot 27, shown on a plan of land recorded at the Hillsborough County Registry of Deeds as Plan #563. The Premises also includes a 10’ strip of land abutting the south side of Lot 27. The Premises are essentially 70’ deep x 80’ wide.

The limited size of the Premises make it very challenging to build upon. As a legally non-conforming lot, construction on the Premises must meet setback requirements of 30’ front, 15’ each side and 40’ rear. Applying the front setback of 30’ and the rear set back of 40’ demonstrates that it is literally impossible to build anything on the Premises without a variance or equitable waiver.

A variance was issued in 1986 to allow the existing residential structure to be built with a front setback of 5’, although a plan in the building department file shows the setback as 0’ and the rear setback as 41’. It now appears that the building is set back 15.7’ on the north end and 10.1’ on the south end. The setback from the rear line is much less than 41’.

The residence was constructed with a sliding door leading outside to where the deck is now located. The original plan for the deck called for a much larger deck, but it was never built. This past Spring, the existing deck was constructed. The deck is setback over 20' from the rear property line and, is only a few feet closer to the rear property line than the main structure. Due to the fact that the lot, like much of the neighborhood, is heavily wooded, the deck is not readily visible from abutters to the rear of the property.

No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property because the setback requirement is impossible to satisfy in this case due to the lot configuration. The deck is still 20' or more from the rear lot line and the deck is difficult to see from the property from the rear of the Premises. And given the neighborhood, there is nothing about the location of the deck that appears out of place or to draw attention to it.

The deck and its location are reasonable. The deck, being an accessory use, is a permitted use. The deck is reasonably sized (approximately 12' x 12'). The deck meets two out of the three applicable setback requirements because it complies with the front setback requirement and the side setback on the north end of the Premises. The only setback that it does not satisfy is the 40' rear setback. But it is impossible to satisfy the rear setback requirement other than by moving the deck forward. Moving the deck forward, however, will cause the deck to encroach into the front setback. And moving the deck forward does not work because the door leading from the main structure to the deck is situated in the rear (northeast) corner of the structure.

8. **APMK Ventures, LLC. (petitioner/owner)** – Special Exception under Section 3.09 of the Zoning Ordinance to permit the conversion of an existing single family dwelling, constructed before June 29, 1953, to a two-family dwelling. The parcel is located at 16 Depot Street in the I-1 (Industrial), Elderly Housing Overlay and Aquifer Conservation Districts, and Wellhead Protection Area. Tax Map 6E-1, Lot 061. Case # 2019-35.

Robert Price summarized the project by explaining that the request is being presented as a special exception and not a variance because the dwelling was constructed before June 29, 1953 and the ordinance allows for alterations to existing structures constructed prior to that date to be handled via a special exception instead of a variance.

Attorney Brett Allard (Bernstein Shur) represented the petitioner (APMK Ventures, LLC) and outlined the request to convert an existing single family dwelling to a two family dwelling. Prior to walking through the Special Exception criteria, Attorney Allard gave some background information on the property, noted that residential use in this district is allowed by special exception and the property is serviced by public water and sewer.

Attorney Allard read the petitioner's responses to the Special Exception criteria and none of the Board Member had any questions.

Public Comment - No Public Comments were received.

The Board voted 5-0-0 to grant the Special Exception, on a motion made by Patrick Dwyer and seconded by Lynn Christensen

Findings of Fact

1. *The additions, alterations or improvements are for a use currently permitted within the Zoning district:*

The applicant proposes to convert/reconfigure the interior of their existing single-family home that was built in 1849 to a two family home. The property is situated in the I-1 Zone. However because use of the property is residential, and is tied into municipal water and sewer, the Zoning Ordinance, (the “Ordinance”) defaults back to the R-4 Zone requirements. Two family homes are permitted by right in the R-4 Zone.

2. *The additions, alterations or improvements are ordinarily and customarily associated with the existing building and/or use:*

It is not unusual for single-family homes to be converted to two-family or multi-family homes. Such alterations are ordinarily and customarily associated with existing single-family homes, particularly where the existing and proposed uses are both permitted by right under the Ordinance and the demand for affordable housing (which is limited) continues to increase in our State.

3. *The additions, alterations or improvements would serve to promote the reuse, restoration, rehabilitation or otherwise enhance an existing building or structure, especially an historic or potentially historic building or structure:*

The Applicant plans to renovate and enhance both units in connection with the conversion. These renovations will significantly enhance the existing home and likely add substantial value to the property. The dwelling is an historic structure that was built in 1849.

4. *The additions, alterations or improvements would not result in increased hazards to vehicles or pedestrians; impair or impede emergency vehicle access or the provision of emergency services, or encroach on planned right of way corridors:*

There are not any current hazards to vehicles or pedestrians, nor impediments to emergency vehicles on the property, and no new hazards or safety issues will arise as a result of the strictly interior conversion of the home. There is sufficient parking in the driveway to accommodate two separate units.

5. *The additions, alterations or improvements would not result in unreasonable impacts to abutting properties by way of increased noise, visual blight, odor or other nuisance*

There will be no increase in noise, visual blight, odor or other nuisance if the Applicant is permitted to convert its single-family home to a two-family home. The size of the existing home is sizeable enough to facilitate a second unit, yet small enough that it is not likely to be occupied by anything more than a small family.

6. *Adequate parking and other necessary support facilities would be provided for the existing building or structure as well as for the proposed addition, alteration or improvement:*

There is significant parking in the driveway to accommodate two separate units, The existing home is already tied to municipal water and sewer. Both units will be served by municipal water and sewer.

7. *The proposed improvement would have been allowed by right prior to adoption of the zoning ordinance provision at issue:*

The existing home predates the adoption of the Ordinance. Had the owner of the property in the mid 1800's wished to convert the single-family home to a two-family home, there would have been no Ordinance prohibiting same.

8. *The proposed improvement cannot reasonably be constructed in a differing way or in a differing portion of the property so as to comply with existing setback requirements:*

The existing home is a pre-existing nonconforming ("grandfathered") structure. Thus, the home will remain noncompliant with the side and rear yard setback regardless of whether the proposed alteration is completed. The strictly interior reconfiguration of the home will not result in any expansion of the existing nonconformity further into the side or rear yard setback. The existing structure cannot be relocated on the property so as to comply with the dimensional requirements of the current Ordinance.

9. **Steven M. Sher (petitioner/owner)** – Variances under Section 3.05 of the Zoning Ordinance to permit the construction of a single family dwelling 1.5 feet from the rear property line whereas 40 feet is required and 4.7 feet from the side property line whereas 15 feet is required. The parcel is located at 24 Lakeside Drive in the R-2 (Residential) District. Tax Map 6A-1, Lot 111. Case # 2019-37.

Joe Wichert, (Joseph M. Wichert LLS, Inc.) represented the petitioner (Steven Sher) and started by giving an overview of the property in question. Mr. Wichert advised the Board that the petitioner is wishing to tear down the existing single-family home and replace it, noting that due to the age of the home and all of the work it needs, refurbishing it is not cost effective.

Mr. Wichert read the petitioner's responses to the variance criteria and none of the Board Member had any questions.

Public Comment - No Public Comments were received.

The Board voted 5-0-0 to grant the Variances, on a motion made by Patrick Dwyer and seconded by Lynn Christensen.

Findings of Fact

1. *Granting the variance would not be contrary to the public interest:*

Approval of these variance requests would allow the applicants to rebuild a new modern, efficient and safer house than what currently exists. The Zone specifically allows for residential use and the applicant is simply requesting variances for reduced building setbacks to allow for the construction of a new single-family residence in place of the existing structure. The new construction has been planned so that there will be no change to the setbacks to the lake and

we have tried to increase the side setbacks where possible. The applicant has tried to keep the house footprint as small as possible and still have it functional. The lot is a non-conforming lot of record and predates the current setback requirements. The abutter to the South (22 Lakeside Drive) received variances for reduced setbacks in 2012 when the house was rebuilt. Therefore, it would seem that the approval of this variance request could not be contrary to the public interest.

2. *The spirit of the ordinance is observed:*

The Ordinance allows houses in the Residential Zone providing they comply with the current building setbacks required by the Ordinance. The Ordinance was crafted with a provision for smaller setbacks on non-conforming lots, however even these reduced setbacks would severely limit the size and location of what could be built. As other similar situations were noted in the neighborhood (see above) and strict compliance to the Ordinance would make it very difficult to develop the lot, we believe the request is reasonable and within the spirit of the Ordinance and should be approved. Short of the requested variances, the only option the applicants would have is to rebuild the house in the same footprint, which might still require variances from the ZBA. Unfortunately, the existing house was built in 1945 (per GIS records) and the small size does not allow for many of the features that are now considered standard in newer homes.

3. *Granting the variance would do substantial justice:*

Approval of the variance request would allow the applicant to build a new house on the subject lot. As stated previously, almost all of the surrounding properties were built with some kind of zoning relief because the lots predate the current Ordinance requirements. Approval of the variance requests and the new construction will be a substantial upgrade to the neighborhood. We can see absolutely no benefit to the public by denying these variance requests and the hardship to the applicant, should the application be denied, would be substantial. As the loss to the applicant would greatly outweigh any perceived public gain, it is our opinion that the variance should be approved.

4. *The values of the surrounding properties will not be diminished:*

The subject property is in need of modernization and upgrades but the size and type of construction make renovating the property problematic. Approval of these variance requests will allow for the construction of a new home and 3-car garage (see other application) that will be worth substantially more than the current house and foundation. The increase in value for the subject lots will only help to raise the values of the surrounding neighborhood when compared to the current structures. As such it is, our opinion that approval of this variance will not diminish the property values of the surrounding neighborhood.

5. *Unnecessary Hardship*

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 and*

2. *The proposed use is a reasonable one because:*

The general purpose of the Zoning ordinance is to prevent overcrowding, unsafe situations and promote orderly and efficient development. The Ordinance allows for houses and garages in the Zone. The subject lot needs a dimensional variance because the special conditions of the historic Baboosic Lake lots are undersized and thus cannot sustain any structure that fully complies to the current setback requirements. Other similar situations were noted in this neighborhood previously in this application. Approval of the variance would allow the applicants to make a substantial investment in their property, which will greatly increase the value of properties and in our opinion, the neighborhood. We can see no public benefit gained by denial of this request.

As the lots predate the ordinance and there are many other non-conforming structures in the neighborhood, approval of this variance request will not change the character of or negatively affect the neighborhood in any way. The proposed use is allowed by the Ordinance. The subject properties predate the current Ordinance so full compliance with the dimensional requirements is not practical. Therefore, we believe that approval of this variance request is justified.

10. **Steven M. Sher (petitioner/owner)** – Variances under Section 3.05 of the Zoning Ordinance to permit the construction of a garage 18 feet from the front property line whereas 30 feet is required; 27.4 feet from the rear property line whereas 40 feet is required; and 6 feet from the side property line whereas 15 feet is required. The parcel is located at 21 Lakeside Drive in the R-2 (Residential) District. Tax Map 6A-1, Lot 147. Case # 2019-38.

Joe Wichert, (Joseph M. Wichert LLS, Inc) represented the petitioner (Steven Sher) for this case as well, and confirmed the property as Map/Lot 6A-1/147 because their petition incorrectly had it listed as lot 146. He summarized the project by stating that the petitioner is hoping to raze all existing structures on the lot and replace the existing 1-car garage (483 square feet) to a 3-car garage (864 square feet) stressed that although the square footage is larger, the new proposal decreases the lot coverage by 30 percent.

Mr. Wichert read the petitioner's responses to the variance criteria and none of the Board Members had any questions.

Public Comment - No Public Comments were received.

The Board voted 5-0-0 to grant the Variances, on a motion made by Kathleen Stroud and seconded by Patrick Dwyer.

Findings of Fact

1. *Granting the variance would not be contrary to the public interest:*

Approval of these variance requests would allow the applicants to rebuild a new three stall modern, modern garage in place of the existing single stall garage. The existing garage is small, previous owners had added a carport and gravel parking area. The intent is to remove all of the structures and replace them with a new garage and porous block driveway. The proposed garage is an allowed use in this zone and the applicant is simply requesting

variances to allow for a reduction in the required setbacks. The lot is a non-conforming lot of record and cannot sustain any structure using the current setbacks. The expansion of the garage should eliminate the need for the other structures, and it is our opinion that a single garage would be more aesthetically pleasing for the neighbors and more functional for the owner. The [proposal will result in a decrease in the lot coverage which NHDES encourages. Therefore, it would seem that approval of this variance request could not be contrary to public interest.

2. *The spirit of the ordinance is observed:*

The Ordinance allows for garages in the Residential Zone providing they comply with the current building setbacks required by the Ordinance. The Ordinance was crafted with a provision for smaller setbacks on non-conforming lots, however even these reduced setbacks would render the subject property unbuildable. The current setback requirements total 70' (30' front and 40' rear); the subject lot is only 70' deep. As other similar situations were noted in the neighborhood and strict compliance would make the lot unbuildable and useless, we believe this request is within in the spirit of the ordinance and should be approved. Any new construction on this lot would require a variance and the reduction in setbacks being requested is consistent with the neighborhood.

3. *Granting the variance would do substantial justice:*

Approval of the variance request would allow the applicant to build a new garage on the undersized lot of record. Many of the surrounding properties were built with some kind of zoning relief because the lot predates the current ordinance requirements. Approval of the variance requests and the new construction should be an upgrade to the neighborhood. We can see absolutely no benefit to the public by denying these variance requests and the hardship to the applicant would greatly outweigh any perceived public gain, it is our opinion that the statutes specify that the variance should be approved.

4. *The values of the surrounding properties will not be diminished:*

The existing garage, carport, paved driveway and gravel storage area are not as functional as the proposed new garage. The garage will match the proposed residence across the street and will be an upgrade from the existing condition. The construction of a new 3-car garage will be worth substantially more than the current one. This increase in value for the subject lot will only help to raise the values of the surrounding neighborhood when compared to the current structure. As such, it is our opinion that approval of this variance will not diminish the property values of the surrounding neighborhood.

5. *Unnecessary Hardship*

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 and*

2. *The proposed use is a reasonable one because:*

The general purpose of the Zoning ordinance is to prevent overcrowding, unsafe situations and promote orderly and efficient development. The Ordinance allows for houses and garages in the Zone. The subject lot needs a dimensional variance because the special conditions of the historic Baboosic Lake lots are undersized and thus cannot sustain any structure that fully complies to the current setback requirements. Other similar situations were noted in this neighborhood previously in this application. Approval of the variance would allow the applicants to make a substantial investment in their property, which will greatly increase the value of properties and in our opinion, the neighborhood. We can see no public benefit gained by denial of this request.

Approval of the variance will not change the character of or negatively affect the neighborhood in any way, as there are other similar variances for reduced setbacks. The proposed use is allowed by the ordinance. The subject properties predate the current ordinance so full compliance with the dimensional requirements is impossible. Therefore, we believe the approval of this variance request is justified.

11. Discussion/possible action regarding other items of concern

Robert Price introduced Casey Wolfe (the new Assistant Planner) to the Board.

12. Approval of Minutes – September 25, 2019

The minutes of September 25, 2019 were approved as submitted, by a vote of 5-0-0, on a motion made by Lynn Christensen and seconded by Patrick Dwyer.

13. Adjourn

The meeting was adjourned at 9:01 p.m. by a vote of 5-0-0, on a motion made by Patrick Dwyer and seconded by Kathleen Stroud.