



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 31, 2018

Members present: Patrick Dwyer, Fran L'Heureux, Lynn Christensen, Kathleen Stroud, and Alternates Leonard Worster, Rod Buckley and Drew Duffy.

Members absent: Richard Conescu

Staff present: Assistant Planner Kellie Shamel, Town Legal Counsel Matt Serge and Recording Secretary Zina Jordan.

1. Call to Order

Patrick Dwyer called the meeting to order at 6:56 p.m. and designated Leonard Worster to sit for Richard Conescu.

2. Roll Call

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

- 3. Arne, LLC. (petitioner/owner)** — Variance under Section 3.02 of the Zoning Ordinance to permit a two-lot subdivision with one lot having 159.22 feet of frontage whereas 250 feet is required. This petition was remanded back to the Zoning Board by the Hillsborough County Superior Court. The parcel is located at 63 Wilson Hill Road in the R-1 (Residential) and Aquifer Conservation Districts. Tax Map 4B, Lot 130. Case #2018-02.

The petitioner came before the Board in February 2018 for this proposal, and the Board denied the variance request for the following reason: the petitioner failed to demonstrate a hardship inherent to the property as the property is able to continue as a single lot with an existing home that is in compliance with the requirements of the Ordinance. In March 2018 the ZBA denied a request for rehearing. The petitioner then appealed to the Hillsborough County Superior Court. In September 2018, the Court remanded the matter back to the Board, finding that the ZBA failed to properly analyze whether denial of the application would result in unnecessary hardship. The ZBA was obligated to analyze whether the variance requested was for a reasonable use, not whether it was a necessary use. The ZBA must analyze whether reasonable use of the particular property is unduly restricted by the zoning ordinance because of special conditions unique to the Property.

Attorney Greg Michael, Bernstein Shur, Sawyer & Nelson, noted that the Zoning Board approved the exact same hardship request in 1989. He explained that the hardship

criteria have changed significantly over the last 30-40 years and how the applicant meets the current criteria. The applicant has the right to enjoy his property. The following criteria were added: 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 and 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. This lot differs from others on Wilson Hill Road because it meets all setbacks and area requirements with the exception of frontage. If it had moderate soils, the applicant would not have to appear before the ZBA. The proposal would not create higher density. Two lots/homes can be supported. The lot is large enough to support a septic system and well. In 1989 it was thought that it would be difficult to install a road on the property because of rock ledge. The Town must have had a Class 5 Town road in mind. They said that is a significant condition that burdens the lot. Soils, wetland areas and slopes differentiate this lot from the others on Wilson Hill Road. Only the hardship standard has changed. A frontage requirement is meant to prevent overcrowding. There is enough frontage to get in and out. The lot meets all other zoning standards. Soil-based zoning created this problem. The public would not gain by denying the variance. There is enough acreage for a septic system on the 12-13 acre parcel, but the frontage requirement is unduly restrictive. Economics is part of hardship. The Court said the ZBA did not consider whether the variance was for a reasonable use. Residential use is reasonable. It is up to the Planning Board whether to approve the subdivision. The issue before the ZBA is reasonable use.

Public comment

Rhonda Tapply, 65 Wilson Hill Road, opposes the variance. She had been told at the time of purchase that she could not subdivide her own lot, although it is the same distance from the road, does not meet the frontage requirement and has the same soils and no sewer. The lot next door is no more unique than hers. There is a 250' frontage requirement because of poorly drained soils near a river. The requirement is reasonable and fair and is not a hardship. The Town did not want to overbuild and put water and sewer everywhere developers wanted to build. It wanted Wilson Hill Road to remain rural with space between homes. Higher density should be allowed only where utilities are available. Health, water quality, safety, and home values may be affected. The significant slope in front would cause water to clog the culvert and divert it to the Foss property. There may be blasting. The lot was intended to support only one home. The property was in foreclosure for a year because of damage to the home. ARNE filed for hardship when Foss would not sell a portion of land to him. Rhonda Tapply suspects that the applicant would build more houses in back of the lot later.

Chairman Dwyer explained that, except for frontage, these are all Planning Board issues.

Julia Ann Foss, Milford NH, spoke for her parents, who live on 55 Wilson Hill Road and oppose the variance. They are concerned about the well and changing the character of the neighborhood. Wilson Hill is a rural road whose residents want privacy. They do

not want to see their neighbors. The new home would be in her parents' direct line of sight.

Attorney Michael responded that, in 1974 when the lot was subdivided, only 150' of frontage was required. Frontage has nothing to do with the new lot, which is not like the other lots because of the amount of frontage, and slopes. The hardship is the same as in 1989. The applicant would not subdivide again nor build on the back of the lot. The lot size requirement is a result of soil and septic issues. Attorney Michael reiterated that this lot has room for a septic system, which is a Planning Board issue. The Court says it is a reasonable use.

Town Counsel Serge agreed that financial hardship is a consideration, but not the only one the ZBA must consider.

Lynn Christensen favors the variance. The lot is unique because of its size, which is significantly larger than most others, and because it has more frontage than the larger lots do. 158.22' is still significantly more frontage than the others on Wilson Hill Road. Fran L'Heureux and Kathleen Stroud agreed, adding that the ZBA cannot deal with future "what ifs". Patrick Dwyer was undecided.

The Board voted 4-0-1 to grant the Variance, with the condition that the petitioner shall obtain Planning Board approval for the proposed subdivision, on a motion made by Fran L'Heureux and seconded by Kathleen Stroud. Patrick Dwyer abstained.

4. Alan Brewster (petitioner/owner) – Variance under Section 3.05 of the Zoning Ordinance to permit an attached garage addition 3 feet from the side property line whereas 15 feet is required. The parcel is located at 1 Mayhew Road in the R-2 (Residential) District. Tax Map 6A-2, Lot 079-01. Case # 2018-33.

Alan & Kira Brewster, 1 Mayhew Road, added a two-bay garage in 2003, planning to add a third at a later date. They assumed the third bay was part of the permit. When they recently added the bay, they discovered that it was not listed on the original permit, although a carport is listed on the tax card. It was their misunderstanding. There is a fence on their property abutting the third bay that has existed for 24 years. Of their seven abutters, only one is opposed. Alan Brewster read the variance criteria into the record.

Public comment

Stephen McMahon, 3 Mayhew Road, said the garage addition is too close to his home. The Brewsters use it as the main entrance to their home, which makes it feel like living in a city. He can almost touch the fence. His living room window is 17.5' from the new bay. The Brewsters poured 3' of gravel next to the fence, which gave him a 3' grade. The bay is 8' from Stephen McMahon's septic system and leach field. The drip edge is 3' higher than his property and drips on his side. There is no public sewer. He would need to install a 10' raised tank if there were a septic problem. Stephen McMahon also objects to the cement in front and around the addition.

Chairman Dwyer suggested that a gutter would solve the runoff/drip problem.

Alan Brewster said the gravel sends the runoff water into the ground. He is willing to install a gutter and can replace the fence with one that is 8' high to give Stephen McMahon privacy. Only three people live in the house. Using the garage as a main entry does not create much traffic. The Brewsters added a door so no one would enter on the side. The cement pad was installed years before the roof.

Chairman Dwyer would have liked to see the original plan. Fran L'Heureux said runoff water from the roof goes directly onto the gravel and nowhere near the fence. Kellie Shamel said that, if the ZBA denies the variance, enforcement action may be necessary. Lynn Christensen said it was an innocent misunderstanding, since the third bay is listed on the tax card. There is no other place on the property to put it. There is a hardship. Patrick Dwyer, Fran L'Heureux and Kathleen Stroud agreed.

The Board voted 5-0-0 to grant the Variance, on a motion made by Kathleen Stroud and seconded by Fran L'Heureux.

Findings of Fact

1. Granting the variance would not be contrary to the public interest because the additional bay would not cause any diminution to any of the surrounding properties. The bay is beautifully built and enhances the look and value of 1 Mayhew Road and its surrounding properties. The additional bay provides "coverage" for belongings and keeps the area aesthetically neat and orderly. It will also add more value to the abutters;
2. The spirit of the Ordinance is observed because the added bay provides an enclosed place for storage of vehicles and lawn equipment, thus adding to the aesthetics of the neighborhood. It does not jeopardize the safety or health of the surrounding area. The bay has a low profile and does not cast undue shadows or otherwise detract from the area's natural light;
3. Granting this variance would do substantial justice because with a family of five drivers, this bay allows for fewer vehicles and "other" clutter to fill the driveway, which would detract from the residence's curb appeal. The bay has been instrumental in keeping cars and a boat from the weather, as well as keeping the yard looking nice and orderly. The main goal in building the bay is to protect the family's investments;
4. The values of the surrounding properties would not be diminished because the additional bay does not detract but enhances the value and appearance of the property. It matches the existing house/garage, including windows and siding. It would not diminish the property or any of the surrounding properties. The Brewsters work hard to keep the yard looking neat and orderly. Curb appeal is important, as the Brewsters are the first house on Mayhew Road that people see;
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 two-car addition was built in 2003. At that time, the Brewsters discussed with the Town adding another bay “down the road” and were under the impression that the bay was looped into the 2002 permit, as it has been shown on the tax map. Given the location and use of the land, (house, yard, septic system, driveway), the area where the bay was built is the only available spot on the property. This was an honest oversight and the Brewsters would like to make the necessary arrangements to make it right with the Town of Merrimack and have the proper paper work in place;

- 2) The proposed use is a reasonable one because the bay is used for the family’s boat, cars, yard equipment, and tools. It promotes a clean, organized and uncluttered appearance for the property and for the neighborhood.

6. **Joe & Teresa Machado (petitioner) and WiRed Barn, LLC. (owner)** – Special Exception under Section 2.02.3 (C)(1) of the Zoning Ordinance to permit the use of an existing single family dwelling to continue on a commercially-zoned parcel that is also being proposed for commercial use. The parcel is located at 3 Wire Road in the C-2 (General Commercial), Flood Hazard Conservation and Aquifer Conservation Districts. Tax Map 5D-3, Lot 109. Case # 2018-34.

Joe & Teresa Machado, 11 Merrymeeting Drive, want to convert the existing three-level home and barn to a residence with a dog day care on the bottom level and a fenced area outdoors. The two co-owners would live in the facility. There would be 20-25 dogs. There would be no grooming, although boarding is a possibility. 6-7 parking spaces are available. Teresa Marchado read the Special Exception criteria into the record.

There was no public comment.

The Board voted 5-0-0 to grant the Special Exception, with the condition that the applicant shall obtain site plan approval from the Planning Board for the proposed mixed uses on the site, on a motion made by Fran L’Heureux and seconded by Donald Worster.

Findings of Fact

1. The specific site is an appropriate location for such a use or uses in terms of overall community development because the property is a perfect location for a dog day care. It is positioned so that there are no residential neighbors bordering the areas where the dogs would be. The location is between the commercial area of Daniel Webster Highway and the residential area of Wire Road, making it a perfect property to be zoned as mixed use commercial/residential. The area is a great central location with easy access from all around Town;
2. The use as developed will not adversely affect the neighborhood because the property is located between Wire Road and Daniel Webster Highway, where there is a pre-existing level of traffic and white noise. Proposed is a small facility much closer to a home day care than a large commercial facility. An excessive amount of barking results from dogs who are stressed or uncomfortable in the

day care environment. The goal is to accept only dogs that are 100% comfortable in this setting. Research shows that there is a need in Merrimack for this type of service;

3. There will be no nuisance or serious hazard to vehicles or pedestrians because dog day care facilities are unique in that customers are at the business on average of only 1-4 minutes. The applicant intends to schedule designated drop-off and pick-up times throughout the day so that there are not many people dropping off and picking up, thus reducing the amount of traffic;
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use or uses because the property owners have working in the pet care industry for 10+ years. The two individuals who will manage and co-own the business have each worked in the pet care industry for 7+ years, including years of experience in training and in separate dog day care facilities. The aim is for it to be a place where small groups of dogs that get along well can play in a safe and happy environment. The goal is to create a more home-like, stress-free environment.
5. **Xiang Zhan (petitioner) and Christopher Ross (owner)** – Variance under Section 3.08.8 of the Zoning Ordinance to permit the construction of a single family residence on an existing lot of record that is part of a cluster development without access to municipal sewer. The parcel is located at 15 Tinker Road in the R-4 (Residential) and Aquifer Conservation Districts. Tax Map 2B, Lot 293-01. Case # 2018-35.

The petitioner proposes to construct a single-family residence on an existing lot of record that is part of a cluster development without access to municipal sewer. Part of the requirement for a cluster development is that all residences shall be serviced by municipal water and sewer. However the municipal sewer pump station in the area does not have capacity for new connections. Until such time that capacity is available in the municipal system, a private septic would be necessary to support the construction of a home on the lot.

Chris Ross noted the property previously had a barn on it which became too costly to rehab. The barn has since been sold and moved to a different site for preservation purposes. . Chris Ross then sold the vacant lot to Xiang Zhan, who wants to build a four-bedroom home.

Nathan Chamberlin, Fieldstone Land Consultants, read the variance criteria into the record. He said the land is flat. The septic system would be 340' from the home and within the 100' buffer. It would be in the best place, where the best soils are.

Public comment

Kathy Byrne, 10 Hampstead Road, noted that nothing can be built on a conservation buffer. She read a letter from Planning and Zoning Administrator Robert Price stating that a landscape buffer cannot be disturbed and live vegetation cannot be removed.

Carlos Byrne, 10 Hampstead Road, said conservation land runs behind all the homes.

Chairman Dwyer pointed out that this is a buildable property.

The ZBA explained that the Byrnes are confusing conservation land and the buffer. The buffer on the Bryne property is not conservation land nor is the 100' buffer on Chris Ross's land. It belongs to the property owner. The 100' landscape buffer is not common land; it is not the same as conservation land. A variance is needed if a structure is proposed to encroach in the 100' landscape buffer. Otherwise that area must not be disturbed. The buffer going through the property makes it unique. The applicant cannot build on the wetland behind the house. Relief is needed to build a home and septic system and to encroach into the buffer. Robert Price's letter concerns conservation land, not the 100' landscape buffer.

Carlos Byrne was assured that the ZBA's decision would not set a precedent.

Kellie Shamel said the driveway could be put somewhere else, as Kathy Byrne suggested, but it is not allowed to encroach on the buffer, which would require another variance. Lynn Christensen clarified that the other variance regarding this property is for a septic system.

Donald Weiss, 10 Dunbarton Drive, wanted more time to research whether a sewer could be constructed. MVD Water is going to increase sewer capacity later. He disagreed about setting a precedent; it would matter if there were a court case.

Chairman Dwyer explained that the ZBA must decide based on current rather than future conditions. The Town's Wastewater Department stated that the existing pump station has no capacity now. A cluster is required to be on a sewer, but since there is no capacity, the applicant must install a septic system.

Donald Weiss objected to encroaching on the buffer without giving the public time to study the matter. Kellie Shamel stated that abutter notices were sent in accordance with State law requirements and were also posted in two newspapers and on Town Hall bulletin boards.

Nathan Chamberlin said the driveway is included in the variance. There is no room to reorient the house, as Kathy Bryne suggested. She noted that the driveway is not mentioned in the materials. Lynn Christensen said that ¼ of the driveway would impact the landscape buffer.

Stephanie England, 43 Dahl Road, said it is a "crime" that Chris Ross was allowed to remove the fifth oldest barn in Merrimack. She claimed that the property sold cheaply because the previous owner knew no one could build on it.

Leonard Worster said that a lot of record is being held hostage/penalized by the cluster sewer requirement that the Town cannot provide. It is simple: there must be relief. Lynn Christensen, Fran L'Heureux and Kathleen Stroud agreed that there is a definite hardship because a sewer cannot be placed on the lot at this time.

The Board voted 5-0-0 to grant the Variance, on a motion made by Lynn Christensen and seconded by Fran L'Heureux.

Findings of Fact

1. Granting the variance would not be contrary to the public interest because this is the only lot within the existing cluster development that does not have access from Hampstead Road, which was constructed with the development. The existing property has frontage on Tinker Road and abuts residential lots to the north, east and south. The abutting residential properties are similar in size and presentation from Tinker Road, meaning that the nature of the proposed lot's use and the neighboring lots would be consistent with one another. This is not an instance where residential development is proposed to abut commercial or industrial uses. The natural topography and vegetation provide an effective transition and screening buffer between the existing structures and uses on the parcel and its abutting lots. The residence to the south, where the 100' buffer is applied, is nearly 350' away. Connection to the sewer is not allowed by the Town through no fault of the property owner and creates a hardship on developing the property. The owner and applicant have agreed to design an on-site septic system that would meet local and State design standards;
2. The spirit of the Ordinance is observed because the property would be developed into a single-family residence that is consistent with the surroundings. The proposed impacts into the 100' buffer are primarily for the construction of an on-site septic system with minor encroachments for the driveway, as the layout of the site is best situated to comply with other dimensional requirements. The layout is required to contemplate the construction of an on-site septic system, which is required due to the fact that the Town will not allow the property to tie into the municipal sewer system. The buffer area would still be mostly vegetation. No structures are proposed for this area. The area would still allow for adequate transitioning; the neighboring residence is located nearly 350' to the south. The proposed lot development would blend into the essential character of the neighborhood and allow for the safe and reasonable use of the property;
3. Granting this variance would do substantial justice because it would allow for the use of the existing property in a reasonable manner. Denying the variances would not result in an appreciable gain to the public, as this lot was approved in 1998 as a buildable lot capable of handling the proposed development;
4. The values of the surrounding properties would not be diminished because the existing lot is a buildable lot and has always been depicted as one since its creation in 1988. Development of the property would be in harmony with the neighborhood and would meet all the other dimensional requirements, thus providing adequate buffering to the surroundings. Experience shows that new development will often improve the values of neighboring properties, especially when the proposed development is in harmony with 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 property is special and distinct from other properties in the area: It is part of Tinker Woods Cluster Development, is the only lot in the development with access directly from Tinker Road, is the largest buildable lot in the development, and is the only lot in the development that the Town would not connect to municipal sewer due to capacity issues. The property is in harmony with the surrounding areas and properties along Tinker Road;
- 2) The proposed use is a reasonable one because the variances being requested are due to the Town's denial to connect to the municipal sewer system. As a result of the denial, the applicant has designed a layout for the home, driveway and on-site septic system and is requesting the proper relief to construct them.

Chairman Dwyer called a five-minute recess at 9:30 p.m.

- 7. Xiang Zhan (petitioner) and Christopher Ross (owner)** – Variance under Section 3.08.9 of the Zoning Ordinance to permit the construction of a private septic system within a cluster development's 100 foot landscaped buffer. The parcel is located at 15 Tinker Road in the R-4 (Residential) and Aquifer Conservation Districts. Tax Map 2B, Lot 293-01. Case # 2018- 36.

The petitioner discusses the criteria for this petition in the presentation on Case # 2018-35.

There was no public comment.

The Board voted 5-0-0 to grant the Variance, on a motion made by Fran L'Heureux and seconded by Kathleen Stroud.

Findings of Fact

1. Granting the variance would not be contrary to the public interest because this is the only lot within the existing cluster development that does not have access from Hampstead Road, which was constructed with the development. The existing property has frontage on Tinker Road and abuts residential lots to the north, east and south. The abutting residential properties are similar in size and presentation from Tinker Road, meaning that the nature of the proposed lot's use and the neighboring lots would be consistent with one another. This is not an instance where residential development is proposed to abut commercial or industrial uses. The natural topography and vegetation provide an effective transition and screening buffer between the existing structures and uses on the parcel and its abutting lots. The residence to the south, where the 100' buffer is applied, is nearly 350' away. Connection to the sewer is not allowed by the Town through no fault of the property owner and creates a hardship on developing the property. The owner and applicant have agreed to design an on-site septic system that would meet local and State design standards;
2. The spirit of the Ordinance is observed because the property would be developed into a single-family residence that is consistent with the surroundings. The

proposed impacts into the 100' buffer are primarily for the construction of an on-site septic system with minor encroachments for the driveway, as the layout of the site is best situated to comply with other dimensional requirements. The layout is required to contemplate the construction of an on-site septic system, which is required due to the fact that the Town will not allow the property to tie into the municipal sewer system. The buffer area would still be mostly vegetation. No structures are proposed for this area. The area would still allow for adequate transitioning; the neighboring residence is located nearly 350' to the south. The proposed lot development would blend into the essential character of the neighborhood and allow for the safe and reasonable use of the property;

3. Granting this variance would do substantial justice because it would allow for the use of the existing property in a reasonable manner. Denying the variances would not result in an appreciable gain to the public, as this lot was approved in 1998 as a buildable lot capable of handling the proposed development;

4. The values of the surrounding properties would not be diminished because the existing lot is a buildable lot and has always been depicted as one since its creation in 1988. Development of the property would be in harmony with the neighborhood and would meet all the other dimensional requirements, thus providing adequate buffering to the surroundings. Experience shows that new development will often improve the values of neighboring properties, especially when the proposed development is in harmony with 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 property is special and distinct from other properties in the area: It is part of Tinker Woods Cluster Development, is the only lot in the development with access directly from Tinker Road, is the largest buildable lot in the development, and is the only lot in the development that the Town would not connect to municipal sewer due to capacity issues. The property is in harmony with the surrounding areas and properties along Tinker Road;

2) The proposed use is a reasonable one because the variances being requested are due to the Town's denial to connect to the municipal sewer system. As a result of the denial, the applicant has designed a layout for the home, driveway and on-site septic system and is requesting the proper relief to construct them.

8. Mark Rivet (petitioner) and FPL, LLC (owner) – Special Exception under Section 2.02.13 (E)(3) of the Zoning Ordinance to permit a lot in the Town Center Overlay District to have less than the required 125 feet of frontage following a lot line adjustment. The parcel is located at an unnumbered lot on Railroad Avenue in the I-1 (Industrial), Aquifer Conservation, Flood Hazard Conservation and Town Center Overlay Districts. Tax Map 5D- 4/078. Case # 2018-37.

The applicant seeks to adjust the lot lines between the four lots in order to remove various encroachments of the three “front” parcels into the larger “rear” parcel and to accommodate expansion of the Rivet Funeral Home (subject to a separate special exception petition and site plan application). While the lot line adjustment is relatively straightforward, it requires relief through several petitions with the ZBA before the Planning Board can act on the proposed lot line adjustment (and the associated special exception petition and a site plan).

Nathan Chamberlin, Fieldstone Land Consultants, read the special exception criteria into the record.

There was no public comment.

The Board voted 5-0-0 to grant the Special Exception, with the condition that approval be conditioned on approval of the lot line adjustment by the Planning Board, on a motion made by Fran L’Heureux and seconded by Lynn Christensen.

Findings of Fact

1. The proposed additions, alterations or improvements would serve to promote the reuse, restoration, rehabilitation or otherwise enhance a historic building or structure or any other potentially historic building or structure identified in the Historic Resources Inventory component of the Town Center Plan because the proposed alterations to the site consist of slightly reducing the area of the property in order to remedy existing encroachments onto the property from the adjacent properties. The proposal would make the properties more conforming as it pertains to the Town Center Dimensional Standards. The property does not meet the frontage requirement, but no development is proposed on the subject lot;
2. The proposed additions, alterations or improvements are for a use currently permitted within the Town Center Overlay District because the proposed lot line adjustment proposes simply to make the subject lots more conforming. This proposal does not propose to change the uses that exist on the subject property;
3. The proposed additions, alterations or improvements would not result in significantly increased hazards to vehicles or pedestrians or impair or impede emergency vehicle access or the provision of emergency services or the planned improvements to the transportation corridor because the proposed lot line adjustment would reduce the size of the subject property but would not change the uses that currently exist on site. The proposal would not result in increased hazards to vehicles or pedestrians and would not impair or impede emergency access;
4. The proposed additions, alterations or improvements would not result in unreasonable impacts to abutting properties by way of increased noise, odor, visual blight, or other nuisance because the proposed modification of the parcel would make adjacent lots more conforming and would remedy existing encroachments. There are no additions, alterations or improvements proposed

on the property, so there would be no impacts to abutting properties by way of noise, odor or visual blight;

5. The proposed additions, alterations or improvements would serve to enhance the overall goals of the Town Center Plan because the proposal would make the existing lots within the Town Center Overlay District more conforming. The proposed lot line adjustment would make the lot smaller, but the parcel would still meet the minimum lot size requirements. There are no proposed additions, alterations or improvements proposed to the structures or uses on the subject property;
 6. Adequate provisions for parking and other necessary support facilities are provided for the proposed additions, alterations or improvements because the proposed lot line adjustment would make the property smaller and adjacent properties larger and more conforming. There are no proposed modifications to the structures or uses on site. The subject property is currently vacant.
- 9. Mark Rivet (petitioner) and Fraser Square Realty, LLC. (owner) –** Special Exceptions under Section 2.02.13 (E)(2), Section 2.02.13 (E)(3), and Section 2.02.13 (E)(4.a) to permit a lot in the Town Center Overlay District to have less than the required 20,000 square feet of area, less than the required 125 feet of frontage, and a front setback of less than the required 30 feet, respectively. The parcel is located at 2 Railroad Avenue in the C-2 (General Commercial), Aquifer Conservation, Flood Hazard Conservation and Town Center Overlay Districts. Tax Map 5D-4, Lot 078. Case # 2018-38.

Nathan Chamberlin, Fieldstone Land Consultants, read the special exception criteria into the record.

There was no public comment.

The Board voted 5-0-0 to grant the Special Exceptions, with the condition that approval be conditioned on approval of the lot line adjustment by the Planning Board, on a motion made by Lynn Christensen and seconded by Fran L'Heureux.

Findings of Fact

1. The proposed additions, alterations or improvements would serve to promote the reuse, restoration, rehabilitation or otherwise enhance a historic building or structure or any other potentially historic building or structure identified in the Historic Resources Inventory component of the Town Center Plan because the proposed alterations to the site consist of enlarging the property so that all existing encroachments would be captured on the appropriate lots. This proposal would therefore make the properties more conforming as it pertains to the Town Center Dimensional Standards;
2. The proposed additions, alterations or improvements are for a use currently permitted within the Town Center Overlay District because the proposed lot line adjustment proposes to simply make the subject lot larger and does not propose to change the uses that exist on the subject property;

3. The proposed additions, alterations or improvements would not result in significantly increased hazards to vehicles or pedestrians or impair or impede emergency vehicle access or the provision of emergency services or the planned improvements to the transportation corridor because the proposed lot line adjustment would enlarge the subject property but would not change the uses or operations that currently exist on site. This proposal would therefore result in no increased hazards to vehicles or pedestrians and would not impair or impede emergency access;
 4. The proposed additions, alterations or improvements would not result in unreasonable impacts to abutting properties by way of increased noise, odor, visual blight, or other nuisance because the proposed enlargement of the subject property will simply capture all of the existing improvements which currently encroach onto the abutting property. There are no additions, alterations or improvements to the existing buildings so there will be no impacts to the abutting properties by way of noise, odor or visual blight;
 5. The proposed additions, alterations or improvements would serve to enhance the overall goals of the Town Center Plan because this proposal will make the existing lots within the Town Center Overlay District more conforming. The proposed lot line adjustment will make the subject lot larger. There are no proposed additions, alterations or improvements proposed to the structures or uses on the subject property;
 6. Adequate provisions for parking and other necessary support facilities are provided for the proposed additions, alterations or improvements because the proposed lot line adjustment will make the subject property larger and more conforming. There are no proposed modifications to the structures or uses on site. Given this we believe that there is adequate parking to support facilities on site for the existing uses.
- 10. Mark Rivet (petitioner) and Daniel Hock (owner)** – Special Exceptions under Section 2.02.13 (E)(2), Section 2.02.13 (E)(3), Section 2.02.13 (E)(4.a), and Section 2.02.13 (E)(4.b) to permit a lot in the Town Center Overlay District to have less than the required 20,000 square feet of area, less than the required 125 feet of frontage, a front setback of less than the required 30 feet, and side setbacks of less than the required 15 feet, respectively. The parcel is located at 4 Railroad Avenue in the C-2 (General Commercial), Aquifer Conservation, and Town Center Overlay Districts. Tax Map 5D-4, Lot 080. Case # 2018-39.

Nathan Chamberlin, Fieldstone Land Consultants, read the special exception criteria into the record.

There was no public comment.

The Board voted 5-0-0 to grant the Special Exceptions, with the condition that approval be conditioned on approval of the lot line adjustment by the Planning Board, on a motion made by Kathleen Stroud and seconded by Lynn Christensen.

Findings of Fact

1. The proposed additions, alterations or improvements would serve to promote the reuse, restoration, rehabilitation or otherwise enhance a historic building or structure or any other potentially historic building or structure identified in the Historic Resources Inventory component of the Town Center Plan because the proposed alterations to the site consist of enlarging the property so that all existing encroachments would be captured on the appropriate lots. This proposal would therefore make the properties more conforming as it pertains to the Town Center Dimensional Standards;
 2. The proposed additions, alterations or improvements are for a use currently permitted within the Town Center Overlay District because the proposed lot line adjustment proposes to simply make the subject lot larger and does not propose to change the uses that exist on the subject property;
 3. The proposed additions, alterations or improvements would not result in significantly increased hazards to vehicles or pedestrians or impair or impede emergency vehicle access or the provision of emergency services or the planned improvements to the transportation corridor because the proposed lot line adjustment would enlarge the subject property but would not change the uses or operations that currently exist on site. This proposal would therefore result in no increased hazards to vehicles or pedestrians and would not impair or impede emergency access;
 4. The proposed additions, alterations or improvements would not result in unreasonable impacts to abutting properties by way of increased noise, odor, visual blight, or other nuisance because the proposed enlargement of the subject property will simply capture all of the existing improvements which currently encroach onto the abutting property. There are no additions, alterations or improvements to the existing buildings so there will be no impacts to the abutting properties by way of noise, odor or visual blight;
 5. The proposed additions, alterations or improvements would serve to enhance the overall goals of the Town Center Plan because this proposal will make the existing lots within the Town Center Overlay District more conforming. The proposed lot line adjustment will make the subject lot larger. There are no proposed additions, alterations or improvements proposed to the structures or uses on the subject property;
 6. Adequate provisions for parking and other necessary support facilities are provided for the proposed additions, alterations or improvements because the proposed lot line adjustment will make the subject property larger and more conforming. There are no proposed modifications to the structures or uses on site. Given this we believe that there is adequate parking to support facilities on site for the existing uses.
- 11. Mark Rivet (petitioner/owner)** – Special Exception under Section 2.02.13 (D) (1) of the Zoning Ordinance to permit the construction of a function hall facility in support of an existing funeral home in the Town Center Overlay District. The parcel is located at 425 Daniel Webster Highway in the C-2 (General Commercial), Aquifer

Conservation, and Town Center Overlay Districts. Tax Map 5D-4, Lot 077. Case # 2018-40.

The applicant has already been granted a variance to locate the funeral home in the front setback.

Nathan Chamberlin, Fieldstone Land Consultants, said the funeral home would tear off previous additions to make the home and the proposed function hall more homogeneous. The addition would be two stories on one side and three on the other with the function hall on the second level. The first floor garage would be only for funeral home use. The addition would be the same height as the existing funeral home because the garage would be underground. The roof lines would match.

Mark Rivet, 3 Tennis Court, said the uses would not necessarily relate to the funeral home (birthday parties, etc.).

Nathan Chamberlin read the special exception criteria into the record.

There was no public comment.

The Board voted 5-0-0 to grant the Special Exception, with the condition that approval be conditioned on approval of the site plan by the Planning Board, on a motion made by Fran L'Heureux and seconded by Kathleen Stroud.

Findings of Fact

1. The site is an appropriate location for the proposed use in accordance with the Town Center Plan because the subject site is currently occupied by Rivet Funeral Home. The proposed addition to the property would include the expansion of the funeral home with garage space and a function room. The function room would fit in well with the existing uses and approving this proposal would encourage an appropriate mixture of land uses on the property which is consistent with the overall goals of the Town Center Plan;
2. The proposed use would not result in significantly increased hazards to vehicles or pedestrians by way of traffic congestion, ingress or egress because the proposed expansion of the funeral home and the addition of a function room would not result in significant increased hazards to vehicles, pedestrians or traffic congestion. Th;
3. The proposed use would not result in unreasonable impacts to abutting properties by way of increased noise, odor, visual blight or other nuisance because the proposed expansion of the existing funeral home and the addition of a function room will not result in unreasonable impacts to the abutting properties by way of noise, odor and visual blight. The expansion will consist of building improvements which will be visually pleasing and the site improvements are generally located to the rear of the property and will have adequate buffering to neighboring abutters. Generally speaking this proposal will be utilizing existing improvements.;
4. The proposed use is designed in harmony with the overall goals of the Town Center Plan with respect to building, transportation corridor, and site design and arrangement because the proposed expansion of the funeral home and addition of a

function room will result in building, traffic circulation, parking, drainage and site lighting improvements which will be in harmony with the goals of the Town Center Plan. This proposal will consist of an appropriate mixture of land uses that will work well with the surrounding traffic patterns and will fit in well with neighboring businesses and uses.

12. Discussion/possible action regarding other items of concern

None.

13. Approval of Minutes – September 26, 2018

Tabled to November 28, 2018

14. Adjourn

The meeting was adjourned at 10:12 p.m., by a vote of 5-0-0, on a motion made by Kathleen Stroud and seconded by Fran L'Heureux.