



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, SEPTEMBER 17, 2014

Members present: Fran L'Heureux, Patrick Dwyer, Phil Straight, Tony Pellegrino, and Alternates Leonard Worster and Richard Conescu.

Staff present: Community Development Director Tim Thompson and Recording Secretary Zina Jordan.

1. Call to Order

Fran L'Heureux called the meeting to order at 7:00 p.m.

2. Roll Call

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

- 3. New Cingular Wireless PCS, LLC. (petitioner) and Alan & Erin Walsh (owners)** – Request for Re-Hearing regarding Case # 2014-16 in which the Board voted to deny a Special Exception under Section 2.02.1(B)(3), Section 2.02.1(B)(1)(a-e), and Section 2.02.4(B)(21)(a) of the Zoning Ordinance to allow the construction of a Telecommunication Tower in the R (Residential) and Aquifer Conservation Districts. The parcel is located at 121 Joppa Road. Tax Map 6C, Lot 329. Case # 2014-37.

Patrick Dwyer recused himself from discussing and voting on this item.

Fran L'Heureux designated Leonard Worster to sit for Patrick Dwyer.

The Board voted 5-0-0 to grant the Request for Re-Hearing, on a motion made by Richard Conescu and seconded by Leonard Worster.

Fran L'Heureux explained that Legal Counsel reviewed the motion and that the vote tonight does not bind the Board either to grant or deny the petition. It means only that the Board will rehear the petition.

- 4. Wayne Doyle (petitioner), Payless Used Car Sales and Frank Twardosky (owner)** – Variance under Section 2.02.4(B) of the Zoning Ordinance to allow a used car sales in the I-1 (Industrial) and Aquifer Conservation Districts located at 759 D.W. Highway. Tax Map 7E, Lot 042-01. Case #2014-35.
This item is postponed from the August 27, 2014 Zoning Board meeting.

Patrick Dwyer returned to the Board.

Leonard Worster recused himself from discussing this item.

There being no petitioner in attendance for the second consecutive meeting, the Board voted 5-0-0 to table this item indefinitely, on a motion made by Tony Pellegrino and seconded by Phil Straight.

5. Shane Poole (petitioner/owner) – Special Exception under Section 2.02.1(B)(2) of the Zoning Ordinance to permit an Accessory Dwelling Unit (ADU) in the R (Residential) District located at 81 Belmont Drive. Tax Map 7D, Lot 345. Case # 2014-38.

Leonard Worster returned to the Board.

Shane Poole, 81 Belmont Drive, read the Ordinance criteria into the record.

There was no public comment.

The Board voted 5-0-0 to grant the Special Exception, with the following conditions, on a motion made by Richard Conescu and seconded by Tony Pellegrino.

1. Execution of Declaration of Covenants for the Accessory Dwelling Unit (form will be provided by Staff); and
2. Payment of the Hillsborough Registry of Deeds recording fee for recording of the Declaration of Covenants for the Accessory Dwelling Unit.

Findings of Fact

1. The site is an appropriate location for the proposed use in terms of overall community development because the ADU would be built on the back side of the existing home, plenty of distance from all boundary lines. It will be pleasing to the eye and match the existing home;
2. The proposed use, as developed, will not adversely affect the neighborhood because the ADU would be designed and developed by a licensed and qualified architect to ensure that it and the landscape will blend well with the area and be pleasing;
3. There will not be a nuisance or serious hazard to pedestrians because the ADU would be built away from the traveled path and roadways for a quiet occupant who is considerate of others;
4. Adequate parking will be provided for motor vehicles on the premises because the occupant will have one car in addition to the existing two cars for the existing home. The driveway can safely accommodate six cars;
5. The ADU is contained within or will be an addition to an existing or proposed single-family detached dwelling. The ADU would be built on an existing ranch-style home with both an ingress and egress built into the ADU;
6. The ADU contains one bedroom;

7. The ADU does not exceed 1,000 square feet in area or fifty percent (50%) of the area of heated living space within the principal dwelling unit in area, whichever is smaller. The ADU would have 546 square feet or 48% of the 1,120 square feet in the current dwelling;
 8. The ADU is connected internally to the principal dwelling unit with a doorway from the current sitting area to the new living room;
 9. The ADU occupancy will be restricted to family members only, with the term “family” as defined as individuals related by blood, marriage or adoption to the fee simple owner-occupant(s) of the principal dwelling unit. The ADU will be occupied by the applicant’s mother;
 10. The ADU is designed to remain functionally dependent on the principal unit and will not have provisions for separate utilities, garages, driveways, yards and other similar amenities. All utilities will be supplied by the existing home.
- 6. Charles Caron (petitioner) and David & Courtney Swan (owners) –** Special Exception under Section 2.02.1(B)(2) of the Zoning Ordinance to permit an Accessory Dwelling Unit (ADU) in the R (Residential) and Aquifer Conservation Districts located at 6 Wilson Hill Road. Tax Map 5B, Lot 208. Case # 2014-39.

Courtney Swan, 6 Wilson Hill Road, read the Ordinance criteria into the record.

There was no public comment.

The Board voted 5-0-0 to grant the Special Exception, with the following conditions, on a motion made by Patrick Dwyer and seconded by Phil Straight.

1. Execution of Declaration of Covenants for the Accessory Dwelling Unit (form will be provided by Staff); and
2. Payment of the Hillsborough Registry of Deeds recording fee for recording of the Declaration of Covenants for the Accessory Dwelling Unit.

Findings of Fact

1. The site is an appropriate location for the proposed use in terms of overall community development because landscaping makes the placement an appropriate choice. There will be easy access to the driveway. The ADU will look aesthetically pleasing to the community;
2. The proposed use, as developed, will not adversely affect the neighborhood because the residence will continue to be a single-family home, the same as the surrounding homes;
3. There will not be a nuisance or serious hazard to pedestrians because the driveway already accommodates four vehicles. The occupants are quiet;
4. Adequate parking will be provided for motor vehicles on the premises because the parking area is already established and conforms to requirements;

5. The ADU is contained within or will be an addition to an existing or proposed single-family detached dwelling. The ADU is an addition to the existing single-family home with interior access between units;
6. The ADU contains one bedroom;
7. The ADU does not exceed 1,000 square feet in area or fifty percent (50%) of the area of heated living space within the principal dwelling unit in area, whichever is smaller. The existing space is 1,654 square feet. Although the allowable size for an ADU is 827 square feet, it will be 768 square feet;
8. The ADU is connected internally to the principal dwelling unit. The ADU would be attached to the basement and connected where the foundation and slab meet;
9. The ADU occupancy will be restricted to family members only, with the term “family” as defined as individuals related by blood, marriage or adoption to the fee simple owner-occupant(s) of the principal dwelling unit. The occupants will be the applicant’s parents. They will be aids for the owner’s Downs Syndrome daughter, who will eventually inherit the ADU;
10. The ADU is designed to remain functionally dependent on the principal unit and will not have provisions for separate utilities, garages, driveways, yards and other similar amenities. Everything is connected to the principal dwelling.

7. College Bound Movers (petitioner) and Benjamin M. Bosowski, Jeffrey L. Clegg, Jessica L. Clegg, Jacob J. Mitchell and Ethan L. Mitchell (owners) – Variance under Section 2.02.1.A of the Zoning Ordinance to permit parking for employees, customer vehicles and temporary mobile storage units located in the I-1(Industrial) and R(Residential) Districts and Wellhead Protection Area at 22 Continental Boulevard. Tax Map 3C, Lot 085. Case # 2014-40.

Richard Maynard, Site Engineer, Maynard & Paquette, listed the locations and areas of the various parking areas and described Mi-Box outdoor storage.

Attorney Ray Tisley, Bernstein-Shur, read the points of law into the record. The use will not alter the essential character of the locality nor threaten public health, safety or welfare. The building will be on the industrial zone section of the lot and parking will be on the residential zone section. This permitted use is the least intensive use of the lot. The small lot with frontage on Continental Boulevard is not appropriate for a residential development. The storage facility will produce little traffic, noise, odor or other impacts detrimental to the surrounding area. Rear buffers will protect abutting properties. Low intensity parking in the residential section of a split-zoned lot will allow a business use in the industrial area.

Public comment

Gary Petas, 20 Tallant Road, stated that over 10,000 board feet of lumber were removed. The Town never required a buffer. Lights come onto his property from

loading docks from 3C/86 (also owned by the petitioner) and there is a firing range below. The Town-mandated 120' fence from 3C/86 was never erected. The industrial and commercial zone lines were misconstrued. The proposal will diminish home values and "kill" the neighborhood. The Building Department will not put an access road or a lane on the sharp corner. Trucks will not exit safely. There are only 25' from the Petas home to Continental Boulevard. A fence will not cut down road noise. Gary Petas said storage is not a proper use of land in a residential zone. There is no access to that lot except at the loading dock, which is very close to Continental Boulevard. Phil Straight explained that traffic, noise and buffers are the purview of the Planning Board; the ZBA is concerned only with land use. Tim Thompson added that the ZBA's concern is whether temporary storage boxes and parking are appropriate - not site design. Richard Conescu noted that diminution of property value is Criterion #4. Attorney Tisley rebutted that a home would not make sense on that lot. The proposed use is the lowest intensity use possible.

Anthony Santos, 4 Tallant Road, agreed with Gary Petas.

Russell Dionne, 45 Camp Sargent Road, asked why storage would be placed on such a small parcel. He is concerned about lighting and more trucks driving on a dangerous road. Attorney Tisley said the applicant would appear before the Planning Board and is aware of the issues stated above.

Patrick Dwyer said this is not an appropriate use of the land and does not meet the hardship criterion. Tim Thompson asked the Board to be specific about why the hardship criterion was not met. Phil Straight explained that the Courts have ruled that an owner has the right to develop the land when two zones come together. The Planning Board and Legal Counsel can deal with the objections. Richard Conescu said a different use would affect the abutters' property values. Their backyards would be a parking lot, which is not a residential use. The ZBA would not approve a parking lot for a house.

The Board voted 4-1-0 to deny the Variance, due to the petitioner not meeting the hardship criterion, on a motion made by Patrick Dwyer and seconded by Tony Pellegrino. Phil Straight voted in the negative.

8. Mark P. Rioux (petitioner) and Catherine M. Coughlin (owner) – Variance under Section 3.05 of the Zoning Ordinance to permit a 16'x18' screened in porch within 14' of the rear property line whereas 40' is required. The parcel is located at 6 Independence Drive in the R (Residential) and Aquifer Conservation Districts. Tax Map 5C, Lot 472-015. Case # 2014-41.

Mark Rioux, 6 Independence Drive, read the points of law into the record.

Tim Thompson explained that the lot is small because it is a non-conforming lot that was created before current zoning requirements.

There was no public comment.

Catherine Coughlin, 6 Independence Drive, said some trees were removed specifically for the purpose of installing a lawn and porch. The rear and side abutters were notified and have no issues with either the work so far or with the proposed porch. Phil Straight suggested that they submit their support in writing to the Community Development Department.

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

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the proposed screen porch will enhance the use of the private home as well as be consistent with the improvements completed in the area;
2. The spirit of the Ordinance is observed because the proposed screen porch will improve the use of the home and enhance its value;
3. Granting this variance would do substantial justice because it will enhance the home's value, enable the property owners to enjoy their home and the enhanced rear yard, and complement the neighborhood where many of the homes display various enhancements;
4. The values of the surrounding properties would not be diminished because the owner has made significant improvements since the home was purchased. The proposed screen porch will enhance the property and be consistent 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 lot size does not meet regulations. The porch has a sliding glass door and is the logical place for a screen porch. Other homes' porches extend farther than this one will;
 - 2) The proposed use is a reasonable one because denial would create a hardship by denying the owners the use and reasonable enjoyment of their home.

9. Discussion/possible action regarding other items of concern

Adam Knott, Anderson & Krieger, was concerned that the ZBA consider and act quickly on the New Cingular proposal because of a forthcoming deadline. Richard Conescu stated that the ZBA had already received guidance from Legal Counsel on the matter. Fran L'Heureux suggested that Adam Knott share his concerns with Tim Thompson. If necessary, the ZBA could hold a special meeting, but it would not discuss the matter tonight.

Tim Thompson announced that Legal Counsel would hold a training session, which the Board agreed to schedule on Wednesday, October 22, 2014.

Tim Thompson announced the Municipal Law Lectures scheduled in Derry for October 1, 2014, about ZBAs in New Hampshire, and October 8, 2014, about how to run a land use board. Registration is on line.

10. Approval of Minutes – August 27, 2014

The minutes of August 27, 2014, were approved as submitted, by a vote of 5-0-0, on a motion made by Patrick Dwyer and seconded by Tony Pellegrino.

11. Adjourn

The meeting adjourned at 8:08 p.m., by a vote of 5-0-0, on a motion made by Richard Conescu and seconded by Patrick Dwyer.