



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, SEPTEMBER 25, 2019

Board members present: Richard Conescu, Patrick Dwyer, Lynn Christensen, Kathleen Stroud, Rod Buckley, and Alternates Leonard Worster and Ben Niles.

Board members absent: Alternate Drew Duffy

Staff present: Planning & Zoning Administrator Robert Price

1. Call to Order

Richard Conescu called the meeting to order at 7:00 p.m.

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.

4. **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 was discussed after Item 3.

At the applicant's request, the Board voted 5-0-0 to continue this item to October 30, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Rod Buckley and seconded by Patrick Dwyer.

5. **Joan Powers (petitioner/owner)** – Variance under Section 3.02 of the Zoning Ordinance to permit a two family residence in the R-1 (Residential, by soils) District whereas only single family residences are allowed. The parcel is located at 143 Baboosic Lake Road in the R-1 (Residential, by soils), and Aquifer Conservation Districts. Tax Map 5C, Lot 082-04. Case #2019-28.

This item was discussed after Item 4.

Planning & Zoning Administrator Robert Price summarized the project by explaining that the variance being requested is to convert a single family dwelling into two family dwelling,

however the work has already been completed. In 1986 the Building Department issued building permits to complete the conversion to a two family in violation of the Zoning Ordinance. The current owner is now trying to legalize the conversion from the zoning perspective so she can sell the property. Robert also explained that if this were a dimensional matter, it could have been resolved with an equitable waiver, however since it is not; a variance is needed to get it corrected. Copies of the original building permits that were issued in 1986 as well as the certificate of occupancy have been provided by the petitioner.

Property owner Joan Powers presented her request by explaining that she has owned the property for 19 years and it was already a two family residence when her and her husband purchased it. Her husband has recently passed away and she needs to sell the property now because it is too big for her to take care of alone. There is currently a buyer interested in the property which is how she learned that it is not considered a legal two family with the town.

Joan Powers read the Variance criteria into the record for this item.

Public Comment

Cheryl Craig, the Mrs. Power's real estate agent, reiterated that there is a buyer interested in the property; however he is not going to purchase it if it is not a legal two family residence. She also stated that the tax card has the property listed as a two family residence and that Mrs. Powers has been paying property taxes on it as a two family since she purchased it in 2000. Mrs. Powers also added that she is in the process of updating the septic system because it was never done, however, she needs to have it properly listed as a two family in order to complete that work.

Patrick Dwyer asked why it was being requested a variance instead of an equitable waiver. Robert Price clarified that an equitable waivers are limited to dimensional issues per State law.

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

Findings of Fact

1. *Granting the variance would not be contrary to the public interest because it has been a two family since we purchased it in 2000.*
2. *The spirit of the ordinance is observed because I am a widow and I cannot take care of the property. I want to sell as a two family. It would not change anything.*
3. *Granting the variance would do substantial justice because I need to sell the property.*
4. *The values of the surrounding properties will not be diminished because there is a two family duplex facing my property on Patten Road. I have rented my upstairs apartment with the knowledge that it was a legal apartment. That is how it was when I bought it.*
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 because I cannot take care of this large property. I need to have it be a legal two family in order to sell. I need to sell and downsize because I am a widow.*
 2. *The proposed use is a reasonable one because it has been a two family for many years and nothing will change.*

5. Discussion/possible action regarding other items of concern

Chairman Conescu presented the idea of asking the Community Development staff if they have anything to say about the project before asking the petitioner to present their request. This will help to eliminate asking something of a potentially nervous speaker that could have been answered by staff.

The Board discussed the rules surrounding how many Board members need to be present to vote and clarified that the petitioner has the right to decide to continue his/her request to another meeting if a full Board is not present.

Lynn Christensen reminded the Board that NHMA is holding a two day conference on November 13th and 14th and encouraged Board members to review the agenda and consider attending. Robert Price interjected and added that the conference is going to be held at the Double Tree Hotel in Manchester and anyone wishing to sign up should let the Community Development staff know soon.

6. Approval of Minutes – August 28, 2019

The minutes of August 28, 2019 were approved as submitted, by a vote of 5-0-0, on a motion made by Patrick Dwyer and seconded by Lynn Christensen.

7. Adjourn

The meeting was adjourned at 7:20 p.m., by a vote of 5-0-0, on a motion made by Lynn Christensen and seconded by Patrick Dwyer.