



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MERRIMACK ZONING BOARD OF ADJUSTMENT

APPROVED MINUTES

SEPTEMBER 27, 2017

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

Members absent: Fran L'Heureux and Richard Conescu.

Staff present: Planning and Zoning Administrator Robert Price and Recording Secretary Zina Jordan.

1. Call to Order

Patrick Dwyer called the meeting to order at 7:00 p.m. and designated Leonard Worster to sit for Fran L'Heureux.

2. Roll Call

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

- 3. David Paul and Toni Paul (petitioners/owners)** — Appeal of Administrative Decision as per the requirements of RSA 674:41. The RSA states that building permits cannot be issued to lots not meeting specific requirements and outlines an appeal process to the Zoning Board of Adjustment. The parcel is located at 312B Baboosic Lake Road in the R (Residential) District. Tax Map 6A-2, Lot 059-09. Case # 2017-34.

The petitioner requested a continuance to December 27, 2017 to allow time to conduct additional research on the paper street called "Jebb Road" and to determine metes and bounds for the proposed driveway easement over the abutting property. The petitioner offered to pay for abutter re-notification due to the length of time between now and the requested hearing date.

At the petitioner's request, the Board voted 4-0-0 to continue this item to December 27, 2017, at 7:00 p.m., in the Matthew Thornton Meeting Room, with abutter re-notification at the petitioner's expense on a motion made by Lynn Christensen and seconded by Tony Pellegrino.

- 4. Richard Bigos (petitioner/owner)** — Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a Quonset hut (20'x20') with a 22 foot front setback whereas 30 feet is required. The parcel is located at 57 Baboosic Lake

Road in the R (Residential) and Aquifer Conservation Districts. Tax Map 5 C, Lot 479. Case # 2017-35.

Richard Bigos, 57 Baboosic Lake Road, wants to build a 20'x20' Quonset hut on the existing 28'x50' concrete slab. Since construction of new homes converted the side of his property into frontage, there is now a 30' setback requirement for a house that has existed since 1918 rather than 15 feet. The hut would be 8' from the property line and positioned in the center of the existing slab. He mentioned wishing to possibly construct an addition to the hut in the future.

The Board asked for clarification as to whether the proposed setback would be 8 feet or 22 feet, noting the discrepancy between the wording on the application and what was just stated. Richard Bigos confirmed he is proposing a setback of 8 feet from the property line.

Richard Bigos read the statutory criteria into the record.

As to #1, public interest, Lynn Christensen questioned that the garage would be "replaced", since the structure would be new. Mr. Bigos noted a garage used to sit on the existing pad prior to his taking ownership of the property. As to #2, spirit of the Ordinance, Lynn Christensen questioned the wording on the application, noting that the Ordinance would not be observed because the applicant is asking not to observe the setbacks. As to #5, hardship, Leonard Worster said there would be too much encroachment and noted that there is another area in the backyard on which to place the garage. Lynn Christensen asked whether future expansion would be permissible. Robert Price replied that it would be if the setbacks were observed. This is a non-conforming lot. Richard Bigos said the setback encroachment would be on the front left corner. The driveway originally came off Baboosic Lake Road, but it had to be moved to the side when the new homes along Rose Lane were constructed.

There was no public comment.

The Board voted 3-0-1 to grant the variance, on a motion made by Lynn Christensen and seconded by Tony Pellegrino. Leonard Worster abstained.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because it would be cleaner, more secure and more eye appealing to the neighbors and public. The intended use is to replace a post garage that burned down shortly before the applicant purchased the home with a more durable metal garage that would increase property values;
2. The spirit of the Ordinance is observed because it would allow adherence to setback regulations rather than the existing pad's encroachments;
3. Granting this variance would do substantial justice because it would improve property values. The platform would finally be utilized for its intended use as a garage, as it was in 1993. It burned down before the applicant's purchase in

1996. It would be used for storage and to keep the applicant's belongings out of view;

4. The values of the surrounding properties would not be diminished because it would greatly improve property values. It would utilize space for replacing the garage that would fit into the neighborhood where everyone has a garage;
5. B. If the criteria in paragraph (A) are not established, explain how an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot reasonably be used in strict conformance with the Ordinance and a variance is therefore necessary to enable a reasonable use of the property. One of the reasons the applicant purchased the property is to use the concrete slab as a possible garage site to hold vehicles, motorcycles, tools, and a generator. The economy, medical problems and a decrease in pay delayed implementation.

- 5. Stephen and Dianne Bazzocchi (petitioners/owners)** — Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a new single family dwelling on lot 105 with a front setback of 6 feet whereas 30 feet is required and rear setback of 16.3 feet whereas 40 feet is required, and the construction of a new garage on lot 151 with a front setback of 5 feet whereas 30 feet is required and a rear setback of 26.6 feet whereas 40 feet is required, with the existing house and garage to be razed. The parcel is located at 12 and 15 Lakeside Drive in the R(Residential) District. Tax map 6A-1, Lot 105 and 151. Case # 2017-36.

Attorney Michael Klass, Bernstein Shur, Sawyer & Nelson, represented the applicants.

At the petitioner's request, the Board voted 4-0-0 to continue this item to October 25, 2017, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Lynn Christensen and seconded by Tony Pellegrino.

- 6. Kenneth and Cecile Burgess (petitioners/owners)** — Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a shed (14'x24') with a 22 foot rear setback whereas 40 feet is required. The parcel is located at 7 Maple Street in the R (Residential) and Aquifer Conservation Districts. Tax Map 6D-1, Lot 093. Case # 2017-37.

Cecile Burgess, 7 Maple Street, said the shed would be consistent with neighboring lots whose sheds also do not meet setback requirements. The lots in Reeds Ferry are small. Much of the Burgess lot is unusable. The petitioner currently owns a dump trailer, tool trailer, two trucks, and a tractor that are currently parked outside. The shed would allow some of those items to be stored under cover.

Cecile Burgess read the statutory criteria into the record.

There was no public comment.

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

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because there are other nearby properties with sheds and garages that do not meet the setback requirements. Therefore this would not adversely affect the character of the neighborhood. The design and quality of the shed would not pose a threat to the public health, safety or welfare;
 2. The spirit of the Ordinance is observed because a visible buffer (fence) to the adjacent properties would be maintained. The chosen site is the least visible from the street;
 3. Granting this variance would do substantial justice because the shed would allow the homeowners to store lawn equipment, patio furniture, garden tools, etc., out of sight and to remove the existing old 12'x22' storage tent and to use the property as the neighbors do;
 4. The values of the surrounding properties would not be diminished because the shed would be of the superior design and quality of the older existing sheds in the neighborhood, would match the color of the home and allow the removal of the existing old 12'x22' storage tent;
 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 location of the house, driveway, fence and landscaping do not allow access to the shed. Because the driveway is used for trailers, the shed must be placed in the rear yard for continued easy trailer access;
 - 2) The proposed use is a reasonable one because it would allow the property owner to utilize the lot efficiently.
- 8. William Lastowka and Land of Goshen, LLC. (petitioner/owner)** — Variance under Section 3.08.9 of the Zoning Ordinance to permit the existing improvements (barn, shed, home, etc.) to remain within a 100 foot landscape buffer proposed as part of a cluster subdivision. The parcel is located at 6 Watkins Road in the R (Residential) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 4C. Lot 449. Case # 2017-39.

This item was discussed before item #7.

Attorney Michael Klass, Bernstein Shur, Sawyer & Nelson, represented the applicants.

At the petitioner's request, the Board voted 4-0-0 to continue this item to October 25, 2017, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Lynn Christensen and seconded by Leonard Worster.

- 7. Chad Brannon, PE of Fieldstone Land Consultants, PLLC. (petitioner) and Brett W. Vaughn Revocable Trust (owner)** — Variance under Section 3.02 of the Zoning Ordinance to permit three reduced frontage lots off a proposed cul-de-sac (lots 7, 8 & 9). The petitioner seeks a minimum frontage of 153.5 feet for lot 7, a minimum of 75 feet for lot 8, and a minimum of 89.6 feet for lot 9 whereas 250 feet is required for each. The parcels are proposed to be located at 123 Wilson Hill Road in the R (Residential) District. Tax Map 4A, Lot 023. Case # 2017- 38.

This item was discussed after item #8.

Chad Branon, Civil Engineer, Fieldstone Land Consultants, PLLC, said a 14 lot subdivision is planned on 63.3 acres with frontage on Wilson Hill Road. On October 27, 2016, the Zoning Board of Adjustment (ZBA) granted three variances for the frontage on proposed lots 7, 8, and 9 to be 106.8', 75', and 89.2', respectively. The applicant is now asking for minimum frontage of 153.5', 75', and 89.6', respectively for those lots, due to ongoing design changes that have occurred during the review process. The frontages may end up being larger, but the petitioner seeks flexibility with the Board granting minimum frontages to allow for additional design changes without having to come back to the ZBA again. Chad Branon is working with the Public Works Department (PWD) and the Fire Department about frontage on the cul-de-sac.

Although the applicant presented the same statutory criteria, except for linear footage, when the ZBA granted the 2016 variance, Chad Branon was asked to read them into the record again.

There was no public comment.

Lynn Christensen said this is a minor change to what the ZBA already approved.

The Board voted 4-0-0 to grant the variance, with the condition that the petitioner shall obtain subdivision approval from the Planning Board for the proposed 14-lot subdivision, on a motion made by Lynn Christensen and seconded by Leonard Worster.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because it would allow for productive use of the property. The proposal is consistent with the surroundings, as many if the lots on Wilson Hill Road possess closer to 100' of frontage, with lot sizes ranging from 1.5-2.5 acres. All lots would be designed with on-site wastewater systems that would meet local and State storm water mitigation requirements. The variance would not alter the essential character of the neighborhood nor threaten the health, safety or general public welfare. Because of working with the abutters, the proposal is more consistent with the interests of the neighborhood. It would provide additional buffering, less road

and a reduced total footprint of land alteration vs. other conforming subdivision concepts;

2. The spirit of the Ordinance is observed because of the size of the lots and the placement of the proposed building sites in relation to the surrounding lots. With irregularly shaped parcels, like lots off cul-de-sacs, frontage becomes less critical when adequate separation and buffering between land owners and uses is more or equal to that of lots with conforming frontage. The proposal is consistent with the surroundings, would not alter the essential character of the neighborhood, nor threaten the health, safety or general public welfare;
3. Granting this variance would do substantial justice because it would allow for the productive use of the land and allow the owner to develop his property in a fashion that would balance the interests of the neighbors. The proposal represents feedback from the Planning Board and neighbors. The subdivision density is reasonable compared to other development options that were submitted. There would be more buffer with this layout than with the conventional grid presented in 2016. Many of the lots along Wilson Hill Road possess closer to 100' of frontage, with lot sizes ranging from 1.5-2.5 acres. The variance would not alter the essential character of the neighborhood nor threaten the health, safety or general public welfare. Denial of the variances would be an injustice to the applicant with no apparent gain to the general public. Denial would result in a loss to both the applicant and the general public as it would ultimately result in consideration of other development options. This proposal is the result of a two year planning process with the Planning Board and Town departments;
4. The values of the surrounding properties would not be diminished because it would allow for a subdivision layout that would provide additional buffering to the surrounding residential properties along Wilson Hill Road and larger lots that would be more in harmony with the neighborhood. The proposal is consistent with neighboring properties. New construction often has positive impacts on surrounding property values, especially developments of this nature. The proposal would increase surrounding property values by creating larger lots, guaranteeing buffers and connectivity to nearby conservation land, maintaining a large undeveloped corridor, and not maximizing the property's development potential;
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 its geometry and size make this property unique. Granting the variances would allow for the reasonable and productive use of the property. The development would provide

adequate spacing and buffering between homes and prevent overcrowding, since the lots with reduced frontages would be farther off the road and would be wider than conventional lots. This style of development is consistent with its surroundings and is in part being sought at the request of the neighboring property owners, for whom the applicant is trying to provide substantial buffering. The size of the parcel and proposed lots and placement of proposed building sites in relation to surrounding lots meet the spirit and intent of the Ordinance, namely to provide adequate separation and buffering between landowners and uses;

- 2) The proposed use is a reasonable one because it would provide for safe access, reasonable sized lots and adequate buffering. It would be consistent with the surroundings and have no negative impact to the general public. The proposed 14 lot subdivision is reasonable, since it would preserve more undeveloped land, provide buffering to the neighborhood, reduce overall impacts, propose less roadway, and would not maximize the property's development potential. Creating 14 lots while preserving large acreage would be more in the public interest than the other alternatives for a larger development with no variances. The average density of one lot per 4.5 acres is reasonable.

9. Discussion/possible action regarding other items of concern

None.

10. Approval of Minutes; August 20, 2017

The minutes of August 20, 2017, were approved as submitted, by a vote of 3-0-1, on a motion made by Lynn Christensen and seconded by Leonard Worster. Tony Pellegrino abstained.

11. Adjourn

The meeting adjourned at 7:50 p.m., by a vote of 4-0-0, on a motion made by Tony Pellegrino and seconded by Lynn Christensen.