



# 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 WEDNESDAY, MARCH 27, 2024

### Members Present:

- Ben Niles (Vice Chair)
- Patrick Dwyer
- Charles Mower (alternate)
- Wolfram von Schoen (alternate)

### Members Absent:

- Richard Conescu (Chair)
- Lynn Christensen
- Brian Dano

### Staff Present

- Colleen Olsen, Assistant Planner

### 1. Call to Order & Roll Call

*Vice Chair Niles called the meeting to order at 6:37 p.m. Patrick Dwyer read the preamble.*

*Vice Chair Niles led the Pledge of Allegiance and swore in members of the public who would be testifying. Vice Chair Niles seated Wolfram von Schoen and Charles Mower for Lynn Christensen and Brian Dano, respectively.*

- 2. S.C. Development, LLC (petitioner/owner)** – Variance under Section 2.01.7 of the Zoning Ordinance to construct a proposed elderly housing development 1.6 miles from the Daniel Webster Highway and Baboosic Lake intersection whereas such developments are not permitted beyond a one-mile radius from same. The parcel is located at 29 Bedford Road in the R-1 (Residential, by soils) & Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 6D Lot 241. #ZBA 2024-01. ***This item is continued from the January 31, 2024 meeting and February 28, 2024 meeting.***

**At the petitioner's request, the Board voted 4-0-0 to continue ZBA Case #2024-01 to April 24, 2024 at 6:30 p.m. in the Matthew Thornton room, with no further written notice to abutters, on a motion made by Ben Niles and seconded by Patrick Dwyer.**

- 3. S.C. Development, LLC (petitioner/owner)** – Variance under Section 2.02.9(B)(6) of the Zoning Ordinance to permit a proposed elderly housing development on a parcel having less than 100 feet of contiguous frontage on a public road. The parcel is located at 29 Bedford Road in the R-1 (Residential, by soils) & Aquifer Conservation District and Wellhead Protection Area. Tax Map 6D Lot 241. #ZBA 2024-02. ***This item is continued from the January 31, 2024 meeting and February 28, 2024 meeting.***

**At the petitioner’s request, the Board voted 4-0-0 to continue ZBA Case #2024-02 to April 24, 2024 at 6:30 p.m. in the Matthew Thornton room, with no further written notice to abutters, on a motion made by Ben Niles and seconded by Patrick Dwyer.**

- 4. S.C. Development, LLC (petitioner/owner) –** Variance under Section 2.02.9(B)(1) of the Zoning Ordinance to permit a proposed elderly housing development to be serviced by private septic systems whereas public sewer is required. The parcel is located at 29 Bedford Road in the R-1 (Residential, by soils) & Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 6D Lot 241. #ZBA 2024-03. ***This item is continued from the January 31, 2024 meeting and February 28, 2024 meeting.***

**At the petitioner’s request, the Board voted 4-0-0 to continue ZBA Case #2024-03 to April 24, 2024 at 6:30 p.m. in the Matthew Thornton room, with no further written notice to abutters, on a motion made by Ben Niles and seconded by Charles Mower.**

- 5. Kaitlyn Stathopoulos (petitioner/owner) –** Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a home addition/garage 29 feet from the front property line, whereas 30 feet is required. The parcel is located at 6 Mayflower Road in the R-a (Residential, by soils) & Aquifer Conservation Districts. Tax Map 5C Lot 11. ZBA 2024-05

Kaitlyn Stathopoulos presented the application to the Board. Ms. Stathopoulos stated that she is requesting a variance in order to permit the construction and home addition and garage that is 29 feet from the frontage of Mayflower Road while 30 feet is required. The property line and existing dwelling want to be even to the current property. Ms. Stathopoulos then read through the responses to the statutory criteria (outlined below) and took questions from the Board.

Mr. Mower said that he remembered when this subdivision began in the community and the community was a lot different in terms of zoning. As the Town of Merrimack has matured, so have the residences that people occupy in that area so that it has grown. As people became more affluent they put on additions etc. After studying the request of the applicant, Mr. Mower stated that it’s clear enough for him to understand that they have very little alternatives to enjoy the same lifestyle that other people do in Merrimack without having some reasonable adjustment to their setbacks. He said it’s consistent to the transition that has happened all around them and he thinks it’s fair, reasonable and supports it.

**No Public Comment was received.**

**The Board voted 4-0-0 to find that the petitioner’s responses to the statutory criteria are sufficient, proved each criterion is met, and the Board adopts the petitioner’s responses as the Board’s findings of fact, and further, to grant the variance under Section 3.05 of the Zoning Ordinance to permit the construction of a home addition/garage 29 feet from the front property line, whereas 30 feet is required, on a motion made by Mr. von Schoen and seconded by Patrick Dwyer.**

*Findings of Fact:*

- 1. Granting the variance would not be contrary to the public interest because:**  
*The addition will not impact the health, safety, or general welfare of our community.*

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

*The home addition will be both functional and appealing to the neighborhood.*

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

*Other homes in the neighborhood have had additions and garages that require setbacks of which have been granted variances.*

**4. Granting the variance would not diminish the values of surrounding properties because:**

*The addition will be aesthetically pleasing and will improve the overall look of the property, therefore increasing the property value of the home and homes in the neighborhood.*

**5. Unnecessary hardship:**

**a. Owing to special conditions of the property that distinguish it from other properties in the area, explain how 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:**

*The subject parcel 5C/011 is 0.43 acres, or 18730 square feet. It is located in the R-1 (Residential, by soils) & Aquifer Conservation Districts. The property is a split level home with one front, two sides, and one rear setback. The home faces Mayflower Road. The proposed addition/garage allows space for town and utility access to the area. Altering the proposed addition to fit within the setback requirements will impact the proposed living space. Building to the north would require additional variances, a smaller addition and would limit access to the backyard/septic tank.*

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

*We believe that the proposed use is a reasonable one for all of the reasons previously stated. The following is an outline of why we believe the proposed use is reasonable:*

- *The addition will create additional living space for our family, garage space for vehicles and additional storage.*

**6. Kaitlyn Stathopoulos (petitioner/owner) – Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a home addition/garage 4.9 feet at its closest point from the side property line, whereas 15 feet is required. The parcel is located at 6 Mayflower Road in the R-1 (Residential, by soils) & Aquifer Conservation Districts. Tax Map 5C Lot 11. ZBA 2024-06.**

Kaitlyn Stathopoulos and Peter Stathopoulos presented the application. They are requesting a variance in order to permit the construction of a home addition/garage, 8.4 and 4.9 feet from the side of the neighbor's property line, (shared line with Map 5C, Lot 10), on Mayflower Road, while 15ft is required. The property line and the existing dwelling run in a slanted direction which is why there is a difference between the frontage and the back of the proposed addition. The proposed addition allows space for the town and utility companies to access the area. Altering the proposed addition to fit within the setback requirements will impact the proposed living space. Building to the north would require additional variances, a smaller addition and would limit access to the backyard and septic tank area. Ms. Stathopoulos then read through the responses to the statutory criteria (outlined below) and took questions from the Board.

Mr. Mower stated that the reason why there are side, rear and front setbacks are because they are important and he doesn't want people to think that just because people desire a bigger project that it's easy to disregard the zoning setbacks. He said that despite the fact that it's 4.9ft in the back and 8.4ft in the front, rather than asking for the addition to be reduced in size isn't really going to affect any greater benefit to that access. Mr. Mower said he is willing to accept the footprint as petitioned by the applicant because it's fair and reasonable. Vice Chair Niles added that it's not the rear that's the issue, it's the side.

Mr. von Schoen stated that he agreed with everything that Mr. Mower said. He wanted to clarify that it's going to be a two car garage. Ms. Stathopoulos responded with "yes."

#### Public Comment

Richard Jones, Building Official Town of Merrimack, asked if the property is serviced by a septic system. Ms. Stathopoulos said yes. Mr. Jones then asked if they would be adding any bedrooms to the septic. Ms. Stathopoulos responded that they are adding one. Mr. Jones asked if the addition will impact access to the septic system if they needed to have the septic replaced. Mr. Dwyer said that from what they have said, it sounds like the proposed addition would need to be built as proposed in order for them to have access to the septic. Mr. Jones asked for clarification that the proposed addition will not compromise the location of the petitioners' septic system. Mr. Dwyer said yes. Mr. Mower stated that it's indicated on the plan that with the proposed addition, they have sufficient space to get around the house and into the back where the septic field is. Mr. Jones then said that the applicant said they were on an angle and the actual incursion into the setback is not a straight shot so is the percentage of the entrance into the nonconforming lot greater if it were a square. He said that the way that the house and the front yard is positioned, if the house was positioned more parallel with Mayflower they might not be encroaching as much as it is now.

**The Board voted 4-0-0 to find that the petitioner's responses to the statutory criteria are sufficient, proved each criterion is met, and the Board adopts the petitioner's responses as the Board's findings of fact, and further, to grant the variance under Section 3.05 of the Zoning Ordinance to permit the construction of a home addition/garage 4.9 feet at its closest point from the side property line, whereas 15 feet is required, on a motion made by Patrick Dwyer and seconded by Ben Niles.**

#### *Findings of Fact:*

- 1. Granting the variance would not be contrary to the public interest because:**  
*Construction of a home addition/garage 8.4 and 4.9 feet from the side of neighbor's property (5C-10) line on Mayflower Road., while 15 feet is required. Property line and existing dwelling run in a slanting direction.*
- 2. The spirit of the ordinance is observed because:**  
*The addition will not impact the health, safety, or general welfare of our community.*
- 3. Granting the variance would do substantial justice because:**  
*Other homes in the neighborhood have had additions and garages that require setbacks of which have been granted variances.*
- 4. Granting the variance would not diminish the values of surrounding properties because:**

*The addition will be aesthetically pleasing and will improve the overall look of the property, therefore increasing the property value of the home and homes in the neighborhood.*

**5. Unnecessary hardship:**

**a. Owing to special conditions of the property that distinguish it from other properties in the area, explain how 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:**

*The subject parcel 5C/011 is 0.43 acres, or 18730 square feet. It is located in the R-1 (Residential, by soils) & Aquifer Conservation Districts. The property is a split level home with one front, two sides, and one rear setback. The home faces Mayflower Road. The proposed addition/garage allows space for town and utility access to the area. Altering the proposed addition to fit within the setback requirements will impact the proposed living space. Building to the north would require additional variances, a smaller addition and would limit access to the backyard/septic tank.*

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

*We believe that the proposed use is a reasonable one for all of the reasons previously stated. The following is an outline of why we believe the proposed use is reasonable:*

- *The addition will create additional living space for our family, garage space for vehicles and additional storage.*

**7. Discussion/possible action regarding other items of concern**

Mr. Dwyer asked a procedural question regarding denying continuance requests. Ms. Olsen stated that she would look into this.

Ms. Olsen added that the Nashua Regional Planning Comity Commission is holding a ZBA Decision making process training in Nashua on April 10 at 6:30p.m. There is also an option to complete it online.

**8. Approval of Minutes – February 28, 2024**

**The Board voted 4-0-0 to approve the minutes of February 28, 2024, on a motion made by Patrick Dwyer and seconded by Chuck Mower.**

**9. Adjourn**

**The Board voted 4-0-0 to adjourn at 7:15 p.m., on a motion made by Patrick Dwyer, and seconded by Wolfram von Schoen.**