



# 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, JANUARY 31, 2024

### Members Present:

- Richard Conescu (Chair)
- Ben Niles (Vice Chair)
- Lynn Christensen
- Brian Dano
- Wolfram von Schoen (alternate)
- Charles Mower (alternate)

### Members Absent:

- Patrick Dwyer

### Staff Present

- Casey Wolfe-Smith, Planning & Zoning Administrator

### 1. Call to Order & Roll Call

Chair Conescu called the meeting to order at 6:32 p.m. Brian Dano read the preamble.

Chair Conescu led the Pledge of Allegiance and swore in members of the public who would be testifying. Chair Conescu seated Wolfram von Schoen for Patrick Dwyer

*The Board opened Agenda Items 2, 3 & 4 simultaneously.*

- 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
- 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
- 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

Attorney Brett W. Allard, Esq. of Shaughnessy Allard introduced himself and Matt Peterson, of Keach-Nordstrom Associates. Mr. Allard stated they are proposing a 55+ independent living condominium development which would have 15 single family units containing 2 bedrooms each. It will be accessed via a new, to be constructed, private road off the northerly side of the Bedford Road and Davis Road intersection which would create a 4-way intersection. He also added that they proposed a private cul-de-sac for interior traffic circulation and emergency vehicle turnarounds which would be maintained by the association. He also said that they are proposing a number of guest parking spaces and a sidewalk that extends out to Bedford Road.

Mr. Allard explained how there is a wetland in the rear of the property on the northerly side. He noted they are holding all wetland setbacks, and the lot is otherwise dry upland. The development can be serviced by municipal water (via Merrimack Village District). There is an 8-inch water main that runs down the Bedford Road right of way. There is no sewer in the vicinity of this project, and that is why they are looking for a variance to be on private septic.

Chair Conescu asked if there was a sewer line on Bedford Road. Mr. Peterson reiterated that there is none. Chair Conescu asked if the units are going to be treated as a condominium and if there will be a Homeowners Association (HOA) that manages that. Mr. Peterson answered yes. Chair Conescu then asked about the approximate square footage of the units. Mr. Peterson said they're smaller units at about 1,450 square feet each.

Ms. Christensen asked if Belmont Drive had a sewer line. Peterson said that closest sewer line is about a mile up the road. Ms. Christensen expressed concern and explained how years ago there was huge issue with the septic systems failing in that area.

Mr. Mower stated that the information provided by the petitioner regarding the availability of municipal sewer is sketchy and that the sewer is a critical issue. He stated that if there's any issues, the residents are going to turn to the Town of Merrimack. He said if there was sewer service available, then he would have no issue with any amount of units being placed on the lot that would comply with the Ordinance. He said that he doesn't see any way the ZBA can support the project without being serviced by municipal sewer, because the surrounding area had a huge septic failure problem in the past. He wants to know specific details as to where the existing sewer lines are located nearby.

Chair Conescu asked if there is going to be 15 septic tanks for the 15 units. Mr. Peterson said that in elderly developments they are 125 gallons per unit.

Mr. Peterson then asked Mr. Mower that if he combined the land and got sewer from down the road, then is he fine with coming in with as many units as he could get there. Mr. Mower stated that he is generally supportive of development on this lot as long as it's shown to have access to public water and sewer service. He reiterated his concern that in the event of a problem, the homeowners are going to complain to the Town and the Town will have to take some action.

Chair Conescu asked how many homes on Belmont Drive have accused the Town of Merrimack as being the reason for the failure of their septic system. Ms. Christensen stated that the septic failure issue is an old situation from when HUD was involved in building the Country Club Estates. She said she is not sure how many, but a lot of the septic systems failed and had to be re-done.

Regarding this current project, she stated how she is leaning toward public sewer service being necessary and thinks there are a number of ways this can be accomplished. Mr. Peterson explained that unfortunately if he were to bring the sewer line to this lot, the current proposal would go away and they would be garden style units. 15 units do not support bringing the sewer line as far as is needed to service the lot. He stated under elderly zoning, they are allowed 8 units per acre and that they would have to max out the sewer. Ms. Christensen said they should do it because there's a demand.

Vice Chair Niles asked if the responsibility of the upkeep and maintenance of the proposed septic system fall through the association down to all the individual owners. Mr. Allard responded that the association would be charged with collecting and holding funds to address any issues. Mr. Niles then asked how many bedrooms each unit would have and Mr. Peterson answered two.

Mr. von Schoen stated that the access road seems to be passing an existing dwelling. He asked Mr. Peterson if he could elaborate the impact on the abutter, how he will deal with the proximity of the access road to that property and what affect it might have on the owner. Mr. Peterson explained that the surveyors did explain the plan to the abutter and that they're not looking to do anything to push them out and that more information would be included in the site plan that would go before the Planning Board.

Mr. Dano expressed to Mr. Peterson that he admired the petitioner's showing of restraint in designing the development by limiting the number of proposed units when more could potentially fit on the property. He asked if Mr. Peterson could potentially oversize the septic or take some sort of action to mitigate the septic system's premature failure in the future. Peterson explained that septic systems are a lot different than they were even a few years ago. The petitioner dug test pits and are not down to the water table and there is a wetland in the back. The septic designers looked at it and determined they would meet all the criteria.

Mr. Niles added that it would be a bit of an oversight to design a septic system under the assumption that only two elderly individuals would be residing in the unit when it could easily accommodate four people. Mr. Peterson explained that the elderly regulation restricts what they have there so they would be following the regulations because their plan is age restricted, therefore grandchildren and children etc. would not be allowed to live there.

Ms. Christensen asked if sewer service is approved per bedroom and not per person. Mr. Peterson answered that he would get back to the Board with that information.

Mr. Mower stated that it's wishful thinking that the septic system would not fail. He said that the truth of the matter is that municipal sewer is not going to fail. He doesn't want the Town of Merrimack to be faced with questions like "why did you approve this?" He said he knows for a fact that sewer is available at the end of Harris Avenue and that it's probably not more than 600ft from the property line of the proposed development. Mr. Peterson answered that he would look into that.

Mr. von Schoen asked if the HOA can stipulate that there cannot be more than two occupants permanently in the dwelling. Mr. Allard answered that there may be exceptions under Fair Housing that might prevent this, such as people who need reasonable accommodations, but he would look into it. He added that in general, condominium associations can establish rules about occupants, guests and tenants. Chair Conescu stated that he doubts that the HOA would be able

to enforce something like this. Mr. Peterson said that HOAs are very good at policing their regulations.

Chair Conescu asked where the existing sewer lines are in relation to this project and if Mr. Peterson could provide that information to the Board at a future meeting. Mr. Peterson answered yes and also asked if the public hearing would be opened. Chair Conescu responded that since there is missing information that the petitioner will be bringing to the Board at a future meeting, he believes opening the public hearing should wait until that time.

Mr. von Schoen expressed that he does not like the idea that the public won't be able to speak on this matter at this current meeting. Chair Conescu explained that all three variances are contingent on each other and that if they start voting then they will shoot down variances that they cannot use. He said that this would not be the last time they would be meeting regarding this plan. One way or another, anyone who wants to speak will have to come back. He does not want to have to vote yet without having all the necessary information.

**The Board voted 5-0-0 to continue the public hearings for ZBA Cases #2024-01, #2024-02, and #2024-03 to February 28, 2024 at 6:30 p.m. in the Matthew Thornton Room, with further written notice to abutters via first class mail (at the Town's expense), on a motion made by Ben Niles and seconded by Lynn Christensen.**

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

None.

**6. Approval of Minutes- December 27, 2023**

**The Board voted 3-0-2 to approve the minutes of December 27, 2023 as drafted, on a motion made by Lynn Christensen and seconded by Ben Niles. Wolfram von Schoen and Rich Conescu abstained.**

**7. Adjourn**

**The Board voted 5-0-0 to adjourn at 7:32pm, on a motion made by Lynn Christensen and seconded by Wolfram von Schoen.**