



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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MERRIMACK PLANNING BOARD APPROVED MINUTES TUESDAY, APRIL 2, 2024

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, April 2, 2024 in the Memorial Room.

Members Present:

- Robert Best (Chair)
- Lynn Christensen (Vice Chair)
- Tom Koenig Town Council Alternate (Alternate Ex-Officio)
- Mark Williams – Alternate
- Nelson Disco – Alternate

Members Absent:

- Haleem Mediouni
- Town Councilor Barbara Healey (Ex-Officio)
- Maureen Tracey – Alternate
- Jaimie von Schoen
- Kevin Peters

Staff Present:

- Robert Price, Community Development Director

1. Call to Order

Chair Best called the meeting to order at 6:31 p.m. and led everyone in the Pledge of Allegiance. He then seated Alternates Nelson Disco and Mark Williams for Jaimie von Schoen and Haleem Mediouni, respectively.

2. Consent Agenda

None

- 3. Colt Refining Inc. (applicant) and King Herrick LLC and Evan Realty, LLC (owners) –** Continued review for consideration of an amendment of a conditionally approved site plan for a 97,600 s.f. light industrial facility and associated site improvements to split construction of the site into two phases. Phase 1 is proposed to consist of all site improvements and 65,282 s.f. of the proposed building. The parcels are located at 12A Star Drive, and unnumbered parcels off Herrick Street and King Street in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 3D-1, Lots 2-1 & 20-1 and Tax Map 3D-2, Lot 20-1. Case #PB2024-05. ***This item is continued from the February 20, 2024 meeting.***

Robert Price explained that staff had requested the applicant seek a continuance for two weeks to permit the Wastewater Department time to review & comment on a revised set of plans.

At the applicant's request, the Board voted 5-0-0 to continue the application's public hearing to April 16, 2024 in the Matthew Thornton Room, with no further written notice to abutters, on a motion made by Lynn Christensen and seconded by Nelson Disco.

- 4. Keith Curran (applicant) and Gleason Co. LLC (owners)-** Continued review for acceptance and final approval of a site plan to construct a 7,650 s.f. manufacturing building with associated office space & other associated site improvements. The parcel is located at 63 Turbine Way in the I-1 (Industrial), Aquifer Conservation, Elderly Housing Overlay, and Town Center Overlay Districts. Tax Map 5D-1, Lot 5-1. Case # PB2024-02. ***This item is continued from the January 16, February 6 & February 20, 2024 Planning Board meetings.***

Robert Price explained that the applicant has submitted a drainage report as had been requested, however, he noted it does not account for the entirety of the site; just the proposed area of development. He indicated the Board should act on completeness of the application and the various waiver requests, and if the Board deemed appropriate after discussion, potentially vote to conditionally approve the project.

Eli Leino, Bernstein Shur (attorney), Keith Curran, Bohler Engineering and Ward Gleason Sr., Gleason Company, presented the application. Mr. Curran stated that they prepared a stormwater and drainage report that Fuss & O'Neill has reviewed. They spoke with Fuss & O'Neill regarding some comments that were made and major adjustments to the plan accordingly. Mr. Curran stated that he believes they have met all their concerns and addressed them.

Chair Best said that when the applicant was last before the Board, the Board hadn't determined that the application was complete yet because they wanted a stormwater evaluation and a potential plan based on all the structures on the site, not just the new structures. All the old structures had never been engineered or had any drainage structures built around them. He asked if Mr. Curran could comment on if that's what he took from this meeting as well. Mr. Curran responded with yes, the discussion was to treat the stormwater as much as possible with it being a redevelopment site. They came to an agreement with Fuss & O'Neill that they treat the redevelopment as if it had to go to NHDES for an Alteration of Terrain permit. Chair Best said that he meant to convey that all of the structures on the site had never been part of an approved site plan before. All of the structures on the site are functionally new because it's the first site plan they appear on. He said that is the approach that he had in mind for the stormwater. Mr. Curran said that there are two catch basins out there but they're not sure where they lead to. He said they probably somehow make it to the Merrimack River but they're removing them because they don't know what they're doing. They will be installing a new stormwater treatment system. Chair Best responded that it doesn't necessarily address the idea that there's a whole lot of impervious coverage on the lot that has never been engineered or designed for stormwater treatment. He said he doesn't know how the site has functioned historically because there's never been an evaluation of it or a peer review conducted.

Mr. Disco was in agreement with Chair Best that he was expecting a stormwater analysis for the whole of the site and not just the small changes. In addition to this, he said that at the Lower Merrimack River Local Advisory meeting, the committee reviewed this plan and their

recommendation at a minimum was to remove the impervious surface that's in the 50ft buffer from the river. He said he personally would not vote in favor of this until there's an agreement to do that. Mr. Curran showed the Board the plan showing the existing edge of pavement in the 50ft line from the river. He stated that they're not increasing the pavement closer to the river or the buffer. He pointed to a small area that where there's existing pavement within the 50ft buffer. Mr. Disco responded that he thought it was a larger area than that. Mr. Curran clarified that the area of concern is probably less than 500 sq ft.

Vice Chair Christensen said that she is concerned for the Merrimack River because they've been trying to clean it up for years and added that she does not want any runoff from the site to drain into the river. Chair Best and Mr. Disco responded that they agree.

The Board entered into a lengthy discussion with the applicant in regards to whether or not the site drains into the Merrimack River, the existing drainage pattern of the site, the origins of the concrete pads that are located on the site and the Board's preferences for what the drainage analysis and proposed infrastructure should account for. Also discussed was the question of whether or not any prior approvals had ever been granted by the Town for the development that has occurred on the site over time, the Town's ownership of the parcel at one time, and the potential for the existing developed portion of the site being deemed legal nonconforming, which would negate any requirement for formal stormwater treatment of the entirety of the developed area.

Chair Best stated that despite the disagreement on the stormwater analysis, he believes that the applicant has provided enough information for the Board to at least consider acceptance of the application as complete.

The Board voted 4-1-0 to accept the application as complete for review, on a motion made by Lynn Christensen and seconded by Nelson Disco. Mark Williams voted in opposition.

The applicant offered a brief summary of each waiver being requested:

1. Section 3.11 Table 1, which outlines the minimum number of required parking spaces;
2. Section 3.11.L.1, which requires a percentage if the interior area of a parking lot to be landscaped;
3. Sections 3.09 & 4.14, which require the submittal of a landscape plan;
4. Section 4.12.c.18.viii, which requires trees larger than 15" in diameter be shown on the existing conditions plan; and
5. Section 3.07.g.3 pertaining to the requirement for 36" of cover over drainage pipes.

The Board indicated it had no concerns with waiver requests 1-4. Regarding the waiver from Section 3.07.g.3, there was a brief discussion about if the cover for the drainage pipes meets the requirements of the manufacturers, which it was stated that it does. Mr. Curran explained a couple of options that would have disturbed the ground near the river if they were to meet the 36" requirement. Robert Price added that pertaining to this waiver, Public Works commented on the concern that pipes could be crushed by vehicles or they could freeze if they weren't deep enough in the ground. Mr. Curran showed on the plan that there would be no traffic where the shallow coverage area will be.

The Board voted 5-0-0 to grant the following waivers, citing that both strict conformity would pose an unnecessary hardship to the applicant, and specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waivers will properly carry out and not be contrary to the spirit and intent of the regulations, on a motion made by Nelson Disco and seconded by Mark Williams:

- 1. Section 3.11 Table 1, which outlines the minimum number of required parking spaces;**
- 2. Section 3.11.L.1, which requires a percentage if the interior area of a parking lot to be landscaped;**
- 3. Sections 3.09 & 4.14, which require the submittal of a landscape plan;**
- 4. Section 4.12.c.18.viii, which requires trees larger than 15” in diameter be shown on the existing conditions plan; and**
- 5. Section 3.07.g.3 pertaining to the requirement for 36” of cover over drainage pipes.**

Public Comment:

No public comments were received.

Chair Best asked to finish the discussion about stormwater. He said that there’s differences in opinions about what is existing and what isn’t because none of the structures exist on an approved plan that’s been engineered. He said that if the applicant were to prepare an analysis indicating that the site would run off less than it would as an undeveloped site, supported by Fuss & O’Neill, he’d accept it. Mr. Curran stated that is not the analysis they prepared or intended to run.

Robert Price noted that he spoke with the Public Works Director Dawn Tuomala, who said that despite the existing draining pattern sheet flowing into the river, she explained that if the site is stable and not showing any active signs of erosion, the applicant may have sufficient treatment with what they are proposing. Dawn is also taking into consideration the fact that the Town does not own any MS4s in this area so drainage is not going into Town system. In addition, there is also the 50ft tree buffer separating the development portion of the site and the river. Chair Best said he had the privilege of being informed of these comments in advance and after having thought through them, he feels as though they are subjective as there’s no data.

Mr. Leino stated they’re trying to do the right thing by developing a rain garden and improving the site by accounting for the development they’re adding. He also stated his opinion that the site’s drainage presently works effectively. Chair Best stated that the assertion that the site works is the view of the applicant but there’s no evidence that it works.

Mr. Curran asked if they could show that the impervious surface existed before 1965 if it would be considered existing non-conforming. Chair Best confirmed.

Ms. Christensen stated that Dawn is an engineer and she gives some credence to her opinions about what the applicant is doing. Mr. Curran stated that he is an Engineer, as well as Fuss & O’Neill and that they reviewed it. Chair Best stated his concern remains that the applicant did not answer the question of whether the site functions better now than it did when it was undeveloped.

Mr. Koenig said there are access doors to a manufacturing area in the proposed building but that he does not see any pavement or a roadway for vehicles to get in or out. Mr. Curran said they provided and submitted an access easement that gives them access through the abutting property and there's existing gravel on one side and concrete on the other side of the of the two doors so they're not adding any pavement. Mr. Koenig stated a concern with the proposal to utilize concrete and gravels that were never planned or engineered.

Mr. Koenig said he doesn't understand how people are getting from the South side of the site to the building. Mr. Curran showed the Board the plan which shows an access easement with existing pavement. He said that the company who plans to build the proposed building is currently using the existing impervious surface for storage of stone slabs and all that they would be doing is adding the building for them to do work with the stone slabs inside instead.

Mr. Leino and Mr. Curran decided they would like to try and get more information regarding what existed on the site before 1965 in an attempt to determine if the existing developed area can be determined legal nonconforming.

The Board voted 5-0-0 to continue the application's public hearing to April 16, 2024 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion made by Lynn Christensen and seconded by Nelson Disco.

5. Workshop Discussion- Potential amendments to the Flood Hazard Conservation District section of the Zoning Ordinance

Robert Price explained that the State's Office of Planning and Development has reviewed the Flood Hazard Conservation District portion of the Zoning Ordinance and provided feedback about updates that need to be made in order to remain compliant with the National Flood Insurance Program. He indicated he put together a draft of the proposed revisions, which was distributed to the Board in their packets. He noted the changes were minor in nature; mostly updating terminology and definitions with a few other small adjustments scattered throughout. He asked the Board if there were any questions. The Board did not have any questions or concerns, and agreed to schedule a public hearing for the proposed amendments in May.

5. Planning & Zoning Administrator's Report/Discussion/possible action regarding other items of concern

The Board requested that staff occasionally report on the Administrative Approvals that the Department has issued, as well as upcoming conditional approval expirations, service requests and other items the Board doesn't typically see or hear about often.

It was also noted that the Office of Planning & Development's annual spring conference registration is now open. Lastly, the Board discussed that two of the Board's alternates will be interviewing soon for the one open full member seat. It was noted someone else might be applying to join the Board as well.

6. Approval of Minutes- March 5, 2024

The Board voted 4-0-1 to approve the minutes of March 5, 2024, as drafted, on a motion made by Lynn Christensen and seconded by Nelson Disco. Tom Koenig abstained.

7. Adjourn

The Board voted 5-0-0 to adjourn at 8:02 p.m., on a motion made by Lynn Christensen and seconded by Nelson Disco.