



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

603 424-3531

Fax 603 424-1408

www.merrimacknh.gov

MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY, AUGUST 2, 2016

Planning Board members present: Robert Best, Alastair Millns, Tom Koenig, Michael Redding, Lynn Christensen, Desirea Falt, Vincent Russo, and Alternate Jeff Sebring.

Planning Board member absent: Alternate Nelson Disco.

Staff present: Assistant Planner Robert Price and Recording Secretary Zina Jordan.

1. Call to Order

Robert Best called the meeting to order at 7:00 p.m.

2. Planning & Zoning Administrator's Report

Portofino Italian Restaurant proposes additional outdoor seating.

Staff recommends that the Board determine that this project is not of regional impact.

The Board voted 7-0-0 to determine the Portofino site plan is not of regional impact, on a motion made by Alastair Millns and seconded by Tom Koenig.

3. **Joseph Mitchell, Esquire (applicant) and Nikolaos Doulamis (owner)** — Review for acceptance and consideration of a waiver of full site plan to convert a single family residence to a multi-family residence. The parcel is located at 565 D.W. Highway in the C-1 (Limited Commercial), Aquifer Conservation District, Elderly Housing Overlay Districts, and Wellhead Protection Area. Tax Map 6D-1, Lot 123. **This agenda item is continued from the July 19, 2016 meeting.**

Robert Best informed the Board that, on December 30, 2015, the Zoning Board of Adjustment granted a Special Exception to permit the conversion of an existing legal non-conforming single-family dwelling into a multi-family dwelling and variances for lot area, frontage, front and side setbacks, and depth.

Attorney Joseph Mitchell said the cellar would be converted into two studio apartments with one window and a separate entrance for each. There would be no exterior changes. Parking is in the rear for the studio apartments and in front of the building for the upstairs apartment.

Staff recommends that the Board vote to accept the application, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow it to make an informed decision.

The Board voted 7-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Desirea Falt.

The applicant seeks a waiver to allow six rather than eight parking spaces because the lot is undersized. Two spaces in front for the main floor and four for the two studio apartments are adequate. Desirea Falt said two spaces per occupant is reasonable. Vincent Russo noted that access for one space is on D.W. Highway, causing an issue for cars backing out onto the street. He wanted to eliminate access onto D.W. Highway, but Chairman Best and Alastair Mills disagreed because the spaces on D.W. Highway and Pine Street already exist. The circular driveway is important for safety.

Attorney Mitchell said the area to the west has a stockade fence and grassy area, a retaining wall and parking for Merrimack House of Pizza. The applicant owns that land. The grassy area is elevated 3'-4'. There is no way to get there to use it for parking. Chairman Best noted that the House of Pizza lot is even higher. Attorney Mitchell said the applicant can't give it an easement because he owns both properties. Chairman Best suggested noting on the plan that there would be an easement if the parcels come under separate ownership (Condition 6.vi.). Tom Koenig was concerned that visitors would have to park on the street. Lynn Christensen suggested adding a note to the plan that Merrimack House of Pizza allows them to park on the back lot (Condition 6.v.).

Alastair Millns cited the criterion that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of the regulations.

The Board voted 7-0-0 to waive full site plan review and that a sidewalk waiver is not necessary, on a motion made by Alastair Millns and seconded by Lynn Christensen.

The Board voted 7-0-0 to grant a waiver from the requirements of Section 7.03(E), Table 1 – Minimum Parking Required – of the Subdivision Regulations, on a motion made by Lynn Christensen and seconded by Desirea Falt.

The applicant seeks a waiver from the requirement to install a sprinkler system in the entire building because the cellar walls are concrete, it is not economically feasible for such a small building, there are no corridors, and there is direct access to the outside over a short distance, making it easy to get out quickly. It is a Fire Department decision. Alastair Millns noted that the State requires two points of access in an Accessory Dwelling Unit (ADU), to which this is similar. There should be two points of access and a sprinkler system. Chairman Best said the access could be a window rather than a door. Robert Price called the Board's attention to general conditions #2 and #4, which require a sprinkler system and a secondary means of egress. Desirea Falt called attention to New Hampshire NFPA codes. Although she wanted a sprinkler system because there is only one exit, she and Vincent Russo agreed that it is the Fire and Building Departments' decision.

There was no vote on Alastair Millns' and Desirea Falt's motion to deny a waiver from the sprinkler requirement because the applicant withdrew the waiver request.

(Staff notes that No Waiver is Possible for the Building or Fire Code Requirements from the Planning Board)

There was no public comment.

The Board voted 6-1-0 to grant final approval, with the following conditions, to be fulfilled within six months and prior to plan signing, on a motion made by Alastair Millns and seconded by Desirea Falt. Vincent Russo voted in the negative.

1. Final plans to be signed by all property owners and signed and sealed by all appropriate professionals;
2. The applicant shall obtain all required State approvals/permits as may be applicable, note the approvals/permits on the plan and provide copies to the Community Development Department;
3. Any waivers granted (including Section and date granted) and/or any changes requested by the Planning Board shall be listed and fully described on the final plan, as applicable;
4. The applicant shall address the following comments from the Building Department:
 - a. Add notes to indicate all currently enforced fire safety, building and electrical codes to be utilized where building construction takes place.
5. The applicant shall address any forthcoming comments from the Conservation Commission, as applicable;
6. The applicant shall address the following Planning Staff Technical Comments:
 - a. The following items shall be added to the plan:
 - i. Space for owner's signature;
 - ii. Planning Board signature block;
 - iii. A note pertaining to number of bedrooms per each unit;
 - iv. A note outlining the required and available parking spaces.
 - v. A note that reads "Overflow parking for 565 Daniel Webster Highway (Map 6D-1, Lot 123) is available at 563 Daniel Webster Highway (Map 6D-1, Lot 124)."
 - vi. A note that reads "Prior to the sale of either 565 Daniel Webster Highway (Map 6D-1, Lot 123) or 563 Daniel Webster Highway (Map 6D-1, Lot 124), an easement for the existing block wall, as labeled on the plan, and for parking shall be executed between the aforementioned lots and recorded at the Hillsborough County Registry of Deeds."

General and Subsequent Conditions

1. A certified plot plan is required per Section 6 of the Merrimack Subdivision & Site Plan Review Regulations for a certificate of occupancy;
 2. As this proposal constitutes a change of use from a single family residential property to an apartment building, the entire building shall be protected by an approved NFPA-13R compliant fire sprinkler system (Town of Merrimack Building Zoning Ordinance and Building Code, Section 11). Plans shall be provided to the Office of the Fire Marshal for review and approval before a permit can be issued;
 3. The building shall be protected by an approved NFPA-72 fire alarm system. Plans shall be provided to the Office of the Fire Marshal for review and approval before a permit can be issued;
 4. All bedrooms are required to have a secondary means of egress. The current configuration of the basement has 2 bedrooms with no secondary means of egress and are unacceptable for use.
4. **Guiliana Davidson of Portofino Italian Restaurant, LLC. (applicant) and Pamela Currier, Co-Trustee of Orrin Connell 1993 Trust (owner)** — Review for acceptance and consideration of a waiver of full site plan review of outdoor restaurant seating. The parcel is located at 458 D.W. Highway, Unit 6 in the C-2 (General Commercial) and Aquifer Conservation and Town Center Overlay Districts. Tax Map 5D-4, Lot 054.

Robert Price explained that the property had been granted a waiver for less than the required number of parking spaces at the time CVS was approved. At the time, Town regulations required a total of 338 parking spaces for the entire site. The waiver reduced that number to 254. Under current requirements, Portofino would need 72, including eight outdoor seats. The CVS lease area contains 82 spaces. Approving Portofino's request would leave 100 spaces for the rest of the stores on site.

Chairman Best said 6-8 additional seats would be no problem and no additional parking would be necessary.

Guiliana Davidson, 458 D.W. Highway, proposes four small tables for two people each, for a total of eight seats from 11:30 a.m.- 4:00 p.m. Chairman Best explained that approval means they could be used at any time, not restricted to certain hours.

Alastair Millns reported his measurements of the sidewalk area, which is 8' wide and of concrete construction approximately 2" above the paved parking area and covered by a roof overhang. His concern is that it is possible for a car to ram the building if driven between the pillars. The rough potholed surface would make it difficult to keep tables from wobbling. For safety reasons, he proposed a condition of approval that the concrete surface be refinished and granite wheel stops be installed (General Condition #1).

Staff recommends that the Board vote to accept the application, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow it to make an informed decision.

The Board voted 7-0-0 to accept the application for review, on a motion made by Desirea Falt and seconded by Lynn Christensen.

Alastair Millns cited the criterion that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of the regulations.

The Board voted 7-0-0 to waive full site plan review, on a motion made by Alastair Millns and seconded by Vincent Russo.

Public comment

Chris Ross, 403 D.W. Highway, sent a letter of support, noting the success of outdoor seating at other local restaurants. The strip mall where Portofino is located can appear bland and without curb appeal. Outdoor seating would add visual appeal and improve the owner's business model. The table and chairs are large enough to accommodate the needs of potential customers easily while maintaining a small enough footprint for unimpeded passage of other patrons, staff or passersby.

The Board voted 7-0-0 to grant final approval, with the following precedent conditions, to be fulfilled within six months and prior to plan signing, on a motion made by Alastair Millns and seconded by Lynn Christensen.

1. Final plans to be signed by all property owners and signed and sealed by all appropriate professionals;
2. The applicant shall obtain all required State approvals/permits as may be applicable, note the approvals/permits on the plan and provide copies to the Community Development Department;
3. Any waivers granted (including Section and date granted) and/or any changes requested by the Planning Board shall be listed and fully described on the final plan, as applicable;
4. Applicant to add a note to the annotated plan indicating that the "proposed" sidewalk and other improvements shown on the plan (except for outdoor seating) have already been constructed/completed.

General and subsequent conditions

1. Prior to use of the outdoor seating area, wheel stops shall be placed in all parking spaces located directly in front of the part of the building containing Portofino Italian Restaurant.
- 5. Continued Public Hearing – Zoning Ordinance Amendments** – The Planning Board will conduct a public hearing to consider recommended amendments to

Section 2.02.1 and Section 17 of the Merrimack Zoning Ordinance, pursuant to RSA 675:6 and 675:7. **This agenda item is continued from the July 19, 2016 meeting.**

The Board voted 7-0-0 to continue this item to August 16, 2016, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Desirea Falt and seconded by Tom Koenig.

- 6. Zoning Ordinance Amendments Workshop – “Redevelopment Overlay” for underutilized parcels. This agenda item is continued from the July 19, 2016 meeting.**

This item was postponed to August 16, 2016.

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

None.

- 8. Approval of Minutes – July 19, 2016**

The minutes of July 19, 2016, were approved, with changes, by a vote of 5-0-2, on a motion made by Alastair Millns and seconded by Desirea Falt. Tom Koenig and Vincent Russo abstained.

- 9. Adjourn**

The meeting was adjourned at 7:43 p.m., by a vote of 7-0-0, on a motion made by Alastair Millns and seconded by Lynn Christensen.