



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY, AUGUST 4, 2015

Planning Board members present: Robert Best, Alastair Millns, Tom Mahon, Desirea Falt, and Alternate Jeff Sebring.

Planning Board members absent: Michael Redding, Lynn Christensen and Alternate Nelson Disco.

Staff present: Community Development Director Tim Thompson.

1. Call to Order

Robert Best called the meeting to order at 7:00 p.m. and designated Jeff Sebring to sit for the vacant full member position.

- 4. Madi Choueiri (applicant/owner) – Review for acceptance and consideration of Final Approval for a waiver of full site plan review for a restaurant located at 480 D.W. Highway in the C-1 (Limited Commercial), Elderly and Town Center Overlay and Aquifer Conservation Districts. Tax Map 5D-3, Lot 046. **This agenda item is continued from the June 2 and July 7, 2015, Planning Board meetings.****

This agenda item was taken up after agenda item #1.

In a July 22, 2015, e-mail, the applicant requested postponement in order to allow adequate time to secure off-site parking provisions and address Planning Board concerns. Tim Thompson said he has not received a new application or site plan.

Public comment

Larry Vigezzi, President, Board of Directors, John O'Leary Community Center, wanted to correct the July 7, 2015, minutes. There is no Mr. Joseph at the Center, so Madi Choueiri could not have spoken to him. He did speak to Steve Dembo, the Coordinator in the past. The Center manages the property, but the parking must be decided by the owner, which is the Town of Merrimack.

Steve Dembo said that Madi Choueiri expressed concern to him over the necessity to provide ample parking space for his proposed restaurant and asked if he could use four of the Center's spaces. Steve Dembo informed Madi Choueiri that he has no authority over parking spaces. An agreement allows the church next door to use the parking spaces on Sundays. The Center has access Monday-Saturday and the church on Sunday. There is limited parking space on the property. People park there and even on Madi Choueiri's property when it is not used. Steve Dembo told Madi Choueiri to contact the church to use their parking.

At the applicant's request, the Board voted 4-0-1 to continue this item to August 18, 2015, in the Matthew Thornton Meeting Room, at 7:00 p.m., on a motion made by Alastair Millns and seconded by Desirea Falt. Desirea Falt abstained.

5. Robert Lavoie (applicant) and Gregg R. Kennedy (owner) – Review for acceptance and consideration of Final Approval of an application for a 2-lot minor subdivision. The parcel is located at 8 Fuller Mill Road in the R-1 (Residential) District. Tax Map 4B, Lot 153. This agenda item is continued from the June 16 and July 7, 2015 Planning Board meetings.

This agenda item was taken up before agenda item #2.

In a July 30, 2015, e-mail, the applicant requested postponement pending the outcome of his Appeal of an Administrative Decision (or potential variance) that will appear before the Zoning Board of Adjustment (ZBA) on August 26, 2015. The Staff Decision states that soils-based lot sizing does not apply to a parcel located within the R-1 (Residential) District by Zoning Map. Tim Thompson said the applicant was granted a continuance to August 26, 2015. He may withdraw the appeal and ask for a Variance.

At the applicant's request, the Board voted 5-0-0 to continue this item to September 1, 2015, in the Matthew Thornton Meeting Room, at 7:00 p.m., on a motion made by Alastair Millns and seconded by Tom Mahon.

2. Joint Meeting of the Planning Board and Conservation Commission

This agenda item was taken up after agenda item #5.

Conservation Commission members present: Tim Tenhave, Matt Caron, Gage Perry, Mike Boisvert, and Jody Vaillancourt.

Conservation Commission members absent: Cynthia Glenn, Lauren Kras, and Kristi Bradshaw.

- a. Preliminary discussion of soils information for potential ordinance amendments (as requested by Pete Gagnon)

Arthur "Pete" Gagnon, 130 Bedford Road, a former Board member and surveyor, gave a power point presentation entitled, "Why Soils Are Important". He gave a history of soils records and methodologies that identify soils and establish standards and regulations for land uses. Pete Gagnon noted the following problems: Some previous studies were not completely accurate. There has been flooding when developments were built in a flood hazard zone. The Town has no control over long-term actions of homeowners on (mis)use of fertilizers, application of salt, disposal systems or soil contamination. He proposed the following solutions: Since only the Planning Board can authorize peer review with the skill and knowledge to over-ride soil definitions, the ZBA should table this type of variance request and submit it to the Planning Board to make a determination. The ZBA would then have facts on which to base a final decision.

Chairman Best summarized his understanding of Pete Gagnon's presentation as follows: that understanding soils would help the Planning Board, Merrimack

Conservation Commission (MCC), and ZBA make decisions on applications. Some soils are more suitable for development than others. Environmental impact should be taken into account when reviewing a plan for development. Zoning Ordinances are based on soil types, but it is an inexact science. The Planning Board can use peer review/soil scientists for a more precise look at soils. Pete Gagnon recommends that other boards should defer to the Planning Board before making decisions.

b. General Discussion of communication and issues of concern for the Board and Commission

Chairman Best characterized MCC recommendations to the Planning Board for conditions of approval as sensible and consistent. They are to use straw rather than hay bales and not to use salt, de-icers, or phosphate fertilizers. He proposed that these could be included in the Subdivision and site Plan Regulations, but wondered how to make Town-wide standards. MCC Chairman Tim Tenhave agreed. Tim Thompson cautioned that there must be coordination with the Merrimack Village District (MVD) on the winter maintenance issue.

Tim Tenhave said the MCC also recommends utilizing native species for landscaping. It is also looking at water and drainage. Tim Thompson said that regulations encourage use of native species, but they do not list them or prohibit invasive species. He is willing to share information from his experience in Londonderry. Landscapers want MCC and Planning Board feedback. Spruce should be encouraged as an alternative to white pine, which is not good for screening. If the items being discussed were in the regulations, it would guide discussions with landscape designers. Tim Tenhave said the MCC agrees about white pine and invasive species. Tim Thompson stated that he had a very good experience implementing Londonderry regulations, including parking lots and breaking up asphalt.

Chairman Best proposed that the Planning Board and MCC look at the Londonderry regulations for ideas and to make it clear to developers what the Town wants.

Tim Thompson added that Merrimack buffer requirements are complex and could be amended. They are not soil-based recommendations. Planting regulations are not as widespread in New Hampshire as in other states. Since they vary across the State, many ordinance examples are available.

Tim Tenhave said the MCC suggests that applicants test the soil before applying for site plan approval because fertilizers may not always be necessary. Gage Perry added that it would save developers money. Chairman Best noted that, even if it is in the notes, there is no follow-up years later. Desirea Falt suggested requiring submission of a soils test. Alastair Millns asked whether developers remove topsoil and replace it with poorer soil. Tim Tenhave replied that sometimes they screen and replace it. Chairman Best noted that sometimes excess soil could be removed after meeting the amount required to cover a septic system. Jody Vaillancourt said that, although people may ignore regulations, the Town can still establish them to help maintain water integrity. Chairman Best noted that it is difficult to be aware of all Merrimack requirements and products are not well labeled. Tim Tenhave explained that NH Department of

Environmental Services (DES) regulates fertilizers much more strictly, so fertilizers in stores have slow-release nitrogen. The MCC now recommends not applying phosphate near streams and rivers. He suggested creating “no phosphate” districts. Chairman Best asked how the MCC decides that a property is “near” a water source. Tim Tenhave said it is not a hard science. The MCC uses its judgement as to where water flows and storm water drains. Chairman Best noted that the Environmental Protection Agency (EPA) wants towns to map catch basins and drainage structures. Gage Perry said that buffer zone delineations are more precise and help the MCC to determine no phosphorous areas. Tim Thompson said that the Londonderry wetland ordinance requires signs on stakes or trees to mark the start of a wetland buffer. Londonderry sells the sign to developers when they begin construction. Pete Gagnon suggested getting additional information from the Hillsborough County Cooperative Extension Service. He said that ordinances empower the MCC to protect water and aquifer resources. Although it no longer tests streams and samples water, it should consider periodic monitoring and instituting best management practices. Tom Mahon noted that fertilizing lawns requires continuous applications because the fertilizer does not build root systems.

In answer to Chairman Best, Tim Tenhave explained that pesticide and herbicide applications require certification, but fertilizers do not.

Chairman Best complimented MCC’s e-mails stating its recommendations. They are prompt, timely, responsive and detailed.

Desirea Falt asked whether the MCC would like to receive land that cluster subdivisions block off as open space areas. Tim Tenhave said the two options are donation or easement. The former means that MCC must monitor it; the latter means the MCC must coordinate with other bodies to manage it. He prefers donation, especially if it abuts another MCC parcel. Chairman Best agreed because the Town would actually own the land and not have to consult other bodies. Tim Tenhave explained that the MCC was given many back lots with no access. Donation removes land from the tax rolls. Jody Vaillancourt noted that there may be drawbacks to receiving land; it is not always a good gift. Chairman Best preferred to ask applicants to donate land only if it connects to MCC land. Tim Thompson said a land trust is a third option. Tim Tenhave said the MCC is beginning to consider that.

Chairman Best asked whether the MCC has a policy for redeveloped land. Tim Tenhave explained that not all redevelopment applications go to the MCC, although water concerns are still relevant. He asked whether something could be done if there is improper drainage. Chairman Best noted that any citizen can testify about any application.

Tim Tenhave said the MCC is working hard on beaver management and water control. An environmental firm did a final study. The policy will be revamped and incorporated into the Town GIS system. The MCC is studying how to control water levels when beavers are in the same habitat. Jeff Sebring asked whether the Town has such authority. Gage Perry said the firm generated a map that included areas the MCC had already identified, so the data are correct. Some devices to control water level were

installed, with varying results. Some 3rd- and 4th-generation property owners are unaware they belong to a homeowners association and call the Merrimack Village District (MVD) when there is a problem in a common area that is their responsibility.

Desirea Falt complimented the MCC for cleaning up trails and asked if the MCC has a subcommittee working on a trail master plan. Tim Tenhave noted that reviewing applications for the Planning Board represents 10% of the MCC's work. It also oversees 1,600 acres of land. Five large parcels are highlighted on the "Merrimackoutdoors.org" website. Three parcels are managed by MCC subcommittees: Grater Woods, 80 Acres/Wildcat Falls, and Horse Hill Nature Preserve/White Pine Swamp. When approved, the Tomasian property will be another. Grater Woods will inherit easements with Chestnut Hill. The MCC is looking for more open space land, especially land that connects to open space in Amherst. It has \$1.3 million to purchase and maintain properties.

Tim Tenhave asked what happens to MCC recommendations to the Planning Board. Tim Thompson explained that they become part of Staff recommendations for conditions of approval for a project. If the Planning Board has not heard from the MCC, the condition of approval states, "address forthcoming MCC comments". Chairman Best noted that consistent MCC recommendations make applicants comfortable with the regulatory process. What is most difficult is that the MCC makes the same recommendations about snow and de-icing for all applications. The Planning Board is stricter in the Aquifer and Wellhead Protection Districts than in other areas. Since commercial applicants want Planning Board approval, they agree to whatever the MCC recommends. Tom Mahon noted that Green SnoPro costs less for developers because there is less ice melt. Developers understand its long-term benefits. Chairman Best added that developers like the Green SnoPro liability waiver. Tim Tenhave said the MCC is educating large engineering firms about Green SnoPro. Chairman Best said that Merrimack snow plow companies now use it, so the Planning Board does not have to require it.

Tim Thompson said Community Development staff is working on other regulatory amendments, so tonight's suggestions will be considered after completion of the current efforts.

3. Planning & Zoning Administrator's Report

None.

6. Discussion/possible action regarding other items of concern

Alastair Millns asked whether the Planning Board would follow up on the soils presentation. Chairman Best preferred to discuss it at a future meeting, then communicate with the ZBA. Tim Thompson said he is very cautious and hesitant about changing soils and zoning procedures in the ordinances because that will become one more thing for which an applicant could request a variance. It is fine to encourage the ZBA to table an item until the Planning Board reviews it, but the Planning Board cannot make specific recommendations to the ZBA because it is a quasi-judicial body that can

break zoning ordinances based on written testimony based on five statutory criteria. It is a fine balance: an individual Planning Board member can provide written testimony/recommendations, but the Planning Board should be cautious do so officially. Chairman Best noted that the Planning Board would have to get information, have a discussion, then submit a written decision before the ZBA meets. Tim Thompson said that 90% of applications go to the ZBA first. Alastair Millns said that Pete Gagnon's presentation results from the Tomasian development. Pete Gagnon believes that a cluster development is not the best use for the soils on that property and that it is an overuse of the land. The ZBA made a decision approved it before the Planning Board knew anything about it. Tim Thompson said a cluster is not allowed in the R-1 Residential District by map because of soils and if there is no municipal sewer. Because Tomasian has no access to municipal sewer, they need a variance to build a cluster development. The ZBA decided to approve Tomasian because the Town benefits from gaining conservation land adjacent to Horse Hill and because their soils scientist said the soils satisfy the septic requirements. Chairman Best noted that Pete Gagnon wanted less density at Edgebrook Heights, but it is on Town sewer and water.

7. Approval of Minutes – July 21, 2015

The minutes of July 21, 2015, were approved as submitted, by a vote of 5-0-0, on a motion made by Alastair Millns and seconded by Desirea Falt.

8. Adjourn

The meeting adjourned at 8:57 p.m., by a vote of 5-0-0, on a motion made by Tom Mahon and seconded by Jeff Sebring.