



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD APPROVED MINUTES TUESDAY DECEMBER 21, 2021

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, December 21, 2021 in the Matthew Thornton Room.

Vice Chair Paul McLaughlin called the meeting to order at 7:00 p.m. and appointed Nelson Disco into a voting position for Lynn Christensen.

Members Present:

- Paul McLaughlin (Vice Chairman)
- Jaimie von Schoen
- Brian Dano
- Town Councilor Barbara Healey - Ex-Officio
- Nelson Disco – Alternate

Members Absent:

- Robert Best (Chairman)
- Neil Anketell
- Lynn Christensen

Staff Present:

Casey Wolfe, Assistant Planner

1. Call to Order

Vice Chair Paul McLaughlin called the meeting to order at 7:00 p.m. and appointed Nelson Disco to vote for Lynn Christensen.

2. Planning & Zoning Administrator's Report

The Board voted 5-0-0 to determine that the Kerner's Car Care and Merrco, Inc. site plans are not of regional impact, on a motion made by Nelson Disco and seconded by Barbara Healey.

- 3. Merrimack Parcel A, LLC (applicant) and Merrimack Parcel A, LLC and Slate Merrimack Acquisition, LLC (owners)** – Continued consideration of an amendment to a previously approved site plan, to add a Phasing plan, allowing the development of the site to be completed in phases for purposes of occupancy permitting. The parcel is located at 10 Premium Outlets Boulevard in the I-2 (Industrial) & Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 3C, Lots 191-02 and 191-02U1-02U4. Case # PB2021-43. **This item is continued from the December 7, 2021 Planning Board meeting.**

Casey Wolfe prefaced the presentation by explaining that the applicant is seeking approval to phase the construction of the site to allow Certificates of Unit Completion to be granted as individual portions of the site are completed. This includes the completion and occupancy of each wing of the apartment building one section at a time rather than all at once.

David Fenstermacher (VHB), Thomas J. Leonard (Welts, White & Fontaine, PC) and Tom Monahan were present to discuss the project with the Board. Mr. Fenstermacher provided some background on the site, explaining that the applicants have already gained approval for a mixed use development consisting of 3 apartment buildings with a club house, a hotel and a restaurant. He went on to explain that the outdoor parking and clubhouse are slated to be done first so that the clubhouse can be used as a leasing office. After that construction is complete the garage level of the apartment building will be next followed by the apartments, which will be finished in three phases (1.3, 1.4 and 1.5). The reason for the phasing is so that renters can start occupying the completed portions of the building while construction continues.

Nelson Disco asked why Phase 2 (which is shown on the plan) was not mentioned in the presentation and Mr. Fenstermacher explained that they have obtained a variance for additional units but the CUP still needs to be amended and approved by the Board so they are not ready to discuss that phase at this time. Mr. Disco then asked about timing for the phasing which Mr. Fenstermacher did not have but indicated once one phase is done, they will move to the next. Mr. Leonard stated that the apartment building is going to be finished by the developer one section (i.e. wing/tower) at a time, so they would like to get unit completions for each wing as it is completed and then get one final certificate of occupancy for the entire building. He added that the building and fire departments are aware of this intended course of action and have no concerns with it but since it was not depicted on the site plan they need to now get approval from the Planning Board. Mr. Fenstermacher confirmed that each building has its own safety exits.

Councilor Healey asked about the traffic study and Mr. Fenstermacher advised her that a full traffic study was done for the original design (which included the commercial component in Phase 1) and when they proposed moving the commercial component into Phase 2 and added residential units in Phase 1, a traffic analysis was conducted that showed a reduction in trips. Councilor Healey also asked about a crosswalk from Premium Outlets Blvd to Spartan Way and Mr. Fenstermacher advised that there are no plans to place a crosswalk there.

Public Comment

Michael Mills, (7 Arbor Street) voiced confusion on the number of units being built as the number 240 was inadvertently referenced in the presentation but only 224 units were approved. He also questioned how the buildings can be occupied if there is no emergency access lane because it is currently cluttered with construction materials. He then voiced concerns about the height of the building being referred to as 4 stories when it is clearly 5 and that he was not given the information being presented at the meeting, and stated that he feels that meeting documents should be shared with all abutters. Mr. Mills also expressed concerns that the original Planning Board approval from 2017 stated that certificates of occupancy for the residential units could not be issued until the hotel was complete and if this standard is not upheld, he's worried that the whole development will turn into residential units.

Beth Burns, (5 Spruce Street) asked about the plans for Phase 2 and Vice Chairman McLaughlin advised her of what is currently approved for that phase but added that the Board is not able to

talk about it at this time because it is not the project at hand. She then voiced overall dissatisfaction with development behind her home, she stated she has put a lot of money into her home and is not excited about having a hotel and apartments directly behind her house. She also stated she understands that the owner has a right to develop land that they own but is concerned that they have too many things planned which is going to impact traffic. Miss Burns then asked for confirmation that regardless of what is built for Phase 2 that the fire lane and buffer will remain as planned and Vice Chairman McLaughlin confirmed that no changes are currently proposed. She also asked if there are concerns with fire trucks being able to get to the site when needed and Vice Chairman McLaughlin stated that the Fire and Police departments review all plans and the Fire Department will not sign off on the certificate of occupancy if they are not satisfied.

Mr. Leonard addressed the public comments by explaining that he understands the concerns that were relayed but the application being discussed is the sub-phasing of Phase 1 and not any of the additional phases. He also reassured everyone that all of the safety departments have thoroughly reviewed the plans and any issues they had have already been addressed. He also stated that this is a fiscally positive plan and it will be built out as planned, and added that the infrastructure for the entire site is already in place and the hotel could begin vertical construction at any point. Mr. Leonard also addressed parking by pointing out that the plan exceeds the number of required spaces and parking will be built out before any of the residential units are started so there will be plenty of parking. He added that the roundabout will be constructed after the residential units are done and before the hotel is started and that the site is an active construction site so it is going to look like a construction site until it is complete.

Mr. Disco asked about the height of the building as there seems to be confusion as to how many stories it is. Mr. Fenstermacher clarified that it is 4 stories of apartments built on a parking podium. Vice Chairman McLaughlin asked Ms. Wolfe if the Fire Department has reviewed the phasing plan. Ms. Wolfe confirmed that they have and reiterated that they will not sign off on any certificates of occupancy if they are not satisfied with the way it was built. Councilor Healey asked if the Fire Department is aware that the building is 5 stories because it makes a difference with the ladder truck and how high it can reach and Miss Wolfe confirmed that they are aware. She then asked Mr. Fenstermacher about parking and he explained that they have 458 parking spaces planned and the requirement was only 370. Vice Chairman McLaughlin asked why the decision was made to construct the roundabout after the residential units were complete. Mr. Leonard explained that the roundabout is not necessary for the apartment building alone, but becomes necessary when the hotel is constructed. Mr. Monahan agreed with that statement and added that the parking podium with the 4 stories of apartments was fully vetted by the Planning Board. He went on to explain that the roundabout has been a topic of discussion many times since the project was first proposed but he feels that it is necessary from a safety perspective.

Vice Chairman McLaughlin allowed Mr. Mills to speak again and he expressed concerns that someone stated that the parking is partially underground and it is not. He also added that the project is going to cost the town money until the hotel and restaurant are built and we have no guarantees that those will ever be done.

Vice Chairman McLaughlin asked Ms. Wolfe if she had the fiscal analysis available and she responded that she did not and that it would be in a different project file. Mr. Monahan then spoke about the timing of the construction and stated that they anticipate the apartment building being completely done in April 2023 and then the hotel will begin construction. He added that they have a franchise secured (Marriott) and are working through financing now.

The Board voted 5-0-0 to grant conditional final approval to the amended site plan, on a motion made by Nelson Disco and seconded by Brian Dano. The following conditions apply:

1. The applicant shall address any forthcoming comments from municipal departments, as applicable, particularly as it relates to the sequencing of the proposed sub-phases (in particular when the roundabout should be completed);
 2. The applicant shall address any precedent conditions placed on the project by the Planning Board at the public hearing, as applicable;
 3. Final plans to be signed by all property owners. The appropriate professional endorsements and signatures shall also be added to the final plans.
- 4. Kerner's Car Care (applicant) and DKERN II, LLC (Owner)** - Review for acceptance and consideration of final approval for a site plan for a change of use from a limited automotive service (oil changes and car wash) facility to a full automobile service and repair facility in addition to the existing car wash use. The parcel is located at 386 DW Highway in the C-2 (General Commercial), Elderly Housing Overlay & Aquifer Conservation Districts. Tax Map 4D-3, Lot 28. Case # PB2021-45.

At the applicant's request, the Board voted 5-0-0 to continue the public hearing to January 4, 2022 at 7:00 PM, on a motion made by Nelson Disco and seconded by Jaimie von Schoen.

- 5. Merrco Inc. (applicant) and 260 DWH, LLC (owner)** - Review for acceptance and consideration of final approval for a site plan to construct a 6,800 s.f. construction materials warehouse/storage building. The parcel is located at 17 Smith Road in the I-1 (Industrial) & Aquifer Conservation Districts. Tax Map 3D-2, Lot 009-2. Case # PB2021-46

Ms. Wolfe provided an update on this project by stating that the staff memo recommends a continuance due to not having peer review comments back and a missing waiver. However, since the time of the memo being drafted, staff has received both documents so staff is now comfortable with accepting the application as complete if the Board so chooses.

Nathan Chamberlin (Fieldstone Land Consultants, PLLC) presented the project on behalf of the applicant. He began by providing an overview of the business and parcel location and then turned his attention to the request at hand. L&W Supply is seeking approval to construct a large storage building on their site to store supplies that cannot be left outside due to weather conditions. He briefly walked the Board through the existing conditions plan to understand the layout as it sits today. Mr. Chamberlain then shared the site plan and showed the location of the proposed building and demonstrated how trucks maneuver through the site. He also stated that they are adding 40 additional parking spaces and per the staff memo, will be making an adjustment to the plan to add an additional ADA space. Mr. Chamberlain discussed the plans for drainage, indicating that since the lot is gravel there are only minor updates needed. He also noted that the peer review had recommendations on drainage so those comments will be addressed as well. Mr. Chamberlain then walked through the lighting plan which is proposing two pole lights in the parking lot and some downcast lights on the exterior of the new building. The landscaping for the site is already in place because it is an existing site however, they will be adding some shrubs along the island in the new parking area and addressing the peer review comments as well. Mr.

Chamberlain wrapped up his presentation by advising the Board that the applicant is seeking a waiver from the requirement to provide building renderings as it is just a cold storage shed and is tucked back on the site out of view.

Vice Chairman McLaughlin asked Ms. Wolfe if the peer review comments showed anything out of the ordinary and she replied no, the comments were pretty standard. There was some discussion about the recent lot merger and Mr. Dano asked how the hill in the back will be impacted. Mr. Chamberlain explained that the back wall of the building will be a retaining wall and the foundation will be built into the hillside.

The Board voted 5-0-0 to accept the application as complete, on a motion made by Barbara Healey and seconded by Jaimie von Schoen.

The Board voted 5-0-0 to grant a waiver from Section 3.12.e.1 (pertaining to external building elevations) of the Site Plan Regulations, on a motion made by Nelson Disco and seconded by Barbara Healey.

There was no public comment.

The Board voted 5-0-0 to grant conditional final approval to the site plan, on a motion made by Nelson Disco and seconded by Barbara Healey. The following conditions apply:

1. Final plans and mylars to be signed by all property owners. The appropriate professional endorsements and signatures shall also be added to the final plans and mylars.
2. The applicant shall obtain any required State approvals/permits, note the approvals/permits on the final plans and mylars and provide copies to the Community Development Department.
3. The applicant shall provide draft copies of any applicable legal documents for review, as applicable and at the applicant's expense, by the Town's Legal Counsel.
4. The applicant shall address the forthcoming comments from the town's peer review consultant, Fuss & O'Neill, as applicable.
5. The applicant shall address any forthcoming comments from the Conservation Commission, as applicable.
6. The applicant shall address any forthcoming comments from the Building Department, as applicable.
7. The applicant shall address any forthcoming comments from the Fire Department, as applicable.
8. The applicant shall address the following comments from the Public Works Department, as applicable.

- a. There shall be a Long Term Operations & Maintenance Manual prepared for the existing storm drainage system on the property and submitted at the Pre-construction meeting.
 - b. Revise note 27 on sheet 3 of 9 to also include that the drainage system is to be inspected and cleaned yearly and a report filed with Community Development every year, on or before June 30th (per Site Plan Regulations Section 3.07 (b) (15)). In addition please note that this requirement shall run with the property and shall be transferred to any new owners or assigns in the future in the event of any type of a sale of the property.
 - c. The on-site drainage system is not to be tied into the municipal storm sewer system.
 - d. There shall be no sheet flow drainage from the site onto Smith Road or Daniel Webster Highway, all drainage is to remain on site.
 - e. Revise Note 35 on sheet 3 of 9 to state that if work is to be done within the Right of Way of Smith Road a Right of Way Permit from the Town of Merrimack will be required.
 - f. Revise Note 31 on Sheet 3 of 9 to state that if any work is required to be done within the Daniel Webster Highway Right of Way a NH Department of Transportation Driveway permit shall be applied for.
 - g. All snow storage shall remain on site and shall be trucked away if needed. Snow may not be pushed across Smith Road and/or Daniel Webster Highway and shall be noted on the plans.
9. The applicant shall address the following comments from the Wastewater Department, as applicable;
 - a. No additional flows are to be added to the sewer without Town of Merrimack Wastewater approval.
 - b. No floor drains or roof drains shall be connected to the Sanitary Sewer lines.
10. The applicant shall address any forthcoming comments from Merrimack Village District, as applicable;
11. The applicant shall address the following Planning Staff Technical Comments:
 - a. Add an owner's signature block to the Existing Conditions plan;
 - b. Amend note #15 on Sheet 3 to say, "The Zoning Board of Adjustment granted a variance under Section 3.02 of the Zoning Ordinance to permit construction of a materials storage building 22.3 feet from the rear property line whereas 40 feet is required on November 17, 2021."
 - c. Note #22 on Sheet 3 states that "the owner shall prepare an operations and maintenance plan for the proposed stormwater system." This plan must be prepared

by the applicant and reviewed by Town staff before final approval of the site plan is granted;

- d. Amend note #15 on Sheet 6 to remove mention of the Wellhead Protection Area.
- e. Existing landscaping is not clearly labeled on Sheet 6. Please clean up how the existing landscaping is represented throughout the plan pages, especially the hickory bushes by the existing parking area.

The following general and subsequent conditions are placed on the approval:

1. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department.
2. The applicant shall submit an As-Built Plan prepared by a qualified professional (Professional Engineer or Licensed Land Surveyor, registered/licensed in New Hampshire) to the Community Development Department prior to the issuance of the final Certificate of Occupancy.
3. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant.
4. The applicant shall address any forthcoming comments from the Building Department, as related to building code compliance and permit application, as applicable (that are not deemed precedent conditions).
5. The applicant shall address any forthcoming comments from the Fire Department, as related to building fire code compliance, sprinkler systems, building addressing, etc., as applicable (that are not deemed precedent conditions).

6. Discussion/possible action regarding other items of concern

- **The Board voted 5-0-0 to grant a 6 month extension to the 57-59 Daniel Webster Highway site plan on a motion made by Nelson Disco and seconded by Brian Dano.**
- **The Board voted 5-0-0 to grant a 12 month extension to the Dodier Court lot line adjustment on a motion made by Nelson Disco and seconded by Jaimie von Schoen with the condition that the applicant provides a status report to the Board in six months.**
- **The Board voted 5-0-0 to release the \$60,989 performance bond being held for the Old Blood Road upgrades project as part of the Richard Prince subdivision, and further, establish a maintenance bond in the amount of \$11,535, which is 10% of the original projected bond amount for the project, to be held for a period of two (2) years after the Town Council votes to accept the aforementioned improvements as outlined in a memo from Dawn Tuomala, Deputy Director of Public Works/Town Engineer dated December 21, 2021 on a motion made by Brian Dano and seconded by Barbara Healey.**

7. Approval of Minutes — December 7, 2021

The Board voted 3-0-2 to approve the minutes of December 7, 2021, as amended, on a motion made by Nelson Disco and seconded by Brian Dano. Barbara Healey and Jaimie von Schoen abstained.

8. Adjourn

The Board voted 5-0-0 to adjourn at 8:33 p.m. on a motion made by Barbara Healey and seconded by Nelson Disco.