



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY, FEBRUARY 17, 2015

Planning Board members present: Robert Best, Alastair Millns, Tom Koenig, Michael Redding, Lynn Christensen, Desirea Falt, and Alternate Nelson Disco.

Staff present: Community Development Director Tim Thompson and Recording Secretary Zina Jordan.

1. Call to Order

Robert Best called the meeting to order and designated Nelson Disco to sit for the vacant full member position.

2. Planning & Zoning Administrator's Report

None

3. **Public Hearing – Zoning Ordinance Amendments** - Planning Board will conduct a public hearing to consider recommended amendments to Sections 1, 2, 3, 5, 6, 7, 8, 9, 14, and 17 of the Merrimack Zoning Ordinance, pursuant to RSA 675:6 and 675:7.

This agenda item was considered after item #6.

Tim Thompson explained that the General Government Department requested the Community Development Department to update the junkyard section of the Zoning Ordinance to comply with changes to state law. While doing that work it made sense to address several items that were out of date or incorrect, such as amending references to the "Board of Selectmen" to "Town Council", amending sections of the Ordinance that are not in line with the current format of Town government and department structure, and making minor typographical and intent clarifications.

There was no public comment.

The Board voted 7-0-0 to recommend that Town Council adopt the proposed amendments, on a motion made by Lynn Christensen and seconded by Alastair Millns.

4. **Old Blood Properties, LLC and Joseph K. and Mary El Kareh (co-applicants/co-owners)** – Review for acceptance and consideration of Final Approval of an application for a cluster subdivision proposing 72 cluster residential lots and 4 open space lots located at Old Blood Road in the R-1 (Residential) District. Tax Map 5B, Lots 001-01, 002, 003, 003-01, 005, 006, 007, 008, 009 and 231. ***This item is continued from the December 16, 2014, January 6, 2015 and January 20, 2015 Planning Board meetings.***

Tim Thompson stated that the School Board and the applicant reconsidered the Madeline Bennett/Old Blood Road intersection and the applicant has returned to the original sweeping curve design. There are six options suggested by the School Board with priorities of their preference for Planning Board consideration.

Ken Clinton, President, Meridian Land Services, Inc., said he sought comments from as many Town entities as possible. The intersection concept that the Planning Board “endorsed” in January 2015 was not agreeable to the full School Board. In his letter of February 5, 2015, the Chairman of the School Board submitted for Planning Board consideration a prioritized list of its preferences among the six options discussed so far. It is Ken Clinton's opinion that the best engineering design is a curved public road with school access as a driveway with a stop condition. Traffic consultant Steve Pernaw was hired to see if the School Board's previous recommendation of a roundabout was warranted. He recommended a “T” intersection with a stop sign at Old Blood Road as an alternate approach. Ken Clinton said that Steven Pernaw never met with him and understood perhaps 15%-20% of the project's background. Steve Pernaw views the School as the main traffic priority, whereas Ken Clinton views the public road as the main traffic priority. The “T” approach was rejected by the applicant because the Middle School is not responsible for the main traffic flow except for two times each day during the school year. Nelson Disco said the school does not want a stop sign on its property. Chairman Best said the school does not want to be responsible for a traffic light. Ken Clinton said the School Board recommendations contain a sweeping curve on the public road, in three of their options, Ken Clinton stated that a correctly designed road does not need a police officer.

Alastair Millns emphasized that the school bus schedule must be met so that school can begin on time in the morning. Buses must have priority during the two 25-minute periods in the morning and afternoon. Auxiliary police at other schools help to maintain the schedule and keep students safe. There should be restrictions that give priority to buses. They will get stuck at the stop sign waiting for cars to indicate their intention either to go straight or to turn. That is why the School Board does not like Option 6.

Kyle Fox, Town Engineer, Public Works Department, reviewed Steve Pernaw's comments and agrees with Meridian that a curve design is the best option because, combined with a 20-mile per hour speed limit, it slows traffic. The key point is that the quantity of traffic at the Middle School does not warrant “stop” or “yield” signs. This traffic does not approach the speed or volume of the other Merrimack schools, which are on collector roads. Michael Redding noted that there are no problems at the Reeds Ferry School, which is also at an intersection and has only a stop sign with neither a police officer nor a signal. Kyle Fox said there are two issues: a) The road design configuration should stand on its own, and b) Bus timing can be taken care of no matter which design is chosen. Road design and bus timing should not be intermixed. He did a bus timing trial this summer with and without a stop sign at the Madeline Bennett cul-de-sac. The maximum delay is five minutes. That can be handled by changing the timing of the light at the Madeline Bennett/Baboosic Lake Road intersection and/or the addition of another police officer. The road should not be designed based on a perceived problem.

Alastair Millns showed the timing at different locations on the road and where buses stop while figuring out what traffic is doing and where traffic would cross in front of a bus. A bus needs a clear distance of 210 feet from the junction when starting from a standstill, whereas State Driving Law only requires cars to signal their intentions 130 feet from the turn. He also suggested that less than 50% of cars would signal their intentions for the turn into the school, because of the junction configuration. In his opinion Kyle Fox's survey is irrelevant.

Kyle Fox replied that buses turn left at intersections with no stop signs all over Merrimack without accidents. The five-minute delay is caused by the light at Baboosic Lake Road.

Chairman Best countered that no intersections with this much traffic are without signals. Kyle Fox agreed the situation is unique, but repeated that the issue could be addressed after the road is built. Chairman Best noted that someone must pay for a signal and/or police officer.

Ken Clinton stated that there is more danger for a car heading to the school at high speed with a straight configuration on Madeline Bennett Road because a bus driver does not know it is making the turn. It would be worse at a “T”. Alastair Millns rebutted that cars do signal at a “T”.

Desirea Falt said every car turns its wheels on a curve, so a bus cannot tell which one is turning.

Lynn Christensen said that, if the subdivision were put in without a school, traffic from Baboosic Lake Road to Old Blood Road would continue to the subdivision with no stop sign or signal and the Planning Board would approve the road as is. Now a school is built and wants its driveway to intersect with Old Blood Road. The Planning Board would put a “stop” sign at Madeline Bennett and Old Blood Road where buses would stop and then continue. What happens on Baboosic Lake Road is irrelevant to the subdivision. The Planning Board is looking at a Town road from Baboosic Lake Road through Old Blood Road to Wilson Hill Road, which is not a school road. The school presumes it is their driveway, but it is not. It stops at the Old Blood Road intersection. Chairman Best countered that the school was there before the subdivision was. Madeline Bennett Road meets the school driveway. Most lights in Merrimack are on the driveways of private property. That is not a deciding factor. The deciding factor is what will work. Tim Thompson noted that other signalized intersections all met the warrant for signals.

Chairman Best noted that school buses and parents create a lot of traffic. Kyle Fox objected that there are not a lot of parent pickups; most students take the bus. Parental cars must defer to school buses. The buses come out only during a 15-minute period in the afternoon, when there is very low non-school related peak traffic.

Lynn Christensen suggested erecting a “no left turn between certain hours” sign coming onto Madeline Bennett Road, like the one at the High School.

Kyle Fox said traffic at the Chestnut Hill Subdivision is far from its peak during the afternoon bus time. Most buses will not have to stop because they can see where traffic is coming from. Great sight distance along with a 20-mile per hour speed limit will work. Chairman Best preferred that no traffic enter the Chestnut Hill Subdivision at bus peak times. Kyle Fox said he hates approving stop signs only on a road and not on a driveway because it will not prevent buses from speeding out. If buses must stop at the driveway, there will be no accidents.

Chairman Best noted that there must be a crosswalk across the school driveway no matter which configuration is built. Buses will have to stop there.

Desirea Falt suggested a curved road with a three-way intersection with a “stop” sign on each of the three roads. Alastair Millns and Lynn Christensen agreed. Tom Koenig objected that it is too much for a short time period twice a day for 180 days a year. Stop lights at Baboosic Lake and Madeline Bennett Roads cause the delay. There should not be a straight road into the school. The school should not have a driveway that is a public road. A sign at the end of the driveway is not necessary to make cars stop. Desirea Falt would agree except that the school is there already and has established traffic patterns. Chairman Best said that, when the school was built, it was known that Old Blood Road would be expanded someday.

Ken Clinton said the current design would work with a three-way stop. He suggested starting with a “stop” sign at the school exit and adding two more later if they are wanted.

There was no public comment.

Kyle Fox said it would take up to two years or more to build the subdivision. A maintenance bond could be used for upgrades, such as two more signs. Tim Thompson added that the School Board could raise issues with Town Council, Highway Safety and the Public Works Department. Ken Clinton said there would be a “20 miles per hour/school” sign and yellow warning flashing lights on Madeline Bennett and Old Blood Road.

The Board voted 6-1-0 to direct the applicant to design the Madeline Bennett/Old Blood intersection with the “sweeping” curve layout as submitted, with one stop at the exit from the Middle School driveway, on a motion made by Desirea Falt and seconded by Nelson Disco. Alastair Millns voted in the negative.

In response to a comment about the required 100' buffer from staff, Ken Clinton said there would be a slope easement rather than a 100' buffer at the backland to the west on the El Kareh property rather than subdividing the land. El Kareh is both the applicant and the owner of the adjacent piece. The easement's length is up to them. The open space would be held by all the subdivision owners. The easement would be part of the Merrimack Conservation Commission (MCC) easement rather than standard open space. It takes less money and time to create an easement than a lot line adjustment. The easement would allow extending the road through the 100' buffer, which is not really needed. The cul-de-sac at the edge of the property would remain.

Ken Clinton is not yet ready to discuss phasing.

Chairman Best said the cross country line was eliminated at the request of the Wastewater Division. Ken Clinton explained he must have a cross country run for sewer depth and manholes, which are 10' down. Rather than make a road to the sewer location, Ken Clinton made a land swap, which swayed the Wastewater Division.

A sidewalk waiver may be requested for a grass strip between the edge of pavement and the road would be eliminated at the wetland crossing areas. There might not be a need for a sidewalk coming from the Old Blood Road hammerhead to the proposed four-way intersection.

A waiver may be sought for a 1:1 slope/road grade rather than a 3:1 slope and building a retaining wall, which PWD recommends. A 3:1 slope would substantially increase the wetland footprint.

Chairman Best preferred road grade and slope relief rather than not installing a sidewalk. Nelson Disco preferred to keep a sidewalk, but wanted to know how long it would be and how much impact it would have before deciding. Ken Clinton said that the Department of Environmental Services (NHDES) would have an opinion on the matter. The sidewalk area in question is 750' long. Each new lot would still have a sidewalk, as would the school intersection. The waiver may be sought to mitigate the wetland impact of off-site improvements. He wanted the Board's opinion before designing it. Alastair Millns had no problem eliminating grass strips, but he preferred having a sidewalk.

Staff recommends that the Board continue the application to March 17, 2015, in order to allow for the receipt of peer review comments and to allow time for the applicant to address comments from the peer review as well as the various Town departments, boards and commissions.

At the applicant's request, the Board voted 7-0-0 to continue this item to March 17, 2015, in the Matthew Thornton Meeting Room, at 7:30 p.m., on a motion made by Alastair Millns and seconded by Desirea Falt.

The Board was in recess from 9:10 p.m. to 9:20 p.m.

5. Don Chagnon of Townsend Oil & Propane (applicant) and Frank Twardosky (owner) –
Review for acceptance and consideration of Final Approval of an application for a waiver of full site plan review for the use of the existing 3,400 s.f. building as a retail/office/distribution facility located at 759 DW Highway in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 7E, Lot 042-01.

Tim Thompson explained that the Planning Board tabled the application in December 2014 pending further plan revisions and annotations. Since then, the applicant has annotated the previous site plan by clarifying existing and proposed fencing, adding the location of a gate to the rear parking area, and adding notes on landscaping, de-icing procedures and proposed lighting. The office was relocated into the building. The change of use is the presence of fuel trucks on the premises. Two employees would drive to the site, park their personal vehicles and

drive the fuel trucks off the lot for distribution each day. Three separate existing interconnected driveways access the parcel.

Don Chagnon, Owner, Townsend Energy, said he received an updated Driveway Permit from the Department of Transportation (NHDOT) today. There is a grass area in the middle with low stones surrounding it. There would be fencing all around the property and slatted fencing for screening from the road in front and on the D.W. Highway side. Propane tanks would be stored on the property until they are moved to customers' homes. Tanks will be empty; there will be no trash. A 3'-wide strip of landscaping would have low plants in the front and higher ones on the side. At present, there is a temporary sign while Don Chagnon applies to reface the sign. There would be 11'-high down-facing motion lights on each corner of the building. The Board instructed the applicant to note all the above on the drawing.

Tim Thompson suggested adding technical comments about indicating light locations on the corners of the building, not using sodium chloride de-icers, using only low-phosphate slow release fertilizers, eliminating submission of a spill control plan, and addressing any applicable Fire Department comments.

Don Chagnon met with the Fire Department. In his years of doing business in various locations, he has never had an oil spill. The back lot is paved. The parcel slopes slightly to the rear.

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

There was no public comment.

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 Desirea Falt.

Staff recommends that the Board vote to grant conditional Final Approval to the application, with precedent conditions to be fulfilled within six months and prior to plan signing, unless otherwise specified.

The Board voted 7-0-0 to grant final approval, with the following conditions, on a motion made by Alastair Millns and seconded by Lynn Christensen.

1. Final plans to be signed by the Applicant and Property Owner;
2. Any waivers granted shall be listed with the section number and date of approval on the Final Plan;
3. Applicant shall address the following comments from the Conservation Commission:
 - a. The Commission appreciates the applicant's non-use of salt or de-icing compounds on the parking lot and would like that to be a condition of approval for the Planning Board;
 - b. The Commission recommends that only low phosphate, slow release nitrogen fertilizers be used. The Commission further recommends that the applicant first utilizes a soil testing facility to determine what levels and applications rates may be necessary before doing any application of fertilizes on the site;
 - c. The Commission recommends that only native New Hampshire plants be used in any updates to the landscaping or plantings;
4. Applicant shall address any applicable comments from the Fire Department;
5. The Applicant has provided a copy of an updated driveway permit from NHDOT to the Community Development Department, and shall add a note to the plan indicating the updated permit number;

6. Address planning staff technical comments. (Below)

Planning Staff Technical Comments

1. Applicant to add address to the title block of the plan;
2. Applicant to add “and Aquifer Conservation District” to zoning notes;
3. Applicant to revise parking note to include that 1 space is required per 300 s.f. of office space plus 1 per company vehicle, therefore totaling 12 required spaces and 12 provided;
4. Add “Plan annotated by Don Chagnon, owner of Townsend Oil & Propane, LLC” with the date under the title of the plan;
5. Either remove “House of Stone” text on plan or replace with “Townsend Oil”;
6. Number the notes;
7. Add a note that all signage will follow town regulations and be properly permitted;
8. Indicate where the ground sign and grass island along DW Highway is located;
9. The Applicant shall indicate the locations of the proposed building mounted lighting on the plan;
10. The Applicant shall correct the winter maintenance note (that sodium chloride will not be utilized, not “low phosphates”) and add a note relative to fertilizers for the landscaping stating that only low phosphate, slow release nitrogen fertilizers are to be used.

General and subsequent condition

1. Applicant shall address the following comment from the Fire Department: The building on this property shall comply with all current NFPA codes for an office use, including emergency lighting and fire extinguisher placement.

- 6. AutoFair Realty II, LLC (applicant) and Helios Investments, LLC (owner) – Review for acceptance and consideration of Final Approval of an amended application for a site plan to construct a 2,095 s.f. car rental facility and outdoor vehicle storage/parking. The parcel is located at 302 Continental Boulevard in the R (Residential) and Aquifer Conservation Districts. Tax Map 2B, Lot 032.**

Tim Thompson said that, since the September 14, 2014, conditional approval, AutoFair decided to scale back 35% because of the cost of site improvements. This is an amendment to the conditional approval that begins a new six-month period. It imposes new conditions that supersede the previous ones. There are no substantial issues in the peer review comments.

Kate Weiss, Bedford Design Consultants, listed the proposed changes: Because there would be less impervious surface, the drainage area will decrease. There will be only one rather than three underground storage areas; the other two would be above ground. The auto storage area would be moved to the south and farther from the abutter. The building would be razed and the Enterprise Building would be moved nearer to its site. If NHDOT approves, the driveway entrance would be moved farther north on Continental Boulevard and allow more turning room. The amount of storage area inside the fenced area would decrease and be beyond the gate. The buffers would remain. There would be a fence, pine trees and woodland next to the abutter. An Alteration of Terrain Permit was granted.

Michael Cheever, Construction Manager, AutoFair Realty II, said this resolves the abutter problem. There would be 213 parking spaces on AutoFair’s storage lot with approximately 50 employee spaces. Enterprise has 30-40 spaces. The plan would conform to the lighting criteria if the poles were raised from 22’ high to 25’ high, but he prefers a waiver from the lighting requirements so they would be lower. The storage parking lot would not be accessible to the public and will not be used for display. Having a reduced lighting plan will be more beneficial to the abutters while still meeting the intent of the regulations.

Nelson Disco agreed that a waiver is appropriate because it is a closed lot that is not open to the public. Alastair Millns cited the criterion that specific circumstances relative to the site plan or conditions of the land in such site plan indicate that the waiver will properly carry out the spirit and intent of the regulations.

The Board voted 7-0-0 to waive the requirements of Section 11.05.3 – Parking Lot Lighting – of the Site Plan Regulations, on a motion made by Alastair Millns and seconded by Tom Koenig.

Michael Cheever sought a waiver from the sidewalk requirement. The site is very steep in the right-of-way, which would not allow proper construction of a sidewalk. The site is located along Continental Boulevard, which is a limited access highway. This means that NHDOT has jurisdiction over the road. It also has a swale along its frontage that is used for NHDOT drainage. A sidewalk would disturb the existing drainage flow.

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 the requirements of Section 4.20 – Pedestrian Ways and Sidewalks – of the Site Plan Regulations, on a motion made by Alastair Millns and seconded by Lynn Christensen.

There was no public comment.

Kate Weiss questioned recording copies of legal easements (Condition #3). All AutoFair rights would be spelled out in a long-term lease agreement rather than in an easement, so access rights to cross the land along the Enterprise access drive to the back of the AutoFair parcel would run with the lease rather than with the land. Tim Thompson explained that the condition should remain because it includes submitting copies of “any applicable legal documents”.

Robert Baskerville, Bedford Design Consultants, wanted to separate obtaining a NHDOT Driveway Permit from the NHDES Alteration of Terrain Permit (Condition #4) and attach it to the construction of the Enterprise building. The driveway will be removed from the limited access highway. Nothing will be finalized until NHDOT grants final approval. Earthwork construction can begin because the Alteration of Terrain Permit has been granted. Tim Thompson suggested making that a general condition of approval and supported the idea only because the permit is from the Turnpike Bureau and is more complicated and time consuming.

Kate Weiss explained that the NHDOT permit is for the Enterprise driveway that is now used for storage. Alastair Millns noted that AutoFair will make a new and larger driveway. Robert Baskerville said the old driveway would remain until a new permit is granted. DOT wants to be sure cars do not stack. It is probably not an issue, but DOT wants proof. DOT must approve moving out of the original access way. It is unknown how long that will take.

Robert Baskerville suggested removing the words “sprinkler system” (Condition #6) and stating only that the applicant would meet the Merrimack Building Code. Tim Thompson said it is the Fire Marshal’s decision.

Staff recommends that the Board vote to grant conditional Final Approval to the application, with precedent conditions to be fulfilled within six months and prior to plan signing, unless otherwise specified.

The Board voted 7-0-0 to grant final approval, with the following conditions, on a motion made by Alastair Millns and seconded by Nelson Disco.

1. Final plans and mylars to provide all professional endorsements and be signed by all property owners;

2. The Applicant shall incorporate cross access language into the lease agreement between the AutoFair VW property and the subject property, as applicable, and as described to the Board at the February 17, 2015 meeting;
3. A draft copy of any proposed easements and any applicable legal documents (including lease agreement language as stated in Condition #2) to be submitted to the Community Development Department for review and approval by the town's Legal Counsel (legal review shall be performed at the applicant's expense);
4. The applicant shall obtain the NHDES Alteration of Terrain Permit, provide a copy to the Community Development Department, and note the approval in the notes on the plan. Additionally, the Applicant shall add a note relative to the NHDOT Driveway Permit from the Bureau of Turnpikes, noting that it is to be obtained, and a copy provided to Community Development, prior to the issuance of a building permit for the construction of the car rental facility;
5. The applicant shall note any waivers granted by the Board on the plan (including Section and date granted) as applicable;
6. The applicant shall address comments from the Fire Department (as applicable);
7. The applicant shall address any forthcoming comments from MVD (as applicable);
8. The applicant shall address the following comments from the Wastewater Division:
 - a. A sewer profile needs to be provided;
 - b. A sewer connection application to both the NHDES and the Town of Merrimack needs to be completed to assess flows being generated;
9. The applicant shall address any forthcoming comments from the Conservation Commission (as applicable);
10. The applicant shall address all applicable comments from the Town's peer review consultant, CLD;
11. The applicant shall address the following planning staff technical comments:
 - a. Update the references to "Chapter 412" in note #10 on sheet 3 of 15 and any other references to read "Chapter 167" as the chapter for the Stormwater Ordinance has recently changed;
 - b. The applicant should indicate the appropriate buffers adjacent to lot 2B/030 from Section 10.01.4 of the regulations graphically in addition to note 1 on the Landscape Plan (sheet 6 of 15) to ensure compliance with the regulations;
 - c. Add sign dimensions to the elevations and state on the elevation plans (in addition to note 9 on sheet 3) that the applicant will be seeking a sign variance;
 - d. Revise note 2 on sheet 4 of 15 to be written for the Town of Merrimack standards;
 - e. Applicant to add the proposed fencing in solution to pedestrians trespassing onto abutters' properties to the legend.

General and subsequent conditions

1. The Applicant shall obtain the NHDOT Driveway permit from the Bureau of Turnpikes (and provide a copy for the Community Development Department file) prior to the issuance of a building permit for the construction of the car rental facility;
2. 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;
3. As this proposal is for a new building the entire building shall be protected by an approved NFPA-13 compliant fire sprinkler system (The Town of Merrimack Building Zoning

Ordinance and Building Code, Section 11). Plans shall be provided to the Fire Department for review and approval before a permit can be issued;

Agenda item #3 was considered after item #6.

7. Discussion/possible action regarding other items of concern

Chairman Best urged the public to volunteer to fill the vacancies on Town boards and on the Economic Development Committee (EDCAC).

8. Approval of Minutes – February 3, 2015

The minutes of February 3, 2015, were approved, as submitted, by a vote of 6-0-1, on a motion made by Desirea Falt and seconded by Tom Koenig. Lynn Christensen abstained.

9. Adjourn

The meeting adjourned at 10:18 p.m., by a vote of 7-0-0, on a motion made by Alastair Millns and seconded by Desirea Falt.