



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 MEETING MINUTES

TUESDAY, JANUARY 17, 2017

Planning Board members present: Robert Best, Alastair Millns, Tom Koenig (arrived 7:07 p.m.), Desirea Falt, Vincent Russo, and Alternate Nelson Disco.

Planning Board members absent: Michael Redding and Lynn Christensen.

Staff present: Planning and Zoning Administrator Jillian Harris and Recording Secretary Zina Jordan.

1. Call to Order

Robert Best called the meeting to order at 7:03 p.m. and designated Nelson Disco to sit for Michael Redding.

2. Planning & Zoning Administrator's Report

None.

Tom Koenig arrived at 7:07 p.m.

- 4. Buckley-Abbott, LLC. (applicant/owner)** — Review for consideration and Final Approval for a waiver of full site plan review for a proposed commercial kitchen addition. The parcel is located at 436 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly and Town Center Overlay Districts. Tax Map 5D-4, Lot 007.

This agenda item was discussed before agenda item #3.

Jillian Harris explained that a waiver of full site review is sought because the proposed addition will add less than 500 square feet of new impervious surface area and is not a significant change to the property. On November 30, 2016, the Zoning Board of Adjustment (ZBA) granted setback variances for rear lot line and wetlands setback encroachments. On December 29, 2016, the NH Department of Environmental Services (NHDES) approved a Shoreland Protection Permit for impacts of impervious area in the 250' wetland protection zone. A stone recharge drip edge trench is proposed alongside the new building addition to offset any increase in runoff from the additional impervious area.

Spencer Tate, Project Manager, Meridian Land Services, Inc., said the property is bound by a fire station on the south, the school district/former pond on the west, Buckley's Great Steaks on the north, and Parks and Recreation on the east. There is parking on the north and east. The land slopes into a wetland area. A 14'x39' kitchen addition on the south to house larger apparatus and to store more inventory is all that is proposed. That would increase the impervious area by 4%/496 square feet. The

proposed stone recharge drip edge would treat more storm water than currently. There would be no impact to the 25' wetland buffer and no improvements to the parcel. Runoff would be treated with a trench around the new improvements. There would be no change in the business or the number of customers. The roof is pitched at the drip edge and would slope less than currently. The applicant agrees to all conditions of approval.

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 6-0-0 to accept the application for review, on a motion made by Nelson Disco and seconded by Alastair Millns.

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 6-0-0 to waive full site plan review, on a motion made by Alastair Millns and seconded by Desirea Falt.

Spencer Tate agreed to Nelson Disco's suggested condition of approval that he label the back property line on the plan. The line is the edge of the former pond.

There was no public comment.

Michael Buckley, Owner, 436 Daniel Webster Highway, said he needs more refrigeration. It would be an interior 8'x10' walk-in unit with a pack on the back wall. Vincent Russo wanted it noted on the plan if it is on the ground. Michael Buckley said the addition would be clapboard, like the rest of the building. The brickwork would remain.

Tom Koenig and Chairman Best disagreed with Public Works Department (PWD) Condition 4.c.: "The last space on the northern line of parking that is almost entirely within the ROW [right-of-way] should be eliminated. This will provide a safer sight distance up to the DW Highway." They argued that, if the space has existed for a long time without creating problems, it should remain. Alastair Millns and Nelson Disco said the space does not interfere with the sight line up D.W. Highway. Jillian Harris clarified that Swan's Chocolate was granted a waiver for parking and Buckley's was not a change of use however it is possible that it changes the calculation for the required number of spaces. The Planning Board agreed to delete Condition 4.c.

The Board voted 6-0-0 to grant final approval, with the following precedent conditions to be fulfilled within six months and prior to signing of the plan, unless otherwise specified, on a motion made by Alastair Millns and seconded by Nelson Disco.

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 Public Works Department, as applicable;
 - a. There should be a note stating that if any work is done in the Right of Way (ROW) (including sewer and water line adjustments) will require a permit from the Department of Public Works;
 - b. There should be a note stating that there shall not be any snow storage within the ROW;
5. The applicant shall address any forthcoming comments from Merrimack Village District, as applicable;
6. The applicant shall address any forthcoming comments from the Wastewater Division, as applicable;
7. The applicant shall address the following Planning Staff Technical Comments:
 - a. A note shall be added indicating variances granted for the proposed kitchen addition (including section and date granted);
 - b. Sheet numbering should be updated as all sheets are labeled as “No. 1 of 1”;
 - c. Typos in legends should be corrected for accurate spelling of “hazard.”
8. The applicant shall clarify the rear property line with a note and legend update.

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

1. The applicant shall address the following comments from the Building Department, as applicable:
 - a. When plans are presented to Building Department, along with the plans for construction, we will need a kitchen layout for review by the Health Department;
 - b. Building plans must comply with all currently adopted codes.
2. The applicant shall address the following comments from the Fire Department, as applicable;
 - a. Any plans for additions or changes to the existing NFPA-72 fire alarm system shall be submitted to the Town of Merrimack Fire Marshal for review and approval.
3. The applicant shall address the following comments from the Conservation Commission, as applicable;

- a. While the applicant does not have any plans for changing the existing greenspace, the Commission recommends the use of native plantings for all new greenscape designs;
- b. The Commission recommends the applicants minimize the use of salt and/or deicing compounds on the site;
- c. The Commission recommends that only no phosphate, slow release nitrogen fertilizers be used. The Commission further recommends that the applicant utilize a soil testing facility to determine what levels and applications rates are necessary prior to applying any fertilizers to the site.

3. The Monahan Companies (applicant) and Merrimack Premium Outlets, LLC. (owner) — Continued review for consideration of Final Approval of a Mixed Use Development Conditional Use Permit (CUP) proposing 388,520 square feet of development including retail, hotel/conference center, restaurant, office, and multi-family residential uses. The parcel is located at 10 Premium Outlets Boulevard in the I-2 (Industrial), Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 3C, Lot 191-02. ***This item is continued from the December 6, 2016 Planning Board meeting.***

Jillian Harris said that, since the December 6, 2016, meeting, there have been no new submissions from the applicant. Staff has received peer review of the Fiscal Impact Analysis performed by the Town's consultant, Arnett Development Group (ADG), which states the project would produce a net positive fiscal impact.

Gordon Leedy, Senior Planner and Managing Director Land Development, Vanasse Hangen Brustlin, Inc., agreed to make Arnett's suggested changes. Proposed Condition 4.b. states: "The applicant shall update the tax rate information on p. 16 of the analysis, as the applicant has utilized the 2015 tax rates." The total net positive impact is predicted to be over \$600,000 a year. Now that he has the new tax rate, Gordon Leedy can update the analysis but the outcome will remain net positive.

Proposed Condition 4.c states: "The applicant shall address the School Aged Children multiplier comments. . . as directed to do so by the Planning Board." Using the National Data Set, the applicant predicts 13 school-age children; using NH Housing Finance Authority multipliers for two-bedroom units and multipliers stated in the analysis for one-bedroom and studio units, staff predicts 16. This approach means a yearly cost of \$76,000 more than his previous number, but the project would still be positive yearly.

Arnett recommends doing a phase-by-phase analysis to be sure that every phase has a positive impact. The fiscal impact would range from moderate to significant. Phase 1 would consist of some of the 192 apartment units, and approximately 30,000 square feet of retail/restaurant. Phase 2 would consist of a conference center and hotel. Phase 3 would consist of a 50,000 square foot office building with ground floor retail, restaurants and parking structure. It would be constructed only when there is an

interested tenant and would be tied to the parking. The total number of apartments would be built over time.

Gordon Leedy explained the methodology of the Urban Land Institute (ULI) shared parking formula that he used. Although only 960 spaces would be needed, approximately 1,080 would be provided to accommodate every eventuality.

With this submission the applicant is asking the Planning Board for three items of dimensional relief, as permitted by the ordinance: from the parking regulations, from buffers against Continental Boulevard and from the building setback on Industrial Drive. No relief will be sought from the buffer next to the residential neighborhood. The applicant will probably come to the Planning Board with one lot for financing purposes. No other lots would be created. Jillian Harris and Gordon Leedy explained that buffers and setbacks are enumerated in the zoning ordinance for abutting districts so the Planning Board should vote on these tonight rather than wait for site plan review. The vote also includes residential density. Jillian Harris said that, if the Planning Board approves the entire proposed program, it is approving all the relief together rather than separately.

Gordon Leedy said he would provide adequate Fire Department circulation and access, as directed as part of the site plan. As at Fidelity, an unpaved fire lane could be provided.

Gordon Leedy showed where the phases would be. A development agreement would outline the specifics of phasing and define what latitude there could be (what constitutes a significant change that requires a return to the Planning Board).

Vincent Russo wanted the parking garage to be closer to the retail component, but Gordon Leedy countered that the hotel people would want a say about where to put parking. Tom Koenig asked how people would get to the retail and the restaurant. Gordon Leedy stated that there would be some parallel street parking (40 spaces around the green and adjacent to the apartments). He would consider Vincent Russo's suggestion to flip the office building 90° so the parking deck would be closer, but he stressed that this would be a fairly urban environment with little parking in front of buildings. Gordon Leedy said that two 32,000 square foot buildings are not very big. Each needs only two handicapped spaces, the hotel needs four and the office building/retail/restaurant needs 4-6. Handicapped spaces for residential units could be provided within the underground parking for the apartment buildings. Gordon Leedy noted that parking is a site plan issue.

Chairman Best said phasing should ensure that the fiscal impact stays net positive. Gordon Leedy said he would not do what is not approved.

Nelson Disco wanted a written phasing plan with costs and benefits for each phase. Gordon Leedy said it is too soon and must await tenants. He agreed to update the fiscal impact study. He will develop the parcel in a way that respects town requirements to be fiscally positive. That will be part of negotiating the development agreement. Chairman Best said that, if the three residential buildings have a positive impact, that answers his worst scenario question. Gordon Leedy said his analysis shows that

developing one residential building and 1½ retail buildings is fiscally positive. There will be no stand-alone residential buildings.

Chairman Best summarized that 11 school-aged children (in the original economic analysis) represent a net positive fiscal impact and 13-16 school-aged children (in the new economic analysis) will still represent a net positive fiscal impact. Gordon Leedy added that his updated economic analysis would also take the new assessed valuation into account. Since that rate is up and the tax rate is down, the impact may be even more positive.

Gordon Leedy said a landscaping and fencing solution would address residential neighbors' concerns. The standard is not whether someone can hear restaurant noise or see automobile headlights, but whether they are a nuisance. Chairman Best noted proposed condition 4.d.: ". . .the applicant shall coordinate with the Town's public safety officials to discuss and verify the assumptions made relative to provision of services impacts resulting from the proposed development." Although a restaurant is an allowed use in this district separate from the CUP, he urged restricting noise from deliveries and outdoor events at restaurants and hotels. Gordon Leedy said this project is nothing like the type of police and fire nuisance as Merrimack Premium Outlets (MPO). There is already more of a police and fire presence because of MPO. Chairman Best noted that MPO is a separate patrol/police district.

Chairman Best asked the applicant to submit a letter from MVD stating that water is available. Gordon Leedy said the fire flow demand numbers would not change from when MPO was developed. Domestic use is significantly less at MPO than was predicted. Part of MPO approval included development on this parcel. Gordon Leedy agreed to all the proposed conditions and offered to address concerns about headlights and noise. This project is a separate program, but uses MPO access and the fire protection line.

Parking under the apartments would be restricted to residents only. There would be one space per residential unit that would not be shared.

Tom Koenig urged Gordon Leedy to be in touch with Town officials about and adjusting for a newly-discovered \$750,000 clerical error that may affect the tax rate.

Gordon Leedy showed and explained the difference between buffers and building setback requirements for Industrial Drive and Continental Boulevard and explained how they are determined. He explained the reason for requesting a waiver from the building setback line and the buffer requirements. Certain strips at the property's edge are zoned residential. When the area was developed, they were never rezoned industrial and are unbuildable.

Alastair Millns wanted assurance that there would be enough office space tenants to have a positive fiscal impact. Gordon Leedy said the project would work from a financial perspective largely because of the mixed use. The synergy of uses would increase the value of the overall project. This is a unique site, since it is surrounded by office use that needs hotel and conference space. The locale provides the value. He is confident it would attract those uses. The worst-case scenario should meet the CUP

criteria. There is not enough of a market to put an office building in Phase 1, so it would be the last building to be erected. There is a market for hotel, retail and restaurant, which would be included in Phase 1. All would be supported by the residential component and surrounding land uses. It is a feasible plan. Chairman Best said the aim of phasing is to be revenue positive in Phase 1 and stay that way through all the project phases. Gordon Leedy stated that Commercial sites would be easier to fill because they are next to MPO, unlike other parts of Merrimack that have trouble filling commercial space. Gordon Leedy said the applicant has already identified more than 20,000 square feet of retail uses that want to relocate to this site. Residential, restaurant and retail won't be an issue, nor will the hotel, once the project gets going.

Discussion ensued about Department of Transportation (DOT) pieces of land and right-of-way along Continental Boulevard and Industrial Drive and how hotel fiscal impact is determined.

There was no public comment.

The Planning Board agreed that the Development Agreement would specify that the project be mixed use and revenue positive at each phase with the requirement of peer review confirming such.

Gordon Leedy showed the location of sidewalks. At Nelson Disco's suggestion, he agreed to provide a link between Camp Sargent Road and the roundabout. As to Vincent Russo's suggestion to include bike lanes or paths, there would be no construction or widening on Continental Boulevard or Industrial Drive. There is potential for bicycle access at the gate. Gordon Leedy said a mixed use is not the same as a multi-modal use. Chairman Best noted that the sidewalks would be private, so people could ride bikes on them. Gordon Leedy agreed to supply bike racks, lockers and secure storage in the underground parking garage. Sidewalks along Continental Boulevard and Industrial Drive would be in the right-of-way most likely. Roads internal to the development are private. The plaza has room for outdoor dining, etc. A sidewalk could link Continental Boulevard to the roundabout.

Staff recommends that the Board vote to grant conditional Final Approval to the application, with precedent conditions to be fulfilled within 12 months and prior to Planning Board final endorsement of the Conditional Use Permit.

The Board voted 6-0-0 to grant Final Approval of the Mixed Use Development Conditional Use Permit (CUP) with the following conditions, on a motion made by Alastair Millns and seconded by Vincent Russo.

1. While a reduced size Master Site Development plan is included in the bound application package, the submitted full-size plans are not indicative of the Master Site Development Plan, but rather are existing conditions and phasing plans. The Applicant shall provide a full size Master Site Development Plan prior to endorsement (final approval) of the CUP by the Board;

2. The applicant shall revise the Master Site Development Plan and narrative application package as necessary to address the following requirements determined applicable by the Planning Board;
 - a. The Master Site Development Plan shall depict the addition of sidewalk continuing from the north side of the access road coming off the round-about along the access road to the gated portion of the emergency access road coming from Camp Sargent Road;
 - b. The Master Site Development Plan and narrative shall note that buffer requirements and limitations on hours of operation for certain accessory uses will be addressed with future site plan submissions;
3. The applicant shall add appropriate notes to the Master Site Development Plan for any dimensional relief (density, buffer requirements, parking, and any others as applicable) granted by the Planning Board as part of the CUP approval. These notes (and any updates to the narrative portion of the application) shall indicate both what is proposed and what is typically required by the Zoning Ordinance and Site Plan Regulations;
4. The applicant shall address the following comments relative to the Fiscal Impact Analysis (from both Staff and ADG) prior to final endorsement of the Conditional Use Permit by the Planning Board:
 - a. The applicant shall correct the miscalculations cited in the peer review memo on pages 2 & 3;
 - b. The applicant shall update the tax rate information on page 16 of the analysis, as directed by the Board, as the applicant has utilized the 2015 tax rates. The 2016 rates of \$4.91 (Town) and \$14.49 (School District) shall be utilized for the analysis;
 - c. The applicant shall address the School Aged Children multiplier comments (as discussed on pages 3 & 4 of the Staff Memo dated January 12, 2017) as directed to do so by the Planning Board;
 - d. The applicant shall coordinate with the Town's public safety officials to discuss and verify the assumptions made relative to provision of services impacts resulting from the proposed development;
5. The applicant shall provide for review by the Town's Legal Counsel (at the applicant's expense), a Development Agreement or other similar instrument specifying the phasing, timing and sequence of the improvements contained within the development; the performance guarantees relating thereto; and any other such development- related information the Board deems necessary to ensure the successful completion of the development;
 - a. The Development Agreement shall specify that the project must be mixed use at each phase; and a fiscal impact analysis must be provided that confirms the project will generate a net positive fiscal impact for the Town. Peer review of the fiscal impact analysis is required and at the applicant's expense.

6. The applicant shall address any forthcoming comments from the municipal departments, boards, and committees as applicable;
7. The applicant shall include as part of the final submission of the Conditional Use Permit package a page (preferably the first page after the cover page), including a signature block for the Planning Board's final endorsement.

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

1. The approval of this Conditional Use Permit does not authorize the applicant to undertake any construction related to the proposed development. The applicant must subsequently obtain subdivision approval for the platting of individual lots and site plan approvals for buildings or sites within the mixed use development in accordance with the Town of Merrimack Subdivision/Site Plan Regulations and Section 2.02.4(C)(6) of the Zoning Ordinance;
2. Any development agreement (or other suitable legal documents) shall be signed by the applicant and the Town prior to commencement of any construction related to development proposed as part of this Conditional Use Permit;
3. Architectural design review of all proposed structures/facilities shall be required at the time of the subsequent site plan applications to ensure compliance with Section 12.04.3 of the Subdivision/Site Plan Regulations and Section 15.03.D.3 of the Zoning Ordinance as applicable;
4. The applicant is responsible for obtaining any federal, state, or local permits that may be required as part of any subsequent subdivision or site plan approval following the granting of this Conditional Use;
5. The applicant is permitted to undertake minor deviations (including but not limited to building orientation on a site, decreases in density or building size, etc.) from the Master Site Development Plan and Conditional Use Permit documentation in such instances where the deviations do not increase the impacts to the Town as demonstrated through the traffic impact analysis or fiscal impact analysis. Deviations that increase impacts or those which the Community Development Department is not comfortable making an administrative determination of impact, shall require the applicant to return to the Planning Board to amend the Conditional Use Permit approvals. In no circumstance shall any uses permitted through the approval of this Conditional Use Permit be modified/changed without an amended Conditional Use Permit approval from the Planning Board;
6. If this Conditional Use Permit approval is not acted upon within a period of two (2) years from the date of the final endorsement by the Planning Board, then the approval shall be null and void. Actions sufficient to vest an approval for a conditional use permit include Planning Board site plan or subdivision approval, issuance of a building permit, or a Certificate of Occupancy issued by the Building Department where no Planning Board approval or building permit is required. However, should any site plan or subdivision approval or building permit expire unused after the conclusion of the two-year validity period provided

for herein, the conditional use permit granted as a precondition to said site plan or subdivision approval or permit shall become void as well;

7. Should the applicant need to extend the two-year validity period, the applicant shall demonstrate to the satisfaction of the Planning Board that it was impossible or impractical to receive the necessary approvals to move forward in reliance on the permit granted within two years;
8. Any renewal/extension application shall be filed with the Planning Board no sooner than 90 days, nor later than 30 days, prior to the expiration of the Conditional Use Permit;
9. The Planning Board may, in its sole discretion, grant such extension of the above validity period as it deems warranted.

5. Discussion/possible action regarding other items of concern

Tom Koenig cited a flashing sign and flags at the Gulf Station on the corner of Greeley Street, which Alastair Millns said happens at every gas station in Merrimack and breaches regulations. Jillian Harris explained that it is an ongoing problem. In such instances, the Community Development Department sends a letter, the recipient fixes the problem, then puts things back as before. When Vincent Russo suggested making reasonable limitations and giving the owner some leeway, Chairman Best explained that the process is too involved because so many groups have input and changing sign regulations is a lengthy process.

Vincent Russo noted that Skip's Marine at 54 D.W. Highway did not inform the Planning Board that two businesses operate on the property. That affects parking. Jillian Harris said that Assistant Planner Robert Price is looking into the matter and it will be addressed if there is any violation.

Chairman Best announced a NRPC Legislative Forum on February 8, 2017, from 6:00-8:00 p.m., at the Courtyard Marriott in Nashua.

6. Approval of Minutes – January 3, 2017

The minutes of January 3, 2017, were approved, with one change, by a vote of 6-0-0, on a motion made by Alastair Millns and seconded by Nelson Disco.

7. Adjourn

The meeting was adjourned at 9:20 p.m., by a vote of 6-0-0, on a motion made by Alastair Millns and seconded by Tom Koenig.