



Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

Fax 603 424-1408

Town Hall - Lower level - East Wing

www.merrimacknh.gov

Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD APPROVED MINUTES TUESDAY JANUARY 17, 2023

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, January 17, 2023 in the Matthew Thornton Room.

Members Present:

- Robert Best (Chair)
- Jaimie von Schoen
- Brian Dano
- Maureen Tracey - Alternate
- Nelson Disco - Alternate
- Town Councilor Barbara Healey - Ex-Officio

Members Absent:

- Paul McLaughlin (Vice Chair)
- Lynn Christensen
- Neil Anketell
- Haleem Mediouni - Alternate

Staff Present: Robert Price, Planning & Zoning Administrator, and Colleen Olsen, Assistant Planner

1. Call to Order

Chair Robert Best called the meeting to order at 6:30 p.m. and led everyone in the Pledge of Allegiance. He then seated Alternates Nelson Disco & Maureen Tracey for Neil Anketell & Lynn Christensen.

2. Planning & Zoning Administrator's Report

None.

3. Consent Agenda

- Regional Impact Determinations*
- Extension request: Thomas More College project (#PB2021-23)*

At Mr. Disco's request, the Board pulled all items off the consent agenda to be considered individually.

The Board voted 6-0-0 to determine that the Bruce and Susan Flanders Revocable Trust and Violet Snow Lot Line Adjustment application is not of regional impact, on a motion made by Nelson Disco and seconded by Jaimie von Schoen.

The Board voted 6-0-0 to determine that the BC FE 29 Manchester, LLC site plan is not of regional impact, on a motion made by Nelson Disco and seconded by Barbara Healey.

The Board voted 6-0-0 to grant a 6-month extension of the conditional approval for the Thomas More College site plan, on a motion by Nelson Disco and seconded by Maureen Tracey.

- 4. McDonald's USA, LLC (applicant) and CP Merrimack, LLC (owner) – Continued review for consideration of a waiver of full site plan to reconfigure the existing single order point drive-thru with a dual order point configuration. The parcel is located at 9 Dobson Way in the C-2 (General Commercial) & Aquifer Conservation Districts, and Wellhead Protection Area. Tax Map 4D-, Lot 054-03. Case #PB2022-47. *This item is continued from the December 6, 2022 Planning Board Meeting.***

The Board voted 6-0-0 to continue the hearing until February 21, 2023 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion by Brian Dano and seconded by Nelson Disco

- 5. Black Diamond Holdings, LLC (applicant) and MM Realty Trust (owner) – Continued review for final approval of a site plan for the redevelopment of an existing automotive/junkyard use into a 102,600 square foot warehouse and associated site improvements. The parcel is located at 734 DW Highway in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 7E, Lot 31. Case # PB2022-36. *This item is continued from the October 18, November 15, & December 20, 2022 Planning Board Meetings.***

Robert Price summarized the project by advising the Board that the applicant was last physically before them on October 18, 2022, where the applicant introduced the project and discussed much of the project's specifics. Sometime around that meeting, the NHDOT requested a full traffic analysis which the applicant completed earlier today. As a result of this, staff is recommending that the Board hear an update from the applicant but ultimately continue the application again to allow time for the traffic analysis to go through peer review.

Matt Peterson (Keach-Nordstrom Associates Inc.) was present to discuss the project with the Board. He focused his presentation on the revisions that have been made to the plan since it was first presented in October 2022. He demonstrated the location of a parking area that the applicant does not foresee needing, he added that the parking area will be instead be grass until additional parking is needed (shown on the plan as a Phase 2 area), and the grass area will also serve as the location of the underground drainage system for the site. He also addressed the two waiver requests mentioned in the staff memo (Section 3.11.m regarding bicycle parking and Section 3.11.n regarding electric vehicle (EV) accommodations) by clarifying that they are not seeking a waiver for the bicycle rack and will be providing one however, they would like to move forward with the waiver for EV accommodations.

Mr. Peterson wrapped up his presentation by explaining that the retaining wall that was originally shown on the plan as 7-9 feet tall has been reduced to 4 feet and the area re-graded to

avoid the need for a variance. He also provided some insight into the results of the traffic study by providing the AM and PM peak numbers (36 AM and 39 PM).

Maureen Tracey asked why the applicant is looking to have new technology inside the building but is seeking a waiver for EV accommodations for the outside of the building. Mr. Peterson responded that he based the waiver on where he believes NH stands on electricity and has concerns that we might start trending back to gas engines based on the need to have coal plants for electricity and the recent push to close those plants.

Mr. Disco asked if the drainage plans have gone through the peer review process and Mr. Price confirmed that they have completed an initial review and are working through the process now. He then asked Mr. Peterson if the site is on town sewer. Mr. Peterson confirmed that it is not because they were not able to tie-in to any lines in the area. He then briefly discussed the septic system and showed the location of it on the plan.

Mrs. Tracey complimented the applicant on the changes that were made to the plan, and mentioned that she especially likes the addition of the windows to the building as not many warehouses incorporate them into their design, Chairman Best agreed with Mrs. Tracey's remarks and added that he feels that the location of the building and the addition of the windows meets the intent of the site plan regulation regarding breaking up building facades.

No public comments were received.

The Board voted 6-0-0 to continue the hearing to February 21, 2023 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion by Brian Dano and seconded by Jaimie von Schoen.

6. **S.J. Torres (applicant) and Orrin H. Connell Family Trust (owner)** – Continued review for consideration of a waiver of full site plan review to permit a variety of temporary “event” uses on site. The parcel is located at 454 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly Housing, and Town Center Overlay Districts. Tax Map 5D-4, Lot 54. PB2022-46. ***This item is continued from the December 6 & December 20, 2022 Planning Board Meetings.***

Mr. Price prefaced the presentation by clarifying the applicant is seeking approval to host 12 events on site per year broken into two categories. The first set of events would be barbecues that would be held on Thursday nights between the hours of 4:00 and 7:00 p.m. The six other events were not specified, however, they would be larger in nature and would be held on Sundays between the hours of 8:00 a.m. and 8:00 p.m. Mr. Price also added that this is the first surveyed plan that staff has seen for the site since the shipping containers were placed at the rear of the lot. Each container is about 320 s.f. which qualifies them as structures and subject to setbacks. Each container appears to be located within both the 40' wetland setback and 25' no disturbance wetland buffer area, so the applicant will need to relocate them or obtain a variance to encroach into the wetland setback as well as a special exception to encroach into the wetland buffer in order to leave the shipping containers where they presently sit as shown on the plan.

Matt Peterson (Keach-Nordstrom Associates, Inc.) and owner S.J. Torres presented the application to the Board. Mr. Peterson explained that the event issue came to light when the owner (SJ Torres) tried to hold a fundraising event at his restaurant for the Merrimack High School football team. The applicant is now looking for approval to hold a variety of events on site

to prevent having to come back to the Board for each event. He shared the site plan to demonstrate the location of where the events would take place and relayed that jersey barriers would be used to shield participants from traffic coming and going from the plaza. He also shared photos of the shipping containers that were mentioned by Mr. Price and indicated that he would have to look at the placement of them and speak to the applicant about options.

Chairman Best asked where participants will park during these events. Mr. Peterson stated that one of the reasons the applicant picked Sundays is because a lot of the other businesses in the plaza are closed which would allow for more parking in the plaza itself. He is also in discussions with the School Department about using the High School's parking lot for overflow parking which is located up Woodbury Street from the restaurant. Chairman Best asked how participants would know where to park for the events and Mr. Peterson stated that they would communicate parking directions through marketing material prior to the event and signs, located on site for the day of the events. Chairman Best asked if the other businesses in the plaza have been notified as to what he is requesting. Mr. Torres expressed that he feels that a lot of them know because they frequent the restaurant but agreed to send them all a letter regardless.

The issue of noise was brought up by Mr. Disco and Mr. Price clarified that the town does not have a noise ordinance. Mr. Torres also added that most of the events would take place during the day and they typically only feature acoustic artists, not bands. There was discussion about the side entrance onto Woodbury Street being blocked off and most Board members felt it was not a concern but Mr. Disco did not agree. Mrs. Tracey asked about the number of participants at the events and Mr. Peterson shared the calculation they used based on the square footage of the event area. He added that they can't know for sure who will show up until they hold a few events but they feel that it will be less than the 250 that was quoted in the request.

Mr. Disco asked about the shipping containers again and how that issue will be rectified and Mr. Peterson commented that he was first told they were considered signs but is now being told they are structures and needs time to look at it. Mr. Price clarified that staff has always considered them structures that have signage on them and had advised Mr. Peterson that they need to be shown on the plan because they are structures which is why the setback issue was caught. This was the first time staff has seen them shown on a surveyed plan which is why the setback issue is being called out now. The applicant will have to move them or seek relief from the ZBA (as mentioned above) if he wants to keep them where they are.

The Board voted 6-0-0 to accept the application as complete, on a motion made by Barbara Healey and seconded by Brian Dano.

No public comments were received.

The Board voted 6-0-0 to grant the waiver of full site plan review, citing that strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations, on a motion made by Barbara Healey and seconded by Maureen Tracey.

The Board voted 6-0-0 to continue the hearing to February 21, 2023 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion by Brian Dano and seconded by Barbara Healey.

7. **Starten Realty, LLC (applicant/owner)** – Continued review for acceptance and consideration of final approval for a site plan for the addition of a gas station, convenience store and drive-thru coffee shop at the site of an existing car wash. The parcel is located at 376 DW Highway in the C-2 (General Commercial), Aquifer Conservation, and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 002. Case #PB2022-40. ***This item is continued from the November 15 & December 20, 2022 Planning Board Meetings.***

Mr. Price provided background for the project by explaining that this proposal required a Special Exception for the gasoline station use, which was granted by the Zoning Board of Adjustment on November 30, 2022. Although the project has been continued twice, this is the first time the applicant has physically appeared before the Board. He noted the applicant has been working behind the scenes with staff to make revisions to the original plans that were submitted in order to address both peer review and municipal department comments. Mr. Price continued by advising the Board that staff has noted that the applicant is proposing some limited landscaping adjacent to DW Highway but has not provided specific details on what is being proposed and have submitted a waiver from the requirement to provide this information. Mr. Price also indicated the Public Works Department has concerns that the sidewalk shown on the plan is located on the applicant's property and not in the Right of Way (ROW).

David Frothingham (Wilcox & Barton) presented the application to the Board. Mr. Frothingham shared a copy of the plan and reviewed the existing layout of the site which currently includes a car wash with two detailing bays and vacuum stations. The owner is proposing changes to the site which would include razing the two detailing bays and replacing them with a drive through coffee shop as well as constructing a small addition to the existing office area to convert it into a small convenience store, as well as moving the existing vacuum area and replacing it with a gas station. He spoke in detail about some aspects of the plan including the parking and queuing of the cars for both the car wash and drive through coffee shop. Mr. Frothingham shared that the results of their traffic study included a recommendation that Daniel Webster Highway be widened in front of the parcel to allow more room for vehicles to turn in and out of the business. He added that widening the road will utilize more of the existing ROW. He noted that the ROW is already narrow in the area, which is one of the reasons the sidewalk that is shown on the plan is on the applicant's property instead of in the Town's ROW. The other reason for the sidewalk placement is the location of utility poles within the ROW that would make construction of a sidewalk more difficult. He added that there is already an existing sewer easement in place where the sidewalk is proposed to be located so it would be easy to extend to the easement to include the sidewalk.

Councilor Healey asked if the Fire Department has commented on the plans because she feels that the site is too small to accommodate all of the proposed uses, and she does not see how a fire truck could maneuver around the buildings. Mr. Price responded that he does not have written feedback from the Fire Department at this time, however, he did have an informal discussion with them and they expressed concerns about maneuvering around the site. Councilor Healey added that she would like to see more details on the landscaping plans as what was provided was vague.

Mr. Disco asked if the traffic analysis was reviewed by the Town's peer review consultant. Mr. Price confirmed that the traffic analysis was reviewed by Fuss & O'Neill and they agreed with the results of the analysis. Mr. Disco commented that it's hard to decipher the turning lanes on the plans so Mr. Frothingham used the plans to demonstrate the flow of the traffic both pre- and post-construction.

Chairman Best shared his concerns about there being too much proposed on such a small site and asked where the pedestrians would cross if they wanted to go to the convenience store. Mr. Frothingham replied that the convenience store is small and really intended for customers that are already on site getting gas but acknowledged there is not a pedestrian walkway included on the plans. Chairman Best continued to express his concerns with all of the vehicle and pedestrian movement on the site and Mr. Frothingham commented that all of the vehicle aisles are 24 feet wide which is more than sufficient for two way traffic. He also pointed out that the area shown on the plan for the underground fuel tanks is approximately 40 feet in length and can be used by vehicles to maneuver the site.

Councilor Healey mentioned that the vacuum cleaners are encroaching in the setbacks and asked if they are considered a structure. Mr. Price stated that he is unsure and would need to look into it. Mrs. Tracey asked about snow storage plans and Mr. Frothingham demonstrated the small area designated for snow storage and indicated that excess snow would need to be removed from the site.

Chairman Best asked about the size of the convenience store and Mr. Frothingham replied that it will be approximately 700 square feet. Chairman Best shared his thoughts that a store that small isn't very attractive from a planning perspective because they are very limited in what they offer. Jaimie von Schoen also offered her concerns regarding maneuverability around the site and feels that it would be safer if the whole site was one way traffic instead of the two lanes, which is something Mr. Frothingham said they could look into. She also asked if the site is expanding their paving footprint at all in the back of the lot and Mr. Frothingham replied that there is an existing retaining wall in the back of the lot so they are just utilizing the existing pavement in that area for this proposal.

Brian Dano conveyed that he is not opposed to the plan as long as they can work out the kinks and make it look nice. Councilor Healey stated she is not ready to vote on completeness without feedback from the Fire Department because their comments may lead to a significant design change. Mr. Disco added that he would also like to see a landscape plan which lead to a discussion about the waivers being requested. Mr. Price clarified that the Board cannot vote on waivers until the application has been accepted as complete and Chairman Best added that in this case it is difficult to do that because he is personally not in favor of two of the waivers (landscaping and building elevations), denial of which would warrant the application incomplete. He suggested that the applicant take another look at the site and consider some of the feedback that was given by the Board to make some changes to improve the overall configuration and the safety of the site.

The Board voted 6-0-0 to continue both the application's acceptance and public hearing to February 21, 2023 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion made by Jaimie von Schoen and seconded by Nelson Disco.

8. **526 DW, LLC (applicant/owner)** – Consideration of an amendment to a previously approved Site Plan requesting the removal of parking space wheel stops as currently required by the approved plan. The parcel is located at 526 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation & Elderly Housing Overlay Districts and Wellhead Protection Area. Tax Map 5D-2, Lot 001. PB2023-01.

Mr. Price offered some background on the project, explaining that in 2022 the applicant was given a Certificate of Occupancy to occupy the newly construed building at 526 DW Highway with the

understanding that the wheel stops shown on the plan would either be installed or an amendment to the site plan would need to be requested by the end of 2022. The applicant has chosen to request an amendment to the plan, removing the wheel stops from the project.

Eric Mitchell (Eric C. Mitchell & Associates, Inc.) presented the application to the Board. Mr. Mitchell reiterated some of what Mr. Price had said previously and added that the wheel stops that were shown on the plan are not required by the town, but because they were shown on the plan they are required to be installed.

Mr. Disco asked why they are requesting to remove them as they appear to offer a safety feature to the pedestrians on the sidewalk. Mr. Mitchell explained that there is an infiltration trench and landscaped area separating the parking area from the sidewalk so they do not foresee it as being a safety issue if they do not install the wheel stops. The wheel stops cause issues in the winter with plowing and the applicant would prefer not to install them.

Chairman Best shared his opinion that he does not feel that the site is unsafe without them and finds the request reasonable.

No public comments were received.

The Board voted 6-0-0 to grant conditional final approval to the amendment of the site plan subject to the following precedent condition to be fulfilled within 6 months and prior to signing of the plan, unless otherwise specified on a motion by Nelson Disco and seconded by Barbara Healey:

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.

The following General and Subsequent Condition is also placed on the approval:

1. All general and subsequent conditions from the original and amended site plan approvals (dated May 15, 2018, August 7, 2019, and December 8, 2021) remain in effect and apply to the project moving forward.

- 9. UDM Group, LLC (applicant/owner) -** Consideration of an amendment to an approved site plan to waive the requirements of Section 6.01.c of the Site Plan Regulations (which requires all on site improvements be completed prior to the issuance of a certificate of occupancy) to allow for final paving improvements to be bonded instead of completed prior to issuance of the certificate of occupancy. The parcel is located at 105 Daniel Webster Highway in the I-1 (Industrial) and Aquifer Conservation District. Tax Map 2D, Lot 021-01. Case #PB2023-02.

Mr. Price began by explaining the applicant is currently constructing an automotive repair facility at the site of the old DCU building and is requesting a waiver from Section 6.01.c of the Site Plan Regulations, which requires all on site improvements be completed prior to the issuance of a certificate of occupancy. The applicant is proposing to bond final pavement due to the current weather conditions, until work can be completed in order to not restrict the business from opening prior to Spring of 2023. If the Board grants the request, staff recommends that a condition of approval be added requiring that the paving be completed by June 30, 2023.

Peter Madsen (Keach-Nordstrom Associates, Inc.) presented the application to the Board. He explained that he recently visited the site and they are getting close to completion but are requesting to bond the final paving so that they can obtain their certificate of occupancy when they are finished construction. Chairman Best asked if the base course is in place and Mr. Madsen confirmed that it is and just the wearing course is needed.

Mr. Disco asked if the site is on sewer or septic and Mr. Madsen replied that the site has a septic system and demonstrated its location on the plan. He then asked if it was septic previously and Chairman Best responded that yes, the site is not on Town sewer despite it being so close to the wastewater treatment facility.

Chairman Best asked Mr. Price some general questions about the bonding process and how to call the bond if the work does not get completed. Mr. Price explained the process for establishing the bond, but indicated he has never had to call one so the Town would need to consult with Legal Counsel when and if the need were to arise.

No public comments were received.

The Board voted 6-0-0 to grant the partial waiver from Section 6.01.c of the Site Plan Regulations which requires all on site improvements be completed prior to the issuance of a certificate of occupancy and conditionally approve the amendment to the approved site plan subject to the following general and subsequent conditions on a motion by Maureen Tracey and seconded by Nelson Disco:

1. All general and subsequent conditions from the original and amended site plan approvals (dated June 9, 2022) remain in effect and apply to the project moving forward.
2. The applicant shall provide a cost estimate to the Community Development Department for review and approval of the amount necessary for a financial guarantee for the construction of the wearing course of pavement.
3. Following approval of the amount necessary for the financial guarantee, the applicant shall provide a letter of credit or cash deposit into escrow for the full amount necessary to guarantee completion of the wearing course of pavement.
4. The applicant shall complete the wearing course of pavement within 6 months of the issuance of the certificate of occupancy or by June 30, 2023 (whichever comes first), or the Town will utilize the submitted financial guarantee to complete the work.
5. The financial guarantee for the construction shall not be released or returned to the applicant until satisfactory completion of the wearing course of pavement and written confirmation from the Community Development Department (following inspection of the improvements) that the funds can be released.

10. Bruce and Susan Flanders (applicants) and Bruce and Susan Flanders Revocable Trust and Violet Snow (owners) – Review for acceptance and consideration of final approval for a lot line adjustment. The parcels are located 174 and 176 Amherst Road in the R-1 (Residential, by map) District. Tax Map 4B, Lots 151 and 152. Case # PB2023-03.

Mr. Price prefaced the presentation by advising the Board that the application proposes a lot line adjustment between two residential lots. Staff notes that the resultant lot 151 will not require relief from the Zoning Board of Adjustment because the proposed lot will be less nonconforming (more conforming) than the existing lot. In situations where a nonconforming lot that becomes less nonconforming after some action takes place, despite still ultimately being nonconforming, variance relief is not required.

Matt Peterson (Keach-Nordstrom Associates, Inc) presented the application to the Board. He shared an aerial view of the two properties and then used the Lot Line Adjustment (LLA) plan to show where the existing lot lines are and where they will be if the LLA is approved. Once the lots have been adjusted, Lot 151 will be 43,502 s.f. (0.998 acres) and Lot 152 will be 165,080 s.f. (3.79 acres).

Chairman Best asked why the LLA was being requested and Mr. Peterson responded that it is his understanding that the owner of lot 172 Amherst Road (who is not involved in the LLA) has a structure that is encroaching onto the land of 176 Amherst Road. Mr. Flanders is requesting the LLA so that the encroachment is on his land and not the owner of 176 Amherst Road. Ultimately, Mr. Flanders is attempting to reconcile an ongoing dispute between his other two neighbors through this action.

The Board voted 6-0-0 to accept the application as complete for review, on a motion made by Brian Dano and seconded by Barbara Healey.

No public comments were received.

The Board voted 6-0-0 to find that with the proposed conditions of approval, the lot line adjustment meets all applicable regulatory requirements and further, grant conditional final approval of the lot line adjustment, subject to the following precedent conditions to be fulfilled within 6 months and prior to signing of the plan, unless otherwise specified on a motion by Brian Dano and seconded by Barbara Healey:

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 all required State approvals/permits applicable to the project and provide copies to the Community Development Department, as applicable.
3. The applicant shall provide draft copies of any additional applicable legal documents for review at the applicant's expense, by the Town's Legal Counsel.
4. The applicant shall address any forthcoming comments from any municipal departments/boards, as applicable.
5. The applicant shall address the following Planning Staff Technical Comments:
 - a. Revise note #1 on sheet 1 to read "The purpose of this plan is to adjust the lot lines between Assessors Map 4B Lots 151 & 152 by creating parcel "A" (17,832 S.F. or 0.409 acres) which is to be transferred by deed from the owner of lot 152 to the owner of lot 151 and parcel "A" is not considered a separate building lot.

- b. Revise misspelling of “surveying” on note #6 on sheet 1.
- c. All lots shall be bounded with permanently set granite or precast concrete markers and iron pipes per Sections 4.17.f & 4.18.a of the Subdivision Regulations;
- d. Add owner’s signature block to sheet 1.
- e. Add the language from Section 4.06.1.k of the Subdivision regulations to the plan notes.
- f. Indicate the water and sewerage services for each parcel.

The following General and Subsequent Conditions of Approval are also 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. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
- 3. The applicant shall address any forthcoming comments from the Fire Department, related to property addressing, as applicable.

11. Robert Parker (applicant) and BC FE 29 Manchester, LLC (owner) – Review for acceptance and consideration of final approval for a site plan to construct a 39,800 square foot warehouse building. The parcel is located at 29 Manchester Street in the in the I-1 (Industrial), and Aquifer Conservation Districts. Tax Map 2D, Lot 004-07.Case # PB2023-04.

Mr. Price began by stating that the proposal before the Board consists of constructing a 39,800 square foot warehouse building on the site of an existing parking lot. Redevelopment of the site, including construction of the warehouse building and the reconfiguration of the parking and access areas will result a 1,600-sf reduction in overall impervious surface. The one item that staff did want to point out is that the back of the building is over 200 feet long and is required by the site plan regulations to be broken up aesthetically so this point should be discussed when the architectural rendering is reviewed by the Board.

Rob Parker (Bradstreet & Chandler, Inc.) and Sean Reardon (Tetra Tech, Inc.) presented the application. Mr. Reardon presented the plans to the Board. He started by explaining that the existing parking lot contains 269 parking spaces and the applicant is proposing to use more than half of those spaces to construct a 39,800 square foot warehouse building. The remaining area will be used for 109 employee parking spaces. Mr. Reardon pointed out that aside from the 1,600 s.f. reduction in overall impervious surface area, the project will also result in a 43,502 s.f. reduction in paved surfaces which is a tremendous impact because runoff from a roof is a lot cleaner than runoff from asphalt. Mr. Reardon continued by sharing that the majority of the landscaping and lighting are going to be repurposed from the existing site and wall pack lighting will be added to the building itself. The applicant is not requesting any waivers and Lighting and Landscaping plans were submitted for review.

He pointed out the location of a new entrance to the site that the applicant is proposing and clarified that the existing two-way entrance will also remain but is being straightened out a bit to make it easier for large trucks to maneuver. The plan is to have the truck traffic enter through the new entrance and circle around the back of the property to get to the loading docks on the side of the building and then exit through the existing two way entrance.

Councilor Healey asked about the number of loading bays and what kind of trucks they anticipate seeing on the site. Mr. Reardon stated that there are 6 bays being proposed however one may be used for a trash compactor and the site was designed to accommodate tractor trailers but until they have a tenant, they do not know for sure what trucks will be used.

Chairman Best asked if the site could be configured for more than one tenant and Mr. Parker stated that it could be configured to hold more than one tenant and demonstrated the location of where a second entrance door is proposed. The loading docks would need to be shared or partitioned off as they are all grouped together. He stated that ideally this size warehouse would be one tenant rather than two.

Mr. Disco asked about the drainage design and whether or not it was reviewed by the peer review consultants. Mr. Parker explained that the existing drainage design is going to be utilized and briefly explained how it functions. Mr. Price advised the Board that peer review comments have not yet been received but are expected soon.

Chairman Best asked Mr. Reardon to walk him through the lighting plan because the printout that was provided to the Board was too difficult to read due to the size and color of the font. Ultimately, the Board agreed that they would trust Fuss & O'Neill to review the lighting plan since it was too difficult for them to decipher. Mr. Price confirmed that Fuss & O'Neill is given both digital files and full size copies of the plans so they should have no issues reading the print.

Mr. Disco asked about the sidewalk on Manchester Street and Mr. Reardon started that it stops before their parcel. Mr. Disco replied that now that site is being developed the town would like it to be extended and Mr. Reardon responded that the applicant would be happy to do that.

Councilor Healey asked for clarification on which entrance a second tenant would use and where the employees would park. Mr. Reardon used the site plan to demonstrate the location of the second entrance and pointed out where to see it in the elevations that were provided in the plan set. He also shared that there are approximately a dozen parking spaces near the second entrance that could serve a second tenant if necessary and reiterated that they are not certain if they will even have 2 tenants, adding that the building's size will likely result in only one tenant.

Chairman Best asked what abuts the property to the southwest and Mr. Reardon responded that Pennichuck owns that land. Chairman Best explained that the side of the building that faces the Pennichuck land is not visually broken up which is required by the Site Plan Regulations, however since it is just unoccupied, unbuildable land that it is facing, he is not concerned with leaving the building as is. The other Board members agreed.

Mrs. Tracey asked if the windows could be changed to something more decorative and added that she feels like the building looks like a prison. Mr. Parker explained that the aesthetics have not been finalized but assured the Board that he and his partner are very committed to ensuring that the building looks good.

The Board voted 6-0-0 to accept the application as complete for review, on a motion made by Brian Dano and seconded by Barbara Healey.

No public comments were received.

The Board voted 6-0-0 to continue the public hearing to February 7, 2023 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion made by Brian Dano and seconded by Jaimie von Schoen.

12. Merrimack Parcel A, LLC (applicant) and Merrimack Parcel A, LLC and Slate Merrimack Acquisition, LLC (owners) – Review for consideration of an amendment to a previously approved Mixed Use Development Conditional Use Permit, calling for the replacement of 93,720 s.f. of office space, 37,400 s.f. of retail, 15,800 s.f. of restaurant space and a 5,000 s.f. event center as part of Phase II with 208 multi-family residential units, 5,000 s.f. of office space, 6,500 s.f. of retail space, 8,000 s.f. of restaurant space and a reduction of the 120-room hotel approved as part of Phase I to 100 rooms. The parcels are located at 1, 2, 3 and 4 Lexington Court in the I-2 (Industrial) & Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 3C, Lots 191-2U1-2U4. Case # PB2023-05.

Mr. Price briefly summarized staff's opinion of the request (which was thoroughly outlined in a memo by Community Development Director Tim Thompson) by stating that staff does not support the changes being requested to the CUP as the density is far greater than what is allowed by the town and also beyond what is allowed in New Hampshire's three largest cities (Manchester, Nashua & Concord).

Gordon Leedy (Tighe & Bond) and Tom Monahan (Merrimack Parcel A, LLC) presented the application to the Board. Mr. Leedy provided a detailed overview of the history of the project and shared an aerial view of the property to demonstrate the location of the site in question. He identified several businesses located in the immediate area of the subject parcel, adding that those businesses combine to have approximately 10,500 employees. He stressed that the housing needs for those businesses' employees is the primary driver for the applicant's request for additional residential units on the subject parcel. He shared a copy of the approved CUP plan and outlined where the apartments that have already been constructed are, as well as the proposed hotel and restaurant space. The remaining 4.5 acres of space that was originally approved as a mixture of office and retail use is what is now being proposed as 208 residential units and 5,100 s.f. of commercial space. Mr. Leedy offered a variety of reasons for the change including but not limited to:

- No market for office use in this location.
- Limited need for retail use
- High demand for residential properties targeted to young professionals.

He also argued that there is no definition of what constitutes "mixed use" in the Zoning Ordinance, and they feel that their proposal meets the standard. He also contended that density is a means of assessing the intensity of use and the proposed mixed use is less intense and less impactful than the approved mix of uses that was previously granted. He added that the ZBA granted a variance allowing up to 208 additional units on the site.

Mr. Leedy used the site plan to walk the Board through the new layout of the site. As proposed the site would include:

- 208 apartment units above a 157 space parking garage (5 story building).
- 7,500 s.f. of commercial space in two locations. 5,100 s.f. will be connected to the residential units and the other 2,400 s.f. will be near the restaurant space.
- 8,000 s.f. of restaurant space broken into 2 units (5,500 and 2,500 s.f.)
- 5,000 s.f. of office space located near the restaurant space.
- A 4 story 100 room hotel.

Mr. Leedy quoted section 2.02.4.D.1 of the Zoning Ordinance which reads:

"The purpose of this section is to permit mixed uses which allow the creative integration of industrial, commercial and residential housing developments based on a master site development plan that permits flexibility in the design and integration of the permitted uses contained therein. The permitted mixed uses are intended to be complementary, so as to provide for the appropriate use of the land, fiscally beneficial development, the efficient provision of public services, and expanded opportunities for a diversity of residential development outside the traditional residential districts."

He stated that the property does abut a residential neighborhood but the buffers being provided on the property have not changed since the original plan. He also contended that the only change from the original master plan has been a change to the mix of uses. The buffers, landscaping, roadways and building configurations have not changed since the original approved master plan.

Mr. Leedy went on to cite the Criteria for Granting a Conditional Use Permit and how the new proposal meets each criterion. (A complete list of the arguments made can be found in the project file which is on file at Merrimack Town Hall in the Community Development Department).

He concluded his presentation by outlining the following bullet points:

- The site is reasonably suited for the intended use.
- \$1.477 million per year positive fiscal impact at full build out.
- Does not burden municipal service capacity.
- Reduces peak hour traffic impacts from previously approved plans.
- Buffers and setbacks are maintained from previously approved plans.
- Sidewalks, paths and other public pedestrian and open space accommodations have been continued from previously approved plans.
- No unreasonable impact or nuisance to adjacent residential uses.
- Complies with all local, state & federal environmental laws.
- Conforms with architectural design criteria.
- Conforms with general design criteria.
- Site Plan process will ensure compliance with conditions imposed.

Mrs. Tracey asked how many young professionals actually work for the businesses in the surrounding area and Mr. Leedy stated he did not have exact numbers for that. She posed a concern about these apartments being geared towards young professionals whose salaries who might not be able to afford the rent for a luxury apartment. She also questioned what happens when these young professionals want to have families and want to buy a house, seemingly noting

concern that the apartments would sit vacant. Mr. Monahan stated that nearly 60% of the site's constructed apartments are rented, and at least 24 of those tenants have a yearly income of \$150,000 or more and several of them work for the surrounding businesses (BAE, Getinge, and Fidelity). Mrs. Tracey continued to express concerns about what she sees trending in town now which is a lot of warehouse development so she is worried the need for luxury apartments may not continue into the future.

Chairman Best shared that he feels the conversation should not be about whether or not the apartments can get rented but feels that the question at hand is whether or not the development being requested fits on the site. He expressed that he does not feel like this plan is integrated with the Merrimack Premium Outlets at all, and it seems as if they are just trying to shoehorn in as many apartments as possible while providing the bare minimum of everything else. He added that although he likes the landscaping that is proposed and the streetscape is appealing, he's left wondering where all of these residents are going to walk their dogs or where children will play because there were no considerations made for either.

Councilor Healey expressed her concerns that the proposed roundabout will not be able to accommodate the traffic from this development as well as the Outlets, especially during peak traffic times. She feels that the lot is not large enough to allow for double the density from what was originally approved.

Mr. Disco questioned the fiscal analysis that was provided and stated he does not agree with some of its findings. He also questioned the lack of amenities for the residents of the apartments. Chairman Best encourages Mr. Disco to ask his questions regarding the fiscal analysis but Mr. Disco stated he does not have them prepared to discuss at this time.

Public Comment:

Wolfram Von Schoen (4 Conservation Drive) stated for the record that he is on the Merrimack Village District Board of Commissioners but speaking as a resident of the town and not as a member of the MVD Board of Commissioners. Mr. Von Schoen questioned the impact on the Town's water supply and contended that 208 additional apartments would certainly have more water use than office buildings. He added that he would also like to ensure the applicant knows about the site's salt restrictions and raised concerns about the amount of impervious surface on the site. Chairman Best informed Mr. Von Schoen that the water usage is typically not part of the CUP discussion and that it gets addressed as part of the site plan review process. Chairman Best also stated that he believes the amount of impervious surface on the site has not changed from the original plan as there were still buildings being proposed where the apartments are now shown but he will have the applicant address the question to be sure.

Nancy Harrington (11 Spruce Street) raised concerns that the applicant is considering the buffer area as the open space for the development. She shared that she has always believed that open space needs to be accessible to residents and does not feel that a wooded buffer meets that definition. She also stated that she feels that MVD needs to reassess the water demand that this project may have on the town's water supply. She added that a lot has changed in town since the Outlets were going through their planning phase and feels that the town cannot rely on assessments made 15-20 years ago. Ms. Harrington went on to say that she is worried of a precedent being set that if the Planning Board approves this proposal, other developments in town could do the same. The Community Development Department has cited several reasons

why this proposal should be denied and they are the professionals that the Planning Board relies on to do their job so she feels that their feedback should be strongly considered.

Barbara Asketh (1 Spruce Street) expressed concerns with the lights coming from the site. The residential neighborhood sees the lights from the current apartments now and if they add additional apartments in the proposed location, all they will see from their houses is a wall of lights. She also shared that she has concerns with the noise that will come from the additional apartments. It was her understanding that the apartments that were constructed were not supposed to have balconies and yet they do and the new apartments are also shown with balconies which will add to the noise coming from the site. Ms. Asketh also questioned the buffer being used as open space. She read a definition of the word “buffer” and stated she does not feel that using it as open space adheres to the definition. If the buffer is used by the residents as open space, she is worried that she will have people walking through her backyard by mistake.

Beth Burns (5 Spruce Street) stated that she and her neighbors have fought hard to keep Merrimack a safe, quiet and respectful town but she cannot see that how it is going to be possible if were bringing hundreds or thousands of people to this site with this development. She argued that the size of the apartment building that was just constructed on the site is enormous and something you would see in a city like New York or Boston and now the developer wants to put a second one close to her backyard. She reiterated what others have said about the site being too small for all the development that is being proposed. Ms. Burns then walked around to the Board members and shared a picture of the view of the existing apartment building from her house. (A copy of this photo is in the project file which can be found at Merrimack Town Hall in the Community Development Department.)

Mike Mills (7 Arbor Street) argued that the applicant should be held to the plan that was originally approved and that small changes are understandable but they keep coming back to the board with more changes. He added that the event center that was previously discussed in the original approval, is no longer being talked about. He also voiced frustration about things being said during the meetings that he feels are untrue, like that the hotel is under construction because it is not. He also expressed concerns with conflicting information that has been provided about the noise level, he stated on one hand the applicant is saying there won't be any noise during the day because everyone will be at work but then they state that the office space is not marketable because everyone is working from home, so which is it? He shared the concerns of the other abutters about the lack of open space in the development and people using the buffer for open space. He also shared how bright the property is now with the first apartment building in place and stressed that the current building is 600 feet from the property line and the newly proposed one will be a mere 200 feet away. He referenced some pictures that he provided to the Board as evidence of how much light is already coming from the site (copies of these pictures can be found in the project file which is located at Merrimack Town Hall in the Community Development Department). He urged the Board to not allow the residential neighborhood that has existed for many years behind this development to be ruined by such a large apartment building so close to their homes. Mr. Mills stated that the plan references open space and detailed landscaping but he does not see either of those depicted in the plan that was presented.

Chuck Parenteau (3 Spruce Street) stated that he believes that the people they are saying they are marketing these apartments to cannot afford them. He added that the average Fidelity employee makes \$72,000 per year so unless a CEO is moving in, the average employee cannot afford \$4,200 a month in rent. He also questioned the fact that the applicant quoted the number of working individuals that live in the area as a reason to need to build the apartments. The

10,000 + people that were mentioned already live somewhere and he isn't convinced they are going to move out of their current homes to rent these apartments. He went on to share his concerns about the noise that would be generated by the additional apartments being so close to their neighborhood and questioned if the revenue the apartments would bring to the town would be worth all of the trouble it will cause for so many people. Mr. Parenteau also questioned why the applicant would want to put another building in the space in question when the land would be perfect as open space for the current apartment building.

Morgan Tilton (15 Spruce Street) stated that she had heard that the underground parking was going to be available for a premium and asked where people are going to park if they do not want to pay extra because there are not enough outdoor spaces available. She questioned why the applicant downsized the hotel and event center if the idea is to bring more people to the area and argued that there is an affordable housing crisis happening now but this is not affordable housing so it is not going to help the situation at hand. Ms. Tilton also expressed concerns with the amount of light coming from the site now and that adding another building that is even closer to the neighborhood is going to make the whole neighborhood need room darkening shades.

Chairman Best closed the hearing to public comment.

Mr. Leedy addressed the public comments by first addressing the question of the water availability. He stated that when the outlets were developed they were allocated 137,000 gallons per day and are currently only using 17,200. Phase one of the development in question is projected to need 64,000 gallons per day which will leave surplus of 55,800 gallons per day. The second phase of this development is estimated to use 37,000 gallons per day which will still leave a surplus of 15,000+. He added that even if the outlets decides to expand as originally planned, they should still be well below the allocation that was provided to them as part of the original agreement. Mr. Leedy also indicated that he has spoken with Brian Hieken (Treatment Foreman, MVD) and was advised that there are not any capacity issues other than the odd/even restrictions in the summer. He added that Mr. Hieken did request that the site not install an irrigation system.

Mr. Leedy spoke briefly about the sewer capacity and addressed the concerns regarding the salt restriction by indicating that they abide by the restriction and will continue to do so. He addressed the lighting and buffer concerns by indicating that he understands the worries of the neighbors but there is an approved plan already in motion and the hotel and restaurant pads have already been placed so the site is vested. He added that he feels that the new proposal is less intense than the original. He indicated that any questions regarding the fiscal analysis can be answered but he is not prepared to answer them at the current time. He also expressed his belief that the traffic analysis is comprehensive and that the new plan would result in less traffic but the town should could always have it reviewed by the peer review consultant.

Chairman Best indicated that some of the items that were mentioned (i.e. sewer and water availability) would be discussed and worked through if the project were to advance to site plan review. If the availability is there, those utilities will present the Board with an approval letter. He also voiced is objection to the idea that the new proposal is less intense than what is already approved because the site already far exceeds any density that is normally approved in town and this new plan would more than double that. Mr. Leedy shared his views on density and the conversation ensued with each side sharing their thoughts on density and what makes a site more intense. Mr. Leedy contended that Mr. Monahan has a right to develop his land and that there is currently not a demand for what has already been approved. Chairman Best agreed that the applicant absolutely has the right to develop his land but the Board has to consider the intensity

and impact to the neighbors. He also shared his feelings on the currently building and how close it is to the road with very little buffering. The discussion continued around traffic and the intensity of the site. Mr. Monahan mentioned that the variance that was granted expires in March and stressed that time is of the utmost importance. Mr. Price confirmed that variance will expire unless an approval is granted by the Planning Board or an extension is requested. He also clarified that the extension would need to be requested no later than 30 days before the expiration date, so the application would need to be submitted for the February meeting.

The Board discussed some of the issues they would like clarity on prior to rendering a decision and the fiscal impact was among them. Mrs. Tracey asked for clarification on whether or not the hotel and restaurant have begun construction. Mr. Leedy responded that the buildings themselves have not started construction yet but a significant amount of site work has been completed including the slabs, utilities and paving. Mrs. Tracey then asked when construction will begin on those two components of the site and Mr. Leedy replied that it depends on the decision of the amendment to the CUP.

The discussion around the density and intensity of the site ensued again and Mr. Dano made several business suggestions for the site in lieu of apartments. Councilor Healey shared her thoughts that understanding more about the fiscal impact study won't change anything in her mind because the density issue is still unresolved. Chairman Best shared his approach that when someone requests changes to a previously approved plan he considers whether or not he would have approved it if it was a new plan and he would not have voted to approve the plan being presented now.

The Board voted 5-1-0 to continue the public hearing to February 7, 2023 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion by Nelson Disco and seconded by Maureen Tracey. Barbara Healey voted in opposition.

13. Discussion/possible action regarding other items of concern

Mr. Dano asked how the Board could imitate the discussion of a noise ordinance in town. Chairman Best replied that a noise ordinance would need to be enacted by the Town Council. Mr. Dano also asked if the Board could re-visit the definition of mixed-use for Conditional Use Permits as it appears that the current definition may be unclear. Chairman Best indicated that this is the only site left in town that would be large enough to meet the criteria.

14. Approval of Minutes — January 3, 2023

The Board voted 6-0-0 to approve the minutes of January 3, 2023, as submitted, on a motion made by Barbara Healey and seconded by Nelson Disco.

15. Adjourn

The Board voted 6-0-0 to adjourn at 11:23 p.m., on a motion made by Barbara Healey and seconded by Brian Dano.