



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

603 424-3531

Fax 603 424-1408

www.merrimacknh.gov

MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY, JANUARY 8, 2019

Planning Board members present: Robert Best, Alastair Millns, Tom Koenig, Dan Ricker, Neil Anketell, and Alternate Nelson Disco.

Planning Board members absent: Michael Redding and Lynn Christensen.

Staff present: Planning and Zoning Administrator Robert Price and Recording Secretary Zina Jordan.

1. Call to Order

Robert Best called the meeting to order at 7:00 p.m.

2. Planning & Zoning Administrator's Report

None.

- 3. Arne, LLC. (applicant/owner)** – Continued review for consideration of final approval for a two lot subdivision. The parcel is located at 63 Wilson Hill Road in the R-1 (Residential, by Zoning Map) and Aquifer Conservation Districts. Tax Map 4B, Lot 130. **This item is continued from the December 4, 2018 meeting.**

Attorney Greg Michael, Bernstein Shur, Sawyer & Nelson, said that, at the December 4, 2018, meeting, abutters expressed concern about blasting and drainage. Since then, the Planning Board performed a site walk on December 29, 2018, and the applicant met with the Merrimack Conservation Commission (MCC). Attorney Michael stated that there is no need for blasting. The applicant paid for a drainage study, which recommended adding an infiltration trench. The study determined that there would be no adverse storm water runoff impacts to any of the abutting properties. All post-development rates of runoff are the same or less than pre-development conditions. The applicant is entitled to develop his property. There would be a hammerhead at the end of the shared driveway; the driveway will support emergency equipment. The applicant would dedicate the necessary area for future road widening of Wilson Hill Road by easement, as requested by Public Works. The common driveway would be marked on the plan and filed with the Registry of Deeds as an enforcement measure. Ambit Engineering will sign the final soil certification. The applicant has no objection to staff comments. Attorney Michael showed the drainage system, which would include an infiltration trench. The culvert under the driveway would be labeled on the plan. The Fire Department wants a 16'-wide driveway, which has existed for 30 years, but has not yet submitted its written comments. Chairman Best noted that their comments are included in staff's conditions.

Fire Marshal John Manuele said he had not received the hammerhead and driveway layout. His concern is the slope because the driveway would service two homes rather than one.

Alastair Millns noted that the slope was too steep for the owner to pull his car all the way up in winter. Chairman Best said the slope must be no more than 10% to comply with the Town's Regulations.

Chairman Best stated that those attending the site walk found the water is not unmanageable or likely to cause erosion. The flat area is under water, but there are no washouts.

Scott Boudreau, Boudreau Land Surveying, explained that an infiltration trench collects excess water and infiltrates it into the ground. Attorney Michael added that it does not send more water to abutters. The report that was submitted concluded that there would be no increase in the peak rate of storm water discharge. Scott Boudreau said the system is designed to handle a larger-than-normal rain event. Attorney Michael described the hammerhead.

There was no public comment.

Alastair Millns said the site walk was inadequate because there was no clear definition of where the subdivision lines were supposed to be. Chairman Best agreed that the usual boundary line markings were missing. Tom Koenig said there were no markings defining the wetlands. Some things are still missing.

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 5-1-0 to grant final approval, with the following conditions on a motion made by Alastair Millns and seconded by Neil Anketell. Tom Koenig voted in opposition.

1. Final plans and mylars to be signed by all property owners. The appropriate professional endorsements and signatures (including the Certified Wetland Scientist) shall also be added to the final plans and mylars;
2. The applicant shall obtain all required State approvals/permits (NHDES Subdivision and any others as may be applicable), note the approvals/permits on the final plans and mylars and provide copies to the Community Development Department;
3. The applicant shall note all waivers granted by the Board on the final plans and mylars (including Section, and date granted) if applicable;
4. The applicant shall provide draft copies of any applicable legal documents for review, at the applicant's expense, by the Town's Legal Counsel;
5. The applicant shall address the following comments from the Public Works Department as applicable:

- a. What is the width of the existing ROW from the centerline of the road? The Plan should reflect this and follow the guidelines of Section 4.12.1:
 - i. "...the Board shall require dedication by deed and platted in general accordance with the typical sections herein, at least 25 feet from the centerline of the existing Town Road or right of way for the future widening of streets where existing road widths are insufficient for present standards or are of such a nature as to cause traffic hazards";
 - b. The driveway entrance shall conform to Section 4.13.1 under the Roadway and Utility Standards and shall be noted on the plans;
 - c. Add a note to indicate "Any work within the public right of way on Wilson Hill Road will require a right of way permit from the Highway Division of Public Works;
6. The applicant shall address the following Planning Staff Technical Comments:
- a. The applicant should verify the sheet is "recordable" with the Hillsborough County Registry of Deeds, as the Registry typically does not record subdivision plats that contain topographic information. The applicant should add a recordable plan sheet without topography as necessary, containing all of the notes and information required for recording;
 - b. The plans include a proposed Right-of-Way to be reserved for Lot 4B-130-1. The applicant shall revise the plan to indicate this "right-of-way" as an access easement for Lot 130-1, be made part of Lot 130 and not a separate right-of-way. Additionally the applicant should provide appropriate easement language for review (see proposed precedent condition #4).
7. The applicant shall address the following conditions placed on the approval by the Planning Board:
- a. The culvert under the driveway shall be labeled on the plan;
 - b. The driveway slope shall conform to the Subdivision Regulations (max 10 % per Section 4.13.1.a), or applicant shall return to the Planning Board (at a properly noticed public hearing) to request a waiver from the requirement.

Staff also recommends that the following general and subsequent conditions be 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 obtain right-of-way permits from the Public Works Department for any new driveways, if applicable. Any driveway changes shall be reviewed and approved by the Highway Division of Public Works as part of the right-of-way permitting process;
4. The applicant shall address the following from the Fire Department:
 - a. The construction of all roads and access ways must be completed to the Town of Merrimack Specifications allowing access of and supporting the weight of fire and emergency medical apparatus throughout the construction period and at all times and weather conditions thereafter;
 - i. Due to the length of the new proposed shared driveway on lot 4B-130 and 4B-130-1 which is over 300 feet in length, it shall also meet the above standard, as well as maintaining a minimum clear width of 16 feet throughout its length and having an acceptable fire apparatus turn around area at the far end of the driveway. (NFPA 1, Chapter 18) This requirement is for the entire length of the shared driveway from the intersection with Wilson Hill Road to both the existing home as well as the proposed new home;
 - ii. Engineering documentation and inspection reports are required to be provided to this office confirming that the driveway meets all applicable standards before a certificate of occupancy can be signed. Plans shall be provided to the Fire Marshall's Office for approval prior to a building permit being issued;
 - b. Lot 4B-130-1 shall be addressed as 61 Wilson Hill Road.
4. **Edgebrook Heights, LLC (applicant) and Edgebrook Heights, LLC, Wigston Properties, LLC & Q. Peter Nash 1987 Revocable Trust 1 (owners)** – Continued review for acceptance and consideration of final approval for a boundary consolidation and subdivision plan. The parcels are located at 1, 37, 39 & an unnumbered parcel off Daniel Webster Highway in the I-1 (Industrial), Aquifer Conservation and Flood Hazard Conservation Districts. Tax Map 1E, Lots 004-1 & 004-2, and Map 2E, Lots 007 & 008. **This item is continued from the November 13 and December 4, 2018, meeting.**
5. **Edgebrook Heights, LLC (applicant) and Edgebrook Heights, LLC & Q. Peter Nash 1987 Revocable Trust 1 (owners)** – Continued review for acceptance and consideration of final approval for a site plan to construct 232 multi-family residences (156 multi-family and 76 elderly housing units), a clubhouse and associated site improvements per the requirements of the Edgebrook Conditional Use Permit. The parcel is located at 1 Daniel Webster Highway in the I-1 (Industrial), Aquifer Conservation and Flood Hazard Conservation Districts. Tax Map 1E, Lots 004-1 & 004-2, and Map 2E, Lots 007 & 008 (would be located on a newly configured Tax Map 1E, Lot 4-1 if subdivision from Agenda item #4 is approved). **This item is continued from the November 13 and December 4, 2018, meeting.**

Items #4 and #5 were considered together.

Tom Zajac, Senior Engineer, Hayner/Swanson, Inc., explained that the 36-acre property contains lots that are currently vacant and part of the conditionally approved Edgebrook Heights Mixed Use Development Conditional Use Permit (CUP). Four existing lots would be consolidated and then subdivided into three new lots. Two other lots that are part of the proposal would remain as they currently exist. The Planning Board had suggested flipping the commercial use and the elderly housing, but the applicant prefers the current layout. Not all commercial uses need frontage exposure. Elderly housing requires three acres, but Lot C has only one acre of developable area. A swap would require a major reconfiguration. Re-routing traffic would affect the south. The elderly housing would no longer be contiguous with the clubhouse; instead it would face the Nashua Corp. property and the railroad. The original CUP plan has better buffers.

Chairman Best suggested that, in future lot line consolidation presentations, applicants submit a plan showing the existing configuration of lots as well as one showing the proposed layout.

Attorney Brad Westgate, Winer & Bennett, explained the existing and proposed configuration of lots to the Board.

Tom Zajac said there would be a 400' driveway extending from D.W. Highway across from Harris Pond Drive with a cul-de-sac at the end to calm traffic. The drive, called Benning Court, would be a private road whose maintenance would be shared by the lot owners. Pioneer Way would loop around with a cul-de-sac at the end. Residential building 1 would be a four-story elderly housing building with 76 units and 116 parking spaces, 44 of which would be in a garage underneath. Access would be both from Pioneer Way and Benning Court. The three other residential buildings would be multi-family apartments that would rent at market rates. Combined, they would have 156 units and 287 parking spaces, 78 of which would be in garages underneath. Pioneer Way would be the access to the multi-family apartments. Also constructed in Phase 1 would be a clubhouse, patio area, fenced dog park, sidewalks and pedestrian ways that cross D.W. Highway at a signalized intersection.

The applicant did not specifically submit a parking waiver request. Staff notes that the Board can determine that a waiver is not required based on the flexibility offered by the Conditional Use Permit process, or that a waiver is required. The applicant has provided 287 parking spaces where 393 are required. If necessary, 100 spaces could be built where the dog park is planned,, but they are not currently shown.

There would be a garage under each building and sprinklers and fire lanes at all buildings. Because the reinforced grass fire lane is not acceptable to the Fire Department, the applicant will explore other options. Steve Pernaw updated his traffic analysis at the November 2018 meeting. He stated that the existing three-way intersection should be made into a four-way intersection and that the road would continue at Service Level B. The plan will be submitted to NH Department of Transportation (DOT). New utilities would be installed as well as a new sewer connection across D.W. Highway at the north. Small storm water treatment areas would promote recharge. Infiltration basins would discharge to Pennichuck Brook.

Adam Wagner, Market Square Architects, showed perspectives of the proposed buildings. There would be four frame apartment buildings whose looks would be geared to young professionals. They would have a masonry base with lighter materials above. Parking would be separated from the residential floors by concrete and/or steel. The roofs would be flat. Adam Wagner explained that air conditioning and mechanicals on the roofs would be hidden by a parapet. The condensers are small and would be clustered in the center, making them difficult to see. The clubhouse would have a pitched roof.

Tom Zajac agreed to add a sidewalk from Pioneer Way to the clubhouse. Chairman Best said the slope must be reasonable in order for the elderly to be able to walk it.

Tom Koenig did not think the buildings were integrated.

Chairman Best recommended installing a second sidewalk on the other side of the clubhouse for building 2.

Tom Zajac said there would be four dumpsters in concrete enclosures that would be privately serviced once or twice a week. He explained the access to the dumpsters at each building. Chairman Best instructed the applicant to label dumpsters and anything else on the plan.

Fire Marshal John Manuele does not know how well reinforced grass would work in a New England winter with frost heaves or on the slope. There are no data saying they would last. He does not want to risk it.

Staff recommends that the Board vote to accept the applications, as they are 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 both the consolidation/subdivision and site plan applications for review, on a motion made by Alastair Millns and seconded by Nelson Disco.

Subdivision application discussion:

There was no public comment on the subdivision plan.

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

The Board voted 6-0-0 to grant final approval to the subdivision application, with the following conditions, on a motion made by Alastair Millns and seconded by Nelson Disco.

1. The applicant shall obtain final approval for the associated Edgebrook Heights Mixed Use Conditional Use Permit prior to final approval (and any plan signatures by the Chair and Vice Chair) of this subdivision;

2. 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;
3. The applicant shall obtain all required State approvals/permits, note the approvals/permits on the final plans and mylars and provide copies to the Community Development Department;
4. The applicant shall note all waivers granted by the Board on the final plans and mylars (including Section, and date granted) as applicable;
5. The applicant shall provide draft copies of any applicable legal documents for review, at the applicant's expense, by the Town's Legal Counsel;
6. The applicant shall address any forthcoming comments from the Assessing Department, as applicable;
7. The applicant shall address any forthcoming comments from the Building Department, as applicable;
8. The applicant shall address any forthcoming comments from the Wastewater Division, as applicable;
9. The applicant shall address any forthcoming comments from the Fire Department, as applicable;
10. The applicant shall address any forthcoming comments from Pennichuck Water as applicable;
11. The applicant shall address any conditions made by the Planning Board during the public hearing;

Staff also recommends that the following general and subsequent conditions be 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 obtain right-of-way permits from the NH Department of Transportation for all new driveways.

Site Plan Application discussion:

It was the consensus of the Planning Board that the applicant should submit a formal parking waiver request for the Board's consideration.

Tom Zajac said the roads would be constructed to Town standards. Although the 2014 CUP listed Benning Court as a public road, the Public Works Department (PWD) did not

support it. It would now be a private road that could easily be converted to a public road. Pioneer Way would bisect and loop around, so it could not become a public way without serious effort. Emergency vehicles would turn around at the bottom of the hill.

Chairman Best asked whether building a dog park so close to the river would create environmental issues. Tom Zajac replied that PWD wants storm water treatment to address dog waste pollutants, and install signs and disposal receptacles. They would be on the plan.

Tom Zajac described the sewer location and where waste would go. He will ask to remove the sewer easement at the back of the property and to tie into the one at D.W. Highway. He showed the location of the pump station, which would be in the landscaped buffer area.

Public comment on the site plan application

Richard Foote, 129 Indian Rock Road, characterized the project as more “urban sprawl” the Town will pay for (e.g., police and fire services).

Bob Simonds, SMC Management, said owners would have to submit their dogs’ DNA. If they do not pick up waste, the first offense is a fine of \$150, the second is \$250 and the third is eviction. There would be a dog wash station at each residential building. Over 70% of their tenants across their other properties have pets. SMC is trying to identify how to treat urine stains in grass. There would be sprinklers throughout the property. Natural fertilizers and Green SnoPro certified snow removal contractors would be used.

Tom Zajac met with the Lower Merrimack River Local Advisory Commission and the Merrimack Conservation Commission. He has submitted a landscape plan. For the next meeting, he will devise a snow storage and removal plan, submit a formal parking waiver request, address building and sidewalk connectivity, and change the lighting plan to include LED/full cut-off fixtures.

Bob Simonds explained why he would not install blue emergency lights on poles. There would be video cameras on the buildings’ exteriors and appropriate lighting.

Tom Zajac referred to the third-party agreement about buffers. There would be a fence and berm on the property line between the residences and Nashua Corp. and behind Lot A in Phase 1. Some land may have to be cleared and a D-3 buffer installed. Tom Zajac did not want to commit to a specific buffer; he will decide before final approval. Chairman Best suggested showing the options at the next meeting.

The Board voted 6-0-0 to continue the site plan application to February 5, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Alastair Millns and seconded by Nelson Disco.

- 6. Mark Rivet (applicant/owner)** — Continued review for consideration of a site plan for the construction of a 1,920 s.f. garage and function room addition and associated site improvements. The parcels are located at 425 Daniel Webster Highway in the C-2 (General Commercial) and Aquifer Conservation, Flood Hazard Conservation,

Elderly Housing and Town Center Overlay Districts. Tax Map 5D-4, Lots 077 & 078. **This item is continued from the September 4, October 2, November 13, and December 18, 2018, meetings.**

The applicant did not realize that revised plans had to be submitted last week. He agrees to provide the Planning Board with another 65-day extension.

The Board voted 6-0-0 to continue this item to January 22, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Alastair Millns and seconded by Nelson Disco.

- 7. WiRed Barn, LLC. (applicant/owner)** – Continued review for acceptance and consideration of a waiver of full site plan review for a change of use to allow a dog boarding and daycare business in addition to the existing residential dwelling. The parcel is located at 3 Wire Road in the C -2 (General Commercial), Flood Hazard Conservation and Aquifer Conservation Districts. Tax Map 2B, Lot 293-01. **This item is continued from the December 18, 2018, meeting.**

The applicant needs time for more research concerning several items discussed with staff.

The Board voted 6-0-0 to continue this item to January 22, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Alastair Millns and seconded by Dan Ricker.

- 8. P&L Landscaping (applicant) & Siam 04 Realty, LLC. (owner)** – Review for acceptance and consideration of a waiver of full site plan review to permit employee parking for an off-site landscaping business in addition to the existing on-site restaurant use. The parcel is located at 75 Daniel Webster Highway in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 2D, Lot 028.

The proposal seeks to designate 23 existing parking spaces as employee parking. No site changes are proposed. The moving business that was operating on site has been ordered to remove everything from the site by January 13.

Eric Brand, Owner, P&L Landscaping, said parking would be in the rear and away from restaurant patrons. The use is different but there is no change in the plan. There is enough parking for both the restaurant and P&L Landscaping employees. There would be no large vehicles, just 23 spaces for personal vehicles. This is a continuation of what has always been done. There is striped gravel in the back of the parking lot, the brush was trimmed and “no parking” signs placed on the side.

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 Alastair Millns and seconded by Nelson Disco.

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

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 6-0-0 to grant final approval, with the following conditions, on a motion made by Alastair Millns and seconded by Nelson Disco.

1. Final plans to be signed by all property owners;
2. 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;
3. The applicant shall address any forthcoming comments from other Municipal Departments, as applicable;
4. The applicant shall address any forthcoming comments from the Conservation Commission, as applicable;

The following general and subsequent condition is also placed on the approval:

1. The existing, unapproved moving business and its associated tractor trailers shall be removed from the property by the previously-established deadline of January 13, 2019.

9. John Flatley Company (applicant) & Gilbert Crossing, LLC & John J. Flatley (owners) – Review for consideration of an amendment to a previously approved Mixed Use Development Conditional Use Permit. The parcels are located at 645, 673, 685, 703, and 707 Daniel Webster Highway in the I-1 (Industrial), Aquifer Conservation and Wellhead Protection Districts. Tax Map 6E, Lots 003-01, 003-03, 003-04, 003-05, and 003-06.

Robert Best recused himself from discussing and voting on this item. Alastair Millns assumed the chair.

The applicant requests that the Planning Board amend the CUP approval to remove the requirement for a vehicular and pedestrian connection to the proposed second phase (commercial development located just south of the Saint Gobain driveway, as was conceptually presented to the Board in November 2018) of the mixed-use project. The Board and Community Development staff has previously agreed that the development agreement and 2014 conditions of approval for the mixed-use development **require** that this connection be made as part of the second phase of the project as currently approved.

Chad Branon, Civil Engineer, Fieldstone Land Consultants, said the applicant believes that he is observing the development agreement and that a connection is not required. There is a new conceptual plan for that portion of the property. It is unreasonable to make a 2,300' connection to the residential development. Substantial commercial development is anticipated. There is a market for smaller retail use, which should be placed at the narrowest section of the property. Larger uses would be in the larger portions. A pedestrian connection could be built, but the applicant cannot pay \$1.5 million for a 2,300' road that may have to be removed. If he has to build it, the project cannot go forward. There is no change to the master plan; there will be connectivity and the development agreement will be followed. Phase 2 of the CUP master plan has no specific connectivity requirement.

Nelson Disco disagreed with the applicant and agreed with staff. An integrated total development plan for a mixed use was always contemplated. Chad Branon said the overall plan is an integrated plan, but he wants to phase the approach for getting there.

Kevin Walker, Project Manager, John Flatley Company, said it would be a waste to build 2,300' of road without knowing what would be going in there. There would be an entry and exit onto D.W. Highway at each pod rather than just one exit at each end of the project. The large portion could be moved, for example. There are too many unknowns. Some leeway is needed for the building and road placements.

Tom Koenig noted that this is the third or fourth CUP/mixed-use project that came to the Planning Board wanting to build the residential portion first. In this case, the Board approved building four out of the five residential buildings with nothing else on the lot. He is concerned that the project would not have an internally integrated aspect if people have to fight traffic on D.W. Highway to get to the retail/commercial portion.

Kevin Walker said he would build out the site one pod at a time. There is a 50% chance that he would have to rip up a \$1.5 million road and move it to another location, at a big box store's request, for example. This will be a high quality, full size development on 100 acres. He thinks that this is a good plan. The cost of the road is extreme and he does not know where it would end up on a permanent basis. He can install a lined gravel walkway.

Tom Koenig suggested waiting before building the fifth residential building until it is known where the other buildings and roads would go.

Chad Branon said a pedestrian walkway is reasonable. He did not want the Board to formalize a road that might restrict a business or to change what the applicant can bring into this project. Kevin Walker said he is going above and beyond what he needs to do on the site, (working with the NH Department of Environmental Services [DES], for example). The connection may be better on the D.W. Highway side of the potential big box building.

Neil Anketell suggested a road along the property line to connect the rear to the retail plus a small side road in front to connect to them. Chad Branon explained why that option is not feasible.

Chad Branon talked to the Fish and Game Division, has an Alteration of Terrain Permit, and worked with DES about the Saint Gobain property. He must show them a reason to get so close to the Brook. He wants to hide the connection to the big box store so traffic would not drive into the residential site. It is all speculation at this time.

Kevin Walker said this residential use along with the condos across the street could attract retail tenants. Chad Branon added that it would be a vibrant area that would attract businesses. Flatley properties have a good reputation with potential retail establishments. Vehicular access and connectivity are the ultimate goal, but they would be phased.

Alastair Millns said it might be 5-10 years before installing the road. That does not serve the needs of the apartment residents. He doubted anyone would come into a big box store and agreed with Neil Anketell's suggestion to build a road that would hug the border at the rear of the site.

Fire Marshal John Manuele said that Phase 2 in the original plan was the fifth apartment building and commercial use. Both Phase 1 and 2 have incredibly good access, but the fifth apartment building requires a secondary egress, namely this road. Without it, he cannot support the fifth building.

Kevin Walker said that the original plan was for a road and parking on both sides of the apartments, a loop road with fire access for the apartments and multiple ways to the back buildings. The traffic report supports five apartment buildings with no adverse impact to D.W. Highway. It was never the intent to build 2,300+' of road without knowing what would go there. Everything is being made as safe as possible. A gravel way could support a fire vehicle and provide secondary access.

Kevin Walker suggested that the Planning Board schedule a site walk and continue this item to another date. If he has to make the road, he cannot do the project.

Fire Marshal Manuele said he would have to see the plans for another type of road. There must be an adequate secondary access.

Public comment

Katy Poirier, 11 Kimberly Drive, lives at Webster Green. She did her own traffic comparison by selecting DOT data for two random dates in one month, on which there were 2,000 and 6,000 more vehicles. This project would add more traffic to a congested area. DOT will not allow Webster Green to have a traffic light, even if it paid, because the light would be too close to the one at the bowling alley. Katy Poirier asked where a second access would be located.

Alastair Millns said that the applicant's traffic study was done in 2014.

Ashley Tenhave, 75 Shelburne Road, also lives at Webster Green. Residents cannot get out of their development in the morning or back in at night. The proposed access would be opposite Webster Green. In her opinion, residents of the apartments would not want to go onto D.W. Highway, where traffic is terrible. It recently took a fire truck 15 minutes to get to Webster Green. Without a new road, it would be a mess. A

pedestrian-only access is not sufficient. No one would carry shopping bags on a 2,300' gravel road.

Jan Jones, 76 Shelburne Road, reiterated that vehicles cannot get onto D.W. Highway from Webster Green in the morning.

Chad Branon said Flatley would make a significant amount of off-site improvements requested by DOT, which approved the traffic study. Traffic studies review traffic over a period of time, not just one day. Without the commercial component, people in the apartments would go onto D.W. Highway to shop and go to a restaurant. Traffic will be addressed during the site plan review process.

Kevin Walker said the road would be widened, there would be left turn-only lanes southbound, a new connection at the center, and a new traffic signal. However that may be dependent on what goes in. Chad Branon said DOT has specific things it wants the applicant to meet in order to install a signal.

Kevin Walker could not answer Nelson Disco's question about whether Flatley would forgo erecting the fifth apartment building now so it would not have to make a connection and still satisfy the Fire Department. A gravel connection would work; it could be turned into a parking lot later if necessary.

Alastair Millns asked whether Flatley would build a secondary access road if the fifth building were approved. Chad Branon replied that a gravel road could support a fire truck. Tom Koenig and Nelson Disco agreed that would meet the intent and minimum CUP requirements.

The Planning Board suggested that staff, the Fire Marshal and the applicant meet to discuss the issue and to return to the Board with their joint recommendation.

The Board voted 4-1-0 to continue this item to January 22, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Tom Koenig and seconded by Nelson Disco. Dan Ricker voted in opposition.

Alastair Millns relinquished the chair. Robert Best resumed the chair.

10. Discussion/possible action regarding other items of concern

Chairman Best informed the Board of House Bill 104 that proposes to create a three-person board to hear appeals of decisions by local land use boards as a faster alternative to going to Superior Court. Alastair Millns opposed the legislation, noting that an existing appeal must be resolved first. After that, anyone at all could object, causing the case to go on for years and prevent a project from going ahead. Chairman Best was also opposed. He said the alternative would not be faster and cheaper than going to Superior Court. Three people do not deliberate faster than 10 people; they may not make the 90-day deadline. The Attorney General's office advocates; it is not an adjudicator. Members of the proposed board would work 20 hours a week and could not accept other similar employment, yet one must be an engineer. What engineer would do that? There is no stated pay rate. It would cost double the filing fee for Superior Court. Allowing the board to make a "remedy" rather than referring an issue

back to the local board takes away local control. The legislation does not say whether one can appeal or have an attorney. Nelson Disco was also opposed. He said one member must be an attorney, one a retired judge and one a professional engineer, which is unworkable. Tom Koenig explained that it was member Bill Boyd rather than Town Council who wanted the Planning Board's and Town Manager's opinion first. Chairman Best said the Business and Industry Association (BIA), is the sponsor. It is interested in workforce housing and wants planning boards to consider it. However every abutter could appeal as a way to squash a project. Alastair Millns said the board could be mischievously misused. Chairman Best noted that this is called a "housing" appeals board, yet the Planning Board hears very few housing cases. They are mostly commercial and industrial. The House previously defeated a similar bill. The NH Senate is working on a better version.

Tom Koenig will inform Town Council that Chairman Best will submit a letter stating that the Planning Board opposes the proposed legislation, depending on the results of the bill's scheduled hearing before the legislative committee on January 9, 2019.

NeighborWorks Southern NH requires an extension of their conditional approvals (lot line adjustment and site plan). The project requires an Alteration of Terrain, Shoreland and Sewer Discharge permits to be issued by NH DES. These items are currently pending and will require additional time once DES has reviewed each application.

The Board voted 6-0-0 to grant NeighborWorks Southern NH a six-month extension of its lot line adjustment application and site plan conditional final approvals, on a motion made by Alastair Millns and seconded by Nelson Disco.

Chairman Best noted that the March 5, 2019, Planning Board meeting conflicts with the School Deliberative Session and asked whether the Board wanted to cancel it.

The Board voted 5-1-0 to keep its March 5, 2019, meeting as scheduled, on a motion made by Alastair Millns and seconded by Nelson Disco. Tom Koenig voted in opposition.

Chairman Best informed the Board the annual meeting of the Planning Board Chairman with Town Council is scheduled for May 9, 2019.

Tom Koenig will urge Town Council to put the membership fee for the NH Municipal Association in this year's budget.

11. Approval of Minutes — December 18, 2018

The minutes of the December 18, 2018, meeting were approved as submitted, and the minutes of the December 29, 2018, site walk were approved, with amendments, by a vote of 5-0-1, on a motion made by Alastair Millns and seconded by Nelson Disco. Tom Koenig abstained.

12. Adjourn

The meeting was adjourned at 10:56 p.m., by a vote of 6-0-0, on a motion made by Alastair Millns and seconded by Dan Ricker.