



Town of Merrimack, New Hampshire

Community Development Department

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Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MERRIMACK PLANNING BOARD

JULY 21, 2015

MEETING MINUTES

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, July 21, 2015 at 7:30 p.m. in the Matthew Thornton Room.

Chairman Robert Best presided:

Members of the Board Present: Alastair Millns, Secretary
 Desirea Falt
 Councilor Thomas Mahon
 Nelson Disco, Alternate
 Jeff Sebring, Alternate

Members of the Board Absent: Lynn Christensen
 Michael Redding

Also in Attendance: Jillian Harris, Planning & Zoning Administrator

1. Call to Order

The next meeting of the Planning Board will be conducted on Tuesday, August 4, 2015 at 7:00 p.m. in the Matthew Thornton Road. A portion of that meeting will be a joint meeting with the Conservation Commission.

Chairman Best appointed Nelson Disco to sit for Michael Reading and Jeff Sebring to sit for the vacant full member position.

Chairman Best informed the viewing audience, at the request of the Applicant, Item #4 on the agenda would be continued to the August 18th meeting.

2. Planning & Zoning Administrator's Report

Jillian Harris, Planning & Zoning Administrator, reminded the Board and viewing audience of the change in meeting times for the Board starting in August; from 7:30 p.m. to 7:00 p.m.

Proposed amendments to Zoning Ordinance (Sections 1, 2 and 17) relative to medical marijuana were introduced by the Town Council on July 18th. The Planning Board Public Hearing for recommendation to the Town Council will be conducted on August 18th. The Public Hearing by the Town Council is scheduled for August 20th.

- 3. Button Homes, LLC. (applicant) and Donna Kazmirchuk (owner)** – Request to amend previously granted conditional approval from the April 7, 2015 Planning Board for a minor subdivision of one lot into two single-family residential lots located at 71 Bedford Road in the R (Residential) and Aquifer Conservation Districts. Tax Map 6D, Lot 090. ***This item is continued from the June 2, 2015 Planning Board meeting.***

Planning & Zoning Administrator Harris stated, at its June 2, 2015 meeting, the Board gave the Applicant the option of submitting a drainage analysis with peer review, to ensure compliance with regulations, in lieu of obtaining the required easement from the original approval. The Applicant has elected to take that option. A drainage analysis addendum has been submitted and received CLD peer review comments. Staff recommends the Applicant obtain flow easement rights as recommended in the peer review.

Mr. Brian Button, 7 Evergreen Lane, Amherst, NH, stated the drainage analysis was done, and a new drawing completed. They are agreeable with granting each lot a flowage easement, which is needed for the new culverts.

No questions were posed by members of the Board.

Chairman Best opened the floor for public comment at 7:36 p.m.

Public Comment - None

Chairman Best declared the public hearing closed at 7:36 p.m.

**MOTION BY MEMBER MILLNS TO GRANT FINAL APPROVAL, WITH THE FOLLOWING PRECEDENT CONDITIONS (TO REPLACE THOSE FROM THE APRIL 7, 2015 APPROVAL) TO BE FULFILLED WITHIN SIX MONTHS AND PRIOR TO PLAN SIGNING, UNLESS OTHERWISE SPECIFIED NOTING 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
MOTION SECONDED BY MEMBER FALT**

1. Final plans to be signed by the Applicant and Property Owner;
2. Any waivers granted shall be listed with the section number and date of approval on the Final Plan;
3. Applicant to provide flowage rights easement as recommended by staff and CLD peer review comments, in a form acceptable to the Community Development Department and Town legal counsel;
4. Applicant shall obtain a variance from the Zoning Board of Adjustment for structures to remain within the 25' no-disturb wetland buffer per Section 2.02.7.A.7(b) of the Zoning Ordinance (or remove the structures prior to issuance of any Building permits for the 2 lots);
5. Applicant shall address the following comments from the Department of Public Works:
 - a. The proposed sewer easement is on property owned by Bedford Road Baptist Church – the easement is not to be granted to the Town as it serves to connect sewer service from the house;
 - b. In accordance with Section 4.18, bounds need to be installed at all appropriate points along Bedford Road;
 - c. Where the property line is less than 25' from the centerline of Bedford Road, a sight distance easement of 25' from Bedford Road centerline shall be granted to the Town;
 - d. In accordance with Section 4.12, the sight distance shown on the plans should be a minimum of 275' but 325' is desired;
6. Address comments from the Fire Department, as applicable, including future addressing requirements;
7. Address comments from the Conservation Commission (as applicable);
8. Address bulleted items from page 3 of CLD peer review memo ("suggested items to be provided/updated/corrected for the record");
9. Address planning staff technical comments

Planning Staff Technical Comments

1. Applicant to add a note to the plan indicating which sheets are to be recorded at HCRD and that a full set is on file with the Community Development Department;
2. Applicant to clarify Note #6 on Sheet 1 to correct grammar and clarify intent.

General and Subsequent Conditions

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. Address the following comments from Merrimack Village District:
 - a. When the applicant is ready they need to come in and fill out the entrance application, pay their Entrance Fee and SDC charge, and we can schedule when to install the service.

**MOTION CARRIED
6-0-0**

4. **John J. Flatley Company (applicant/owner)** – Review for acceptance and consideration of Final Approval of an application for a site plan to construct 240 multi-family residences, clubhouse, and associated parking and drainage improvements, per the requirements of the Flatley mixed use Conditional Use Permit. The parcels are located at # 645, 673, 685, 703 and 707 D.W. Highway in the I-1 (Industrial), Aquifer Conservation and Wellhead Protection Districts. Tax Map 6E, Lots 003-01, 003-03, 003-04, 003-05 & 003-06. ***This item is continued from the June 16, 2015 Planning Board meeting. – Applicant has requested a continuance to August 18, 2015.***

Chairman Best noted the reason for the continuance is to provide the Applicant ample time to address comments by the reviewing engineering as well as to receive input from the review by the Merrimack Village District (MVD). The applicant also needs to complete the approval for the Conditional Use Permit which would allow the project to move forward.

**MOTION MADE BY MEMBER MILLNS TO CONTINUE THE ITEM TO THE AUGUST 18, 2015 PLANNING BOARD MEETING AT 7:00 P.M. IN THE MATTHEW THORNTON ROOM WITH NO FURTHER NOTIFICATION TO ABUTTERS
MOTION SECONDED BY MEMBER DISCO**

**MOTION CARRIED
6-0-0**

5. **Edgebrook Heights, LLC. Wigston Properties, LLC and Q. Peter Nash 1987 Rev. Trust I (co-applicants/co-owners)** – Review for consideration of a six month extension of a previously approved Conditional Use Permit to permit a future mixed-use development consisting of retail, office, multi-family residential and assisted living. Parcels are located at # 1, 37, 39, 55 and an unnumbered parcel, D.W. Highway in the I-1 (Industrial), Aquifer Conservation and Flood Hazard Conservation Districts. Tax Map 1E, Lots 004-01 & 004-02 and Tax Map 2E, Lots 006-02, 007 & 008.

Planning & Zoning Administrator Harris stated the Applicants have requested an extension to meet the precedent conditions of approval, which were approved on August 19, 2014.

Brad Westgate, Esq., Winer and Bennett, LLP, stated he has been representing Edgebrook Heights and the other co-owners of the property in this project, and noted one of the principals of Edgebrook Heights, LLC, Mr. Bernard Plante, was in attendance.

Attorney Westgate stated on August 19, 2014, the Planning Board approved the Conditional Use Permit (CUP) for the mixed-use project to be known as Edgebrook Heights. One of the components of the approval was that certain precedent conditions be satisfied within 12 months of approval and prior to the Planning Board endorsing the plan. A request was made for a 12-month extension of the 12-month timeframe to meet the precedent conditions of approval. If granted, the expiration date for conditional approval would be August 19, 2016.

Attorney Westgate stated after the CUP was approved, within the 30-day appeal period, NIP Owner and Nanocomp Technology appealed the CUP decision to the Superior Court. That Appeal is pending. The Town is a party to the Appeal and Edgebrook Heights, LLC an intervener. The parties all agreed that Appeal would be stayed until a further determination was made regarding the northerly access, which is really the core component of the Appeal. Their concern is regarding the use of that northerly access because of how Nanocomp and NIP Owner presently use it. Not to hold up unnecessarily process litigation, the idea was that issue will be addressed when a Site Plan for that particular lot comes in.

The requested extension is not related to that particular issue, it simply has to do with the timeframe for the Applicants to satisfy the precedent conditions.

The staff report recommends granting the extension noting no changes have occurred to the Ordinance or regulations that govern this since it was granted last year. Attorney Westgate noted the report also mentions the status of the Appeal, which does frustrate getting some of the conditions set. He stated they are very close to having an arrangement with the perspective developer of the multi-family lot and the assisted living lot. It is anticipated the Applicants will come before the Board in the near future with a request for an amendment to the CUP due to design differences that will likely be contemplated by that developer. He commented they remain mindful of the mixed-use concept, the non-residential component, and the phasing aspect.

Attorney Westgate remarked when looking at the precedent conditions that are part of what is contemplated to have been addressed within the 12-months of approval, it can be seen as somewhat of an academic exercise to try to address them now, and doing so would result in duplication of efforts. He suggested it to be sort of pointless to impose upon staff to deal with analyzing the conditions and their satisfaction when it is known amendments to the permit are likely.

Member Disco requested clarification the CUP was what was being discussed. Attorney Westgate stated that to be what was in front of the Board. However, technically, it is not an extension of the two-year term of the permit. Member Disco remarked there has been discussion of the possibility of changes when the Site Plan is solidified. Attorney Westgate stated that to be correct, and added, if what they believe will come together does in fact come together for the multi-family and assisted-living lots, there is likely to be a little bit of a lot line shift involving those lots. There is the potential for a change in layout on the multi-family side of things, which would require an amendment to the permit and for the project to then be processed as a normal full blown site plan. Member Disco noted that would result in two reviews. Attorney Westgate remarked they are mindful that site plan review has to occur on every lot.

Member Millns stated it appears they are sort of pushing ahead with the residential and assisted living pieces, but he didn't hear that they were pushing ahead with the commercial side. Although the comment was made that they are mindful of it that does not mean much to him. He stated the Board would not buy into that without something occurring on the commercial side. Another statement he was not pleased with was related to holding off on the Appeal regarding the shared access. He stated he was not indicating he would not agree with what was being asked, but was bothered by what was said.

Attorney Westgate responded with regard to stating they are mindful of the commercial aspect, he did not mean to come across as indicating they would think about that later maybe when they have time; he meant it is very much in the forefront of their thinking that presently the first phase requires a non-residential component to the project. That was debated a good deal last year, but they have not lost sight of it. It is clear that is a necessary component of the first phase. They fully recognize that.

With regard to the access issue, Attorney Westgate stated the best way that comes to conclusion is the detailed site plan for that particular lot because then the abutter knows what is being planned and can react to that. He commented the abutters have multiple avenues of appeal that remain available to them. To try to solve the issue now with a theoretical design of that access is not the best way as opposed to a concrete design of that particular lot site.

Chairman Best remarked, on the second issue, he is in complete agreement with Attorney Westgate. When a site plan comes forward it could be that the issues are resolved.

Member Sebring requested a summation be provided of what the major phases are expected to be, and when it is believed they would be completed. Mr. Plante responded It is expected the first phase would consist of the assisted living, the multi-family, and one of the commercial lots (perhaps in the next 60 days). Assuming conditional use, site and subdivision approvals for the first phase could be completed by the end of the year, construction is expected to commence in earnest on those structures by June 1, 2016. The anticipated timeframe for completion is 18 months. Chairman Best commented those kinds of expectations are always subject to change.

**MOTION BY MEMBER FALT TO GRANT A 12-MONTH EXTENSION EFFECTIVE FROM THE PREVIOUS EXPIRATION DATE OF AUGUST 19, 2015 MAKING THE NEW EXPIRATION DATE FOR THE CONDITIONAL APPROVAL AUGUST 19, 2016
MOTION SECONDED BY MEMBER SEBRING**

**MOTION CARRIED
6-0-0**

- 6. Keach-Nordstrom Associates, Inc. (applicant) and Valleyview Revocable Trust, Carol Maggio, Trustee (owner)** – Reconsideration of the Planning Board's June 16, 2015 decision to deny applicant's request to reinstate conditional final approval and a six month extension for compliance with conditions of an approval granted by the Planning Board on July 23, 2013 and July 8, 2014 to subdivide one lot into two single-family residential lots located at 15 Valleyview Drive in the R (Residential) District. Tax Map 5C, Lot 142.

Planning & Zoning Administrator Harris stated the Applicant is seeking reinstatement of approval for the two-lot subdivision, which the Board decided to reconsider on July 7, 2015. The Staff Memorandum provides a very detailed project history for the Board's consideration.

Chairman Best stated his view the vote to reconsider was based on the fact that when the Board decided not to grant the six-month extension the first time it had incomplete or incorrect information as to what the Applicant had accomplished in terms of the conditions of approval.

Patricia Panciocco, Esq., Baroff Professional Association, stated a Variance was granted by the Zoning Board of Adjustment in 2012 regarding the lot depth. The properties meet size and frontage requirements of the Town's regulations. The plan was originally approved on July 23, 2013 and was subject to a number of administrative conditions, which were not met. As a result, approval expired in January of 2014. The Board reinstated the approval in July of 2014, imposed the same conditions, and added other conditions related to the Administrative Approval from 2012. There was also a requirement that the Applicant come in approximately two months later for a compliance hearing regarding the additional conditions related to the 2012 Administrative Approval.

The July 15, 2015 Staff Memorandum states on 11-7-14 "Precedent conditions of approval for 2-lot subdivision not completed, 2-Lot Subdivision Approval Expires For 2nd Time". However, when last before the Board, it was relative to the conditions related to the Administrative Approval from 2012 that were not met. The conditions that were imposed on the two-lot subdivision from July of 2013 were met. The July 15, 2015 Staff Memorandum also states in part: "In fact, the mylars and final plan sets were received in late October 2014."

Attorney Panciocco stated she had with her copies of the transmittal memo from Keach-Nordstrom Associates, Inc. The memo confirms those plans were hand delivered on October 9th; almost a month before the approval of the two-lot subdivision expired. In June, the Board denied a request that the approval be reinstated, but as was previously stated by Planning & Zoning Administrator Harris, the Board agreed to reconsider that denial in early July.

Attorney Panciocco requested the Board approve the two-lot subdivision stating the conditions have been met. She stated her belief staff recommended the plans be available for the Board to sign after the meeting for recording because conditions related to that approval were met.

Chairman Best opened the floor for public comment at 7:58 p.m.

Public Comment

Dave Hammond, 18 Valleyview Drive

Commented what stuck out to him in the letter he received regarding this meeting was July 23, 2013, which was nearly two years ago when the application was approved and extensions began. He commented it was news to him that all conditions were satisfied in October of 2014. Regardless, it took nearly a year and a half before it was completed. There were a lot of things that did get done in that year and a half timeframe; three houses were built and sold. These issues do not become a priority to Mr. Maggio until he is ready to move on to his next phase in the project. Here we are today; the house that is on that lot now is just about done. Here we are again; it is being

stated everything has been done, just because he is ready to move on not because he got the effort done in a timely manner and to meet the requirements of the Board.

Mr. Hammond requested the Board remain tough and stand behind the decision that was made last month.

Chairman Best noted last month when the Board made the decision to call the bond that put the emergency access road extension in the Town's hands for completion. He questioned if any work has been done on that. Mr. Hammond responded nothing has been done. When asked if Mr. Maggio has removed his equipment from the site, Mr. Hammond stated there is no equipment by the road, it is all on the lot that is currently under construction.

When asked if he still has the sign in his front yard, Mr. Hammond stated he does not. However, his issues have not been resolved. Since the last meeting things have changed a little bit, and the sign may be going back up.

Shauna Amick, 11 Valleyview Drive

Stated the access road is not an access road but a two-way Town road. That is what it is used for. She commented she is curious to learn how that could be approved; what conditions needed to be met in order to get a Town road that is not enforceable as an access road. She questioned if there was incorrect information given during the process that would permit such a road. She stated if you were to go to the site of the road you would be able to see the road grade, the curve, and the incline, which creates several blind spots.

The incline encourages motorists to go up the hill very fast. Not only are motorists traveling at a minimum speed of 40 mph up a one-lane road that is used for two-way traffic, they are traveling at that speed around a curve where there is no sight distance. Ms. Amick commented on the amount of pedestrian traffic on the access road, and stated a safety concern.

She stated her understanding the decision to put a gate on this road would be made by another committee. Chairman Best stated there are a lot of moving pieces involved. The road is an emergency access road because of the physical dimensions of it. If Mr. Maggio had been able to acquire the property rights necessary to build it wider like a full Town road, he could have proposed that and then asked the Town to accept it as a Town road. He did not have the ability to do that so he built an emergency access road, which the Board gave him permission to do.

The emergency access road ultimately, after approved and built, has to be accepted by the Town, which is a function of the Town Council. Determining how to enforce it as an emergency access road is sort of the last piece of the puzzle. Chairman Best stated he is aware the Police Chief has requested an action item before the Town Council to consider amendments to ordinances to allow the ability to enforce it as an emergency access road.

The original decision regarding whether or not to gate the emergency access road was at the recommendation of the Fire Department. The Fire Department is looking at it from the perspective of, if an emergency access road, gating it does not serve that function well. That is consistent advice they have given for virtually every application he has seen with a gated access save for one, which is the outlet mall.

That does not mean that it can be a two-way Town road, and it shouldn't be. Chairman Best stated his belief the Police are doing what they can, through the Highway Safety Committee, to get the authority to actually ticket motorists for driving on it because it is an emergency access road. He stated his belief that would involve signage. He remarked he is kind of pleased with the comments that if we can keep cars off of it, it is actually a good amenity for the community.

Ms. Amick stated her hope what has been stated regarding the direction the Police are taking is correct as that is not what she is hearing from that department. She spoke of a situation at the end of June where a large utility van would come from the other end of Valleyview Drive, using the access road, park in front of her house, stay in the van and look around for a long enough period of time where it became uncomfortable, drive down to the bottom of the hill, turn around, and go back up the access road to the other side. This occurred on a few occasions. She contacted the Police Department. The officer that responded explained to her they cannot enforce use of the road.

Councilor Mahon stated his recollection the Police Chief alerted the Town Council to the issue. The subject matter will likely be on the Town Council's August 20th agenda. He noted, without authority, through ordinance, the Police Department cannot provide enforcement.

Ms. Amick commented she, her husband, and their neighbors were told they could not put any kind of temporary barricade up to discourage motorists. She questioned how that could be enforced if traffic could not. Councilor Mahon stated his belief there is an ordinance that addresses obstruction of a roadway.

When asked about the process by which the Town Council would put such an ordinance in place, Councilor Mahon stated the process would take 7 weeks; if an ordinance is introduced for its first reading at the Council's August 20th meeting, it would go to Public Hearing at the Council's first meeting in September. The Charter requires a waiting period of at least 7 days before taking action on the issue. That would push final action off until the second meeting in September.

Ms. Amick noted there are signs at either end of the road that state emergency and authorized vehicles only, and others that say something along the lines of no outlet. Although she appreciates the comment that once the proper authority is made aware of a situation action can be taken, she has been speaking of this issue for over a year. Councilor Mahon responded until the Planning Board took the action of calling the bond, the Town Council had no authority. Having called the bond, the access road now belongs to the Town.

Ms. Amick reiterated her concern for the safety of the children and adults that utilize that access road for recreational purposes and the amount of additional time it will take to address the issue. She questioned the ability to change the process moving forward so that such an instance does not occur again within the Town. She commented it is great if 7 weeks after August 20th maybe we will get the Town in support of keeping its kids alive; maybe, maybe not, but that is 7 weeks after August 20th. That is a lot of time where there can be a fatal accident.

Chairman Best cautioned noting he understands there are kids out in the road and cars will come down it. Everyone that lives on one of the subdivision streets in Town notices cars very frequently going faster than they should on a subdivision road. You always want to do something about it and there is not really a whole lot you can do about it. Signs or an Ordinance or even the ability of the Police Department to enforce it doesn't prevent that from occasionally happening. Some of that has to be everybody else's responsibility to understand where you let your kids go to play.

Ms. Amick stated her understanding of that. She commented she has nowhere else to go, and feels like nobody is concerned about the residents of this street. It is not a subdivision, it is a dead-end that has no visibility and is being used as a two-way street. Chairman Best stated his concern. He added whether the Board reinstates a subdivision and allows Mr. Maggio to build a house doesn't change the situation with the access road. Ms. Amick stated her understanding of that.

Chairman Best declared the public hearing closed at 8:10 p.m.

Member Millns remarked he was brought up believing that a gentleman's word was his bond. He has always believed statements or commitments made to this Planning Board should be taken as a firm promise that could be taken to the bank. He commented he realizes the original approval was contingent on the completion of the road, without it being a formal condition of approval. It was known the two-lot subdivision depended on that emergency road being constructed. Mr. Maggio has not provided the road himself despite all of his promises and commitments. From Mr. Maggio, Anthony Basso, and Pete Julia from Keach-Nordstrom, the Planning Board has received promise after promise after promise.

He stated if Mr. Maggio hasn't kept his promise why should the Board keep its. He is aware the law, as explained to him, allows this to happen. He stated his personal belief the application should be denied purely on the grounds the Board has been misled from start to finish on this project.

**MOTION BY COUNCILOR MAHON TO GRANT THE REINSTATEMENT OF THE EXPIRED APPROVAL AND
AUTHORIZE THE CHAIR AND SECRETARY TO SIGN THE FINAL PLANS AND MYLARS
MOTION SECONDED BY MEMBER SEBRING**

**MOTION CARRIED
5-1-0**

Member Millns voted in opposition

Chairman Best stated he regrets having to provide that relief because he agrees Mr. Maggio has misled the Board. However, the Applicant has supplied the information that is necessary to complete his conditions of approval, which is all that is required of him.

- 7. Home Health & Hospice Care (applicant/owner)** – Review for Acceptance and consideration of Final Approval for a waiver of full site plan review for a proposed parking lot expansion for an existing two story office building. The parcel is located at 7 Executive Park Drive in the C-2 (General Commercial), Aquifer Conservation District and 100/500 year Flood Hazard Areas. Tax Map 4D, Lot 071.

Planning & Zoning Administrator Harris stated the Applicant was before the Board for acceptance and consideration of a Waiver of full Site Plan review for a simple parking lot expansion for an existing two-story office building. The Applicant has also requested a Waiver of sidewalks.

Earle Blatchford, Hayner-Swanson, Inc., stated the plan is a minor Site Plan for a small parking expansion. The existing site is a 2.4 acre C-2 (Commercial) lot located on the east side of Executive Park Drive. The lot was developed in the early to mid '80s, and has a two-story office building onsite. Originally both office buildings were developed at the same time on a single lot. It was subsequently subdivided. The remaining building is two stories and has 20,825 sq. ft. of commercial office space with 69 parking spaces.

The abutting lots are zoned commercial on the south, west, and north. The F.E. Everett Turnpike is on the east. The site has two access drives. The easterly end of the property is heavily wooded and slopes down to a deep ravine. Naticook Brook flows south of the site, but cuts across the southeasterly corner.

The proposed location for the additional parking spaces is in the flat, cleared area adjacent to the wooded area. The site has underground electricity and telephone, which was recently upgraded. There is a desire to minimize any tree cutting and to stay clear of the slope. Some reconfiguring will be done of the existing parking lot to make it more efficient. The net gain would be 27 parking spaces. The building is used as the headquarters for Home Health & Hospice Care, and the need for additional parking is great. They approached the Town to discuss options. Because Executive Park Drive was designed as a wide boulevard, and is wider than it needs to be, they inquired about parallel parking along the curb, which the Town was not in favor of. The proposed plan would result in approx. 8,000 sq. ft. of additional pavement area.

The proposed stormwater management design incorporates a closed drainage system consisting of a new catch basin, fitted with a gas trap, and underground pipes, which are connected to an underground infiltration trench system designed to comply with Merrimack stormwater design regulations. All runoff from the new pavement area will be captured and treated.

The project was before the Conservation Commission the prior evening. The Commission had a few minor comments, which will be addressed, and was in support of the project. Chairman Best stated the email received from the Conservation Commission states: "The Commission appreciates the Applicant's non-use of salt or deicing compounds. The Commission recommends that only no phosphate slow-release nitrogen fertilizers be used. Due to the vicinity of Naticook Brook, the Commission recommends no phosphates be used in any fertilizer applications. The Commission further recommends that the Applicant's contractor and later users first utilize a soil testing facility to determine what levels and application rates may be necessary before doing any applications of fertilizers onsite. The third comment is the Commission did not have a stormwater report to reference. Mr. Blatchford noted that there would be a net decrease in water leaving the site in the 50-year event. We ask the Town staff, in the planning process, review the report and let the Commission know if there are any items that may be of concern to the Commission."

Member Disco questioned how the new parking compares with the new parking requirements for this type of building. Planning & Zoning Administrator Harris responded they are required to have 70 spaces, and they would like to go above and beyond that. It was noted, if approved, the expansion would result in a total of 96 spaces.

MOTION BY MEMBER MILLNS TO ACCEPT THE APPLICATION FOR REVIEW
MOTION SECONDED BY MEMBER DISCO

**MOTION CARRIED
6-0-0**

**MOTION BY MEMBER DISCO TO WAIVE THE REQUIREMENT FOR FULL SITE PLAN REVIEW ON THE BASIS THAT THE SPECIFIC CIRCUMSTANCES RELATIVE TO THE SITE PLAN INDICATE THAT THE WAIVER WILL CARRY OUT THE SPIRIT AND INTENT OF THE REGULATIONS
MOTION SECONDED BY MEMBER SEBRING**

**MOTION CARRIED
6-0-0**

Chairman Best opened the floor for public comment at 8:33 p.m.

Public Comment - None

Chairman Best declared the public hearing closed at 8:33 p.m.

**MOTION BY MEMBER FALT TO WAIVE THE REQUIREMENTS OF SECTION 7.05.D.19 – SIDEWALKS NOTING SPECIFIC CIRCUMSTANCES RELATIVE TO THE SITE PLAN, OR CONDITIONS OF THE LAND IN SUCH SITE PLAN, INDICATE THAT THE WAIVER WILL PROPERLY CARRY OUT THE SPIRIT AND INTENT OF THE REGULATIONS
MOTION SECONDED BY MEMBER MILLNS**

**MOTION CARRIED
6-0-0**

**MOTION BY MEMBER MILLNS TO GRANT FINAL APPROVAL WITH THE FOLLOWING PRECEDENT CONDITIONS TO BE FULFILLED WITHIN SIX MONTHS AND PRIOR TO PLAN SIGNING, UNLESS OTHERWISE SPECIFIED
MOTION SECONDED BY MEMBER FALT**

1. Final plans to be signed by the Property Owner;
2. The applicant shall note any waivers granted by the Board on the plan (including Section, and date granted) as applicable;
3. The applicant shall submit a planting plan to the Community Development Department for administrative approval;
4. The applicant shall address the following comments from the Public Works Department:
 - a. The proposed drainage ties into the Town's public system. Although the drainage calculations indicate the design meets compliance with the Town regulations, the Public Works Department has some concerns about the design allowing more contaminants into the existing catch basin, which ties into the public system. The Public Works Department suggests having both catch basins flow initially to the infiltration trench so that the majority of storms (2 yr frequency rate) would infiltrate instead of flowing into the public system, which flows into Naticook Brook.
5. The applicant shall address any forthcoming comments from the Wastewater department (as applicable);
6. The applicant shall address any forthcoming comments from the Conservation Commission (as applicable);
7. The applicant shall address the following planning staff technical comments. (Below)

Planning Staff Technical Comments

1. Please remove the "Preliminary – Not for Construction" notes on all applicable sheets.

General and Subsequent Conditions

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;

ON THE QUESTION

Member Disco commented the conditions applied state the Applicant shall address any forthcoming comments from the Conservation Commission. The Conservation Commission has commented. He would presume the motion means CLD will review the drainage based on the Conservation Commission's comments.

Chairman Best noted the Conservation Commission's recommendation is for staff to review the submission. Mr. Blatchford stated the studies were submitted in the Waiver request. As part of the Waiver of Full Site Plan Review, the Applicant requested specifically waiver of peer review because of the small scale and simplicity. However, they did provide three copies of the study. He stated his understanding one of the copies was intended to go to the Conservation Commission.

Mr. Millns commented the Applicant noted the amount of water running off the site was reduced as a result of the project. Chairman Best agreed, and added the Conservation Commission requested the Town staff and planning process review the report and let the Commission know of any items that may be of concern to the Commission. They were not asking for outside peer review.

Member Disco responded he misunderstood. When asked, he stated understanding of the conditions stated, and that he would be pleased if staff conducted the review.

Mr. Blatchford informed the Board Kyle Fox, Deputy Director, Public Works Department (PWD)/Town Engineer, reviewed the study. He had a single request; to see if the Applicant could accommodate some of the runoff from the existing parking lot in the infiltration system. The 1 and 2 year storms are being looked at, which are typically the ones where the highest concentrations of sediment and constituents wash off. Those are the ones that are most effectively treated. The Applicant agreed to look at how much additional runoff could be accommodated in the infiltration system that has been designed for hose smaller storms. Deputy Director Fox indicated that was all he was looking for.

MOTION CARRIED 6-0-0

8. Discussion/possible action regarding other items of concern.

Member Millns remarked, in view of the saga of Valleyview Drive, he believes it might behoove the Board, at some point in time, to consider whether, in the event a bond is called, the Board has a further sanction that could be used to protect the Town and its citizens. Chairman Best stated agreement, and commented the way the project worked out was based on what was required by law, but he does not like it. He believes the Board should look to see what, if any, language within the regulations could provide the Board with different choices.

It was noted there have been other instances where bonds have been called. Member Disco stated his belief the Board would run into some issues of the law if it were to try to apply sanctions. Chairman Best remarked it may be that sanctions is not the right language, but there ought to be a way to address a development gone wrong for the best interest of others in the community. Even if the end result is staff and/or legal counsel determine there is nothing that can be added to the ordinances to change the situation, at least it would have been investigated and the Board would understand whether or not there are alternative actions that could be considered.

9. Approval of Minutes – July 7, 2015

MOTION BY MEMBER FALT TO APPROVE WITH AMENDMENTS MOTION SECONDED BY MEMBER MILLNS

MOTION CARRIED

6-0-0

10. Adjourn

**MOTION BY MEMBER MILLNS TO ADJOURN
MOTION SECONDED BY MEMBER SEBRING**

**MOTION CARRIED
6-0-0**

The July 21, 2015 meeting of the Merrimack Planning Board was adjourned at 8:48 p.m.

Submitted by Dawn MacMillan