



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

APPROVED MINUTES

TUESDAY, JUNE 18, 2019

Planning Board members present: Alastair Millns, Ex-Officio Bill Boyd, Dan Ricker, Neil Anketell, and Alternate Nelson Disco

Planning Board members absent: Robert Best and Lynn Christensen

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

1. Call to Order

Alastair Millns called the meeting to order at 7:02 p.m. and designated Nelson Disco to sit for the vacant full member position.

2. Planning & Zoning Administrator's Report

Tim Thompson stated that the Cellco site plan satisfied the regional notification requirement from RSA 12-K.

The Board voted 5-0-0 to determine that Cellco Partnership site plan and Robert Curry subdivision are not of regional impact, on a motion made by Bill Boyd and seconded by Neil Anketell.

In reply to Nelson Disco, Tim Thompson stated that the Community Development Department has not yet heard back from the State DOT concerning the NRPC Sidewalk Master Plan.

3. Cellco Partnership D/B/A Verizon Wireless (applicant) and Brett Vaughn Revocable Trust (owner) - Review for acceptance and consideration of a site plan for a new 125' tall telecommunications tower. The parcel is located at 123 Wilson Hill Road (soon to be re-addressed as 10 Whitetail Ridge Circle) in the R-1 (Residential) District (by the Zoning Map). Tax Map 4A, lot 023. Case # PB2019-17.

Tim Thompson said that, on February 27, 2019, the Zoning Board of Adjustment (ZBA) granted a special exception to permit a telecommunications tower in the residential district, so the location of the tower has been decided and is not part of the Planning Board's role in the process. He reminded the Board that the Federal Telecommunications Act of 1996 prohibits local governments from considering RF

emissions and their perceived potential health impacts on a wireless communication facility application.

Attorney Victor Manougian, McLane Middleton, listed changes since the May 7, 2019, conceptual hearing: the tower will be referred to as a “flagpole”; subdivision lot lines, the easement and elevation changes are shown on the plan; Black Oak Road is now White Tail Ridge; signature lines are provided; the gravel drive will have a hammerhead turnaround; the only fuel allowed on site for future co-locators is propane, whose delivery is limited to 10:00 a.m.-2:00 p.m. on weekdays. In response to a question from the Board at the conceptual discussion, the ground elevation at Wilson Hill Road is 305’ and ground elevation at the proposed flagpole tower is 434’, which is a 129’ elevation change on the rise uphill. The previously approved Turkey Hill cell tower ground elevation is 354’ and the road is 192’, which is a 162’ elevation change. Utilities will run underground starting from the last telephone pole on the Vaughn driveway to the flagpole.

In January 2019, a new FCC Order now stipulates that wireless carriers need not show a gap when planning future infrastructure and can plan for future expansion/upgrades even if there is no immediate need at the site. The applicant has no issues with the proposed conditions of approval.

In response to questions from Bill Boyd and Nelson Disco, Attorney Manougian stated that the Fire Department has directed that the gravel driveway be 16’ wide after the Vaughn driveway; the easement is 20’ wide. 5G would be part of the future infrastructure. It requires some small cells as well as traditional towers. Verizon does not share its generator with other carriers. Not all carriers have their own generator and use 8-10 hour battery back-up.

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 5-0-0 to accept the application for review, on a motion made by Nelson Disco and seconded by Bill Boyd.

Tim Thompson explained that the requested waivers are typical for such applications and the Planning Board has typically granted them in the past. The Public Works Department (PWD) determined that the amount of impervious area becoming pervious area from the flagpole to Wilson Hill Road would have a negligible impact.

A parking waiver is sought because there would be only one vehicle per month for maintenance and deliveries of propane as needed. Access would be from an existing bituminous driveway, then a 16’ pervious gravel driveway over an existing trail. The proposed installation would not be open to the public.

Nelson Disco 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 5-0-0 to grant waivers from the requirements of Sections, 7.03 – Parking, 7.05.D.7 – Soil types and boundaries, 7.05.D.13 – Storm water drainage plan, 7.05.D.14 – Engineering calculations, 7.05.D.18 – Landscaped area, and 7.05.D.19 – Paved pedestrian way or sidewalk, on a motion made by Nelson Disco and seconded by Bill Boyd.

Public comment

Michael Chow, Owner, 136 Wilson Hill Road, sent an e-mail in opposition, expressing concerns about RF emissions and that the facility would adversely affect the value of the whole area and the neighborhood.

Sean Lynch, 120 Wilson Hill Road, said that the ZBA member cited diminished property values and tower visibility. All the trees have been cut down; everyone will be looking at a 125' high tower.

Karen Grimes, 117 Wilson Hill Road, said the balloon test was done when the trees had foliage; now they are completely stripped. Verizon wants to strengthen the area's signal. The FCC order means there is nothing residents can do about it, although Amherst gets all the benefit. Merrimack does not need coverage. One ZBA member said he did not have cell coverage, which is a personal reason for his affirmative vote at the appeal. The signal would not cover the east end of Wilson Hill Road. Verizon stated that no one in Merrimack has applied for a tax abatement because of a neighboring cell tower, but the Assessor's Office says such an abatement is not allowed. The National Association of Realtors predicts a 20% decrease in property values. The Owners of the new \$600,000 homes will see a tower.

Attorney Manougian cited the Real Estate Valuation Report, which said there would be no diminution of property values and no tax abatements. He showed a June 10, 2019, photograph from Wilson Hill Road where the flagpole would be visible from the Vaughn house. 153 Wilson Hill Road could see the telephone pole but not the flagpole. It cannot be seen from Wilson Hill Road homes even though the trees were cleared. There will be no more clearing. A balloon test was done before applying to the ZBA. The ZBA did not request it be redone for the public, nor does the Ordinance require it.

Derek Creaser, Civil Engineer, Hudson Design Group, said the permit filing would show the flagpole to be a 5' circumference base that would taper to 3' at the top.

Bill Boyd explained that the Planning Board's options are limited, since the ZBA approved the location and the applicant meets the 1996 Telecommunications Act standards and Merrimack ordinances. He suggested that abutters urge their Congressional delegation to give back local control to communities. Although he abhors cell towers in residential neighborhoods, he must support the project.

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 5-0-0 to grant final approval, with the following conditions, on a motion made by Bill Boyd and seconded by Neil Anketell.

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 as may be applicable, note the approvals/permits on the plan and provide copies to the Community Development Department;
3. The applicant shall note all waivers granted (including Section and date granted) on the final plan;
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 any forthcoming comments from the Fire Department, as applicable;
6. The applicant shall address the following comments from the Public Works Department:
 - a. Plans indicate that the access to the tower will be by Whitetail Ridge (under construction) and then by a private driveway located within the Access and Utilities Easement for and on Lot 4A-23. There shall be no other access granted off of Wilson Hill Road or Whitetail Ridge for this use. This shall be noted on the plans;
 - b. Driveway construction shall be in accordance with the driveway specifications as outlined in the Roadway & Utility Standards Section 4.13.1;
7. The applicant shall address the following Planning Staff technical comments:
 - a. Plan notes located on sheet C-1 need to also be located on Sheet C-2 unless it is the applicant's intent to record the entire plan as opposed to just the site plan sheet (staff does not believe that the Registry will allow for all sheets to be recorded);
 - b. Planning Board signature blocks should only be placed on sheets T-1, C-3, and A-1. The Planning Board signature block shall be removed from all other sheets;
 - c. The front setback throughout the plan is shown as being to Wilson Hill Road. The subject lot does not have frontage on Wilson Hill Road, but rather on Whitetail Ridge (under construction). The setback notes and lines need to be corrected throughout;
 - d. Add the following note to the plan: On February 27, 2019, the Zoning Board of Adjustment granted a Special Exception to permit a telecommunications tower in the Residential District;
 - e. While staff has verified that all required abutters have been correctly notified, Sheet C-1 has several incorrect abutters and Map & Lot numbers referenced. Please verify and update the map & lot information on the plan in this area:

- i. Update owner of Map 4A, Lot 015;
- ii. Update Cappuccio lot number to Map 4A, Lot 016;
- iii. Update owner of Map 4A, Lot 011;
- iv. Add ownership of Map 4A, Lot 023 -1;
- v. Update easternmost labeled Map 4A, Lot 010 to be Map 4A, Lot 010-1;
- vi. Update owner of Map 4A, Lot 010;
- f. The following typical plan notes shall be added to the site plan sheet, unless it is the applicant's intent to record the entire plan as opposed to just the site plan sheet (staff does not believe that the Registry will allow for all sheets to be recorded):
 - i. Purpose of the plan;
 - ii. Lot Areas;
 - iii. Owner of record (the owner is currently listed, but there is no place for him to sign the plan as required by Condition of Approval #1);
 - iv. Water source;
 - v. Sewer source;
 - vi. Vertical datum reference;
 - vii. Detailed list of plan references (written descriptions in addition to the HCRD recording number);
 - viii. FEMA Flood Hazard information;
 - ix. Site Soils;
 - x. Note indicating which plans are to be recorded and which are on file with the Community Development Department (unless entire plan is to be recorded);
 - xi. Note regarding regulations being part of the plan (as required by Section 4.06.1.k);
 - xii. Notes regarding requires State Permits (if applicable);
 - xiii. Notes regarding waivers (if applicable).

The following general and subsequent conditions 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 the following comments from the Building Division, as applicable:
 - a. Most recently adopted building, fire safety, and electrical code requirements will be requested with building permit applications. An engineering report confirming capabilities of structures will be needed.
4. The applicant shall address any comments from the Fire Department, as related to building fire code compliance, or other Fire Code issues, as applicable (that are not deemed precedent conditions).

4. Petroleum Marketing Group, Inc. (applicant) & Blue Hills Fuels, LLC (owner) - Conceptual discussion of a potential site plan to raze and re-build an existing gas station/convenience store. The parcel is located at 1 Continental Boulevard in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 4D, Lot 054- 01. Case # PB2019-16.

Tim Thompson said the applicant plans to raze and reconstruct the gas station, re-orient the convenience store so that the front of the building faces Continental Boulevard and add a drive-thru service window (a special exception is required for the use in this district, once the existing use is razed the site loses non-conforming use protections). The site plan will come to the Planning Board after the new site plan regulations are passed. The proposed number of parking spaces is well short of the required space calculation and would require a waiver.

Ron Lezott, Maser Consulting, said the 0.78 acre property now houses a gas station with access from three driveways. Existing conditions are eight fueling positions that would remain, an 1,800 s.f. convenience store, and 23 parking spaces. Proposed are a new overhead canopy, moving the building back, building a new 3,000 s.f. store/drive-thru and reducing the number of parking spaces from 23 to 11. The drive-thru is expected to be the majority of the business. One driveway on Camp Sargent Road would be removed and one would remain. Both proposed driveways would be right-turn in and right-turn out only due to the medians on both Continental and Camp Sargent.. Impervious surface would be reduced by 7% from 74% to 67% for 2500' more of landscaped green space.

Ron Lezott showed a drawing of how the building would look. It would have clapboard on four sides, a stone base, columns, a cornice on top, dormers, and shutters. There would be a 24'-wide aisle to the canopy, so vehicles could get by a fuel truck. A turn template will be submitted. There is no rule against filling a car while a fuel tank is unloading. The 400' drive-thru would be a quick serve, like Dunkin' Donuts or Starbucks. Nelson Disco suggested providing a by-pass lane.

Although the tanks have recently been replaced, Ron Lezott said they would be replaced again.

Tim Thompson noted that the proposed peer-to-peer synchronized signals should help alleviate traffic on Continental Boulevard and Camp Sargent Road. Ron Lezott said there is no other driveway location because of site constraints. Tanks would be refilled late at night/during off-peak hours. Dan Ricker suggested installing walkways on both sides and right turn arrows in addition to a sign, perhaps one at the stop sign on Continental Boulevard.

Ron Lezott said a minimum of seven cars would stack; that could be increased to 8 or 9 by moving the building. There is room for a by-pass lane on the west. Spaces for the handicapped can be located anywhere in the front, since the curb would be flat.

There was no public comment.

- 5. Robert Curry (applicant/owner)** - Review for acceptance and consideration of final approval for a two lot subdivision. The parcel is located at 2 County Road in the R-1 (Residential, by map), Aquifer Conservation and Flood Hazard Conservation Districts. Tax Map 3A, Lot 065. Case # PB2019-20.

Due to an abutter notification error, this item will be re-noticed for the July 2, 2019 Planning Board meeting.

- 6. Lawrence Bird (applicant) and Dennis Drouin (owner)** - Review of a Home Occupation to permit a firearms cleaning and repair business. The parcel is located at 168 Camp Sargent Road in the R-1 (Residential by Zoning Map) and Aquifer Conservation Districts, and Wellhead Protection Area. Tax Map 2B, Lot 310. Case #PB2019- 21.

Tim Thompson said the applicant did not provide the required photographs or the required plot plan of the property showing the driveway's suitability for customers/clients. A 2011 Google photo shows there to be sufficient room to accommodate the anticipated client load so long as no changes have been made since. Staff recommends that the applicant provide a photograph or plot plan to ensure that it is still adequate to ensure the proposed use. The applicant should clarify the type of safe and hours of operation.

Lawrence Bird, 168 Camp Sargent Road, wants something to do in retirement, and is proposing cleaning and repairing firearms. There would be no machinery and no employees aside from himself. Guns would be locked in a gun safe. The small amount of cleaning solvent or lubricating oil would be properly disposed of at the dump. Only a federal firearms permit is required, but that requires a shop and Planning Board approval. The home occupation would be maintenance only, with no manufacturing. If test firing is necessary, it would be done at the Horseshoe Fish and Game Club rather than on site. Ammunition would be kept in a fireproof locked safe. Lawrence Bird will install an alarm system. There are no children in the home.

Tim Thompson informed the Board that it could decide whether to allow ammunition to be stored on site. Neil Anketell said it is crucial for testing. Dan Ricker agreed as long as it is locked separately from guns. Alastair Millns added that the Police Department must approve an alarm system.

Dennis Drouin, Owner, 168 Camp Sargent Road, said Lawrence Bird has been his tenant for over 30 years. He is qualified and his proposal presents no problem for him as the landlord.

Public comment

Bob Whittaker, 166 Camp Sargent Road, lives next door. There is a school eight houses away. Alastair Millns assured him there would be no sign or bars on the windows. It concerns Bob Whittaker to live next door to a business. He claimed that Dennis Drouin made the property a “slum”: he has never painted, the roof sags and shingles are coming off. Bob Whittaker believes the property should be condemned. The condition of the applicant’s house is the reason he cannot sell his house. He is wary of break-ins. Bob Whittaker claimed that Lawrence Bird was arrested for assault, has anger issues and should not be near firearms. Bob Whittaker’s property value is sinking every day. There should be no business on this property.

Melanie Pearl, 5 Drouin Way, abuts the Bird backyard. She is concerned about customer traffic, children on the street, security, hours of operation, and whether customers must show they can own a gun. She does not want anyone wandering into her unfenced backyard. Melanie Pearl asked whether Lawrence Bird’s license must be renewed and if there would be regular or unannounced inspections.

Dennis Drouin said there would be no parking impact on Drouin Way. He never had issues with Bob Whittaker, who did have issues with Lawrence Bird’s dog. Lawrence Bird is cutting shrubs. Only he and his wife live in the house. Work would be done in the garage. Customers would come in the front door. The neighbor just bought and improved the property on the left.

Neil Anketell noted that, if there really is an arrest in Lawrence Bird’s background, the federal government will not issue a license. Tim Thompson added that the Police and the US Bureau of Alcohol, Tobacco & Firearms would be responsible for the issuance of the required federal firearms permit. Bill Boyd noted that the Planning Board must look only at whether the applicant meets the Zoning Ordinance criteria.

The applicant was instructed to submit a plan showing where the work would be done, a photograph showing the driveway’s suitability for customers/clients, information and correct footage, and a plot plan drawn to scale.

The Board voted 5-0-0 to continue this item to July 2, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Bill Boyd and seconded by Dan Ricker.

The Board recessed from 8:50-8:57 p.m.

7. Planning Board Workshop – Site Plan Regulations: Discussion and review of draft Sections 4 through 7 of the proposed new regulations.

Tim Thompson presented modifications and changes to Sections 4-7 of the draft Site Plan Regulations, explaining the rationale for the changes and answering Planning

Board questions. The Planning Board determined that a public hearing on the new Site Plan Regulations would be scheduled for August 6, 2019.

8. Discussion/possible action regarding other items of concern

None

9. Approval of Minutes - June 4, 2019

Tabled to July 2, 2019. **10. Adjourn**

The meeting was adjourned at 9:18 p.m., by a vote of 5-0-0, on a motion made by Bill Boyd and seconded by Nelson Disco.