



Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD VIRTUAL MEETING APPROVED MINUTES TUESDAY, MAY 4, 2021 7:00 P.M.

Due to the COVID-19 crisis, and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Planning Board is authorized to meet electronically.

As stated on the agenda, the meeting was aired live on Merrimack TV and the Merrimack TV webpage (<http://www.merrimacktv.com>). Telephone access was available for members of the public wishing to speak during the Public Hearing or provide public comment. Also identified on the agenda was the opportunity for general public comment to be submitted leading up to the start of the meeting via email to CommDev@MerrimackNH.Gov.

Members of the Board and Town Staff were participating via Zoom. In accordance with RSA 91-A: 2 III, each member of the Board was asked to state, for the record, where they were, and who, if anyone was with them.

1. Call to Order

Robert Best called the virtual meeting to order at 7:00 p.m. and read the procedures & processes for the virtual meeting.

Roll Call:

- Robert Best (Chair) stated he was present at his office in Concord NH and alone in the room he was in.
- Councilor Barbara Healey (Ex-Officio) stated she was present at home and alone in the room she was in.
- Nelson Disco (Alternate) stated he was present at home and alone in the room he was in.
- Paul McLaughlin stated he was present at home and alone in the room he was in.
- Neil Anketell stated he was present at home and his wife was in the room with him.

Members Absent: Lynn Christensen

Community Development Director, Tim Thompson was attending alone from his home.

Chairman Best appointed Nelson Disco to sit for the late Alastair Millns.

2. Planning & Zoning Administrator's Report

None.

- ### **3. Merrymac Christmas Tree Farm, LLC (applicant) and Linda Raymond (owner) –**
- Continued review for consideration of a Site Plan to permit a Christmas Tree Farm and supporting accessory use/infrastructure. The parcels are located at 105 and 107 Turkey Hill

Road in the R-1 (Residential, by soils), and Aquifer Conservation Districts. Tax Map 4C, Lots 229 and 229-01. Case #PB2021-11. **This item is continued from the April 6, 2021 Planning Board meeting.**

Tim Thompson provided a brief history of the project and explained that it was continued at the last meeting primarily because peer review comments had not been received at that time. Peer review comments have since been received and staff is recommending conditional approval.

Matt Peterson (Keach-Nordstrom Associates) was present to review the project with the Board. Mr. Peterson began by sharing some pictures of a Christmas Tree Farm in Deering, NH that he believes will look similar to the one being proposed. He continued by reviewing a list of outstanding items that need to be addressed including parking, Traffic and waivers. The three waivers being requested are for the traffic study, lighting, and internal landscaping. The traffic study and landscaping waivers are being requested because the business is only going to operate for one month out of the year in the winter. A lighting plan is not necessary for the majority of the parcel because the "cut your own trees" service is only going to be offered during daylight hours. Removable lighting is being proposed for the parking lot and snack shack areas.

Chairman Best asked Mr. Peterson to comment on the feedback from the Conservation Commission (MCC) and comments that were received from an abutter questioning a buffer that was discussed during the Zoning Board approval process. Mr. Peterson explained that MCC called out some conflicting information within the plans regarding phosphate usage but the plans have since been updated. Tim Thompson addressed the question about the buffer and explained that due to the way the plan was presented at the Zoning Board meeting, it appeared that there was a proposed buffer around the property but due to the agricultural use, the site plan regulations do not require a buffer. Chairman Best asked for clarification on the ZBA decision and Mr. Thompson explained that the Zoning Board approved the sale of trees from an off-site location until such time that the trees on site are ready for sale. Chairman Best asked how a temporary timeline can be enforced and Mr. Thompson suggested that the Planning Board can request a development agreement and items like the timing of the off-site sales and traffic control during busy times can be included within the agreement. Chairman Best liked the idea of development agreement because he is concerned that if off-site sales continue once the on-site trees are ready, the business may become too big and turn into a disruption to the surrounding neighbors. The discussion about the development agreement continued briefly and they agreed that staff would work with Mr. Peterson to draft something everyone agrees to.

Nelson Disco stated that he looked at the meeting minutes from the January ZBA meeting and a buffer was discussed as part of that approval and there is no buffer on the Planning Board proposal. Mr. Thompson stated that he is aware that the buffer was part of the justification the applicant submitted to the ZBA but there are no regulatory requirements that mandate a buffer. He further explained that the Planning Board can make it a condition of approval if they so choose but because of the use, it is not required. Mr. Disco expressed concerns that since it was discussed during the ZBA meeting and shown on the plan, the neighbors were counting on it so it does not seem right to remove it now. Mr. Thompson explained that an exhibit plan like the one shown at the ZBA meeting is not the same thing as a site plan and had nothing to do with the variance being requested, the variance was for the sale of off-site trees and had nothing to do with the approval of the Christmas tree lot itself. Mr. Peterson apologized for the error in his ZBA justification but stated it has always been the applicant's intention to cut the existing & plant the Christmas trees right up to the property line.

Chairman Best commented that it's within the Planning Board's jurisdiction to require buffers and he is in favor of them when they buffer commercial or industrial use from residential but since this is agricultural, he cannot see the need since the majority of the year, it would be a tree buffer from trees. Nelson Disco also asked about the difference in the size of the snack shack from the ZBA plans to now. It was originally presented as 20x20 to the ZBA and the Planning Board plans show it as 20x40. Mr. Thompson explained that it is not unusual to see changes like this as plans evolve through the approval process and as long as the ZBA did not make the size of the snack shack a condition of their approval, there are no concerns from a staff perspective that the size has changed. The Board discussed the size of the snack shack and speculated whether or not the ZBA would have come to a different decision had they known it was larger. Mr. Peterson ultimately interjected to state that he would just change the size back to 20x20.

Mr. Disco asked about the utilities for the snack shack and Mr. Peterson clarified that just overhead electric would be utilized. He then asked how the recycling of trees would be handled and Mr. Peterson responded that for approximately 3 weeks after Christmas the owners would like to collect the trees back and compost them to help the environment however if this is not something the Board is ok with, they do not have to offer that service. Mr. Disco asked about the sign and whether or not it is illuminated and Mr. Peterson confirmed it is a 3x6 foot sign that is not illuminated. Chairman Best commented that he heard Mr. Peterson mention overhead electricity for the snack shack and the town regulations require underground. Mr. Peterson noted the change and indicated that it is not a problem.

Public Comment:

Public Comment was received via email and by phone from: Robert & Debbra Uttero, 5 Acacia Street. A copy of the email is on file at the Community Development Department. Mrs. Uttero expressed concerns about the elimination of the wooded buffer as she is worried that the values of the surrounding homes will be diminished. She also referenced the picture of the Deering, NH Christmas tree lot that was shared by Mr. Peterson to point out that there are hardwood trees in the foreground of the picture so there must be a wooded buffer around that lot. She added that keeping a wooded buffer would keep the existing neighbors happy.

Mr. Peterson shared the pictures of the Deering Christmas tree farm again and stated that the trees that were mentioned by Mrs. Uttero are trees that are lining the street and not a property line buffer. Chairman Best commented that concerns regarding diminished property values are out of their jurisdiction as that falls within the Zoning Board's control.

Mr. Peterson then discussed the waivers being requested:

- Sections 3.11.l (1) (parking), 3.11.l (3) (parking), 3.11.l (5) (parking): The project is requesting a waiver from the three above internal landscape requirements due to the nature of the planning board request and the limited time of year that this project would be operating. This site is required 8% internal area landscaping, shade trees per 15 parking spaces, and perimeter landscape trees. Based on the proposed use of a Christmas Tree Farm and sale of Christmas Trees in November and December the applicant would like to request this waiver due to the proposed parking lot being gravel, any the fact that any landscape would be in its dormant state in November and December when clients are visiting the site.
- 3.13.e (lighting): The project is requesting a waiver from the above Parking Lot Lighting requirements due to the nature of the planning board request and the limited time of year that this project would be operating. The applicant is proposing

temporary lighting for the site for the month of November and December to sell Christmas Trees and related goodies. Based on the proposed use of a Christmas Tree Farm and sale of Christmas Trees in November and December the applicant would like to request this waiver due to the proposed parking lot being gravel and only used for 2 months out of the year.

- 3.14 (traffic): The project is requesting a waiver from the Traffic Impact Analysis requirements due to the nature of the planning board request and the limited time of year that this project would be operating. The applicant is proposing to operate from late November until Christmas to sell Christmas Trees and related goodies from the snack shack. Based on the proposed use of a Christmas Tree Farm and sale of Christmas Trees in November and December the applicant would like to request this waiver due to the limited use of the property.

Tim Thompson suggested that lighting could be added to the development agreement that was discussed earlier in the meeting. Chairman Best agreed that the temporary lighting plan should be added to the development agreement but also indicated that he wants the decision and the minutes to clearly reflect that the Planning Board did not approve any lighting in the back of the lot.

The Board voted 5-0-0 by roll call vote to grant waivers to Sections 3.11.l (1) (parking), 3.11.l (3) (parking), 3.11.l (5) (parking), 3.13.e (lighting), and 3.14 (traffic) on a motion made by Neil Anketell and seconded by Nelson Disco.

Neil Anketell asked why the applicant is choosing to do temporary lighting in the parking lot as opposed to a permanent pole. Mr. Peterson explained that due to cost and the seasonal use of the property, temporary lighting is a better fit for the property and additional lights can be added as needed. Since trees are being brought in from off-site for the first several years, they expect fewer customers so only one light may be needed.

Paul McLaughlin expressed that he is in favor of a buffer, not from the trees themselves but to separate the customers wandering around the lot from neighboring houses.

Mr. Anketell commented that he would like to see something added to the development agreement about traffic and possibly adding no parking signs along Turkey Hill Road. Mr. Thompson agreed that language regarding traffic will be added to the development agreement.

Tim Thompson reminded that Board that here are two conditions that need to be added when and if a motion to approve the application is made. The first condition is regarding underground electricity for the snack shack and the second is the creation of the development agreement.

Chairman Best asked for a note be added to the plan indicating that there will be no lighting in the "tree farm area" and that the size of the snack shack be corrected to 20x20.

The Board voted 5-0-0 by roll call vote to grant conditional final approval on a motion made by Paul McLaughlin and seconded by Barbara Healey. The following conditions apply:

1. Final plans to be signed by all property owners. The appropriate professional endorsements and signatures shall also be added to the final plans as applicable.

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 provide draft copies of any applicable legal documents for review at the applicant's expense, by the Town's Legal Counsel.
4. The applicant shall, in conjunction with the Community Development Department, agree to, and record at the Hillsborough County Registry of Deeds, a Development Agreement that outlines processes and procedures that would be implemented in the event of traffic congestion, any parking taking place in the public rights-of-way, illumination methods for the parking and sales areas, and any other pertinent operational detail.
5. 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.
6. The applicant shall address the following comments from the Public Works Department:
 - a. The proposed driveway entrance shall conform to Section 4.13.1 under the Roadway and Utility Standards and shall be noted on the plans. Additionally, a driveway entrance detail shall be provided.
 - b. Please revise Sheet 1, Note 14 to include "year round" line of sight to account for snow banks during winter conditions.
7. The applicant shall address any forthcoming comments from Merrimack Village District, as applicable.
8. The applicant shall address any forthcoming comments from the Fire Department, as applicable.
9. The applicant shall address the comments from the Town's peer engineering review consultant, Fuss and O'Neill, as applicable.
10. The applicant shall revise the snack shack to be no larger than 20' x 20' in size.
11. The applicant shall indicate underground utilities to the snack shack, providing any necessary details in the plan set.
12. The applicant shall note on the plans that no lighting shall be utilized anywhere within the area trees are being grown on the "farm" portion of the parcel.
13. The applicant shall address the following Planning Staff Technical Comments:
 - a. The applicant should address the following relative to the plan notes:
 - i. Note 9 on Sheet 1 does not list any parking requirements. The Planning Board will need to make a determination as to what the appropriate amount of required parking should be, per the parking table for a "closest similar use" in Section 3.11.

- ii. Note 18 on Sheet 1 mentions a full site plan review waiver. Please amend this note to remove that language. If the listed waivers are approved, the approval date shall be added to this note.
- iii. Note #5 on Sheet 2 does not list the full dimensional requirements. Please add the requirements for lot area, frontage, and depth.
- iv. Remove Note #30 on Sheet 1 due to being a repeat of Note #27.
- v. Remove "For sites with greater than 20,000 square feet of land disturbance, note the following" from Note #29, Sheet 1. Additionally, the quotations around this note shall be deleted.
- vi. Delete the quotations around Note #28, Sheet 1.
- b. A professional endorsement/stamp for the certified wetland scientist shall be added to the plan on Sheet #1.
- c. Hours of operation and the annual start and end dates shall be added to the plan notes.
- d. The existing access & utility easement appears to be redundant with the proposal for the larger easement for agricultural, access, utility, parking and structure purposes. If the "existing" access & utility easement was never actually established, it should be completely removed from the entire plan set (including the easement plan page). Additionally, the easement area on Lot 229-1 for the benefit of Lot 229 should also be removed from the entire plan set, if it was never actually established. Please add a note to the easement plan page stating that these two easement areas are not shown due to being irrelevant to the project.
- e. On Sheet #2, show the full buildable area on the eastern end of Lot 229-1.
- f. There appears to be tree growth proposed within the existing Brookfield Acres drainage easement over Lot 229 & 229-1. Please review that easement to ensure the farm activities are permitted within that easement, are deemed acceptable by the Public Works Department and Town Legal Counsel, and revise the plan as might be applicable.
- g. An agreeable means of addressing ADA compliant parking spaces shall be added to the plan meeting the approval of the Community Development Department.

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

- 1. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant.
- 2. The applicant shall address any comments from the Fire Department, as related to building fire code compliance, sprinkler systems, building addressing, etc., as applicable (that are not deemed precedent conditions).
- 3. The applicant shall address any forthcoming comments from the Building Department, as related to building code compliance and permit application, as applicable.

4. The sale of trees sourced from the subject properties and the sale of related applicable seasonal items shall be limited to November 1 to December 25 annually.

4. **John Flatley Company (applicant) & Gilbert Crossing, LLC & John J. Flatley (owners)** – Continued review for consideration of an amendment to a previously approved Mixed Use Development Conditional Use Permit to permit 96 additional multi-family residential units. The parcels are located at 645, 673, 685, 703 & 707 Daniel Webster Highway and 5 Gilbert Drive 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 and 003-07. Case # PB2021-12. **This item is continued from the April 6, 2021 Planning Board meeting.**

Robert Best recused himself from the next 2 cases. Paul McLaughlin assumed the Chair.

Tim Thompson began by reminding everyone that this project is a request to amend the Conditional Use Permit (CUP) only and does not authorize construction to begin at any of the lots in question. Any approvals granted would set the framework for the next step in the process which would be site plan approval through the Planning Board. Mr. Thompson then commented on the request to update the fiscal analysis that was made at the last meeting and indicated that the updates have been made. He referenced the staff memo to site specific updates that were made and shared that the additional two residential buildings will generate \$320,000 a year in revenue for the town. Mr. Thompson also provided details on the impact to the schools from the five existing buildings that have been construed indicating that five school age children have been added to the Merrimack school system, which is less than what was anticipated in the original fiscal analysis. He touched base on the traffic analysis and stated that it has been updated but will need to be updated again if a new site plan is submitted. The master development agreement will also need to be updated if the additional units are approved and the Board needs to determine if the CUP amendment request still meets the requirements of the Zoning Ordinance. Mr. Thompson read through the Zoning criteria for a CUP and concluded that staff does feel that the criteria is still being met.

Chad Branon (Fieldstone Land Consultants) Kevin Walker (John Flatley Company) and Giles Ham (Vanasse and Associates) were all present to discuss the project on behalf of the applicant. Mr. Branon began by explaining that the applicant feels that they still meet the criteria outlined in the Zoning Ordinance for a Conditional Use Permit. The addition of the two new residential units was originally going to reduce the retail space by approximately 20,000 square feet but as a result of feedback from the last meeting, the retail space was added back in. He went on to explain that the goal of the CUP amendment isn't to change the scope of the project but rather to address a local housing need. He then shared the master site plan to show the placement of the two 48-unit residential buildings that are being proposed and the retail units that were expanded to add back in the retail space that was originally eliminated to make space for the residential buildings. Mr. Branon then discussed the project phasing and briefly walked through what is up next in the master plan and where the new residential units will fit into the project. He also discussed a parking area behind building five that is being eliminated to add more of a buffer between the buildings and neighbors in that area. In addition to the eliminating the parking lot, the applicant is also going to increase landscaping in that section.

Nelson Disco expressed concerns with the fiscal analysis, indicating that he has asked for it to include more Merrimack properties in the past and has still not been updated. Tim Thompson responded to Mr. Disco's comments by explaining that Merrimack does not have enough properties that are similar in nature to use all Merrimack examples so surrounding towns have to be used. He also added that the fiscal analysis was peer reviewed by a peer reviewer that specializes in economic analysis (Stu Arnett) when the initial CUP was

approved, and staff has reviewed all revisions to ensure the peer review comments/parameters have continued to be met. Mr. Walker added that since the first iteration of the report, two Merrimack apartment developments as well as four Merrimack restaurants were added.

Paul McLaughlin asked if the new Police and Fire Chiefs were asked to provide feedback. Mr. Thompson responded that both chiefs did provide feedback and read through the feedback that was received. Mr. McLaughlin then asked if the phasing does indicate that the completion of the flex buildings should be completed next. Mr. Thompson replied that the phasing will follow whatever direction the Board agrees to. Mr. McLaughlin then asked about soil testing being conducted at the site and Kevin Walker responded to that by indicating it will be discussed more during the next agenda item but everything is underway with DES as far as testing is concerned. The DES approvals only apply to any ground-breaking that is being done which is not what the CUP amendment is requesting.

Councilor Healey indicated she has concerns with traffic as an additional 96 units means approximately another 192 cars on the road. Giles Ham addressed Councilor Healey's concerns by explaining that the required traffic analysis yielded 33 additional a.m. peak trips and 43 additional p.m. peak trips which staff felt were reasonable given the volume associated with DW Highway. Mr. Ham also added that the traffic study will be updated again when they go through the site plan approval process. Mr. Thompson added that the anticipated traffic was decreased significantly when the big box retail was removed from the project and Councilor Healey argued that the traffic from a big box retailer is different than residential, because residential traffic happens in the early morning hours when people are leaving for work and school buses are out. Councilor Healey asked for clarification on what the additional trips mean. Mr. Thompson explain how the traffic is calculated and Councilor Healey added that anyone that travels that road knows that traffic is horrible in the morning hours.

Public Comment

Ashley Tenhave (75 Shelburne Road) spoke about the traffic concerns stating that the existing buildings has significantly increased traffic and feels that it is a lot more than 33 a.m. trips and 43 p.m. trips. She went on to say that she does not feel that the analysis is accurate because it was conducted during a pandemic. She urged the Board to require a new traffic study now that people are starting to go back to work and added that it took her 10 minutes to drive from Merrimack Ten Pin to the entrance of Webster Green due to the increase in traffic.

Kathryn Poirier (11 Kimberly Drive, Unit 21) voiced concerns that Flatley is not being honest and is breaking promises to the abutting neighbors behind the property. She added that constructing another building in that area is going to further decrease the tree buffer for the neighbors in that back of the property. Ms. Poirier also mentioned the traffic analysis indicating that she does not believe it to be accurate and traffic is already bad in that area and needs to be fixed before more cars are added to the situation.

Katherine Hodge (44 Belmont Drive) also spoke about Flatley not being honest with the neighbors in the back of the property and the fiscal analysis. She feels that the fiscal analysis is not accurate because the town has to consistently seek aid from neighboring towns. She also challenged the student age children number stating that it is not 5, its 34 because she asked the bus company how many kids are picked up at that location. Ms. Hodge went on to address the traffic study stating that the traffic on that road is terrible during the peak hours and urged the Board to require an updated study.

Mr. Walker addressed the dishonestly comments by stating that they are working with the neighbors and have left more of a buffer than what is required. He also stated they are working on putting a berm up behind one of the buildings now to address a neighbor's concerns. He added that Flatley does not walk away from the properties once they are constructed, they manage them so they want to do things the right way. He went on to remind everyone that the parcel is zoned industrial and that they could have just constructed a bunch of warehouses but they are trying to construct something Merrimack can be proud of and help out with the housing need. He touched base on the traffic analysis by stating it was conducted by a professional firm and was also reviewed by town staff and Fuss & O'Neill. He concluded by reiterating again that they are trying to work with the neighbors and urged anyone with questions or concerns to call him.

Mr. Ham explained that the traffic study was not impacted by the pandemic at all, the numbers were taken from the ITE trip generation manual that was created prior to the pandemic. He also reminded everyone that the numbers are based on peak hours and if you are traveling outside of those times you may see a different result. Mr. Branon added that the current traffic study is an abbreviated study for the CUP amendment and a more detailed study will be conducted if the amendment is approved and the project moves on to site plan approval. He also reiterated that all of the parties involved in the project are professionals and are adhering to local and state regulations and are not being dishonest.

A motion to grant conditional approval to the amended Conditional Use Permit made by Neil Anketell failed for lack of a second.

Nelson Disco brought up his concerns with the fiscal impact analysis again and Mr. Thompson explained that other towns are used because they need to use similar properties and there are not enough in Merrimack to use just this town. He also explained that the numbers for the commercial component of the project do not apply to this request because they are only asking for an amendment to the residential component. Mr. Branon also reminded Mr. Disco that an updated Fiscal Analysis is required for each site plan application so it will get updated several more times as they develop the remainder of the land. Mr. Thompson also reminded the Board again that the CUP amendment does not allow for development to happen and site plan approval will still be needed.

A motion to deny the amended CUP because it did not meet the traffic criterion from the Zoning Ordinance made by Barbara Healey failed for lack of a second.

The Board voted 3-1-0 by roll call vote to grant conditional final approval to the amendment to the Conditional Use Permit on a motion made by Nelson Disco and seconded by Neil Anketell. Barbara Healey voted in opposition.

1. CUP Phasing shall be noted on the Master Site Development Plan in accordance with the Board's determination of appropriate phasing for the project:
 - a. Phasing of remaining phases of the project may occur in any order as long as the Industrial Flex phase (to the immediate south of the St. Gobain driveway) has received final site plan approval and has begun active and substantial construction (as defined in the Site Plan Regulations in Section 7.06.c.2);
2. All future phases of development (regardless of sequencing) shall be required to provide updated fiscal impact analyses to ensure that each phase of the project remains fiscally positive to the Town (the Town reserves the right to require peer review, at the

applicant's expense, if necessary for fiscal impact analyses, as determined by the Community Development Director);

3. The project's Development Agreement shall be revised as applicable based on the phasing decision made by the Board at the Public Hearing, reviewed and approved by Community Development Department staff and, if necessary, the Town's Legal Counsel (at the applicant's expense);
4. The applicant shall provide an updated narrative package (as was provided with the original CUP approval) containing all revisions to the project including, but not limited to, project narrative, fiscal impact analysis, phasing documents/materials, traffic impact analysis, and any other information that is amended by the current application;
5. The Fiscal Impact Analysis shall be updated to note that the 96 units referenced in Tables 5 and 6 (in the existing units at the top of the tables) on pages 10 and 12 of the report from Gilbert Crossing indicate the initial 2 apartment buildings that were fully occupied on the site (for purposes of analysis the report did not include other buildings that were not fully occupied for the most recent years that call data was available);
6. The applicant shall address any forthcoming comments from municipal departments as applicable to the CUP application;
7. Address the following planning staff technical comments relative to the revised Master Site Development Plan:
 - a. The plan indicates different colored shading on the residential buildings (one is gray, others are light brown), and does not indicate the existing versus proposed buildings. The applicant shall clarify the plan through shading, color, and labels indicating the existing Gilbert Crossing buildings and a different color/shading/label for the 2 proposed new buildings that this amended CUP intends to include in the project;
 - b. Note 5 should be revised to indicate that the purpose of the plan is specific to the amended mixed use CUP (further detailing that the amendment is to add the additional 96 units in 2 multi-family buildings, and reflecting the addition of 20,000 square feet of retail space north of the St. Gobain driveway);
 - c. Note 13 regarding phasing shall be updated as necessary based on the decision of the Board as it relates to phasing of the amended CUP.

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

1. The approval of this amended Conditional Use Permit does not authorize the applicant to undertake any construction related to the proposed development. The applicant must subsequently obtain subdivision approval for the platting of individual lots and site plan approvals for buildings or sites within the mixed use development in accordance with the Town of Merrimack Site Plan Regulations, Subdivision Regulations (as applicable), and Section 2.02.4.D.6 of the Zoning Ordinance;
2. Final Architectural design review of all proposed structures/facilities shall be required at the time of the subsequent site plan applications to ensure compliance with Section 3.12 of the Site Plan Regulations and Section 15.03.D.3 of the Zoning Ordinance as applicable;

3. The applicant is responsible for obtaining any federal, state, or local permits that may be required as part of any subsequent subdivision or site plan approval following the granting of this amended Conditional Use Permit;
 4. The applicant is permitted to undertake minor deviations (including but not limited to building orientation on a site, decreases in density or building size, etc.) from the Master Site Development Plan and amended Conditional Use Permit documentation in such instances where the deviations do not increase the impacts to the Town as demonstrated through the traffic impact analysis or fiscal impact analysis. Deviations that increase impacts or those which the Community Development Department is not comfortable making an administrative determination of impact, shall require the applicant to return to the Planning Board to amend the Conditional Use Permit approvals. In no circumstance shall any uses permitted through the approval of this Conditional Use Permit be modified/changed without an amended Conditional Use Permit approval from the Planning Board;
 5. If this amended Conditional Use Permit approval is not acted upon within a period of two (2) years from the date of the final endorsement by the Planning Board (for all phases following Phase 1), then the amended approval shall be null and void. Actions sufficient to vest an approval for this amended conditional use permit include Planning Board site plan or subdivision approval (for any phase amended by this approval), issuance of a building permit, or a Certificate of Occupancy issued by the Building Department where no Planning Board approval or building permit is required. However, should any subsequent site plan or subdivision approval or building permit expire unused after the conclusion of the two-year validity period provided for herein, the amended conditional use permit granted as a precondition to said site plan or subdivision approval or permit shall become void as well;
 6. Should the applicant need to extend the two-year validity period, the applicant shall demonstrate to the satisfaction of the Planning Board that it was impossible or impractical to receive the necessary approvals to move forward in reliance on the amended conditional use permit granted within two years;
 7. Any renewal/extension application shall be filed with the Planning Board no sooner than 90 days, nor later than 30 days, prior to the expiration of the Conditional Use Permit;
 8. The Planning Board may, in its sole discretion, grant such extension of the above validity period as it deems warranted.
5. **John Flatley Company (applicant/owner)** – Continued review for acceptance and consideration of a Site Plan to construct 100,000 square feet of research & development/warehouse in 3 proposed buildings and associated site improvements, per the requirements of the Flatley Mixed Use Conditional Use Permit. The parcel is located at 685 Daniel Webster Highway in the I-1 (Industrial) District and the Aquifer Conservation and Wellhead Protection Areas. Tax Map 6E, Lot 003-04. Case #PB2020-19. **This item is continued from the September 1, October 6, October 20, and November 10, 2020 and January 5, 2021 Planning Board meetings.**

Tim Thompson began by explaining that the statutory deadline for the Board to make a decision on this project is approaching so the applicant has granted the Board an extension to that deadline. Mr. Thompson read the extension letter into the record and added that staff recommends accepting the extension. Nelson Disco asked if a 45 day extension is enough time

to iron out all of the remaining details. And Mr. Branon responded that they are confident that 45 days is sufficient.

The Board voted 4-0-0 by roll call vote to accept the applicant's extension to the RSA 676:4 timeframes to make a final decision for 45 additional days on a motion made by Nelson Disco and seconded by Barbara Healey.

Mr. Thompson provided a history of the project which included an explanation that the project started back in 2020 and was continued indefinitely to allow the applicant time to work out issues with the drainage. The issue is now back before the Board as the applicant has worked through the drainage issues and is ready to move forward. He went on to explain that staff just received the peer review comments and information from EPA was also just received so staff is recommending another continuance to June 1st so that all of the new information can be reviewed.

Chad Branon (Fieldstone Land Consultants) and Kevin Walker (John Flatley Company) were present to discuss this project on behalf of the applicant. Mr. Branon began by providing some additional details on the history of the project and explained that the drainage design has been updated and now meets the town stormwater requirements so the waivers that were originally submitted will be withdrawn. He added that Fuss & O'Neill has reviewed the updated plans and had minimal feedback. Mr. Branon continued by explaining that they received confirmation that since the site is private and the discharge is to a water body and not the town's MS4 system then the project does not fall under the town's MS4 permit. The MS4 question was a concern of Public Works and they are happy to finally have it resolved. Mr. Branon then spoke briefly about the two waivers that remain which are for lighting and a survey waiver regarding locating all trees with a diameter of 15 inches or more.

Mr. Branon shared a copy of the plan and explained that this project is an 11 acre stretch of land adjacent to DW Highway. The applicant is proposing to construct three industrial flex buildings that will total 100,000 square feet. The use was approved as part of the original Conditional Use Permit and the building unit sizes will depend on the tenants which is what makes them "flex." He went on to discuss the two entrances to the property, one will be at the traffic light near Saint Gobain and the other will be across the street from the Webster Green entrance. The buildings will face Daniel Webster Highway and the employee and visitor parking and entrances will be in the front and the loading docks and deliveries will be in the back of the property. The layout was designed to keep the commercial traffic separate from pedestrian traffic and activity.

Mr. Branon then discussed the parking requirements stating that 167 parking spaces are required for this use but 56 of those spaces will be constructed as needed. The 56 spots are shown on the plan but will be left as green space until the need arises for them to be constructed. He briefly discussed the permits that are required and reiterated that the drainage issue has been resolved. Mr. Disco asked for an overview of the drainage system and Mr. Branon shared the plan and discussed how the drainage works. Mr. Disco asked about a section of the drainage design that has pedestrian access across it and Mr. Branon confirmed that it was designed to withstand any pedestrian or vehicle traffic. Paul McLaughlin asked for clarification on what contaminants are being filtered out and Mr. Branon replied that it filters for typical stormwater contaminants and nothing that was caused by the Saint Gobain property. He also added that the PFOA contaminants have not been added by the state as a requirement for stormwater at this time but they will evaluate the levels with the soil management plan. There is still a lot of work that needs to take place for permitting and soil management for the site but from a stormwater perspective the new design meets local and state requirements. Mr. Thompson added a clarification to explain that the drainage was not

allowed to infiltrate any stormwater into the groundwater because of the PFOA contamination.

Mr. McLaughlin asked if the applicant has met with Merrimack Village District Water Works yet and Mr. Walker explained that they have had preliminary discussions with MVD but now that they are starting to move forward with the development of the site they will be scheduling a meeting to discuss the water mains for not only this project but the rest of the development as well. Councilor Healey asked if the Board will be receiving copies of the EPA and DES correspondence and Mr. Thompson advised that they should be included in the next packets.

Public Comment

Ashley Tenhave (75 Shelburne Road) voiced frustration with the proposed entrance across the street from Webster Green. The traffic is already awful on Daniel Webster Highway and turning out of Webster Green can take 25 minutes. She also stated that the school bus stop is located at the entrance to the development so making an entrance at that location will put their children in danger. She expressed discouragement that the residents have asked for the entrance to be relocated numerous times and it has not been considered.

Kathryn Poirier (11 Kimberly Drive, Unit 21) urged the Board not to grant the lighting waiver because the lighting that is going to be projected into their development is not going to be rectified with a berm or some trees. Second floor bedrooms are not covered by the existing berms that Webster Green has already. She also addressed the entrance at Shelburne Road and the fact that even former Councilor Bill Boyd suggested that the entrance be moved.

Mr. Thompson addressed the lighting waiver by indicating that staff recommends that none of the waivers be addressed at this meeting, but that the lighting waiver is for lights facing the Saint Gobain side of the property and not the DW Highway side.

Kendall Smith (18 Kimberly Drive) asked if there is anything preventing another business like Saint Gobain to take up residency at the new buildings. Mr. Thompson addressed this immediately by indicating that they would not be permitted because only light industrial use is allowed. Mr. Smith then asked why Saint Gobain was allowed then and Mr. Thompson explained that it pre-dates the current Zoning Ordinance language.

Mr. Smith also asked about snow removal and who polices it to ensure it is being removed quickly and stored in the appropriate locations. He also referenced a note on the plan that states "the Facility Manager needs to have a NH Green Snow Pro certification" He suggested revising it to read "the person in charge of snow removal..." in case it is not the Facility Manager. Mr. Smith also asked who is going to ensure that 10 years down the road another Saint Gobain type of company does not move into these buildings. Mr. Thompson addressed this question too by advising Mr. Smith that all tenant changes are handled through the Community Development department and they ensure that the use is allowed within the zone. The last topic Mr. Smith addressed was traffic. He echoed the previous abutter's comments that he finds it hard to believe the numbers are accurate because the traffic backs up all the time in the am and pm hours. He also expressed concerns that an analysis was performed instead of a study.

Katherine Hodge (44 Belmont Drive) asked what the stormwater detention basins are going to be lined with as she wants to ensure they do not infiltrate the land.

Public Comment was also received by email from: Joel Folliard, 11 Kimberly Drive. A copy of the email is on file at the Community Development Department.

Mr. Branon advised that there are two materials approved for lining the detention basins, one is a plastic liner and one is a clay liner and they work with the state to ensure the materials meet their requirements. Mr. Thompson addressed the NH Green Snow Pro certification question by advising that staff has not done a complete review of all of the notes on the plan yet because it is not a final plan however, the requirement is that anyone doing snow removal needs to have the certification or functional equivalent. Mr. Walker addressed the lighting plan briefly and clarified that the plan calls for all lights to be facing down. He also stated that he is happy to discuss the option of adding a fence to either property and offered his phone number.

Mr. Thompson called out a review comment regarding the traffic impact analysis that needs to be corrected. The report indicates a reduction in traffic based on the previously approved CUP (which indicated retail uses on this lot), but that since the retail was never constructed the traffic analysis needs to be based on a vacant lot.

Board voted 4-0-0 by roll call vote to continue the public hearing to June 1, 2021 on a motion made by Nelson Disco and seconded by Barbara Healey.

Robert Best returned to Chair the meeting.

6. Discussion/possible action regarding other items of concern

Chairman Best announced that the Planning Board and other town boards are in need of members and encouraged any interested parties to reach out to Community Development or General Government for information.

Chairman Best also welcomed Councilor Healey to the Planning Board and Mr. Thompson encouraged her to contact the Community Development if she has any questions.

7. Approval of Minutes — April 6 & April 20, 2021

The Board voted 3-0-2 by roll call vote to approve the minutes of April 6, 2021, as submitted, on a motion made by Paul McLaughlin and seconded by Nelson Disco. Barbara Healey and Neil Anketell abstained.

The Board voted 3-0-2 by roll call vote to approve the minutes of April 20, 2021, as submitted, on a motion made by Paul McLaughlin and seconded by Nelson Disco. Barbara Healey and Neil Anketell abstained.

8. Adjourn

The Board voted 5-0-0 by roll call vote to adjourn at 10:02 p.m. on a motion made by Paul McLaughlin and seconded by Barbara Healey.