



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

603 424-3531

Fax 603 424-1408

www.merrimacknh.gov

MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY, SEPTEMBER 23, 2014

Planning Board members present: Robert Best, Alastair Millns, Tom Koenig, Stanley Bonislowski, Desirea Falt, and Alternate Nelson Disco.

Board members absent: Lynn Christensen and Michael Redding.

Community Development staff present: Assistant Planner Donna Pohli and Recording Secretary Zina Jordan.

1. Call to Order

Robert Best called the meeting to order at 7:30 p.m. and designated Nelson Disco to sit for Michael Redding.

2. Planning & Zoning Administrator's Report

None.

3. Boomer McCloud Car Audio (applicant) and GFI Merrimack LLC. (owner) –

Review for acceptance and consideration of Final Approval of an application for a site plan to construct a 7,500 s.f., two-story car audio/electronics retail sales and service building. The parcel is located at 5 Executive Park Drive in the C-2 (Commercial) and Aquifer Conservation Districts. Tax Map 4D, Lot 073.

Withdrawn by the applicant.

4. Tomasian Drive LLC. (applicant) and The Stephanie Tomasian Revocable Trust (owner) –

Review for acceptance and consideration of Final Approval of an application for a 19-lot cluster subdivision located at Tomasian Drive in the R-1 (Residential), Aquifer Conservation and Flood Hazard Conservation Districts and Shoreland Protection Area. Tax Map 4B, Lot 009-01.

Donna Pohli explained that there are no CLD comments yet because the escrow has not been received.

Ken Clinton, President, Meridian Land Services, the parcel is predominantly wooded with Town-owned conservation land (Ireland parcel) on the west. The applicant has received comments from Town departments, but is awaiting the results of this meeting before submitting the escrow funds. There will be no more construction this season.

Ken Clinton distributed his September 23, 2014, letter responding to staff comments:

By lengthening the road and widening the lots, he might have fallen below the 50% open space threshold. However even after extending the road 150', he will still have 50.9% of open space. An Open Space Easement will be necessary.

Because of the specific circumstances of the parcel, a waiver from the requirements of Section 4.18.b. - Right-of-Way Work - of the Subdivision Regulations - is sought to allow a 150' portion of the road grading to be at 2:1 slope where the regulations allow a maximum of 3:1. This portion of the road is at a wetland crossing. The design slope is intended to minimize the area of wetland and environmental impact. The side slopes will be stabilized with matting and grass and will include a guardrail and 8' of fill and a sidewalk on the north side for safety. There will be 2,700' of impact with a 2:1 slope vs. 3,300' of impact with a 3:1 slope. According to Ken Clinton, the NHDES (Department of Environmental Services) prefers the 2:1 slope, but Kyle Fox, Deputy Director of the Public Works Department (PWD), prefers the 3:1 slope because, as Town Engineer, he must uphold Town standards. If denied, Ken Clinton will tell DES it is the Town's decision and should not prevent granting a permit. Chairman Best and Stanley Bonislowski stated that the Planning Board tends to give much weight to a Town department such as PWD. Ken Clinton stated that maintenance would consist of periodic mowing and clearing the inlet of tree branches. There will be a 30" culvert with an inlet on the south. Water will flow from Amherst Street to the Ireland property to the culvert, to rip rap, to the Souhegan River. There may be spotted, wood, or Blandings turtles crossing the wetland. The Fish and Game Department requested increasing the pipe size to 36" of CCP pipe reinforced concrete to help the turtles cross. A 30" pipe would have been plastic. The culvert size will not change the design. 3:1 slopes will require longer pipe and more rip rap, which makes more of a net impact. Ken Clinton said the fill apron with a 2:1 slope would be 10' wide, whereas it would be 15' wide with a 3:1 slope. Tom Koenig did not hear that Kyle Fox had any objections except for maintaining Town standards. The side slopes will create stability and safety. The area in question is very small where the wetland crosses the road and flows only at some times of the year. A waiver is reasonable for a limited portion of the road that crosses wetlands. Chairman Best added that pedestrians would not be walking on the slope because there would be sidewalks. Ken Clinton stated that a guardrail might not be necessary with a 3:1 slope. Donna Pohli noted that Kyle Fox objects to the 2:1 slope because there are other ways to meet the regulation. Ken Clinton said the suggested retaining wall is not worth the added construction and maintenance costs. He will add approximately 13' to the 60' pipe length. He can create an impediment to prevent children from playing in the pipes.

The houses will be designed to avoid a foundation drain (Condition 8.i.)

NH Fish and Game recommends an Open Space Conservation Easement. Any easements with neighbors would be on private property and would be required no matter what size the slope would be. Ken Clinton met with the Merrimack Conservation Commission (MCC), who did not comment on whether they would oversee an easement. Ken Clinton wants an Open Space Conservation Easement because the DES and Fish and Game Department want more open space protection. The applicant wants an active use of the wetland. He will use the same language that is in the Ireland property deed that requires maintaining the parcel in its natural state, low impact educational and recreational uses, and banning motorized vehicles. Chairman Best said the MCC did not

address the open space issue in its letter to the Planning Board, which he read into the record. The MCC has no issue with the crossing location, but it cannot comment on permits that have not yet been filed. It has no comment regarding turtles. MCC recommends only low phosphate fertilizers and limited snow de-icers. 50.9% of donated open space will have a positive impact on protecting the Souhegan River and open fields to the west. Ken Clinton prefers the Town own it outright, but Chairman Best prefers that the owners do not have shared property. Ken Clinton explained that the National Heritage Bureau has a database of turtle sightings and showed where they had been seen in the past.

Staff recommends that the Board vote to accept the application, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow it to make an informed decision.

The Board voted 6-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Stanley Bonislowski.

Alastair Millns asked whether the original three houses to the south would have underground electricity and no utility poles. Ken Clinton said approving the three lots is a separate issue. His clients have begun road upgrades and intend to put utilities underground.

Public comment

Pete Gagnon, 130 Bedford Road, suggested that the Board look at the revised Sewer Master Plan, which lists priorities for drainage areas where the Town will install sewers. Although this area is #29 on the list, it will be under pressure from development in the nearby area. He noted that the Town does not have money for sewers, so it must be careful about how land is used in the future. Ken Clinton said a certified soil scientist would stamp the plan.

Regarding the waiver from the 3:1 slope, Chairman Best said that less wetland impact is better. Robert Best, Alastair Millns, Tom Koenig, and Nelson Disco agreed that minimizing wetland impact is a good plan. The waiver is for a very short distance and there will be a guardrail and a 24'-wide sidewalk. Alastair Millns stated that 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.

The Board voted 6-0-0 to grant a waiver from the requirements of Section 4.18.b. - Right-of-Way Work - of the Subdivision Regulations – on a motion made by Alastair Millns and seconded by Desirea Falt.

It was the Planning Board's consensus to convey the open space to the Town with a Conservation Easement similar to the one on the abutting Ireland property. Ken Clinton said the peripheral road would remain a walking trail.

At the applicant's request, the Board voted 6-0-0 to continue this item to October 21, 2014, in the Matthew Thornton Meeting Room, at 7:30 p.m., on a motion made by Alastair Millns and seconded by Desirea Falt.

5. John J. Flatley Company (applicant/owner) – Review for acceptance and consideration of Final Approval of an application for a Conditional Use Permit to

permit a future mixed-use development consisting of industrial, multi-family residential, commercial, restaurant, and retail uses. 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 July 22, 2014, August 5, 2014, and September 9, 2014, Planning Board meetings.***

Chad Branon, Civil Engineer/Project Manager, Fieldstone Land Consultants, wrote to Donna Pohli asking for a continuance because he did not realize that the Town required revised plans by September 18, 2014, to address feedback received at the last Planning Board meeting and is also awaiting traffic review.

At the applicant's request, the Board voted 6-0-0 to continue this item to October 7, 2014, in the Matthew Thornton Meeting Room, at 7:30 p.m., on a motion made by Alastair Millns and seconded by Desirea Falt.

6. Keach-Nordstrom Associates, Inc. (applicant) and Valleyview Revocable Trust, Carol Maggio, Trustee (owner) – Compliance hearing pursuant to the Planning Board's July 8, 2014, grant of a six-month extension to meet precedent conditions of approval for a 2-lot subdivision. The parcel is located at 15 Valleyview Drive in the R (Residential) District. Tax Map 5C, Lot 142.

Peter Julia, Project Manager, Keach-Nordstrom Associates, said the Planning Board mandated a compliance hearing to verify that the applicant controls its contractors' use of the emergency access lane, the construction of the access lane and the addition of the water line, and to make sure the existing road is restored to its original condition or better per the Administrative Approval of August 24, 2012. The road is now stable, with grass and side slopes, and is clean and free for travel. The barricade is temporary. A new contractor is excavating the access road, but he hit ledge that must be removed from the trench mechanically rather than blasted. He is excavating but still has not found the end of the existing water main at the end of Valleyview Drive to tie into. A Merrimack Village District (MVD) representative who was present could not find it either. He distributed photos of the work. The water main is probably under the stone wall at the Amick home at 11 Valleyview Drive. Digging was stopped in order not to disturb that property or the wall. The applicant will restore everything when the work is done, but Peter Julia does not know how long that will take. No schedule he previously mentioned has been met by the contractor and builder. The Amicks were not given advance notice that the driveway would be brought up to grade this morning. Additional test pits were dug. Additional ledge was found within 12" of the paved surface, so pipe cannot be put there and the schedule will be extended. On September 9, 2014, Pete Julia wrote that the water line would be finished on September 19, 2014, and the emergency road on September 26, 2014. The contractor thinks he can finish the water main and access road to gravel grade within 10-14 working days. The MVD representative has no diagrams showing the location of the water pipe. Digging must go 5'-6' down. Pipe was found in some locations. Pete Julia described where MVD dug. In his opinion, ledge is the reason that the end of Valleyview Drive is so steep and the pipe stops. The water main does not extend as far north up Valleyview Drive as the client and MVD representative had hoped. Whatever is disturbed will be restored.

Michael Maggio, FHB Consulting, said the Town has no plan showing the pipe's exact location. It is very difficult to locate. He is being as careful as possible and will be at the site tomorrow and every day until it is found. He is hammering rather than blasting. He rented a hammer for one week and will have to rent it for another.

Pete Julia said the pipe is metal. MVD used a metal detector and the signal did not change. Alastair Millns suggested asking the National Guard Corps of Engineers to use its IED finder. Chairman Best and Nelson Disco agreed that there should be metal detectors sensitive enough to find the pipe. Pete Julia said there was no surface reading. Because the trajectory went to the Amick's front lawn, the MVD decided not to dig there. The MVD will decide which option to use rather than dig holes for another week. Pete Julia produced a photo showing that the wall is strikingly close to the roadway and possibly in the right-of-way. It has not been surveyed. It turns 90° at the end and ties back to the property boundary. The Amick family, MVD and Mike Maggio will have to meet to decide on the best resolution. The MVD shut down a main temporarily and shut off water to the homes briefly while digging. Mike Maggio said an elbow pipe is not allowed to turn more than 45° to cross the road. Pete Julia suspects that the Amick's water service is within 3' of the end of the water main to keep the water in the pipe from becoming stagnant. MVD thought that is where they would find the end. One option is to start further down where they found pipe and either cut in a "T" or put in a tapping sleeve, which is very costly (\$5,000-\$10,000). He does not want to excavate on the Amick property. Mike Maggio said MVD thinks the shutoff/curb stop is 10' away on the lawn and should know tomorrow.

Stanley Bonislawski urged quick action. Chairman Best said he understands that having difficulty finding the pipe's end is not the contractor's fault, but wants more communication with the neighbors.

Pete Julia said most of the July 2014 conditions of approval have been addressed and reviewed by staff.

Chairman Best read from the staff memo that the Police Chief, Community Development Director, and Town's Legal Counsel have discussed the enforcement of the emergency access way being limited to emergency vehicles. It has been determined that a public hearing must occur with the Town Council in order for the Police to have enforcement power for limiting access to the emergency access drive to unauthorized vehicles. The interested parties will have to work with the General Government Department to be placed on an upcoming Town Council agenda to address this issue. Chairman Best noted that a Planning Board condition of approval was that the access road be for emergency vehicles only. Donna Pohli said Community Development and the Police Departments rather than the applicant would ask Town Council for a hearing once final approval is granted. A note was added that no construction vehicles use the emergency road.

Public comment

Shauna Amick, 11 Valleyview Drive, said this is the first day the yard was dug and asked if one day is enough to find the pipe, protection for the neighbor at #18, and the imposition of a time limit/deadline. Chairman Best said there is no guarantee how long it would take to find the pipe. The Board can impose a deadline to complete the job and to

compel the applicant to return for another extension/compliance hearing if he does not. Shauna Amick said the roadblock did stop traffic on the dead end street. She wanted a completion deadline, return of the property to its previous condition, and keeping the road as an emergency access road rather than a public Town road. Chairman Best replied that it would be limited to emergency personnel. The issue is enforcement, which is up to Town Council. Alastair Millns suggested a gate with a radio controlled button that the Fire Department can press to raise the barrier like the one at the Merrimack Premium Outlets, but Stanley Bonislowski said the Fire Department does not like it. Chairman Best said they did not want an emergency gated access lane for this project, but gave no reason. Stanley Bonislowski opined that Town departments want to finish as quickly as possible. Shauna Amick said she would be home tomorrow to work with the various departments, Keach-Nordstrom and the contractors. She thanked the Planning Board for its previous help with the road barrier and suggested that everyone communicate about next steps.

Amary Hammond, 18 Valleyview Drive, lives at the end of the emergency road and is concerned about through traffic there. She wants a barricade, not just a sign. Work should be completed in a timely manner. Chairman Best explained that the Fire Department objected to a gate because the road must be used when GPS sends vehicles wanting to go to #18 to #11. The Board agreed that Donna Pohli should ask the Fire Department for a written explanation for its reasoning.

Mike Maggio promised to work as quickly as possible. As soon as he finds the main and chips the ledge, he will be ready to complete the work. The time it takes to restore the Amick yard depends on how much of the rock wall will have to be moved. He should know in the next few days. It will be done as soon as the pipe is installed. Mike Maggio does not yet have a contractor for the wall but he does have one for the grass, loam, etc.

Mike Maggio said the conditions of approval would be met within 10-14 days. Pete Julia said they would be met by December 15, 2014, at the latest, when paving plants close. Alastair Millns suggested a Thanksgiving/60-day deadline. Desirea Falt noted that the extension deadline is January 8, 2015. Tom Koenig suggested 45 working days. Chairman Best noted that the applicant did not look for end of the pipe until today although he had since July 9, 2014, to do so. The Board should set a deadline that makes the applicant do the work quickly and not delay. Mike Maggio said he is committed to a discussion with Shauna Amick and other departments tomorrow. He cannot guess when he will finish. He thought MVD would find the pipe a long time ago. Alastair Millns said it is not fair to set a date because MVD cannot find the end of the pipe.

The Board voted 5-1-0 that the applicant complete the water main construction; pave Valleyview Drive, including the emergency access way; and restore any damage to Valleyview Drive and/or to private property, by November 7, 2014, on a motion made by Tom Koenig and seconded by Stanley Bonislowski. Alastair Millns voted in the negative.

7. Discussion/possible action regarding other items of concern

Alastair Millns said that the NH Hillsborough County Conservation District would make a presentation about soil types, land use and mapping at the joint meeting with the Zoning

Board of Adjustment (ZBA) on December 9, 2014. MCC will be invited. Desirea Falt said the December 9, 2014, Bicycle and Pedestrian Committee meeting would have to be rescheduled.

In reponse to AutoFair's neighbors' complaints about night deliveries at Home Depot, Donna Pohli reported that Home Depot delivery hours are Monday-Saturday from 6:00 a.m. to 10:00 p.m., and Sunday from 8:00 a.m. to 6:00 p.m. If there is an inadvertent delivery outside normal hours, the truck must park in front of the store.

Desirea Falt said the Bicycle and Pedestrian Committee met with NH Department of Transportation District's representatives. They have established a baseline about what to expect of a Sidewalk Master Plan for all of Route 3 and are especially concerned about the section from Bedford Road to the north. Chairman Best noted that Kyle Fox has information about the drainage structure. Desirea Falt said the committee would overlay maps with the Nashua Regional Planning Commission (NRPC). The committee will get legal information about "payment in lieu of sidewalks". The goal is to resolve the situation this year. Nelson Disco said a sidewalk fund should be established.

Nelson Disco said he and Donna Pohli were not allowed to attend a NH Municipal Association workshop because Merrimack no longer belongs, although it should. Tom Koenig said Town Council voted against it despite his support.

Chairman Best suggested the Board's e-mail chain be a matter of public record.

8. Approval of Minutes – September 9, 2014

The minutes of September 9, 2014, were approved as submitted, by a vote of 6-0-0, on a motion made by Stanley Bonislowski and seconded by Desirea Falt.

9. Adjourn

The meeting adjourned at 10:00 p.m., by a vote of 6-0-0, on a motion made by Alastair Millns and seconded by Nelson Disco.