



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

## MERRIMACK PLANNING BOARD

### APPROVED MINUTES

TUESDAY, OCTOBER 15, 2013

Planning Board members present: Robert Best, Alastair Millns, Tom Koenig (arrived 7:40 p.m.), Michael Redding, Lynn Christensen (arrived 7:35 p.m.), Stanley Bonislowski, Desirea Falt, and Alternate Nelson Disco.

Planning Board members absent: Alternate Matthew Passalacqua.

Community Development staff: Community Development Director Tim Thompson, 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 Lynn Christensen.

#### 2. Planning & Zoning Administrator's Report

None.

**3. Wigston Properties, LLC. & Edgebrook Heights, LLC./Q. Peter Nash, Trustee of the Q. Peter Nash 1987 Revocable Trust (applicants/owner) – Pre-Submission Hearing for a proposed mixed use development site plan consisting of retail (including a gas station), office, multi-family residential & assisted living. The parcels are located in the I-1 (Industrial) District located at 1, 37, 39, 55 and an unnumbered parcel, D.W. Highway, Merrimack, NH. Tax Map 1E, Lots 004-1 & 004-2, Tax Map 2E, Lots 006-2, 007 and 008.**

Tim Thompson explained that there had been a previous pre-submission hearing on June 4, 2013. The Zoning Board of Adjustment (ZBA) granted a variance for mixed-used development and will decide on October 23, 2013, about a variance for residential density. The latter is the subject of tonight's discussion. Mixed use is permitted by a conditional use permit, which the Planning Board must approve. It is an additional level of scrutiny.

James Petropulos, Vice President/Principal Engineer, Hayner-Swanson, Inc., said the 35-acre parcel is on D.W. Highway across from the Harris Pond development. It will consist of a mix of retail, commercial, elderly and multi-family housing. The ZBA wants the Planning Board's opinion regarding the multi-family housing density.

Lynn Christensen and Tom Koenig arrived at 7:35 p.m. and 7:40 p.m., respectively.

The following significant changes were made since June 4, 2013: There may be a 60-seat restaurant on the north portion. Employee parking would be in the rear, leaving 115 spaces. Dumpster locations are on the plan. A recreation facility was added to the clubhouse and a bus loop was added in the center of the residential project with a sidewalk leading to it. There will be two roundabouts and a covered canopy for school children. Parking throughout the development will meet code. There will be 430 spaces in the multi-family portion. There will be garage-level

parking beneath three of the buildings. This compares favorably with Forest Ridge in Nashua, which the Board had asked for. What would have been elderly housing was swapped with what would have been the commercial building. The square footage of the commercial building was downsized and the number of beds in elderly housing was increased from 64 to 74 because a potential elderly housing developer preferred the new location. On August 28, 2013, the applicant requested that the ZBA grant a density variance to allow 168 units/6.8 units per acre because Merrimack housing and density regulations do not reflect typical residential multi-family development, mixed use or different forms of housing. The ZBA tabled the variance petition until October 23, 2013, and requested that the applicant discuss the proposed density further with the Planning Board before it renders a decision. The ridge acts as a buffer between uses, which complement each other. At its June 3, 2013, meeting, the Planning Board was satisfied with the density as long as there is ample parking.

Stanley Bonislowski was concerned about the location of the parking. There would be 10 spaces for the clubhouse and pool, so people must park on the road when using them. Robert Best said that, although the ZBA must meet five statutory criteria to grant a waiver, the Planning Board could say the reason for doing so is that the number of units per acre is the basis for the density regulation. The applicant wants seven rather than six units per acre.

Attorney Brad Westgate, Winer & Bennett, said a variance would allow up to seven units per acre for a maximum total of 168. The Ordinance is based on net acreage reduced by wetland soils, 100-year floodplains, land with slopes greater than 25% and land encumbered by overhead electric power line easements. The applicant wants to calculate density on gross acreage without such reductions because the land lends itself to that calculation by the nature of the ridge. It would be a benefit rather than a burden to the parcel. The flood plain in the rear is really an amenity for homeowners to view.

Chairman Best was concerned about environmental impact rather than aesthetics. Nelson Disco asked where the Ordinance mentions calculations. Attorney Westgate read out Section 15.04 concerning the PUD regulations within a conditional use overlay. Paragraph B mentions steep slope and floodplain reductions and refers to Table 1, which concerns the type of dwelling units per gross acre. They are inconsistent. Planning and Zoning Administrator Nancy Larson said it seems to imply calculating on gross acreage, but the regulation requires calculating net acreage. That is why a variance is sought.

Tim Thompson said the PUD density standard is in Section 2.02.4.C(2), which refers a permitted use to PUD for density.

James Petropulos said there would be five lots. He showed the 25% slope and floodplain areas, which would exclude nine acres.

Michael Redding asked whether the land has the capacity to support the density and how disturbance to runoff would be minimized. James Petropulos said a soils test showed sandy soil. Roof water is cleaner and would go directly underground. The parking areas would be broken up into smaller area/rain gardens. A pipe would probably take bigger flows. Michael Redding said that more pervious cover/parking is a trade-off and asked if there could be a better balance to manage the intensity. James Petropulos reminded the Board that it asked the applicant to meet the parking standard, which he did. Less parking would help drainage, but that would be shown a later design.

Alastair Millns stated that Hinkley soils are not good, but James Petropulos said it is good. The particles allow water to move vertically through the soil. The water would be treated before recharge. The depth is deep under the groundwater. Robert Best asked how steep the slope behind the commercial section is, which James Petropulos said is 25-30%.

Alastair Millns asked for the rationale for making the D.W. Highway access road to the first rotary a public rather than a private road. Would it have a single-site manager or would each unit be managed differently? Why should the town maintain that road? James Petropulos replied that there is a signalized intersection. All traffic would come onto one road, which would be a short cul-de-sac. Robert Best said the commercial site needs access on a public road. The town requires a separate lot to get the building permit, which requires access onto a public road. Tim Thompson said the road could be private and approved by the Planning Board. He added that there is a sign issue on a private drive vs. a public road. Attorney Westgate explained that lots accessed by easement on a private road are not allowed by statute unless the town signs off. There is no frontage in the industrial zone. The back lot needs frontage on a public road. Revenue from this project should cover the cost of plowing the short road.

Chairman Best noted that there would still be some shared driveways in the commercial section. There is no public access road for the assisted living facility. A shared driveway is an unnecessary headache. Alastair Millns reiterated that it could be a private road with public access maintained by the developer. Attorney Westgate said that is tangential to the density issue. Lynn Christensen queried the difference between a private and public road. Attorney Westgate said some shared driveways require covenants for maintenance if they are private. More sharing is required to manage them, so everyone must be in the loop. A public road would simplify things so that only the shared driveways would need covenants. The assisted living facility on the back lot would not have frontage on the public road. That creates a financing issue and goes against the Ordinance for residential development. It would be more complex to sell and finance the development without a public road. The project is an overall benefit to the town, so a public road would also be a benefit. One must balance cost vs. benefit.

Chairman Best suggested that, at a future discussion period, the Board discuss how to address applicants' requests for a public road. There have been inconsistencies.

Stanley Bonislowski said a private road is fine for senior housing. If housing is for all ages, including the need for school buses, it must be a public road. Chairman Best said that is the reason for a roundabout. He, too, asked whether the site could handle the density of this development and wanted information about storm water and salt and fertilizer use at the next discussion.

Tom Koenig was concerned about environmental impact, stating that the development is overly dense, leaving not much outdoor area for people to move around. A lot is being "shoehorned" into the lot and against the railroad. It is overbuilt, which is the reason for a slope regulation. Tim Thompson explained that multi-family housing has significantly fewer school-age children than single-family homes: .1-.3 per unit, perhaps 42 children in this development. Alastair Millns noted that adults also need to move around. Robert Best said that the floodplain and wetland are more important for him than the slope; they are not usable space. The slope area can be used. The Board must address wetland impacts. If the site were flat, there would be no problem. He repeated his concern about environmental impacts. Nelson Disco reinforced Tom Koenig's and Robert Best's statements. When the Ordinance was written, there was debate about how to calculate area. The concern was to protect wetlands and floodplains by not using them. If an exception from the regulation is made, other sites may want to follow suit. Chairman Best reminded the Board that every site is unique, so no precedent would be set.

### **Public comment**

Pete Gagnon, 130 Bedford Road, said this is a zoning rather than a variance issue. Density, permeability of soils and the environment were factors in writing the Ordinance. Hinkley soil has rapid permeability, which is the main hazard for groundwater contamination. Pete Gagnon read out absorption rates and characteristics of various soils. There are salt and fertilizer issues with

different types of soil and density. It was he who suggested that the ZBA seek the Planning Board's opinion. This development can be looked at from the standpoint of performance zoning, which the Master Plan encourages. There are soils similar to this all over town. The density is too great after exclusions.

Chairman Best said rapid permeability is not an issue because there is no on-site septic system, but it would cause trouble watering and fertilizing lawns. Perhaps a cover other than grass could be used. It would be hard to maintain lawns on that soil type. If environmental impacts were avoided, he would support the project, but it is too early to tell. The ZBA must answer its five criteria, but the Planning Board will look for environmental protection.

James Petropulos does not think multi-family housing is a dense development, although the Planning Board thinks otherwise. There is no septic system, on which many regulations are based. There will be municipal sewer. A lot of vegetation will be saved; there will be no clear cutting. Robert Best added that the applicant showed that the density of the proposed development is better than at Forest Ridge in Nashua. He asked for examples in Merrimack. Alastair Millns said that Forest Ridge maintains itself. There are no lawns, so no fertilizer is used. He again asked whether a management company would run the development. If so, he would worry less than if every home is responsible for its own property. Lynn Christensen noted that Forest Ridge is land locked. Her concern is that this development has a bearing on a waterway. Forest Ridge is not a good comparison.

Attorney Westgate listed data three for multi-family garden-style Merrimack developments supplied by Nancy Larson. The Commons has almost nine units per acre; Country Crossing was approved for 10 units per acre and has 9.8. Crosswoods Path has 17-18 units per acre. Tim Thompson said the figures were calculated for garden apartments and explained how Nancy Larson got the figures. She separated garden apartments from townhouses. Chairman Best noted that Crosswoods Path and The Commons were built under the 1980s Planned Unit Development (PUD) Ordinance. Tim Thompson said the numbers in the Ordinance were different then. Pete Gagnon said the Ordinance was enacted over a period of time with the assistance of a number of state and federal agencies and consultants.

Chairman Best said not having a septic system makes a huge difference when calculating density. There are no issues with the three projects with a higher density.

Attorney Westgate reminded the Board of the Master Plan's housing goals: to encourage more mixed use along the D.W. Highway Corridor and to allow higher density where infrastructure can support it with smaller and more affordable dwelling units. Mixed use is the most appropriate use for this property. The applicant will prove this density can be environmentally sound, but must have a variance in order to build the development. 40% of mixed use would be lost if density is based on net acreage. Chairman Best said the Master Plan is a good point. A conditional use permit is the means to performance-based zoning. He does not see the synergy among the five entities on the lot and wants to see a more cohesive site. He repeated that, if environmental challenges are managed, he would have no problem with higher density, but the engineering will be done later. Michael Redding said unique qualities make the density on this site acceptable. It is different from other requests, so a variance would not set a precedent. Nelson Disco agreed that the Board could point to the unique features of this particular site when recommending a higher density without making a new standard. When the Ordinance was written, only public sewers rather than on-site disposal were considered. Stanley Bonislowski cited the Master Plan's encouragement of higher density over the next 10 years as a step forward. Tom Koenig said there is not much PUD development in Merrimack now. There are many shared driveways on this plan. He reminded the Board of a previous applicant who wanted to change his zoning because he could not fill his commercial space. Tom Koenig doubted that this could be a functional PUD.

Chairman Best suggested that, at a future discussion period, the Board discuss whether to phase projects differently so that the commercial portion is built as fast as the residential portion.

Chairman Best called this a “Catch 22”: there is not enough information for the Board to decide the density, but the applicant does not have to do the engineering until he learns the Board’s density decision. Alastair Millns said uniqueness is the basis for the density, but the Planning Board will require certain environmental constraints. Lynn Christensen disagreed. The Old Shaw’s and Maple Ridge Plaza are PUDs, but they have not been able to rent commercial space for many years. How does the Board know this commercial space can be developed? Chairman Best said that is why the commercial portion should be rented and occupied in Phase 1. It would be a big improvement for business. However that should be discussed later without the applicant in attendance.

In the Planning Board’s letter to the ZBA, Chairman Best will note the site’s special features.

**The Board voted 6-1-0 to offer the following comments, on a motion made by Stanley Bonislowski and seconded by Lynn Christensen. Tom Koenig voted in the negative.**

Assuming that the applicant is able to establish, to the satisfaction of the Zoning Board of Adjustment, that the statutory conditions required in order to justify a variance exist, the Planning Board would be comfortable with the proposed higher density for the following reasons, provided that the applicant addresses and manages the various environmental concerns from an engineering standpoint when a formal application is submitted for the Planning Board’s review as part of the required Conditional Use Permit process:

1. The site is unique in its topographical circumstances which provide a natural buffer of the residential uses to the other proposed uses that are part of the project;
2. The proposed higher density is consistent with recommendations and goals of the forthcoming Master Plan (in the Land Use, Housing, and Economic Development elements), which has been conditionally adopted by the Planning Board; and
3. If the ZBA granted a variance to the applicant to allow a higher density, the Planning Board retains the opportunity to require the applicant to address any adverse impacts that result from the higher density, such as storm water controls and environmental issues, as a part of the Planning Board’s review.

The Board took a five-minutes recess, from 8:57 p.m.-9:02 p.m.

**4. Northview Homes & Development, Inc. (applicant) and Carl A. Quimby Revocable Trust & Larry Kittle (owners) – Consideration of Final Approval of an application proposing to consolidate and re-subdivide three lots into thirteen lots, located at 164 Amherst Road, 8 Pollard Road, and an unnumbered parcel in the R-1 (Residential) and Aquifer Conservation Districts. Tax Map 4B, Lots 146, 146-1 and 152-1. The application also proposes a lot line adjustment between 166 Amherst Road (Tax Map 4B, Lot 145) and 164 Amherst Road (Tax Map 4B, Lot 146). This agenda item is continued from the September 24, 2013 meeting.**

Tim Thompson said that the Planning Board accepted the application for review and granted four road waivers on August 6, 2013. The applicant has since received and addressed most comments. Staff is concerned about access to Lot 147.

Ken Clinton, Meridian Land Services, agreed to all comments and revised the plans and said the existing right-of-way is sufficient to provide access to Lot 147. John Tenhave of Northview Homes met with the owners and will convey a triangular piece of land along their current frontage at no cost for their fee ownership of the frontage along the realigned Pollard Road. He gave them landscaping rights and slope and drainage easements and will shift some lot lines in order to

meet Condition 4. He will still have more than 100,000 square feet of contiguous upland along the frontage. Lot 4 has driveway access through an easement over Lot 5. The applicant may bring the driveway across Lot 3 to the opposite side of the wetland. He will file an easement plan and get town approval.

Chairman Best thanked Ken Clinton for all his work on issues the Planning Board had discussed; it is quite an accomplishment. He asked about one access for Lots 1, 2, and 3 off Amherst Road. Ken Clinton said double frontage is a pre-existing condition. He will not use the three access roads to Amherst Road as right-of-ways. He may convey some land from one lot's surplus land or make an agreement with an abutter to convey surplus land. He can put a note on each of the three strips to say that it is not for access to the lot. Chairman Best wanted it put on the deed as well and expressed satisfaction with the proposal.

Chairman Best asked about steep slopes for driveway access to Lots 4, 5 and 6. Ken Clinton said he pre-designed the driveways to make the drainage and the road system work together. All driveways would have less than a 10% slope.

Nelson Disco asked whether Lot 147 has sufficient frontage. Ken Clinton replied that it has an excess of frontage.

Nelson Disco asked whether all the lots were surveyed and staked after new lot lines were drawn. Ken Clinton they would be; it is premature to do so now.

Nelson Disco asked where the drainage on the side would go. Ken Clinton said it would ultimately go to the Souhegan River. It would be treated on site and metered and would not leave the property at a greater volume or rate. It would be better than current conditions: sheet flow now goes down the slope through abutter properties, is uncontrolled, and overwhelms the public system. PUD is satisfied. There would be no overload downstream. The system works now.

Nelson Disco noted a street light at Pollard and Amherst Roads and asked about the intersection of the two cul-de-sac roads. Ken Clinton said the Fire Department approved it as Lexie Circle. No streetlight is required or proposed.

There was no public comment.

Desirea Falt complimented the water retention plan.

Tim Thompson suggested revising Condition 4 and adding Condition 12.

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

**The Board voted 7-0-0 to grant final approval, with the following conditions, on a motion made by Alastair Millns and seconded by Lynn Christensen.**

1. Final plans and mylars to be signed by all property owners. The Licensed Land Surveyor and Certified Wetland Scientist shall also sign and seal final plans and mylars;
2. The applicant is responsible for recording the plan (including \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) and any related documents at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
3. A draft copy of all proposed easement and any applicable legal documents to be submitted to the Community Development Department for review and approval by the town's legal counsel. (Legal review shall be performed at the applicant's expense.) Said

document shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;

4. The applicant shall revise the plans to include the revisions to all impacted lots modified in order to provide access to the reconfigured Pollard Road for Map 4B, Lot 147. In addition, the owners of Map 4B, Lot 147 are to be added to the project plans as co-applicants and appropriate signatures from the owners added to the final plans;
5. The applicant shall obtain all required State Permits, provide copies of all permits to the Community Development Department, and add notations of permit numbers and expiration dates, if applicable, to the final plan;
6. The applicant shall verify that all comments from the Town's peer review consultant, CLD, have been satisfactorily addressed;
7. The applicant shall verify that comments from the Merrimack Conservation Commission have been satisfactorily addressed;
8. The applicant shall satisfactorily address the remaining comments from the Merrimack Village District: Add a hydrant at road station 6+50 between Lots 1 and 2;
9. The applicant shall verify that review comments from the Public Works Department have been satisfactorily addressed;
10. The applicant shall verify the review comments from the Fire Department (see Memo dated June 12, 2013, from the Fire Marshall);
11. Final plan to set to include Sheets acceptable to the Registry of Deeds for recording purposes (i.e., without topography, shading, etc.);
12. The applicant shall add a note to the recordable sheet of the plans indicating that no access is to be obtained from Amherst Road for lots 146-1, 146-2, and 146-3;
13. Address Planning Staff Technical Comments (see below).

Planning Staff Technical Comments

1. Revise Note #13 on Sheet 1 in its entirety to read: "This project is subject to the requirements of the Town of Merrimack Stormwater Management Standards (Chapter 412 of the Town Code). A pre-construction meeting with the Community Development Department and Public Works Department shall take place at least two weeks prior to commencement of disturbance in accordance with Article IV of the Stormwater Management Standards.";
2. Add the owner of record of 4B/145 (Larry Kittle) to Note #2 on Sheet 1, as the owner of the lot involved with lot line adjustment, and therefore an applicant to the project;
3. Add a note to the plans explaining the difference or purpose between the square footage and square footage "net" indicated on several lots on Sheets 4-7;
4. Provide a streetlight at the intersection of Pollard and Amherst Roads in accordance with the regulations and provide all appropriate details for the streetlight meeting the approval of the Public Works Department;
5. Correct the spelling of "boulder" on Sheet 8 and in the cross sections on Sheet 17 ("bolder" is currently indicated.) In addition, please verify that the Public Works Department is satisfied with the use of retaining walls within the proposed public right-of-way;

6. Confirm with the Public Works Department that adequate access is provided to stormwater management areas for proper maintenance;
7. Address the following minor “drafting issues” on various sheets:
  - a. On Sheet 2, clean up the titles for details “B”, “C”, and “D”, which appear to be plotted twice over one another;
  - b. On the bottom right corner of Sheet 8, address the overlapping text for the 4K Septic Box;
  - c. On Sheet 15, add the location (“boxes”) for the “Potential Stump Disposal” areas or remove the text entirely if not applicable to this Sheet.

**5. Canis Properties, LLC. (applicant/owner)** – Review for Acceptance and consideration of Final Approval of an application proposing to construct a 4,075 s.f. addition and to convert a portion of an existing 2,350 s.f. residential duplex for a commercial dog grooming, training, daycare & boarding facility (d.b.a. “SuperDogs” Daycare & Boarding). Approximately 1,558 s.f. of the existing duplex will serve as a residential caretaker’s unit for the facility. The parcel is located at 637 Daniel Webster Highway in the C-1 (Limited Commercial), Aquifer Conservation Districts & Wellhead Protection Area. Tax Map 6E-2, Lot 023.

Dawn Tuomala, Civil Engineer and Wetland Scientist, Monadnock Survey, Inc., said a one-bedroom home and a two-bedroom home are on the ¾-acre site. It is proposed to move the pet care facility from 515 D.W. Highway because more space is needed. The applicant will appear before the Merrimack Conservation Commission (MCC) on October 21, 2013. The site is serviced by an on-site septic system and leach field that will be converted and tied into the sewer line beside the property. MVD supplies the water. The front unit and the addition will be combined for the dog facility and the second dwelling will remain as is. There will be one play area on the first level and one boarding area in the basement with a stockade fence around both. The existing driveway will go into the parking area in front and a sidewalk with a handicap ramp will go into the entrance. DOT granted a change-of-use permit. The second garage door below is for the addition that will house day care. Hours of operation will be the same: Boarding is all day every day. Day care is Monday-Friday 6:30 a.m.-7:00 p.m., Saturday 8:00 a.m.-5:30 p.m., closed on Sundays and holidays. Play/exercise times will be at four 45-minute intervals: 8:00-8:45 a.m., 11:00-11:45 a.m., 2:00-2:45 p.m., and 4:00-4:45 p.m. One person is always outside with the dogs.

Mark Threlfall, 637 Daniel Webster Highway, said owners must call for pickup; Sundays are by appointment only. There are never 20 people parking at the same time. Drop-off is staggered and takes 1-1½ minutes. No dog is ever loose. The latest time a day care dog is taken outside is 4:45 p.m.; the latest a boarding dog is taken outside is 8:00 p.m. There may be 0-15 dogs on the weekend. Boarding is seasonal.

Dawn Tuomala said feces are picked up immediately and put in lined trashcans, double bagged, put into the dumpster, and picked up once or twice a week. There is a chain link fence around the area. Delivery trucks drive in back where there is a stockade fence, so dogs will not see and be stimulated by them. Dogs are primarily in a climate-controlled building. The dogs are divided by size. There is a grooming area. A trainer comes twice weekly. The residential area will be used for offices. Landscaping is tied to storm water. Sheet flow will run from the parking lot and part of the roof in front and into a rain garden planned according to NH Department of Environmental Services standards that will be easy to maintain. Storm water will come around the edge down the side into wide swale areas in back, where it will be held, treated and infiltrated. There is a vacant industrial property behind the site and a restaurant and house on either side. There may be rain barrels over the roof gutters to water the lawn. There is a sewer easement to

the sewer main. The Sewer Department wants the shed removed. Most staff comments were incorporated on the drawings. CLD comments have not yet been received. The Wastewater Department is satisfied.

There will be residential rather than commercial lights. There will be one sign at the entrance 20' from the road, one on the building and one at each door. Tim Thompson referred to Technical Comment 6 that lists the lighting requirements. Chairman Best said the Board must see the lighting plan and noted that no lights can shine into neighbors' windows.

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 7-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Desirea Falt.**

Three waivers are sought.

1) To provide 13 rather than 15 parking spaces. Only nine spaces fit in front. The owners will park in the garage. There is additional space in the rear if it becomes necessary to increase the number of spaces. There is not enough room between the house and the right-of-way to allow for two rows of parking in front and to maintain the 20' parking buffer to D.W. Highway. The numbers are based on the current operation. At peak times, only six spaces maximum are used. Drop-offs and pick-ups are not concentrated during a small window of time. Chairman Best and Nelson Disco said there would be 13-16 if the spaces in the garages were counted. That is sufficient for this small property. Stanley Bonislowski suggested that making two parallel spaces in the snow storage area in front would obviate the need for a waiver, but Tim Thompson said that would mean that there would not be sufficient aisle width.

2) Not to install a sidewalk or paved pedestrian way along the frontage. The property is less than 125' wide (excluding the easement to the north). It would not connect to any other sidewalk. It is a State-controlled road and permission would have to be obtained to put the sidewalk in its right-of-way. The majority of dogs are dropped off by car. Chairman Best said there is pedestrian traffic on D.W. Highway; there would be more if there were sidewalks that eventually connect. Stanley Bonislowski noted that the Flatley property would have a sidewalk, as will all of D.W. Highway. Dawn Tuomala said a sidewalk cannot be installed in front because of the drainage, snow storage area, the 11'-wide rain garden and the buffer. The edge of pavement is on the 20' setback line. The drainage would have to be put in the rear and more swales added. Michael Redding said the soils are good for infiltration. Robert Best said the rain barrels are not a fixed structure and may not remain in the future. If not well maintained, they breed mosquitoes. Dawn Tuomala explained how the front drainage would work. Lynn Christensen noted that the house is below street level. Dawn Tuomala said it is graded. Robert Best was reluctant to grant a sidewalk waiver on D.W. Highway. Lynn Christensen asked if parking could be moved to the rear. Stanley Bonislowski and Robert Best said it is not practical to make owners walk to the entry from the rear.

3) Not to install a 10'-wide planting buffer/one evergreen tree every 10' because the edge is so narrow and there are trees behind. Because a section of removable fence will be installed so the sewer line can be installed, the applicant does not want much planting there. There will be a natural landscape buffer and a stockade fence will go around the dog play areas. Robert Best asked if there is a sound buffer and trees on the side abutting the house. Dawn Tuomala said that is the location of the drainage and sewer easement. The Sewer Department will remove trees. The applicant would try to fit more trees on the side.

Dawn Tuomala said the owners would live in the house full time. On-site sewage will be eliminated and the site will be connected to the municipal sewer. The Sewer Department says the facility uses 60 gallons daily. There is very limited water use; neither dogs nor floors are hosed. The amount of flow from the building will be reduced.

Michael Redding asked how the stormwater system in the rear would address the large increase in impervious area. Dawn Tuomala explained the system. There would be no discharge from a 10-year storm and only a little from a 25-year storm. The plan will show a supplemental natural filter strip. Dawn Tuomala said the owner does not use the dug well. Michael Redding suggested that it be terminated. Dawn Tuomala said CLD would review the drainage calculations.

There was discussion about whether the applicant should request a continuance until receiving CLD comments.

### **Public comment**

Phillip Appert, 6 Allen Road, opposes the project because of noise (barking) pollution and fecal runoff to the pond/vernal pool behind the property. The hill is extremely steep. The use is inappropriate in the Aquifer Protection District. Plantings are lacking. The use will hurt property values. Stanley Bonislowski agreed the neighborhood in the rear is nice. His concern is drainage. The neighbors will not see the day car because of the trees in the rear that will also stop the sound. Phillip Appert said there would be a clear view when the leaves fall.

Briana Beauchesne, 43 Flintrock Lane, supports the project. She asked how a family-owned business could be bad for the community. It exceeded her expectations. Her dog is well behaved after eight hours at Superdog. The dogs do not run or leave feces and no one can walk the dogs around the property.

David Geyer, 24 Bean Road, who is also a customer, agreed. He never saw more than two people in the lobby. Nine spaces would be excessive. The plan addresses the issue of feces, which are picked up. People do not wander on the property; they drop off and pick up their dogs. Noise is contained inside the building. He never hears the dogs when they are outside. Superdog is a very good neighbor. It is a well-run and efficient business and a tremendous service to the town. Dogs board all night without cages and with someone always present.

Jess Shanahan, Superdogs Assistant Manager, said the business is good for Merrimack. Socializing is one of the best things for dogs. Someone is always outside with them. They keep down the noise and pick up feces immediately. There are an average of 45 dogs daily in cage-free boarding and day care. Stanley Bonislowski said he never heard or saw dogs at the present location. They are not outside all day; they go out only at the four play times.

Courtney Count, is a Superdogs employee who knows all the owners. It is a very personal business. Someone watches and plays with the dogs all the time. Because the dogs socialize and are trained, they come home calm. That makes the neighborhood quiet. The dogs are quiet outside because they get attention. Superdogs brings more business to Merrimack.

Phil Bleezarde, Brant Drive, who is a customer, agreed. The business is very clean. Dogs do not bark because employees area with them all the time and correct the barking. He hears more barking in his neighborhood than at Superdogs. Mark Threlfall is a professional trainer. The number of dogs is limited. Every new dog is screened.

Mike McDonough, 643 D.W. Highway, owns the Homestead Restaurant. He said barking is not as big an issue on his deck as he originally feared. There are two outside pens, one for boarding and one for play. He was concerned about odors from the dumpster. The outdoor play schedule will have minor impact.

Charles Curran, 16 Essex Green Court, is a customer who said that the staff is very professional compared to others he has used.

Rachel Watkins, 9 Rainbow Avenue, is a customer. The center is exceptional. The dogs are so busy playing and getting attention that they do not bark. They are tired at the end of the day. The business is good for Merrimack.

Tom Columbia, 21 Sand Hill Drive, is a customer. The experience is unique. The dogs are not out of control. No one ever walks a dog around the property. There is never fecal runoff. Superdogs is a successful business creating more business and improving the neighborhood. No current neighbors ever complained.

Donna Rowen, 50 Walnut Circle, is a customer and confirmed what was previously said.

Judy Threlfall, 637 Daniel Webster Highway, related how she helped Donna Rowen's timid dog.

Negative public comment was received by letter from the following, objecting to noise pollution of barking dogs, fecal runoff from outside pens and walking dogs on property with a wetland down slope, inappropriateness of such a business in the Aquifer Conservation District, no plans documenting the management of animal wastes, offensive odors, and reduced property value: Pat Wolfendale, 4 Allen Road; Scott Freeman, 5 Lantern Lane; David & Susan Proulx, 8 Hilton Drive; Nils Johnson, 2 Lantern Lane; John Collins, 4 Lantern Lane; Robert Desaulniers, 6 Lantern Lane; Stephanie Reid, 3 Allen Road; Sheryl & Brian Jean, 5 Hilton Drive; Phillip & Lesley Appert, 6 Allen Road; Bill Tenteris, 222 Baboosic Lake Road; Debra Siendstrom, 8 Whispering Pines; Lisa Grigg, 111 Drouin Way; and Kenneth Lowe, 11 Birch Street.

Supporting public comment was received by e-mail from the following Superdog customers: Leslie Doughty, 88 Shelburne Road; Geri Gregowske; Susan Columbia, 21 Sandhill Drive; Joanne & George Pessotti, 10 Harrington Drive; Carolyn Vander Horst, Wagtime Dog Training; Lindsey and John Joseph, 14 Hillcrest Drive; Melissa McNulty, 6 Wren; Harvey & Elaine Bloom, 3 Evergreen Drive; Greg Roberts; Cindi & Bob Colletti, 5 Rushmore Court; Sue Geyer, 24 Bean Road; Kevin Carter, 24 Whispering Pines Lane; Jeff Therrien, 37 Woodward Road; Joanne & Steve Comolli, 14 Woodward Road; Phil & Kathy Bleezarde, Brant Drive; Liz Towle; Briana Beachesne, 43 Flintrock Lane; Mr. & Mrs. John Nazaka, 9 Danforth Road.

Mark Threlfall said he is very cognizant of abutter reservations. He has worked with and shown dogs for 44 years and won Best in Show in 1993. He said the standard of care has changed. His facility is up to the standard that people expect when they leave a dog. He showed a list of 430 Merrimack customers. The facility is designed to minimize noises and smells.

Chairman Best stated that he never saw any business generate such support for a proposal before the Planning Board. When it approved Superdogs in 2011, the Board had no information about barking, a play area, boarding, or feces pickup. The Board does not have to speculate now. There is no problem. It made a good decision in 2011. No concerns came to pass. He supports the application. Because of the special condition of the MVD sewer easement, he is convinced that the owner cannot plant a buffer and should be granted a waiver. The parking waiver is a "no-brainer". Two spaces is a very small reduction. It is probably unnecessary because of the garage parking. The Planning Board wants sidewalks from Nashua to Bedford. The applicant will supply a lighting plan that is compliant with regulations.

Lynn Christensen asked whether there is sufficient parking for training classes. Mark Threlfall said training is done after business/day care hours for five dogs. The number is limited to five according to previous Planning Board approval. There are enough parking spaces. One cannot teach more than six dogs at a time. Lynn Christensen and Alastair Millns suggested putting the restriction on the plan.

Stanley Bonislawski asked whether a snow storage area could be placed on top of the rain garden and make room for a sidewalk. Dawn Tuomala said it could not because a rain garden consists of trees and plants.

Nelson Disco agreed with Robert Best. It is important that there be a sidewalk and that the drainage works. He wants to encourage this business. Desirea Falt agreed. One space would be lost with the aisle. Cars cannot be parked near the dumpster when it is emptied. Dawn Tuomala said employee parking could be moved if there is an overflow. The dumpster can also be moved. Judy Threlfall said the dumpster can be out only when it is emptied at 6:00 a.m. Mark Threlfall said construction is based on when the lease is up and before it snows.

Alastair Millns cited 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 7-0-0 to waive the requirements of Section 10.1(4) – Landscaping Buffers – of the Subdivision Regulations - on a motion made by Alastair Millns and seconded by Desirea Falt.**

Lynn Christensen cited 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 and information based on other facilities owned by the applicant.

**The Board voted 7-0-0 to waive the requirements of Section 7.03(F) – Flexibility in Off-Street Parking and Loading Standards – of the Subdivision Regulations – with the condition that a note be placed on the plan that no more than six people/dogs would attend a training class, on a motion made by Lynn Christensen and seconded by Stanley Bonislawski.**

**A motion to waive the requirements of Section 7.05.19 – Submission Items (Sidewalks) – of the Subdivision Regulations – failed by a vote of 0-7-0, on a motion made by Lynn Christensen and seconded by Desirea Falt. Robert Best, Alastair Millns, Tom Koenig, Michael Redding, Lynn Christensen, Stanley Bonislawski, and Desirea Falt voted in the negative.**

**The Board voted 7-0-0 to deny a waiver of the requirements of Section 7.05.19 – Submission Items (Regarding Sidewalks) – of the Subdivision Regulations – on a motion made by Alastair Millns and seconded by Lynn Christensen.**

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

**The Board voted 7-0-0 to grant final approval, with the following conditions, on a motion made by Alastair Millns and seconded by Lynn Christensen.**

1. The applicant is responsible for recording the plan (including \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) and any related documents 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. The applicant shall obtain all applicable state permits, provide copies of all permits to the Community Development Department and add notations of permit numbers and expiration dates, if applicable, to the final plan;
3. Final plans to be signed by the Applicant and Property Owner;

4. Any waivers granted or any changes requested by the Board shall be listed and fully described on the Final Plan;
5. Address comments received from the Merrimack Conservation Commission;
6. Address two comments received from Merrimack Village District per correspondence dated October 7, 2013. Said correspondence requested that:
  - a. No sodium or chloride is to be allowed on this site;
  - b. If a fire sprinkler system is required, per MVD policy, a separate fire service line is required;
7. Final outdoor fencing and gate configuration to be approved by the Merrimack Fire Department;
8. Address comments received from the Public Works Wastewater Division as listed in correspondence dated October 1, 2013:
  - a. Relating to the concern about a completed and approved Wastewater Permit application;
  - b. All sewerage system construction shall meet Merrimack's Sanitary Sewer Engineering Standards;
  - c. All NHDES Standards;
  - d. Shed must be relocated or removed from easement;
  - e. Lateral sewer line must be 6" from main line to building;
  - f. Must have a cleanout and backfire preventer;
  - g. Pipe exiting building needs to have enough earthen cover;
  - h. Plans should include profile of pipe;
  - i. A hair collection trap should be installed on any washing or grooming table;
9. Address any forthcoming comments from the town's peer review consultant, CLD;
10. Fencing along Map 6E-2, Lot 24 and Map 6E-2, Lot 27 shall be shown on final site plan;
11. Building renderings shall be added to the plan set;
12. No more than 6 dogs can attend training courses at one time;
13. Address planning staff technical comments; (Below)

Planning Staff Technical Comments

1. The applicant shall add to Note #7 of the plan acknowledging that any signage modifications shall require a sign permit from the Building Department;
2. The applicant shall add an applicable note to the final plan regarding the use (or non-use) of deicers (including salt);
3. The applicant shall change the key on the plan set identifying stockade and chain-link fences to represent what is shown on final site plan;
4. The applicant shall add the proposed sewer tie-in on the final site plan;
5. The applicant shall add the address of the proposed project to the plan set;

6. The applicant shall provide an updated illumination plan meeting the requirements of Section 11 as follows:
  - a. Provide fixture details on the sheet;
  - b. Indicate fixture heights as mounted on the building;
  - c. Indicate photometric data on the plan;
  - d. Indicate CRI of all fixtures;
  - e. Note maximum illumination level;
  - f. Indicate uniformity ratio;
  - g. Verify general compliance with the requirements of Section 11 of the regulations;
7. Revise Note #4 on Sheet 1, indicating the “residence” as a “caretaker unit”;
8. Revise Note #9 on Sheet 1, replacing “municipal water” with “Merrimack Village District (MVD) Water”.

#### **6. Discussion/possible action regarding other items of concern'**

Lynn Christensen, who sits on the Commission for Housing Regulation and Policy, which discusses affordable housing, asked residents who have related concerns to bring them to her attention.

#### **7. Approval of Minutes – September 10, 2013 & September 24, 2013**

**The minutes of September 10, 2013, were approved as submitted, by a vote of 5-0-2, on a motion made by Stanley Bonislowski and seconded by Lynn Christensen. Tom Koenig and Desirea Falt abstained.**

**The minutes of September 24, 2013, were approved, with one revision, by a vote of 6-0-1, on a motion made by Stanley Bonislowski and seconded by Desirea Falt. Tom Koenig abstained.**

#### **8. Adjourn**

**The meeting adjourned at 11:30 p.m., by a vote of 7-0-0, on a motion made by Alastair Millns and seconded by Tom Koenig.**