



# Town of Merrimack, New Hampshire

Community Development Department

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Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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## MERRIMACK PLANNING BOARD

### APPROVED MINUTES

TUESDAY, FEBRUARY 7, 2012

Planning Board members present: Robert Best, Alastair Millns, John Segedy, Tom Koenig, Lynn Christensen, and Michael Redding.

Community Development staff: Community Development Director Tim Thompson, Assistant Planner Jeff Morrisette, and Recording Secretary Zina Jordan.

#### 1. Call to Order

Robert Best called the meeting to order at 7:30 p.m.

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

Tim Thompson reported that he met with several police departments and the Department of Transportation (DOT) about the June 14, 2012, opening of the Merrimack Premium Outlets that coincides with other activities on that weekend. The groups are trying to plan logistics for traffic, off-site parking, and traffic mitigation in order to minimize disruptions and impacts.

Alastair Millns once again noted the presence of illegal election signs and asked Councilor Koenig to ask Town Council to send their thoughts on the proposed temporary sign ordinance back to the Planning Board. Tim Thompson said he is trying to minimize Town involvement in political signs and will notify DOT about those on Route 101A.

#### 3. Atrium Medical Corporation (Applicant) and Rykel Company, Inc. (Owner) – Review for consideration of final approval of a Non-Residential application proposing to construct an approximately 311,700 s.f. medical/office/research and development manufacturing facility located at 50 Robert Milligan Parkway in the I-1, Industrial and Aquifer Conservation Districts. Tax Map 2D, Lot 078. **This agenda item is continued from the January 17, 2012, Planning Board Meeting.**

Tim Thompson explained that the company's new owners initially told local management to move ahead with ongoing projects when Atrium was purchased last year. Later the new corporate parent decided to cancel the project because it wasn't interested in building new facilities and instead would rather focus on expanding an existing building. The Town is still working with the company to find an existing building(s) to accommodate the company's wish to expand and relocate to Merrimack.

4. **Merrimack Valley Baptist Church (Applicant/ Owner)** – Review for consideration of final approval of an application proposing to construct a 125-space parking lot in support of the Merrimack Valley Baptist Church, which is located at 517 Boston Post Road. The subject properties are located at 526 & 528 Boston Post Road and lie within the R (Residential) Zoning District and the Wellhead Protection Area. Tax Map 2A, Lot 058 & Tax Map 2B, Lot 023 (Recently merged by applicant with Tax Map 2A, Lot 009, 517 Boston Post Road.)

Chairman Best said that Town Departments and CLD have commented on the plan. CLD raised only minor issues.

Attorney Greg Michael, Bernstein Shur, said that most comments have been resolved. Staff believes that no sidewalk waiver is necessary. However, the applicant will install privately maintained paved pedestrian ways and crosswalks for safe ingress and egress.

Paul Chisholm, Keach Nordstrom Associates, Inc., said the underground storage tank would be removed as part of Phase 1.

Attorney Michael said a wall pack light that affects an abutter might be a street light rather than a Church light. He distributed a photo to that effect. If it is a Church light, a different fixture will be installed.

There was no public comment.

Chairman Best noted that staff says a sidewalk waiver is not required. The applicant will voluntarily install a sidewalk. This is a non-residential site plan. He asked whether the Board is comfortable with Staff's interpretation. Jeff Morrisette explained that the Planning Board always has the ability to require a sidewalk for a project in those instances that the Board determines it is necessary in order to protect the public health, safety and general welfare, but no waiver from the sidewalk requirement is necessary in this particular application because this is neither a commercial nor an industrial non-residential site plan. Chairman Best agreed that the wording of the regulation seems deliberate and premeditated. Tim Thompson said that, according to the State, a multi-family residence is also a non-residential use. Chairman Best opined that Staff correctly interpreted the Ordinance. Tim Thompson added that Staff is working with the Public Works Department (PWD) on proposed revisions to subdivision regulations and can add this item to its list.

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

The Board voted 6-0-0 to **grant** final approval, with the following conditions, on a motion made by Alastair Millns and seconded by Lynn Christensen.

1. Any waiver(s) granted by the Board to be described on the final recordable plan sheet;

2. The owners and/or applicant shall sign all applicable plan sheets. The Licensed Land Surveyor, Certified Wetland Scientist, and Professional Engineer shall also sign and seal all applicable plan sheets;
3. The applicant is responsible for all fees (including \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) associated with recording the plan at the Hillsborough County Registry of Deeds;
4. Satisfactory resolution of comments contained in CLD's letter of December 6, 2011;
5. Applicant to provide evidence that the existing stockade fence located near the southerly property line (adjoining the Root property) satisfies the minimum height requirement of 6 feet (according to Buffer Category C, Type 1), or else replace the existing fence with a fence that satisfies the Buffer requirements of Section 10 of the Subdivision Regulations;
6. Address the Planning Staff Technical Comment (see below).

Planning Staff Technical Comment

1. In order to demonstrate that proposed bio-retention pond will function as designed/intended, a test pit should be dug within the limits of the proposed bio-retention pond and location shown on the Grading, Drainage and Utility Plan. New test pit information to be reviewed and addressed to the satisfaction of peer reviewer CLD.

General Condition

1. Submission of As-Built plans prepared by a Licensed Land surveyor or Professional Engineer demonstrating substantial compliance with approved plans prior to use of the proposed parking lot, or prior to release of a financial surety, if required, to warranty completion of site improvements.

5. **Old Blood Properties, LLC (Applicant) and Earth Realty Corporation (Owner)** – Pre-submission hearing to discuss a proposed Yield Plan for a 66-lot single-family residential subdivision plan located in the R-1, Residential District. (The Yield Plan establishes the total number of lots that may be permitted in the proposed cluster subdivision). Parcels accessed off Old Blood Road. Tax Map 5B, Lots 001-1, 002, 003, 003-1, 005, 006, 007, 008, 009 and 231. **This agenda item is continued from the January 17, 2012, Planning Board Meeting.**

Chairman Best explained that the applicant does not propose to build a conventional subdivision, but is using it as a basis to determine how many lots can be in a cluster subdivision. Jeff Morrisette said that Nancy Larson reviewed revised materials that the engineer submitted. The revisions addressed concerns she listed in her February 3, 2012, memo about the buildability of Lots 1, 4, 12, 15, 17, 21, 23, 31, 32, 40, and 53. Grading, a retaining wall or landscaping can address her concerns. Nor has she any more issues with Lots 16, 22 and 23.

Attorney Greg Michael, Bernstein Shur, said the ZBA granted a Variance that permitted a Cluster Residential Development in 2009. The ZBA, Planning

Board and Merrimack Conservation Commission (MCC) agreed this is the best use of the land. A second Variance allows the addition of six more cluster lots than would otherwise be permitted in a conventional subdivision. The Town has not yet accepted the Madeleine Bennett sewer that connects to the school. Former Acting Town Manager Paul Micali's report raised some concerns. The client is prepared to pay the cost to fix the line according to State standards in return for getting the six additional lots to make it economically viable. The ZBA believes that makes sense. If the development were in a zone that allows clusters, there would be over 100 rather than 72 proposed lots. The ZBA allowed the same number of lots (66) as in a conventional subdivision. The grid is submitted only to show density. The development will not be built that way so there will be no 300' driveway, which was one of Nancy Larson's concerns. At this meeting, the Board is being asked only to confirm the number of lots. The applicant will work with the Board and Town departments and consultants about the Madeleine Bennett sewer. Attorney Michael expects the road and sewer to be approved by the Town and to be available to the client, who will spend over a half million dollars to upgrade the School's substandard sewer line. It will be municipal infrastructure. Alastair Millns read out Nancy Larson's February 7, 2012, memo stating that she "no longer has concerns with the buildability of the lots in question " and supports the number 66 plus six. Tim Thompson said she is correct that all lots on the yield plan are viable.

### **Public comment**

Barbara Chase, 23 Merrymeeting Drive, abuts the front of the development. In 2009 the neighborhood presented concerns, especially that a development on Old Blood Road will diminish property values. The cluster project is on a hill, where the neighborhood has drainage issues. Everyone has invested in fixing drainage issues on their properties. She asked what the development would do to those drainage issues. Chairman Best explained that CLD would review the plan and ensure that the drainage would not cause problems. Barbara Chase said the development also has leach field viability issues related to the septic system. There is also concern about traffic and noise so close to neighbors' property lines. She asked whether Old Blood Road would be upgraded. Attorney Michael said the interconnect would not be moved and that the road would be pulled significantly farther away from the Merrymeeting Drive area. Drainage standards will be met. Tom Koenig noted that the applicants would go across land that is not theirs or the Town's. Attorney Michael explained that the Town reserved the right to bring a road across this area to move it away from wetlands. The applicants bought three abutting lots at auction to continue the roadway.

The Board voted 6-0-0 to **set** the yield plan number for the proposed residential development at 66 lots, on a motion made by Lynn Christensen and seconded by Tom Koenig.

**6. Congregation of Jehovah's Witnesses (Applicant) – Review for consideration for Final Approval of a request to construct a single-story 3,960 s.f. church. Parcel is located at 59 Wire Road. Property lies within the R (Residential) and Aquifer Conservation Districts. Tax Map 6D, Lot 526-1. This agenda item is continued from the January 3, 2012, Planning Board Meeting.**

Chairman Best noted that Staff recommends final approval with conditions. Jeff Morrisette stated that Staff has no major issues in its comments.

John Heavisides, Civil Engineer, Meridian Land Services, reported that, on January 25, 2012, the ZBA voted not to grant the request for a Rehearing, so its prior vote to grant the special Exception to allow the church use on this parcel still stands. The major change since the last Planning Board hearing is the addition of a sidewalk along the front of the parcel. Therefore the sidewalk waiver request is withdrawn. There will also be a 20'-wide sidewalk easement along the entire frontage of the parcel.

Don Buso, Permitter, Jehovah's Witnesses NH Regional Building Committee, asked why the Planning Board requires an easement with a sidewalk. Chairman Best explained that for a non-residential site plan, the Planning Board may require a sidewalk for safety and pedestrian traffic. This site has the potential for pedestrian traffic and the neighbors are concerned. The easement would give the public access to walk on the applicant's land. A sidewalk must have an easement. Don Buso noted that other towns create sidewalk networks rather than installing them piecemeal. This is unique. Chairman Best stated that the Town is not opposed to that approach, but asks for a sidewalk for commercial, industrial and non-residential uses. They may ultimately interconnect. It is one of the highest priorities in the Master Plan. Alastair Millns noted that Nashua requires a sidewalk for every development without exception and does not allow waivers. Chairman Best said the Planning Board wants sidewalks wherever it can get them. It would be a token of good will to the Church's neighbors.

John Heavisides said another addition to the plan would be curbing around the islands, although it is not required. There would be no curbing near the landscaped islands. It is shown on the plan as an option. If it were not required in the parking lot, curb stops would be installed.

Another addition is landscaping between the abutting property and the Church on the north. There would be no additional landscaping on the south because of the abutting 850' wooded Mallard Point common space area. He asked whether another 20'-30' of plantings makes sense and whether a waiver is necessary. Jeff Morrisette said a waiver from Section 10.01(4) is still required. John Heavisides agreed to Chairman Best's proposed condition that the applicant not remove any vegetation within 20' of the property line. Don Buso added that a variety of shrubs will grow up there and create a natural buffer.

### **Public comment**

David Edmonds, 75 Wire Road, noted that the Town restricts water because of the water shortage. Resources are running thin. It is irresponsible to allow another major commercial enterprise to put a further strain on resources. There is a wetland and no Town sewer. A septic system will be necessary. Proper studies must be done to ensure there is no runoff or pollution, especially salt on the parking lot. Alastair Millns said that property owner Ronald Therrien used more water for his crops than the Church will use. No one can build a septic system without approval from the Department of Environmental Services (NHDES). David Edmonds countered that Ronald Therrien paid taxes, which the Church will not. Chairman Best said it would pay for municipal water just like everyone else. DES has already granted the sewage disposal permit.

Carol Edmonds, 75 Wire Road, reported that the ZBA said all concerns would be addressed at this meeting. She asked when that happened. Chairman Best explained that the plan has been under review by the Town's consulting engineer since the application was submitted. Alastair Millns added that, on January 3, 2012, the Planning Board heard public comment at a long meeting. Carol Edmonds said she was not notified about that meeting. Chairman Best and Lynn Christensen explained that, when an item is tabled, the Planning Board announces that no additional notices would be sent. Jeff Morrisette explained that notifications were sent for the January 3, 2012, meeting, but when the lot was subdivided, some people were no longer abutters. Carol Edmonds is potentially in that category. Staff verified, following a review of the abutters list, that Ms. Edmonds is no longer an abutter due to the previous subdivision of the parcel. Carol Edmonds has concerns about the curve and her driveway's line of sight on Wire Road.

Tom Boland, 12 Mallard Point Road, who is on the Mallard Point Association board, asked how much landscaping exists and how much would be added. Chairman Best showed him the plan and explained that the applicant would seek a waiver for an added 20' along the right edge toward the front. Tom Boland is concerned that the Church already did some clearing near the south boundary that abuts Mallard Point common land. There will be a lot of asphalt, vehicles, lights in the parking lot and a very Spartan-looking utilitarian building that will diminish property values.

Mark Sorenson, 36 Davis Road, reported that, in a January 6, 2012, e-mail, the Tax Assessor stated that there would be little or no impact on the market value of surrounding properties. The Church is a limited use. Traffic would increase for only a few hours. Other professional appraisers state the same. The five e-mails are on file. Mark Sorenson noted that a sidewalk easement is usually given "for consideration paid". He asked whether that is required or an option. Chairman Best said that Town Counsel would help draft easement language, but there can be no sidewalk without one. Mark Sorenson asked whether the Town would assume liability. Chairman Best said that is a matter for both Town Counsel and Town Council. Mark Sorenson asked

whether Town Council must vote to accept an easement. Chairman Best suggested seeking legal advice. An easement can be a condition of approval. If it is not acceptable, the Church can return to the Planning Board to discuss other options.

Ron Hansen, 50 Lawrence Road, addressed some abutters' objections. The abutter list changed when the subdivision went into effect. He went to PWD about a line-of-sight problem he had with a tree in the Town's right-of-way near his home on Lawrence Road. Since it was a Town problem, he wrote to the Selectmen to ask that they remove it, which they did. No work was done on the property. The farmhouse was sold and the new owner bought firewood. The Church did not cut trees.

Fran LaPoint, 29 Hannah's Way, Springfield NH, is an engineer for the Jehovah's Witnesses Regional Building Committee. He stated that the buffer in the middle of the parking lot will hide some of the headlights and that new landscaping would somewhat hide the parking lot. He showed where the new landscaping would be. Mallard Point has 84 homes. That means, in his estimate, 10 trips daily per home or 840 trips daily or 6,000 trips weekly. The Church would generate 270 trips.

Mark Sorenson said that the majority of the congregants are Merrimack residents who pay taxes. All churches in New Hampshire are tax-exempt. The Town already grants millions of dollars in tax exemption for other churches. Many have abutting residential units or a parsonage, which the Jehovah's Witnesses do not. They will erect only one building. The farm home property tax will increase \$515 and the change-of-use tax will be approximately \$15,000-\$17,000.

John Heavisides confirmed that all new landscaping would be north and west of the tree line.

Tom Koenig noted that CLD has no problem with the line of sight. John Heavisides said it is more than 325' to the north and south.

Alastair Millns said that considerable growth on the other side of the property line is a specific circumstance relative to the site plan and that a waiver would carry out the spirit and intent of the regulations.

The Board voted 6-0-0 to **waive** the requirements of Section 10.01(4) - Buffers - of the Subdivision Regulations, with respect to the southerly line, with the condition that no vegetation is to be removed within 20' of the property line, on a motion made by Alastair Millns and seconded by Lynn Christensen.

The Board voted 6-0-0 to **grant** final approval, with the following conditions, on a motion made by Alastair Millns and seconded by John Segedy.

1. Final plans and mylars to be signed by all property owners. The Licensed Land Surveyor, Certified Wetland Scientist, and Professional Engineer (as appropriate) shall also sign and seal final plans and mylars;

2. The applicant is responsible for all fees (including \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) associated with recording the plan and any related documents at the Hillsborough County Registry of Deeds;
3. Any waivers granted shall be listed and fully described on the Final Plan set on a recordable sheet;
4. As the parcel lies within the Aquifer Conservation District, the applicant shall satisfactorily address any forthcoming comments from the Conservation Commission;
5. The applicant shall satisfactorily address comments from the Town of Merrimack Department of Public Works (in an e-mail from Kyle Fox dated December 23, 2011), Merrimack Fire Department and the Building Department (all forthcoming);
6. The applicant shall satisfactorily address peer review comments from the town's review consultant, CLD, in a letter dated December 23, 2011;
7. Should the Board acquire a sidewalk easement (for any portion of the sidewalk or paved pedestrian way) from the applicant, the plan is to be revised to show clearly the proposed easement on the plan and properly described. The intended benefiting party to the easement shall also be noted on the plan;
8. Submission of a water availability letter from the Merrimack Village District;
9. Building elevations are to be incorporated into the final plan set and sheet numbering sequence and be noted on the Sheet Index. Building elevations to show/note all proposed building materials, building dimensions, wall pack lighting, and any roof-top mechanical equipment and be drawn to scale in the final plan sets. Elevations also to note North, South, East and West elevations;
10. Plan to be revised to demonstrate that sufficient sight distance can be provided at the proposed driveway location;
11. Address planning staff technical comments (below).

Planning Staff Technical Comments

1. Revise the Grading and Utilities plan to reflect the intent to raze the existing barn/shed structure at the northwest corner of the property (or remove the shed from this sheet entirely since the proposed disposition is noted on the Existing Conditions plan);
2. Add the following notes to the recordable plan sheet:
  - Reference Plans with HCRD recording numbers;
  - Date, case number and description of the Special Exception granted by the Zoning Board of Adjustment at their meeting on November 16, 2011;



- Minimum dimensional requirements for the zoning district, including the 40 ft. wetland building setback and the 25 ft. No-Disturb Wetland Buffer;
- Remove the word “further” from the drainage certification statement to comply with certification statement in Section 4.16(c) of the Subdivision Regulations;
- “A complete set of plans is on file with the Town of Merrimack, Community Development Department”;
- “A Right-of-Way Permit from the Town of Merrimack, Department of Public Works, is required prior to commencing any work within the right-of-way of D.W. Highway” (please replace any references to a requirement for a “driveway permit” with this note);
- Note all applicable State/Local permit numbers granted and their expiration dates;
- Names and addresses of all abutting property owners;
- Zoning classification of the subject parcel;
- All shading to be removed from plan (not permitted on recordable sheets per Registry standards);
- Minimum clearance height of proposed carport;
- One ADA parking space to be noted and signed as Van Accessible;
- 100-year flood plain boundary and note the Base Flood Elevation;
- Add a note to the plan regarding necessary compliance with Chapter 412 Stormwater Management Standards adopted by the Town of Merrimack Town Council on July 12, 2011.

3. Add the following notes to the plan sheets as indicated:

Boundary Plan (Sheet SP-2) -

- Add the 25 ft. No-Disturb Wetland Buffer to the zoning notes;
- Include the HCRD Plan number to the reference plan;
- Verify the accuracy of the note stating that the property lies within the Well Head Protection Area (staff believes this is inaccurate);
- The 100-year flood plain elevation is noted with a reference to a “Note E”, but no such note could be found on this sheet.

Existing Conditions Topography and Soils Sheet (Sheet SP-3) -

- The 100-year flood plain elevation is noted with a reference to a “Note D”, but no such note could be found on this sheet.

Grading and Utilities Plan (Sheet SP-4) -

- Plan to be revised to show access to the stormwater drainage system for maintenance purposes by the applicant.

Lighting Plan (Sheet LT-1) -

- Note compliance with dark-skies lighting requirements and note compliance with full-cut-off fixture requirement.

Landscape Plan (Sheet LS-1) -

- Legend should clearly distinguish Chantileer Pear from the Regal Prince Oak;
- Proximity of the Weeping Willow to the proposed leach field should be confirmed to ensure long-term health of the septic system;
- Applicant should work with staff to confirm that plan satisfies Buffer Requirements contained within Section 10 of the Subdivision Regulations.

Details – Construction (Sheet D-1) -

- Reference to compliance with ADA Standards for Accessible Design to be added to Note 1 of the ADA parking space sign detail.
4. Add the following construction note: “A pre-construction meeting with the Community Development Department and Department of Public Works shall take place at least two weeks prior to commencement of disturbance in accordance with Chapter 412, Article IV of the Stormwater Management Standards adopted by the Town of Merrimack Town Council on July 21, 2011”;
  5. Increase the size of the symbols indicating proposed light fixtures (including wall pack lights) on the site plan so they are noticeable. Each typical fixture also to be labeled on the plan.

General Condition

1. Completion of As-Built plans by a Licensed Land Surveyor or Professional Engineer as a condition of the release of any financial surety or prior to issuance of the certificate of occupancy, if financial surety is not necessary to guarantee completion of on-site improvements.

**7. Discussion/possible action regarding other items of concern**

Lynn Christensen wanted staff to review the Ordinance to see if it is appropriate for churches to be required to install a sidewalk. Chairman Best thought that a church is a good place for a sidewalk, since people walk there.

Tom Koenig again noted colored and/or flashing lights at GS Market and S & P Quick Stop. Jeff Morrisette said that Staff visited 1-2 sites mentioned at the January 17, 2012, meeting and has still to visit others. Harley Davidson will be resolved in short order.

**8. Approval of Minutes**

None.

**9. Adjourn**

The meeting was **adjourned** at 9:08 p.m., by a vote of 6-0-0, on a motion made by Alastair Millns and seconded by John Segedy.