



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

## **MERRIMACK PLANNING BOARD**

### **APPROVED MINUTES**

**TUESDAY, AUGUST 7, 2012**

Planning Board members present: Robert Best, Alastair Millns, Tom Koenig, Michael Redding, Lynn Christensen, Stanley Bonislowski, Desirea Falt, and Alternates Nelson Disco, Pete Gagnon (arrived 7:45 p.m.), and Matthew Passalacqua.

Community Development staff: Planning and Zoning Administrator Nancy Larson, 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. Announcements**

Chairman Best announced that the next Master Plan Steering Committee and Planning Board meetings are scheduled for August 18 and August 21, 2012, respectively. He welcomed new member Desirea Falt and new alternate member Matthew Passalacqua.

#### **3. Planning & Zoning Administrator's Report**

None.

**4. Stephen T. Lyons (Applicant/Owner) & John E. & Elaine T. Lyons Revocable Trust, Stephen T. Lyons, Trustee (Applicant/Owner)** – Review for Acceptance and consideration for Final Approval of a proposed Lot Line Adjustment and Consolidation plan. The parcels are located at 12 & 14 Shore Drive in the R (Residential) Zoning District. Tax Map 6A-2, Lots 003, 004 & 006. This agenda item is continued from the July 10th Planning Board meeting.

Nancy Larson stated that, at its July 25, 2012, meeting, the Zoning Board of Adjustment (ZBA) granted variances to permit a proposed lot line adjustment that increases the non-conformity of a legal non-conforming lot (parcel would decrease in size & frontage) and reduces the setback of an existing leach field from approximately 18 feet to approximately 3 feet from the side property line, whereas 20 feet is required, as well as a reduction in the side yard setback of an existing garage from approximately 19 feet to approximately 4.6 feet, whereas 15 feet is required.

Attorney Greg Michael, Bernstein Shur, said the lot line of Lot 003 would move approximately 15'-20' in a northerly direction and merge with Lot 004 to create a

new Lot 003 and eliminate Lot 004. The lot without road frontage would now have frontage. The septic system would remain. An easement would be created per NH Department of Environmental Services (DES) regulations to permit encroachment into the State's 10' setback by the septic system. If it must be replaced, the leach field would be placed elsewhere and the easement would be extinguished. The portable bridge would be removed. The ZBA allowed the applicant to move the lot line closer to the garage on Lot 006, thus reducing the corresponding encroachment on Lot 003, and increasing the garage setback on Lot 003 from 2.8' to approximately 18', while decreasing the garage setback on Lot 006 from approximately 20' to 4.6'. Reducing the frontage on Lot 006 and increasing it on reconfigured Lot 003 results in two parcels that are more conforming. These variances, plus the setback variances, significantly improve a difficult area. Lot 006 and newly configured Lot 003 will have access off Shore Drive.

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 Lynn Christensen.**

Chairman Best stated that the Board could decide that waivers for the north arrow and paved pedestrian way are unnecessary, since this is a minor subdivision.

In answer to Board questions, Attorney Michael said nothing would be done with the 20' private right-of-way. It may still be a vested public right that Town Council can "undedicate"/"discontinue". It is not part of this plan. The well on Lot 004 has been abandoned. The ZBA's condition relates to the septic easement. Jeff Morrisette read the conditions. The second condition allows for the existing septic system encroachment to violate State setback requirements:

1. That Planning Board approval for the proposed Lot Line Adjustment and Consolidation Plan application be granted;
2. The Petitioner to provide a draft copy of the easement language required by the New Hampshire Department of Environmental Services to permit proposed setback encroachment of existing septic system located on Map 6A Lot 006.

Attorney Michael stated that the 4.6' setback from the garage to the lot line is not an improvement by itself, but it is when the two lots are taken together. The plan would make two non-contiguous lots contiguous. The applicant already has the rights to cross the private right-of-way.

There was no public comment.

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 7-0-0 to grant final approval, with the following conditions and with no waivers necessary, on a motion made by Alastair Millns and seconded by Lynn Christensen.**

1. Final plans and mylars to be signed by the property owners. The Licensed Land Surveyor shall also sign and seal final plans and mylars. In addition to the recordable mylar sheet, the applicant to provide 1 mylar and 4 paper copies of the final plan;
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 at the Hillsborough County Registry of Deeds;
3. Applicant to satisfy all conditions of their ZBA approval granted on July 25, 2012. All decisions rendered by the ZBA at said meeting to be noted and fully described on the final plan and shall include any ZBA case numbers;
4. Address planning staff technical comments. (Below)

Planning Staff Technical Comments

1. Written confirmation to be provided by a Licensed Land Surveyor to the Community Development Department certifying that proposed monumentation has been set in accordance with the final approved plan;
2. The final plan shall be amended to include the following minor revisions:
  - i. The street number for Lot 5 shall be added to the plan;
  - ii. The subdivision note (Section 4.06(k)) shall be added to the plan;
  - iii. A signature block for the owners shall be added to the plan;
  - iv. The plan shall be revised so as to provide setback dimension labels with respect to the graphical building envelopes;
  - v. The labeling of Map and Lot numbers shall be revised so as to provide additional clarity (i.e., avoid possible confusion of Map 6A, Lot 002-2 vs. Map 6A-2, Lot 002);
  - vi. The Licensed Land Surveyor shall verify that plan text, hatching and shading conform to Registry standards for any recordable sheets. (Staff suggests modifying the "OH" labels between PSCO 396/8-1 and 396/8-2). Staff also suggests allowing the applicant to remove topographic information from the final recordable sheet;
  - vii. Plan to be revised to include the 40' Building Setback to Wetlands;
  - viii. Plan shall be revised to show and note the 250-foot Shore Land Protection District and provide a label for the 50-foot primary structure setback;
  - ix. Plan shall be revised to provide a label to for the 100-year floodplain (note 100-year base flood elevation of 237).

3. Applicant to work with staff to ensure that no additional easements are required because of the proposed adjustments to the lot line.

5. **Kathleen Ruggiero (Applicant) and Kathleen & James Ruggiero (Owners)**  
– Home Occupation for a proposed dog grooming business within the R (Residential) District, located at 25 Brek Drive. Tax Map 3B, Lot 095.

Pete Gagnon arrived at 7:45 p.m.

Nancy Larson stated that hours of operation/days per week could increase, but for now this is a hobby because Kathleen Ruggiero works full time.

Kathleen Ruggiero, 25 Brek Drive, proposes to run a small part-time grooming business in her basement for neighbors and friends. There would be no other employees. She will groom one dog at a time. There would be no kennel and no noise. She has a large driveway, but most people would walk their dogs to her home, drop them off and leave them. Kathleen Ruggiero would bring them back home or the owners would pick them up, so there would be no noticeable traffic. There may be a sign on the mailbox in the future; for now Kathleen Ruggiero will pass out flyers.

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 Stanley Bonislawski and seconded by Michael Redding.**

Kathleen Ruggiero proposes to work 1-2 nights a week from 6:00-8:00 p.m., and from 9:00 a.m.-3:00 p.m. one weekend day. She would have a maximum of five clients per day. It takes two hours to groom a dog. She and the Planning Board agreed to Stanley Bonislawski's suggestion that the Board approve the hours of 5:00-9:00 p.m. all five weekdays and 9:00 a.m.-3:00 p.m. on Saturdays. Dogs would stay in her home until they are picked up, but not overnight. She would dispose of waste appropriately. Grooming would be by appointment.

There was no public comment.

Staff recommends that the Board grant final approval subject to one general and subsequent condition.

**The Board voted 7-0-0 to grant final approval, with the following general condition, on a motion made by Michael Redding and seconded by Lynn Christensen:** That the applicant secure a sign permit for the Home Occupation from the Building Department before one is installed on the property.

6. **Sharon J. Boudreau (Applicant) and Raymond A. Cota (Owner)** – Review for Acceptance and consideration for Final Approval of a subdivision application proposing to subdivide one lot into a total of four lots. The property is located at 14 Pearson Road and lies within the R (Residential) and Aquifer Conservation Districts. Portions of the parcel are subject to the Flood Hazard Conservation District. Tax Map 6D, Lot 047.

Nancy Larson reported that the applicant would build a paved pedestrian way to connect the existing sidewalk across the road from Lilac Court along Pearson Road and run it onto Lyons Road. She suggested that be added to the plan. The existing underground pool associated with 16 Pearson Road is unused and abandoned. The applicant may add a note concerning removal of the pool.

Steven Keach, Principal, Keach-Nordstrom Associates, Inc., said the 21.47 acres has no public sewer and some severe soils. The lot is split into both the R-1 and R-2 Residential Districts. It borders Baboosic Brook. Portions contain wetlands and flood plain, and are subject to the Flood Hazard Conservation and the Aquifer Conservation Districts. The property gently slopes to the west, then drops precipitously toward the river. The applicant would preserve the integrity of the homestead/principal buildings in the 7.8-acre lot. Three new parcels would be available for sale as single-family building lots. The minimum acreage would either be met or exceeded. Steven Keach submitted copies of Department of Environmental Services (DES) approval and Merrimack Village District's (MVD) statement that it would provide water.

The sidewalk would follow the right-of-way rather than the edge-of-pavement to keep pedestrians away from traffic at the busy intersection. Pearson Road is a "collector road" that requires construction of a paved pedestrian facility along the parcel's frontage at Pearson Road. The area in front of the existing house contains large specimen trees and stonewalls that the applicant does not want to lose for both aesthetic and sentimental reasons. The northerly portion of the property is also bounded by stonewalls and a large pine forest that extends to Pearson Road, which the applicant also wants to keep. As an alternative, the applicant proposes to extend an existing walkway, situated on the east side of Pearson Road, along the frontage of the Merrimack School District's property, northerly to Lyons Road, where a new crosswalk would be installed to permit pedestrians to cross that road safely. The walkway would continue in an easterly direction along a route generally parallel to Lyons Road and would meander around existing trees, utility poles and other obstructions prior to terminating at a large gravel parking lot situated immediately east of the second of two multi-purpose athletic fields on School District property. School District Business Manager Matt Shevenell favors this proposal, which would be of more benefit to the public than building a sidewalk for two homes. Children who play soccer would no longer have to walk on Pearson Road.

The abandoned pool will remain on the Raymond Cota property. The family has no intention of using it or selling their parcel in the near future.

Since the School District owns the lot where the pedestrian way is proposed to be constructed, and it is already public property, it is Steven Keach's opinion that the proposed Condition #5 and the first sentence of proposed Condition #6 noting the location of existing and proposed sidewalks and easements are unnecessary. Steven Keach further asserted that, since he would provide a cross-section of the 5'-wide paved pedestrian way identical to that in Lilac Place and the ground would be staked, an engineering design in proposed Condition #7 is not needed. Nor is

proposed Condition #8 requiring a construction bond, since the applicant would build immediately/before school opens.

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 Lynn Christensen and seconded by Michael Redding.**

In answer to Board questions, Steven Keach stated the following. Family use of the outbuilding on proposed Map 6D lot 047-3 would stop when the lot is sold. It would belong to the future owner of that lot and the driveway linkages to the Cota home at 16 Pearson Road would cease to exist. The reason for not running the sidewalk straight up Pearson Road is that the intersection of the alignment of Pearson Road and Bedford Road is curvilinear. To keep children as far away from traffic as possible, the sidewalk would be at the edge of the right-of-way of Pearson Road. That is why it would meander and shift to the east. The original proposal was to go straight alongside Pearson Road rather than onto Lyons Road, but there would be more public benefit for the 800 soccer-playing children on Saturday mornings with the extra 150' and a wide surface to walk on.

Although Stanley Bonislowski preferred the original plan, Lynn Christensen preferred the alternative plan because the volume of pedestrian traffic, particularly children, would be off the street and away from cars backing out and onto the sidewalk. A minimal number of people walk on Pearson Road. Matthew Passalacqua agreed with Stanley Bonislowski, noting that there are many runners and bikers on Pearson Road. Alastair Millns asked who would plow the sidewalk and noted that it would not be 5' wide behind the trees. Steven Keach said it would be a paved pedestrian way rather than a sidewalk. It would not be plowed on School District property because it would not be in the immediate vicinity of school buildings. Lilac Court and the Public Works Department (PWD) would not maintain it. Alastair Millns was concerned about children's safety. Steven Keach said the applicant would build the paved pedestrian way and donate it to the public, but PWD would not plow it as a matter of public policy. It is not the applicant's decision. Chairman Best stated that whether the applicant builds a sidewalk on his property or submits an alternative proposal, maintenance is not his issue. Steven Keach does not know whether the School Department plans to extend the paved pedestrian way from where the applicant's would end. If the Planning Board approves the alternative proposal, the applicant would stake the ground and comply with ADA standards. No formal action is necessary for the School District to assume ownership. Chairman Best explained that it already owns the underlying real estate; that is why no easement is necessary. Steven Keach said a typical cross-section for the pedestrian way would be placed on the plan. There would be a green space between the pavement and the fence. The existing gravel would go from the end of the paved pedestrian way to the School parking lot.

### **Public comment**

David Batt, 2 Woodhaven Circle, suggested not extending the pedestrian way all the way to the School, but bringing the last 50' to Pearson Road. That would finish the entire front of the School. It must be clearly marked near the parking lot. Steven Keach and the Cotas agreed. So did Lynn Christensen, since it would bring the pedestrian way to the edge of the School property and onto Pearson Road, while shortening the Lyons Road pedestrian way and lengthening the School's pedestrian way alongside Pearson Road.

Steven Keach showed the buildable area on the plan, which meets the 100,000 square foot contiguous upland requirement. There are just a couple of feet difference in elevation from the 100-year flood (177') and the 500-year flood, whose elevation has not been determined by FEMA. If the applicant goes below 177', he would not be able to build a septic system. Steven Keach preferred that the Planning Board waive the sidewalk requirement in light of the alternative proposal. Chairman Best said it would meet the criteria because of the public benefit and not disturbing trees and the stone wall.

**The Board voted 7-0-0 to waive the sidewalk requirement provided that the alternative sidewalk proposal is built, on a motion made by Lynn Christensen and seconded by Alastair Millns.**

Chairman Best stated that the applicant would comply with Section 4.05(d) concerning abutters. Abutters were notified, but are not listed on the plan. Steven Keach stated that he would add the aerial photo showing the location of the proposed walkway to the plan. (Section 4.05(f)). Since the School District does not need an easement on its own property, there is no one to whom to convey an easement, and as the applicant does not intend to make an easement for the pool for the benefit of 16 Pearson Road, Section 4.05(g) is unnecessary. Steven Keach stated that water mains are shown on the plan, so Section 4.05(m) is unnecessary. The Planning Board agreed with Steven Keach that, since the School District owns the lot and it is already public property, proposed Condition #5 and the first sentence of proposed Condition #6 noting the location of existing and proposed sidewalks and easements are unnecessary. Nancy Larson suggested adding a condition that the applicant either submit SAU's written approval of the location of the pedestrian way to staff or add a signature block for the SAU to the plans.

Steven Keach said that Lot 46 might be expanded in the future. The leach field in back between the house and the pool is totally on Lot 46.

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

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 all fees (including \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) associated with recording the plan and any easement documents at the Hillsborough County Registry of Deeds;
3. As the parcel lies within the Aquifer Conservation District, the applicant shall satisfactorily address any forthcoming comments from the Merrimack Conservation Commission;
4. Proposed right-of-way dedication along the frontage of Parent Map 6D Lot 047 to be dimensioned on the Subdivision Plan (recordable plan sheet) from the centerline of the roadway for Pearson Road;
5. The applicant to provide written documentation from the Merrimack School District authorizing the location of and approving the construction of the proposed pedestrian way on property owned by the School District as shown on the Final Plan;
6. A draft copy of the proposed right-of-way dedication along Pearson Road to be submitted to Community Development for review by legal counsel, at the owner's/applicant's expense. Upon approval of the language, final executed document(s) shall be submitted to Community Development for recording at the Registry of Deeds;
7. Plan set to include a typical sidewalk detail and the aerial photograph illustrating location of existing sidewalk and proposed paved pedestrian way along Pearson Road and Lyons Road as described in Note 11 of the Subdivision Plan;
8. Add a note to the Subdivision Plan (recordable sheet) stating that, prior to issuance of the first Certificate of Occupancy, a bond estimate to guarantee construction of the proposed paved pedestrian way as described in Note 11 of the Subdivision Plan be submitted to the Community Development Department for review and approval by Public Works. Upon approval, a bond (or whatever mechanism is preferred by Public Works) to be submitted to the Community Development Department for review and approval by Public Works;
9. The applicant either to submit SAU's written approval of the location of the pedestrian way to staff or add a signature block to the plans;
10. Address planning staff technical comments. (Below)

Planning Staff Technical Comments

1. Subdivision Plan to note the contiguous upland area for each proposed lot;
2. Show/Label the Reference Line for Baboosic Brook on the Subdivision and Topographic Subdivision Plans;



3. Written confirmation to be provided by a Licensed Land Surveyor to the Community Development Department certifying that all monumentation has been set in accordance with approved plan;
4. General Note #4 on the Subdivision Plan to be revised to include a statement as to which set of Dimensional Requirements apply (R-1 or R-2);
5. General Note #4 to be added to the Subdivision Plan;
6. Revise General Note #4 to state, for which lots, R-2 District Regulations are permitted due to the presence of greater than 45,000 sq. ft. of Moderate Soils;
7. Add a note to the Subdivision Plan stating that, prior to commencement of any work within the public Right-of-Way, a Right-of-Way Permit shall be issued by the Department of Public Works.
7. Discussion and possible action regarding other items of concern

**The Board voted 6-0-1 to hold information sessions in lieu of public hearings under RSA 674:54 concerning a proposed pavilion and a dog park in Watson Park, on a motion made by Lynn Christensen and seconded by Michael Redding. Tom Koenig abstained.**

#### **8. Approval of Minutes**

None.

#### **9. Adjourn**

**The meeting adjourned at 9:15 p.m., by a vote of 7-0-0, on a motion made by Alastair Millns and seconded by Lynn Christensen.**