



# Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

Fax 603 424-1408

Town Hall - Lower level - East Wing

[www.merrimacknh.gov](http://www.merrimacknh.gov)

Planning - Zoning - Economic Development - Conservation

## **MERRIMACK PLANNING BOARD APPROVED MINUTES TUESDAY, OCTOBER 19, 2021**

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, October 19, 2021 in the Matthew Thornton Room.

Paul McLaughlin, Vice Chairman, presided.

### Members Present:

- Neil Anketell
- Lynn Christensen
- Jaimie von Schoen
- Nelson Disco – Alternate
- Town Councilor Barbara Healey - Ex-Officio

### Members Absent:

- Robert Best (Chairman)

### Staff Present:

- Robert Price, Planning & Zoning Administrator

### **1. Call to Order**

Paul McLaughlin called the meeting to order at 7:00 p.m. and appointed Nelson Disco to sit for Robert Best.

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

None

### **3. Discussion of Capital Improvement Program for Merrimack Village District.**

**This item was postponed to November 2, 2021.**

- 4. L & F Realty Trust (applicants/owners) – Continued review for acceptance and consideration of a Site Plan amendment to modify site lighting and add additional pavement and related improvements. The parcel is located at 396 Daniel Webster Highway in the C-2 (General Commercial), R-4 (Residential), Aquifer Conservation, and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 032. Case #PB2021-26. This item is continued from the July 7 and August 17, and September 21, 2021 Planning Board meetings.**

Matt Peterson (Keach-Nordstrom Associates, Inc.) was present to discuss the project with the Board. Mr. Peterson began by advising the Board that this project began from a violation letter that was issued to the applicant in December of 2020. The violation letter was in reference to a site plan violation due to additional pavement that was added to the property without Planning Board approval and flood lighting installed on Eversource utility poles that violates the Town's lighting regulations.

Mr. Peterson then shared the site plan with the Board and demonstrated the location of the infiltration system that is being proposed on the property. He also spoke briefly about the lighting plan and advised the Board that the current plan has the wrong wall pack lights referenced so he is working on getting the plan updated. Mr. Price interjected and explained that due to the nature of this project, it would make more sense to consider it for a waiver of full site plan to just address the changes being made. This would also prevent the applicant from needing waivers for the full site plan requirements that do not apply here.

Nelson Disco asked if the existing flood lights were included in the lighting calculations. Mr. Peterson explained that once the wall lights are mounted, the flood lights will be removed so they were not included in the calculation. Mr. Disco also asked if any consideration was given to asking the applicant to add a sidewalk to the front of the property. Mr. Peterson stated that he hadn't considered it because he was only focused on addressing the items from the violation letter. He added that he will discuss the sidewalk request with the applicant and provide an answer at the December meeting. Councilor Healey asked for clarification on what is being done to the site and Mr. Peterson explained that they are trying to fix the issues from the violation letter only which entails the lighting and increased pavement. Mr. Price added that when the pavement was added it increased the off-site run off of drainage so the plan is aiming to correct that issue.

**The Board voted 5-1-0 to accept the application as complete, on a motion made by Lynn Christensen and seconded by Neil Anketell. Nelson Disco voted in opposition.**

Nelson Disco added that he voted in opposition because he feels that a sidewalk should be required at this location and there is not one currently shown on the plan.

There was no public comment.

**The Board voted 6-0-0 to continue this item to December 7, 2021 at 7:00 p.m. in the Matthew Thornton Room, on a motion made by Nelson Disco and seconded by Barbara Healey.**

- 5. Gary and Diane Kudalis (applicants/owners) – Review for acceptance and consideration of a Site Plan to construct a 6,000 s.f. Equestrian Training Facility and related site improvements. The parcel is located at 102 Joppa Road in the R-2 (Residential), and Aquifer Conservation Districts. Tax Map 6C, Lot 388. Case #PB2021-37. This item is continued from the September 21, 2021 Planning Board meeting.**

Robert Price prefaced the presentation by reviewing the staff memo to discuss the waiver requests that have not been received and clarifying that the waiver for the parking lot that was initially thought to be needed is not needed for this use.

Chris Guida, Wetlands & Soil Scientist (Fieldstone Land Consultants, PLLC). Diane Kudalis, (property owner) and Carla Kudalis (resident & business owner) were all present to discuss the

project with the Board. Mr. Guida began by explaining that the missing waivers that Mr. Price mentioned were emailed to staff at approximately 4:30 pm and handed out copies to the Board members. He then shared a copy of the site plan with everyone in attendance and walked through the exiting layout of the property and demonstrated where the proposed riding facility would be constructed. The existing house and 10 stall barn will remain in place and the proposed training facility will have no more than 10 horses and will only be used for training, there are no plans to hold any shows at the facility. Mr. Guida also explained that access to the training facility will be off of the existing driveway, which will be expanded. Mr. Disco expressed concerns that the lot boundaries are not shown on the plan and Mr. Guida explained that the lot is so large (23 acres) and the majority of it is not being touched, so they just focused the plan on the area that is being developed and are requesting a waiver from the requirement to show all of the boundaries (section 4.12.a). He added that the inset plan does include the entire lot and demonstrated on that plan the location of the proposed training facility. Mr. Disco also asked about a pool that is shown on the existing conditions plan but not on the site plan. Mr. Guida explained that the project has been in the works for a couple of years and when the existing conditions plan was first created the pool was there however it has since been removed.

Councilor Healey asked about the plans for the horse manure. Diane Kudalis responded that they are currently composting the manure but if it ever got to be too much to handle they would haul it offsite.

**The Board voted 6-0-0 to accept the application as complete, on a motion made by Barbara Healey and seconded by Nelson Disco.**

Questions arose about the agricultural use of the parcel and Mr. Price clarified that because the use is agricultural, it is permitted by state law and allowed anywhere in town. The only reason the Board is involved is because the law stipulates that towns can require a site plan process for any structures related to agricultural use.

Mr. Guida read through each of the seven waivers being requested and the reasons for each request.

Public Comment:

Sandra May (8 Beaver Brook Drive) expressed concerns with lighting because their house is behind the lot in question and she is worried that headlights will shine into their home. She asked if it would be possible to add a fence to block the headlights from shining into their house. She also questioned what the hours of operation will be and what the plans are for pest control because horse manure can draw flies and other insects.

Sue Williams (10 Beaver Brook Drive) also shared concerns about car headlights, traffic and the animal waste with 8 additional horses, indicating the smell is pretty bad now just from the two that they have. She added that she would like to see a buffer of spruce trees to block headlights as the trees are more natural looking than a fence would be.

Roger Vanwert (94 Joppa Road) echoed the same concerns as his neighbors and added that he is also worried about the impact to the aquifer. Mr. Vanwert also asked about the staff memo comment regarding an existing unidentified easement.

Claude Mayo (8 Beaver Brook Drive) asked if the applicant would have to go back to the Planning Board if they decide to expand their business in the future, and Mr. Price confirmed that yes, they would have to. He also asked if the training facility does not work out and they decide to have a farm instead of they could do so without approval from the Board. Mr. Price explained that it would depend on what it is but if it were commercial in nature then the town may require site plan approval through the Planning Board.

Carla Kudalis responded to the public comments by explaining that they do not anticipate an increase in traffic because she is the only trainer so she can only accommodate a few lessons per day. When asked about the hours of operation, she explained that they will operate from 10 am to 5 pm in the spring/summer and 10 am to 6 pm in the fall/winter. Neil Anketell asked if the proposed training facility is completely enclosed and Miss. Kudalis responded that it is. Mr. Guida shared a picture of a similar facility to the one being proposed and Miss Kudalis added that the only outdoor light will be used will be for travelling between the barn and training facility and it will be shut off when it is not in use. Nelson Disco asked about the size of the building that was shown and Miss Kudalis responded that it is approximately 70x200 but their building will be no larger than 60x180 (the site plan shows a proposed building size of 60x100).

Chairman McLaughlin asked if the applicant has ever had to haul manure offsite and Miss Kudalis stated that they have not, they have been composting it in the area of the proposed training facility. Mr. Guida added that the property is so large that they can easily disperse it and that the smell usually only happens when it stays in piles. Mr. Price suggested that the Board require a note on the plan that states the applicant must comply with the State of NH Department of Agriculture Best Management Practices for handling manure. Chairman McLaughlin also asked if MVD has been advised of this project and Mr. Price explained that all projects that are at a parcel with town water are sent to MVD to provide comments on but they did not provide any comments on this particular one. Councilor Healey questioned if the Health Inspector needs to be involved and Mr. Price stated he does not believe it is necessary at the local level as part of the approval process.

Mr. Anketell asked what the plans are to ensure that the headlights are not shining into the neighbors houses. Miss Kudalis responded that the number of cars coming and going at night will be minimal and that the parking is currently situated near the barn so when someone pulls into a spot, their headlights are facing the barn. Mr. Guida shared a copy of the plan that shows the parking and demonstrated that the lights would not be directed at any neighbor's houses. Miss Kudalis also explained the day to day operations and that the horses that will be boarded there are typically there long term and that there are no plans for trail riding within the property.

Chairman McLaughlin asked Mr. Guida about the easement that was mentioned during public comments and Mr. Guida read from the Deed to explain that it is an access easement for lot 6C/387.

**The Board voted 6-0-0 to grant a waiver from Section 4.14.e (pertaining to provision of a landscape plan) of the Site Plan Regulations, on a motion made by Neil Anketell and seconded by Lynn Christensen.**

**The Board voted 6-0-0 to grant a waiver from Section 4.12.c.18.viii (pertaining to locating trees greater than 15” in diameter on the plan) of the Site Plan Regulations, on a motion made by Neil Anketell and seconded by Nelson Disco.**

**The Board voted 6-0-0 to grant a waiver from Section 4.16 (pertaining to provision of an illumination plan) of the Site Plan Regulations, on a motion made by Neil Anketell and seconded by Nelson Disco.**

**The Board voted 6-0-0 to grant a waiver from Section 4.17 (pertaining to provision of a traffic impact analysis) of the Site Plan Regulations, on a motion made by Neil Anketell and seconded by Barbara Healey.**

**The Board voted 6-0-0 to grant a waiver from Section 3.08.c.5 (pertaining to driveway construction) of the Site Plan Regulations, on a motion made by Neil Anketell and seconded by Nelson Disco.**

**The Board voted 6-0-0 to grant a waiver from Section 4.12.a (pertaining to showing the entire boundary of the site on the Existing Conditions Plan) of the Site Plan Regulations, on a motion made by Lynn Christensen and seconded by Barbara Healey.**

**The Board voted 6-0-0 to grant a waiver from Section 4.12.c.18 (pertaining to field location of various items on an Existing Conditions plan) of the Site Plan Regulations, on a motion made by Barbara Healey and seconded by Lynn Christensen.**

Mr. Price read through the proposed Conditions of Approval that should be amended or modified based on discussions by the Board and granting of waivers.

**The Board voted 6-0-0 to grant conditional final approval, on a motion made by Lynn Christensen and seconded by Barbara Healey. The following conditions apply:**

1. Final plans and mylars to be signed by all property owners. The appropriate professional endorsements and signatures shall also be added to the final plans and mylars.
2. The applicant shall obtain any required State approvals/permits, note the approvals/permits on the final plans and mylars and provide copies to the Community Development Department.
3. The applicant shall provide draft copies of any applicable legal documents for review, as applicable and at the applicant's expense, by the Town's Legal Counsel.
4. The applicant shall address the forthcoming comments from the town's peer review consultant, Fuss & O'Neill, as applicable.
5. The applicant shall address any forthcoming comments from the Public Works Department, as applicable.
6. The applicant shall address any forthcoming comments from Merrimack Village District, as applicable.

7. The applicant shall address the following Planning Staff Technical Comments:

- a. The applicant shall note on the plan that the owner shall comply with the New Hampshire Department of Agriculture Manual of Best Management Practices for Agriculture in New Hampshire, latest revision, for the handling of manure on site.
- b. The applicant shall note on the plan that the Hours of Operation will be 10:00 a.m. – 6:00 p.m.
- c. The applicant has provided only a partial site plan and grading plan, which does not indicate the entirety of the property. The applicant shall provide the full extent of information required by Section 4.14.
- d. The applicant has not provided the required plan notes (from Section 4.11) which should be added to the site layout plan sheet (to be recorded at the Registry of Deeds):
  - i. Existing and proposed use
  - ii. Sanitary sewer source
  - iii. Water supply source
  - iv. List of required permits and permit approval numbers (if applicable)
- e. In addition to the plan notes listed above (condition 7.d), the applicant shall address the following relative to the Site Layout Plan:
  - i. Update note #4 to not only indicate the regulatory dimensional requirements, but also note what exists/is proposed to verify compliance with the regulations.
  - ii. Update note #11 to indicate what kind of easement is referenced.
  - iii. Re-number the notes so that number “16” is not written twice.
  - iv. Applicant shall add a note on the plan that reads as follows: “The applicant shall be responsible for ensuring ADA compliance will be met for the parking area.”

**The following “General and Subsequent Conditions of Approval” are also placed on the approval:**

1. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) 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 submit an As-Built Plan prepared by a qualified professional (Professional Engineer or Licensed Land Surveyor, registered/licensed in New Hampshire) to the Community Development Department prior to the issuance of the final Certificate of Occupancy.

3. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant.
4. The applicant shall address any forthcoming comments from the Building Department, as related to building code compliance and permit application, as applicable (that are not deemed precedent conditions).
5. The applicant shall address the following comments from the Fire Department, as related to building fire code compliance, sprinkler systems, building addressing, etc., as applicable (that are not deemed precedent conditions).
  - a. As this proposal is for new commercial building (covered riding arena) the entire building shall be protected by an approved NFPA-13 compliant fire sprinkler system. (Town of Merrimack Building Zoning Ordinance and Building Code, Section 11) Plans shall be provided to this office for review and approval before a permit can be issued.
  - b. The buildings shall be protected by an approved NFPA-72 fire alarm system. Plans shall be provided to this office for review and approval before a permit can be issued.

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

**The Board voted 6-0-0 to recommend to the Town Council that Tim Tenhave be appointed to the Nashua Regional Planning Commission, on a motion made by Lynn Christensen and seconded by Barbara Healey.**

Mr. Price explained to the Board that staff was approached by the applicant of the Robert Milligan Parkway project about a waiver that was denied during the approval process for section 3.12.d.ii of the site plan regulations. The regulation requires the applicant to include recesses in the building every 50 feet which would result in a loss of approximately 85,000 square feet of space. To avoid the loss of space, the applicant is proposing exterior alterations to give the impression that the building is divided without it actually being so. The Board discussed the matter and agreed that they never intended for the applicant to lose building space but were not in favor of the building looking so boxy because it is seen from the highway. Mr. Price shared an architectural rendering of the building with the exterior changes being proposed and the Board agreed that they would be willing to listen to the waiver request again at a future meeting.

**7. Approval of Minutes — September 21, 2021 Non-Public Session & October 5, 2021**

**The Board voted 4-0-2 to approve the minutes of the September 21, 2021 Non-Public Session on a motion made by Lynn Christensen and seconded by Barbara Healey. Paul McLaughlin and Barbara Healey abstained.**

**The Board voted 6-0-0 to approve the minutes of October 5, 2021 on a motion made by Lynn Christensen and seconded by Jaimie von Schoen.**

**8. Adjourn**

**The Board voted 6-0-0 to adjourn at 8:38 p.m. on a motion made by Neil Anketell and seconded by Barbara Healey.**