



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

## MERRIMACK PLANNING BOARD

OCTOBER 6, 2015

### MEETING MINUTES

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, October 6, 2015 at 7:02 p.m. in the Matthew Thornton Room.

Chairman Robert Best presided:

Members of the Board Present: Alastair Millns, Secretary  
Lynn Christensen  
Desirea Falt  
Councilor Thomas Mahon  
Vincent Russo  
Nelson Disco, Alternate  
Jeff Sebring, Alternate

Members of the Board Absent: Michael Redding

Also in Attendance: Tim Thompson, Director, Community Development

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#### 1. Call to Order

The next meeting of the Planning Board will be conducted on Tuesday, October 20, 2015 at 7:00 p.m. in the Matthew Thornton Room.

Chairman Best appointed Jeff Sebring to sit for Michael Redding.

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

Director Thompson spoke of a memorandum included in the Board's packet regarding regional impact determinations for three of the projects that appear on the agenda; Crosswoods Path Site Plan, Gakis subdivision, and Domian subdivision. Based on the criteria from the discussion the Board had last December, staff recommendation is that the Board determine these are not of regional impact as they don't meet the criteria for a regional impact determination.

**MOTION BY COUNCILOR MAHON TO DETERMINE THAT THE CROSSWOODS PATH SITE PLAN, GAKIS SUBDIVISION, AND DOMIAN SUBDIVISION ARE NOT OF REGIONAL IMPACT**  
**MOTION SECONDED BY MEMBER CHRISTENSEN**

#### MOTION CARRIED

6-0-1

*Member Russo Abstained*

Director Thompson commented he is hopeful he will be able to introduce the new Assistant Planner at the next meeting. A decision was reached, and work continues to complete the H.R. process, e.g., waiting for driving records from the State, etc.

- 3. Robert Lavoie (applicant) and Gregg R. Kennedy (owner) – Review for acceptance and consideration of Final Approval of an application for a 2-lot minor subdivision. The parcel is located at 8 Fuller Mill Road in the R-1 (Residential) District by Zoning map. Tax Map 4B, Lot 153. *This agenda item is continued from the June 16, July 7, 2015, and August 4, 2015 Planning Board meetings.***

Director Thompson remarked while the project has been continued on 3 separate occasions, this is the first time the Applicant is here to present the project. This proposed subdivision did have to go to the Zoning Board of Adjustment (ZBA). It received 4 variances; 3 for the new lot and 1 for the parent lot; those being to allow the new lot to have less than the required frontage, lot size, and lot depth, and to allow the parent lot to have less than the required lot depth.

When the lot was originally subdivided back in the late '90s, it was prior to the Town adopting the R-1, Residential zoning district by map. At the time, it was allowed to be subdivided using the soil based lot standards. Now that this lot is in the R-1 District, it requires 100,000 sq. ft., 250' of frontage, and 300' of lot depth. Because they were unable to subdivide under the current standards, they were successful in obtaining variances. The Applicant is before the Board requesting conditional final approval for the project.

Daniel Higginson, Meridian Land Services, addressed the staff memo noting the existing structures in the front setback of the proposed lot are to be razed, which will eliminate any setback issues. The State subdivision permit has been applied for and is pending. The memo notes several miscellaneous drafting items, which are being addressed. The memo also includes information regarding a sidewalk waiver, which has been prepared for the Board's consideration.

**MOTION BY MEMBER CHRISTENSEN TO ACCEPT THE APPLICATION AS COMPLETE  
MOTION SECONDED BY MEMBER FALT**

**MOTION CARRIED**

**6-0-1**

*Member Russo Abstained*

Director Thompson noted, because this is a minor subdivision, the Board can determine that a Waiver is not necessary based on the requirements of the regulation.

Mr. Higginson stated Fuller Mill Road is not listed as collector or arterial street, and due to the fact there are no sidewalks in near proximity to the property, they feel strict conformity would pose an unnecessary hardship to the Applicant, and the Waiver would not be contrary to the spirit of the regulations.

**MOTION BY MEMBER MILLNS TO GRANT A WAIVER FROM THE REQUIREMENTS OF SECTION 4.06.1(r) – SIDEWALKS OF THE SUBDIVISION REGULATIONS NOTING STRICT CONFORMITY WOULD POSE AN UNNECESSARY HARDSHIP TO THE APPLICANT AND THE WAIVER WOULD NOT BE CONTRARY TO THE SPIRIT AND INTENT OF THE REGULATIONS  
MOTION SECONDED BY MEMBER CHRISTENSEN**

ON THE QUESTION

Member Christensen questioned the effect of granting a sidewalk waiver or determining a waiver is not needed, and was informed the effect is essentially the same. Because the Board has the ability to determine the waiver is not needed, if, for whatever reason, the Applicant couldn't make a case that it met the requirements statutorily for granting a waiver, it gives the Board an out.

Member Sebring remarked if a waiver is granted that is documented. Director Thompson stated it would have to be noted on the plan that would be recorded at the Registry. Chairman Best noted if the determination is that it is not required it would not be recorded with the plan, but the action of the Board would be recorded in the meeting minutes.

Chairman Best mentioned with minor subdivisions, the Board has included language in the Ordinance that allows the Board to set aside any of the subdivision regulations as being unnecessary without necessarily tying it to one of the statutory criteria. It is really something the Board is able to do only in the context of a minor subdivision.

Director Thompson commented in many cases with a minor subdivision where there is a large parent lot that has a lot of topography that needs to be mapped, the Board has the ability to determine it is not necessary to delineate all of the topography, the wetlands, or anything on the lot that is not being impacted as long as you have sufficient information to make an informed decision.

Member Christensen stated her intent to vote against the motion, and commented she would rather determine the waiver to be not necessary.

**MOTION FAILED**

**2-4-1**

*Members Best, Christensen and Sebring and Councilor Mahon voted in opposition  
Member Russo Abstained*

**MOTION BY MEMBER CHRISTENSEN TO DETERMINE A SIDEWALK WAIVER IS NOT NECESSARY UNDER SECTION 4.07 OF THE REGULATIONS  
MOTION SECONDED BY MEMBER FALT**

**MOTION CARRIED**

**5-1-1**

*Member Millns voted in opposition  
Member Russo Abstained*

*Chairman Best opened the floor for public comment at 7:15 p.m.*

Public Comment - None

*Chairman Best declared the public hearing closed at 7:16 p.m.*

Member Disco requested clarification on the remarks made regarding existing structures within the setback. Mr. Higginson responded they will be removed. The plan says the "barn to be", and leaves out the word "razed". That will be corrected on the plan.

Member Millns commented, given the unusual shape of the lots, he has concern there might be enthusiasm from the owner(s) to gain access onto Amherst Road. He stated a desire for the plans to state that would not be allowed. Mr. Higginson stated agreement.

Member Sebring questioned if consideration has been given as to what the access roads will be on these properties. Mr. Higginson commented it is a relatively flat road with good site distance. They have not pinned down an exact point, but it seems like kind of a moot point.

Councilor Mahon noted the staff memo questions what will happen with the concrete slab associated with the razing of the storage containers. Mr. Higginson stated that will be removed as well.

Member Falt spoke of the reduced size of the front lot, and questioned if drainage will be adequate. The response was that test pits were done, and it meets the Town and State criteria.

**MOTION BY MEMBER MILLNS TO GRANT FINAL APPROVAL, WITH THE FOLLOWING PRECEDENT CONDITIONS TO BE FULFILLED WITHIN SIX MONTHS AND PRIOR TO PLAN SIGNING, UNLESS OTHERWISE SPECIFIED  
MOTION SECONDED BY MEMBER SEBRING**

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 NHDES Subdivision Approval, note the permit approval on the plans, and provide a copy to Community Development;
3. The applicant shall update Note #14, referencing the variances granted by the ZBA, indicating the specific variances granted:
  - a. Variance under Section 3.02 to allow Lot 153-2 with less than the required 100,000 square feet of lot area;
  - b. Variance under Section 3.02 to allow Lot 153-2 with less than the required 250 feet of frontage;
  - c. Variance under Section 3.02 to allow Lot 153-2 with less than the required 300 feet of lot depth;
  - d. Variance under Section 3.02 to allow Lot 153 with less than the required 300 feet of lot depth;
4. The applicant shall provide draft copies of any applicable legal documents for review, at the applicant's expense, by the Town's Legal Counsel;
5. The applicant shall address any forthcoming comments from the Fire Department, as applicable;
6. The applicant shall address any forthcoming comments from the Conservation Commission as applicable;
7. The applicant shall add a note to the plan indicating that no vehicular access shall be permitted from Amherst Road and that access to the lots will be from Fuller Mill Road;
8. Address the following Planning Staff Technical Comments:

**Planning Staff Technical Comments**

- a. Staff recommends that a recordable sheet be prepared without topography for recording at HCRD, as typically plans with topography are not considered "recordable" at the registry (additionally, there are several locations on the plan where text intersects with linework, which is also unacceptable at the Registry). This sheet must contain all required notes and signatures;
- b. Please add the 40' wetland setback per the requirements of the Zoning Ordinance (the 25' buffer is shown, but the setback is missing);
- c. Applicant to add a note to the plan indicating that the plan is to be recorded at HCRD and that a copy is on file with the Community Development Department;
- d. Applicant to indicate that the storage containers between lots 4B/153-2 and 4B/153 are to be razed (also, what is to happen with the concrete slab?) or, the applicant shall obtain an

agreement or easement for them to remain (additionally, it appears the word “razed” is missing where the barn is located. Plan currently reads “Barn to be”);

- e. Applicant to add owners address to the title block of the plan;
- f. Applicant shall correct note # 8 (the proper title is Zoning Board of Adjustment, not Adjustments);
- g. Applicant to clearly indicate existing lot lines versus proposed lot lines on plan and in legend;
- h. Applicant to revise note # 12 to update the reference to the Town Code (Chapter 167 is the current Stormwater Management Ordinance number).

### **General and Subsequent Conditions**

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. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
3. Applicant to obtain right-of-way permits from the Public Works Department for all new driveways.

### **MOTION CARRIED**

**6-0-1**

*Member Russo Abstained*

4. **Crosswoods Path III, LLC. (applicant/owner)** – Review for acceptance and consideration of Final Approval of an application for a waiver of full site plan review for a conversion of an approximately 20,000 sf. office building to up to 21 unit multi-family residential dwelling units within the C-2 (General Commercial) and PUD Overlay and Aquifer Conservation Districts. The parcel is located at 1 Crosswoods Path Boulevard. Tax Map 7E, Lot 046-053.

Director Thompson noted Mr. Levin has been before the Board twice to discuss this project in a pre-submission hearing, and has received Board feedback. In August, the ZBA granted the variances needed under Section 15 of the Ordinance to allow the 21 units where the regulations would not otherwise allow it. Mr. Levin was before the Board for a Waiver of full Site Plan review based on the feedback the Board had given, to convert the existing commercial office building into up to 21 units of multi-family.

Jerry Levin, Crosswoods Path III, LLC, stated the project looks to convert the property from an office building to a 21 unit multi-family residential dwelling. He spoke of an application that was submitted for a new permit from the Highway Department. The Highway Department has informed him and the Town, in writing, it is not necessary, the information they had is sufficient, and the prior permit is valid.

Director Thompson noted the permit is the New Hampshire Department of Transportation (NH DOT) driveway permit for Crossroads Path Boulevard. As the only access to the project is through Crossroads Path, Mr. Levin contacted District 5, and we do have confirmation the permit does not need to be updated.

Mr. Levin commented the only other issue was the excessive amount of parking. He had stated he would try to indicate to the Board what would be eliminated. He pinpointed (on a map) the area of

parking that would be eliminated (approx. 22-24 spaces). Part of the area will be used as a dog run with the remainder being grass. Chairman Best noted, for the record, the area indicated is the northern edge along Crosswoods Path Boulevard. Mr. Levin stated that would be denoted on the final plan when submitted. Chairman Best questioned the amount of pavement that would be removed as a result, and was told it would be 10,800 sq. ft.

Director Thompson noted whatever remains for parking needs to meet the requirement of half a parking space per dwelling unit plus 1.25 per bedroom. Mr. Levin remarked that comes to 58-59. They started out with 90±. The remaining will be more than sufficient. Director Thompson stated the need for that to be noted on the plan.

**MOTION BY MEMBER FALT TO ACCEPT THE APPLICATION AS COMPLETE  
MOTION SECONDED BY MEMBER SEBRING**

**MOTION CARRIED 6-0-1**  
*Member Russo Abstained*

**MOTION BY MEMBER MILLNS TO GRANT A WAIVER OF FULL SITE PLAN REVIEW NOTING  
STRICT CONFORMITY WOULD POSE AN UNNECESSARY HARDSHIP TO THE APPLICANT AND  
THE WAIVER WOULD NOT BE CONTRARY TO THE SPIRIT AND INTENT OF THE REGULATIONS  
MOTION SECONDED BY MEMBER SEBRING**

**MOTION CARRIED  
6-0-1**  
*Member Russo Abstained*

*Chairman Best opened the floor for public comment at 7:25 p.m.*

Public Comment

Amey Fuller, 5 Crosswoods Path Blvd.

Ms. Fuller indicated she was not notified of the hearing. She learned of the hearing through local newsprint. She questioned the meaning of conditional final approval. Chairman Best explained there are a number of technical or sometimes substantive requirements the applicant hasn't yet met and is required to meet in order to have the plan signed off. Those items are outlined in a memo by staff dated September 20<sup>th</sup>. Once those conditions are met the plan would be signed off, assuming that conditional approval is granted.

Ms. Fuller questioned the notation within the staff memo regarding waiving the sidewalk requirement. Director Thompson responded, given it has waived full site plan review, the Board is able to make a determination as to whether or not it is necessary to waive the requirement for a sidewalk.

Ms. Fuller remarked, with Spartan Pizza next door and the 7/11 just up and across, there is a good deal of foot traffic; enough that there is a crosswalk with a light at the Society Hill intersection. She suggested a sidewalk would be beneficial.

Chairman Best remarked there are some peculiarities with what is required of notice when there is a condominium association or management company involved and the Board almost always ends up with residents or condo. owners coming forward stating the notice did not come. Staff does look over what the notice was and how it was given to ensure it was compliant with the law.

Ms. Fuller stated the ZBA notified the management company who in turn notified residents. She stated she checked again with the management company earlier in the day, and was informed they had not

received any notice. Director Thompson stated they are on the list of having been sent the notice. It goes from the Community Development Department to the Post Office, and out. Chairman Best stated the notices from both the ZBA and the Planning Board are both generated out of the Community Development Department. Director Thompson stated the file indicates it was sent.

Ms. Fuller commented traffic flows will be altered with a change of use, e.g., traffic at differing times of the day. People will be going in and out at the same time as those from the condominiums. The way the driveway is situated traffic will come together at a meeting point at the T. She requested there be some directional lines or similar means of routing traffic.

Chairman Best commented on the point made regarding the change of use and the impact that would have to the volume and timing of traffic. Generally speaking residential is a big step down in volume from commercial traffic. Ms. Fuller commented, in this case, there has been no traffic. Director Thompson noted it is based on assuming the building was fully occupied as commercial space.

Donna Bally, 5 Crosswoods Path Blvd.

Thanked the Telegraph for the notice of the hearing. She commented on Mr. Levin having a history with the property and perhaps the condos as well.

With regard to the issue of traffic, she commented when residents pull out of what is a very short, nubby parking lot that services both the commercial building, 5 Crosswoods Path Boulevard, and other units, there is really only about 75' of pavement between pulling out of there and stopping to try to get across the D.W. Highway. With the elimination of the Ext 12 tolls and the opening up of the access highway, there is considerable congestion in that area. That results in a lot of backup and wait time getting out onto the D.W. Highway. Ms. Bally remarked she is not clear how to address that; however, felt the suggestion of directional markings on the roadway may be helpful.

Ms. Bally questioned whether lighting requirements would be different when going from a commercial to a residential use. With residential there is traffic coming and going all hours of the day and night, which differs from commercial traffic. The area is not well lit currently. She questioned if the lighting would be an area addressed. She questioned if there would be a plan for an onsite management company given the dwelling would be an actual apartment building.

Ms. Bally questioned if bus stops would be altered as a result of an increase to the number of residents in the area. Presently the bus stops at the far end of Crosswoods Path Boulevard. She stated an uncertainty of who would coordinate that with the School District.

Chairman Best commented the School District might. He remarked he drives by the area every morning and witnesses cars and parents and kids standing on the corner. Ms. Bally stated she has lived there for 8 years and has never seen that occurring at the top of Crosswoods Path Boulevard. What she sees is the school buses going down to the gazebo and coming back up. She is not sure if there are students coming from the other side. Director Thompson suggested the area might be being confused with Society Hill. He commented he drives by the area each morning as well, and does not recall ever seeing people at the intersection.

Ms. Bally stated what goes down Crosswoods Path Boulevard is more of an asphalt path, and does not meet the definition of a sidewalk. That path runs from the beginning of building 5 and goes all the way down around the bend to the end of Crosswoods Path Boulevard itself. With regard to a sidewalk variance she would not necessarily support it without saying to the Board has anyone been over there and seen the really narrow strip of grass that kids spend time at. Depending on where a bus stop is located, there would be concern with an increasing amount of congestion and traffic traveling at high rates of speed in that area. She commented there are serious safety issues to be looked at in that regard when it comes to making a decision about a waiver.

Chairman Best noted the question related to whether or not there would be a management company onsite is probably not within the purview of the Board. Bus stops are decided by the School District, but the Board does think and talk about bus traffic. Lighting is something the Board can discuss with the Applicant and determine whether it is satisfied with that situation.

*Chairman Best declared the public hearing closed at 7:38 p.m.*

Chairman Best remarked as we approach this with the sidewalks and considering the traffic flow, lighting, and bus stops, that fits into that waiver of full site plan review where the Board can decide whether those things are necessary or not. Director Thompson stated agreement. He noted, in terms of lighting, the regulations language does not speak to minimum lighting standards. There are maximum standards, e.g., don't allow certain levels to go beyond a certain point.

With regard to sidewalks, the previous commercial building on this property had been granted a waiver of the sidewalk. Again, with the waiver of full site plan review the Board can make a determination whether or not it feels comfortable to require that to be a waiver or with that being part of the waiver of full site plan review.

In terms of the bus stop issue, generally speaking, with a 21-unit apartment building with a mix of 1 and 2 bedroom units, based on the multipliers for typical school aged children in this part of the state, you are probably talking 6-8 children as the multiplier (5.25 actual).

Addressing comments made regarding traffic volume. Mr. Levin commented an office is very busy between 8:00 - 9:00 a.m. and 5:00 - 6:00 p.m., which are the same times residential traffic is busy with residents leaving for and returning home from work. He believes the amount of traffic would be greater with a commercial use or perhaps the same with a residential use. There will be fewer residents than employees to the site.

Mr. Levin commented the issue of the sidewalk has come up in the past. He does not believe it possible to put a sidewalk in the area, which is very steep.

Director Thompson stated this is a State controlled section of Route 3, and we do not yet have a sidewalk plan. As a result, the NH DOT will not accept a sidewalk within the right-of-way.

Chairman Best questioned plans for lighting. Mr. Levin responded, without question, there will be exterior lighting on the front of the building. Exterior lighting towards the back of the building may present a problem for the apartments located behind the building. Certainly the front and the walkway would be lit for safety purposes.

Member Falt recommended having lighting at least at the entrances to the building. Mr. Levin stated there is lighting there now, but there will be lighting sufficient to light the building. He continued we would have to light the front of the building otherwise it wouldn't be safe for the people who are living there. They wouldn't want to live there unless the front of the building was reasonably well lit as well as the parking area.

Member Christensen questioned the number of entrances, and was informed there are 2 fire entrances on each end of the building and one entrance in the center. Chairman Best questioned if the fire entrances are meant for emergency use only? Mr. Levin responded that would be discussed with the Fire Department.

Chairman Best expressed, from the standpoint of the Board, if you make them accessible to the residents as a normal means of entrance and egress they should be lit. If they are not, that is a choice that you make; perhaps, in a fire situation, the lights come on or something like that. Mr. Levin

indicated the entrances at either end of the building would not be the main entrance to the building noting the elevator is in the center of the building.

Director Thompson questioned, if the Board is going to ask Mr. Levin to add additional lighting, is that something the Board would like to have an illumination plan for. Member Christensen stated she would. Chairman Best responded he was uncertain, noting an illumination plan is quite an expense for putting a couple of lights around a doorway and a building in an enormous parking lot. Mr. Levin stated there are lights around the doorway and the front lobby is lit.

Member Millns asked for additional clarification on the parking area that is intended to be removed, and was shown the area on the map. Chairman Best noted the applicant indicated all of the space on the northern edge of the parking lot. The parking next to the building and a driveway through that parking lot will remain, but the parking spaces themselves (roughly 10,000 sq. ft.) go away. Member Millns stated his belief it would be far better to remove the parking spaces that are along the front parallel to D.W. Highway and put in additional trees, etc. to make it more visually pleasing and more fitting to a residential building.

Member Falt stated her belief hiding the front of the building closer to the building you would get more affect. She added removal of that area of parking would result in the loss of a great many more parking spaces (almost 30 spaces). Member Millns affirmed that would result in the removal of 28 spaces rather than 20. Member Falt suggested sections of parking separated by landscaped buffers, and suggested looking out onto a parking lot is worse than looking out onto the road.

Chairman Best stated agreement, and commented it is not so much that when you look at it you think of the number of spaces and what you see is just a building in the middle of a flat plain absent a lot of landscaping. He noted there is a lot more landscaping around the building than is shown in the aerial photo. Member Millns commented that is not shielding the building from the D.W. Highway. He reiterated making the adjustment to the parking would result in the removal of 29 spaces, which leaves 67. Chairman Best remarked it is not the number of spaces. He commented he is not sure if shielding the building from D.W. highway would be for the benefit of D.W. Highway or the residents.

Director Thompson commented given the height of the building you will not get trees tall enough to do anything for those that would live in the 2<sup>nd</sup> and 3<sup>rd</sup> floors. Member Millns commented he simply believes it would be more visually appealing. Member Christensen remarked her preference would be to see the spaces on the south side of the building gone. That would provide for more green space next to the drainage easement.

Mr. Levin pointed out the trees in front of the building are quite a bit larger than what is shown on the photo; almost up to the 2<sup>nd</sup> story. He stated his preference for the parking to remain as initially indicated. Although he does not have a terrible objection to the suggestion of stripping the front 28 spaces, the alternative he would prefer is adding a few islands with landscaping. He suggested that to be a compromise he was willing to do, in addition to removal of the spaces on the northern side he initially spoke of removing. He would not want to take away all of that parking because it is utilized. Member Millns stated he liked the idea and was happy to go along with it.

Member Christensen requested additional clarification of the dog run including the amount of space that would be allocated to it. Mr. Levin responded they would likely utilize the equivalent of an area 15' wide and 50' long. That area would be fenced and would have soil put down, a few benches and a fire hydrant, and perhaps a tree or two so residents who have provided the DNA of their dog could enjoy the area. If dog feces are found anywhere on the property it is sent out to have the DNA analyzed. Within 24 hours there is a substantial fine to the tenant. Mr. Levin spoke of having 460 units in south Nashua, and he does not believe he has had 5 fines in 5 years.

Member Falt noted if three islands were put in, there would be approximately 6 spaces in between each. She recommended a total of three islands. Mr. Levin stated he would make an effort to do that.

Member Christensen questioned if there is ample room to make a left turn lane for traffic coming out of Crosswoods Path onto D.W. Highway. Director Thompson responded whether there is or not, there is absolutely no justification for the Board to require that because the traffic generation both overall and peak hour is significantly less than it was as a commercial property.

Chairman Best commented Director Thompson hits on a good point that was also referred to by Mr. Levin; when the project was originally laid out with that sea of parking spaces, it was designed for the traffic that would have used that many parking spaces. If it was designed for that traffic and passed all of the approvals necessary for a facility with that many spaces, the traffic that will come from a small number of apartments is far less than what it was designed for. Now that may be different than what people have observed over the years, but it certainly meets design standards for a tremendous amount of traffic with all of those spaces.

Chairman Best remarked, although the Public Hearing has been opened and closed, a few members of the audience have indicated a desire to speak. He offered another opportunity for public comment.

Colleen Rush, 9 Crosswoods Path Blvd.

Ms. Rush stated she has resided in this location for the past 2 years. Looking at the aerial photography displayed, there are quite a few cars in the front of the building. The implication is that there would have been a lot of people coming and going to coincide with the business day. But in the past few years the occupancy of the building was such that there were maybe 4 cars parked in that area. To say that many people were leaving at that time in these past few years she does not believe is a true representation of what was occurring.

Chairman Best thanked her for the clarification. He commented he does not believe Mr. Levin meant to imply that is what the traffic has been over the last couple of years, he believes what he was saying was that is the traffic that it was designed for, and frankly he has a right to operate it as a business that had that level of traffic.

*There being no other members of the public expressing a desire to provide input, Chairman Best closed the public hearing once again at 7:58 p.m.*

Member Christensen suggested there is no need to address a waiver of sidewalks. Member Millns spoke of the remarks made by Director Thompson noting the State, who controls the road at this point, will not go along with any such requirements until there is a sidewalk plan in place; therefore there is no point to discuss sidewalks. Chairman Best remarked because of the State situation it is better to decide that it is not necessary than try to fit it into a waiver, which doesn't quite apply.

***The consensus of the Board was for a determination a sidewalk waiver is not necessary.***

Member Disco suggested the Board consider a lighting plan for the project noting the proposal is a different use, and citing safety concerns. Chairman Best noted the information Director Thompson provided regarding the regulations citing a maximum standard but no minimum standard. The Applicant could say his lighting plan is no lights. Concerns for safety or not, the Board does not get to weigh in on that aspect of lighting.

Member Disco stated his belief the Board has the right to weigh in on the issue of safety. Director Thompson questioned if it would be to require the full blown illumination plan the Town would typically require that indicates lighting locations and foot candle levels. This is a waiver of full site plan review. The Board has already waived the requirement to go through the fully engineered process. He

questioned, if the Applicant were to indicate where lighting is going to be and that it meets full cutoff requirements would that be sufficient to satisfy the concerns of the Board.

Member Disco remarked if the Board is acceptable to that he would be as well. He questioned if the grass area could be made more user friendly for the human residents as well as the canine residents, e.g., adding benches, pathways, etc. Mr. Levin reiterated there would be benches in the dog area. The remaining space would only be about 25' wide. It would be grassed and comfortable for people to sit on or walk on. He does not believe it would make real sense to expend funds to put in additional benches. People who want to sit and relax there can sit and watch the dogs play. There will be benches for that. He remarked if it came to the point that it was a useful amenity that would be satisfactory and used by the residents, he would entertain it.

Member Russo stated his understanding the full site plan review has been waived and the Board is touching on a few things to try to adapt this to its new use. He commented on having seen, in the past, where lighting plans can be a problem after the fact because it wasn't spelled out. He stated he would be a proponent of going with an illumination plan. The Town has graciously given the Applicant the opportunity to try to get through this process as feasibly as possible, but in this case, he would be amenable to going with the full illumination plan. He does not believe it to be that large of an expense, and feels it would put a lot of people's minds at ease.

Chairman Best remarked Director Thompson has suggested the application identify the location of lights, that they meet our standards for whether they shine up, down, etc. The full lighting plan that is sometimes required is an engineered thing that measures the candle power at every spot along the parking lot. That plan is provided to the peer reviewer who would look at it and decide does it meet our regulations, do calculations about ratios, etc. Director Thompson noted, in this case, peer review would not be utilized as the Board has not utilized peer review for a project of this nature. It would be reviewed in-house by staff. When asked if staff would perform the same calculations of ratios, lighting standards, etc., Director Thompson stated that is something he could do. He clarified the one part of the lighting plan he is suggesting might be not part of the requirement is the measurement of foot candle levels at the ground level. He would still be looking for locations, details, and notes on the plan that indicate that they meet the standards of the regulations. Member Russo stated he would be amenable to that.

**MOTION BY MEMBER MILLNS TO GRANT FINAL APPROVAL, WITH THE FOLLOWING PRECEDENT CONDITIONS TO BE FULFILLED WITHIN SIX MONTHS AND PRIOR TO PLAN SIGNING, UNLESS OTHERWISE SPECIFIED  
MOTION SECONDED BY MEMBER FALT**

1. Final plans to be signed by the Property Owner;
2. The applicant shall note any waivers granted by the Board on the plan (including Section, and date granted) as applicable;
3. Applicant to revise the plan to indicate the parking spaces to be removed (and indicate the green space and dog play area to replace the parking spaces), add 3 landscape islands along the D.W. Highway side of the parking lot (spaced as equally as possible), and note the parking provided in the notes on the plan (as well as the number of parking spaces required by the Regulations);
4. The applicant shall include a limited illumination plan indicating all proposed lighting locations, fixture details, and certification that the fixtures are full cut-off and in compliance with the Regulations;
5. Applicant to address any forthcoming comments from the Building Department;

6. Applicant to address any forthcoming comments from the Fire Department;
7. Applicant to address any forthcoming comments from Merrimack Village District (MVD);
8. Applicant to address any forthcoming comments from the Public Works Department;
9. The applicant shall address the following planning staff technical comments. (Below)

#### **Planning Staff Technical Comments**

1. Applicant to type notes for legibility;
2. Applicant to add address of parcel to Note 1;
3. Applicant to white out prior site plan notes that are no longer applicable in bottom right corner;
4. Applicant to modify "Proposed Office Building" notation to "Proposed Multi-family Residential Building"

#### **MOTION CARRIED**

**6-0-1**

*Member Russo Abstained*

- 5. Daniel Higginson of Meridian Land Services, Inc. (applicant) and Vasilios Gakis (owner) –**  
Review for acceptance and consideration of Final Approval of a 2-lot minor subdivision. The parcels are located at 17 Beaver Brook Road in the R-1 (Residential) and Aquifer Conservation and Flood Hazard Conservation Districts. Tax Map 6C, Lot 406.

Director Thompson stated the project to be a minor subdivision (2 lots). The existing property is about 76.2 acres; predominantly wetland area. There are some small areas of upland that are available for building. The Applicant received a variance from the ZBA back in July to allow the creation of the new lots to have less than the required contiguous upland of 100,000 sq. ft. What was before the Board was the minor subdivision. The same question would be asked regarding the sidewalk waiver and a determination the Board can make as to whether or not that is necessary. There was also a waiver request from Section 4.06.1(i) seeking to waive the requirement for monumentation at the lot corners that are located within the wetland areas.

Daniel Higginson, Meridian Land Services, displayed a diagram of the proposed ten-acre lot noting staff had questioned where the access to the building portion of the lot would be; it is the area labeled as formerly right-of-way located between Tax Map 6C, Lot 561, and Lot 553. That right-of-way is the remnant of the original subdivision of the land. It was broken into many small parcels that were then joined to become the existing setup. Because it was wet, it was not suitable for development over a large portion of the rear.

When asked if the right-of-way is no longer for the benefit of others, Mr. Higginson stated it was not. He clarified it is a former right-of-way that they still have right (deeded) to, but they do not use at this exact point in time. That will be the area where the driveway is placed for the lot that will be subdivided and built upon.

Chairman Best requested the buildable area be indicated. The upland buildable area is about 80,000 sq. ft. There is another area of a little over 20,000 sq. ft. They do have the required 100,000 sq. ft.; however, it is not contiguous.

Chairman Best questioned the status of the former right-of-way on the other side of the parcel, and was told the situation is similar to that of the one in the middle except there is only one abutter that has

rights to it. That abutter has two lots. Chairman Best commented on the language that refers to the right-of-ways as former. Mr. Higginson stated that language could be changed. When asked if there are any other lots or property the applicant would anticipate tying to access through those right-of-ways, and was told there are not. He requested a note be added to the plan indicating there are no other access ways through the property other than the right-of-ways.

Member Disco questioned the soil types. Mr. Higginson responded they have done test pits, but have not done any high intensity soil work out there. It is suitable for individual septic for residents by both Town and State standards. He is not aware of the actual soil types, but stated that could be added to the plan. Member Disco stated his opinion that should be added to the plan.

Member Disco questioned if the test results have been submitted to the New Hampshire Department of Environmental Services. Mr. Higginson stated they have not. Because the lot is greater than 5 acres, it is not required. Director Thompson stated any lot that is greater than 5 acres does not require State subdivision approval.

**MOTION BY MEMBER MILLNS TO ACCEPT THE APPLICATION AS COMPLETE  
MOTION SECONDED BY MEMBER SEBRING**

**MOTION CARRIED**

**6-0-1**

*Member Russo Abstained*

*Chairman Best opened the floor for public comment at 8:14 p.m.*

Public Comment - None

*Chairman Best declared the public hearing closed at 8:15 p.m.*

**MOTION BY MEMBER MILLNS TO GRANT A WAIVER FOR THE REQUIREMENTS OF SECTION 4.06.1(i) – MONUMENTATION OF LOT CORNERS - OF THE SUBDIVISION REGULATIONS NOTING STRICT CONFORMITY WOULD POSE AN UNNECESSARY HARDSHIP TO THE APPLICANT AND THE WAIVER WOULD NOT BE CONTRARY TO THE SPIRIT AND INTENT OF THE REGULATIONS  
MOTION SECONDED BY MEMBER FALT**

**MOTION CARRIED**

**6-0-1**

*Member Russo Abstained*

***The consensus of the Board was for a determination a sidewalk waiver is not necessary.***

Councilor Mahon noted the plan refers to 10 acres as well as 43,577 sq. ft. Director Thompson stated there to be a typo that needs to be corrected. Councilor Mahon noted there are two property owners listed at the same address, 1 Walden Drive. Director Thompson stated that is how it is listed in the Assessing record. It will be checked again.

Director Thompson spoke of having added two additional items under Planning staff technical comments: to add a note relative to the rights of abutting property owners to use the “former rights-of-way” and indicating that no other access is to be granted for use of said “former rights-of-way” (other than use by the applicant for access to the newly subdivided lot) in the future and that the applicant shall add soils information to the plans.

**MOTION BY MEMBER MILLNS TO GRANT FINAL APPROVAL WITH THE FOLLOWING PRECEDENT CONDITIONS TO BE FULFILLED WITHIN SIX MONTHS AND PRIOR TO PLAN SIGNING, UNLESS OTHERWISE SPECIFIED  
MOTION SECONDED BY MEMBER CHRISTENSEN**

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 note all waivers granted by the Board on the plan (including Section, and date granted) as applicable;
3. The applicant shall update Note #11, referencing the variance granted by the ZBA, indicating the specific variance granted: "Variance under Section 3.02(A) of the Zoning Ordinance to permit the creation of a lot with less than 100,000 s.f. of contiguous upland area";
4. The applicant shall add a note relative to the rights of abutting property owners to use the "former rights-of-way" and indicating that no other access is to be granted for use of said "former rights-of-way" (other than use by the applicant for access to the newly subdivided lot) in the future;
5. The applicant shall add soils information to the plans as appropriate;
6. The applicant shall provide draft copies of any applicable legal documents for review, at the applicant's expense, by the Town's Legal Counsel;
7. The applicant shall address any forthcoming comments from the Public Works Department as applicable;
8. The applicant shall address any forthcoming comments from the Fire Department, as applicable;
9. The applicant shall address any forthcoming comments from the Conservation Commission as applicable;
10. Address the following Planning Staff Technical Comments:

**Planning Staff Technical Comments**

- a. The applicant should indicate where access to the new lot is to be obtained from;
- b. Applicant to add a note to the plan indicating that the plan is to be recorded at HCRD and that a copy is on file with the Community Development Department;
- c. Applicant to add owners address to the title block of the plan;
- d. Applicant shall correct note # 8 (the proper title is Zoning Board of Adjustment, not Adjustments);
- e. Applicant to revise note # 10 to update the reference to the Town Code (Chapter 167 is the current Stormwater Management Ordinance number);
- f. Applicant shall add the wetland buffer and setback delineation to the plan.

**General and Subsequent Conditions**

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. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
3. Prior to the issuance of a building permit for the new lot (406-1), a septic design shall be submitted to, reviewed, and approved by the Building Division;
4. Applicant to obtain right-of-way permits from the Public Works Department for all new driveways.

### **MOTION CARRIED**

#### **6-0-1**

*Member Russo Abstained*

- 6. North View Homes & Development, Inc. (applicant) and Elaine and Walter Domian (owners) –** Review for acceptance and consideration of a Final Approval of an application for a 2-lot minor subdivision. The parcel is located at 15 Brenda Lane in the R-1 (Residential) and Aquifer Conservation and Flood Hazard Conservation Districts and Shoreland Protection Area. Tax Map 6D, Lot 037.

Director Thompson informed the Board the project is a two-lot minor subdivision. The parcel is unique. Based on soils it is currently an R-1 zoned lot, however, the Applicant is proposing a sewer easement and extension of sewer to service this parcel coupled with the existence of MVD water. Once that happens, this parcel would then meet the R-4 requirements, which has a minimum lot size of 40,000 sq. ft., 20,000 sq. ft. of contiguous soils, and 150' of frontage.

One of the issues that is not included in the staff memo that he would recommend, should the Board consider conditional approval would be to add additional conditions related to the installation of that sewer line and any necessary wetland permitting as those would be required in order for the zoning of this lot to change to R-4.

Ken Clinton, Meridian Land Services, remarked Brenda Lane is an old subdivision from the 1970s. There were a variety of lots created on it. It has MVD water, but does not currently have sewer. All of the residences are septic. The project proposes to extend sewer from Pearson Road. Last year they had a project known as the Cota subdivision, which extended sewer from Bedford Road up Pearson. The sewer is into that subdivision now, and the proposal is to extend the sewer main/Town main, through the Cota property subdivision, across Baboosic Brook to Brenda and then on towards Whispering Pine to serve other residences in Town and then a future subdivision for which they expect to have an application before the Board in the near future.

When asked about the size of the main to be extended, Mr. Clinton stated, at this point, it is 12" through the Cota property, but it will be stepping down. There is a siphon (two 6" pipes) that crosses the brook that will be used because there is high elevation on both sides, and you need to get under the brook. The way that works is you have a reduction in the size of the pipe, pressure head, etc. When it comes out on Brenda, it is likely going to be 8-10" because the volume of future connectivity isn't there to require 12" at that point.

Chairman Best questioned if all of the work being done is at the expense of the client. Mr. Clinton stated it is not Merrimack Waste Water although they are part of the design process and approval it is really a private extension. It is another developer, LaMontagne Builders, who would be an end user, but it is also part of the Master Plan. Director Thompson stated it will eventually get to Greenfield Farm.

The overall design of the sewer is in process, and while this particular lot now exists as a 4.6 acre lot, the new lot being created is Tax Map 6D, Lot 037-1. To accommodate the sewer crossing at Baboosic Brook they have a proposed sewer easement through this section. Not exactly parallel with the property line just because of the nature of the best location for the sewer manholes and the siphon, but effectively crisscrossing it leaving on its south side a proposed lot of 1.3 acres. As an R-4 lot, it requires 40,000 sq. ft. gross, 25,000 sq. ft. of that to be upland, and that is what the proposed project has.

Mr. Clinton commented there is a fair amount of wetlands on the east side of the proposed lot adjacent to Baboosic Brook. Baboosic Brook is a flow in a certain channel. It has certain lowland areas that seasonally flood and are considered jurisdictional wetlands. That is what they have for the easterly half of the proposed lot. The rest of the land is built upon. The Domians reside there, have a paved driveway. They have a pool in the front yard with a shed as opposed to the back yard just because of the depth of where their house is off the road and they have a leach field in the back. Also on their property is an existing drainage easement. That was part of the original subdivision; there are a couple of catch basins in Brenda Lane and it outlets down the drainage easement and ultimately ends up in Baboosic Brook.

**MOTION BY MEMBER MILLNS TO ACCEPT THE APPLICATION AS COMPLETE  
MOTION SECONDED BY MEMBER FALT**

**MOTION CARRIED**

**6-0-1**

*Member Russo Abstained*

Mr. Clinton remarked with regard to the proposed sewer easement, that design is separate from the actual subdivision plan, is in design phase now, and soon to be submitted to the Town and then to the NHDES. Once they have a sense that location of the sewer line is firm they can complete the description and the actual easement documents. It is fine to say approval would be conditioned on that.

Chairman Best question who the easement holder would be. Mr. Clinton stated it would be an easement to the Town.

Item #4 of the staff recommendations requires the project to receive all necessary State permits for the subdivision. There are no State permits for the subdivision because it would be a municipal water and sewer lot. State subdivision is not necessary. There is a Shoreland application that would need to be filed by whoever is seeking a building permit on Lot 37-1. It is not part of the subdivision approval, but it is part of the development of that lot.

Director Thompson stated the item could be moved to a general condition. Mr. Clinton stated the plan includes a note that states that is required.

Chairman Best noted NHDES approvals with respect to the sewer installation. Mr. Clinton stated the design itself, from a sewer standpoint, is really based on the nuts and bolts of the sewer design specifically, not necessarily impacts to the land. The technique of construction of the site really drives the nature of the NHDES permit; being a wetlands permit and its own Shoreland permit. Alteration of Terrain (AoT) is not necessarily required because it is a public utility, and they don't necessarily fall under the jurisdiction of AoT permit. There will be two permits; Shoreland and NHDES wetlands.

Mr. Clinton commented on having been before the Conservation Commission the prior evening to discuss the project. Although they didn't have specific comments relative to the two-lot subdivision, they recognized the project will be back before them with the wetlands permit prior to construction to

talk about technique of installing the siphon and what some of the wetland impacts may be, why and how they will be minimized.

Chairman Best questioned if it is anticipated the sewer installation is going to get constructed and the two lots developed on their own, or if it is envisioned some of those other users would come online and share the cost of the siphon. Mr. Clinton responded as far as the cost sharing goes he cannot comment as he is not sure how that may or may not work. In his opinion, the line has to be installed and operational for a Certificate of Occupancy (CO) to be given on Lot 037-1. Then with a line operational, abutters along the line can hook up as they would like to or based on the required timeframe.

Chairman Best commented he is using the application to learn a little bit because the Board had an experience more than a year ago where a siphon was discussed. Two parties were before the Board; one suggesting that the costs were astronomically high and the other saying they are cheap and reasonable. If it is something you could undertake as a part of 1 lot being built with 1 house it tells him which one of those parties was accurate. Mr. Clinton stated it is not economical to do a siphon for one lot. When asked if it was being done with the other users in mind, Mr. Clinton responded Meridian has been hired to do the design of the extension to a certain point on Whispering Pine. Once it is there another consultant, at this point, has the project that the end user would be. Along the route, everybody has the opportunity to hook up, and then after a certain time period he understands they are supposed to hook up. That will comply with the Master Plan guidelines for that.

Member Millns remarked surely the siphon has to go in and the whole thing approved, physically be there, before we can sign off on the subdivision. Mr. Clinton did not believe so. He remarked he equates it much the same way as the Cota subdivision, which this line comes through to get here. The Cota subdivision was 13 lots, 2 short cul-de-sacs, but there was no sewer on the premises. You approved that, signed it, recorded it, lots were sold, and the sewer wasn't completed, and it certainly wasn't accepted. The Old Blood subdivision, Chestnut Hill; 71 lots, that is approved and the sewer is not constructed.

Director Thompson noted it is not signed. In both of those cases the Town also had financial surety to ensure that the Town was covered in the event construction did not take place. That was the reasonable assurance that gave the Planning Board the ability to sign those plans. In this case, we're talking about physically changing the zoning from one district to another dependent upon the installation of that sewer. It either needs to be bonded for or installed before the Planning Board, in his opinion, would be able to sign these plans.

Chairman Best remarked that change of zoning does prevent a bit of a difference in this. He questioned if it is typical to bond in minor subdivisions. Mr. Clinton stated he does not see that as reasonable in this case. If that is the position of the Board he would ask that they have a longer than normal conditional approval period. Director Thompson stated he would have no problem with that. He does not see any way, based on the way the zoning ordinance is constructed, for the town to be able to sign the plan prior to the sewer being available to that lot because of the change in zoning.

Chairman Best stated agreement. He noted it is because of the change in zoning. Other than that, saying that something will get done before COs get issued and all of that is a different animal. Giving the Applicant more time to accomplish that and arrange for other parties to privately do whatever they wish to do, he does not have a problem with that.

Mr. Clinton remarked, as a condition, he would hope they would have the option to do either; if it were deemed reasonable from a developer's standpoint to issue that bond so that this lot would become available in order for them to move forward and have the plans signed or have an extended period of conditional approval of time. Director Thompson stated his suggestion would be two years.

Chairman Best stated he would not object to a two year period and also providing the option to bond it instead of build it. He noted bonding it does present a topic to think through in terms of the deadlines of when a bond would be called and when a CO could be issued, etc. If you are putting the construction of it into potentially a process where the bond gets called and the Town builds it, the timeframe changes quite a bit.

Mr. Clinton noted he has not seen comments from the Public Works Department, Fire Department, MVD, etc. He reiterated he was before the Conservation Commission the prior evening to see if they had other concerns relative to the lot itself.

Chairman Best stated he did receive information from the Conservation Commission, and Mr. Clinton has accurately reflected that they don't have any comments on the plan as it stands now or they think you have addressed all of their normal comments and that they want to be a part of the NHDES approval process. Mr. Clinton noted he indicated to them that he would be back with the wetlands permit at some point.

Mr. Clinton addressed #5, which speaks to seeking appropriate relief from the ZBA for a shed and house location that technically fall within the 40' setback from wetlands. Director Thompson stated originally it had been written to say shall obtain. He wanted to back off on that so that we have the opportunity to discuss this further with legal counsel to determine whether or not these are even applicable given the circumstances of the subdivision of the lot because that 40' building setback did not exist at the time this lot was developed. There is a very good possibility that no relief from the ZBA will be necessary.

Mr. Clinton stated his professional opinion none is necessary. They are in agreement that they will work the issue out with the Community Development staff. If found conclusive to require relief, they will then seek it; however, they do not want that to be an absolute condition of any approval. Chairman Best questioned a way to word the language to capture all of those intentions. Mr. Clinton questioned if Director Thompson wished for him to suggest language. Director Thompson stated he could, however, he feels comfortable with it as a condition of approval. Mr. Clinton responded since it says "as necessary" they all understand it may not be. Director Thompson stated that is exactly why he had it re-worded before it was presented to the Board. Mr. Clinton stated as long as it is understood in that context he is fine with it. Chairman Best remarked that is the way he understands it, and he has seen the Community Development Department do that frequently, to put in "as necessary", for things that we're not sure whether it is a requirement.

Mr. Clinton stated he scoured the Ordinance and the regulations trying to find something that they didn't keep that is an absolute need. He can't find that. Director Thompson remarked you and I are in agreement. Mr. Clinton continued by stating he believes it to be preexisting, non-conforming, and therefore it is not a violation that needs relief. Director Thompson stated his only hesitation in completing agreement with Mr. Clinton on this is the way the wording is constructed for the wetlands ordinance whereas it specifically exempts the 25' buffer from any lot created after 2000. But, however, it does require the 40' building setback for development that takes place regardless. Mr. Clinton stated agreement to confirm that and then do what is necessary.

Mr. Clinton commented on the issue of sidewalks. He stated his opinion that, in this particular case, 4.06.1 is absolutely not applicable as this subdivision is not on a collector street. As a minor subdivision that is not on a collector street, sidewalks are clearly not required. As 4.06.1 (r) reads, all residential subdivision plans shall provide for a paved pedestrian way or sidewalk to be constructed along all existing or proposed collector streets. This is neither an existing nor a proposed collector street so, therefore, that doesn't apply. However, just in case the board felt otherwise, he has a waiver request should the Board wish to consider it.

***The consensus of the Board was for a determination a sidewalk waiver is not necessary.***

*Chairman Best opened the floor for public comment at 8:42 p.m.*

Public Comment

Douglas Botham, 11 Brenda Lane

Mr. Botham stated he is the abutter just south of the proposed project. He stated his impression the idea is to put a sewer line from Pearson Road over to Brenda Lane for the purpose of 1 lot.

Chairman Best responded it is part of this approval because this is the piece of land that it is on, however, he believes what the Applicant is suggesting is that it is sized for and it is sort of everybody's view towards there being more houses available to it. He questioned if he has interest in getting his home connected or if he did not want a sewer line.

Mr. Botham commented if you're on a septic system you always like to have a door to back out of it if it goes bad. It was a number of years ago that the Town was looking to put sewerage through that whole area, which was a proposal that was voted down. He questioned if the abutters would have the ability to utilize the line if it became necessary or if the intent is that the line is solely for one lot.

Chairman Best stated his belief what will be built there will be controlled by the Town, and if the Town wants to provide you access to it they certainly could do that. Looking at the configuration of it, it looks like it is angling off a little bit away from your property so it doesn't look like it would be directly right out in front of your house. Mr. Botham commented it would probably have to run up about 400'.

Mr. Botham questioned what the setback would be of a house put on that lot. He noted he has lived there since '78. He knew the builder well and at the time the builder opted not to build on that particular section because of the severe drop-off at the back. His opinion at the time was it just wasn't feasible to put a home on that lot because of the creek. Over the years, he has seen that creek rise up pretty high (within 8-10' of his basement). He suggested the back of the lot will go under water at some point. Chairman Best stated most of the back of that lot is wetland, and would not be built on. The setback from the road is 30'.

Director Thompson stated it to be 30' from the front, 20' from the side, and 60' from the rear. However, in this case the rear property line setback doesn't matter because there is a 40' building setback from the edge of the wetland.

Mr. Botham suggested it will look a little out of place at 30'. Most of the homes on that street run 40-50' back. Director Thompson stated it does not necessarily mean that he has to place it at 30', but that is the minimum.

Dustin Muzeroll, 14 Brenda Lane

Mr. Muzeroll stated he resides directly across from the proposed new home. He stated his opposition to changing the zoning from R-1 to R-4. He does not believe 30' is enough, and that if the desire were to push the structure further back, it would fall off the edge. He is not against infrastructure and not against the sewer line. He does not feel they should try to get a foothold on Brenda Lane by using that piece of property. He is okay with them going up into the neighborhood, and commented it would be nice at some point to hook up to that, but he believes it is too close to the road. His home is over 100' back, as are most of the houses on that street, up to that point at least.

Mr. Muzeroll commented it was stated it is not really cost effective, and questioned the point of going through all of the hoops for the wetland and putting something in that is out of place when there are bigger fish to fry at the end of the road.

Director Thompson noted the mere fact that water and sewer become available to this lot makes this an R-4 lot regardless of whether or not they decide to build on it. Mr. Muzeroll questioned if they are required to change it. Director Thompson stated if the lot has access to municipal water and sewer it becomes eligible for R-4 zoning, which has the 40,000 sq. ft. requirement. Mr. Muzeroll questioned if applying is an automatic approval. Director Thompson responded if it has access to. It has to either be constructed or bonded before the zoning of that lot would be changed.

Mr. Muzeroll requested the Board take a close look at that lot, and suggested building on there would be very difficult.

*Chairman Best declared the public hearing closed at 8:50 p.m.*

Mr. Clinton stated he understands the concerns expressed. He agreed there is a fairly steep slope in the back of the building envelope with relief. The plan indicates the 100-year flood line. He pointed to the delineated edge of wet flagged by the Wetland Scientist and a calculated flood elevation. Yes, indeed this lowland that is wet adjacent to Baboosic Brook seasonally does flood. However, it is not necessarily flowing all the time. It is a logical and legitimate comment, but it does not mean that the building envelop is not suitable; it is.

Member Disco questioned if the 500-year flood or equivalent is shown on the plans, and was told it is not. When asked about the elevation for the 500-year flood in Merrimack, Mr. Clinton stated it is location dependent. In this particular case, the 100-year flood is 177 or so. If talking about a 500-year flood that would mean most places next to flood sources would be inundated. Member Disco responded, but anything you build in there has to be flood proofed according to the regulations. Mr. Clinton responded not for a 500-year. Director Thompson stated it to be for the 100-year flood. Member Disco stated for 100 you don't build at all. Chairman Best remarked if you are under the 100-year you don't build at all. Mr. Clinton stated there are no restrictions in the 100-500 range. Member Disco stated his belief the restriction is it has to accommodate the flood. Mr. Clinton responded he is not aware of anything that says that.

Member Disco questioned if the Public Works Department has had an opportunity to look at this. Mr. Clinton stated they have submitted all of the necessary plans and copies that go to all of the different staff and departments, and they have seen no comments. Director Thompson stated comments have not yet been received. If there are any they will be relayed to the Applicant. With regard to the sewer they are cooperating with the Applicant in this case as well as the other applicant associated with the LaMontagne project. They are very involved in both the design and the approval for the sewer line extension to go to that other project.

Member Disco commented what concerns him is the last time they heard there were some differences of opinion. Director Thompson stated this is why they are working on this solution, which is not what Mr. LaMontagne was looking for. This is an alternative to that that is working through the Public Works process and to this point has the support of the Public Works Department.

**MOTION BY MEMBER MILLNS TO GRANT FINAL APPROVAL WITH THE FOLLOWING  
PRECEDENT CONDITIONS TO BE FULFILLED WITHIN TWO YEARS AND PRIOR TO PLAN  
SIGNING, UNLESS OTHERWISE SPECIFIED  
MOTION SECONDED BY MEMBER CHRISTENSEN**

1. Final plans and mylars to provide all professional endorsements and be signed by all property owners;
2. Any waivers granted shall be listed with the section number and date of approval on the Final Plan;

3. A draft copy of any proposed easements 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);
4. The applicant shall obtain all necessary state permits pertaining to the construction/installation of the sewer line (including NHDES Shoreland Impact Permit, NHDES Wetland Permit, and Town Sewer Permitting, as applicable), provide copies of the permits to the Community Development Department file, and note the approvals in the notes on the plan;
5. The applicant must either complete installation of the sewer line to serve the new lot, or provide appropriate financial surety for the sewer installation, prior to endorsement of the subdivision plan by the Planning Board;
6. Applicant shall obtain appropriate relief from the Zoning Board of Adjustment, as necessary, for structures to remain within the 40' wetland building setback per Section 2.02.7.A.6 of the Zoning Ordinance (or remove the structure(s) prior to issuance of any Building permits for the 2 lots);
7. Applicant shall address any forthcoming comments from the Department of Public Works, as applicable;
8. Applicant shall address any forthcoming comments from the Fire Department, as applicable, including future addressing requirements;
9. Applicant shall address any forthcoming comments from Merrimack Village District, as applicable;
10. Applicant shall address any forthcoming comments from the Conservation Commission, as applicable;
11. Address the following planning staff technical comment: Applicant to add a note to the plan indicating which sheets are to be recorded at HCRD and that a full set is on file with the Community Development Department.

#### **General and Subsequent Conditions**

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. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
3. The applicant shall obtain all necessary state permits (including NHDES Shoreland Impact Permit, as applicable) pertaining to the construction of the new home on the lot and provide copies of the permits to the Community Development Department file;
4. Applicant to obtain a right-of-way permits from the Public Works Department for the new driveway.

#### **MOTION CARRIED**

**6-0-1**

*Member Russo Abstained*

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

Director Thompson noted the Board was provided with a draft schedule for 2016. Efforts were made to avoid all holidays, and continue the practice of only holding 1 meeting during the month of November as that second meeting week typically falls under the week of Thanksgiving.

Chairman Best remarked one thing he observed was a meeting tentatively scheduled for July 5th. He was reminded by staff that the meeting date being on a tentative schedule doesn't mean that there would be agenda items and the need to actually conduct a meeting. Director Thompson stated it is always the prerogative of the Chair to call the meetings whenever he/she sees appropriate.

Councilor Mahon commented in his employment, that week was considered a dead week. Chairman Best remarked it may be for the Applicants as well. Director Thompson stated he could eliminate that from the schedule for purposes of publishing for now. Again, if the desire and/or demand is there for a meeting the Chairman could reinstate the date pending discussion with the remaining Board members.

Chairman Best remarked if we publish a schedule that says there is a meeting and there is an application deadline, that leaves an applicant the opportunity to come forward and lobby to be put on that agenda. He noted he has always made a very conscious effort to try to minimize conflicting deadlines and meeting schedules with the ZBA so that he does not have double packet and double meeting weeks, which are an incredible stress both on the staff and the applicants in order to get all of the work done associated with those types of weeks. Moving that meeting to a different week is either going to leave them with a double meeting week or a period of 3 straight weeks where his staff will be in nothing but deadline mode because of the scheduling of the meetings.

Chairman Best suggested it would also put the Board to the point where it would hold two meetings in back to back weeks in June or July.

Chairman Best requested that meeting date be removed from the calendar. No objections were noted with moving forward with the proposed schedule, as amended.

Member Sebring spoke of the packets being provided to the Board via U.S. Postal Service, and questioned if consideration has been given to electronic distribution and mailing perhaps only the plan sets. Director Thompson stated that to be a preference of the Board. He remarked when he started here 4-5 years ago he had left a community where he had gone to completely paperless packets and paperless meetings. The advantage that Londonderry has, that we don't have here, is the presence of a computer terminal at each of the seats at the table where members could basically scroll through everything as well as the items that were on the screens. We have the ability if you bring a laptop, to plug in and connect here, but in lieu of that the direction he has continued to receive is continue with paper packets until we are better equipped to handle that type of meeting environment.

Chairman Best commented when he began as Chairman there was some discussion of this, and the decision was the time was not right. He suggested memos and printed documents, other than plans, are easy enough to look up online. He would be acceptable to having the plans online as long as the applicant is required to submit them in the proper pdf format so that you can zoom in. Director Thompson stated that was done in Londonderry; they had transformed the application process to an electronic process entirely with specific requirements for the plans as well as other information.

Chairman Best remarked from the applicant's standpoint if they are submitting the full sized plans and enough copies for all of us that is a good expense. Director Thompson noted the requirement has been for 7 full size sets not necessarily for the Board but for all of the different departments that review them. They have been requesting and receiving the reduced size (11 x 17) copies for the Board members.

Member Sebring questioned if there is anyone on the Board who is against the idea of electronic copies. Several Board members responded they are against the idea. Member Millns commented he finds it difficult to read memos, documents, minutes or anything else off a computer screen. If the

decision were to move to electronic distribution he would not complain, but would print the information out. Director Thompson stated his belief it is important for the members to have something in front of them when sitting here at the meeting. Member Millns stated he has no problem if done electronically as long as he is provided with the necessary paper to print the information out. Chairman Best mentioned he tends to carry the printed document with him from the time he gets it until arriving at the meeting, and at some point during that time period he finds minutes to open it up and review it. If electronic distribution is something we are technologically capable of doing he would find a way to make an adjustment. He added being at the meetings without at least a screen in front of him showing him what it is he is looking at would be difficult.

Councilor Mahon remarked last year or the year before the Town Council attempted to do that. Refurbished laptops were acquired and were used primarily during the budget process. He did not utilize the laptop because he too has difficulties reading off a screen. Although he requested he receive a hard copy of the information, most of the remainder of the Council did utilize laptops. Technologically we have the equipment needed to do that. If you want to do that, now is the time to consider it as budget submissions are being made at this point for next year.

Ms. Christensen questioned, if having the laptops already available, is there any reason they could not be put at the table to provide the Board access. Member Millns remarked, as Council members, they would take those laptops home. You would need a completely separate set of hardware. Member Disco suggested Board members would have to be able to take them home. Member Christensen suggested the information would be reviewed on an individual Board member's home computer, and the laptops would be made available at the meetings. Member Millns suggested there could be information on the laptops the Council would not want to share. Director Thompson noted there are far more members of the Board than there are on the Council.

Director Thompson suggested if this is something the Board wants to pursue, it should consider discussing this over a longer period of time to avoid being crunched by the existing budget schedule. If it is something the Board wants him to pursue it is something he can take into consideration and account for in his FY18 budget. Chairman Best stated he is in favor of providing the flexibility to look at the budget, but he would also ask if the staff or any Board members have time and are interested in doing it on their own to consider whether some of the lesser expensive technology like the Microsoft Surfaces (\$100 each) have the ability to receive the information and allow for the Board to utilize it during meetings.

Director Thompson stated the only two things he needed in Londonderry were Acrobat Reader and PowerPoint. Those were ultimately the only two things that were utilized during the meetings. All of the packets and plans were in pdfs. During times where the Board members used the pdfs they were controlling the computers. When it was into presentations, etc., essentially there was a VNS service where what was happening on his laptop was happening on everybody's screen, and there was no control for the individual members.

Chairman Best questioned, from a staff standpoint, if there is any benefit in preparing a lesser number of packets Director Thompson stated it to be a matter of paper and time. When asked if it would make a difference to cut the distribution down to 3, Director Thompson stated the department makes extra copies for Zina and a few extra for members of the public. They typically make 15 copies of the packet every meeting. Chairman Best remarked if it is not an all or nothing switch it really doesn't do any good from the department standpoint. Director Thompson stated it would not be a significant difference.

Member Millns stated if everyone wants to go in that direction, he will as well, but will print it out for his own use. Member Falt commented when you start looking at your phone or your computer, you are making less contact with the applicant and it affects the experience of working with them. Chairman Best commented he has seen that. He has been to Londonderry and it looks like they are busy doing

some stuff. Giving them all the benefit of the doubt he is sure they are looking at the application but you can't tell that from the other side of the counter.

Member Russo questioned if the workload is increased by providing both versions. Director Thompson stated if the applicants are providing it in the correct format it is actually less work for the electronic packets, but the trick for him, and the reason he is not quite ready to make that step, is the accessibility in the meeting room for having electronic materials or requiring members on their dime to start printing things. That is not something he believes should be occurring at this stage.

Chairman Best questioned if the Town has the requirements in its own regulations that the applicants are submitting information electronically or would changes be required. Director Thompson stated specific changes would need to be made to the regulations. Chairman Best suggested changes be considered during the Board's next review of its regulations. From there both mechanisms for providing the information could take place for a period of time.

Member Sebring questioned if there are any restrictions on sending the information electronically, and was told there are not. Member Disco suggested phasing it in, e.g., start with the typed documents. Director Thompson suggested the item is worthy of being placed on a future agenda for further discussion. Chairman Best suggested a good time to review that may be at the annual meeting where procedures and processes are reviewed. He stated agreement with the idea of transiting into it and the suggestion of having both options available.

#### **8. Approval of Minutes – September 15, 2015**

**MOTION BY MEMBER CHRISTENSEN TO APPROVE THE MINUTES OF SEPTEMBER 15, 2015 AS SUBMITTED**

**MOTION SECONDED BY COUNCILOR MAHON**

**MOTION CARRIED**

**5-0-2**

*Members Falt and Russo Abstained*

#### **9. Adjourn**

**MOTION BY MEMBER MILLNS TO ADJOURN**

**MOTION SECONDED BY COUNCILOR MAHON**

**MOTION CARRIED**

**7-0-0**

The October 6, 2015, 2015 meeting of the Merrimack Planning Board was adjourned at 9:15 p.m.

Submitted by Dawn MacMillan