



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

Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY, SEPTEMBER 15, 2015

Planning Board members present: Robert Best, Alastair Millns, Tom Mahon, Lynn Christensen (arrived 7:25 p.m.), and Alternates Nelson Disco and Jeff Sebring.

Planning Board members absent: Michael Redding, Desirea Falt and Vincent Russo.

Staff present: Planning and Zoning Administrator Jillian Harris and Recording Secretary Zina Jordan.

1. Call to Order

Robert Best called the meeting to order at 7:07 p.m. and designated Nelson Disco and Jeff Sebring to sit for Michael Redding and Desirea Falt, respectively.

2. Planning & Zoning Administrator's Report

Chairman Best announced the appointment of Vincent Russo, a long-time member and former chairman of the Hudson Planning Board, to the vacant full member position. Tom Mahon noted his breadth of knowledge and experience.

- 3. Anheuser-Busch, LLC. (applicant/owner)** – Review for consideration of a 2-year extension of the Conditional Final Approval granted on April 21, 2015, to permit a site plan to construct three building additions totaling 55,100 s.f. and associated site improvements at the existing brewery. The site is located at 221 D.W. Highway in the I-1 (Industrial), Aquifer Conservation Districts and 100-year and 500-year Flood Hazard Areas. Tax Map 3D, Lot 031.

Jillian Harris explained that Anheuser-Busch wants time to fulfill the precedent conditions. Construction will be delayed until 2016 or 2017. Tom Mahon praised the applicant for asking for an extension before the old one expires.

The Board voted 5-0-0 to grant the extension, on a motion made by Alastair Millns and seconded by Tom Mahon.

- 4. Madi Choueiri (applicant/owner)** – Review for acceptance and consideration of Final Approval for a waiver of full site plan review for a restaurant located at 480 D.W. Highway in the C-1 (Limited Commercial), Elderly and Town Center Overlay and Aquifer Conservation Districts. Tax Map 5D-3, Lot 046. **This agenda item is continued from the June 2, July 7, August 4, and August 18, 2015, Planning Board meetings.**

Jillian Harris said that the applicant submitted a revised site plan in response to Planning Board comments. Architectural elevations were submitted today.

Madi Choueiri, 480 D.W. Highway, said he revised the site and floor plans and elevations. He will seek setback variances on D.W. Highway and on Church Street from the Zoning Board of Adjustment (ZBA) and is asking the Planning Board for a waiver from the sidewalk regulations. He will deed a sidewalk easement to the Town to build a future sidewalk on the property. An extended paved area will remain alongside the road. Signage will conform to Town regulations. Removable bollards with chains between them will define the entrance to the parking lot. The bump-out on the upper floor and the right entry are labelled. A new roof, an emergency exit and landscaping are noted on the plan. No salt or de-icing compounds will be used except as required in extreme icing events.

Chairman Best stated that “except as required in extreme icing events” is to be dropped from Note 8 about no salt or de-icing compounds. Madi Choueiri told the MCC that he would use sand rather than salt.

Chairman Best said the printing on the architectural elevations is too light to show the buildings and asked the applicant to submit a legible copy.

There was no public comment.

Nelson Disco commended Madi Choueiri for how much he submitted since June 2015. He wanted to see the building elevation and to have the Public Works Department (PWD) review the 10’ sidewalk easement. He disagreed that “Specific circumstances relative to the site plan or conditions of the land in such site plan indicate that the waiver will properly carry out the spirit and intent of the regulations”. Chairman Best said most of the pavement in front would be removed and the sidewalk would remain. A waiver is sought in the south because of the steep hill with a telephone pole in it. It is appropriate because the lay of the land makes it impossible to install a sidewalk.

Lynn Christensen arrived at 7:25 p.m.

The Board voted 4-1-0 to grant a waiver from the requirements of Section 7.05(D)(19) - Sidewalk or Paved Pedestrian Way – of the Subdivision Regulations - on a motion made by Alastair Millns and seconded by Jeff Sebring. Nelson Disco voted in the negative.

Alastair Millns cited the criterion that “Strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of the regulations”.

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

The Board voted 5-1-0 to grant final approval, with the following conditions, on a motion made by Alastair Millns and seconded by Jeff Sebring. Nelson Disco voted in the negative.

1. Final plans to be signed by the Applicant and Property Owner;

2. Any waivers granted shall be listed with the section number and date of approval on the Final Plan;
3. The applicant shall indicate any proposed easements on the plan, as applicable, including utility, parking and sidewalk easements. 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. Applicant shall address the following comments from the Conservation Commission (as applicable):
 - a. The Commission requests no use of salt or de-icing compounds at the proposed site. This is due to the vicinity of Baboosic Brook, the Merrimack River, and being in a Wellhead protection area.
5. Applicant shall address any forthcoming comments from the Public Works Department;
6. Applicant shall address any forthcoming comments from the Building and Health Division (as applicable);
7. Applicant shall address the following comments from the Wastewater Division:
 - a. The plan as submitted does not indicate where the sewer lateral is located.
8. Applicant shall revise Note 8 to read 'No salt or de-icing compounds to be used onsite' removing the following language from the note 'except as required in extreme icing events';
9. Applicant to submit legible architectural elevations to the Community Development Dept. office;
10. Applicant to address forthcoming comments from the Public Works Dept. on the location and details of the sidewalk easement;
11. Applicant to attend a compliance hearing with the Planning Board after legible architectural elevations are submitted to Community Development;
12. Applicant shall obtain a setback variance from the Zoning Board of Adjustment for the proposal to add a new roof /enclosure for the patio (as the existing patio is within the 30' front setback).
13. Address planning staff technical comments. (Below)

Planning Staff Technical Comments

1. Add signature and date to the following note "Plan annotated by Madi Choueiri, Applicant/Owner";
2. Update the site plan as follows:
 - a. Label the bump-out on the upper floor;
 - b. Label right side entry;

- c. Provide all four architectural elevations;
- d. Include a note on sidewalk easement intent;
3. Add a note referencing CDD Plan #1082 which was annotated;
4. Indicate the locations of any proposed signs, and verify compliance with the requirements of the Zoning Ordinance;
5. Add a note indicating the source of water and sewer services;

General and Subsequent Conditions

1. All proposed easements and any applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
2. Applicant shall address the following comments from the Fire Department:
 - a. As this proposal is for a change of use to a mixed use combining a residence and restaurant 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 building 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;
3. Applicant shall address the following comments from the Wastewater Division:
 - a. A plumbing plan indicating said grease trap is required (see condition #7a).
5. **John J. Flatley Company (applicant/owner)** – Review for acceptance and consideration of Final Approval of an application for a site plan to construct 240 multi-family residences, clubhouse, and associated parking and drainage improvements, per the requirements of the Flatley mixed-use Conditional Use Permit. The parcels are located at # 645, 673, 685, 703 and 707 D.W. Highway in the I-1 (Industrial), Aquifer Conservation and Wellhead Protection Districts. Tax Map 6E, Lots 003-01, 003-03, 003-04, 003-05 & 003-06. ***This item is continued from the June 16, July 21, August 18, & September 1, 2015, Planning Board meetings.***

Robert Best recused himself from discussing and voting on this agenda item. Alastair Millns assumed the chair.

Alastair Millns reported that, at the Planning Board's suggestion, he attended the September 14, 2014, Merrimack Conservation Commission (MCC) meeting with Kevin Walker of the Flatley Company and spoke in support of a pedestrian bridge over the wetland. Michael Redding said at a previous Board meeting that a trail/path over the wetland would be educational. The MCC agreed to retain the bridge if it were extended, a post and rail fence installed on each side so no one would go into the wetland, there would be no stone dust on the path, the path would be wetted down, bridge

maintenance would be part of the maintenance plan for the site, there would be information panels about the flora and fauna, and “keep to the path” and “no dogs allowed” signs would be erected.

Kevin Walker said he submitted a traffic study and an architectural plan. There would be a 6'-wide stone dust perimeter walkway that would be tamped down at the wetland. The timber bridge at the wetland would be replaced. CLD received the plans and had no severe comments. The applicant will address CLD comments by October 2015. An agreement is in place for additional parking (20 or more spaces) on the site for the Homestead Restaurant. There is room for more spaces in the future. A walkway will extend from the apartments to the parking lot. Runoff will be controlled by a rain garden. The design for two turning lanes on D.W. Highway is complete and a meeting has been scheduled with NH Department of Transportation (DOT).

The Board voted 5-0-0 to accept the application for review, on a motion made by Nelson Disco and seconded by Lynn Christensen.

Kevin Walker showed the architectural plans. There will be five four-story high-end 1-2 bedroom apartment buildings, each with a deck and a garage with one handicap stall, with other handicap spaces outside the building, as well as a clubhouse, tennis courts and a pool. A detailed landscape plan was submitted. Screening will keep the mechanical units on the roof from view. There will be a detention basin in the rear with seven acres left natural with trees, a path, and an access road for the Fire Department. Kevin Walker thanked Alastair Millns for attending the MCC meeting.

Nelson Disco asked about the CUP phasing plan. Alastair Millns read out the relevant section of the Conditional Use Permit (CUP) agreement: Phase 1: four residential buildings; the fifth for a future phase would be the southernmost building closest to the residential neighborhood; Phase 2: any portion of commercial/non-residential development and vehicle and pedestrian links to the St. Gobain traffic light; Phase 3: fifth residential building and any other developments. Alastair Millns explained that Legal Counsel advises that, if the CUP phasing plan is not followed, the CUP must be amended. The risk is that other CUPs may also ask for amendments. Nelson Disco favored continuing the CUP as approved. The economic case to erect the fifth apartment building in Phase 1 is not compelling. The Planning Board wants to be assured of a mixed-use development.

Nelson Disco noted that the connection with the Allen Road right-of-way as either a full Town standard road or an emergency access road (Condition 6.c.) is not on the plan. Kevin Walker said he would meet with PWD again about that. There is a wetland at the end of Allen Road and sheds in the right-of-way. Kevin Walker listed other options for a secondary access without connecting to Allen Road. Jeff Sebring and Lynn Christensen agreed with Nelson Disco that Allen Road was dropped at the last Planning Board meeting, which preferred a different access, such as a loop.

Lynn Christensen did not like creating access and building new construction after four apartment buildings are occupied. Construction vehicles crossing the site is a safety issue. The purpose of mixed use is to be tax positive. Commercial uses are tax

positive while residential uses are tax negative. Mixing the two uses makes the entire project tax positive. She asked for an analysis to confirm that is still the case, since residential uses have become more tax positive than before. Jillian Harris explained that staff would need outside help to do such an analysis. Kevin Walker said the fiscal impact study determined there would be a positive tax impact/negligible school system impact because these would be apartments rather than single-family homes. There are only nine children in the 564 apartment units Flatley built in Nashua. Alastair Millns and Nelson Disco wanted to have the full fiscal impact study that was part of the CUP application at the next meeting.

Tom Mahon was concerned about a Planning Board member appearing at a MCC meeting. Alastair Millns noted that he did so at the Board's request. Tom Mahon pointed out that the September 1, 2015, minutes state only that "Alastair Millns will be in touch with the MCC". Alastair Millns replied that, when he contacted MCC Chairman Tim Tenhave, he suggested that Alastair Millns attend the meeting. Tom Mahon wanted something more formal for transparency purposes. Alastair Millns noted that the MCC reversed itself because it agreed with his presentation (with conditions). Tom Mahon said the issue is that the Planning Board is constantly chipping away with incremental impacts on these areas and causing a degradation of resources. The Planning Board is not doing its job. Kevin Walker explained that the structure/bridge is already there. The MCC agreed to a replacement and a larger buffer zone that would protect the area. It would not have given approval if the plan were not an improvement. Tom Mahon objected that 240 units is a different dynamic in a sensitive area. Kevin Walker said that people would have walked across the old bridge and the wetland would not have been protected without the MCC conditions. Jillian Harris explained that any wetland buffer impact requires a Special Exception from the ZBA.

Jeff Sebring was surprised at the low number of cars at morning and evening peak hours cited in the traffic study, which recommends only signs and no traffic light or roundabout. He asked if the numbers are too low. Kevin Walker replied that the entire CUP plan was studied. The numbers are not too low, but NHDOT will ultimately decide if a traffic light is warranted. The goal is to keep D.W. traffic moving, which is the reason for installing new turning lanes. Apartment traffic would leave in the morning and return in the afternoon without staying on D.W. Highway. The Homestead Restaurant parking, the fifth apartment building and a potential commercial site on the south at the St. Gobain entry would not require amending the CUP. Commercial parking for the restaurant meets the CUP requirements. Amending the CUP would not encourage other CUP developments to follow suit. Commercial tenants for the Nashua project would not lease until the apartments were occupied. Alastair Millns said that, if the road is not completed before the fifth building, the CUP requirement would not be met. Nelson Disco said the goal of the mixed use is that people would live, work, and shop in an integrated and somewhat self-contained community without going onto Route 3. Kevin Walker said he could install a connecting road now; however in one year, the road would be in the way of constructing a potentially large (50,000 square foot) retail building. He would either have to rip up roads and utilities or not be able to fit such companies. The CUP will work, but it must be done step by step. The issue is

that St. Gobain is in the middle of the site and limits the ability to move the road 10' for a 6,000-10,000 square foot building. A commercial use satisfies the CUP, but a road all the way across the parcel at this time is not a good idea. Commercial uses want to be sure people are living in the apartments.

Alastair Millns explained that the Planning Board must either allow erecting five apartment buildings in Phase 1 and changing the CUP or adhering to the CUP and disallowing the fifth building in Phase 1. Lynn Christensen agreed. She suggested building the fifth building in Phase 1 but not giving it a Certificate of Occupancy (CO). Jillian Harris noted that would leave an empty building for a long time. Lynn Christensen had no issue because it solves the problems. Kevin Walker said he would still have to connect one mile of roadway if he erected a commercial building, which would require relief/changing the CUP. A commercial use would want to be closer to the apartments.

Alastair Millns suggested deferring a decision to allow the applicant to come back with a proposal to which the Planning Board might be more amenable and to discuss amending the CUP and discussing the site plan at separate meetings. Jillian Harris noted that the Development Agreement would also have to be revised if the phasing were changed.

There was no public comment.

The Board voted 5-0-0 to discuss amending the CUP on October 20, 2015, and to continue this item to November 3, 2015, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Lynn Christensen and seconded by Jeff Sebring.

6. Discussion/possible action regarding other items of concern

Robert Best returned to the meeting and resumed the chair.

The Board voted 5-0-1 to establish a Mast Road performance bond in the amount of \$367,410.89, on a motion made by Tom Mahon and seconded by Nelson Disco. Robert Best abstained.

7. Approval of Minutes – September 1, 2015

The minutes of September 1, 2015, were approved, as submitted, by a vote of 5-0-1, on a motion made by Alastair Millns and seconded by Lynn Christensen. Tom Mahon abstained.

8. Adjourn

The meeting adjourned at 8:40 p.m., by a vote of 6-0-0, on a motion made by Alastair Millns and seconded by Lynn Christensen.