



# Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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## **MEMORANDUM**

**Date:** June 11, 2015

**To:** Robert Best, Chairman, & Members, Planning Board

**From:** Timothy J. Thompson, AICP, Community Development Director

**Subject:** **Recommendation to call the Performance Bond for Valleyview Revocable Trust  
(Improvements associated with Administrative Approval)**

**Background:** Please refer to the memo from the May 19, 2015 Planning Board meeting for the background on this item. Also included in your packets are the minutes from the meeting.

**Progress since the last meeting:** Public Works recently inspected the work at the site, and produced the following punch list of items remaining to be addressed (as of June 9, 2015):

1. Silicone seal all poly liner/CB frames;
2. CB's 178L & 472R need to mortar area to seal where polyliner was cut too small;
3. Remove all dirt/gravel from polyliner surfaces (do not sweep into CB's or they will need to be cleaned again);
4. Mortar all pipe connections into catch basins;
5. Mortar the pipe outlet at the headwall;
6. Clean out debris from DI at 1+78 Lt and 4+70 Lt;
7. CB 472R - remove grade stake from the sump;
8. CB 472L - remove broken concrete and repair area;
9. Station 2+00 - remove boulder that is in ROW;
10. Repair swale on left side of the road, reseed to obtain stable growth;
11. Loam and seed all slope and ROW areas to achieve stable growth;
12. Cap utility conduits at 5+00 Lt;
13. Sweep road to remove all sand etc.;
14. Set all water valves on site to grade including valve box at 10+70 Rt;
15. Locate (flag up) all proposed and found property markers on site - we had trouble finding some of them. Note: markers that have been disturbed will need to be replaced by licensed surveyor;
16. Clean out the pipe end sections on the access road cross culvert;
17. Cut out and patch hole pavement in access road;
18. Install access road "authorized vehicles" signs (2);
19. Compact and smooth all loamed areas (particularly note footprints in loam around hammer head);
20. Pave driveway apron at 4+00 Lt;
21. Pave sacrificial apron at proposed future driveway to protect roadway pavement;
22. Install pull box (flush with finish grade) over conduit at 3+30 Rt;
23. Remove field trailer and temporary power panel;
24. Shim low point in road where new base pavement meets existing;
25. Base pavement will need to be shimmed where gouged by track excavator (road and access road) - extent of damage will require full width shim so as to protect proper cross slopes. You may opt to install a 1.5" wearing course in lieu of shim;

26. Pave top;
27. Install shoulder gravel;
28. General site cleanup – remove trash, remove banding tie sticking out of slope by access road, mow grass areas, etc.;
29. Remove all silt fence once establishment of stable slopes has been achieved; and
30. Provide final as-built drawings.

**Recommendation:**

The Planning Board will need to determine if the applicant is making sufficient progress to justify not calling the surety. At this point, CD Staff has not heard anything from the applicant or his attorney regarding the project since the Planning Board meeting on May 19, despite assurances that the applicant would work with the Town to bring the project to completion. Ultimately, the decision on how to handle this situation is with the Board.

*The Board has the following options available at this point:*

1. *Determine that the progress has been sufficient to justify a further extension of the validity period of the surety, and grant such extension to a date certain. Should the Board choose this option, staff would recommend that the Board continue to the same date certain the associated request to reinstate and extend the 2-lot subdivision; or*
2. *Determine that the progress is not sufficient to justify a further extension, and direct the Town to call the surety. Should the Board choose this option, staff would further recommend that the Board deny the associated request to reinstate and extend the approval for the 2-lot subdivision.*

Cc: File  
Correspondence

Ec: Valleyview Revocable Trust, c/o Carol Maggio, Trustee  
Michael Maggio, FHB Consulting  
Pat Panciacco, Baroff Professional Association  
Tony Basso, Keach-Nordstrom Associates, Inc.  
Kyle Fox, Deputy Director of Public Works  
Captain John Manuele, Fire Department  
Carol Miner and Fred Kelley, Building Department  
Ron Miner, Superintendent, MVD



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## MERRIMACK PLANNING BOARD APPROVED MINUTES TUESDAY, MAY 19, 2015

Planning Board members present: Robert Best, Alastair Millns, Tom Mahon, Michael Redding, Lynn Christensen, Desirea Falt, and Alternates Nelson Disco and Jeff Sebring.

Staff present: Community Development Director Tim Thompson and Recording Secretary Zina Jordan.

### 1. Call to Order

Robert Best called the meeting to order at 7:30 p.m. and designated Nelson Disco to sit for the vacant full member position.

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

Tim Thompson/staff recommends that the Board determine that two projects are not of regional impact: Madi Choueri seeks 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 Overlay, and Aquifer Conservation Districts. Merrimack Premium Outlets seeks review for acceptance and consideration of Final Approval for an application for a minor subdivision of one lot into two lots for financing purposes. This will allow it to move forward in the coming months with a site plan for Phase II to construct 100,000 square feet of additional retail space.

**The Board voted 7-0-0 to determine that the Madi Choueri Site Plan and Merrimack Premium Outlets Subdivision are not of regional impact, on a motion made by Alastair Millns and seconded by Lynn Christensen.**

Matt Fortin could not accept an alternate position on the Planning Board because he moved to Florida. So the position is still vacant. Desirea Falt's position will expire on June 30, 2015.

Emily Edwards, a student at Dalhousie University, will be the summer Community Development intern. She will help with plan reviews and the preliminary Economic Development website update.

### 4. Recommendation to call the Performance Bond for Valleyview Revocable Trust (emergency access way)

This item was considered before agenda item #3.

Tim Thompson summarized the history. On July 23, 2013, the Board granted conditional final approval to an application proposing to subdivide one lot into two single-family residential lots. It granted reinstatement and extension with a condition of approval that there be a compliance hearing on September 30, 2014. At that meeting, the Board required the applicant to finish the emergency access way and to bring all neighboring properties back to order by November 7, 2014. As of April 15, 2015, the water main was installed and the neighbor's retaining wall was mostly restored, but the emergency access way was not finished and the street and other properties were not restored. The contractor is working diligently to complete the improvements.

The performance bond for the Administrative Approval, which was the origin of the required emergency access way, comes due in May 2015. Staff recommends that the Board grant an extension of the bond's validity period to June 17, 2015. This should allow enough time for work to be completed, or the Board could call the bond on June 16, 2015.

Nelson Disco wanted a commitment that the work be finished by June 17, 2015. Chairman Best noted that the applicant is spending money and trying to complete the work. Lynn Christensen asked if the work is acceptable and if there are sufficient surety funds if the bond were called and the Town must complete the work. Tim Thompson replied that the work was inspected and reviewed and is acceptable and there are more than enough surety funds to cover the rest of the work. Alastair Millns noted that PWD would have to subcontract the work. The fastest way to complete it is to leave things as they are.

Attorney Pat Panciocco explained that Michael Maggio hired her last week. She met with him and Keach-Nordstrom and will also speak to Tim Thompson. It is clear that the Planning Board has been very patient. She went on to explain that everything went wrong for the applicant. Great progress was made this week. The Board has the applicant's attention. Attorney Panciocco will make a list of what must be done for the PWD to approve. She is a little concerned about heavy equipment work yet to be done on the lots and applying top coat prematurely. The equipment should not be left on the road. Perhaps the Board should wait 60 days to put down top coat before removing all equipment from the public road. Everything else should be done by June 16, 2015, although she cannot make a 100% promise.

Chairman Best opined that Michael Maggio does not want to destroy his new road with heavy equipment. Attorney Panciocco said the site is steep and very rocky. She will work with staff to ensure completion of 100% of the work. Chairman Best said attorney involvement is appropriate, but noted that the issues are man-made and not due to nature. Michael Maggio knew that from the start. Attorney Panciocco agreed. Chairman Best stated that the Planning Board has already waited a long time and is now being asked to wait longer, but he feels it is still better to have the applicant do the work than to pull the bond.

**The Board voted 7-0-0 to extend the validity period of the performance surety to June 17, 2015, on a motion made by Alastair Millns and seconded by Desirea Falt.**

- 3. Keach-Nordstrom Associates, Inc. (applicant) and Valleyview Revocable Trust, Carol Maggio, Trustee (owner) – Discussion and possible action regarding a request for a reinstatement of conditional final approval and a six month extension for compliance with conditions of an approval granted by the Planning Board on July 23, 2013 and July 8, 2014 to subdivide one lot into two single-family residential lots located at 15 Valleyview Drive in the R (Residential) District. Tax Map 5C, Lot 142. *This item is continued from the April 21, 2015, Planning Board meeting.***

This item was considered after agenda item #4.

Tim Thompson said that, as part of the two-lot subdivision approval, the Board required the completion of the improvements associated with the Administrative Approval for the development of four lots of record in August 2012. These improvements include the emergency access way and other roadway, grading, and drainage improvements. Completion of these improvements has not happened and has been a source of constant frustration for the Board and abutting property owners. The applicant received several extensions, most recently on July 23, 2013, and on July 8, 2014. The last one expired December 2014. Based on the action

taken by the Board on the Bond, Staff recommends the Board continue this application to the June 16, 2015, meeting.

**Public comment**

Dave Hammond, 18 Valleyview Drive, cited one year of delays and excuses. He tried to resolve issues at his home for 10 months. It is a frustrating and painful process. Michael Maggio, FHB Consulting, claims he is not his responsible for fixing the problem. Dave Hammond requested that the Board deny reinstatement of conditional approval. When Chairman Best noted that such action would stop construction, Dave Hammond agreed with the recommended extension to June 16, 2015, but wanted the Board to pull the bond if the work is not finished by then.

Steve Amick, 11 Valleyview Drive, conceded that there has been great progress: curbs were replaced, the road graded, top soil put down, and the area was hydro-seeded. However Michael Maggio must finish before the Board allows the subdivision and building a new house. There is a lot left to do. The top coat is expected within the next month. Michael Maggio left a mess of trees and machinery in front of Steve Amick's house for three years, is discourteous and drives on the emergency access road. He should continue to clean up his mess before "hammering another nail". Heavy equipment can be taken care of later.

**The Board voted 7-0-0 to continue this item to June 16, 2015, in the Matthew Thornton Meeting Room, at 7:30 p.m., on a motion made by Lynn Christensen and seconded by Desirea Falt.**

- 5. Old Blood Properties, LLC. and Joseph K. and Mary El Kareh (co-applicants/co-owners)** – Review for consideration of Final Approval of an application for a cluster subdivision proposing 72 cluster residential lots and 4 open space lots located at Old Blood Road in the R-1 (Residential) District. Tax Map 5B, Lots 001-01, 002, 003, 003-01, 005, 006, 007, 008, 009 and 231. ***This item is continued from the December 16, 2014, January 6, 2015, January 20, 2015, February 17, 2015, March 17, 2015 and April 21, 2015, Planning Board meetings.***

Tim Thompson explained that, because the plans were not received until late on May 13, 2015, there was not enough time for departmental review. He suggested a continuance to June 2, 2015, when it is expected that the application will be ready for conditional Final Approval. Alastair Millns was concerned about lack of public notice, but Tim Thompson explained that Final Approval was never sought at any previous meetings. Now that CLD has reviewed the application, this will be the first request for Final Approval. Chairman Best said that it is the general public who wish to speak about traffic and that abutters would be notified. Tim Thompson said they were recently notified when a wetland permit was submitted to the State. Lynn Christensen noted that interested parties are paying attention and will come if they wish to speak.

**The Board voted 7-0-0 to continue this item to June 2, 2015, in the Matthew Thornton Meeting Room, at 7:30 p.m., on a motion made by Lynn Christensen and seconded by Tom Mahon.**

- 6. 526 DW LLC. (applicant/owner)** – Review for acceptance and consideration of Final Approval for a site plan to construct a 44,000 s.f. commercial storage building located at 526 DW Highway in the C-2 (Commercial) and Aquifer Conservation Districts, Wellhead Protection Area, and 100-year and 500-year Flood Hazard Areas. Tax Map 5D-2, Lot 001.



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## **MEMORANDUM**

**Date:** May 15, 2015  
**To:** Robert Best, Chairman, & Members, Planning Board  
**From:** Timothy J. Thompson, AICP, Community Development Director  
**Subject:** **Recommendation to call the Performance Bond for Valleyview Revocable Trust (Improvements associated with Administrative Approval)**

**Background:** As the Board will recall, the applicant appeared many times before the Planning Board regarding the previous agenda item on the applicant's proposed 2 lot subdivision. Background and history of that project are well documented in the previous memos prepared by CDD staff.

As part of the 2 lot subdivision approval, the Board has required the completion of the improvements associated with the Administrative Approval for the development of 4 lots of record in August 2012. These improvements include the emergency access way and other roadway, grading, and drainage improvements.

As the Board is aware, the completion of these improvements has not happened to date, and has been a source of constant frustration for the Board and abutting property owners. The performance surety for these improvements is coming due this month, and the Board will need to determine an appropriate course of action regarding the surety.

Public Works staff reports that over the past several weeks, progress has been made toward completion of the improvements, but they still are not complete, and are not anticipated to be complete by the time of the hearing on May 19. Given the amount of work that has been completed though, the staff recommendation is as follows.

### **Recommendation:**

Based on the amount of progress toward completion, and the remaining work to be completed, **the Community Development and Public Works staff recommends that the Board extend the performance surety to June 17, 2015 (the day following the June 16 Planning Board meeting).** This extension of the surety should be sufficient to allow the applicant to complete the improvements required by the Administrative approval, which would then allow for the Board to take action on the 2-lot subdivision on June 16. Should the improvements not be complete by June 16, the Board could then call the bond at the meeting that evening.

Cc: File  
Correspondence

Ec: Valleyview Revocable Trust, c/o Carol Maggio, Trustee  
Michael Maggio, FHB Consulting  
Tony Basso, Keach-Nordstrom Associates, Inc.  
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