



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

603 424-3531

Fax 603 424-1408

www.merrimacknh.gov

MEMORANDUM

Date: July 15, 2015

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

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

Subject: **Keach-Nordstrom Associates, Inc. (applicant) and Valleyview Revocable Trust, Carol Maggio, Trustee (owner)** – Reconsideration of the Planning Board’s June 16, 2015 decision to deny applicant’s request to reinstate 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.

Background: As was requested at the July 7, 2015 Planning Board meeting, attached to this memo is the “history” of the various Valleyview projects starting in 2012 with the Administrative Approval for the roadway/emergency access improvements to present. Agendas, minutes, and decision letters from both the ZBA and Planning Board for each appearance of a Valleyview project before the respective Boards are included. To help summarize the 60 pages of information, please find below a timeline summary of the projects:

1. **8/24/2012:** Community Development Department grants administrative approval for the roadway/emergency access way improvements required to develop 4 lots of record. (The “Administrative Approval”);
2. **10/24/2012:** ZBA grants variance to allow 3-lot subdivision (lot depth and lot area variances);
3. **11/13/2012:** Planning Board meeting to consider 3-lot subdivision. Continued to 12/4/2012 at applicant’s request;
4. **12/4/2012:** Applicant withdraws 3-lot subdivision after being unable to obtain necessary easements to allow for full roadway connection;
5. **1/22/2013:** Planning Board establishes performance bond for Administrative Approval (\$352,688.76), and also approves a bond reduction to \$228,122.83;
6. **6/4/2013:** Planning Board approves a bond reduction for Administrative Approval, to \$144,732.65;
7. **7/23/2013:** Planning Board accepts application for 2-lot subdivision, grants waiver, grants conditional final approval (precedent conditions to be fulfilled within 6 months);
8. **1/23/2014:** Precedent conditions of approval for 2-lot subdivision not completed, **2-Lot Subdivision Approval Expires**;

9. **7/8/2014:** Planning Board grants applicant's request to re-instate conditional final approval for 2-lot subdivision, and grants extension to time period to meet precedent conditions, adds additional conditions (conditional approval valid through 9/30/2014);
10. **9/23/2014:** Compliance Hearing for project. Further extension of conditional approval for 2-lot subdivision granted until 11/7/2014, conditions related to water main and emergency access way made;
11. **11/7/2014:** Precedent conditions of approval for 2-lot subdivision not completed, **2-Lot Subdivision Approval Expires For 2nd Time;**
12. **1/6/2015:** Applicant again requests reinstatement and extension of the 2-lot subdivision approval, Board grants continuance of the item to 3/3/2015 at applicant's request;
13. **2/19/ 2015:** Applicant (through KNA) informs Town he is in Florida, defers request to reinstate/extend approval for 2-lot subdivision until he returns;
14. **4/21/2015:** Applicant again requests reinstatement and extension of the 2-lot subdivision approval, no one appears to represent applicant at hearing (letter from KNA requests continuance to 5/19). Request continued to 5/19/2015;
15. **5/19/2015:** Planning Board considers, but defers action (until 6/16/2015) on calling performance bond for Administrative Approval. Continued hearing for reinstatement/extension of 2-lot subdivision also continued to 6/16/2015;
16. **6/16/2015:** Planning Board **calls** performance bond for Administrative Approval. Board also **denies** request to reinstate approval for 2-lot subdivision;
17. **7/7/2015:** Planning Board grants request to reconsider 6/16/2015 denial of reinstatement for 2-lot subdivision, schedules decision on reconsideration for 7/21/2015;
18. **7/21/2015:** Planning Board meeting to consider reinstatement of previous approval for the 2-lot subdivision.

Current Request: Based on the Board's decision to reconsider the denial of the re-instatement and extension of the 2-lot subdivision on June 16, 2015, the applicant is before you for consideration of re-instatement of the approval as has been previously requested. As the Board is aware, the performance surety of the Administrative Approval was called by the Board on June 16, and the Town will now be completing the work utilizing the funds from the surety. Based on the recommendation of the Town's Legal Counsel, the Board should not consider any part of the Administrative Approval in making a decision on the reinstatement of the 2-lot subdivision at the hearing on July 21.

Because the work associated with the Administrative Approval is now the responsibility of the Town, the applicant should not be required, as part of the reinstatement request, to be responsible for any potential conditions of approval related to the roadway or emergency access improvements. The Board's consideration of the reinstatement request should focus solely on the subdivision of the lot, and the applicant's compliance with the requirements of the original Decision Letter from July 2013 and compliance with the requirements of the Subdivision Regulations.

As was noted by staff at the July 7, 2015 meeting, at least part of the Board's decision to deny the request to reinstate the approval for the 2-lot subdivision was based on incorrect information. Both the applicant's attorney and staff erroneously stated that all conditions that were not associated with

the improvements for the *Administrative Approval* had not been met prior to the expiration of the extension that the Board had previously granted (which expired on November 7, 2014). On June 16, Staff and the applicant's attorney stated that the final mylars had not yet been submitted.

In fact, the mylars and final plan sets were received in late October 2014. The submitted mylars and plans address all of the conditions of approval from the original decision (2013), but not the additional conditions the Board had placed on the 2-lot subdivision during the various extension request hearings (all of which were associated with the improvements from the *Administrative Approval*).

Recommendation:

Based on the information available to date, and with consideration of the Town's legal counsel recommendations, Staff recommends that the Board vote to **grant the reinstatement of the expired approval, and authorize the Chair and Secretary to sign the final plans and mylars** that were received in October 2014. Staff does not have any additional conditions of approval to suggest for the application, as it is in compliance with the requirements of the regulations and meets all of the precedent conditions of approval from the July 2013 decision of the Board. Should the Board agree with this recommendation, there is no need to extend the validity period for the conditional final approval, as the plans would be signed after the hearing concludes.

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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October 31, 2012

Carol Maggio, Trustee
Valleyview Revocable Trust
66 Gillcrest Road
Londonderry, NH 03053

Re: Valleyview Revocable Trust (petitioner & owner) - Variances under Section 3.02 of the Zoning Ordinance to permit the subdivision of one lot into three single-family residential lots with insufficient lot depth and area. The parcel is located at 15 Valleyview Drive within the R (Residential) District. Tax Map 5C, Lot 142. Case # 2012-29.

Dear Ms. Maggio:

At the Zoning Board of Adjustment hearing on October 24, 2012, the Board separately voted 5-0-0 to grant the petitions noted above, subject to the following condition:

1. The petitioner to provide approved septic designs to the Planning Board.

For specific details relative to this order or decision, please consult the public minutes of the meeting available at the Community Development Department or online. Per Section 8.07 of the Zoning Ordinance, if this approval is not acted upon within a period of two (2) years from the date of the approval, then such approval shall be null and void. Please refer to Section 8.07 for details regarding actions sufficient to vest or protect your approval (www.merrimacknh.gov).

Per RSA 677:2, any person aggrieved by any order or decision of the Zoning Board of Adjustment may apply for a rehearing before the Board within thirty (30) days after the date of decision or order. No appeal may be taken to the superior court of any order or decision of the Board unless an application for rehearing is made first, setting forth fully every ground upon which the decision or order complained of is unlawful or unreasonable.

If you have any questions, please feel free to call me at 424-3531.

Sincerely,

Nancy Larson
Planning & Zoning Administrator

cc: Correspondence
ZBA File
ec: Mike Maggio, FHB Consulting
Carol Miner & Fred Kelley, Building Department





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MERRIMACK ZONING BOARD OF ADJUSTMENT

APPROVED MINUTES

WEDNESDAY, OCTOBER 24, 2012

Members present: Phil Straight, Fran L'Heureux, Tony Pellegrino, Patrick Dwyer, Kevin Shea, and Alternates Leonard Worster, Nathan Barry and Richard Conescu.

Staff present: Planning and Zoning Administrator Nancy Larson and Recording Secretary Zina Jordan.

1. Call to Order

Phil Straight called the meeting to order at 7:00 p.m.

2. Roll Call

Fran L'Heureux led the Pledge of Allegiance. Patrick Dwyer read the preamble. Phil Straight swore in members of the public who would be testifying.

3. **Valleyview Revocable Trust (petitioner & owner) - Variances under Section 3.02 of the Zoning Ordinance to permit the subdivision of one lot into three single-family residential lots with insufficient lot depth and area. The parcel is located at 15 Valleyview Drive within the R (Residential) District. Tax Map 5C, Lot 142. Case # 2012-29.**

Fran L'Heureux questioned why the applicant is already working on the roadway before the Zoning Board of Approval (ZBA) has heard the petition and asked for the definition of "administrative approval". Nancy Larson explained that the subdivision was approved by the Planning Board in the 1960s. It was determined that the subdivision is vested/protected because significant improvements were made to the road network. Only the structural roadway was not constructed as part of the original subdivision.

Tony Basso, Vice-President, Keach Nordstrom Associates, Inc., explained that, although the subdivision was built in the 1960s, Valleyview Drive was partially constructed. The north and south termini where the road stopped were not completed. The road dead-ends in front of 11 Valleyview Drive to the south and in front of 24 Valleyview Drive to the north, with a significant gap of "paper street" between the two addresses. Three lots on the west of the right-of-way and six lots on the east of Valleyview Drive were not built. The Town took the parcels for taxes. In 1994, the Town consolidated the six lots on the east into one lot, which the petitioner wants to divide into three lots. The three lots on the west were kept separate. Two years ago, the Town auctioned the surplus land, which changed hands several times

before the Valleyview Trust bought it. The three lots on the west side of Valleyview Drive are pre-existing and non-conforming. In order to get a building permit, the petitioner must build a portion of Valleyview Drive to provide frontage and a turnaround. Both the Fire Department and the Public Works Department agree that connecting both dead ends of Valleyview Drive would benefit the Town emergency services, including snow removal and emergency response. Half the road is currently under construction to provide legal frontage for the existing lots. There would be three larger lots than were approved in the 1960s where a single lot currently exists, thus requiring depth and area variances.

The roadway location is fixed. The petitioner does not own the land across the street on the south end. The right-of-way and the road were permitted many years ago. The right-of-way is established. A road that was platted/dedicated in the 1960s makes the western boundary. The original outer property line for the entire development makes the eastern boundary and is out of the applicant's control. That leaves a tract of land in the middle that varies in width from 179' to 197' to the south and is in a fixed location. The right-of-way cannot be moved because of other properties to the south that the petitioner does not control. Public rights exist in the right-of-way and cannot be changed. The width of the right-of-way was fixed before the Town had a depth requirement.

The original lots were ½ acre in area. The three proposed lots would be 1.1-1.5 acres (51,000 s.f.-65,000 s.f.), or twice the original size, but 80,000 s.f. are required for lots with moderate soils. Tony Basso did not think there was an area requirement when the lots were originally drawn. The Town would benefit from a full road connection.

Tony Basso read the points of law for both the lot depth and lot area variances into the record. The Board accepted points of law #2-#5 as read and #1 after questioning (see below) for the Lot Depth Variance and accepted all points of law for the Lot Area Variance as read.

Questions from the Board

Kevin Shea questioned #1, public interest, for the depth variance. The terrain is higher than in the rest of the neighborhood. There is a septic concern because of granite and ledge. There is not enough room for drainage. Tony Basso responded that numerous test pits found that the soils are adequate for the NH Department of Environmental Services (DES) septic requirement. There is rock in some places, but it is not consistent. A number of places have decent soil. Some pits require no special condition. The petitioner will stay out of the areas with ledge. Tony Pellegrino asked how far the ledge is from the soil for the septic system, whether it would run off downhill, and if the petitioner would guarantee it would remain on site. Tony Basso said it would not run off. The petitioner would not dig in areas close to ledge according to DES minimum separation requirements. There is more than enough area to meet requirements. Phil Straight said it is a Planning Board issue. Tony Basso stated that the plan would not be feasible if the requirement could not be met.

Kevin Shea asked whether the connecting both ends is contingent on granting of the variances for the lot. Tony Basso replied in the affirmative.

Public comment

Bill McInnis, 28 Valleyview Drive, asked if there would be hydrants. Phil Staight said that is a Planning Board issue. Bill McInnis favors the variance. He is opposed to two dead ends because people cannot find his house. Tony Basso repeated that it is also an emergency response issue.

Michael Maggio, FHB Consulting, said the Fire Department and the School District worry about the hill. Buses cannot turn around because of the steep hill and the dead end. It was not supposed to be like that. The hill would be lowered and made safer. The Fire Department does not know to which end to go when there is an emergency. There will now be one complete loop. The new plan would improve safety to the level it should have been originally.

Steve Amick, 11 Valleyview Drive, is concerned about how his newly purchased property would look after the road grade is lowered as much as 10'. Trees were cut. He bought his lot because of the dead end and does not want its character to change. A dead end sign would solve the problem. Phil Straight stated that the ZBA could deal with pedestrian or vehicle hazards; the rest is a Planning Board issue. Steve Amick opposes the variance without assurance about the appearance of his property.

The Board voted 5-0-0 to grant the Lot Depth Variance, with the condition that the petitioner must present a certified DES-approved septic plan to the Planning Board, on a motion made by Kevin Shea and seconded by Tony Pellegrino.

Kevin Shea wanted to include a condition about Steve Amick's property in the area variance vote, but Phil Straight said that the new lots are the same depth as the lots on the right and deeper than then ones on the left. It is a Planning Board issue.

The Board voted 5-0-0 to grant the Lot Area Variance, on a motion made by Tony Pellegrino and seconded by Fran L'Heureux.

Findings of Fact – Lot Depth Variance

1. The granting of the variance would not be contrary to the public interest because the proposed lot configurations and associated lot sizes are in keeping with the other lots in the neighborhood;
2. The spirit of the ordinance is observed because the proposed lots would be sized similar to all of the surrounding lots in the development and would be adequate to support onsite septic systems, promoting the health and welfare of the residents;
3. Granting this variance would do substantial justice. Lot 142 is an existing lot of record and the existing lot depth is fixed based on the fact that Valleyview Drive is situated within a previously platted public right-of-way. The variance would allow the applicant to create three frontage lots within the existing Lot 142 acreage and would not affect the existing lot depth. Subdividing Lot 142 would permit the construction of a continuous Class V roadway for emergency access from both ends of Valleyview Drive;
4. The values of the surrounding properties would not be diminished. The proposed frontage lots would have depths and acreage similar to all of the other

lots in the Valleyview neighborhood. The new construction homes and associated landscaping would enhance the aesthetics of Valleyview Drive. The new homes would be sold for a price at or above the existing homes in the area, adding positive real estate comparisons for them;

5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

1) No fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property. The subject property can be distinguished from other properties in Merrimack because it was part of a previously approved subdivision dating to the late 1960s. The previously approved Glen Acres Subdivision resulted in the construction of both ends of Valleyview Drive. Because the two ends were never connected, the previously platted six lots on the east side of the unbuilt portion of Valleyview Drive were consolidated into Lot 142 as it exists today. Granting the variance would allow the applicant to re-subdivide Lot 142 into three new single-family building lots where six lots were previously platted and further construct the missing portion of Valleyview Drive, making a continuous loop road from there to Courtland Drive. The enhanced emergency access is in keeping with the general public purpose of the Ordinance, which is to promote health and safety for the residents of Merrimack.

Findings of Fact – Lot Area Variance

1. The granting of the variance would not be contrary to the public interest because the lots created by the proposed frontage subdivision would be larger than most of the existing lots throughout the previously constructed Glen Acres Subdivision. The proposed lot areas exceed the minimum lot size requirements of the NH DES. Public safety would be improved because the three additional lots enable the developer to extend Valleyview Drive completely, connecting the two dead end segments existing today;

2. The spirit of the ordinance is observed. The previously approved Glen Acres Subdivision proposes six single-family residential building lots. The current proposal would provide only three single-family building lots. Each of the three proposed building lots would be sized in accordance with the NH DES. Permits for individual onsite sewage disposal systems would be sought for each new residence. The acreage of the three proposed lots exceeds the acreage of most of the existing lots throughout the development;

3. Granting this variance would do substantial justice because Valleyview Drive would be completed, thus providing better life safety access throughout the development (See attached e-mail from Captain John Manuele, Fire Marshal), without compromising the surrounding neighborhood;

4. The values of the surrounding properties would not be diminished because the proposed frontage lots would have larger acreage than all of the other lots in the Valleyview neighborhood. The newly constructed homes and associated

landscaping would enhance the aesthetics of Valleyview Drive. The new homes would be sold at a price at or above the existing home values in the area, adding positive real estate comparisons for the existing properties in the area;

5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- 1) No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property. See 5.A. from Lot Depth Variance above.

3. **Kenneth G. Azorian and Laura A. Smith (petitioners & owners)** - Variance under Section 3.05(1) of the Zoning Ordinance to permit the construction of a 12'x14' kitchen addition 32 feet from the rear property line whereas 40 feet is required. The property lies within the R (Residential) District, located at 15 Independence Drive, Merrimack, NH. Tax Map 5C, Lot 472-06. Case # 2012-30.

Laura Smith, 15 Independence Drive, read the points of law into the record. The Board accepted points of law #1-4 as read and #5 after questioning. (See below)

Questions from the Board

Nathan Barry questioned 5.A., special conditions, and asked about extending the basement. Kenneth Azorian, 15 Independence Drive, said it would be extended with a new full foundation to prevent sinkage. There is outside access to the existing basement. The wall would be removed.

There was no public comment.

Deliberations of the Board

Kevin Shea noted that there are no neighbors in the rear and that the one on the side favors the variance. Kenneth Azorian said it is because the value of the neighbor's home would increase. All houses on the street have been enlarged. Chairman Straight said he was involved with a request for a deck that was granted by the Zoning Board because the existing steps encroached to the same extent as the deck would. It was almost as though it were grandfathered. In this case, the deck, steps and Jacuzzi already encroach the same amount. He assumes that the ZBA would look at it in the same way as did the Zoning Board. Nathan Barry stated that enclosing deck space is no longer grandfathered.

The Board voted 5-0-0 to grant the Variance, on a motion made by Kevin Shea and seconded by Fran L'Heureux.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because it does not alter the neighborhood, threaten public health, safety or welfare, and does not injure public rights. The variance requests only that the rear setback be 32 +/- versus 40', a difference of only 8', for an addition to the kitchen area to offer more living space;



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MERRIMACK PLANNING BOARD

Agenda for Tuesday, November 13, 2012

Town Hall Meeting Room, West Wing, Second Floor (Former Courtroom)

7:30 P.M.

1. **Call to Order.**
2. **Announcements.**
3. **Planning & Zoning Administrator's Report.**
4. **Cloud K9, LLC., c/o Laura Federspiel (applicant) and Leo & Aline Fortier (owners)**
– Review for Acceptance and Final Approval of an application requesting a waiver of full site plan review to permit a change of use to convert approximately 1,545 s.f. of first floor retail space (formerly Paul's Cleaners; Unit 1 & Ryly's Gourmet; Unit 2) to Cloud K9, a business offering grooming, home-based boarding & daycare services for dogs, and a portion of the upstairs (Unit 4) to office and storage space for Cloud K-9. The parcel is located at 385 D.W. Highway and lies within the C-1 (Limited Commercial) and Aquifer Conservation Districts. Tax Map 4D-3, Lot 090.
5. **Valleyview Drive Revocable Trust (applicant/owner) – Review for Acceptance and consideration of Final Approval of a subdivision application proposing to subdivide one lot into a total of three residential lots. The property is located at 15 Valleyview Drive and lies within R (Residential) District. Tax Map 5C, Lot 142.**
6. **Two-Year Maintenance Bond Release Request for Greenfield Farms – Phase XII, Public Works Department recommends the release of the \$102,762.00 two-year maintenance bond.**
7. **Discussion of Proposed Amendments to the Parking Regulations.**
8. **Discussion and possible action regarding other items of concern.**
9. **Approval of Minutes.**
10. **Adjourn.**

Copies of application materials are available at the Community Development Department office in the Merrimack Town Hall for review by the general public between the hours of 8:30 A.M. and 4:30 P.M., Monday through Friday.

The Town Hall Meeting Room (Former Courtroom) at Town Hall is accessible to the disabled. Persons requiring special arrangements are encouraged to call 424-3531 at least 48 hours in advance. It is the policy of the Board not to take up any new business after 10:30 P.M. and to adjourn by 11:00 P.M.

(Posted: October 29, 2012)

Building Department and shall comply with Section 17 – Signs – of the Zoning Ordinance and Section 11.10 – Illuminated Signs – of the Subdivision and Site Plan Regulations, as applicable;

2. The applicant shall add an applicable note to the final plan regarding the use (or non-use) of deicers (including salt, sodium and chloride).

5. Valleyview Drive Revocable Trust (applicant/owner) – Review for Acceptance and consideration of Final Approval of a subdivision application proposing to subdivide one lot into a total of three residential lots. The property is located at 15 Valleyview Drive and lies within R (Residential) District. Tax Map 5C, Lot 142.

At applicant's request, the Board voted 7-0-0 to postpone this item to December 4, 2012, in the Matthew Thornton Room, at Town Hall, at 7:30 p.m., on a motion made by Lynn Christensen and seconded by Desirea Falt.

6. **Two-Year Maintenance Bond Release Request for Greenfield Farms – Phase XII, Public Works Department recommends the release of the \$102,762.00 two-year maintenance bond.**

Michael Redding left at 8:40 p.m.

The Board voted 6-0-0 to release the Greenfield Farms – Phase XII \$102,762.00 two-year maintenance bond, on a motion made by Lynn Christensen and seconded by Tom Koenig.

7. **Recommended** road acceptance for Portside Drive (part of the Holts Pond Estates subdivision), in accordance with Section 5.01.1(f) of the Subdivision Regulations.

The Board voted 5-0-1 to recommend acceptance of Portside Drive to Town Council, on a motion made by Lynn Christensen and seconded by Alastair Millns. Tom Koenig abstained.

8. **Portside Drive Bond Release – Discussion/possible action regarding the release of performance bond for Portside Drive, subject to the posting of a maintenance bond.**

Michael Redding returned to the Board at 8:43 p.m.

The Board voted 7-0-0 to release the \$395,872.00 performance bond subject to posting of \$39,587.00 two-year maintenance bond, on a motion made by Lynn Christensen and seconded by Alastair Millns.

9. Discussion of Proposed Amendments to the Parking Regulations

Tim Thompson summarized the changes. He hopes to hold a public hearing in two months.

7.03.C.1. and 3: Stacking Chairman Best agreed that a drive-thru restaurant differs from a bank and should have different stacking requirements. Tim Thompson said the size of a stacking space is like a standard parking space, 9'x18'. Michael Redding agreed with 10 stacking spaces. A site must be suited to the need rather than try to squeeze spaces into small sites. Desirea Falt said that, since there are long lines at a drive-thru at peak hours with more of a demand for quick service than at a bank, the proposed 10 stacking spaces work. Tim Thompson said it is rare for a bank to have only one drive-thru lane. If



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MERRIMACK PLANNING BOARD

Agenda for Tuesday, December 4, 2012

Matthew Thornton Room, West Wing, Second Floor (Former Courtroom)

7:30 P.M.

1. **Call to Order.**
2. **Announcements.**
3. **Planning & Zoning Administrator's Report.**
4. **Valleyview Drive Revocable Trust (applicant/owner) – Review for Acceptance and consideration of Final Approval of a subdivision application proposing to subdivide one lot into a total of three residential lots. The property is located at 15 Valleyview Drive and lies within R (Residential) District. Tax Map 5C, Lot 142. This agenda item was postponed from the November 13, 2012 meeting.**
5. **Atrium Medical Corporation (applicant) and APCA Merrimack, LLC c/o Paradigm Properties, LLC (owner) – Review for Acceptance and consideration of Final Approval for a modification to the previously approved (with conditions) Non-Residential Site Plan application proposing construction of an additional 10,800 s.f. addition (previously approved for 90,000 s.f.) for Research & Design/Manufacturing/Warehousing located at 40 Continental Boulevard in the I-3 (Industrial) & Aquifer Conservation Districts, and Wellhead Protection Area. Tax Map 3C, Lot 040.**
6. **John J. Flatley Company (applicant/owner) – Review for Acceptance and consideration of Final Approval of a subdivision application proposing to subdivide one lot into a total of three industrial lots located at Daniel Webster Highway (to the rear of Saint-Gobain) in the I-1 (Industrial) & Aquifer Conservation Districts, and Wellhead Protection Area. Tax Map 6E, Lot 003-4.**
7. **John J. Flatley Company (applicant/owner) – Review for Acceptance and consideration of Final Approval for a request of a Non-Residential Site Plan application proposing to construct a 120,000 s.f. warehouse/distribution facility located at Daniel Webster Highway in the I-1 (Industrial) & Aquifer Conservation Districts, and Wellhead Protection Area. Tax Map 6E, Lot 003-4.**
8. **Discussion of Capital Improvement Program for The Town of Merrimack and School Administrative Unit #26.**
9. **Discussion and possible action regarding other items of concern.**
10. **Approval of Minutes.**
11. **Adjourn.**

Copies of application materials are available at the Community Development Department office in the Merrimack Town Hall for review by the general public between the hours of 8:30 A.M. and 4:30 P.M., Monday through Friday. The Matthew Thornton Room at Town Hall is accessible to the disabled. Persons requiring special arrangements are encouraged to call 424-3531 at least 48 hours in advance. It is the policy of the Board not to take up any new business after 10:30 P.M. and to adjourn by 11:00 P.M.

(Posted: November 19, 2012)

Mr. Shevenell remarked when the facility was first turned into an upper elementary school, the need existed for a playground. It was difficult to locate a playground on the property as the only available location was the front lawn to avoid sacrificing a play field that included underground drainage and sprinkler systems.

Speaking to the Merrimack High School Track/Field Upgrade, Mr. Shevenell stated the project has been identified in FY16 as a placeholder. He noted the football field in the back of the high school is the main field for high school athletes. Artificial turf surfaces are being explored for this field. The current track is asphalt base with a rubberized coating. The coating is delaminating in spots, and will reach end of life in FY16. It was noted the track is another area walked by the Director of Maintenance who looks to ensure there are no tripping hazards, etc. It was believed beneficial to group the track and field upgrade projects together.

Chairman Millns questioned the opportunity to gain sponsorship to cover some of the costs, and was informed that possibility has been discussed and will be explored further. Member Falt commented she was previously involved in a large school project that consisted of the construction of a new stadium, track and field, etc. She worked collaboratively with a signage company to develop a fundraising package. Marketing of the package was assisted by the alumni foundation, e.g., naming rights, in-kind donations, etc.

Member Bonislowski questioned the ability to set funds aside each year in the budget as a means of funding the project. Mr. Shevenell stated monies cannot be transferred into reserve funds that would have to be done via a Warrant Article. When asked if facility use would be restricted to high school functions, Superintendent Chiafery stated this would be a field the district would want to be utilized by community groups as well as school teams.

Addressing Technology Infrastructure Upgrade, Mr. Shevenell stated the item is new to the CIP this year although it has been discussed in prior years. The intent is to begin funding these improvements to avoid the equipment becoming obsolete and unusable for the end user in the classroom. Monies are being put aside in each year for upgrades, e.g., additional network cabling (multiple computers sharing jacks), network switches (66 beyond end of life), 18 servers (8 years old or older). A leasing option is being considered. First in line for replacement would be computers at the Merrimack Middle School. The school has approximately 137 computers, which were purchased at the same time. The idea would be to lease equipment over a three-year period after which the equipment could be purchased outright for \$1. The leasing option would create the necessary replacement/refresh cycle. This project would also include the phasing in of a Voice over IP (VoIP) phone system.

With regard to the drainage project at the Masticola Upper Elementary School, member Nelson questioned whether the alternate system proposed would be designed utilizing Best Management Practices for disposal of roof water. Mr. Shevenell stated the system would include a series of structures consisting of crushed stone beds and infiltration systems. Those plans have been provided by Keach-Nordstrom.

4. Valleyview Drive Revocable Trust (applicant/owner) – Review for Acceptance and consideration of Final Approval of a subdivision application proposing to subdivide one lot into a total of three residential lots. The property is located at 15 Valleyview Drive and lies within R (Residential) District. Tax Map 5C, Lot 142. This agenda item was postponed from the November 13, 2012 meeting.

**MOTION BY MEMBER BONISLAWSKI TO ACCEPT THE WITHDRAWAL OF THE APPLICATION
MOTION SECONDED BY MEMBER REDDING
MOTION CARRIED
7-0-0**



Town of Merrimack, New Hampshire

Community Development Department

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MERRIMACK PLANNING BOARD

AMENDED Agenda for Tuesday, January 22, 2013

Matthew Thornton Meeting Room, West Wing, Second Floor (Former Courtroom)

7:30 P.M.

1. Call to Order.
2. Planning & Zoning Administrator's Report.
3. XTL, Inc. (applicant) and Sam A. Tamposi, Harold Watson, Benjamin M. Bosowski, Jeffrey & Jessica Clegg (owners) – Review for Acceptance and consideration of Final Approval of a subdivision application proposing to subdivide one lot into two lots located at Mast Road in the I-1 (Industrial) & Aquifer Conservation Districts. Tax Map 2D, Lot 021. **The applicant has requested that this agenda item be postponed to the February 19, 2013 Planning Board Meeting.**
4. Crestview Circle Bond Release – Discussion/possible action regarding the release of the performance bond for Crestview Circle, subject to the posting of a maintenance bond.
5. Recommended road acceptance for Crestview Circle, in accordance with Section 5.01.1 (f) of the Subdivision Regulations.
6. Discussion/possible action regarding approval of the performance bond amount for Valleyview Drive.
7. Discussion/possible action regarding a request for a reduction of the performance bond for Valleyview Drive.
8. Discussion/possible action regarding other items of concern.
9. Approval of Minutes.
10. Adjourn.

Copies of application materials are available at the Community Development Department office in the Merrimack Town Hall for review by the general public between the hours of 8:30 A.M. and 4:30 P.M., Monday through Friday.

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(Posted: January 16, 2013)

The Board voted 7-0-0 to release the Crestview Circle \$403,821.00 performance bond, subject to posting a \$55,383.64 maintenance bond, on a motion made by Lynn Christensen and seconded by Matthew Passalacqua.

5. Recommended road acceptance for Crestview Circle, in accordance with Section 5.01.1(f) of the Subdivision Regulations.

The Board voted 6-0-1 to recommend road acceptance for Crestview Circle to the Town Council, on a motion made by Lynn Christensen and seconded by Desirea Falt. Tom Koenig abstained.

6. Discussion/possible action regarding approval of the performance bond amount for Valleyview Drive.

The Board voted 7-0-0 to approve a \$325,688.76 performance bond for Valleyview Drive, on a motion made by Lynn Christensen and seconded by Alastair Millns.

7. Discussion/possible action regarding a request for a reduction of the performance bond for Valleyview Drive.

Stanley Bonislowski questioned why a reduction is in order when the road is not finished. Chairman Best explained that it is usual for the initial amount to be reduced as work is completed. It reflects what work remains to be done.

The Board voted 7-0-0 to reduce the \$325,688.76 performance bond for Valleyview Drive to \$228,122.83, on a motion made by Lynn Christensen and seconded by Alastair Millns.

Pete Gagnon arrived at 7:37 p.m.

8. Discussion/possible action regarding other items of concern

Chairman Best announced the Nashua Regional Planning Commission (NRPC) 30th annual Legislative Forum on February 6, 2013, from 6:00-8:00 p.m., at Martha's Exchange in Nashua.

Alastair Millns noted that, at the Capital Improvements Plan (CIP) meeting, the School Board advised the Planning Board that roof work must be done. Desirea Falt agreed to help. However the consultant just said that it is not necessary to do the work now. Stanley Bonislowski said the 15-year old roof would be replaced with one with a 35-year warranty. He asked how long the original was supposed to last. Chairman Best and Desirea Falt said it depends on the warranty. Chairman Best approved of replacing a roof at the end of the warranty period, even if there are no leaks, in order to avoid a disaster later.

Lynn Christensen asked which body is authorized to discontinue a road. Jeff Morrissette stated that it is likely that the Town Council, in lieu of Town Meeting, is empowered to discontinue a roadway; however, the Town Charter would have to be examined for confirmation. Furthermore, there is usually a requirement that the Planning Board make a recommendation prior to any vote for discontinuance. Tom Koenig said it no longer goes to Town Meeting, which Lynn Christensen noted is a change in the Town Charter.



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MERRIMACK PLANNING BOARD

Amended Agenda for Tuesday, June 4, 2013

Matthew Thornton Meeting Room, West Wing, Second Floor (Former Courtroom)

7:30 P.M.

1. **Call to Order.**
2. **Planning & Zoning Administrator's Report.**
3. **Discussion/possible action regarding the nomination Mr. Anant Panwalker** to be reappointed as one of Merrimack's representatives to the Nashua Regional Planning Commission. This recommendation is made pursuant to RSA 36:46 (III).
4. **College Bound Movers (applicant) and DW Development & Land Services, LLC (owner)** – Review for consideration of Final Approval of a site plan application proposing the establishment of a commercial moving facility. The parcels are located at 723 & 725 Daniel Webster Highway and lie within the C-2 (General Commercial), Aquifer Conservation and Planned Unit Development Overlay Districts. Tax Map 7E, Lots 048-1 & 048-2. **This agenda item is postponed from the May 7, 2013 meeting.**
5. **Wigston Properties, LLC. & Edgebrook Heights, LLC./Q. Peter Nash, Trustee of the Q. Peter Nash 1987 Revocable Trust (applicants/owner)** – Conceptual discussion of a proposed mixed use development site plan consisting of retail, office, multi-family residential & assisted living. The parcels are located in the I-1 (Industrial) District located at 1, 37, 39, 55 and an unnumbered parcel, D.W. Highway, Merrimack, NH. Tax Map 1E, Lots 004-1 & 004-2, Tax Map 2E, Lots 006-2, 007 and 008.
6. **Discussion/possible action regarding a request for a reduction of the performance bond for Valleyview Drive.**
7. **Discussion/possible action regarding other items of concern.**
8. **Approval of Minutes – May 7, 2013.**
9. **Adjourn.**

Copies of application materials are available at the Community Development Department office in the Merrimack Town Hall for review by the general public between the hours of 8:30 A.M. and 4:30 P.M., Monday through Friday.

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(Posted: May 24, 2013)

NRPC for the past 1½ - 2 years. During that time the NRPC has completed work on the three-year and five-year plans. Work will begin shortly on the ten and fifteen-year transportation plans with an eye on 2025 and 2040.

He noted the New Hampshire Department of Transportation (NHDOT) is working with the various regional planning commissions in an effort to set a unified format for the submission of transportation projects so that all projects go through a similar approval process.

**MOTION BY MEMBER CHRISTENSEN TO RECOMMEND THE REAPPOINTMENT OF MR. ANANT PANWALKER TO THE NASHUA REGIONAL PLANNING COMMISSION
MOTION SECONDED BY MEMBER BONISLAWSKI**

ON THE QUESTION

Chairman Best noted Mr. Panwalker was originally appointed to fill an unexpired term. When asked, Mr. Panwalker remarked he has enjoyed the nature of the work in that it considers projects based upon the impact to Merrimack as well as the surrounding communities. Mr. Millns noted the term of office is four years.

Mr. Disco stated a desire to receive additional information regarding the activities of the NRPC. Ms. Christensen suggested Mr. Panwalker could be asked to provide the Board with an update at a future meeting. Councilor Koenig suggested the Merrimack delegation to the NRPC, as a whole, be invited to provide the Board with an update on the activities of the NRPC.

**MOTION CARRIED
6-0-0**

- 4. College Bound Movers (applicant) and DW Development & Land Services, LLC (owner) – Review for consideration of Final Approval of a site plan application proposing the establishment of a commercial moving facility. The parcels are located at 723 & 725 Daniel Webster Highway and lie within the C-2 (General Commercial), Aquifer Conservation and Planned Unit Development Overlay Districts. Tax Map 7E, Lots 048-1 & 048-2. **This agenda item has been withdrawn by the applicant.****

Chairman Best informed the Board of a request to go out of the regular order of business and take up either or both of the discussion items as a means of providing the applicant for Agenda Item #5 additional preparation time.

There being no objection, the Board went out of the regular order of business and took up Agenda Item #6.

6. Discussion/possible action regarding a request for a reduction of the performance bond for Valleyview Drive.

Chairman Best noted the Board's receipt of a copy of a communication from Kyle Fox, Deputy Director, Public Works Department to Timothy Thompson, Director, Community Development Department regarding the performance bond reduction request for Valleyview Drive. The communication indicates the Board set the initial bond for slightly over \$325,000 and was reduced to \$228,122 at the Board's January 22, 2013 meeting as a result of work being done. The Applicant has continued to make the necessary improvements and has not yet posted the bond.

The requirement is either to make the improvements or post the bond before building permits will be issued. Deputy Director Fox has determined the appropriate amount, based on the remaining work, to be \$144,732. The recommendation is to adjust the bond to that amount.

**MOTION BY MEMBER CHRISTENSEN THAT THE BOARD REDUCE THE AMOUNT OF THE PERFORMANCE BOND FOR VALLEYVIEW DRIVE TO ONE HUNDRED FORTY FOUR THOUSAND SEVEN HUNDRED THIRTY TWO DOLLARS AND SIXTY FIVE CENTS (\$144,732.65)
MOTION SECONDED BY MEMBER MILLNS**

ON THE QUESTION

Mr. Bonislawski noted the item has appeared on several agendas and been postponed. Ms. Larson explained what was proposed is slightly different than what is being constructed. She noted a subdivision was approved by the Planning Board back in the '70s to build all of the Valleyview subdivision. Either end of the unconstructed middle section was built. The middle section is currently partially built to create frontage for existing lots to be developed.

Mr. Maggio visited the department several months ago and questioned how to go about gaining approval to build. He was informed he would have to comply with today's road standards as best he can. The connection was already approved, and Mr. Maggio wished to build fewer lots than were initially approved. Administrative approval was granted to pave the west side of the center area to Town standards and dead-end at a stub. From that point to the other end of Valleyview drive was going to be an access road for emergency vehicles. Mr. Maggio decided later on that he would try and see if he could pave that section and create an entire paved, built to Town standards roadway in order to further subdivide the larger parcel (information shared with the Planning Board through the application that was postponed). Mr. Maggio has not returned with that plan. The proposed subdivision was intended to help finance the full length of the roadway construct.

Mr. Bonislawski stated his desire to see the road completed. He remarked Town entities, e.g., police and fire, are very excited to see the road connected, and he believes it would be helpful to the neighborhood as emergency personnel and delivery drivers struggle to distinguish between the two sections. Ms. Larson explained further although the roadway is still being constructed, it is not to the same degree the Planning Board had seen on the recent application that was never carried out.

Ms. Larson stated her belief that the bond amount is not based upon the entire middle section being paved as a 24' wide Town road. There is a certain amount of it that will be constructed and end at a back-up stub and then the remainder to connect to the existing Valleyview Drive at the other end would be paved, but would be a narrower cross-section of paved roadway (12'), and would be intended for emergency vehicles only (signed/not gated). Ms. Larson noted emergency access will be addressed, and suggested the issue of delivery drivers may be resolved through signage at either end of Valleyview Drive inclusive of address numbers, arrows, etc.

Mr. Disco questioned whether the adjustments were deemed a change to the original site plan, and was informed they were not. Ms. Larson noted the three lots on the west side of the road will still have all required road frontage, built to Town standards, for issuance of building permits and satisfying all zoning requirements, and the one larger lot on the east side of the road will satisfy minimum road frontage. She commented if an individual is looking to build enough roadway to satisfy the frontage requirements for issuance of a building permit and making the lot legal based upon today's standards, the Town would not force him/her to construct another few thousand feet of roadway. That is essentially what Mr. Maggio is doing, e.g., instead of not building that additional linear feet of roadway and just leaving it as barren land and not allowing any kind of connection, his alternative is building that section of roadway for emergency vehicles only.

Ms. Christensen questioned what would prevent a delivery vehicle from using the emergency road if not gated. Ms. Larson responded there would be nothing in place to prohibit such use. Mr. Bonislawski questioned whether the bond amount would be sufficient to construct a 12' or a 24' wide roadway. Chairman Best stated it would support what is being proposed; 24' wide for the frontage for the four house lots and 12' wide for the remainder (emergency access).

MOTION CARRIED

4-1-1

Member Bonislawski voted in Opposition

Member Disco Abstained

Mr. Millns noted he has reviewed the draft document provided by Director Thompson outlining proposed changes to Section 5 of the subdivision regulations, and believes it important this particular matter and the level of confusion around it be brought to his attention to support the belief that the proposed change of eliminating the opportunity for the Planning Board to review changes in performance bonds is not a good idea. Chairman Best agreed for certain projects that would hold true. Mr. Millns stated he would express his views to Mr. Thompson via e-mail, and would copy members of the Board. Mr. Disco stated his agreement. Chairman Best remarked he is in favor of calling attention to this particular application and requesting Mr. Thompson consider it as he revises his draft.



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MERRIMACK PLANNING BOARD

Agenda for Tuesday, July 23, 2013

Matthew Thornton Meeting Room, West Wing, Second Floor (Former Courtroom)
7:30 P.M.

1. Call to Order.
2. Planning & Zoning Administrator's Report.
3. Northview Homes & Development, Inc. (applicant) and Raymond A. Cota and David R. & Dorothy E. Cota (owners) – Pre-Submission Hearing to discuss a proposed consolidation and re-subdivision of five residential lots into a 13-lot residential cluster subdivision. The parcels are located at 14 & 16 Pearson Road within the R (Residential) District. Tax Map 6D, Lots 046, 047, 047-2, 047-3, & 047-4.
4. Keach-Nordstrom Associates, Inc. (applicant) and Valleyview Revocable Trust, Carol Maggio, Trustee (owner) – Review for Acceptance and consideration of Final Approval of an application proposing 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.
5. Discussion/possible action regarding other items of concern.
6. Approval of Minutes
7. Adjourn.

Copies of application materials are available at the Community Development Department office in the Merrimack Town Hall for review by the general public between the hours of 8:30 A.M. and 4:30 P.M., Monday through Friday.

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(Posted: July 12, 2013)



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July 25, 2013

Valleyview Revocable Trust, c/o Carol Maggio, Trustee
66 Gilcreast Road
Londonderry, NH 03053

Re: Keach-Nordstrom Associates, Inc. (applicant) and Valleyview Revocable Trust, Carol Maggio, Trustee (owner) – Review for Acceptance and consideration of Final Approval of an application proposing 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.

Dear Ms. Maggio:

The Planning Board, at its meeting on July 23, 2013, voted 5-0-0 to accept jurisdiction of the application. The Board then voted 5-0-0 to grant a waiver of Section 4.05(f) – Sidewalks of the regulations, and lastly voted 3-2-0 to **grant final conditional approval of the application, subject to the following precedent conditions to be fulfilled within six months and prior to signing of the plan, unless otherwise specified:**

1. Final plans and mylars to be signed by all property owners. The Licensed Land Surveyor shall also sign and seal final plans and mylars;
2. The applicant is responsible for recording the plan (including \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) and any related documents at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
3. Any waivers granted shall be listed and described on the recordable sheet of the Final Plan set;
4. Copy of State Subdivision approval to be submitted to the Community Development Department. General Note #18, Sheet 1 of 2 be revised to include the Approval Number and expiration date;
5. Satisfactorily address any forthcoming comments to be received from the Fire, Public Works, and Building Departments;
6. Address planning staff technical comments. (Please See Following Page).

Planning Staff Technical Comments

1. Revise plans to show the layout of the emergency access roadway. Emergency access roadway to be labeled with a reference to the Administrative Approval (Reference Plan #5) for roadway design, including for the emergency access roadway;
2. Applicant to coordinate with the Assessing Dept. regarding approval of Map 5C, Lots 142-1 & 142-2 as parcel i.d. numbers (the Assessing Dept. may not want to abandon the parent Map/Lot number of 5C/142). Written approval (e-mail is sufficient) from the Assessing Dept. to be submitted to Community Development;
3. Reference to the Administrative Approval granted on August 24, 2012 to be incorporated into Reference Plan Note #5 on Sheets 1 & 2 of 2. Please also include a note that the plans are on file with the Town of Merrimack Community Development Department;
4. General Note #7 to be revised to read “public” water rather than “municipal” water;
5. In accordance with previous interpretations, the 60 ft. setback graphically depicted and labeled on Sheets 1 & 2 of 2 to be revised to reflect a 30 ft. side yard setback. The proposed lot line for this parcel adjacent to Proposed Map 5C, Lot 142-2 and perpendicular to abutting Map 5C, Lot 202 (7 Quincy Lane) shall also be considered a side lot line;
6. Add the Book/Page number to the “existing slope easement” label on Sheet 1 of 2;
7. Add a note to the recordable plan sheet referencing MVD’s requirement that the main water line is to be extended from the north end of Valleyview Drive to the south end, via the emergency access roadway.

Please be advised that any party to the action or proceedings, or any party directly affected thereby, may appeal the Board’s decision within 30 days, in accordance with RSA 677:15.

If you have any questions, please feel free to call me at 424-3531.

Sincerely,



Timothy J. Thompson, AICP
Community Development Director

Ec: Michael Maggio, FHB Consulting
Pete Julia, Keach-Nordstrom Associates, Inc.
Kyle Fox, Deputy Director of Public Works/Town Engineer
Captain John Manuele, Fire Department
Carol Miner and Fred Kelley, Building Department
Ron Miner, Superintendent, Merrimack Village District

cc: File, Correspondence

to the land adjacent to Pearson Road. Tim Thompson said that Nancy Larson would consider this non-binding consensus in her determination of the applicability of the buffer along Pearson Road.

Tim Thompson suggested a short trip generation/traffic analysis about daily trips at peak hours and how they are distributed from the development rather than a full traffic study. Alastair Millns said that the road is most congested at 8:00 a.m. on school days and on Saturdays. Michael Redding wants data but no formal submittal is needed. The school is the issue, but it does not tip the scale. The Board can make an informed decision when listening to the engineer. Attorney Michael said he would present information on that issue at the acceptance hearing. Alastair Millns objected that trip generation is not enough. Stanley Bonislowski said it is not necessary for such a small piece of property. Tom Koenig agreed that 10 houses would not make a significant traffic impact. Attorney Michael will inform Meridian Land Services, Inc., of the Board members' views.

4. Keach-Nordstrom Associates, Inc. (applicant) and Valleyview Revocable Trust, Carol Maggio, Trustee (owner) – Review for Acceptance and consideration of Final Approval of an application proposing 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.

Tim Thompson said that the applicant received variances from the ZBA in 2012 to subdivide the same lot into a total of three residential lots with insufficient lot depth and area, which are still valid, but withdrew the application prior to the December 4, 2012, Planning Board meeting. The plan provided for a full road connection to Valleyview Drive, but did not get the necessary slope easements for a roadway. On August 24, 2012, the Planning and Zoning Administrator granted Administrative Approval to allow a portion of the remaining roadway (650+) to be constructed as a 12' wide emergency access road to connect the existing lots. (All of the lots achieve minimum frontage along Valleyview Drive.) This plan calls for subdividing into two lots rather than three and maintaining an emergency access but not a full roadway.

Pete Julia, Project Manager, Keach-Nordstrom Associates, Inc., said that neither single-family lot needs a variance, since they exceed the required minimum 80,00 square feet in area (84,611 s.f. and 87,331 s.f. respectively).

Staff recommends that the Board vote to accept the application, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow it to make an informed decision.

The Board voted 5-0-0 to accept the application for review, on a motion made by Stanley Bonislowski and seconded by Michael Redding.

Alastair Millns asked why the boundary line has a peculiar "z" shape. Pete Julia explained that, since the road cannot be connected to town standards, the line has to jog over so the two lots conform to minimum frontage. Alastair Millns said

that is so both lots conform to town frontage regulations for a lot on a road. Stanley Bonislowski said that it is so a road can get onto the property and asked when the 12'-wide road would be finished. Tim Thompson said an access for emergency vehicles is required in order to obtain Certificates of Occupancy for the homes.

Michael Redding asked about grading, an infiltration basin, the emergency outlet, the commitment to operate and maintain it, how sites would be built, and how lawns would be prevented from eroding because of the steep slope. Pete Julia agreed the lots are steep. He will prepare a subsurface plan indicating house placements, septic system, grading, and driveways. Stormwater management is the responsibility of each home, with the exception of a portion of each driveway, which was included within the previous stormwater mitigation design associated with the recent Valleyview Drive roadway improvement completion. ■ Keach-Nordstrom recommends that sites be located at the mid- to upper third of each parcel where there is more flat land and less site disturbance. The 275'-300'-long driveway construction parallels Valleyview Drive and existing contours and marries well with the existing topography. ■ The slope would be diminished because of the driveway length and the house would be uphill from the septic system. The costs of the extended driveway are offset by less disturbance to the existing parcels. ■ Michael Redding asked about stormwater disturbing over 20,000 square feet. ■ Tim Thomson explained that, if less than 20,000 s.f. is disturbed, stormwater regulations do not apply because the lots are part of an already existing subdivision. The Building Department and the Department of Public Works (PWD) will review the drainage and disturbance. The stormwater Ordinance requires (and Note 16 of the plan mentions) that the applicant must meet with Community Development and PWD for a pre-construction meeting and ongoing reporting/monitoring takes place during construction.

Michael Redding asked about different rear setbacks, size of home and its location in relation to the subsurface system. Pete Julia said he addressed all planning staff technical comments, which are insignificant, and edited the plan accordingly. That is why the plans in the Board's packets differ from the plans he is showing on the easel. Pete Julia recommends an optimum building envelope area where the contours are 7' apart with a 25'-30' window. The building location impacts only a 4' vertical grading change, which is very reasonable. There is a significant grade change, so he will put the house where there is 65+ feet between the easterly limits of the 4K area and the 30' side setback.

Michael Redding asked about blasting of ledge. Pete Julia said two test pits encountered no ledge and no water within 20' of what he recommends as the optimum building envelope. The likelihood of surprise is remote on Lot 1. Lot 2 has ledge at 50", but it is 100+' away, so he must wait and see. Concerns will be addressed through the town building and subsurface application processes. Pete Julia will inform the applicant of Michael Redding's concerns.

Pete Julia repeated that, at the outset, the homeowner and developer would discuss the length and alignment of the driveway, grading, and placement of the

homes. In the future, the responsibility for stormwater management will be shared between the future homeowner and the developer.

Stanley Bonislawski recalled that drainage changed and went into two homes on Valleyview Drive when a house was built on the hill. He is concerned about how to protect other homes from a change in the flow of water down the hill. Pete Julia said that Keach-Nordstrom would design a responsible plan for the land that is compliant with regulations. The town will ensure compliance during construction. He cannot speculate about what will happen after that. Alastair Millns cited Section 4.16.c of the Subdivision Regulations: the engineer must certify that there will be “no adverse impact on downstream properties”. Tim Thompson added that stormwater regulations require monitoring and protection.

Stanley Bonislawski said there would be only a few feet of sidewalk in an area where there are no sidewalks. He 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.

The Board voted 5-0-0 to waive the requirements of Section 4.05(f) of the Subdivision Regulations - Sidewalks - on a motion made by Stanley Bonislawski and seconded by Desirea Falt.

Public comment

Steve Amick, 11 Valleyview Drive, is concerned about the privacy of his abutting lot and about the steep hill. He asked whether the house would be put close to his. The front of the road has been torn up for a year and there is no turnaround. He asked when the access road would be finished and whether it would be gated. He would rather have a through street than an ungated access road. Tim Thompson said Trustee/Owner Carol Maggio wanted three lots and a full road originally. The income generated by selling the lots would justify the cost of road. She was unable to get necessary easements, so the connection for a full road cannot be made. Noting slow progress, Steve Amick asked again when the road would be finished and whether his end would be made visually pleasing. Alastair Millns said emergency vehicles do not want to slow down to open a gate during an emergency. Steve Amick asked what would prohibit people from using the emergency road on a regular basis. Alastair Millns replied that nothing would, which Steve Amick called absurd, opining that people will use the road as a shortcut. He asked why there is no dead end sign or one with Valleyview Drive house numbers. Alastair Millns agreed that numbering signs might help. Tim Thompson repeated that the emergency access road was already approved. There is no plan for a gate. The Planning Board approved a full road for a three-lot subdivision, but it cannot meet town standards without easements. The Fire Department and PWD required an emergency access road. Because no new lots were created beyond those approved in the 1960s, it did not come to the Planning Board. The issue must be raised with the Fire and Public Works Departments. Steve Amick wanted completion date of the road to be specified. It comes in front of his house and ripped up his pavement. Tim Thompson explained that it must be completed before issuance of a Certificate of

Occupancy. When Steve Amick noted a drainage concern on Lot 1 that would be a stone's throw from the house behind the development, Alastair Millns repeated that the ZBA approved a depth variance. Steve Amick countered that the variance was based on a full road. Tim Thompson noted that this proposal is more conforming than the one the ZBA approved with a depth variance. Michael Redding said everyone is concerned about steep slopes and construction management. The new stormwater Ordinance requires town staff to monitor and mitigate impacts.

Tom Koenig asked about the different setbacks. Tim Thompson said the north lot is different because the paper street to the north is considered the front setback. If a lot has two fronts, all other setbacks are considered to be side setbacks. There is no rear setback.

Steve Amick asked whether the plan shows a finished emergency road. Tim Thompson said that staff technical comment #1 is to incorporate the design into the plan set. It will have a jog where it goes from 24' to 12'. Steve Amick asked whether the Planning Board determines how it would look. Alastair Millns repeated that PWD and the Fire Department set the requirements. Steve Amick said he was told he would receive a detailed plan of how his property would look when the original connection was discussed, but not with this plan. Alastair Millns reiterated that the applicant was unable to build the road to town standards and had to revert back to this arrangement. Tim Thompson repeated that the emergency access road was already approved before the three-lot subdivision was approved. Pete Julia offered to show Steve Amick all plans on file and to explain the plan to him. The emergency road on those plans was well within the right-of-way. All disturbance must be contained within the right-of-way. It will be as pretty as possible. He can only recommend a location to the builder. It is more than 250' from Steve Amick's residence. To move trees would cost more money, so he doubts the builder would do it.

After the public comment, Michael Redding wondered what lesson could be learned from relying on an old plan. Tim Thompson stated that the likelihood of this situation recurring today is slim. Subdivision standards were different in 1966. Stanley Bonislawski noted that this plan is 50 years old. Tim Thompson warned the Board to be wary of landowners' vested development rights that protect them from changes in regulations. Alastair Millns cited *caveat emptor* (buyer beware) when purchasing property. Tom Koenig said he was uncomfortable voting for final approval because the property is too difficult to develop and too much is up in the air.

Staff recommends that the Board vote to grant 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 3-2-0 to grant final approval, with the following conditions, on a motion made by Michael Redding and seconded by Desirea Falt. Tom Koenig and Stanley Bonislawski voted in the negative.

1. Final plans and mylars to be signed by all property owners. The Licensed Land Surveyor shall also sign and seal final plans and mylars;
2. The applicant is responsible for recording the plan (including \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) and any related documents at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
3. Any waivers granted shall be listed and described on the recordable sheet of the Final Plan set;
4. Copy of State Subdivision approval to be submitted to the Community Development Department. General Note #18, Sheet 1 of 2 to be revised to include the Approval Number and expiration date;
5. Satisfactorily address any forthcoming comments to be received from the Fire, Public Works and Building Departments;
6. Address planning staff technical comments.

Planning Staff Technical Comments

1. Revise plans to show the layout of the emergency access roadway. Emergency access roadway to be labeled with a reference to the Administrative Approval (Reference Plan #5) for roadway design, including the emergency access roadway;
2. Applicant to coordinate with the Assessing Department regarding approval of Map 5C, Lots 142-1 & 142-2 as parcel i.d. numbers (the Assessing Department may not want to abandon the parent Map/Lot number of 5C/142). Written approval (e-mail is sufficient) from the Assessing Department to be submitted to Community Development;
3. Reference to the Administrative Approval on August 24, 2012, to be incorporated into Reference Plan Note #5 on Sheets 1 & 2 of 2. Also include a note that the plans are on file with the Town of Merrimack Community Development Department;
4. General Note #7 to be revised to read “public” water rather than “municipal’ water;
5. In accordance with previous interpretations, the 60 ft. setback graphically depicted and labeled on Sheets 1 & 2 of 2 to be revised to reflect a 30 ft. side yard setback. The proposed lot line for this parcel adjacent to Proposed Map 5C Lot 142-2 and perpendicular to abutting Map 5C, Lot 202 (7 Quincy Lane) shall also be considered a side lot line;
6. Add the Book/Page number to the “existing slope easement” label on Sheet 1 of 2;

7. Add a note to the recordable plan sheet referencing MVD's requirement that the main water line is to be extended from the north end of Valleyview Drive to the south end, via the emergency access roadway.

5. Discussion/possible action regarding other items of concern

Stanley Bonislowski met with the Directors of Community Development and PWD concerning the sidewalk construction schedule using the town's fund in lieu of providing sidewalks. Nothing is in the pipeline. A tracking form is needed. Alastair Millns explained his Sidewalk Development Funds spreadsheet that lists project number and name; amount of money; dates logged, returned and completed; and detail and suggested that it be discussed regularly. The Planning Board wants PWD to spend the money and ensure that the projects are done. Tim Thompson said he would ensure that the information is up to date. The only money currently in hand is \$42,899 from Dunkin Donuts. He will propose utilizing some of the money to hire engineering consultants to study Continental Boulevard and Industrial Drive and the best use of a sidewalk in the area consistent with the Master Plan. It is unlikely that the funds will be sufficient to construct a full-length sidewalk. It would be a better use of the funds to do a study and require future applicants to do parts of a sidewalk at a time or to give money instead.

Michael Redding explained the cyanobacteria and its consequences found by the study in Horseshoe Pond. Very little remediation is possible. He listed good preventive practices needed for the watershed, such as a buffer system, vegetation, and stormwater management. Alastair Millns stated that the issue is important because it relates to the YMCA/Melton application.

6. Approval of Minutes

None.

7. Adjourn

The meeting adjourned at 10:05 p.m., by a vote on 5-0-0, on a motion made by Michael Redding and seconded by Desirea Falt.



Town of Merrimack, New Hampshire

Community Development Department
6 Baboosic Lake Road
Town Hall - Lower level - East Wing

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www.merrimacknh.gov

Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD

Agenda for Tuesday, July 8, 2014

Matthew Thornton Meeting Room, West Wing, Second Floor

(Former Courtroom)

7:30 P.M.

1. Call to Order.
2. Planning & Zoning Administrator's Report.
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 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.
4. Discussion/possible action regarding other items of concern.
5. Approval of Minutes – June 3, 2014 and June 17, 2014.
6. Adjourn.

Copies of application materials are available at the Community Development Department office in the Merrimack Town Hall for review by the general public between the hours of 8:30 A.M. and 4:30 P.M., Monday through Friday.

The Matthew Thornton Room (Former Courtroom) at Town Hall is accessible to the disabled. Persons requiring special arrangements are encouraged to call 424-3531 at least 48 hours in advance. It is the policy of the Board not to take up any new business after 10:30 P.M. and to adjourn by 11:00 P.M.

(Posted: June 27, 2014)



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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July 9, 2014

Valleyview Revocable Trust, c/o Carol Maggio, Trustee
66 Gilcreast Road
Londonderry, NH 03053

Re: **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 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.

Dear Ms. Maggio:

The Planning Board, at its meeting on July 8, 2014, voted 5-1-0 **to reinstate and extend conditional final approval to September 30, 2014, subject to a compliance hearing prior to September 30, 2014 and the following precedent conditions to be fulfilled prior to signing of the plan, unless otherwise specified:**

1. A compliance hearing occurs before September 30, 2014, to verify that the applicant controls its contractors use of the emergency access lane, the construction of the access lane, and the addition of the water line, and to make sure that the existing road is restored to its original condition or better per the administrative approval dated August 24, 2012;
2. A note to be added to the recordable sheet of the plan stating that no construction vehicles associated with the applicant can use the emergency access road, unless doing work within the emergency access road; and
3. All conditions of the approval per the Decision Letter dated July 25, 2013 for the original approval of the project.

Please be advised that any party to the action or proceedings, or any party directly affected thereby, may appeal the Board's decision within 30 days, in accordance with RSA 677:15.

If you have any questions, please feel free to call me at 424-3531.

Sincerely,

Donna Pohli,
Assistant Planner, Community Development

cc: Correspondence
Planning Board File

ec: Valleyview Revocable Trust, c/o Carol Maggio, Trustee
Michael Maggio, FHB Consulting
Pete Julia, Keach-Nordstrom Associates, Inc.
Kyle Fox, Deputy Director of Public Works/Town Engineer
Captain John Manuele, Fire Department
Carol Miner and Fred Kelley, Building Department
Ron Miner, Superintendent, Merrimack Village District



Town of Merrimack, New Hampshire

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MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY, JULY 8, 2014

Planning Board members present: Robert Best, Alastair Millns, Tom Koenig, Lynn Christensen, Stanley Bonislowski, and Desirea Falt.

Planning Board members absent: Michael Redding and Alternate Nelson Disco.

Community Development staff: Assistant Planner Donna Pohli and Recording Secretary Zina Jordan.

1. Call to Order

Robert Best called the meeting to order at 7:30 p.m.

2. Planning & Zoning Administrator's Report

None.

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 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.

Donna Pohli explained that, upon the Community Development Department's notification that conditional final approval had lapsed, the applicant requested reinstatement and extension.

Tony Basso, Vice President, Keach-Nordstrom Associates, Inc., said that he was focused on an ongoing project on separate lots. Due to unforeseen circumstances beyond his control, he was unable to meet the (minor) conditions by the expiration date of January 25, 2014. They have now been addressed and the applicant is ready to begin. There are no improvements and nothing has changed.

Alastair Millns asked whether the concerns expressed at the July 23, 2013, meeting by Steve Amick, 11 Valleyview Drive, had been addressed. Tony Basso said the road was extended and paved. A future emergency access road will link the two Valleyview Roads. It will not be a through road. The water line will be extended. He is addressing the slope bleeding as requested by Deputy Public Works Director/Town Engineer Kyle Fox. The under-drain will be extended down the side. Certificate of Occupancy for the lots on the other project is contingent upon completion of the work, which should be soon. The building lot will be far from the Amick residence. This property was purchased at a

Town auction and the road is being extended to provide legal frontage. The lot is large enough to subdivide. The Public Works Department is supervising the work.

Alastair Millns noted that Steve Amick's concern was runoff and work impinging on his property. Tony Basso responded that the work does not impinge on that property in any way. Chairman Best added that conditional final approval did not ask Keach-Nordstrom to address Steve Amick's concerns. Stanley Bonislawski said that every time a new house is built, water runs down both sides of the hill into basements. The easement below the property and across the way did not work. Tony Basso explained that was from a different project. The applicant originally wanted to create three lots and a through road. The easement was needed because a road could not be built within the 50' right-of-way. Now runoff and the bleeding slope go to a stormwater management system/collection site. Stanley Bonislawski noted Technical Comment #7: ". . . MVD's requirement that the main water line is to be extended from the north end of Valleyview Drive to the south end via the emergency access roadway". Tony Basso replied that the applicant rather than Merrimack Village District (MVD) is doing that. The road pitches down and everything is collected at the stormwater treatment and detention area, which has already been constructed. Keach-Nordstrom and the Public Works Department (PWD) both checked on it.

Chairman Best explained that, since reinstatement would cover the six-month extension from January 23, 2014 to June 23, 2014, the applicant would need an extra two months. He noted that staff recommends extension to January 8, 2015.

Peter Julia, Project Manager, Keach-Nordstrom Associates, Inc., said conditions were met with the exception of a State Subdivision Approval number. The applicant submitted it and is addressing comments. Approval should be granted in the next two months, so an eight-month extension would work. The comments are to do an auger test for the depth of ledge and to show septic locations on the two lots.

Public comment

Shauna Amick, 11 Valleyview Drive, said the family moved to this location at the end of a dead-end street because there would be no cars and they would not have to worry about their special needs child running into traffic. The trees on the property abutting their home were cut down, making a one-lane road that extends off the dead-end street. Over the last two years traffic using this one-lane dirt "emergency access" road has increased dramatically, even with an "emergency and authorized vehicles only" sign. Many people are using it as an accepted Town street, making it dangerous for children. Cars and trucks speed up and down the hill with no concern for pedestrians or other vehicles, using the middle of the street instead of driving on the right. Traffic begins at 6:30 a.m. and continues all day into the evening. An 18-wheeler delivering lumber to the new house and three other cars coming home from work were on that road tonight. The paved road comes past the Amick's driveway. They were told that it would be a 10'-wide paved emergency road. Given that the dead end is on a steep hill and involves a sharp curve in the road, there is a dangerous blind spot for vehicles and pedestrians on the dead end. As long as the dead end is used as a two-way Town road, it is unsafe for the Amick's children. Moving out of Merrimack is not an option. Living on the edge of a construction site has greatly reduced curb appeal and made the home's resale close to impossible. Michael Maggio, FHB Consulting, told the Amicks they would have to deal with the

situation until construction is over. The Amicks request that the Planning Board stop the dead end from being used as a two-way Town road, place conditions on the access road, finish and block it before completion and occupancy of the five new houses.

Stanley Bonislawski agreed that it is not really an “emergency” road because the neighbors cannot be stopped from using it. Not paving the road would slow traffic.

Alastair Millns asked whether the Amicks spoke to the Police Department. Shauna Amick explained that she did not want to because she prefers to handle the matter the right way and does not want to be difficult. She did speak to the Police when a very large dump truck parked on the Amick’s property for over 24 hours. The Community Development Department said they did not have immediate enforcement power. The Police said the truck was part of construction. Her husband spoke to someone who had the truck removed.

Chairman Best stated that the road should not be used that way. Tony Basso said he could restrict its use by construction workers, which can be made a condition of approval. He agreed the applicant must respect the neighbors and this absolutely should not be happening. The Fire Department required that connection, but did not want a locked gate. He would be willing to install an iron gate, but doubts the Fire Department would approve. Use of the road by non-construction vehicles is a police issue. The road was never connected at the top. Residents wanted one end changed so that emergency vehicles would know where to go, but at last year’s meeting, the Fire Department objected to a gate. The only solution is to notify the police and have them drive by every once in a while. It is for emergency access only. If police stop the residents, they will not repeat the offense. Shauna Amick said the bulk of the traffic is construction-related. The construction workers drive around the two barrels. Tony Basso said it is up to his client to police that. Chairman Best agreed the applicant could commit to that on the plan, but there is no way to control the neighbors unless there is a police presence. Tony Basso said there would eventually be a 12’-wide gravel road. Tom Koenig suggested that the Amicks contact the Town Safety Committee, which has representation from the Public Works, Fire, and Police Departments.

Shauna Amick asked about finishing the emergency road before building the houses. Tony Basso explained that the 12’-wide gravel path would be built after the water line extension is completed. Tom Koenig said the road that was torn up by the Amicks house should also be finished. Tony Basso said a water main has to be connected to that house. Shauna Amick worried that the road would be torn up again.

Lynn Christensen asked about installing speed bumps. Tony Basso has heard of but not seen gravel speed bumps, but they might create water bars that would impede drainage. Lynn Christensen saw some with channels for water. Chairman Best suggested a speed bump at 11 Valleyview Drive.

Chairman Best asked whether the Planning Board wanted a compliance hearing to ensure that Tony Basso’s promises are kept. Tony Basso said he could do so in six weeks. Pete Julia represented the applicant at last year’s hearing. He said Valleyview Drive was not paved last year. One portion of the road was in poor repair. Now the road is paved and has curbs. That section of the road is not completed because the under-

drain on the back side of the road is new. Last year the construction site was disturbed. It is now stable with grass, drainage and stormwater treatment.

Alastair Millns said that last year the Planning Board stated that the road must be completed before Certificate of Occupancy, but Tony Basso said that was for the other section. Chairman Best added that this section is not subject to that requirement.

Given that there have been no changes to any Ordinances or regulations that impact this project, staff recommends that the Board grant the request for reinstatement of conditional final approval and a six-month extension, effective from July 8, 2014, creating the new deadline of January 8, 2015, and that it place the same conditions outlined in the July 18, 2013, decision letter on this extension.

The Board voted 5-1-0 to reinstate and extend final approval to September 30, 2014, with the additional condition that a compliance hearing occurs before September 30, 2014, to verify that the applicant controls its contractors' use of the emergency access lane, the construction of the access lane, and the addition of the water line, and to make sure the existing road is restored to its original condition or better per the Administrative Approval dated August 24, 2012, on a motion made by Stanley Bonislowski and seconded by Alastair Millns. Tom Koenig voted in the negative.

4. Discussion/possible action regarding other items of concern

Chairman Best announced that the Bicycle and Pedestrian Committee met for the first time and elected Desirea Falt as Chair. Other attendees were Robert Best, Nelson Disco, Alastair Millns and PWD Director Rick Seymour. The committee will meet once monthly and report to the Planning Board.

5. Approval of Minutes – June 3, 2014 and June 17, 2014

The minutes of June 3, 2014, were approved, as submitted, by a vote of 6-0-0, on a motion made by Tom Koenig and seconded by Lynn Christensen.

The minutes of June 17, 2014, were approved, with one change, by a vote of 6-0-0, on a motion made by Stanley Bonislowski and seconded by Alastair Millns.

6. Adjourn

The meeting adjourned at 8:35 p.m., by a vote of 6-0-0, on a motion made by Alastair Millns and seconded by Tom Koenig.



Town of Merrimack, New Hampshire

Community Development Department
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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD

Agenda for Tuesday, September 23, 2014

Matthew Thornton Meeting Room, West Wing, Second Floor

7:30 P.M.

1. **Call to Order.**
2. **Planning & Zoning Administrator's Report.**
3. **Boomer McCloud Car Audio (applicant) and GFI Merrimack LLC. (owner)** – Review for acceptance and consideration of Final Approval of an application for a site plan to construct a 7,500 s.f., two-story car audio/electronics retail sales and service building. The parcel is located at 5 Executive Park Drive in the C-2 (Commercial) and Aquifer Conservation Districts. Tax Map 4D, Lot 073.
4. **Tomasian Drive LLC. (applicant) and The Stephanie Tomasian Revocable Trust (owner)** – Review for acceptance and consideration of Final Approval of an application for a 19-lot cluster subdivision located at Tomasian Drive in the R-1 (Residential), Aquifer Conservation and Flood Hazard Conservation Districts and Shoreland Protection Area. Tax Map 4B, Lot 009-01.
5. **John J. Flatley Company (applicant/owner)** – Review for acceptance and consideration of Final Approval of an application for a Conditional Use Permit to permit a future mixed-use development consisting of industrial, multi-family residential, commercial, restaurant, and retail uses. 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 July 22, 2014 August 5, 2014, and September 9, 2014 Planning Board meetings.*
6. **Keach-Nordstrom Associates, Inc. (applicant) and Valleyview Revocable Trust, Carol Maggio, Trustee (owner)** – Compliance hearing pursuant to the Planning Board's July 8, 2014 grant of a six month extension to meet precedent conditions of approval for a 2-lot subdivision. The parcel is located at 15 Valleyview Drive in the R (Residential) District. Tax Map 5C, Lot 142.
7. **Discussion/possible action regarding other items of concern.**
8. **Approval of Minutes – September 9, 2014.**
9. **Adjourn.**

Copies of application materials are available at the Community Development Department office in the Merrimack Town Hall for review by the general public between the hours of 8:30 A.M. and 4:30 P.M., Monday through Friday.

The Matthew Thornton Room (Former Courtroom) at Town Hall is accessible to the disabled. Persons requiring special arrangements are encouraged to call 424-3531 at least 48 hours in advance. It is the policy of the Board not to take up any new business after 10:30 P.M. and to adjourn by 11:00 P.M.

(Posted: September 12, 2014)

permit a future mixed-use development consisting of industrial, multi-family residential, commercial, restaurant, and retail uses. 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 July 22, 2014, August 5, 2014, and September 9, 2014, Planning Board meetings.***

Chad Branon, Civil Engineer/Project Manager, Fieldstone Land Consultants, wrote to Donna Pohli asking for a continuance because he did not realize that the Town required revised plans by September 18, 2014, to address feedback received at the last Planning Board meeting and is also awaiting traffic review.

At the applicant's request, the Board voted 6-0-0 to continue this item to October 7, 2014, in the Matthew Thornton Meeting Room, at 7:30 p.m., on a motion made by Alastair Millns and seconded by Desirea Falt.

6. Keach-Nordstrom Associates, Inc. (applicant) and Valleyview Revocable Trust, Carol Maggio, Trustee (owner) – Compliance hearing pursuant to the Planning Board's July 8, 2014, grant of a six-month extension to meet precedent conditions of approval for a 2-lot subdivision. The parcel is located at 15 Valleyview Drive in the R (Residential) District. Tax Map 5C, Lot 142.

Peter Julia, Project Manager, Keach-Nordstrom Associates, said the Planning Board mandated a compliance hearing to verify that the applicant controls its contractors' use of the emergency access lane, the construction of the access lane and the addition of the water line, and to make sure the existing road is restored to its original condition or better per the Administrative Approval of August 24, 2012. The road is now stable, with grass and side slopes, and is clean and free for travel. The barricade is temporary. A new contractor is excavating the access road, but he hit ledge that must be removed from the trench mechanically rather than blasted. He is excavating but still has not found the end of the existing water main at the end of Valleyview Drive to tie into. A Merrimack Village District (MVD) representative who was present could not find it either. He distributed photos of the work. The water main is probably under the stone wall at the Amick home at 11 Valleyview Drive. Digging was stopped in order not to disturb that property or the wall. The applicant will restore everything when the work is done, but Peter Julia does not know how long that will take. No schedule he previously mentioned has been met by the contractor and builder. The Amicks were not given advance notice that the driveway would be brought up to grade this morning. Additional test pits were dug. Additional ledge was found within 12" of the paved surface, so pipe cannot be put there and the schedule will be extended. On September 9, 2014, Pete Julia wrote that the water line would be finished on September 19, 2014, and the emergency road on September 26, 2014. The contractor thinks he can finish the water main and access road to gravel grade within 10-14 working days. The MVD representative has no diagrams showing the location of the water pipe. Digging must go 5'-6' down. Pipe was found in some locations. Pete Julia described where MVD dug. In his opinion, ledge is the reason that the end of Valleyview Drive is so steep and the pipe stops. The water main does not extend as far north up Valleyview Drive as the client and MVD representative had hoped. Whatever is disturbed will be restored.

Michael Maggio, FHB Consulting, said the Town has no plan showing the pipe's exact location. It is very difficult to locate. He is being as careful as possible and will be at the site tomorrow and every day until it is found. He is hammering rather than blasting. He rented a hammer for one week and will have to rent it for another.

Pete Julia said the pipe is metal. MVD used a metal detector and the signal did not change. Alastair Millns suggested asking the National Guard Corps of Engineers to use its IED finder. Chairman Best and Nelson Disco agreed that there should be metal detectors sensitive enough to find the pipe. Pete Julia said there was no surface reading. Because the trajectory went to the Amick's front lawn, the MVD decided not to dig there. The MVD will decide which option to use rather than dig holes for another week. Pete Julia produced a photo showing that the wall is strikingly close to the roadway and possibly in the right-of-way. It has not been surveyed. It turns 90° at the end and ties back to the property boundary. The Amick family, MVD and Mike Maggio will have to meet to decide on the best resolution. The MVD shut down a main temporarily and shut off water to the homes briefly while digging. Mike Maggio said an elbow pipe is not allowed to turn more than 45° to cross the road. Pete Julia suspects that the Amick's water service is within 3' of the end of the water main to keep the water in the pipe from becoming stagnant. MVD thought that is where they would find the end. One option is to start further down where they found pipe and either cut in a "T" or put in a tapping sleeve, which is very costly (\$5,000-\$10,000). He does not want to excavate on the Amick property. Mike Maggio said MVD thinks the shutoff/curb stop is 10' away on the lawn and should know tomorrow.

Stanley Bonislawski urged quick action. Chairman Best said he understands that having difficulty finding the pipe's end is not the contractor's fault, but wants more communication with the neighbors.

Pete Julia said most of the July 2014 conditions of approval have been addressed and reviewed by staff.

Chairman Best read from the staff memo that the Police Chief, Community Development Director, and Town's Legal Counsel have discussed the enforcement of the emergency access way being limited to emergency vehicles. It has been determined that a public hearing must occur with the Town Council in order for the Police to have enforcement power for limiting access to the emergency access drive to unauthorized vehicles. The interested parties will have to work with the General Government Department to be placed on an upcoming Town Council agenda to address this issue. Chairman Best noted that a Planning Board condition of approval was that the access road be for emergency vehicles only. Donna Pohli said Community Development and the Police Departments rather than the applicant would ask Town Council for a hearing once final approval is granted. A note was added that no construction vehicles use the emergency road.

Public comment

Shauna Amick, 11 Valleyview Drive, said this is the first day the yard was dug and asked if one day is enough to find the pipe, protection for the neighbor at #18, and the imposition of a time limit/deadline. Chairman Best said there is no guarantee how long it would take to find the pipe. The Board can impose a deadline to complete the job and to

compel the applicant to return for another extension/compliance hearing if he does not. Shauna Amick said the roadblock did stop traffic on the dead end street. She wanted a completion deadline, return of the property to its previous condition, and keeping the road as an emergency access road rather than a public Town road. Chairman Best replied that it would be limited to emergency personnel. The issue is enforcement, which is up to Town Council. Alastair Millns suggested a gate with a radio controlled button that the Fire Department can press to raise the barrier like the one at the Merrimack Premium Outlets, but Stanley Bonislowski said the Fire Department does not like it. Chairman Best said they did not want an emergency gated access lane for this project, but gave no reason. Stanley Bonislowski opined that Town departments want to finish as quickly as possible. Shauna Amick said she would be home tomorrow to work with the various departments, Keach-Nordstrom and the contractors. She thanked the Planning Board for its previous help with the road barrier and suggested that everyone communicate about next steps.

Amary Hammond, 18 Valleyview Drive, lives at the end of the emergency road and is concerned about through traffic there. She wants a barricade, not just a sign. Work should be completed in a timely manner. Chairman Best explained that the Fire Department objected to a gate because the road must be used when GPS sends vehicles wanting to go to #18 to #11. The Board agreed that Donna Pohli should ask the Fire Department for a written explanation for its reasoning.

Mike Maggio promised to work as quickly as possible. As soon as he finds the main and chips the ledge, he will be ready to complete the work. The time it takes to restore the Amick yard depends on how much of the rock wall will have to be moved. He should know in the next few days. It will be done as soon as the pipe is installed. Mike Maggio does not yet have a contractor for the wall but he does have one for the grass, loam, etc.

Mike Maggio said the conditions of approval would be met within 10-14 days. Pete Julia said they would be met by December 15, 2014, at the latest, when paving plants close. Alastair Millns suggested a Thanksgiving/60-day deadline. Desirea Falt noted that the extension deadline is January 8, 2015. Tom Koenig suggested 45 working days. Chairman Best noted that the applicant did not look for end of the pipe until today although he had since July 9, 2014, to do so. The Board should set a deadline that makes the applicant do the work quickly and not delay. Mike Maggio said he is committed to a discussion with Shauna Amick and other departments tomorrow. He cannot guess when he will finish. He thought MVD would find the pipe a long time ago. Alastair Millns said it is not fair to set a date because MVD cannot find the end of the pipe.

The Board voted 5-1-0 that the applicant complete the water main construction; pave Valleyview Drive, including the emergency access way; and restore any damage to Valleyview Drive and/or to private property, by November 7, 2014, on a motion made by Tom Koenig and seconded by Stanley Bonislowski. Alastair Millns voted in the negative.

7. Discussion/possible action regarding other items of concern

Alastair Millns said that the NH Hillsborough County Conservation District would make a presentation about soil types, land use and mapping at the joint meeting with the Zoning



Town of Merrimack, New Hampshire

Community Development Department

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MERRIMACK PLANNING BOARD

Agenda for Tuesday, January 6, 2015

Matthew Thornton Meeting Room, West Wing, Second Floor

7:30 P.M.

1. Call to Order.
2. Planning & Zoning Administrator's Report.
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.
4. **Old Blood Properties, LLC and Joseph K. and Mary El Kareh (co-applicants/co-owners)** – Review for acceptance and 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 Planning Board meeting.*
5. Discussion/possible action regarding other items of concern.
 - **Robert & Susan Arp** – Voluntary Lot Merger for Tax Map 3C, Lots 080 and 081, also known as 6 Tallant Road.
6. Approval of Minutes – December 16, 2014.
7. Adjourn.

Copies of application materials are available at the Community Development Department office in the Merrimack Town Hall for review by the general public between the hours of 8:30 A.M. and 4:30 P.M., Monday through Friday.

The Matthew Thornton Room (Former Courtroom) at Town Hall is accessible to the disabled. Persons requiring special arrangements are encouraged to call 424-3531 at least 48 hours in advance. It is the policy of the Board not to take up any new business after 10:30 P.M. and to adjourn by 11:00 P.M.

(Posted: December 26, 2014)



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MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY, JANUARY 6, 2015

Planning Board members present: Robert Best, Alastair Millns, Tom Koenig, Michael Redding, Lynn Christensen, Desirea Falt, and Alternate Nelson Disco.

Staff present: Planning and Zoning Administrator Jillian Harris.

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 seat.

Michael Redding arrived at 7:31 p.m.

2. Planning & Zoning Administrator's Report

- Old Blood Regional Impact Determination.

Planning and Zoning Administrator Jillian Harris stated that the project will be on the January 20, 2015 Planning Board Agenda and proposes to consolidate and re-subdivide 10 lots into 72 cluster residential lots and four open space lots located on Old Blood Road in the R-1 (Residential) District. She stated that staff recommends that the Board determine that the project is not of Regional Impact, as it does not meet the criteria discussed by the Board at the December 2, 2014 meeting.

Desirea Falt and Tom Koenig arrived at 7:32 p.m.

The Board voted 7-0-0 to determine that the project is not of Regional Impact on a motion made by Alastair Millns and seconded by Lynn Christensen.

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.

Robert Best stated that the applicant sent a request previously this afternoon to continue to the February 17, 2015 Planning Board meeting.

Public Comment

Steve Amick, 11 Valleyview Drive, stated that he has lived in Merrimack for 2.5-3 years and has “put up with Maggio” every moment he has lived here. He has not gotten any benefit from this project or at the very least been compensated with kindness or courtesy. His neighbors have been treated similarly. Steve Amick continued that Mr. Maggio has not been in full compliance with the things he said he would do. He was going to dig up the water main and Steve Amick was not even acknowledged when he went out to discuss the project in front of his house. A huge hole was dug up in his yard and his stone wall was torn down and it remained in this state off and on. An excavator was hammering rock nearby. Mr. Maggio promised that the yard would be repaired and pavement would be down in 2 weeks. It was only finally completed a month ago. They did not repair a crack in the driveway created by the excavator. Steve Amick had to rebuild the stone wall himself because it was not professionally done as promised. Mr. Maggio said the yard would be hydro-seeded and that was not done. Steve Amick said that he got broken promises and minimal interaction from Mr. Maggio. The curbing is still not put in. Steve Amick appreciates that the vehicle traffic did stop after his wife went to a Planning Board meeting to complain about the issue. Steve Amick stated that the road was not plowed last week and that Mr. Maggio is supposed to be responsible for that. He felt that he needed to come to this meeting to vent about these issues. Mr. Amick is fed up with him and wonders if it's time to nail Mr. Maggio with some consequences. His concern right now is when will this be done and when can he be done with Mr. Maggio for good?

Robert Best asked what the situation with the stonewall is and Steve Amick stated that he rebuilt it and he is happy with the state of the wall currently. Steve Amick is frustrated that it was not “professionally done” as promised. In terms of the items that still need to be addressed, Robert Best stated it's just the curbing and seeding.

Steve Amick hopes that the access road can be finished so a plow can get through. He does not see any reason why the road could not be finished by now. Alastair Millns stated that it has not been done because he (Mr. Maggio) was trying to re-align the road to avoid some rock ledge, which was not approved by Public Works. This delayed the access road construction. Alastair Millns confirmed that Steve Amick was happy with the state of the stone wall on his property.

Steve Amick stated that Mr. Maggio has no regard for this town, the people who bought houses from him or the residents of this town.

Robert Best discussed the timeline of the project with Steve Amick and that the bond for the emergency access way will come due in May 2015. The Planning Board will decide at that time whether it's appropriate to call the bond or extend it at that time. After the emergency access work is completed a maintenance bond will remain for another 2 years. There will be a public hearing before this board and Robert Best encouraged Steve Amick to watch the agendas and come speak if he feels there is something to be addressed in regard to the road completion.

The Board voted 7-0-0 to continue the public hearing to March 3, 2015 at 7:30 pm in the Matthew Thornton Room on a motion made by Alastair Millns and seconded by Nelson Disco.

- 4. Old Blood Properties, LLC and Joseph K. and Mary El Kareh (co-applicants/co-owners)** – Review for acceptance and 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 Planning Board meeting.

At the request of the applicant, the Board voted 7-0-0 to continue the public hearing to January 20, 2015 at 7:30 pm in the Matthew Thornton Room on a motion made by Alastair Millns and seconded by Desirea Falt.

Lynn Christensen questioned whether a roundabout was ever considered at the intersection of Baboosic Lake Road and Madeline Bennett Lane. Robert Best answered that it was not a part of this proposal. Nelson Disco answered that it was determined there was not enough land to do that when that intersection was proposed, without taking land from nearby properties and therefore a traffic light was instituted.

5. Discussion/possible action regarding other items of concern.

- **Robert & Susan Arp** – Voluntary Lot Merger for Tax Map 3C, Lots 080 and 081, also known as 6 Tallant Road.

Robert Best stated that this was for information purposes only and would be signed by himself and the Secretary after the meeting.

– Crestview Circle Maintenance Bond Release

Robert Best read a Memo from Kyle Fox, Deputy Public Works Director, recommending the release of the bond.

The Board voted 7-0-0 to release the maintenance bond in the amount of \$55,383.64 on a motion made by Desirea Falt and seconded by Nelson Disco.

Robert Best asked Jillian Harris, Planning and Zoning Administrator, to discuss adding bond releases to future agendas with Community Development Director Tim Thompson. Nelson Disco suggested that bond releases should have a public hearing and be noticed. Robert Best feels there is a reason they are on the agenda under other items of concern but could not recall the reason behind that.



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MERRIMACK PLANNING BOARD

Agenda for Tuesday, April 21, 2015

Matthew Thornton Meeting Room, West Wing, Second Floor

7:30 P.M.

1. Call to Order.
2. Planning & Zoning Administrator's Report.
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.
4. **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, and March 17, 2015 Planning Board meetings.*
5. **Anheuser-Busch, LLC. (applicant/owner)** – Review for acceptance and consideration of Final Approval for 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.
6. **Discussion/possible action regarding other items of concern.**
 - Preliminary discussion of soils information for potential ordinance amendments (as requested by Pete Gagnon)
7. **Approval of Minutes – April 7, 2015.**
8. **Adjourn.**

Copies of application materials are available at the Community Development Department office in the Merrimack Town Hall for review by the general public between the hours of 8:30 A.M. and 4:30 P.M., Monday through Friday.

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(Posted: April 10, 2015)



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MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY, APRIL 21, 2015

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

Planning Board member absent: Michael Redding.

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 welcomed Alternate Jeff Sebring to the Planning Board. He designated Jeff Sebring and Nelson Disco to sit for Michael Redding and the vacant full member position, respectively.

2. Planning & Zoning Administrator's Report

None.

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.

Chairman Best read an e-mail from Tony Basso, Vice-President, Keach-Nordstrom Associates, Inc., asking for an extension to May 19, 2015, because there was no construction due to the long and snowy winter. It is scheduled to begin May 4, 2015.

Alastair Millns noted that Michael Maggio, FSB Consulting, had promised to meet the terms of conditional approval by Thanksgiving 2014. Failure to do so cannot be blamed on winter conditions. Tim Thompson explained that the missing piece to meet all the conditions of approval is the emergency access road. The performance bond for it is due in May 2015. He informed Tony Basso that Michael Maggio must either finish the work or the Planning Board would take action on the bond at its May 19, 2015, meeting. The administrative approval that includes the bond for the emergency access road was granted in 2012. Chairman Best noted that the applicant promised to complete the access road as part of the two-lot subdivision. If he does, the Board will look more favorably on the subdivision. Tim Thompson said he suggested a continuance to May 19, 2015; the bond will expire at the end of May 2015. If the Board were to deny tonight's request for reinstatement/extension and if the bond is called, Michael Maggio must return to the Board for the second lot because the approval would have lapsed. He cannot get a building permit for the second lot without Planning Board approval for the subdivision. No extension means no second lot. The process would have to begin again with a new application for a two-lot subdivision. Chairman Best said the site is a "disaster" and a "mess". However people living nearby would be better off if Michael Maggio is in compliance rather than walking away from the property. He supports the continuance. Tim Thompson

said the road to the emergency access road would be completed according to the design that is part of the administrative approval. There are sufficient funds in the performance bond to complete the work and for a two-year maintenance bond. Chairman Best said that the Planning Board had mandated that the destruction to the neighbor's yard must be fixed at their meeting in July 2014. Lynn Christensen said a continuance would encourage Michael Maggio to do what is right. Tom Koenig added that, although the neighbors are frustrated, he would rather see the project finished than see Michael Maggio walk away from it. Chairman Best noted that the barrels blocking the south end of the road are pushed to the side whenever someone feels like using the road. He has kept almost none of his promises.

The Board voted 6-1-0 to continue this item to May 19, 2015, in the Matthew Thornton Meeting Room, at 7:30 p.m., on a motion made by Lynn Christensen and seconded by Tom Koenig. Alastair Millns voted in the negative.

- 4. 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, and March 17, 2015, Planning Board meetings.***

Tim Thompson said that CLD peer review comments were received only today. Now Meridian Land Services can make plan revisions and work with the Public Works Department (PWD). Ken Clinton, President, Meridian Land Services, Inc., said that CLD made very few substantial comments.

Ken Clinton said that, at the intersection from Old Blood Road to the subdivision, there is a sewer line with 20' access at Lot 42 with a storm water basin on the side slope. The plan was revised to create the four-way intersection that PWD recommended. 1:1 slopes were proposed at the wetland crossings to manage impact and fit the road improvements. There is a 35' easement with an abutter to the north. The unused Class 6 portion of the right-of-way on Old Blood Road places constraints on the use of Madeline Bennett Road and Merrymeeting Drive. A sewer can be placed there because of gravity flow. Since the storm water basin is no longer needed, a four-way intersection can be created and Lot 42 can be reconfigured. Deputy Public Works Director/Town Engineer Kyle Fox does not support 1:1 slopes because PWD cannot effectively maintain them. The compromise is to have 2:1 slopes and a limited 2'-high retaining wall opposite Station 33 plus 00. The impact is a wider footprint. The wall would be built with rectangular blast rocks from the site.

One drawback is eliminating the 3' grass strip and sidewalk in that section because of grading constraints. PWD supports a sidewalk waiver. CLD suggests erecting signs warning that there is no sidewalk in that section. Ken Clinton tried to install a sidewalk, as the Planning Board prefers. There will be a sidewalk on the frontage of every one of the 72 lots, wrapping around the internal loop, and extending to the school entrance. Only one part of Old Blood Road, the spur that was granted a waiver in 2014 and this section will not have a sidewalk. There are no other options.

A sidewalk can be installed on part of the spur to the 2:1 slopes, as Chairman Best suggested, but it makes no sense because there is no connection to Old Blood Road. Chairman Best also suggested making a turnoff to walk out where there is no sidewalk. Ken Clinton said that, because there would be no signs, the default speed limit by State law would be 30 mph.



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MERRIMACK PLANNING BOARD

Agenda for Tuesday, May 19, 2015

Matthew Thornton Meeting Room, West Wing, Second Floor

7:30 P.M.

1. Call to Order.
2. Planning & Zoning Administrator's Report.
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.*
4. **Recommendation to call the Performance Bond for Valleyview Revocable Trust (emergency access way).**
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.*
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.
7. **Discussion/possible action regarding other items of concern.**
 - Preliminary discussion of soils information for potential ordinance amendments (as requested by Pete Gagnon)
8. **Approval of Minutes – May 5, 2015.**
9. **Adjourn.**

Copies of application materials are available at the Community Development Department office in the Merrimack Town Hall for review by the general public between the hours of 8:30 A.M. and 4:30 P.M., Monday through Friday.

The Matthew Thornton Room (Former Courtroom) at Town Hall is accessible to the disabled. Persons requiring special arrangements are encouraged to call 424-3531 at least 48 hours in advance. It is the policy of the Board not to take up any new business after 10:30 P.M. and to adjourn by 11:00 P.M.

(Posted: May 8, 2015)



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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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MERRIMACK PLANNING BOARD

Agenda for Tuesday, June 16, 2015

Matthew Thornton Meeting Room, West Wing, Second Floor

7:30 P.M.

1. Call to Order.
2. Planning & Zoning Administrator's Report.
3. Recommendation to call the Performance Bond for Valleyview Revocable Trust (emergency access way/roadway improvements)
4. 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 and May 19, 2015 Planning Board meetings.*
5. Mario Fortin and Nitrof Investments, LLC. (applicant/owner) – Review for acceptance and consideration of Final Approval of a waiver of full site plan review to construct an 18'x 60' storage shed addition to the existing 5,432 s.f. building. The parcel is located at 82 D.W. Highway in the I-1(Industrial) and Aquifer Conservation Districts. Tax Map 2D, Lot 040.
6. 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. Tax Map 4B, Lot 153.
7. 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.
8. Discussion/possible action regarding other items of concern.
 - Potential establishment of a Performance Bond for Tomasian Cluster Subdivision. (Tenative)
9. Approval of Minutes – June 2, 2015.
10. Adjourn.

Copies of application materials are available at the Community Development Department office in the Merrimack Town Hall for review by the general public between the hours of 8:30 A.M. and 4:30 P.M., Monday through Friday.

The Matthew Thornton Room (Former Courtroom) at Town Hall is accessible to the disabled. Persons requiring special arrangements are encouraged to call 424-3531 at least 48 hours in advance. It is the policy of the Board not to take up any new business after 10:30 P.M. and to adjourn by 11:00 P.M.

(Posted: June 5, 2015)



Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

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Town Hall - Lower level - East Wing

www.merrimacknh.gov

Planning - Zoning - Economic Development - Conservation

June 17, 2015

Valleyview Revocable Trust, c/o Carol Maggio, Trustee
66 Gilcreast Road
Londonderry, NH 03053

Re: **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.

Dear Ms. Maggio:

The Planning Board, at its meeting on June 17, 2015, voted 7-0-0 to call the performance surety related to the administrative approval for improvements associated with development of 4 lots of record in August 2012 (which were then made part of the approval for the approval for the above referenced project in 2014) and then **voted 7-0-0 to deny the request to reinstate and extend conditional final approval for the proposed two lot subdivision originally approved on July 23, 2013 by the Planning Board, due to the inability of the applicant to complete the required improvements (despite multiple extensions granted by the Board) and the calling of the performance surety.**

Please be advised that any party to the action or proceedings, or any party directly affected thereby, may appeal the Board's decision within 30 days, in accordance with RSA 677:15.

If you have any questions, please feel free to call me at 424-3531.

Sincerely,

Donna Pohli,
Assistant Planner, Community Development

cc: Correspondence
Planning Board File

ec: Valleyview Revocable Trust, c/o Carol Maggio, Trustee
Michael Maggio, FHB Consulting
Patricia Panciocco, Baroff Professional Association
Steven Keach, Keach-Nordstrom Associates, Inc.
Kyle Fox, Deputy Director of Public Works/Town Engineer
Captain John Manuele, Fire Department
Carol Miner and Fred Kelley, Building Department
Ron Miner, Superintendent, Merrimack Village District

He stated Tim Thompson, Director, Community Development, has commented that in his past experience a courtesy notice to the Town of Litchfield might suffice as well as a formal finding of regional impact. Chairman Best stated his belief it is slightly less expensive for the department to manage the courtesy notification as opposed to the regional impact notification, which has procedural standards that have to be complied with.

Councilor Mahon noted Bedford is in the Southern New Hampshire planning district not the Nashua regional planning district. Member Millns agreed with providing a courtesy notification to the Town of Bedford. Member Disco stated his preference for formal notification to be provided to the NRPC and the Town of Litchfield and a courtesy notice to the Town of Bedford. Member Christensen questioned if formal notification is required to all of the NRPC communities. Chairman Best replied, if making a regional impact recommendation, formal notification is required to both the NRPC and the Town of Litchfield.

MOTION BY MEMBER CHRISTENSEN THAT THE FORTIN/NITROF SITE PLAN AND LAVOIE/KENNEDY SUBDIVISION ARE NOT OF REGIONAL IMPACT
MOTION SECONDED BY COUNCILOR MAHON
MOTION CARRIED
7-0-0

MOTION BY MEMBER DISCO THAT THE FLATLEY SITE PLAN IS OF REGIONAL IMPACT AND THAT THE LEGAL NOTIFICATIONS BE PROVIDED AS WELL AS A COURTESY NOTICE TO THE TOWN OF BEDFORD
MOTION SECONDED BY MEMBER SEBRING

MOTION CARRIED
7-0-0

3. Recommendation to call the Performance Bond for Valleyview Revocable Trust (emergency access way/roadway improvements)

Assistant Planner Pohli informed the Board the Performance Bond was for the improvements associated with the development of 4 lots of record handled administratively. The bond is now due.

Patricia Panciocco, Esq., Baroff Professional Association spoke of having been before the Board last month when additional time was granted. She stated significant progress has been made on the work required to complete the secured improvements. She spoke of the punch list provided by the Public Works Department, which identifies all remaining items that need to be completed up to and including final paving. Attorney Panciocco stated the items checked off have been completed, and it is likely others have been completed by this time. The remaining items are associated with the final paving. The intent had been for final paving to be completed on June 12th. Difficulties associated with the coordination of aspects such as the sweeping and weather conditions, did not allow that to occur.

The Applicant is currently awaiting notification from the paving company of the date paving will be done. Once that is known, all other aspects will be coordinated, and the punch list will be completed.

When asked Attorney Panciocco stated it was her client who checked the items off the list as they were completed. She stated her belief Kyle Fox, Deputy Director, Public Works Department, was at the site earlier in the day, and verified the items were completed. She commented Steven Keach, Keach-Nordstrom Associates, Inc. has worked on the project with her client from inception.

Chairman Best remarked the letter from Brox Industries (Brox) talks about rain that occurred for a couple of days over the past week or two. However, promises were made beginning last July, that this project would take about two weeks. He is of the opinion the items could have been completed prior to this time. Attorney Panciocco reiterated some of the items remaining cannot be done until a schedule is identified for paving. Chairman Best commented if we were in the December or January timeframe and the argument was it is too cold to pave, he would buy into that, but it is June, and paving activities have been going on for several months. Attorney Panciocco stated her understanding of that. She stated the problem they are now experiencing is too much demand and not enough pavers.

Chairman Best questioned if all remaining items would be addressed by Brox. Mr. Michael Maggio, FSB Consulting, stated the punch list was received on June 9, 2015. Since that time, all items marked with a check

mark have been completed. Deputy Director Fox was onsite earlier in the day to review the work, and reminded them to have the sweeper present on the day paving is done. Brox was all set to pave today, but they could not get out. That is the reason a letter was provided stating they were not able to get to the site today. They have stated they will more than likely have the work completed later this week. Items that are circled were supposed to be completed on Monday or Tuesday of this week. Weather prohibited that work from being completed.

Chairman Best questioned if Brox has been engaged and hired to complete all of the remaining items. Mr. Maggio responded Brox has been hired to do some of the work. Items such as road sweeping have to be done in conjunction with the paving schedule. With regard to the loaming and seeding of slopes, the slopes have all been loamed, but were not seeded because of the rain the previous day. He stated they would be seeded the following morning. With regard to repairing the swales on the side of the road, they have been repaired and need to be seeded and jute matting put down. Weather prohibited that from being completed the prior day.

Mr. Maggio spoke of the item to remove the field trailer and temporary power panel. He stated there was no temporary power. The power that was to it was removed, and the trailer was supposed to be removed the prior day, but was postponed because of rain. The statement was made that it would be removed the following morning. Brox will skim the low point in the road where new base pavement meets existing, shim the area gauged by the track excavator, and pave top. Mr. Maggio reiterated Brox sent a letter indicating the inability to get the work done because of rain. Shoulder gravel cannot be installed until after the final coat of pavement.

Member Millns commented on his recollection May 2015 was the driest month of May there has ever been in New Hampshire. He stated three weeks passed between the last meeting and June 9th when the punch list was provided, and questioned what work was completed in that timeframe. He remarked as the individual in charge of the project, Mr. Maggio should not need Deputy Director Fox to tell him what needs to be done; he is supposed to understand that. He spoke of a meeting in early August of last year when the Board was assured the job would be completed by Thanksgiving 2014.

When asked if Deputy Director Fox has provided comment, Assistant Planner Pohli stated she last spoke with Deputy Director Fox the prior day. Member Sebring questioned whether the Board could be afforded the opportunity to inspect the site, and if Deputy Director Fox could be present. Chairman Best replied the Board has the legal right to do so, and could invite Deputy Director Fox to participate. The Board, as a whole, could identify a Saturday to conduct a site walk or, if the matter were continued, individual Board members could utilize the opportunity to visit the site.

Attorney Panciocco stated she contacted Deputy Director Fox the prior Friday to try to schedule a time for him to visit the site either the prior day or earlier in this day so that he would be able to provide the Board an update on the status of the work. The response she received was that he does not do that. Chairman Best stated that to be correct; that is not done as a matter of course. However, the Friday before the Tuesday meeting on a process that has lasted for more than a year is, despite their best efforts, a bit of a last minute call. Attorney Panciocco stated she did not have any documentation prior to Friday, it only arrived earlier in the week, and she was trying to breach the gap for the Board. Chairman Best commented he is sympathetic to her role, but her client could walk the site and identify all of the items Deputy Director Fox identified.

Mr. Maggio stated they have been working on the project diligently. Member Millns stated objection to the use of the word diligently noting he has been to the site many times and found nobody working. Chairman Best stated his agreement diligently is a word that couldn't be more misused than to say it applies to this project.

Attorney Panciocco remarked we can't change the past, the Board does have security, and it is within the Board's power to call the bond or to let the project move towards fruition. She added she was not involved in the project early on; however, has followed through on what she committed to doing. The project has a long history. It had a rough start. There was a plan approved of a very old subdivision. There were a number of things encountered during the construction phase that had to be dealt with. There were a lot of site constraints, e.g., steep topography, ledge, an additional \$70,000 worth of underdrains that were added, etc. That is not an excuse. The project should not have gone on this long, but the past cannot be changed. Chairman Best remarked he understands all of the difficulties cited, however, the Merrimack Premium Outlets were built in less time than it has taken to get a 12' wide access road.

Attorney Panciocco stated she can tell the Board a lot of her clients are having trouble getting help because of the increase in demand. Chairman Best stated he does not disagree, but if someone had been on the phone with

Brox in January saying the first chance you get I need you to do this, they would have been first in line. He remarked he wants to give the benefit of the doubt as often as possible, Steve Keach has a good name and reputation and has bought the client a little bit of time, Brox Industries is a good company with a good reputation as well, but they are not going to be doing all of this work. Member Christensen noted only 3 of the remaining items would be addressed by Brox. Member Millns noted Brox has not yet provided a date for the work to be done. Attorney Panciocco stated that to be correct; Brox has not provided an exact date.

Chairman Best commented item #10 - repair swale on left side of the road, reseed to obtain stable growth, not only has nothing to do with paving, but should have been done at the first opportunity to control erosion. Item #11 - loam and seed all slope and ROW areas to achieve stable growth, is not on a waiting list for dry weather. Member Christensen stated Item #15 - locate (flag up) all proposed and found property markers on site should have been completed months ago. Attorney Panciocco stated those have been located. She has spoken with Mr. Keach about that herself, and learned his field crews have been very busy. They want to come out and do that, the as built, etc. all at once. That is not something her client has asked to be deferred, he has actually made several calls to have them come out. Member Christensen reiterated they are not done. Chairman Best spoke of being frustrated there was a list of 30 incomplete items on the 9th.

Member Falt commented clearly the pattern of the applicant has been to do as much work as possible just before the deadline. She stated the last time the Board discussed not calling the bond the feeling was it is better that they finish the work. The question now is if the Town would take on the remaining items on the list. Chairman Best stated his impression the pattern is, do a few things right before we have to show up before the Board.

Attorney Panciocco stated her opinion to have her client to get this done. She reiterated she knows he tried to schedule the paving. Member Millns commented the reason the Board had been promised the work would be completed by last Thanksgiving was because that is when the paving plants would be closed. The Board was assured the paving would be completed before Thanksgiving of last year. Chairman Best stated the client represented to the Board that it could be done faster than that, and a member of the Board suggested allowing 45 days rather than 30. Then we ended up all the way out to Thanksgiving, which was probably closer to 60 days.

Attorney Panciocco reiterated there are no excuses, and remarked "I guess it is pick your poison now; let him do it or call the bond and have the Town do it." Chairman Best stated if Deputy Director Fox is put in charge of it, it will get done. That is the one thing he knows for sure.

Member Millns stated concern if the project continues to be pushed out the Board would be sending a signal to any and every contractor that we don't hold people's feet to the fire.

Attorney Panciocco questioned the timing requested when the work was first approved. Chairman Best stated his recollection it was administratively approved in 2012 and a promise was made that it would be completed within a few weeks. It lingered into becoming involved in a second project, which is the two-lot subdivision that is Item #4 on the agenda.

Member Millns questioned what Attorney Panciocco, on behalf of her client, wished the Board to do. Attorney Panciocco stated understanding of the Board's frustration, and that of the residents in the area. She stated the only thing she could request of the Board was to give her client until the Board's July meeting to complete the items. She stated that to be the only option before her unless the Board wished to call the bond. She stated her belief the work would be completed faster if left in her client's hands.

Member Disco stated the Board's experience shows otherwise. At this point, there have been so many extensions, he is of the opinion the Board should call the bond and utilize the funds to get the work completed. He noted instances such as this are the reason a bond is required. Member Sebring questioned if the Board would hear from abutters. Chairman Best remarked he is unsure if the Board conducts a Public Hearing with respect to calling a bond. However, did not object to allowing the public to address the Board.

Councilor Mahon suggested it may be that Mr. Maggio would be able to get the paving done quicker than the Town could. He believed that typically the Town would try to fold such a project into the planned paving for the season due to economies of scale, etc. It is likely the Town has already gone out to bid for its paving projects. It was agreed the items not associated with paving could be completed in a timely fashion. Chairman Best commented the road to be paved is an emergency access road, which hopefully will not be driven on. He does

not believe a delay in paving would impact abutters. He also commented on the quality of work that would be expected if it were overseen by Deputy Director Fox, and stated his complete confidence in that.

Member Millns noted the letter from Brox speaks of "past rain events" and goes on to reference rain on Monday and Tuesday of this week.

Attorney Panciocco stated there were a few intermittent downpours, and when there is a down pour on a job site that is waiting to be paved, it often times disturbs the underlying gravels requiring them to be rehabilitated and dried out before work can resume. Chairman Best remarked if that occurs to Brox on another site then coming to this site is a perfect solution for them since this one has already got its base coat down. He stated the bigger concern for him is hearing from her client that today's rain kept Brox from completing the work today, but the letter provided was written yesterday.

Attorney Panciocco stated a willingness to contact Brox personally, put them on the spot, and get back to Director Thompson with clearer information. Member Sebring stated agreement with comments made regarding the quality of work that would result if overseen by Director Fox. Attorney Panciocco stated Deputy Director Fox is onsite when the paving is performed. Chairman Best commented the last time paving was done it had to be torn out because it was done when it was too cold. Member Christensen remarked if in the Applicant has been in contact with Brox and is in line to have the work performed, she agrees having Brox do the work would get it completed faster. She suggested the possibility of extending the deadline until the Board's next meeting with the understanding, if the work is not complete by that time, there would be no further discussion. Councilor Mahon questioned if the completion date had to be tied to a meeting date. Chairman Best stated he has seen other Boards approve items contingent upon completion by a date certain. In the absence of completion, the approval lapsed. He stated uncertainty the Board has the authority to conditionally call a bond. Member Disco stated a meeting date could be called if necessary.

Public Comment

Dave Hammond, 18 Valleyview Drive

Stated 100% of the work being done currently is on the house being built across the street rather than the roadway. A few days in advance of this meeting is when work on the road began.

He stated if a delay in the paving were to result from the Board calling the bond, it would have zero impact on him personally. He commented the delay has been over a year already. The base coat is down, and waiting a few more months would have no impact to him. He stated his support of calling the bond, and his belief doing so would ensure the road work was done correctly. It would also eliminate the need for him to be present at another meeting two weeks from now just to hear again the same excuses that have been heard for the past two years.

Shauna Amick, 11 Valleyview Drive

Stated appreciation of the conversation noting she has been discouraged by the project. She spoke of the comment made regarding the message that would be sent to other contractors should the Board not call the bond, and stated it would be a message to residents as well. She stated she has been heartbroken over having moved here as she has felt like the Planning Board is sending a very clear message to the residents of Valleyview that they are of no value, and that an out-of-state businessman has more value in Merrimack than the actual residents do.

When asked for her recommendation on the decision of whether or not to call the bond, she stated it is a difficult decision. She agreed with making the next meeting and requiring the work to be completed prior to the meeting. She remarked on the one hand she feels the Board would be putting off the inevitable by providing additional time. On the other, it may take more time if the Town were to take over supervision of the work. She stated her agreement with her neighbors it doesn't matter to them whether it is paved next week or in August or September. If anything, not having Mr. Maggio's crew working on the house will keep the contractors from driving on the new grass that has been planted.

She spoke of having come before the Board at a previous meeting and requested people stop using the access road as a Town Road. Whatever action the Board took at that time worked for a while as the crew stopped using

the road. Unfortunately, that use has started again. They remove the orange cones and leave them off to the side. Tire tracks can be seen on the new grass that has been planted.

Chairman Best clarified the house that is under construction isn't affected by what the Board is considering. Mr. Maggio wishes to subdivide the lot the house is on to allow yet another house. That issue is Item #4 on the Board's agenda. Ms. Amick questioned what could be done to prohibit use of the access road. Member Sebring questioned, beyond keeping the street from being used for general access, are there any activities she would like to see done early; particularly given the likelihood of a longer period of time being required should the Town take over responsibility for the remainder of the items on the punch list. Ms. Amick stated a desire to see the street swept. Living on a hill it becomes a safety issue.

Member Christensen spoke of her recollection of the discussion around the use of the road. The fact that behavior stopped for a while and started back up again shows a disregard for requirements put in place. She suggested if the Board were to call the bond and had to wait for paving, the Town would have total control and could block that road off and stop that access. She stated her support of calling the bond.

When discussing the matter a month or two ago Mr. Maggio stated he would get control of the contractors and sent the Board an email the following day with a photo of barrels blocking the road. Chairman Best noted the barrels have been removed and cars are traveling down the road.

Attorney Panciocco questioned what is supposed to block that road long term, e.g., gated. Chairman Best stated it would not be gated per the administrative approval.

Attorney Panciocco stated her desire for the Board to provide an additional two weeks, and stated, if the work is not completed by that time, she would expect the bond to be called. Chairman Best stated his support of calling the bond commenting the Board has provided enough drop dead deadlines, and they don't mean anything to the applicant.

**MOTION BY MEMBER MILLNS TO CALL THE PERFORMANCE BOND FOR THE VALLEYVIEW REVOCABLE TRUST ON THE BASIS OF CONTINUOUS FAILURE TO MEET PROMISED DEADLINES, WHICH HAVE BEEN MADE SINCE AUGUST 2014 AND HAVE RESULTED IN THE BOARD'S LOSS OF CONFIDENCE IN THE JOB BEING COMPLETED TO ITS SATISFACTION IN A TIMELY FASHION
MOTION SECONDED BY MEMBER FALT**

**MOTION CARRIED
7-0-0**

4. 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 and May 19, 2015 Planning Board meetings.*

Assistant Planner Pohli stated based on the action the Board has taken with regard to calling the bond, Staff recommends the Board deny the associated request to reinstate and extend the approval for the two-lot subdivision.

Patricia Panciocco, Esq., Baroff Professional Association stated the bond is more than sufficient to cover the cost of the remaining work. She commented the purpose of requiring a bond is to avoid a situation occurring where taxpayer dollars have to be expended to complete road work, etc. associated with a project the Planning Board has to approve. With ample funds available, there is no risk to the taxpayers. Therefore, there is no basis to deny the two-lot subdivision. She noted the Board has conditioned approval on the work being completed. The road will be finished one way or another. The money is there and the Town is now placed in a precarious position.

To tie the two together is almost double security. There is excessive money put aside in cash to secure the work being done, there is no need to hold up the two-lot subdivision. There are no improvements required to approve

the additional lot. Attorney Panciocco suggested to hold up the additional lot and hold the money is like double bonding, and that is inconsistent with the reading of the Statute and unauthorized. Member Christensen stated she would be willing to consider the two-lot subdivision after the road is complete. Until that road is completed there is no frontage.

Attorney Panciocco stated there is frontage because you have the security. She reiterated there is double security; holding up a subdivision approval on a two-lot subdivision and holding a bond for the same improvements. She stated that is not authorized under State Statute 674:36 III.

Chairman Best stated the road is part of a different proposal and a different subdivision. Attorney Panciocco stated it is, and has nothing to do with the two-lot subdivision at all. Chairman Best stated the two-lot subdivision had conditions of approval placed on July 20, 2013 that were extended in 2014. As we sit here today, they are still not met.

Attorney Panciocco stated it should never have been a condition of that approval. She remarked she understands why the Board did that, but it is not authorized under the Statute; to hold up another approval because something is deficient on a separate application. She retracted by stating it was not a separate application as the four lots existed. She stated it to be the road building, and reiterated there is double security. She remarked she was not sure she was explaining that well enough, but the Board is holding the lot hostage.

Chairman Best stated he heard what she was explaining, but the Board disagrees. Attorney Panciocco suggested the Statute be read. Chairman Best stated the road is not related to the two-lot subdivision. The road is part of the administrative approval for the roadwork associated with the development of 4 lots of record, which just had its bond called. This two-lot subdivision had conditions of approval, which have not been met.

Attorney Panciocco stated it to have been an unauthorized condition to impose on a two-lot subdivision that the road be completed when the Town had full security for that. She reiterated there is the need to read State Statute. Chairman Best stated he has, and respectfully disagrees with the position. Attorney Panciocco stated that is exactly what case law says. She remarked she double checked it to make sure it didn't change. Chairman Best stated it is not a question of the law it is a question of the facts. The road is not a part of the two-lot subdivision. It is not a condition of approval for the two-lot subdivision. It is not linked to the two-lot subdivision. It is part of the administrative approval.

Attorney Panciocco questioned why the completion of the improvements on the administrative approval was made a condition of this. Chairman Best stated it was not. Attorney Panciocco stated she was told it was. Chairman Best remarked her client came before the Board and promised that he would connect the two and said he would get the first one done in order to get the two-lot approval. Attorney Panciocco responded so you called his bond and that is the consequence for not having that road completed, but the other two-lot subdivision is completely independent. It shouldn't be bootstrapped together. Chairman Best reiterated he heard the argument, he simply did not agree with it.

Attorney Panciocco restated that is what the law says. State Statute 674:36 III states "in lieu of". She stated her belief her client has the zoning relief that was required. This is basically putting a lot line on a plan that formerly had four lots on that side of the street in the old plan from 1973. There were four lots on that side of the road. They were merged somewhere. Her client got the zoning relief, and came in with a plan for two lots, which was approved once before.

Member Christensen questioned if there were conditions on the approval. Assistant Planner Pohli stated there were two different decision letters. One was dated July 9th for the two-lot subdivision, and identified the need for a compliance hearing before September 30th to verify the Applicant controls the contractor's use of the emergency access lane, the construction of the access lane and the addition of the water line, and to make sure the existing road is restored to its original condition or better per the Administrative Approval dated August 24th. There was also a note to be added to recording sheet that no construction vehicles associated with the Applicant can use the emergency access road unless doing work within the emergency access road, and all conditions of the approval dated July 25th. Within those conditions, #2 states the Applicant is responsible for recording the plan, including the LCHIP fee, and any related documents at the Hillsborough County Registry of Deeds, and that was never done. Attorney Panciocco stated she spoke with Keach's office about that, and from what she understands they never delivered the mylar.

Member Sebring questioned if the matter could be postponed for two weeks and the Board obtain a legal opinion on the matter. Chairman Best stated that could be decided as the course of action by a vote of the Board. He noted he would not vote in favor of such a motion. Member Disco remarked he was not involved in the original subdivision and is not clear on the issue. However, is willing to accept the Chairman's interpretation of the legal aspects being discussed.

Chairman Best stated if Mr. Maggio were to come in the next day with a new application for a subdivision that would be different than extending something that was approved virtually two years ago, and still doesn't have its conditions of approval met after extending deadlines as often as the Board has.

Member Millns questioned if he was correct in thinking when something has conditions of approval there is a time limit put to it. If the conditions are not met, the Board has the right to say conditions have not been met despite extensions, the application fails. If the Applicant wishes to put forth a new application that would be his privilege.

Attorney Panciocco stated she does not know what the original conditions were, and believes she heard there are a few different ones. She is unclear of a deadline associated with the conditions of approval. She stated quite frankly those things are all very important. There is a lot at stake for her client. She commented she knows he has made some mistakes, but she would ask the Board to again renew and allow him two weeks. She spoke of Director Thompson not being present and someone she believed has been involved in the whole process. She questioned if Assistant Planner Pohli was on board at the beginning. Assistant Planner Pohli stated she was present for the original reinstatement extension. Attorney Panciocco questioned what the conditions were.

Assistant Planner Pohli stated on July 25, 2013 the matter was before the Board for review for acceptance and consideration of final approval of an application proposing to subdivide one lot into two single-family residential lots. The Planning Board voted 5-0-0 to accept the jurisdiction of the application, 5-0-0 to grant the waiver of sidewalks, and 3-2 to grant the final conditional approval of the project subject to the following conditions to be fulfilled within 6 months and prior to the signing of the plan:

1. Final plans and mylars to be signed by all property owners. The Licensed Land Surveyor shall also sign and seal final plans and mylars;
2. The applicant is responsible for recording the plan (including \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) and any related documents at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
3. Any waivers granted shall be listed and described on the recordable sheet of the Final Plan set;
4. Copy of State Subdivision approval to be submitted to the Community Development Department. General Note #18, Sheet 1 of 2 to be revised to include the Approval Number and expiration date;
5. Satisfactorily address any forthcoming comments to be received from the Fire, Public Works and Building Departments;
6. Address planning staff technical comments.

There were 7 technical comments, which were crossed off as having been done. Assistant Planner Pohli remarked it appears as though the remaining condition was the recording of the plan. Also mylars were not received.

The Applicant came back before the Board on July 8, 2014. The decision letter dated July 9, 2014 states: "The Board voted 5-1-0 to reinstate and extend final approval to September 30, 2014, with the additional condition that a compliance hearing occurs before September 30, 2014, to verify that the applicant controls its contractors' use of the emergency access lane, the construction of the access lane, and the addition of the water line, and to make sure the existing road is restored to its original condition or better per the Administrative Approval dated August 24, 2012."

Attorney Panciocco stated that kind of mixed the road in with it. She questioned the associated deadline. Assistant Planner Pohli reiterated the vote was to reinstate and extend conditional approval to September 30, 2014. Attorney Panciocco asked for clarification that the conditions from July 2014 were not met either. Assistant Planner Pohli stated that to be correct. Attorney Panciocco questioned if that was the most recent decision, and was informed it was.

Attorney Panciocco stated she was unaware this was on the agenda, and they had not asked for it to be placed on the agenda. Member Millns noted, at its last meeting, the Board stated it would be on this agenda. Chairman Best commented the approval the Board is considering reinstating expired in November of 2014. It is 8 months expired after being extended for a year.

Attorney Panciocco questioned if it was on the agenda as a new item, and was informed it is a request from her client to reinstate prior approval and provide an additional 6 month extension. Attorney Panciocco questioned what the 6 months was needed to accomplish on the two-lot subdivision. Chairman Best reiterated the request was from her client. He added every piece of the process hinges on her client's promises and credibility, and after all that has transpired, he doesn't have any credibility.

Attorney Panciocco stated she understands, and reiterated she would like the opportunity to assist him. Member Christensen stated there is an opportunity to bring it forward as a new application. Member Millns remarked there would be nothing at stake. Attorney Panciocco stated there is nothing at stake, her client could come back with it now and doesn't have to worry about building the road.

**MOTION BY MEMBER MILLNS TO DENY THE REQUEST TO REINSTATE AND EXTEND CONDITIONAL APPROVAL FOR THE PROPOSED TWO-LOT SUBDIVISION
MOTION SECONDED BY MEMBER CHRISTENSEN**

ON THE QUESTION

Member Millns stated if the Applicant wishes to come back before the Board in the future to discuss this project the Board would entertain a new application.

Chairman Best opened the floor for public comment at 8:52 p.m.

Public Comment

Dave Hammond, 18 Valleyview Drive

Spoke of having come before the Board last month, and expressed his frustration with how things have progressed with the request to subdivide the lot. He stated he and his wife feel as though, whether denying this application or approving a new application, approving splitting that lot would reward the Applicant for behavior that is unacceptable. It would indicate to the residents of Valleyview that their best interests may not be at the forefront of the minds of the Planning Board members. He stated their recommendation would be to deny the request. He stated, if a new application is brought forward, he will again request the Board deny it.

Chairman Best declared the public hearing closed at 8:54 p.m.

**MOTION CARRIED
7-0-0**

- 5. Mario Fortin and Nitro Investments, LLC. (applicant/owner)** – Review for acceptance and consideration of Final Approval of a waiver of full site plan review to construct an 18' x 60' storage shed addition to the existing 5,432 s.f. building. The parcel is located at 82 D.W. Highway in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 2D, Lot 040.

Mr. Mario Fortin, 82 D.W. Highway, stated the parcel includes an existing slab (20' x 60'). He would like to enclose it, and use it as a storage shed. He spoke of having marked up a previously approved plan from 1987, which he would like the Board to consider.

When asked, he stated he owns a drywall company, and intends on storing leftover materials from job sites. At present, materials are left on the open slab and are visible to passersby. Chairman Best commented the structure is more of an addition than a shed because it will touch the building. He questioned if it would be sided to resemble the existing building. Mr. Fortin stated his intent to redo the entire building with an exterior insulation and finishing system (EIFS), which is similar to Styrofoam stucco.

1 **MERRIMACK PLANNING BOARD**
2 **DRAFT MINUTES**
3 **TUESDAY, JULY 7, 2015**

4 Planning Board members present: Robert Best, Alastair Millns, Tom Mahon, Desirea
5 Falt, and Alternates Nelson Disco and Jeff Sebring.

6 Planning Board members absent: Michael Redding and Lynn Christensen.

7 Staff present: Community Development Director Tim Thompson, Assistant Planner
8 Donna Pohli and Recording Secretary Zina Jordan.

9 **1. Call to Order**

10 Robert Best called the meeting to order at 7:32 p.m. and designated Nelson Disco and
11 Jeff Sebring to sit for Michael Redding and the vacant full member position,
12 respectively.

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

14 Tim Thompson announced that, as of August 4, 2015, Planning Board meetings will
15 begin at 7:00 p.m.

16 Tim Thompson informed the Board that the Merrimack Hotel site was sold to a group
17 that is looking at different options. He suggested that they implement some economic
18 revitalization according to the Master Plan. He urged the Planning Board to push the
19 project and Shaw's up the priority list for some kind of overlay district with a Conditional
20 UsePermit/flexible zoning. The Planning Board agreed. Tim Thompson will hold
21 workshops and produce zoning amendments.

22 Tim Thompson announced that, on July 16, 2015, a Town Council public hearing will be
23 held concerning alternate treatment centers for medical marijuana, following which the
24 Planning Board will make a recommendation to Town Council in August. The language
25 is similar to that in Dover, Concord and Laconia. There will be a conditional use permit
26 process in addition to site plan review for extra scrutiny.

27 Donna Pohli will leave Merrimack at the end of the week to accept a position as
28 Assistant City Planner in Dover. Tim Thompson expressed his gratitude for her service
29 for over two years, describing her as an asset to the community and offering his
30 congratulations. Donna Pohli thanked the Planning Board for its assistance. Chairman
31 Best agreed that she deserves the opportunity. She did a great job and the Planning
32 Board wishes her the best.

33 Tim Thompson referred to a June 30, 2015 memo from Attorney Patricia Panciocco,
34 Baroff Professional Association, listing her reasons for disagreeing with the Board's
35 decision not to reinstate its earlier approval of the Valleyview Drive two-lot subdivision
36 and asking for a rehearing at this meeting. She is contemplating a legal appeal. Legal
37 Counsel advises that the Planning Board may either reconsider its June 16, 2015 denial
38 to reinstate the conditional final approval or it could consider the new application filed by
39 the applicant at its July 21, 2015, meeting. Tim Thompson explained that the Planning

40 Board based its June 16, 2015 decision on erroneous information. The conditions of
41 approval for the subdivision were not related to the administrative approval for the
42 improvements to the emergency access road. All conditions of approval were met
43 before the November 11, 2014 expiration of the plan. Chairman Best agreed that he
44 incorrectly stated the status of the conditions.

45 **The Board voted 6-0-0 to reconsider the Planning Board's June 16, 2015, denial of**
46 **the request to reinstate conditional final approval to the Valleyview Drive two-lot**
47 **subdivision on July 21, 2015, in the Matthew Thornton Meeting Room, at 7:30**
48 **p.m., on a motion made by Nelson Disco and seconded by Desirea Falt.**

49 Tim Thompson agreed to Alastair Millns' request that the Board receive the full history
50 of the item.

51 Although this was not a public hearing, the Planning Board allowed Attorney Panciocco
52 to present her case. She stated that she has a tremendous problem: she can either
53 take the risk that the Planning Board will approve the two-lot subdivision on July 21,
54 2015, or make an appeal in Superior Court. She is not sure what to do.

55 The applicant asked for only one waiver, for the sidewalk, that was routinely granted
56 whenever the Planning Board considered the subdivision. Since the site plan meets
57 regulations, the Planning Board must approve it.

58 There have been three public notices. Any comments have been addressed. Adequate
59 notice has been met, although the applicant will take the risk of another public notice.

60 The applicant is asking to create two lots, whereas there were six in 1966. The biggest
61 problem is testimony about the emergency road and traffic. This plan received
62 administrative approval on August 24, 2012, with no abutter or public notice. All Town
63 departments have commented and the improvements were bonded.

64 The biggest complaint is the connection of the north and south ends of Valleyview
65 Drive. The Fire Department will not allow a gate. The abutters were not notified of the
66 emergency road connection. Attorney Panciocco is not convinced that additional notice
67 is required.

68 In 2007 the District Court said all land use boards can reverse themselves within the 30-
69 day appeal period before a case goes to court so the Planning Board can explain its
70 decision.

71 The emergency road issue is still not resolved because the authority to limit traffic there
72 was questioned by staff and the Planning Board and must go to Town Council, but that
73 is unrelated to the two-lot subdivision.

74 Attorney Panciocco asked the Planning Board to reverse its decision at this meeting.

75 Tim Thompson stated that Legal Counsel specifically recommends that the Planning
76 Board not consider the 2012 administrative approval. The decision to reinstate the
77 former approval and vote on the waiver must have public notice, but there was none for
78 tonight's decision to reconsider.

79 Attorney Panciocco said that notices went out to all interested parties for the June 16,
80 2015, meeting, when the Planning Board decided not to reinstate the project. The
81 Planning Board heard abutter testimony. The Board should reconsider tonight. No
82 notice harms only the applicant, who is willing to assume the risk.

83 Chairman Best said government works when there is notice and transparency. It was
84 an error to say that separate conditions of approval were not met; that is why the Board
85 agreed to reconsider. It did not say it was punishing bad behavior. The neighbors did
86 not know the Board would discuss the issue again tonight. Desirea Falt said there must
87 be public notice because the issue was closed on June 16, 2015. Alastair Millns said
88 that whenever consideration is deferred, the place, time and date must be made clear
89 with public notice, but the Board did not do that. Open government gives the abutters
90 the right to discuss the issue again. No notice is a danger for the Board. Citizens have
91 the right to notification. Chairman Best preferred to err on the side of transparency.
92 Nelson Disco agreed that, since the matter is not on tonight's agenda, it should not be
93 decided at this meeting.

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

99 Donna Pohli said the applicant has returned with a revised floor plan after hearing the
100 Planning Boards' suggestions on June 2, 2015. He did not, however, make any
101 modifications to the submitted site plan.

102 Madi Choueiri, 480 D.W. Highway, said the seating area on the terrace area is on the
103 floor plan. Mr. Joseph said the senior center has no problem with Madi Choueiri using
104 its parking lot. The church deacon does not either, but cannot write a letter to that effect
105 because his staff is at a meeting tonight. He has promised to write one.

106 Chairman Best said what is needed is more formal than a letter, namely a permanent
107 parking cross-easement document that is recorded at the Registry of Deeds. Madi
108 Choueiri did not discuss such a document with either party. He said there is plenty of
109 parking on the side street coming out of the Library and there are no cars in the
110 neighborhood from 5:00-6:00 p.m. Chairman Best does not want to authorize parking
111 on Church Street or at the Library unless such a document gives a permanent right to
112 us the lot(s). The plan does not define the curb between the parking lot and Church
113 Street.

114 Madi Choueiri said he showed a line for cars to park on the plan. There is a 20'
115 entrance. There will be 40 seats. Chairman Best noted 59 seats on the plan: 12
116 outside and 47 inside. Madi Choueiri said that includes extra seats on the terrace.
117 Chairman Best explained that they must be counted on the submission. The Planning
118 Board must determine the number of parking spaces based on the number of seats and
119 employees. There are 17 parking spaces on the property. Madi Choueiri counted two



Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD

Agenda for Tuesday, July 21, 2015

Matthew Thornton Meeting Room, West Wing, Second Floor

7:30 P.M.

1. **Call to Order.**
2. **Planning & Zoning Administrator's Report.**
3. **Button Homes, LLC. (applicant) and Donna Kazmirchuk (owner)** – Request to amend previously granted conditional approval from the April 7, 2015 Planning Board for a minor subdivision of one lot into two single-family residential lots located at 71 Bedford Road in the R (Residential) and Aquifer Conservation Districts. Tax Map 6D, Lot 090. *This item is continued from the June 2, 2015 Planning Board meeting.*
4. **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, 2015 Planning Board meeting.*
5. **Edgebrook Heights, LLC. Wigston Properties, LLC and Q. Peter Nash 1987 Rev. Trust I (co-applicants/co-owners)** – Review for consideration of a six month extension of a previously approved Conditional Use Permit to permit a future mixed-use development consisting of retail, office, multi-family residential and assisted living. Parcels are located at # 1, 37, 39, 55 and an unnumbered parcel, D.W. Highway in the I-1 (Industrial), Aquifer Conservation and Flood Hazard Conservation Districts. Tax Map 1E, Lots 004-01 & 004-02 and Tax Map 2E, Lots 006-02, 007 & 008.
6. **Keach-Nordstrom Associates, Inc. (applicant) and Valleyview Revocable Trust, Carol Maggio, Trustee (owner)** – Reconsideration of the Planning Board's June 16, 2015 decision to deny applicant's request to reinstate 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.
7. **Home Health & Hospice Care (applicant/owner)** – Review for Acceptance and consideration of Final Approval for a waiver of full site plan review for a proposed parking lot expansion for an existing two story office building. The parcel is located at 7 Executive Park Drive in the C-2 (General Commercial), Aquifer Conservation District and 100/500 year Flood Hazard Areas. Tax Map 4D, Lot 071.
8. **Discussion/possible action regarding other items of concern.**
9. **Approval of Minutes – July 7, 2015.**
10. **Adjourn.**

Copies of application materials are available at the Community Development Department office in the Merrimack Town Hall for review by the general public between the hours of 8:30 A.M. and 4:30 P.M., Monday through Friday.

The Matthew Thornton Room (Former Courtroom) at Town Hall is accessible to the disabled. Persons requiring special arrangements are encouraged to call 424-3531 at least 48 hours in advance. It is the policy of the Board not to take up any new business after 10:30 P.M. and to adjourn by 11:00 P.M.

(Posted: July 10, 2015)