



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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## **MEMORANDUM**

**Date:** September 29, 2015

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

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

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

**Background:** Since this application has been continued several times by the Board, the following background is re-written from the initial memo in June, with additional information added to describe what has happened with the application since the initial submittal in June.

The subject property is an approximately 4.41 acre lot located at 8 Fuller Mill Road in the R-1 (Residential) District. The property is abutted by the Horse Hill Nature Preserve to the east and residential lots to the north, west, and south. According to the project narrative, both lots will be serviced by onsite septic systems and private wells.

The applicant proposes to subdivide Lot 4B-153 into two residential lots (shown on the proposed plan as Lots 153 and 153-2). Proposed Lot 153 will be 124,383 square feet and proposed Lot 153-2 will be 67,721 square feet.

Because the parcel is located in the R-1 District by Zoning Map, the applicant required relief under the Zoning Ordinance to permit the subdivision. The applicant applied for both an Appeal of Administrative Decision (challenging the staff determination that the lots were required to meet the R-1 District standards) and variances to permit the subdivision. The ZBA denied the Appeal of Administrative Decision, but granted the variances. The variances allow Lot 153-2 to have less than the required lot size, frontage, and lot depth, & allow Lot 153 to have less than the required lot depth.

There is currently a barn and a shed on proposed lot 153-2 that are marked to be razed. However, there are also storage containers on the proposed lot line that will need to be addressed as these existing structures do not meet the R-1 lot and yard regulation setbacks and sit on the property line.

Tax Map 4B, Lot 153 was previously subdivided in 1997 (prior to the adoption of the R-1 District by Zoning Map, so it was a conforming subdivision at the time). This prior subdivision of Lot 153 resulted in the creation of Lot 153-1 located at 2 Fuller Mill Road as shown on the proposed plan (not part of this application).

**Completeness:** **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 the Board to make an informed decision.

**Waivers:** Although none have been requested, staff recommends a sidewalk waiver per Section 4.06.1(r) of the Subdivision and Site Plan Regulations, or a determination under Section 4.07 that it is not necessary (As a Minor Subdivision, the Board has the option of determining that a waiver is not required).

**Staff recommends that the Board vote with respect to any requested waivers utilizing the criteria from RSA 674:36:**

- Strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations; **or**
- Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

**Recommendation:**

Based on the information available to date, **the planning staff recommends that the Board grant conditional final approval to the application with the following precedent conditions to be fulfilled within 6 months and prior to plan signing, unless otherwise specified:**

1. Final plans and mylars to be signed by all property owners. The appropriate professional endorsements and signatures shall also be added to the final plans and mylars;
2. The applicant shall note all waivers granted by the Board on the plan (including Section, and date granted) as applicable;
3. The applicant shall obtain NHDES Subdivision Approval, note the permit approval on the plans, and provide a copy to Community Development;
4. The applicant shall update Note #14, referencing the variances granted by the ZBA, indicating the specific variances granted:
  - a. Variance under Section 3.02 to allow Lot 153-2 with less than the required 100,000 square feet of lot area;
  - b. Variance under Section 3.02 to allow Lot 153-2 with less than the required 250 feet of frontage;
  - c. Variance under Section 3.02 to allow Lot 153-2 with less than the required 300 feet of lot depth;
  - d. Variance under Section 3.02 to allow Lot 153 with less than the required 300 feet of lot depth;
5. The applicant shall provide draft copies of any applicable legal documents for review, at the applicant's expense, by the Town's Legal Counsel;
6. The applicant shall address any forthcoming comments from the Fire Department, as applicable;
7. The applicant shall address any forthcoming comments from the Conservation Commission as applicable;
8. Address the following Planning Staff Technical Comments:

- a. Staff recommends that a recordable sheet be prepared without topography for recording at HCRD, as typically plans with topography are not considered “recordable” at the registry (additionally, there are several locations on the plan where text intersects with linework, which is also unacceptable at the Registry). This sheet must contain all required notes and signatures;
- b. Please add the 40’ wetland setback per the requirements of the Zoning Ordinance (the 25’ buffer is shown, but the setback is missing);
- c. Applicant to add a note to the plan indicating that the plan is to be recorded at HCRD and that a copy is on file with the Community Development Department;
- d. Applicant to indicate that the storage containers between lots 4B/153-2 and 4B/153 are to be razed (also, what is to happen with the concrete slab?) or, the applicant shall obtain an agreement or easement for them to remain (additionally, it appears the word “razed” is missing where the barn is located. Plan currently reads “Barn to be”);
- e. Applicant to add owners address to the title block of the plan;
- f. Applicant shall correct note # 8 (the proper title is Zoning Board of Adjustment, not Adjustments);
- g. Applicant to clearly indicate existing lot lines versus proposed lot lines on plan and in legend;
- h. Applicant to revise note # 12 to update the reference to the Town Code (Chapter 167 is the current Stormwater Management Ordinance number).

**Staff also recommends that the following general and subsequent conditions be placed on the approval:**

1. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
2. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
3. Applicant to obtain right-of-way permits from the Public Works Department for all new driveways.

Cc: File  
Correspondence

Ec: Robert Lavoie, Applicant  
Gregg R. Kennedy, Owner  
Kenneth C. Clinton, Land Surveyor  
Carol Miner and Fred Kelley, Building Department  
Kyle Fox, Deputy Director of Public Works/Town Engineer  
John Manuele, Captain, Merrimack Fire Department  
Loren Martin, Assessing Department