



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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MEMORANDUM

Date: January 11, 2016

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

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

Subject: **The Monahan Companies (applicant) and Merrimack Premium Outlets, LLC. (owner)** – Conceptual discussion of a Mixed Use Development Conditional Use Permit (CUP) on a lot in the I-2 District. The parcel is located at 10 Premium Outlets Boulevard in the I-2 (Industrial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 3C, Lot 191-02.

Background: The subject parcel, Tax Map 3C, Lot 191-02, is approximately 20 acres in size and is located at 10 Premium Outlets Drive (at the corner of Industrial Drive and Continental Blvd) in the I-2 (Industrial) and Aquifer Conservation Districts and Wellhead Protection Area. The site is the vacant “pad site” to the Merrimack Premium Outlets (MPO), which was conceptually envisioned (prior to MPO’s construction) to contain a hotel and restaurants. The site has access to water from Merrimack Village District and municipal sewer. It is abutted by the MPO development northeast, residential uses to the north, Fidelity Investments to the south, and commercial/industrial development (including Dunkin Donuts and Atrium Medical) to the west.

The applicant is seeking to develop the property as a mixed use project under the provisions of Section 2.02.4(D) of the Zoning Ordinance. Variances from 3 portions of the Ordinance were granted by the Zoning Board on November 18, 2015. These variances permit the applicant to pursue the Mixed Use Development Conditional Use Permit (CUP) where the parcel is in the I-2 District (whereas Mixed Use CUP’s are only permitted under the ordinance in the I-1 District), containing approximately 20 acres (whereas a minimum of 50 acres is required), and the parcel location (whereas the ordinance requires 500 feet of continuous frontage on the State-maintained portion of DW Highway). The Zoning Board granted all 3 variances with the condition that the applicant receive the appropriate CUP and site plan approvals from the Planning Board, as typically required by the Ordinance (see attached minutes).

The applicant’s conceptual proposal, according to their narrative description provided to the Zoning Board for their variance requests, “is a modern mixed-use concept where some of the buildings include retail on the first floor and office or residential uses on the upper floors.” The proposed mixed use development would include a 120-room hotel, up to 100,000 SF of restaurants and supporting retail (proposed on the ground floor of the buildings), up to 180 bedrooms of multi-family residential units (number of units has not yet been specified) and 160,000 SF of office space. Parking would be provided both with surface parking within the development and in an 860-car parking structure. The proposed concept plan submitted for the Planning Board’s consideration indicates modifications to the mix of uses that was presented to the Zoning Board, but represents a reduction of overall square footage and parking as was proposed at the time of the variances.

Staff offers the following comments to facilitate the conceptual discussion with the applicant:

1. The following criteria (from 2.02.4(C)(5) of the Zoning Ordinance) will need to be satisfied in order for the Board (when the project returns for a public hearing) to grant a Conditional Use Permit:
 - a. The property in question is reasonably suited for the proposed use(s) and will not create undue hazard or excessive expenditure of public funds to insure that public health and safety are maintained throughout and following the development of the parcel;
 - b. The applicant shall demonstrate, to the satisfaction of the Board, that the development will generate a net positive fiscal impact for the Town. The Planning Board may require preparation and review of a fiscal impact assessment to demonstrate compliance with this requirement;
 - c. The proposed development shall include provisions, satisfactory to the Planning Board, to insure that current and future municipal service capacity for police, fire, public works, general government, recreation, and school services and facilities within the community will not be adversely affected by the development. The Planning Board may require preparation and review of a municipal service capacity impact assessment to demonstrate compliance with this requirement;
 - d. The proposed mixed use development shall not create an undue hazard or nuisance for vehicular or pedestrian traffic; shall include adequate provisions for safe and efficient traffic access, circulation and parking; and shall promote pedestrian and public transportation linkages within and between sites to the maximum practical extent. The Planning Board may require preparation and review of a traffic impact assessment to demonstrate compliance with this requirement;
 - e. Adequate and appropriate public infrastructure shall be provided to ensure the proper operation of the proposed mixed uses. The Planning Board may require that portions of the project be designed so as to complete any street or utility systems in the vicinity of the subject parcels consistent with projected town plans for such improvements;
 - f. The proposed development must comply with all applicable federal, state, and local environmental laws, including all appropriate sections of the Town's zoning ordinance and subdivision regulations;
 - g. Adequate buffers, satisfactory to the Planning Board, shall be provided along the development parcel's perimeter boundaries, and along proposed boundaries of parcels interior to the mixed use development. Buffers and landscaping shall reflect the need for appropriate separation and transitions between adjoining industrial, commercial and residential uses;
 - h. The proposed development plan shall provide for a continuity of open space throughout development. Open space and other recreational areas within the development shall be related to projected town plans for such improvements, and should not be limited to trails and paths, although these are desirable features of the design;
 - i. The proposed development must demonstrate compliance with the architectural design criteria contained in Section 12.04.3 of the Merrimack Subdivision Regulations pertaining to "Transitional Districts", provided that the Planning Board may permit the

Applicant to utilize Merrimack Subdivision Regulations Section 12.04.2 “Industrial Design District” criteria for exclusively industrial facilities within the development;

- j. The proposed development will not result in unreasonable impacts to adjoining properties or uses, by way of light, noise, pollution, visual blight, odor, vibration or other nuisance. The Planning Board may require preparation and review of such studies or assessments as it may deem necessary to demonstrate compliance with this requirement;
 - k. The proposed development addresses, to the satisfaction of the Planning Board, the general design criteria of Section 15.03.D.3 a) through g).
2. The applicant should discuss any deviations from the parking requirements and provide justification for any potential waiver requests that may be forthcoming as part of the formal application;
 3. The applicant should describe any proposed phasing of the project;
 4. The applicant and the Board should discuss the residential density of the project, and address compliance with the requirements of the Zoning Ordinance;
 5. The applicant should be prepared to discuss “planning issues” that were raised by abutters at the ZBA hearing (buffering existing residential neighborhoods, density, traffic, service vehicles, preliminary fiscal impacts, etc.);
 6. We recommend that the applicant begin discussions early in the process with the all local reviewing bodies (Conservation Commission, Town Departments, State Agencies, etc.);

cc: File
Correspondence
The Monahan Companies, Petitioner
Danielle DeVita, Merrimack Premium Outlets, LLC, Owner

ec: Gordon Leedy & Mark Verostick, VHB
Thomas J. Leonard, Welts, White & Fontaine, P.C.
Mark Doyle, Chief of Police
Michael Currier, Fire Chief
John Manuele, Fire Marshall
Kyle Fox, PE, Town Engineer/Deputy Public Works Director
Fred Kelley, Building Official
Carol Miner, Building Department
Tim Tenhave, Conservation Commission Chair

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 because there will be no wetlands impact, since the encroachment is not a request to “build within the wetlands”, but merely within the 40’ setback associated with them.
 - 2) The proposed use is a reasonable one based on the current assessment of the parcel and the fact that the proposed use is permitted. Every effort has been made to create a design that minimizes any wetland encroachment.

6. The Monahan Companies (petitioner) and Merrimack Premium Outlets, LLC. (owner) - Variances under Section 2.02.4(D) of the Zoning Ordinance to permit a mixed use development Conditional Use Permit (CUP) to be sought from the Planning Board on a lot in the I-2 District; Section 2.02.4(D)(1)(a) to permit a mixed use CUP to be sought from the Planning Board on a lot with less than 50 acres, and Section 2.02.4(D)(1)(d) to permit a mixed use CUP to be sought from the Planning Board on a lot without 500 feet of contiguous frontage on the State maintained portions of Daniel Webster Highway. The parcel is located on 10 Premium Outlets Boulevard in the I-2 (Industrial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 3C, Lot 191-02. Case # 2015-42.

Gordon Leedy, Managing Director Land Development, Vanasse Hangen Brustlin, Inc., said the approximately 20-acre lot was originally intended for a 200-room hotel along with three stand-alone restaurants. It is surrounded on three sides by other industrial uses. More than 8,000 employees work within ¼ mile of the property. Merrimack’s Master Plan calls for expanding mixed use to smaller lots in districts other than the I-1 District, however there has yet to be such zoning amendment. Except that it is not located on D.W. Highway, this parcel meets all the mixed-use criteria. This form of development is allowed except for the residential component and is the highest type of development from a tax base standpoint. The applicant is asking the Zoning Board of Adjustment (ZBA) to allow him to engage in a dialogue with the Planning Board, which has the authority to review the 10 Conditional Use Permit (CUP) criteria. The plan is still in the conceptual stage until a CUP is approved.

Patrick Dwyer did not want to grant a variance based on the conceptual plan presented only to discover that the applicant later built something else. Gordon Leedy said that Planning Board may want modifications, but the applicant intends to stick generally to this plan. A Conditional Use Permit (CUP) has 10 criteria. After it is granted, the Planning Board must approve a site plan and engineering details.

Attorney Thomas Leonard, Welts, White & Fontaine, clarified that the I-2 zone does not allow mixed-use development, although the I-1 zone does. The applicant is asking the ZBA to authorize mixed-use development and will go the Planning Board for a CUP once it has a variance.

Patrick Dwyer asked why the applicant did not appear before the Planning Board before the ZBA and what would happen if the ZBA denies the variance. Attorney Leonard said the applicant must first get approval to present a mixed use development in this zone to the Planning Board. It does not have the authority to approve it without the variance. Lynn Christensen explained that, if the applicant developed the plan without the residences, it would not have to appear before the ZBA. The residences make the project a mixed use. One of the goals of the Master Plan is for Merrimack to expand mixed use into other areas. If there were a zoning ordinance provision in place, appearing before the ZBA would not have been necessary.

Fran L'Heureux had a problem granting *carte blanche* for three variances: mixed use in the I-2 Industrial zone on a lot with less than 50 acres and without 500' of contiguous frontage on the State-maintained portions of D.W. Highway. Attorney Leonard explained that it would bring a live-work-play synergy and diverse housing that is not available in Merrimack, keep young people in Town, and support surrounding uses. He read the relevant ordinance.

Attorney Leonard read the statutory criteria into the record.

As to criterion #1, public interest, Fran L'Heureux asked what type of residence is not provided in Merrimack. Attorney Leonard said buildings with retail on the first floor and residences on the upper floors. Gordon Leedy added that the uses are not segregated. This would be a walkable environment, so residents would not need a car to get to work, shopping or entertainment. The market for this now is hot.

Public comment

Chris Ross, 401 & 403 D.W. Highway, supports the variance. The applicant did a great job developing the Merrimack Premium Outlets land into a beautiful site and paid attention to detail. Merrimack has properties that need attention. Mixed use is the latest, new and upcoming trend. It will build a community that is not desolate at night. Residents will keep an eye on things. There is nothing like this in Merrimack. It will do well and increase the tax base. There is no reason not to discuss it with the Planning Board.

Nancy Harrington, 1 Spruce Street, noted that the project was already approved except for the residences. They will be upscale and high class, but would they affect abutters' property values? All the trees have lost their leaves, so the existing buffer would not provide protection from headlights shining into homes. The project is too dense. Traffic from cars, trucks and service vehicles will have an impact. There must be a method to protect houses from noise and lights. Lynn Christensen explained that these are Planning Board issues. This is just an idea rather than an actual plan. The ZBA is not deciding on the plan but only on whether to allow a residential component.

Barbara Amaral, 1 Spruce Street, asked whether there would be access onto Camp Sargent Road. It would make traffic a disaster. She wondered whether the Thornton Ferry School could handle the additional children. Patrick Dwyer explained that these are Planning Board issues.

Charles Parenteau, 3 Spruce Street, asked whether this would be low-income housing and how night activity would affect abutters' home values. This area does not need housing; other areas do. This will add to what is already a lot of traffic from Merrimack Premium Outlets. Can the infrastructure support more school children? Charles Parenteau doubts that many employees will live there.

Fran L'Heureux asked about the frontage. Gordon Leedy said there is over 1,000' of frontage Industrial Drive and on Continental Boulevard. "Controlled access"/intersection is already dictated by zoning ordinances and the NH Department of Transportation (DOT) to be at the signal at Premium Outlets Boulevard. The applicant has a Driveway Permit. Gordon Leedy said that analysis determined that additional traffic does not require any off-site improvements. There is sufficient capacity on the roadways.

Lynn Christensen added that regional and State studies show a housing need for young professionals. They do not buy; they rent. They delay having families and have few children. The Tara Heights apartments in Nashua are upscale. This age group demands it, but Merrimack does not have it. Merrimack wants to attract them. Gordon Leedy agreed. These would be market rate rental apartments with a mix of one and two bedrooms. This is not expected be family housing and there should be very few school children. There is a need for this type of environment to attract and keep talented young professionals. He explained the preliminary traffic analysis. The applicant will need a DOT permit for additional traffic and will submit detailed studies to the Planning Board.

Fran L'Heureux asked when the traffic study was done. Gordon Leedy replied that traffic counts were done in August 2015 at the Saturday mid-day peak and Thursday or Friday evening.

The Board voted 5-0-0 to grant the Variances, with the following conditions, on a motion made by Richard Conescu and seconded by Lynn Christensen.

1. The petitioner shall obtain approval for a Conditional Use Permit from the Planning Board to allow the site to be developed in accordance with the Mixed Use Conditional Use Permit requirements of Section 2.02.4(D) of the Zoning Ordinance; and
2. The petitioner shall obtain all necessary site plan and subdivision approvals from the Planning Board that are necessary following approval of the Mixed Use Conditional Permit.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the proposed mixed use development is on a lot that is zoned for commercial and industrial use and is a site appropriate for infill development. The transportation and utility infrastructure available to the site supports the proposed use. The proposed uses are all permitted uses except the residential component. The zone permits hotel uses and perhaps long-stay hotel uses, but it does not allow for more

typical residential uses. The proposed residential component is a mixed-use building where the residences are on the upper floors. It is a use that is new to the Town of Merrimack, but in demand.

The 2013 Merrimack Master Plan supports the idea of diverse housing and the notion of both tax base and diversity of use through the development of additional mixed-use projects in the Town.

The parcel is an “out parcel” of a larger project, which has ample footage and size to accomplish the purposes of the Ordinance.

The project will provide enhanced tax revenue to the Town, a variety of residential units not currently provided in the Town and a substantial amenity to the more than 8,000 employees working in the immediate vicinity of the property.

The proposal will not alter the essential character of the locality because all uses are permitted except apartments. The proposal will not threaten public health, safety or welfare because of the sufficient and appropriate supporting infrastructure.

2. The spirit of the Ordinance is observed because it meets the goals of Town zoning. But for the residential component, other uses on the property would be allowed in the I-2 Industrial District. The siting of significant development in areas that are supported by transportation and utility infrastructure is a principal tenet underlying the zoning ordinance. The proposal is a modern mixed-use concept that is particularly complementary and appropriate to this area.
3. Granting this variance would do substantial justice because the uses are consistent with the present neighborhood and the surrounding infrastructure. The mixed-use project is the highest and best use of the property. The loss to the property and property owners would not be outweighed by any gain to the general public. There is no reason to apply and enforce the frontage and lot size requirements, since it is a portion of the original Merrimack Premium Outlets development.
4. The values of the surrounding properties would not be diminished because the setbacks and buffers of residential properties will protect the existing residential properties from any adverse impacts. The value of adjacent residential properties will not decrease. The value of adjacent commercial and industrial properties will likely increase somewhat by providing amenities available to employees at those facilities.
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 because the property meets the criteria of mixed use development on undeveloped parcels where adequate transportation and utility infrastructure

exist to serve them, creating diversity of both commercial and residential development in Merrimack. The Master Plan supports the notion of increasing both tax base and diversity of use through the development of additional mixed-use projects in all commercial and industrial portions of Merrimack.

- 2) The proposed use is a reasonable one because mixed-use development is permitted by Conditional Use Permit in other industrial districts with characteristics similar to this property. Other dimensional and density provisions of the district would be met. The development will be similar in appearance to other allowed uses in the district.

The Board recessed from 8:30-8:38 p.m.

6. **Shawn Farrell (petitioner) and Brett W. Vaughn Revocable Trust (owner)** - Variance under Section 3.02 of the Zoning Ordinance to permit a subdivision with a lot containing 209.90 feet of frontage whereas 250 feet is required. The parcel is located on Wilson Hill Road in the R-1 (Residential) and Aquifer Conservation Districts. Tax Map 4A, Lot 004. Case # 2015-43.

Chad Branon, Fieldstone Land Consultants, PLLC, said the property consists of approximately 28.03 acres of land with 709.9' of frontage along Wilson Hill Road. Single-family lots must have a minimum lot size of 2.3 acres (100,000 square feet of contiguous upland area) with a minimum of 250' of frontage on a Class V or better road. The proposed subdivision will create a three-lot subdivision. The proposed lots will consist of approximately 2.44 acres with 250' of frontage, 3.19 acres with 250' of frontage and 22.4 acres with 209.9' of frontage. The Farrells want to purchase the subject property so they can build their dream home on the 22+-acre parcel. To do so, they must create the two additional front lots. Although the current proposal requires a variance to subdivide the property into three frontage lots, the parcel could be subdivided into five residential lots that conform to regulations if someone purchased the property and wanted to build a short public road onto the parcel. What is proposed is a reasonable and responsible development.

Chad Branon read the statutory criteria into the record.

Fran L'Heureux noted two addresses that are the same but two different lot numbers. Jillian Harris said this is not 50 Wilson Hill Road. The subject parcel does not yet have a number.

Patrick Dwyer asked why two other homes would be built. Chad Branon replied that, for financial reasons, two lots must be created to sell for income.

Public comment

James Wood, 119 Wilson Hill Road, opposes the variance. He asked if the frontage were being reduced so the Farrells could afford to buy the property. Patrick Dwyer said that is the case. James Wood said the property is unique: most of it is unbuildable with raw land and wetlands. Water runs off the hill. The 250' standard should be kept. This rural area should not be turned into a subdivision that will affect the neighborhood.