



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

Memorandum

Date: August 19, 2015

To: Fran L'Heureux, Chair, & Members, Zoning Board of Adjustment

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

Subject: **Crosswoods Path III, LLC. (petitioner/owner)** – Variance under Section 15.04(B) - Table I of the Zoning Ordinance to permit up to 21 multi-family residential units on a lot containing 83,397 s.f. whereas between 130,680 and 152,460 s.f. is required (depending on the mix of 1 & 2 bedroom units). The parcel is located at 1 Crosswoods Path Boulevard in the C-2 (General Commercial) and Aquifer Conservation Districts and Planned Residential Overlay. Tax Map 7E, Lot 046-053. Case # 2015-28.

The following information is provided to aid in your consideration of the above referenced case. Additional background and application materials are included in your packet.

Background:

Please see the attached staff memo to the Planning Board dated June 30, 2015 for a detailed background on the proposed conversion of the building to multi-family residential use, and detailing the need for the variance.

The subject property is located at 1 Crosswoods Path Blvd in the C-2 (General Commercial) and Aquifer Conservation Districts, and the Planned Residential Overlay. The site is serviced by municipal water from Merrimack Village District and municipal sewer (through a private sewer line that connects into the municipal system).

The property is part of a previously approved Planned Unit Development (PUD) approved by the Planning Board in 1998. The petitioner is currently seeking to convert the commercial building into (up to) 21 units of multi-family residential. The density requirements for multi-family residential within a PUD are governed by Section 15.04(B) – Table I. Because the petitioner has not yet settled on the final mix of 1 bedroom and 2 bedroom units, the required lot size for 21 units would range from 130,680 square feet at the low end (all 1 bedroom units) to 152,460 square feet (all 2 bedroom units) on the high end. It is expected that the project will be a mix of 1 and 2 bedroom units. Regardless of the number of bedrooms proposed in each unit, the lot only contains 83,397 square feet, so a variance is required to convert the building to 21 units regardless of the bedroom mix.

Standard of Review: It is the burden of the Petitioner to demonstrate that the five requirements for the granting of a Variance under Section 15.04(B) - Table I of the Zoning Ordinance have been met to permit up to 21 multi-family residential units on a lot containing 83,397 s.f. whereas between 130,680 and 152,460 s.f. is required.

Staff recommends that should the Board vote to grant the variance that it be granted with the following condition:

- The applicant shall obtain site plan approval from the Planning Board for the proposed conversion of the building to multi-family residential use.

cc: Correspondence & Zoning Board File

ec: Crosswoods Path III/Jerry Levin, Petitioner/Owner
Attorney Brad Westgate, Winer & Bennett
Carol Miner and Fred Kelley, Building Department
Captain John Manuele, Merrimack Fire Department



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MEMORANDUM

Date: June 30, 2015

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

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

Subject: **Jerry F. Levin (applicant) and Crosswoods Path III (owner)** – Pre-Submission Hearing to discuss a proposal to convert an office building to a multi-family residential building located at 1 Crosswoods Path Boulevard in the C-2 (General Commercial), Planned Residential Overlay, and Aquifer Conservation Districts. Tax Map 7E, Lot 046-053.

Background: As the Board may recall, the applicant appeared before the Planning Board on August 20, 2013 to discuss this project in a pre-submission hearing. The applicant has attempted to find commercial tenants for the building, but has been unsuccessful. He is returning to the Board again to discuss preliminarily the proposal to convert the building to multi-family residential, and gain feedback and guidance from the Board as it relates to process. Please refer to the August 20, 2013 minutes (in your packets) for a refresher on the background and various points of discussion and direction given by the Board.

What follows below is essentially the same information presented to the Board in a memo from former Planning & Zoning Administrator Nancy Larson. I have updated the language from her 2013 memo to address the current proposal from the applicant.

The subject property is located within the Crosswoods Path Planned Unit Development (PUD) at the southeast corner of Crosswoods Path Boulevard and DW Highway. The PUD was originally approved by the Planning Board at their meeting of December 8, 1998. The approval consisted of 52 single-family dwelling units, 58 multi-family dwelling units and 19,350 sq. ft. of commercial space. The commercial space consisted of 1 building of office and retail space (14,800 sq. ft.) on Map 7E, Lot 046-053 and a second building containing a 130-seat restaurant (4,550 sq. ft.) on Map 7E, Lot 046-54. The restaurant parcel was never developed and, at their meeting on January 17, 2012, the Planning Board conditionally approved a site plan for Arenco to construct three (3) single-story duplex style buildings for office and commercial daycare uses (this parcel, however, is not the subject of the current application).

At their meeting of May 30, 2000, the Planning Board voted to grant a modification to the approved PUD to allow construction of an 18,000 sq. ft. office building at 1 Crosswoods Path Boulevard instead of the previously approved 14,800 sq. ft. building. Assessing records indicate that the commercial building contains approximately 20,172 sq. ft., slightly exceeding what was approved by the Planning Board in 2000.

Because the applicant has continued to experience difficulties leasing out the units within commercial office building since his initial pre-submission hearing in 2013, he is more seriously exploring the possibility of converting the entire 3-story office building to multi-family residential.

In reviewing Section 15 of the Zoning Ordinance regarding Planned Unit Developments, a PUD cannot exceed a total of four hundred (400) dwelling units. Given the presence of 110 residential dwelling

units, the applicant would not be in jeopardy of exceeding the maximum permitted. Furthermore, while Section 15.05 of the Zoning Ordinance requires the establishment of non-residential uses within a PUD ("Certain non-residential uses shall be established with a PUD."), it is still the opinion of current Planning and Zoning Administrator Jillian Harris that the Ordinance only sets forth a maximum square footage (75 sq. ft./ Dwelling Unit. "Additional square footage at the discretion of the Planning Board.") of non-residential uses within a PUD, as opposed to a minimum (Section 15.06, Table II of the Zoning Ordinance). As such, the applicant would not be in violation of either the Zoning Ordinance or the approved site plan for Crosswoods Path (bearing in mind that the second commercial parcel, Map 7E, Lot 046-54, has Planning Board approvals to construct either a 130-seat restaurant or three (3) single-story commercial buildings.). Thus, by converting 1 Crosswoods Path Boulevard to a residential parcel within the PUD, the non-residential uses approved by the Planning Board for Map 7E, Lot 046-54 would satisfy the non-residential requirement of Section 15.

Conversion of the commercial office building into residential would, however, still require approval by the Planning Board. Staff expects that a good deal of the discussion at the hearing will be about the possibility of a waiver of full site plan review, as there will likely only be internal renovations needed for the building, and little to no site improvements necessary for the conversion.

It is Staff's understanding that the applicant is seeking 18 units in the proposed conversion. The applicant should be prepared to address the number of units/bedrooms with the Board. Discrepancies in the method of calculating density appear to exist between Section 15.04(B) and Section 15.06, Table II, of the Zoning Ordinance. Nevertheless, the applicant is aware that the proposal will require granting of a variance by the Zoning Board of Adjustment to exceed the density permitted by Section 15 of the Zoning Ordinance, no matter which methodology in calculating allowable density is applied.

Cc: File
Correspondence

Ec: Crosswoods Path III/Jerry Levin
Fred Kelley, Building Official, Building Division
Carol Miner, Secretary, Building Division
John Manuele, Captain, Fire Department
Jim Taylor, Assistant Director, Public Works/Wastewater Division
Ken Conaty, Sewer Collections Manager, Public Works/Wastewater Division
Ron Miner, Superintendent, Merrimack Village District

At the applicant's request, the Board voted 5-0-0 to postpone this item to September 10, 2013, in the Matthew Thornton Meeting Room, at 7:30 p.m., on a motion made by Alastair Millns and seconded by Desirea Falt.

5. Crosswoods Path III, LLC. (applicant/owner) – Pre-Submission Hearing to discuss a proposed conversion of an approximately 20,000 s.f. office building (with unfinished basement) to 18-21 unit multi-family residential dwelling units within the C-2 (General Commercial) and PUD Overlay Districts. The parcel is located at 1 Crosswoods Path Boulevard. Tax Map 7E, Lot 046-053.

Chairman Disco designated Nelson Disco to sit for Michael Redding.

Tim Thompson said that he and Planning and Zoning Administrator Nancy Larson met with Real Estate Developer Jerry Levin. Because he has been experiencing difficulties leasing units within the commercial office building, he is exploring the possibility of converting the entire three-story office building into multi-family residential.

Jerry Levin said that, when he built the building, he promised the Planning Board it would be commercial. He is looking for a solution to the problem that he is unable to get enough tenants to sustain the building and he has trouble covering the mortgage. Converting to a multi-family residential building would still satisfy the non-residential requirement of the PUD. He has 18,000 square feet of rentable space in a first-class building and grounds; it would make a nice residential building. He could get 18-21 units and promises no more than 39 bedrooms that he would either rent or sell as condominiums. Jerry Levin recounted his problems renting his commercial building. He will seek a variance from the Zoning Board of Adjustment (ZBA) to exceed the density as necessary.

Stanley Bonislowski favored the project and asked what would happen to the current tenants. Jerry Levin said their leases are running out and he may be able to get them into another lot. Although Nancy Larson's memo states that each unit would have one bedroom, there would be six two-bedroom units and one one-bedroom unit on each floor with minimal effort. The exterior would not change.

Nelson Disco was sympathetic and said a condominium would meet the PUD requirement of the amount of commercial space to support/complement it. The Board must listen to the marketplace. He asked if there would be major renovations. Jerry Levin replied that it would not be difficult, since the building has individual meters and a sprinkler system and the interior partitions can be moved. There is plumbing and electricity on each floor. It would not be as bad as erecting an entire building.

Nelson Disco asked if there would be a stand-alone condominium association from Crosswoods Path. Jerry Levin said it would because the condominium cannot absorb it without changing its documents, which is a complex process. Rental units fit more into his procedure than do condominiums.

Nelson Disco asked whether there would be changes for pedestrian access. Jerry Levin replied there would not, since the building has a covered handicap ramp and a nice lobby.

Robert Best asked about a sidewalk in front, which Jerry Levin said would go nowhere. The road slopes dramatically, making it too difficult. The proposed condominium would have the rights to the amenities and inside walks according to PUD requirements.

Robert Best asked about parking. Jerry Levin said there are 80+ spaces, which is more than is necessary. He may remove some. Tim Thompson said 60+ would be required for multi-family residential. Jerry Levin noted that the building has sewer and water.

Alastair Millns asked Jerry Levin whether he discussed the conversion with the condominium association. He said he had not.

Alastair Millns asked about traffic, which Jerry Levin said would be less with a residential use than with a commercial use. The parking lot goes to the street. Everyone will have cross-easements. He built the building behind as apartments, mostly two bedrooms/ two baths, and sold it to Brady-Sullivan in Manchester, who converted it into condominiums. The architectural design is similar, but the other buildings have units on the lower level. His building has an elevator and a full heated basement that would be used for storage and amenity space. It already has four large (15'x12') cages; more can easily be added.

Tom Koenig asked about the restaurant the Board previously approved. Tim Thompson stated that in January 2012, the Board instead approved a site plan for Arengo, which consists of a single-story office building a separate lot that is part of the PUD. The plans have been signed.

Desirea Falt said she supports the approach, which makes sense.

Tom Koenig asked whether the airport access road has a good impact on business and commercial space. Jerry Levin thought it would, but Bedford is also struggling with office space, so the road has not had much impact. Should he attract tenants in the next few months, he will keep the building as office space.

Tom Koenig preferred the mix of commercial and residential space rather than changing the use. Jerry Levin noted that the PUD was originally his idea, but there is not enough traffic to support a restaurant.

Robert Best supported the project as a good alternative use. He agreed with Nelson Disco about synergy between residential and commercial use in a PUD, but it is challenging. Office space is more difficult. He sees no obstacle to changing the use. There is enough commercial property left in the PUD to meet the standards. This will make the property productive.

6. Discussion/possible action regarding other items of concern

None

7. Approval of Minutes – July 23, 2013

The minutes of July 23, 2013 were approved, with revisions, by a vote of 5-0-1 on a motion made by Stanley Bonislowski and seconded by Alastair Millns. Nelson Disco abstained.

8. Adjourn

The meeting adjourned at 8:13 p.m., by a vote of 6-0-0, on a motion made by Alastair Millns and seconded by Desirea Falt.