



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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## **MERRIMACK PLANNING BOARD APPROVED MINUTES TUESDAY, FEBRUARY 6, 2024**

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, February 6, 2024 in the Matthew Thornton Room.

### **Members Present:**

- Robert Best (Chair)
- Lynn Christensen (Vice Chair)
- Town Councilor Barbara Healey (Ex-Officio)
- Jaimie von Schoen
- Maureen Tracey – Alternate
- Nelson Disco – Alternate
- Mark Williams – Alternate

### **Members Absent:**

- Kevin Peters
- Haleem Mediouni

### **Staff Present:**

- Casey Wolfe-Smith, Planning & Zoning Administrator

### **1. Call to Order**

Chair Robert Best called the meeting to order at 6:30 p.m. and led everyone in the Pledge of Allegiance.

### **2. Consent Agenda**

- Extension Request: Thomas More College Site Plan Amendment (Case #PB2021-23)*
- Extension Request: Anheuser-Busch Waiver of Full Site Plan Review (Case #PB2022-05)*
- Extension Request: Vault Motor Storage Site Plan Amendment (Case #PB2023-01)*
- Regional Impact Determinations*

**After removing the extension request for the Vault Motor Storage Site Plan Amendment from the consent agenda, the Board voted 7-0-0 to approve the consent agenda, on a motion made by Lynn Christensen and seconded by Jaimie von Schoen.**

**The Board voted 7-0-0 to approve the extension request for the Vault Motor Storage Plan Amendment, on a motion made by Lynn Christensen and seconded by Jaimie von Schoen.**

- 3. LMG Merrimack LLC, (applicant/owner)-** Continued review for acceptance and consideration of a two lot subdivision with one lot to contain an existing utility tower and associated building in the other lot to contain 100,115 square foot industrial building & its associated site improvements, currently under construction. The parcel is located at 4 Harris Pond Drive in the

I-1 (Industrial and Aquifer Conservation Districts. Tax Map 1D. Case # PB2024-01. ***This item is continued from the January 16, 2024 Planning Board Meeting***

*Ethan Beals, Hayner/Swanson, Inc.*, representing LMG Merrimack LLC, presented the plan to the Board. He explained that they are seeking approval for a two lot subdivision at 4 Harris Pond Drive. The proposal is to subdivide Lot 1-6 which is currently under construction for an industrial building, and will measure 12.91 acres. The new proposed lot, Lot 1-7, will contain the existing cell tower, utility building and associated features and will measure 0.124 acres. There are no frontage requirements in the I-1 zone, however, as part of this subdivision plan, the existing access and utility easements to the cell tower lot will be revised so that appropriate access can be maintained and provided to that new lot.

Chair Best asked Mr. Beals to show exactly where on the map the new lot is and where it's coming from. Mr. Beals presented where on the map the proposal is.

Nelson Disco asked if there are any guy-wires on the cell tower. Mr. Beals replied that he did not believe so.

Mark Williams asked if there's an existing access easement that will remain in place. Mr. Beals replied yes, and that the plan is to revise it slightly so that it makes sense in conjunction with the new lot.

Chair Best asked if it's a condition of approval to have the Town's legal counsel look over the easement documents. Casey Wolfe-Smith explained that it is a recommended condition.

Referencing the expanded version of the plan, Mark Williams asked Mr. Beals why the access easement stops and does not carry on like the existing one. Mr. Beals explains that the shaded one is the new one, just to the north of that there is a separate access easement which is unchanged and will remain in place. It ties into a separate access easement.

Barbara Healey asked where the curb cut for the warehouse is. Mr. Beals responded that access to the overall property is off of Harris Pond Drive. Ms. Healey then asked if the remaining lot is going to be dedicated to the warehouse and the parking. Mr. Beals confirmed.

Lynn Christensen asked if either of the properties were part of the condominium association. Mr. Beals replied with no.

**The Board voted 7-0-0 to accept the application as complete for review, on a motion made by Lynn Christensen and seconded by Jaimie von Schoen.**

*Public Comments:*

Bill Fallon, 12 Merrimack Drive stated that years ago, the access road for the cell tower was off of Harris Pond Drive. Then Pennichuck built their warehouse and paved about a 20 ft driveway up to the cell tower. He said he feels as though this was a much better access and a lot closer than going to Harris Pond Drive. He asked if there's a reason for this.

Chair Best stated that he suspects that it's because the applicant owns both parcels and would access it using his own property rather than someone else's. He said that when it's their turn, he'll let the applicant address that.

Mr. Beals stated he's not familiar with the previously mentioned section of paved area from the Pennichuck piece. He stated that his understanding is that the cell tower company and their utility company have always used the gravel road across the subject property.

Chair Best asked Mr. Beals if he had any sense of how frequently the cell tower requires anyone to visit it. Mr. Beals stated he does not have a good sense but does believe it to be quite infrequently. Chair Best responded that in terms of impacts or traffic, he does not feel as though with these frequencies that it would make a difference in which access they use.

**The Board voted 7-0-0 to find that with the proposed conditions of approval, the application meets all applicable regulatory requirements necessary and further, to grant conditional final approval to the application subject to the recommended conditions of approval presented in the staff memo dated January 12, 2024 on a motion made by Lynn Christensen and seconded by Barbara Healey.**

- 4. Keith Curran (applicant) and Gleason Co. LLC (owners)-**Continued review for acceptance and final approval of a site plan to construct a 7,650 s.f. manufacturing building with associated office space & other associated site improvements. The parcel is located at 63 Turbine Way in the I-1 (Industrial), Aquifer Conservation, Elderly Housing Overlay, and Town Center Overlay Districts. Tax Map 5D-1, Lot 5-1. Case #PB2024-02. *This item is continued from the January 16, 2024 meeting.*

**At the applicant's request, the Board voted 7-0-0 to continue the public hearing to February 20, 2024 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion made by Lynn Christensen and seconded by Barbara Healey.**

- 5. John Flatley Company (applicant/owner)-** Continued consideration of an amendment of a previously approved site plan to modify the project's phasing to allow up to a maximum of three units in the first building (out of three total proposed buildings) to be occupied prior to the completion of any off-site improvements. The parcel is located at 685 Daniel Webster Highway in the I-1 (Industrial) Aquifer Conservation Districts and the Wellhead Protection Area. Tax Map 6E Lot 3-4. Case #PB 2024-03. *This item is continued from the January 16, 2024 meeting.*

Kevin Walker, John Flatley Company, and Derek Roach, Vanasse & Associates, Inc., presented the application. Mr. Walker stated that they currently have one tenant for two units in building A. In order to allow their tenant to occupy building A prior to completion of the off-site improvements, they would like to revise the phasing to include those two units as part of the initial phase which will allow them to make any necessary interior improvements and occupy the space by April 1, 2024. He noted the Community Development Department made a couple of recommendations regarding the plan. The first regards note 3 on the phasing plan to indicate that parking, loading and drainage will be completed during phase 1. Mr. Walker stated that he will change the note to specify which building and that the drainage is already complete and everything is paved. The second recommendation was to revise the working in Note 5, which currently states between

two and three units will be occupied, but since they cannot do this as per the traffic study that was conducted, they will change the note to specify only 2 units.

Chair Best asked Mr. Walker what the plan was for offsite improvements and what they entailed. He answered as soon as spring hits that they'll be able to begin work again. The plan is to make a right turn lane heading northbound into the site and a left turn lane heading southbound into the site. Chair Best asked if this requires widening DW Highway or just restriping. Mr. Walker answered both. Chair Best then asked how much wider the pavement needs to be. Mr. Walker and Mr. Roach explained that they do not have the exact numbers in front of them, but it's somewhere between 14ft and 20ft. Chair Best asked what length of the roadway needs to get widened. Mr. Walker answered that it's a couple of hundred feet on both sides of the intersection. Chair Best asked if they lined up contractors to do this work. Mr. Walker answered yes.

Nelson Disco asked what the current status is of the Saint Gobain building. Mr. Walker responded that it's currently occupied and he has had discussions with them regarding what the plan is and potentially getting easements switched up on the back side of the building. It's his understanding that they're not planning a full shut down until the end of the year. Chair Best asked if they had any idea of who the next occupant would be in that building. Mr. Walker answered he hasn't heard anything regarding that.

Mr. Disco asked if they are going to be able to do any landscaping. Mr. Walker answered that through the entirety of that site, there will be more landscaping as they go. They did have to cut the trees down along DW Highway that were diseased. He stated that they did come back to the Board with a revised landscaping plan. They have already had 60 trees planted in front of building A.

Chair Best asked about the status of the site lighting because he has heard some complaints. Mr. Walker replied that he has spoken with the Community Development Department a few times. The complaint originally was the wall lighting at the front of the building which was open on the top. The plan is to cap the top of the lights so that they comply with the Site Plan Regulations. Chair Best also added that there is some lighting on the south face of the building that is casting horizontally and is bright. Mr. Walker replied that those lights are exactly what were shown on the approved plan. He said he could look into angling them differently. Lynn Christensen explained that she drove North on Daniel Webster Highway a month ago or so and noticed that the lights on the end of the building were bright. However, she drove past a couple of weeks ago and they did look like they were turned off.

Ms. Christensen also noted that at one point she noticed that the blank sign in the median at the entrance was being lit up. She requests that this not be lit up until they actually have occupancy. Chair Best added that it was his understanding that the lights need to be compliant with the approved plan in order to have the Certificate of Occupancy signed off for the 2 units.

Maureen Tracey asked if the 2 units that are going to be occupied just for storage or become a self-storage unit. Mr. Walker explained that one of them will be for their tenant's own storage needs and that tenant will have 3-5 employees but that the units themselves are not self-storage units.

*Public Comments:*

*Kendall Smith, 18 Kimberly Drive*

Mr. Smith asked the Board not to approve this amendment. He asked how much needed to be done in terms of widening and paving, in order for it to be substantially complete. Chair Best explained that functionally, all of the improvements notated have to be there.

Mr. Smith stated that his concern is that the applicant used a general light industrial area to calculate the estimated trips and it showed that there were very few trips. He's concerned that it does not capture what actually can go in there which would be anything that can go in the Industrial District and is not just general light industrial. He asked what businesses were going in the building because at the August 2023 ZBA meeting, Mr. Walker explained that the building would be for various uses and would be a flex site. Mr. Smith stated that he doesn't feel as though on one hand you can say that industrial or retail can go there but then treat it as 100% industrial when you're trying to calculate trips.

Mr. Smith added that if the amendment is allowed, Mr. Walker can put anything in the building that is compliant with the I-1 district. He said it sounds like Mr. Walker has someone in mind to go in there, but that deals fall through all the time. Mr. Smith said that Mr. Walker can put anyone in there that will sign a lease. He said he is concerned that that there will be no turning lanes formally constructed and that since he lives at Webster Green, the turning lane is very important. He added that the DOT permit states that Mr. Walker was not allowed to work between November 15, 2023 and April 15, 2024. April is only two months away and it doesn't seem onerous to have him wait and do that work. Especially given that he was approved to do the work because the original approval date to begin work was June 2022. Mr. Smith stated that he doesn't understand why Mr. Walker needs a special dispensation when he could've commenced work already.

*Kathryn Poirier, 11 Kimberly Drive*

Kathryn Poirier stated to the Board that if they were to approve this, based off of what was written on the notice, a maximum of 3 units could be occupied. She asked the Board to emphasize that only two unit occupancies would be allowed. Ms. Poirier pointed out that page two of the applicant's traffic study states that if the southern or middle building are built first, one could build and occupy only two units before they need improvements on Route 3.

Ms. Poirier stated that to the best of her knowledge, the way the phasing was originally approved was per building and not per unit in a building. She believes that needs clarity. She expressed concern for the future when other developers do Conditional Use Permits (CUPs) and want to occupy 1 or 2 units and not the whole building.

Regarding the landscaping, Ms. Poirier referenced how Ms. Christensen asked Mr. Walker to add more trees to the area of the southern building last summer during the hearing for the revised landscaping plan. Ms. Poirier expressed that she feels that was not done. In addition to the trees that had been planted, they are not even close to 5 feet tall. Ms. Poirier also stated that the site lighting is atrocious and needs to be taken into account.

Ms. Poirier added that Mr. Walker has had over a year to do th offsite improvement work, but has chosen not to yet. With the expansion of the Everett Turnpike underway, there is an abundance of "toll jumpers" getting off of exit 12 and 13 so that they don't have to deal with the highway construction. She expressed concern for the safety of Webster Green residents' children getting

on and off the school bus because that takes place at the intersection of their site with DW Highway. Ms. Poirier said that the lanes need to be lined up and to have signage so the children and school buses do not get hit. She added that this needs to be done before there is any occupancy of the building because it's a safety hazard.

Chair Best opened the floor to allow Mr. Walker and Mr. Roach to respond to any questions or concerns from the public. Mr. Roach explained that the land use code 110, used for the traffic study, is not just for trucks but for all vehicles.

Mr. Walker stated that their hope back in 2022 was to have all the DOT permits in hand for all proposed work along DW Highway and do all the work they needed to do on Daniel Webster Highway at one time. The reason that was not done in 2022 is because they have been waiting for permits.

Mr. Walker understands the concern over toll jumpers but explains that they do not have control over that. The reason he believes this is not a safety hazard is because they are coming in looking only at two units. If Vanasse & Associates had said they can't do any units and needed lanes immediately then it would've been a different case.

Regarding the lightning, Mr. Walker reiterated that he will take another look at it. In terms of the landscaping, he stated that he believed that the Community Development Department has gone out there and looked and ok'd everything. He stated that everything that was required to be planted, including the extra plantings that Ms. Christensen had requested during the hearing process last summer, is now in the ground. Mr. Walker added that he will have their arborist go to the site and if anything is in tough shape or does not look like it will survive then they will have it taken out and replaced.

Chair Best stated to Mr. Roach that one of the abutters had discussed that one of the sections of Daniel Webster Highway functions at level of service F at times. He asked Mr. Roach to explain what this means in terms of functions. Mr. Roach explained that they did not run that analysis but typically that is done on freeways or interstates. The intersection analysis shows that the mainline runs pretty well. There is a high volume on that street and the side streets do see delay. There are simulation models that can be done to account for the queuing but such analysis is not required by the DOT or for the purposes of this plan. He stated that the level of service is not an F on the mainline. Chair Best asked what the level of service F looks like on a freeway. Mr. Roach explained that on an intersection, on a typical cycle you have a queue, and that queue is able to go through a signal during its green phase and then there's no queue. A failing signal would be only part of that queue gets through, some of it gets stuck and then the next amount comes and that queue continues to extend.

Chair Best explained that the Bedford Road light by Walgreens functions like this in the late afternoon and extends well past your sight with the traffic that's backed up to get to the light. He said he is not sure how many times the light cycles, but it takes several times to get through. It's a manmade issue because the DOT will not fix the lights. Mr. Roach agreed and stated that there's a regional issue with that signal with the traffic coming off of the Everett Turnpike. Chair Best asked what they know about the way that DW Highway functions past Gilbert Crossing and other areas. Mr. Walker explained that heading North it's typically fine. The biggest issue is the afternoon peak hour heading South on DW Highway.

Ms. Poirier stated that there is an issue around seven in the morning with traffic going North. Chair Best agreed but also stated that it doesn't back up and function like the southbound side does at the Bedford Road light. Mr. Smith added that regarding the light at Bedford Road, he previously had spoken with Kyle Fox who told him that the Town of Merrimack has control over the timing of it and the preference was to not change it. He stated that he doesn't believe it's the State's problem, but that it's actually the Town's problem. Mr. Roach responded that he would assume that DOT has priority to not wanting stuff to back up onto the Everett Turnpike so that's why there's probably a high priority to Bedford Road. Chair Best added that the Town controls south of Bedford Road and the State controls north of Bedford Road.

Barbara Healey confirmed that the lights at Bedford Road are under the jurisdiction of the Town of Merrimack. She stated that DPW made two timing changes to the lights in the past year which have improved things a little bit but it's still a work in progress.

Maureen Tracey asked Mr. Walker if he could identify the potential tenant who is interested in leasing the units. He replied that he has one lease signed already by Holmris US, Inc. and none so far for the other two units. Mr. Walker stated they are open to anything.

Barbara Healey asked what entrance the new occupants would be using to access their building. Mr. Walker said there are two entrances to get into the site and they can come in off of Daniel Webster Highway across from Webster Green. Ms. Healey asked if it's also being used for construction. Mr. Walker replied that they're not doing any construction until the spring. Chair Best clarified with Mr. Walker that the construction entrance is from the northern part of the parcel. Mr. Walker said yes and that it comes off of the Saint Gobain driveway and runs behind what will be buildings B and C. Ms. Healey asked if that driveway is paved. Mr. Walker replied that it's gravel. Chair Best also stated that it would not be paved until they were finished with it. Ms. Healey expressed concern that there would be an unpaved access with tenants in the building. Chair Best explained that the DW Highway entrance is paved and that is what would be used.

Mr. Williams asked what the timing of performing the off-site improvements was like. Mr. Walker explained that they are waiting until the spring to get started. It should take a few days to do the paving and widening work.

Jaimie von Schoen asked why the applicant is seeking to amend the phasing plan to have occupancy in building A early when the off-site improvements will take place in just a couple months. Mr. Walker stated that he needs to phase the plan in order to get the building permit which will allow the internal improvements needed for the tenant in order for them to move in by April 1, 2024. Ms. Schoen asked how they can be sure that the off-site improvements will still be done as soon as possible if they allow the two units to have CO's early. Chair Best explained that if Mr. Walker were to do two units and that's all there ever was, he'd never have to widen the road because it wouldn't be necessary for that level of traffic. Ms. Schoen then stated she has seen how the traffic is now and additional vehicles in the area will impact the traffic. Chair Best explained that the number of cars added isn't necessarily going to make any difference at all to the amount of traffic that's already there with only two units occupied.

Ms. Tracey asked why the DW Highway work can't happen now. Chair Best stated that the DOT decides when you can do construction on their road and asphalt plants do not generate until the

weather gets right. Mr. Walker added that typically the New Hampshire DOT shuts down on November 15 and reopens mid-April. They plan to have their pre-construction meeting at least one month before this. Ms. Tracey stated that she would like to see a timeline of their plans due to the abutter's concern for the children standing at the bus stop. Chair Best explained that he does not feel there is a safety concern due to the minuscule amount of traffic. The construction of the turning lane is going to make that section of the Daniel Webster Highway more complex in terms of movements that are coming and going.

Ms. Schoen asked if the plan was to have the tenants move in for April 1, 2024 and then a couple of weeks later start construction on DW Highway. Mr. Walker replied that the plan is to have the DOT preconstruction meeting before April 1, 2024 and to have everything squared away and give them the ok to begin on or around April 15, 2024.

**The Board voted 4-3-0 to find that with the proposed conditions of approval, the application meets all applicable regulatory requirements necessary and further, to grant conditional final approval to the application subject to the recommended conditions of approval presented in the staff memo dated January 11, 2024, on a motion made by Lynn Christensen and seconded by Nelson Disco. Jaimie von Schoen, Barbara Healey, and Maureen Tracey voted in opposition.**

- 6. FPL, LLC (applicant/owner)-** Continued conceptual discussion regarding a potential lot line adjustment. The parcels are located at 427 & 429 Daniel Webster Highway, and an unnumbered parcel off Railroad Avenue in the C-2 (Commercial), I-1 (Industrial), Aquifer Conservation, Town Center, and Elderly Housing Overlay Districts. Tax Map 5D-4 Lots 75,76,78. Case #PB2024-04. *This item is continued from the January 16, 2024 meeting.*

Mike Ploof, Fieldstone Land Consultants, PLLC, and Mark Rivet, property owner, presented the conceptual plan to the Board. Mr. Ploof stated that they are looking for a potential lot line adjustment between Tax Map 5D-4, Lot 78 and Map 5D-4, Lot 75. They requested a conceptual discussion because there may be more than one avenue to achieve their goal which is why they wanted to have some feedback from the Board. He stated that 5D-4/78 contains 7.9 acres and has 74 feet of frontage along DW Highway. 5D-4/75 contains 0.3 acres and has 70 feet of frontage. They would like to merge the frontage area of lots 78 and 75. They would leave the remainder as a non-buildable lot without frontage.

Mr. Ploof explained that the existing frontage of lot 78 is merely "technical" frontage, there is no physical frontage as there's a guardrail and bridge preventing usable access to the lot. A fair amount of this lot is unusable for development due to wetlands, floodplains and floodway. He stated the lot would essentially serve as a conservation area. Lot 75 would gain a much needed area and additional frontage. Mr. Ploof believes the other options they've considered would involve seeking frontage relief from the Zoning Board of Adjustment.

Chair Best asked what would lot 75 gain functionally by having the extra space. Mr. Ploof replied that the building on lot 75 is right at the lot line and to go around the building, you're technically going onto lot 78. Chair Best pointed out the area on the plan that is being proposed for an access easement, serving as potential access to lot 78. He asked if this proposal is specifically for access or if there's any intention for lot 78 to possibly be considered buildable with this being the

primary access point. Mr. Ploof replied that the goal is only to grant access to lot 78; there are no development proposals at this time.

Chair Best asked if the parking lot shown on Lot 78 on the plan is constructed. Mark Rivet responded that the parking lot is constructed. Chair Best asked if the parking lot has a guard rail along the back edge as it drops off. Mr. Rivet replied yes and said that this is part of the issue with lot 78. There has never been a time when you could drive from DW Highway out to the back of lot 78. Mr. Rivet said that it drops off about 30-40 feet. Chair Best stated that he does not feel as though the potential access easement to lot 78 seems necessary if the only part of lot 78 you can access is within the guardrail. Mr. Rivet said the only usable easement would possibly be on the Railroad Avenue side where there's a vacant lot.

Chair Best stated that in terms of their choices, he thinks that the lot line adjustment as opposed to a variance to get relief for lot 75 would be easier as long as lot 78 is permanently designated as unbuildable. He then asked Mr. Rivet if he was thinking of creating a permanent deed restriction or conservation easement. Mr. Rivet stated that he thinks the Town of Merrimack already has it listed as an unbuildable lot. Chair Best said that the potential access easement is not needed at all if lot 78 will be an unbuildable lot.

Chair Best asked if there is intention by the owner of lot 75 to expand the building into the lot 78 transfer area once the plan is approved. Mr. Ploof said he does not know the answer to that. Ms. Christensen stated that there would be a setback encroachment concern in that area.

Mr. Ploof asked if the Board would be amendable to waiving some of the items required by the Subdivision Regulations. He is trying to cut down on the cost of something that may not be needed. Chair Best responded that waivers are possible and suggested the applicant work with the staff to find out whether the Board would look favorably upon them. Setting monuments is one they would be less likely to waive.

**7. Planning & Zoning Administrator's Report/Discussion/possible action regarding other items of concern.**

*None.*

**8. Approval of Minutes- December 19, 2023 & January 16, 2024**

**The Board voted 7-0-0 to approve the minutes of December 19, 2023 and January 16, 2024, as drafted, on a motion made by Lynn Christensen and seconded by Barbara Healey.**

**9. Adjourn**

**The Board voted 7-0-0 to adjourn at 8:23 p.m., on a motion made by Barbara Healey and seconded by Jamie von Schoen.**