



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, APRIL 17, 2018

Planning Board members present: Robert Best, Alastair Millns, Tom Koenig (arrived 7:08 p.m.), Lynn Christensen, Neil Anketell, and Alternate Nelson Disco.

Planning Board members absent: Michael Redding, Dan Ricker and Alternate Vincent Russo.

Staff present: Community Development Director Tim Thompson and Recording Secretary Zina Jordan.

1. Call to Order

Robert Best called the meeting to order at 7:00 p.m. and designated Nelson Disco to sit for Michael Redding.

2. Planning & Zoning Administrator's Report

None.

3. Consideration of Planning Board Nomination for NRPC Commissioner (to be sent to the Town Council) – Tim Tenhave.

Tim Tenhave, 5 Windy Hollow Circle, summarized his activities for the Town and his interest in representing Merrimack on the Nashua Regional Planning Commission. The Planning Board requested him to keep them informed about regional planning issues that affect the Board and updated him about the NRPC-Merrimack sidewalk mapping plan for Route 3 from Bedford to Nashua.

The Board voted 5-0-0 to send to the Town Council the nomination of Tim Tenhave for NRPC Commissioner, on a motion made by Alastair Millns and seconded by Nelson Disco.

- 4. Charles Morgan (applicant) and 526 DW, LLC (owner) —** Review for acceptance and consideration of a waiver of full site plan review for the addition of 76 outdoor vehicle storage parking spaces, (for use between November 1st through April 1st). The parcel is located at 526 Daniel Webster Highway in the C-2 (General Commercial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 5D-2, Lot 001. **This item is continued from the February 6, 2018, and April 3, 2018, meetings.**

Withdrawn by petitioner.

- 5. Charles Morgan (applicant) and 526 DW, LLC. (owner)** — Review for acceptance and consideration of final approval for a site plan to construct a 21,069 s.f. single story storage facility and a 2-bay auto detailing shop. The parcel is located at 526 Daniel Webster Highway in the C-2 (General Commercial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 5D-2, Lot 001. **This item is continued from the February 6, 2018, and April 3, 2018, meetings.**

Tom Koenig arrived at 7:08 p.m.

Robert Best recused himself from discussing and voting on this agenda item; Vice Chair Alastair Millns assumed the chair.

Attorney Greg Michael, Bernstein Shur, Sawyer & Nelson, said this would be the last expansion on the site. The business of cleaning and detailing cars would be moved to a new building. A 2015 sidewalk easement runs the length of the property which is maintained by the owner, not the Town. Vehicles may have encroached on the sidewalk area because there is a grassy strip between the sidewalk and the parking area that is difficult to block. The applicant would continue to maintain, plow and prevent encroachment of the sidewalk.

In reference to a comment made by the Public Works Department, the applicant would make the site entrances conform to the Site Plan Regulations without installing curbing, which would have drainage and safety issues. He does not want to move the drainage. The southerly access would be moved away from McGaw Bridge Road, some pavement would be ripped up, and the entry made more attractive with the addition of a cedar fence and landscaping. A new plan would be submitted showing the re-worked entrance.

Eric Mitchell, Eric Mitchell & Associates, Inc., has not addressed all the peer review comments, but expects to do so for the May 15, 2018, meeting. He could reduce the entrances to a 36'-wide pavement for wider vehicles, which is wider than the required 24'. There would be lights on the new building.

Alastair Millns reminded the applicant that raising the sidewalk for pedestrian safety and preventing cars from going over the sidewalk had been discussed previously. Nelson Disco suggested wheel stops set back from the street. He still wanted a sidewalk against the entire property along the road and to replace some grass. Attorney Michael agreed that blocking the entrance would help safety. Tim Thompson cautioned that adjustments would be necessary because a connection must be made to another sidewalk. Alastair Millns asked about drainage and whether pavement would replace all the gravel. Eric Mitchell said there is no more gravel; the plan was incorrectly labelled. The pavement is non-pervious asphalt.

A new drainage design was submitted for peer review. An infiltration basin would put water back into the ground. The Merrimack Conservation Commission (MCC) approves of the design.

Charles Morgan, 526 DW, LLC, said small trailers would be moved to another property. There would be no more outside storage.

Tim Thompson and Attorney Michael said that difficulty for fire equipment to go around the north corner of the building is an existing condition.

Alastair Millns suggested restoring the fence between this property and the abutting property owned by Crow's Nest Commercial Properties, LLC (536 DW Highway).

In Nelson Disco's opinion, the plan is incomplete because it shows no sidewalk, architecture, landscaping, or lighting and there has been no drainage review. Tim Thompson explained that CLD completed its first review, but he would not send them another plan until Planning Board and municipal department comments are received. He wants CLD to verify the addition of a sidewalk and the gravel issue.

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. CLD's comments are easy to address. There is enough information to start the clock.

The Board voted 3-2-0 to accept the application for review, on a motion made by Lynn Christensen and seconded by Tom Koenig. Nelson Disco and Neil Anketell voted in the negative.

Public comment

Don Miner, 65 Donovan Court, stated the entire building front is a sidewalk. It no longer looks like a dump. The applicant did a great job. It is ridiculous to move the sidewalk onto the road, as Nelson Disco suggested. Don Miner never saw a car parked on the sidewalk. Water drainage is not an issue. Adding a building with landscaping is better than the current sandpit. It is rare to see anyone walk across the parking lot. No one uses the sidewalk.

Alastair Millns cited the 2013 Master Plan concerning a sidewalk going from Bedford to Nashua. Lynn Christensen stated that people would walk on a sidewalk if one was placed there. Charles Morgan stated that what triggered the sidewalk discussion was that one employee inadvertently parked the nose of his truck on the sidewalk. Although he did not always do so before, Charles Morgan will always plow it henceforth. He said it is dangerous to move the sidewalk 10' from the road onto the green strip. The current location is safe.

Bob McCabe, 30 Wilson Hill Road, stated he manages the farmers market on the site. The parking attendant keeps cars off the sidewalk. Charles Morgan has done a wonderful job.

The Board voted 5-0-0 to continue this item to May 15, 2018, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Lynn Christensen and seconded by Tom Koenig.

- 6. Carolanne Caron (applicant/owner)** — Review to allow a Home Occupation permit for a swimming instruction business. The parcel is located at 12 Collins Avenue in the R-1(Residential) and Aquifer Conservation Districts. Tax Map 6D, Lot 564.

Alastair Millns relinquished the chair; Robert Best resumed the chair.

Tim Thompson explained that the Community Development Department recently became aware of the existing business because of an enforcement action. The applicant is not complying with the Ordinance: the home occupation occupies greater than 25% of the inhabitable floor area of the dwelling. The additional square footage of the garage should not be included as part of the 25% gross home living space. The applicant would either need to seek a variance from the Zoning Board of Adjustment (ZBA) for that, or successfully appeal the Planning & Zoning Administrator's decision. Variances would also be needed for sign size and number of signs.

Carolanne Caron, 12 Collins Avenue, corrected the application to show that Friday hours would be 7:00 a.m.-10:00 **a.m.** and on only one Saturday a month from January-April. She is the only employee. There is only one client in the pool at a time. Winning Swimming is registered as a health club. The sign on the mailbox would be removed and the one on the house reduced to two square feet. The indoor pool is the smallest possible size. It fits into one bay in the renovated former garage. The waiting room and bathroom at the end of the breezeway are closed off from the house. There are separate bathrooms for the clients and for the home. Tim Thompson explained that a Home Occupation where clients visit the property requires Planning Board approval. Whoever informed the applicant that it is not necessary was incorrect. A Home Occupation with this characteristic cannot be approved administratively.

Carolanne Caron sometimes holds a two-hour seminar from 7:00 p.m.-9:00 p.m. one Wednesday a month for a maximum of 10 triathlon athletes. The pool is not used. Chairman Best instructed her to put that on the application.

Chairman Best instructed the applicant to keep cars off the street. Tim Thompson said that width access is an issue where the driveway meets the road. Chairman Best added that the curb cut is too wide for a residence; 24' is the maximum width. Tim Thompson stated that the applicant must get a Right-of-Way Permit from the Public Works Department (PWD), who will look at requirements for two driveways. A parking lot in front of a home may not distinguish it as a residence. The Planning Board suggested possible changes for the driveway configuration. Chairman Best stated that the Board could not approve the seminars if cars park on the street. The applicant could reduce the number of attendees, reorganize the number of spaces or hold the seminars elsewhere. Tim Thompson stated that an on-street winter parking ban would be in effect anyway. The Public Works Department wants 50' between driveways.

Alastair Millns suggested connecting the garage to the house, but Carolanne Caron said she could not figure out how to do that at the time; Tim Thompson said the structure was out of compliance for too long.

Public comment

Joan and Tony Cardillo, 16 Meadowcrest Drive, Bedford, the property owners of 11 Collins Avenue, spoke in opposition. They are concerned that clients coming as early as 7:00 a.m. and leaving as late as 8:00 p.m. could intrude on the privacy, quiet and family life of the neighborhood and possibly decrease property values. They are concerned about entering and exiting from the driveway across the street, especially

backing into the street. Approval may open the possibility of other similar types of business requests with similar client traffic, parking and hours of operation and building imposing structures that may detract from the aesthetic and character of the neighborhood. The Cardillos asked whether the approval would be passed on to future owners. In their opinion, such a business is not suitable for the residential area.

Chairman Best replied that a Home Occupation approval does not pass on to a future owner. The building currently being constructed would be allowed even if there were no business. Nothing new is being constructed to support the business itself. The building must fit with the neighborhood. Indoor swimming is a rare home occupation.

The Cardillos said that allowing seven cars to park is dangerous for children. They object to one car going in and out every hour or to two cars at the time of changeover. This is not a main road. There is too much pavement.

Chairman Best reminded them that the business has been in operation for seven years.

Chairman Best read into the record an e-mail in opposition from Jim Lowther, 8 Collins Avenue. Jim Lowther anticipates that business traffic would increase in a densely populated neighborhood and jeopardize its safety and quality of life. The building being constructed is larger than the house and appears close to the road and the abutting property line. It detracts from the value of other homes on the street. Chairman Best stated that the location and size of the new building are not germane; the building is within the required setbacks.

Carolanne Caron noted that the Cardillos do not live on Collins Road. Their tenants have more vehicles than the applicant does. They have never raised an issue. All Winning Swimming clients are parents and are aware of that this is a neighborhood. The business does not disrupt traffic. Vehicles have never been an issue. The new building has nothing to do with the business. If the business expands, she would move it to a commercial property. Chairman Best added that Jim Lowther seems unaware that the business has been operating for seven years, so it must not disturb him.

Discussion ensued about how many seminar clients' cars could fit and how to configure and block the view of the driveways.

Carolanne Caron has no children as clients, only older adults. There are lights on the front and side of the garage, on the walkway, on the house, and on the studio.

The recommendation in the staff memo is that the Board grant conditional final approval of the Home Occupation with conditions to be completed within six months or the approval shall become null and void.

Tim Thompson suggested continuing this item to give the applicant time to request a variance from the ZBA, work with PWD about the driveway layout, then return to the Planning Board with a final layout. Chairman Best agreed.

The Board voted 6-0-0 to grant approval to the Home Occupation, with the following conditions, on a motion made by Alastair Millns and seconded by Neil Anketell.

1. The applicant shall either come into compliance with Section 2.02.1.A.2.c (regarding signage), or seek the appropriate relief from the Zoning Board of Adjustment;
2. The applicant shall obtain a variance (or successfully appeal the Planning & Zoning Administrator's Administrative Decision) from the Zoning Board of Adjustment from Section 2.02.1.A.2.d to permit a home occupation that occupies greater than 25% of the inhabitable floor area of the dwelling;
3. The applicant shall obtain all necessary permits and approvals from the Department of Public Works regarding driveway access to the property;
4. Any "seminars" as described at the public hearing shall be limited to a number that does not require any on-street parking (all customers/seminar participants must be able to park on-site). Additionally, seminars may only be held on a Wednesday, one time per month during the months from January through April, from 7:00 p.m. to not later than 9:00 p.m.;
5. Hours of operation shall be as discussed at the public hearing as follows:
 - a. Mondays 7:00 a.m. – 10:00 a.m. and again 2:00 p.m. – 8:00 p.m.;
 - b. Tuesdays & Thursdays 2:00 p.m. – 8:00 p.m.;
 - c. Fridays 7:00 a.m. – 10:00 a.m.;
 - d. One Saturday per month from 8:00 a.m. – 1:00 p.m.
6. Any proposed changes to the terms of this approval shall require further review and approval by the Planning Board.

7. Discussion/possible action regarding other items of concern

Chairman Best announced that 240 sidewalk surveys were collected at the polls. Tim Thompson added that there were no responses from the survey on the Town website. Preliminary results are 80% for sidewalks and 20% against.

Chairman Best announced that registration for the April 28, 2018, Office of Strategic Initiatives Planning and Zoning Conference is closed.

Chairman Best announced the NRPC Planning Board Basics Workshop to be held on May 17, 2018.

8. Approval of Minutes — April 3, 2018

The minutes of April 3, 2018, were approved as submitted, by a vote of 6-0-0, on a motion made by Lynn Christensen and seconded by Alastair Millns.

9. Adjourn

The meeting was adjourned at 8:50 p.m., by a vote of 6-0-0, on a motion made by Alastair Millns and seconded by Lynn Christensen.