



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

## MERRIMACK PLANNING BOARD

### APPROVED MINUTES

**TUESDAY AUGUST 15, 2023**

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, August 15, 2023 in the Matthew Thornton Room.

#### Members Present:

- Lynn Christensen (Vice Chair)
- Jaimie von Schoen
- Haleem Mediouni
- Town Councilor Barbara Healey - Ex-Officio
- Nelson Disco – Alternate
- Maureen Tracey - Alternate

#### Members Absent:

- Robert Best (Chair)
- Neil Anketell

#### Staff Present:

- Colleen Olsen, Assistant Planner

### 1. Call to Order

Vice-Chair Lynn Christensen called the meeting to order at 6:32 p.m. and led everyone in the Pledge of Allegiance. She then seated Nelson Disco and Maureen Tracey for Bob Best and Neil Anketell respectively.

### 2. Consent Agenda

- a. Extension Request: DW Highway Commerce Park Access Road (#PB2021-29)
- b. Extension Request: 734 DW Highway Warehouse (#PB2022-36)
- c. Extension Request: 29 Manchester Street Warehouse (#PB2023-03)
- d. Extension Request: 585 DW Highway Site Plan (#PB2020-27)

**The Board voted 6-0-0 to approve the Consent Agenda, on a motion made by Barbara Healey and seconded by Haleem Mediouni.**

- 3. Starten Realty, LLC (applicant/owner)** – Continued review for consideration of final approval for a site plan for the addition of a gas station, convenience store and drive-thru coffee shop at the site of an existing car wash. The parcel is located at 376 DW Highway in the C-2 (General Commercial), Aquifer Conservation, and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 002.

Case #PB2022-40. *This item is continued from the November 15 & December 20, 2022, and January 17, February 21, March 21, April 18, & June 6, and July 18, 2023 Planning Board Meetings.*

David Frothingham (Wilcox & Barton) presented the application to the Board. He began by explaining that after the last meeting he spoke to the applicant about the Board's request for a by-pass lane and mentioned eliminating the coffee shop from the proposal but the applicant expressed his desire to move forward with the addition of both the gas station and coffee shop. As a result of this conversation, the building size was adjusted to allow room for the by-pass lane. Mr. Frothingham shared a copy of the revised plans and advised the Board that the plans have not been shared with the town as they were not done in time for the submittal deadline. He went on to explain that as a result of the Board's concerns about the maneuverability of large vehicles at the site, he made some minor adjustments to allow these vehicles more room to traverse the site. He shared a color coded copy of the Circulation Plan to show the changes that were made.

#### Public comment

Bill Fallon (12 Merrimack Drive) spoke against the proposal citing concerns that the gas station business will fail in a couple of years due to the increase in electric cars.

Nelson Disco asked if any plans were in place to add landscaping or some other form of screening on the South side of the parcel. Mr. Frothingham advised Mr. Disco that it was discussed at the July 18<sup>th</sup> meeting and they did agree to add either a fence or plantings. The plans have not been updated to show this change yet because they wanted to ensure the Board was going to be ok with the by-pass lane proposal first.

Fire Marshal John Manuele commented that the Fire Department has not seen the revised plans yet so he would not be able to say one way or the other if the proposed by-pass lane meets the MFD's standards. Vice Chair Christensen asked Mr. Manuele if he would be ok with a conditional approval with a requirement that the plan must meet the Fire Department's standards and he agreed that would be fine.

Jaimie von Schoen asked how they plan to prevent people from blocking the by-pass lane and Mr. Frothingham responded that both signs and pavement striping will be used to prevent this from happening. Mrs. Von Schoen asked if the proposed sign could be changed to a stop sign to hopefully eliminate people from blocking the bypass lane. Mr. Frothingham responded that he would be willing to make that change to the plans

**The Board voted 6-0-0 to find that with the granted waivers and the proposed conditions of approval, the site plan application would meet all applicable regulatory requirements and further, to grant conditional final approval to the site plan subject to the following precedent conditions to be fulfilled within 6 months and prior to final approval (signing) of the plan, unless otherwise specified on a motion made by Haleem Mediouni and seconded by Barbara Healey. The following conditions apply:**

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 obtain all required State approvals/permits, note the approvals/permits on the final plans and mylars and provide copies to the Community Development Department;
3. The applicant shall provide draft copies of any applicable legal documents for review, at the applicant's expense, by the Town's Legal Counsel;
4. Any waivers granted (including Section and date granted) and/or any changes requested by the Planning Board shall be listed and fully described on the final plan;
5. The applicant shall provide a letter from Merrimack Village District indicating the availability of public water to the project;
6. The applicant shall meet with Merrimack Village District staff and address any of their comments or requirements;
7. The applicant shall address the comments from the town's peer review consultant, Fuss & O'Neill, as applicable;
8. The applicant shall address the following comment from the Conservation Commission:
  - a. The applicant shall eliminate all references in the plan of the use of "hay", and replace them with "straw";
9. The applicant shall address the following comments to the satisfaction of the Fire Department (which shall be verified in writing):
  - a. There is no bypass lane for the proposed drive-through coffee shop, and a full bypass lane should be provided;
  - b. A check of fire apparatus access to the building using the department's standard fire apparatus turning template shows that there would be extreme difficulty in maneuvering even a single piece of apparatus around the property due to the crowding of buildings and gas islands. The submitted turning plan shows emergency vehicles encroaching on curbing;
  - c. The drive through exit lane passes directly in front of the car wash exit lane which could result in collisions from exiting vehicles.
10. The applicant shall address the following comments from the Public Works Department & Wastewater Division of Public Works:
  - a. The applicant shall add the following note to the site plan sheet: "Per Town Code Chapter 167 there shall be a Post Construction Meeting prior to the issuance of the Certificate of Occupancy. The As-Built Plans must be submitted and reviewed prior to the Post Construction Meeting. At the meeting the final Operations and

Maintenance Plan for the on-site drainage and recovery tank system shall be presented. The owner of the property shall provide yearly inspection reports on the systems to Community Development by June 30th of each year. These requirements will be run with the property and shall be transferred in the deed whenever the property is sold in the future.”;

- b. It shall be noted on the site plan sheet that a Right of Way permit from the Highway Division of Public Works will be required prior to any work being proposed within the Town portion of Daniel Webster Highway;
- c. The Existing Conditions drawings reference “Site Plan Lot 4D-3-2 Proposed Tunnel Car Wash Facility” dated August 30, 1985 by George F. Keller as well as the “Recovery Tank Layout” sketch dated 11-10-86. It is assumed that the recovery tanks are part of the car wash infrastructure and will remain in use as part of the car wash facility. It is also assumed that the locations shown on the drawings are for location reference only. It shall be noted on the plan that the tanks shall not discharge to either sanitary sewer or storm water flow;
- d. The proposed sidewalk shall be constructed per the Subdivision Regulations, Section 4.20. The sidewalk shall be built using vertical granite curbing along Daniel Webster Highway and be constructed within the right-of-way;
- e. The applicant indicated information for Catch Basin 884 is located on Sheet C1.5, however the size and type of catch basin are missing and the information shown in the plan view and the existing drainage structure table do not match;
- f. General Sewer Notes shall be added to the plan set to include the following: The engineering design, construction and testing of the sewer line shall conform to the Town of Merrimack Sewer Use Ordinance currently adopted, Chapter 158 of the Town of Merrimack Code and the Town of Merrimack Department of Public Works – Wastewater Treatment Facility – Sanitary Sewerage Engineering Standards (SSES) as last revised. Also the State of New Hampshire Department of Environmental Services (NHDES) Standards for Design and Construction of Sewerage and Wastewater Treatment Facilities, Env-Wq 700, latest revision;
- g. Additional notes shall be added to the plan, as applicable from section SSES S2.04.8.;
- h. The Sanitary Sewer General Notes shall include a note to state that under no circumstances shall stormwater, surface water, ground water, roof runoff subsurface drainage, geothermal discharge or untreated industrial process water be discharged into the public sanitary sewer system. In addition, there shall be no footing or floor drains connecting into the sewer system (SSES S3-01.1.e);
- i. Under Section S3-02 General Design Criteria the anticipated flow calculation shall be provided along with the existing flow to establish if sufficient flow allocation exists for the property. An allocation permit shall be filled out and filed with the

Town of Merrimack Wastewater Division of Public Works if it is determined there is an increase in the flow allocation;

- j. Sheet 7 of 16 does not show a back water valve within 2 feet of the exterior of the building as required under SSES S3-07. A backwater valve shall be provided on both lines exiting the building per section SSES S4-12. A detail shall be provided on the plans. Construction shall be per section SSES S5-19. There shall be access to the backwater valve unit from the surface with a 6" sleeve and cap;
- k. All requirements under Town of Merrimack Code, Chapter 158-39 N will apply. This must be coordinated with the Town of Merrimack Pretreatment Manager for compliance and noted on the plans;
- l. Clearances to other utilities shall be per SSES Section S3-13, and shall be noted/detailed on the plans as applicable. Please note that there is a crossing being proposed where the new water line crosses over the Town maintained sewer line that's within the existing sewer easement;
- m. Gravity Sewerage Pipe & Fitting materials shall conform to SSES S4-02 and Env-Wq 704.05 and shall be noted on the plans as follows: All PVC sewer pipe and fittings manufacture and installation shall meet or exceed the ASTM D3212-07(2013) recommended specifications, unless otherwise specified, and all installation shall be in strict compliance with the manufacturer's directions. All pipe shall be clearly marked with the date of manufacture. All pipes shall be fabricated from a reference mark for proper spigot insertion. Joint gaskets shall be fabricated from a compound of which the basic polymer shall be a synthetic rubber consisting of styrene, butadiene, polyisoprene or any combination thereof and shall meet the requirements of ASTM D-3212;
- n. A note shall be added to the plans that all Sewer construction, inspections, testing, quality control shall conform to the methods and requirements under SSES S5. The Sewer Inspector shall be present during the required testing and all of the testing results shall be provided to the Inspector; there shall be 48 hours' notice given for all testing;
- o. Per SSES S3.12 there will need to be a grease interceptor added to the sewer line for the food service. This shall be shown on the plan along with a detail. There will need to be cleanouts placed before and after the interceptor with a capped pipe to the surface. There will also need to be a cleanout provided on the second sewer line from the other side of the building;
- p. Per SSES S3.07 Lateral Sewer Construction there shall be cleanouts placed at any change in direction in the sewer pipe. Cleanouts shall be brought to the surface with the same diameter pipe and capped. The y connection should be replaced with a sampling manhole for testing purposes prior to connection into the Town's Sewer line;

- q. Sheet C 1.5: Adjust the printing of the scale so it can be read properly to clarify 1"=20';
- r. Sheet C 1.5: Backwater valve must be shown on both sewer services, added back water valve to grease laden line. Per Town of Merrimack SSES S5-20;
- s. Sheet C 1.5: General Sewer Notes Add Sewer Note 14 from Town of Merrimack SSES S2-04.8;
- t. Add note requiring coordination with Town of Merrimack Pretreatment Manager per Town of Merrimack Code Chapter 158. Annual Inspections will be required per Town of Merrimack Code Chapter 158 sub 41;
- u. Sheet C 1.5 A sampling manhole shall be added to the design as per Town of Merrimack S3-02.8;
- v. Sheet C 5.4: Sewer manhole and grease interceptor frame and cover shall be compliant with Town of Merrimack SSES S4-08;
- w. Sheet C 5.5: Sewer manhole detail note 3 sub D remove non shrinking mortar as sole means of connection to pipe to manhole. Per Town of Merrimack S5-08
- x. Sheet C 5.5: Add note no steps shall be used in sewer manholes and all holes shall be filled with a non-shrinking mortar.
- y. Demand calculations must be submitted as per Town of Merrimack S3-02.2 and to verify proper allocation and permitting requirements.

11. The applicant shall address the following Planning Staff Technical Comments:

- a. Existing Conditions Plan does not show any wetlands on site. If none are present, then please note such on the plan per Section 4.12.c.15 (*applicant has requested a waiver from this requirement*);
- b. Sheet 7 (site plan) – revise Note 1 to remove mention of the convenience store since it is no longer being proposed;
- c. Applicant shall note on the lighting plan that all proposed fixtures shall be full cut-off;
- d. As required by the Site Plan Regulations and noted by the Public Works Department, site monuments shall be set in accordance with Section 3.02.b, which reads: *"Lot corners and points of curvature along the right of way line shall be marked by a stone or concrete monument 4" x 4" x 36" (minimum). All other lot corners and angle points along property lines shall be marked by 1" diameter iron*

*pipe or 5/8 " steel rebar at least 30" in length or a drill hole set in an existing stonewall."*

- e. Text boxes, various free-floating text and other line work throughout the plan overlap. The applicant should review the plan to clean up these instances. Be advised that Sheet 7 (site plan) shall be recorded at the Hillsborough County Registry of Deeds and will need to meet registry standard for recording;
  - f. Sheet 7 (site plan) - the applicant shall add a note to the plan indicating that snow not able to be stored in the snow storage areas on site shall be removed from the property and properly disposed of;
12. The applicant shall install landscaping along the southerly property line to the extent practicable and to the satisfaction of the Community Development Department;
13. The applicant shall revise signage located at the coffee shop drive-thru to be a stop sign as directed by the Board;

**The following general and subsequent conditions are also 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. *Please note: HCRD requires the site plan bear both a licensed land surveyor's stamp and professional engineer's stamp to be recorded;*
- 2. The applicant is responsible for recording any proposed easements and/or applicable legal documents at the Hillsborough County Registry of Deeds at the expense of the applicant. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
- 3. Prior to the issuance of a Certificate of Occupancy or Unit Completion, as applicable, the applicant shall submit a mylar copy of an As-Built Plan, prepared by a NH Licensed Land Surveyor to the Community Development Department. The plan shall contain the information outlined for an Existing Conditions Plan under Section 4.12 of the Site Plan Regulations;
- 4. The applicant shall provide the .dwg files of the as-built plan to the Public Works Department, and provide paper copies of the as-built plan to any municipal Department that may require them;
- 5. The applicant shall address any forthcoming comments from the Building Department, as related to building code compliance and permit application, as applicable (that are not deemed precedent conditions);

6. The applicant shall address the following comments from the Fire Department:

- a. An NFPA 13 compliant fire sprinkler system shall be installed in the entire building. This is required under Section 11 of the Town of Merrimack Building Code;
- b. It is unknown if this building currently has an NFPA-72 compliant fire alarm system. If there is an existing system that is compliant the new addition shall be connected to the system. If there is not an existing compliant system, or if the existing system is not capable of having the addition connected to it a new NFPA-72 compliant system shall be installed in all areas.

**4. TC Boston Development, Inc. (applicant) and DRI TCC 50 RMP, LLC (owner) –** Consideration of an amendment to a previously approved site plan to waive the requirements of Section 3.04 of the Site Plan Regulations (which requires all proposed utilities to be constructed underground). The parcel is located at 50 Robert Milligan Parkway in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 2D, Lot 078. Case #PB2023-22.

Austin Turner (Bohler Engineering) presented the application to the Board. He began by explaining that the original site plan for the Robert Milligan Warehouse project proposed that the electrical supply be routed to the site from Daniel Webster Highway via existing underground utility infrastructure. Since the approval was granted and construction has begun, several discussions with Eversource have taken place about the utility proposal and Eversource has determined that the existing infrastructure cannot be utilized to supply power to the site. They cited a number of reasons for this however the most prominent reason is the inability to “cut” power at any time during construction to the Federal Aviation Administration (FAA) facility on Robert Milligan Parkway, which is not feasible due to the air traffic control implications. Mr. Turner shared an aerial photo of the site to demonstrate the location of the property and the proximity to the FAA facility. He then explained that the applicant is proposing to run overhead utilities from the DW Highway to the driveway to the site (which is a private drive). Once the connection is made, the utilities for the building will be underground and have already been installed. He reiterated that they need to get the power to the site and the only solution Eversource had involves a massive infrastructure project that would be both time consuming and costly. The reason this is before the Planning Board as a waiver request is because the site plan regulations indicate that all utilities need to be underground.

The discussion continued around the obstacles that are facing the applicant and the suggestion was made that perhaps the connection could come from Al Paul Lane which is also in close proximity to Robert Milligan Parkway. Mr. Turner explained that Al Paul Lane was also considered however it comes with its own set of unique challenges and would be far more challenging than going the above ground route. Vice Chair Christensen asked if the Al Paul Lane option was discussed with DPW and Mr. Turner confirmed that it was discussed with them and in fact it was the Public Works Director (Dawn Tuomala) that suggested it as an option. Director Tuomala feels that Al Paul Lane is the better alternative however the applicant feels that it is not because it would require easements through private property and is more costly.

Councilor Healey commented that she feels that the FAA should not be the determining factor because they must have back up power available to them. She also feels that the regulations are in place for a reason and this is Eversource’s problem to figure out. Maureen Tracey asked if the

cost falls on Eversource or the applicant and Mr. Turner responded that the applicant would have to cover the cost. Mrs. Tracey added that she would like to see some documentation from Eversource that outlines the different options for getting power to the site and the cost associated with them. Colleen Olsen added that Community Development Director Tim Thompson has also had meetings with the State and Developer on this matter and the State has had no luck with Eversource either.

Mr. Turner agreed that he can work with Eversource to get some supporting documentation but stressed the importance in proceeding through this process quickly as the construction is moving along rapidly and they are going to need electricity soon.

No public comments were received.

**The Board voted 6-0-0 to continue this public hearing until September 5, 2023 on a motion made by Nelson Disco and seconded by Jaimie Von Schoen.**

- 5. Colt Refining Inc. (applicant) and King Herrick, LLC and Evan Realty, LLC (owners) –** Conceptual discussion regarding a proposal to construct a 97,600 s.f. light industrial facility with associated site improvements. The parcels are located at 12A Star Drive, Herrick Street and King Street in the in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 3D-1, Lots 2-1 and 20-1 and Tax Map 3D-2, Lot 20-1. Case #PB2023-21

Jason Hill (TF Moran) presented the conceptual plan to the Board. Mr. Hill began by providing an overview of the property in question and shared an aerial photograph to show the existing layout of the land. He informed the Board that the purpose of the conceptual discussion is to gain feedback on the plans in order to alter them (if necessary) before they submit a formal site plan application. He went on to explain the nature of the business stating that Colt Refining does recycling and refining and is an E-Scrap dismantling company. They break down electronic devices and supply raw material to various mills and recycle the pieces that cannot be re-used. The existing building is approximately 50-60,000 square feet and is accessed through Star Drive. Mr. Hill shared some photos of the existing building and access and then shared a copy of the conceptual plan to demonstrate the location of the new building being proposed as well as the proposed new access off of Herrick Drive. He also shared a photograph of King Street which is an existing street that sits in the rear of the parcels being developed and indicated that there will not be any access to the site from this street. Mr. Hill also shared a plan that shows the wetlands on the property and indicated that some of the driveways will encroach into the 25 foot buffer so they are going to need to request a variance for relief.

Nelson Disco asked for clarification on what the business does and Mr. Hill explained that they break down electronic devices to remove pieces that can be repurposed and then recycle the rest. Vice Chair Christensen asked where the goods come from and Mr. Hill replied that they are trucked in from different businesses and recycling yards. Mr. Disco then asked if there are furnaces involved in the process and Mr. Hill said he isn't certain if furnaces are used and added that they do wet industrial processing but there is no industrial wastewater discharge because it is stored in drums and transported offsite.

Councilor Healey indicated that she would like to know more about other possible pollutants onsite as the parcel abuts a residential neighborhood. She stated that she would like to know which chemicals are used in the process, how they are used and where are they contained. Mrs. Tracey agreed that she would like to know more about the business itself.

Ms. Olsen interjected to advise the Board that there is an existing portion of King Street that would need to be discontinued as part of this proposal. Mr. Hill shared the plan again and pointed out the portion of the road in question. When King Street was first proposed, it was designed as a cul-de-sac but never constructed. A portion of the newly proposed building as well as some parking falls within the area in question and would need to be discontinued as a condition of approval.

Vice Chair Christensen asked Fire Marshal Manuele if the Fire Department has any concerns with this business. Mr. Manuele indicated that Colt Refining has been in business for many years and the FD has never had any problems with them.

Jaimie von Schoen asked for clarification on the Herrick Street access and whether or not trucks would be using that entrance. Mr. Hill explained that it would be for employees and smaller trucks such as UPS or Fed-Ex but would not be used for tractor trailers.. She then asked if the Herrick street access could be used by emergency vehicles and Mr. Hill replied that it could be used because it will be a 24 foot wide driveway. They also discussed the proximity of the residential properties as a concern with trucks coming and going and Mr. Hill reminded the Board that the new building is positioned so that the large tractor trailer trucks will be coming and going from the same location they do now, which is on Star Drive and not near King Street. He also indicated that he will have more specific information on the hours of operation and traffic volume when he submits the actual site plan application.

- 6. Continued Public Hearing – Zoning Ordinance Amendments** (as referred by the Town Council) proposing the repeal of Section 2.02.4.D (Mixed Use Developments Permitted in the I-1 District by Conditional Use Permit) and the correction of Section numbers in the remainder of Section 2.02.4. ***This item is continued from the July 18, 2023 Planning Board Meeting.***

**The Board voted 5-0-1 to continue the public hearing for the proposed Zoning Ordinance amendments which would repeal Section 2.02.4.D to the September 5, 2023 at 6:30 PM in the Matthew Thornton Room, on a motion made by Jaimie von Schoen and seconded by Haleem Mediouni. Barbara Healey abstained.**

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

Mr. Disco asked for copies of the Zoning Ordinance amendment documents because he missed the meeting that it was first discussed at. Ms. Olsen advised him that staff would be sending materials again in the September 5<sup>th</sup> packets. Mr. Disco expressed concerns because his packets are arriving to him late.

Ms. Olsen reminded the Board that there is a non-meeting with the town's Legal Counsel before the September 5<sup>th</sup> meeting. The meeting will be held in the Community Development conference room at 5:30 pm.

**8. Approval of Minutes — July 18, 2023**

**The Board voted 4-0-2 to approve the minutes of July 18, 2023 with amendments, on a motion made by Barbara Healey and seconded by Haleem Mediouni. Nelson Disco and Jaimie von Schoen abstained.**

**9. Adjourn**

**The Board voted 6-0-0 to adjourn at 7:45 p.m., on a motion made by Jaimie von Schoen and seconded by Barbara Healey.**