



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, AUGUST 16, 2016

Planning Board members present: Robert Best, Tom Koenig, Michael Redding, Desirea Falt, and Alternates Nelson Disco and Jeff Sebring.

Planning Board members absent: Alastair Millns, Lynn Christensen and 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 and Jeff Sebring to sit for Alastair Millns and Lynn Christensen, respectively.

Chairman Best announced that the Greenfield Farms site walk is scheduled for 8:00 a.m. on August 27, 2016.

2. Planning & Zoning Administrator's Report

None.

3. Jeffrey Kibbie (applicant/owner) — Review for acceptance and consideration of a waiver of full site plan for a change of use to permit (OHRV) Off Highway Recreational Vehicle sales. The parcel is located at 407 Daniel Webster Highway in the C-1 (Limited Commercial) and Aquifer Conservation Districts. Tax Map 5D-4, Lot 097.

Tim Thompson informed the Board that, at its May 25, 2016, meeting, the Zoning Board of Adjustment (ZBA) granted a variance to permit off-highway recreational vehicle (ORHV) sales in the C-1 (Limited Commercial) and Aquifer Conservation Districts with four conditions: 1. The approval is limited to off-highway recreational vehicles (OHRV) only; 2. No more than two parking spaces can be used for display with a maximum of six total OHRVs displayed at any one time; 3. No OHRV use or testing may be conducted on the property; 4. Site plan approval by the Planning Board.

Tim Thompson explained that, were it not for condition #4, the Community Development Department could have given administrative approval. The Building Department confirms building additions constructed since the 1992 site plan have not received any building permits. Tim Thompson recommends that obtaining building permits and updating the plan to reflect what exists today be made conditions of approval, if the Board decides to move forward with a decision.

James Kibbie, 407 Daniel Webster Highway, wants to start a business that he co-owns and co-manages with his father, Jeffrey Kibbie. He would make a clean and attractive business. There are 14 other vehicular businesses within 5 miles to the south and 0.9

miles to the north of the property. James Kibbie has sold personal ORHVs for five years with no complaints. He requested the Planning Board to treat his business the same as other businesses on D.W. Highway that display more than six vehicles.

Jeffrey Kibbie, 407 Daniel Webster Highway, said he has made significant improvements to the exterior. Custom Electric is a thriving business. He tries to encourage young entrepreneurs.

Chairman Best said the Building Department noted additions placed on the north and south since 1992 that are not on the site plan. Tim Thompson added that there has been no site plan approval since 1992 indicating the full extent of what is now on the property. Jeffrey Kibbie said there have been no additions since he bought the property.

Jeff Kibbie said the Fire Department has no issues with the proposal because there would be no fuel storage or repairs and a maximum of six vehicles at a time on the property.

Chairman Best queried why the applicant had not come before the Planning Board five years ago. James Kibbie referred to an RSA that says it is not necessary if he does not sell more than five vehicles in a 12-month period. Chairman Best explained this is a NH Department of Transportation (DOT) regulation regarding licensure, which is not the same as a land use regulation. Selling on a commercial property requires site plan approval. Tim Thompson added that one cannot sell ORHVs without approval. James Kibbie was unaware of that fact.

James Kibbie said that two snowmobiles or a maximum of three OHRVs could fit into one space. Two spaces could hold six OHRV's. OHRV's include dirt bikes, snowmobiles and ATVs.

James Kibbie said the building is used to sign paperwork. Customers have no access to other sections of the building. OHRVs may go into the garage at night, but most would stay outside. He now sells used OHRVs. If an OHRV does not work, the repair work is outsourced to another local company or inspection station depending on the warranty. There is no driving or testing on site. Customers lift the OHRV onto their trailers themselves without starting them. They do testing at another site. James Kibbie would have preferred that the ZBA not impose these limitations. Chairman Best explained it is to keep noise from the residential use next door.

James Kibbie said that he advertises on Craigslist, Facebook and word of mouth. He hopes to sell one vehicle a week. He has the required number of parking spaces. Customers would call ahead before leaving a consignment vehicle because only six may be displayed. If the spaces are full, they would be told to return when one is available. There is abundant parking in the rear in addition to the two display spaces. There are 11 spaces in front for both uses, although one in front would not be usable if the parking lot were filled to capacity. There is a gravel parking area in the rear with ample space to support both Custom Electric and the OHRV business. Tim Thompson said 18'x9' spaces are required. This plan is not to scale, so one cannot tell if they comply. The spaces available plus the gravel area in the rear appear sufficient to meet

regulations. Chairman Best said this is generally speaking, an innocuous use that does not need much scrutiny.

The Board voted 6-0-0 to accept the application for review, on a motion made by Tom Koenig and seconded by Desirea Falt.

Nelson Disco wanted a sidewalk because there are sidewalks on the next development and beyond. Chairman Best noted that they are piecemeal, but they are almost connected. A sidewalk makes sense for future development of neighboring properties.

Public comment

Don Lewis, Jr., 2 Wire Road, the son of the abutter at 409 D.W. Highway, distributed photographs of the property. He stated that, although the 1992 site plan required a 30' grass buffer between 407 and 409 D.W. Highway, it is actually a paved area of less than 10'. How can parking spaces be counted when they are not official? All the vehicles should not be behind the building. There should be a full site review because there are so many violations. Don Lewis, Jr., wanted everything put back to the way it was supposed to be before making more changes. Only seven rather than 11 parking spaces were approved. There should be grass rather than a road to the rear parking. The applicant wants a dealer's license, but he is already selling vehicles. There are no signs. Full foundation additions are not on the original plan. The "patio" has a door, roof, etc. The "shed" has lights, wiring and security cameras. The applicants will not do what they say they will do. How can one guarantee they would not put in more than two spaces? Their Certificate of Occupancy (CO) should be revoked. There is no loud noise from Custom Electric. Chairman Best explained that the ZBA gave permission for vehicle sales, so the use of the property for OHRV sales is no longer an issue the Planning Board could change

Dyana Lewis, 16 Miriam Road, the abutter's daughter, said there are three other businesses on site as well as two illegal additions and a tractor trailer. She asked where 12 employees would park and for the location of "no parking" signs on D.W. Highway. Tim Thompson said that, at the ZBA hearing, ZBA member Leonard Worster noted that signs are not a ZBA issue and are not germane to the ZBA's decision. Those are Planning Board types of issues. Chairman Best explained that because a business is listed, it does not mean that it is being operated on the property. Dyana Lewis said renters once lived on the property and the police were called. Chairman Best has no information that is happening now. Dyana Lewis said that, in addition to the issues of the 10' buffer and paving to the rear, one can see through the shrubs and an 18 wheeler is being used for storage.

Nelson Disco, who signed the 1992 site plan, said it clearly shows an unpaved grass buffer with trees. The paving is new. Parking on gravel was approved. The rest was grass. Chairman Best summed up that all the paving in front is not consistent with the site plan of record.

Don Lewis, Sr., 111 Bishop Road, said the buffer was to protect his bushes and shrubbery. Because the applicant piled snow and salt on them, they are now dead and must be replanted. Don Lewis, Sr., wants the parking lot removed and the buffer zone

replaced. Chairman Best told him that snow plowing onto his property is a police matter and not a Planning Board issue.

Jeff Kibbie said he bought the property in 2006 as it is today and did nothing to it. The sign and Custom Electric are permitted. He did not push snow onto the abutter's property. The other businesses are Amherst Information Group, which is a real estate holding company for Custom Electric and a mailing address for Striker Technologies, another company he owns. Neither has any activity. The two open and one closed trailer belong to Custom Electric. Tim Thompson said an accessory storage use for Custom Electric is expected; it is not a violation. Jeff Kibbie added that Custom Electric parking would have no impact on the proposed use. There are four vans on the south side. Most vehicles go either to a job or home with the employees. The vans park in back. Tim Thompson repeated that parking is more than sufficient to meet requirements.

Desirea Falt said that everything on the site should be shown on the plan. Jeff Kibbie replied that the Planning Board has drawings of what exists today and what he bought, but Desirea Falt noted they do not show the trailer and accessory buildings. Chairman Best explained that the applicant bought a non-compliant property and must bring it into compliance.

Chairman Best asked whether paving affects drainage calculations. Michael Redding said it would increase runoff. Without knowing the grading, it is unclear where the water goes or how it is managed, although the increase is of minimal magnitude. Michael Redding said one cannot assess runoff impacts without engineering; there is not enough information to make a determination. Tim Thompson recommends that the applicant update the site plan and permits. Tom Koenig noted the steep drop off in the rear; drainage would go 300+' to the bottom.

If they had to decide about adding what is on the property today, Michael Redding and Nelson Disco would have wanted peer review and engineering. Tim Thompson said regulations require a buffer. One option could be Category C, (required by the regulations) type 1: a 10' unpaved buffer if there is a 6'-high stockade fence and evergreen plantings every 10 feet. Tom Koenig queried whether the Board should use 1992 as a starting point or work from what is on the site, since it has been like this for 10 years. Chairman Best said that parking two OHRVs on a paved corner with a "for sale" sign is not a major issue. Chairman Best said that, because of the impact on the neighbor, full site plan review could be waived if a buffer and a 6'-high stockade fence were required. Tim Thompson said updating the site plan and permits would fulfill the site plan requirement. Tom Koenig said that adding OHRV sales in the corner would not cause a dramatic change. He would approve waiving full site plan review if a buffer and updated drawings were required. Michael Redding asked whether there should be relief for the abutter's dead plants. Chairman Best did not want to rely solely on tonight's testimony.

Tim Thompson suggested that a sidewalk is really not necessary for the use of two existing parking spaces. Chairman Best supported a sidewalk as a fair compromise for not fixing all the non-compliances. It could be done without disturbing the rock wall.

Tim Thompson's concern is who would design the sidewalk, whether it would be within the property or in the right-of-way, and whether it would be 10' from the pavement or 10' from the property line, and whether the proposal before the Board is significant enough to justify the cost and expense of sidewalk construction. Tom Koenig did not want to make a sidewalk a condition of approval, since there is no connection at either end.

Desirea Falt cited the criterion that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of the regulations.

The Board voted 5-1-0 to waive full site plan review, on a motion made by Desirea Falt and seconded by Tom Koenig. Michael Redding voted in the negative.

Chairman Best suggested a condition of approval of a new drawing of what is on site with accurate measurements. Nelson Disco wanted them to scale and asked about a buffer to the south. Tim Thompson explained that it is not necessary because the uses of the two properties have the same use (commercial). A buffer is needed next to the residential abutter because they are two different uses (commercial and residential).

Don Lewis, Jr., said the Planning Board made him and others install a sidewalk for their projects and should do the same with this applicant. The Board is approving leaving two non-compliant illegal buildings because they have been there for 10 years. The Planning Board must be consistent and follow the rules by requiring full site plan review. "Only two spaces" are not permitted. The Board does not know where water, snow and trash would go. Chairman Best replied that the Planning Board's approach is not to cause pain but to fix the non-compliance. It must consider whether there is an impact. It is a disgrace that the previous owner, who is in the construction business, knew he was not complying. He repeated that the matter would have been handled by administrative approval were it not for the non-compliance. Chairman Best would not have required no testing of OHRVs on the property, but the ZBA did. He supports installing a sidewalk and buffer in order to be fully compliant. One cannot revert to the 1992 conditions.

The Board voted 4-2-0 to grant final approval, with the following precedent conditions to be fulfilled within six months and prior to plan signing, unless otherwise specified, on a motion made by Nelson Disco and seconded by Michael Redding. Tom Koenig and Desira Falt voted in the negative.

1. Final plans to be signed by all property owners and signed and sealed by all appropriate professionals;
2. The applicant shall obtain all required State approvals/permits as may be applicable, note the approvals/permits on the plan and provide copies to the Community Development Department;
3. 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, as applicable;

4. The applicant shall update the submitted plan to indicate all actual existing conditions that exist on the site (particularly those that occurred following the 1992 site plan approval for the site). Plans should be to scale and dimensioned properly. In addition, the applicant shall obtain any required building permitting for any structures constructed on the site since 1992 that were not indicated on the previously approved plans;
5. The applicant shall provide for and indicate on the revised plan a buffer meeting the regulatory requirements of “Category C, Type 1” as the property abuts the parcel located at 409 DW Highway;
6. The applicant shall revise the plans to indicate proper parking spaces (9'x18') on the paved parking area, and number the spaces properly (eliminating spaces that are inaccessible or used for OHRV sales display);
7. The applicant shall provide for and indicate a sidewalk or paved pedestrian way as required by the regulations;
8. The applicant shall indicate proper snow storage area on the plans;
9. The applicant shall address any forthcoming comments from the Assessing Department, as applicable;
10. The applicant shall address any forthcoming comments from the Building Department, as applicable;
11. The applicant shall address any forthcoming comments from the Fire Department, as applicable;
12. The applicant shall address any forthcoming comments from the Highway Division, as applicable;
13. The applicant shall address any forthcoming comments from the Wastewater Division, as applicable;
14. The applicant shall address any forthcoming comments from the Conservation Commission, as applicable;
15. The applicant shall address the following Planning Staff Technical Comments:
 - a. The following items shall be added to the plan:
 - i. Identity and signature of the current owner;
 - ii. Purpose statement;
 - iii. All applicable zones to be noted (C-1, I-1 and Aquifer Conservation);
 - iv. Updated parking calculation to reflect both the existing and proposed uses;
 - v. Water & sewer sources;
 - vi. Information pertaining to variance history for this site, including dates and any conditions of approval;

vii. Blank Planning Board signature block for current approval.

General and subsequent conditions

1. The approval is limited to off-highway recreational vehicles (OHRV) only;
2. No more than 2 parking spaces can be used for display with a maximum of 6 total OHRV's displayed at any one time.

4. Continued Public Hearing – Zoning Ordinance Amendments – The Planning Board will conduct a public hearing to consider recommended amendments to Section 2.02.1 and Section 17 of the Merrimack Zoning Ordinance, pursuant to RSA 675:6 and 675:7. **This agenda item is continued from the July 19 and August 2, 2016 meetings.**

ADU. Tim Thompson explained that the new state law means that occupancy cannot be restricted to family members only and that the property owner must live in either the primary dwelling or in the Accessory Dwelling Unit (ADU). The Town cannot and will not enforce the previously recorded restrictive covenants and any previously approved ADU can now be occupied in accordance with the new law. This change also addresses the Master Plan goal of meeting the needs of the workforce housing stock and community needs and also fixes the ZBA process issue of Special Exceptions. An ADU would now be a permitted use in a residential district. The ZBA would no longer hear ADU requests. It is proposed that an attached ADU will be handled by administrative process and a detached ADU will be handled by a Conditional Use Permit (CUP) with the Planning Board.

Tim Thompson read and explained the proposed amendments.

Signs. Because of a recent US Supreme Court case (Reed vs. Gilbert), the focus of any sign regulation must be on those aspects that have nothing to do with content, such as dimensions, height, colors, material, etc. They cannot treat commercial speech more favorably than non-commercial speech, such as political speech or signs that advertise church services. Distinctions based on message are content-based and do not meet the legal standard. Language can make signs content neutral without making substantive changes to the Ordinance in general.

Tim Thompson summarized sections that would change.

Chairman Best read into the record an August 8, 2016, letter from Alastair Millns, but suggested that the Planning Board focus first on the Supreme Court decision. Alastair Millns made the following suggestions: 1. Do not allow a sign to be posted similar to one on Amherst Street in Nashua concerning individuals' activities; 2. Limit banner signs to one per business, including those fashioned like the national flag and about MIA veterans; 3. Enforce rules requiring signs to be removed in due time more rigorously; 4. Stop the practice of using stationary vehicles to be used as advertising signs; 5. Find a simple and legal way of stopping sign violations.

Tim Thompson said that sign ordinances are controversial and difficult to draft and enforce. He would not recommend any further changes to what is currently proposed

unless there is a comprehensive examination of the Sign Ordinance in general that involves businesses, Town Council, etc., so the entire community can accept them.

If it approves of the proposed amendments, the Planning Board would make a recommendation to Town Council, which would hold three readings and a public hearing on the proposed amendments before making a final decision.

There was no public comment.

The Board voted 6-0-0 to recommend that Town Council adopt the proposed amendments, on a motion made by Nelson Disco and seconded by Tom Koenig.

5. Zoning Ordinance Amendments Workshop — “Redevelopment Overlay” for underutilized parcels. This agenda item is rescheduled from the July 19 and August 2, 2016 meetings.

Tim Thompson said staff is looking at methods to utilize innovative or flexible zoning techniques to try to facilitate the redevelopment of selected properties within the community. The goal is to look for opportunities to creatively revitalize underutilized and vacant sites. Economic development goals are to coordinate land use policies, regulations and permitting to facilitate economic development; refine the Town’s zoning and land use regulations to allow for greater flexibility; and to encourage repositioning and redevelopment of underutilized properties. The list of “opportunity zones” for economic development and growth includes: Airport access road corridor, Flatley property, former Merrimack Hotel & Conference Center, Zylas, former Shaw’s Plaza, and 50 Robert Mulligan Parkway (Audley pit). Implementation methods include: 1. The Master Plan recommends examining zoning regulations in existing non-residential districts to ensure that they achieve the community’s land planning objectives without being overly restrictive on the establishment of new businesses or the expansion of existing ones; 2. Considering implementing performance-based zoning to increase the flexibility of land development; 3. Seeking grants to encourage or facilitate the repositioning of underperforming properties, especially those in the Town’s opportunity zones; 4. Considering preparation of a conceptual “master plan” for key parcels along the northern Route 3 corridor that could illustrate the potential for a mixed use development to property owners, potential users of the site and investors.

The advantage of an Overlay approach is that it allows underlying zoning to be used in the event the new ordinance is not the intent for eventual development. The mechanism to promote redevelopment is a CUP process similar to the mixed use CUP in the Industrial District or a PUD-style regulation, which is Tim Thompson’s preference..

Chairman Best wanted to avoid “spot zoning”, meaning giving special favors that neighboring properties do not get. The Board should think only of areas rather than specific pieces of property.

Nelson Disco said one problem is getting interest in mixing commercial along with residential. Chairman Best suggested integrating smaller parcels within a neighborhood. He no longer supports performance-based development because it is too nebulous and

undefined. He supported Tim Thompson's proposal. There must be incentives for creativity, but there should be some criteria for "flexibility".

Chairman Best questioned why someone would invest time and effort into redevelopment when the owner is not responsive, such as at the old Shaw's. The community is most interested in that property.

Tim Thompson asked the Board to relay its thoughts to him for another discussion in a couple of months. Chairman Best favored density on properties with municipal water & sewer. Tim Thompson suggested that the Planning Board think about how much more residential use it is willing to approve in mixed use developments. Tom Koenig would rather see a multi-layered project without a specific percentage (vertical integration,, where residential is on upper levels above commercial uses). Chairman Best asked how the Board could plan a multi-use model that would work and whether there is any research on the topic. Tim Thompson mentioned the gradual decline in traffic at off-peak hours on D.W. Highway. Tom Koenig has seen no obvious impact from the airport access road. Tim Thompson said the parcels there are narrow and there is no municipal sewer, hindering potential redevelopment

6. Discussion/possible action regarding other items of concern

Tim Thompson reported that the Edgebrook Heights mixed use CUP will expire on Friday, August 19, 2016. He expects they will ask for reinstatement and an extension.

7. Approval of Minutes – August 2, 2016

The minutes of August 2, 2016, were approved as submitted, by a vote of 5-0-1, on a motion made by Desirea Falt and seconded by Michael Redding. Nelson Disco abstained.

8. Adjourn

The meeting was adjourned at 9:45 p.m., by a vote of 6-0-0, on a motion made by Desirea Falt and seconded by Nelson Disco.