



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

603 424-3531

Fax 603 424-1408

www.merrimacknh.gov

MERRIMACK PLANNING BOARD

APPROVED MINUTES

Tuesday, August 18, 2015

Planning Board members present: Robert Best, Alastair Millns, Tom Mahon, Michael Redding (arrived 7:15 p.m.), Lynn Christensen (arrived 7:20 p.m.), Desirea Falt, and Alternates Nelson Disco and Jeff Sebring.

Staff present: Community Development Director Tim Thompson, Planning and Zoning Administrator Jillian Harris, Community Development Intern Emily Edwards, and Recording Secretary Zina Jordan.

1. Call to Order

Robert Best called the meeting to order and designated Nelson Disco and Jeff Sebring to sit for Lynn Christensen and Michael Redding until their arrival, after which he designated Nelson Disco to sit for the vacant full member position.

2. Planning & Zoning Administrator's Report

John J. Flatley Company (applicant/owner) – Review for acceptance and consideration of Final Approval of an application for a site plan to construct 240 multi-family residences, clubhouse, and associated parking and drainage improvements, per the requirements of the Flatley mixed-use Conditional Use Permit. The parcels are located at # 645, 673, 685, 703 and 707 D.W. Highway in the I-1 (Industrial), Aquifer Conservation and Wellhead Protection Districts. Tax Map 6E, Lots 003-01, 003-03, 003-04, 003-05 & 003-06. **This item is continued from the June 16 and July 21, 2015 Planning Board meetings.**

Tim Thompson explained that the applicant wishes to continue this item, which staff forgot to place on tonight's agenda.

At the applicant's request, the Board voted 6-0-0 to continue this item to September 1, 2015, in the Matthew Thornton Meeting Room, at 7:00 p.m., on a motion made by Alastair Millns and seconded by Desirea Falt.

Tim Thompson stated that staff recommends that the Pennichuck Water Works Subdivision at and Pennichuck Water Works Site Plan are not of regional impact. They are located at 16 Daniel Webster Highway and Manchester Street, adjacent to the Nashua City Line. The project proposes to construct a 32,300 square foot distribution facility on the proposed 7.2-acre lot in the accompanying subdivision project. The facility would replace the existing Pennichuck Distribution facility located in Nashua.

The Board voted 6-0-0 to determine that the Pennichuck Water Works Subdivision and Pennichuck Water Works Site Plan are not of regional impact and that the City of Nashua be sent courtesy notification, on a motion made by Nelson Disco and seconded by Tom Mahon.

Tim Thompson said that he and Planning and Zoning Administrator Jillian Harris would interview five candidates for the position of Assistant Planner on August 19, 2015. Also on August 20, 2015 Emily Edwards will complete her position as Community Development Intern.

Tim Thompson thanked her for participating in the Economic Development website and drafting staff memos and recommendations to committees. Chairman Best thanked her on behalf of the Planning Board.

- 3. Public Hearing – Zoning Ordinance Amendments** - Planning Board will conduct a public hearing to consider recommended amendments to Sections 1, 2, and 17 of the Merrimack Zoning Ordinance for regulation of Alternative Treatment Centers (for medical marijuana under NH RSA 126-X), pursuant to RSA 675:6 and 675:7.

Tim Thompson explained that, over the course of the past several months, the Town has become aware of interest by Prime Alternative Treatment Centers of NH in locating a medical cannabis (marijuana) dispensary (ATC) in Merrimack. Staff and Legal Counsel determined that, without any regulatory amendments, the Town would be required to treat ATCs in the same manner as “retail pharmacy”. In response Town Council has developed Zoning Ordinance amendments intended to provide greater local regulatory oversight to such operations. Proposed are amendments to three sections to cover definitions, establishment of district and signage. Dispensaries would be required to be 1,000’ away from schools and to have floor plans and security measures reviewed by Merrimack police. They would provide only medical cannabis and related paraphernalia. Tim Thompson read the conditions to allow a Conditional Use Permit, which affords extra scrutiny to applications. Town Council will review the changes on August 20, 2015, and hold a third hearing in September 2015, before taking a final vote.

There was no public comment.

The Board voted 6-0-0 to recommend to Town Council that the proposed Ordinance Amendments be adopted, with changes recommended by staff, on a motion made by Nelson Disco and seconded by Alastair Millns.

- 4. Brighter Horizons Environmental Corp. (applicant) and James E. Longa & Son, Inc. and James E. Longa Revocable Trust (owner)** – Review for consideration of an extension of the previously granted six-month extension to comply with conditions of an approval granted by the Planning Board on June 18, 2013 for a waiver of full site plan review for an application proposing partial reclamation of a sand and gravel pit located at 17 Twin Bridge Road in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 5D-1, Lot 010 and Tax Map 5D-4, Lot 074-01.

Tim Thompson explained that the Board granted two six-month extensions: on July 22 and December 16, 2014. The applicant requests another extension pending appeal of the denial of the required permit by NH Department of Environmental Services (DES). A hearing was held and the applicant awaits a written decision from DES.

Michael Redding and Lynn Christensen arrived at 7:15 p.m. and 7:20 p.m., respectively.

Attorney Roy Tilsley, Jr., Bernstein Shur, said the Waste Management Council held a two-day hearing, but there was no official written decision. It is expected any day. He filed a request for an extension before the current one expired. Nothing in the project has changed. A six-month extension is needed to receive the Council’s decision and determine how to move forward. Chairman Best read an e-mail from the DES appeals clerk denying the permit. Attorney Tisley said he never received it in writing. The appeal was reviewed by a Council separate from DES that can over-ride a DES decision. He must learn and analyze the reasons for the denial before deciding whether to appeal to the NH Supreme Court.

There was no public comment.

Michael Redding said DES denial may have been because the project poses challenges for the community. He is not confident that the Court will see to the Town's best interest and is uncomfortable with the impact of the project on the community. Chairman Best wanted to allow the legal process to run its course. It is safe to grant an extension, which can be reviewed every six months. A Supreme Court decision usually takes one year.

Staff recommends that the Board reinstate the 2013 conditional final approval and grant a third six-month extension, effective August 18, 2015, with a new deadline of February 18, 2016. The conditions outlined in the June 21, 2013, decision letter will continue to apply.

The Board voted 4-2-1 to reinstate the June 18, 2013, conditional approval and to grant a six-month extension to February 18, 2016, on a motion made by Desirea Falt and seconded by Alastair Millns. Michael Redding and Nelson Disco voted in the negative; Tom Mahon abstained.

5. Madi Choueiri (applicant/owner) – Review for acceptance and consideration of Final Approval for a waiver of full site plan review for a restaurant located at 480 D.W. Highway in the C-1 (Limited Commercial), Elderly and Town Center Overlay and Aquifer Conservation Districts. Tax Map 5D-3, Lot 046. This agenda item is continued from the June 2, July 7, and August 4, 2015 Planning Board meetings.

Desirea Falt recused herself from discussing and voting on this item.

Robert Best designated Jeff Sebring to sit for Desirea Falt.

The applicant has submitted a revised floor plan and site plan in response to Board comments at previous meetings. The applicant revised the plan significantly since the last hearing, showing more clearly the proposed improvements and layout. The proposal has also been scaled back to the point that the seating and number of employees no longer require off-site parking or a parking waiver for the restaurant use.

Madi Choueiri, 480 D.W. Highway, said that, at the Board's request, he changed the layout of the parking lot, showed the dumpster on the plan, and reduced the number of seats from 59 to 36.

Desirea Falt, 21 Beebe Lane, representing the applicant, said the parking was reduced to 14 spaces. Striping from the right-of-way to the back will separate Church Street from the lot. There will be 30 seats, but only two rather than four employees at the same time. Adding two spaces for them and four for the patrons brings the parking to 36.

Chairman Best noted that D.W. Highway is paved from the road to the building and asked what it would look like when it is finished. Madi Choueiri said he would remove the porch, install landscaping and a fancy 4'-high or 6'-high fence after removing the construction fence, and will install a sidewalk later. The restaurant can only be entered from Church Street, not from D.W. Highway. Desirea Falt added that landscaping of native species would replace the concrete. The upper floor is an apartment building and not the restaurant, which is below it. One must go down stairs from and a ramp into the restaurant. There is no bump-out in the rear on the lower level. The patio will be enclosed and labeled on the plan. Desirea Falt described how to enter the restaurant. Madi Choueiri said the patio would be enclosed with glass.

Chairman Best asked if there would be curb stops on Church Street and a picket fence next to the parking area. Madi Choueiri replied that would make it too difficult to enter and exit the lot. Chairman Best wanted a 22'- or 24'-wide driveway and a barrier next to the parking lot. Madi Choueiri agreed to install a curb. There is room for a dumpster to pull in and back out. The

patio and staircase in front would be removed and the landscaping would be retained. Tim Thompson explained that it would become inside seating.

In answer to Nelson Disco's questions, Madi Choueiri again explained the number of restaurant seats, the curb, dumpster location, landscaping, bump-out elimination, and porch enclosure (see above). The railroad ties and boulders will be removed and the area will be paved with a sidewalk on the easement if the Planning Board so desires. Tim Thompson noted that the Board has not yet decided whether to waive the sidewalk requirement. A 50' setback from front of the building to D.W. Highway does not apply in the Town Center Overlay. (Technical Comment 3.a.) Madi Choueiri said the emergency exit would be on the porch level going to the parking lot or to the street.

Desirea Falt said that everything that was discussed at this meeting would be put on the site plan.

Chairman Best asked about the peak of the roof, which Madi Choueiri said would be turned on end and would no longer be in front.

Jeff Sebring asked whether there would be parking on D.W. Highway. Madi Choueiri said a fence would prevent it.

Tim Thompson explained that this is a dual/mixed-use site with a restaurant and residential building. Each residential unit requires two parking spaces. Technical Comment 10 suggests that the applicant verify whether the new roof/patio enclosure requires a setback variance. Jillian Harris verified that basic repair to the roof would not require a variance.

The Board voted 4-3-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Jeff Sebring. Tom Mahon, Michael Redding and Nelson Disco voted in the negative.

Nelson Disco was still not satisfied with the site plan. Tim Thompson explained that, unlike the preliminary plans, the site plan will meet requirements and conditions after Final Approval. The ZBA does not require an engineering survey.

The Board voted 4-3-0 to waive full site plan review, on a motion made by Lynn Christensen and seconded by Alastair Millns. Tom Mahon, Michael Redding and Nelson Disco voted in the negative.

There was no public comment.

Tim Thompson recommended a continuance in order for the applicant to submit a site plan that includes Planning Board comments.

The Planning Board wanted the following on the site plan: label the bump-out on the upper floor, label the curb along Church St. to delineate parking lot, describe the front landscaping and what would be removed, label right side entry, add emergency exit and where it would be accessed, note all setbacks with dimensions (30' front setback, 15' setbacks from property lines), note ZBA setback variance (as applicable), provide all four architectural elevations and note what will be removed, how much would be removed and how much would be left of existing sidewalk, include a note on the sidewalk easement intent, remove railroad ties depicted with in the sidewalk easement.

Tim Thompson said a sidewalk easement could be a condition of approval. The Board can decide whether to waive the sidewalk requirement at a later meeting.

The Board voted 7-0-0 to continue this item to September 15, 2015, in the Matthew Thornton Meeting Room, at 7:00 p.m., on a motion made by Alastair Millns and seconded by Lynn Christensen.

6. Discussion/possible action regarding other items of concern

Desirea Falt returned to the Board.

The Board voted 7-0-0 to release the \$100,535.24 Pearson Road Sewer Performance Bond, on a motion made by Alastair Millns and seconded by Lynn Christensen.

Alastair Millns noted that there is a non-conforming “Cupcake Conspiracy” sign on Fairpoint land and at other locations. Lynn Christensen said that their parking is not in compliance either; they park in the fire lane. Jillian Harris said that Community Development is aware of these issues. It is an ongoing process.

Alastair Millns was “disheartened” that the ZBA granted a Special Exception to allow car auctions at the Vault. Lynn Christensen explained the ZBA’s rationale. Chairman Best said the Planning Board is not an appropriate venue for discussing ZBA decisions.

7. Approval of Minutes – August 4, 2015

The minutes of August 4, 2015, were approved as submitted, by a vote of 7-0-0, on a motion made by Lynn Christensen and seconded by Tom Mahon.

8. Adjourn

The meeting adjourned at 8:18 p.m., by a vote of 7-0-0, on a motion made by Tom Mahon and seconded by Alastair Millns.