



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

## **MERRIMACK PLANNING BOARD APPROVED MINUTES TUESDAY, AUGUST 3, 2021**

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, August 3, 2021 in the Matthew Thornton Room.

Robert Best, Chairman, presided.

### Members Present:

- Paul McLaughlin (Vice Chairman)
- Lynn Christensen
- Councilor Barbara Healey, Ex-Officio
- Alternate Nelson Disco

### Members Absent:

- Neil Anketell
- Jaimie von Schoen

Staff Present: Robert Price, Planning & Zoning Administrator

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

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

### **2. Planning & Zoning Administrator's Report**

**The Board voted 5-0-0 to determine that the Jones/MacLean Lot Line Adjustment is not of regional impact, on a motion made by Lynn Christensen and seconded by Barbara Healey.**

- 3. Garrett Burbee (applicant) and 385 DW Highway, LLC (owner)** – Continued review for consideration of a Waiver of Full Site Plan Review to permit a mixed use development consisting of a single-family dwelling and contractor storage yard. The parcel is located at 385 Daniel Webster Highway in the C-1 (General Commercial), Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 090. Case #PB2021-10. This item is continued from the July 20, 2021 Planning Board meeting.

Robert Price provided a brief history of the project and explained that Mr. Burbee has worked with staff to provide a plan that outlines the existing conditions of the site and staff is now in favor of granting the waiver of full site plan. He noted that the new plan that was provided has

been updated to remove the proposed garage which means there will be no external changes being made to the site at this time. Mr. Price also reminded the Board that the Shelter Logic temporary structure currently on the site needs to be discussed, as it was something they had concerns with when it was first mentioned. This type of temporary structure is not usually seen on a commercial site but this is a unique circumstance as the location is a mixed use and the structure is used as residential storage for Mr. Burbee.

Garret Burbee (applicant/owner) was present to discuss the project with the Board and stated he did not have anything to add to Mr. Price's overview of the project.

**The Board voted 5-0-0 to accept the application for review, on a motion made by Lynn Christensen and seconded by Barbara Healey.**

Nelson Disco expressed concerns with the lot lines being uncertain, since the boundaries have not been established by the licensed land surveyor and the fact that an old plan is referenced but they did not receive copies of that plan. Chairman Best asked Mr. Burbee what was done to identify the lines. Mr. Burbee responded that the company that created the plan conducted an aerial survey and also used the information from the Town's GIS. Mr. Price responded to the concern of the Board not having the old plan by explaining that since the plan that was referenced is approved, it is not necessary to have the reference plan on hand for this discussion. He added that it is common for newer plans to reference previously-approved plans and that the referenced plans are never provided in Board packets.

Mr. Disco also mentioned concerns that Mr. Burbee's neighbor looks to be encroaching on his land. Mr. Price stated that the applicant is aware that there may be a potential encroachment and it is a civil issue between Mr. Burbee and his neighbor. Chairman Best commented that under normal circumstances they would want to see accurate boundary lines but this is a waiver of full site plan with no external changes to the property so he feels it is not something the Board should pursue. Mr. Burbee advised that board that the previous owner of his property had sent the neighbor a letter about the possible encroachment in approximately 2017 but the issue was never resolved. The Board then discussed parking and Mr. Disco stated that he has driven by the location and seen cars parked on the grass area along Daniel Webster Highway. Mr. Burbee disputed this claim and stated that he has never parked his vehicles on the grass because there are plenty of paved parking spaces available.

Chairman Best asked Mr. Burbee if the temporary Shelter Logic structure is being used for residential use or as part of the business and Mr. Burbee confirmed that it is used to store items for his residence. Because of this, Chairman Best indicated that the Board has no concerns with its presence. Mr. Price added that staff is recommending, as a potential condition of approval, that a note be added to the plan indicating that the structure shall only be used for residential purposes and if storage for the business is ever needed, site plan review for a permanent structure will be required.

Mr. Disco asked about drainage on the site and recalled that being a concern in an earlier discussion. Mr. Price confirmed that when the project was first discussed, Mr. Burbee was considering adding a permanent garage structure to the site which led to concerns about drainage, however since the garage is no longer being proposed, it is no longer a concern. Mr. Price also pointed out that the last several owners of this parcel have received a waiver of full site plan approval, even when external changes were being made.

The Board walked through the plan with the applicant and discussed a few small changes that need to be made before Chairman Best opened up the floor for public comment.

There was no public comment.

Nelson Disco referenced the aerial photo of the property from the Nashua Regional Planning Commission's GIS to reiterate his concerns with not knowing the exact property lines. The photo seems to indicate that the front setback is not being met as the property line looks to be too close to the DW Highway. Chairman Best indicated that adding a note to the plans stating that the Board is not agreeing to any property lines indicated on the plan should solve for that problem. Lynn Christensen also stated that she is not concerned since there is already an approved plan in place and they are voting on a waiver of full site plan.

**The Board voted 4-1-0 to grant a waiver of full site plan review, on a motion made by Lynn Christensen and seconded by Barbara Healey. Nelson Disco voted in opposition.**

**The Board voted 4-1-0 to grant conditional final approval to the application, on a motion made by Paul McLaughlin and seconded by Lynn Christensen. Nelson Disco voted in opposition. The following conditions apply:**

1. Final plans to be signed by all property owners.
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, as applicable.
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. The applicant shall address any forthcoming conditions placed upon the approval by the Planning Board during the hearing(s):
  - a. Applicant shall fix the line work labeled as Existing Fence (A) near the northerly property line for clarity (the area that currently appears as a narrow enclosed space).
  - b. Applicant shall note the following on the plan: "As part of the granting of a waiver of full site plan review, the Planning Board is not approving the locations of the boundaries, nor the encroachments shown on this plan".
5. The applicant shall work with staff to ensure that some typical plan notes be added to the plan to make it acceptable for final approval:
  - a. The applicant shall add a Planning Board Signature Block to the plan, designed as shown below:

Approved by the Merrimack, NH Planning Board on: \_\_\_\_\_

Certified by: \_\_\_\_\_

Chair: \_\_\_\_\_

Vice Chair: \_\_\_\_\_

- b. Applicant shall add a space for property owner signature on the plan.
- c. Revise Note 8 to indicate there are 6 parking spaces provided on site, not 7.
- d. List of Planning Board waivers (including the granting of a waiver of full site plan review, as applicable).
- e. A note shall be added to the plan stating: “The shelter logic structure is limited to storage for the residential use only; no storage related to the HVAC business is permitted. Should storage become necessary for the HVAC business, applicant shall obtain site plan approval for a permanent structure.”

**The following “General and Subsequent Conditions of Approval” are also be placed on the approval:**

1. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant.
2. 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).
3. The applicant shall address the following comments from the Fire Department:
  - a. As this proposal constitutes a change of use from a commercial property to a mixed use property the entire building shall be protected by an approved NFPA-13 compliant fire sprinkler system. (Town of Merrimack Building Zoning Ordinance and Building Code, Section 11) Plans shall be provided to this office for review and approval before a permit can be issued.
  - b. The building shall be protected by an approved NFPA-72 fire alarm system. Plans shall be provided to this office for review and approval before a permit can be issued.
4. **Robert & Karen Curry (applicants/owners)** - Review for acceptance and consideration of final approval for a two lot subdivision. The parcel is located at 2 County Road in the R-1 (Residential, by Map) and Aquifer Conservation Districts. Tax Map 3A, Lot 65. Case # PB2021-25.

Robert Price prefaced the presentation by telling the Board that the applicant was before the Board previously for a subdivision on one side of his property and now is seeking to subdivide the land again along the river side.

Matt Peterson (Keach-Nordstrom Associates, Inc.) represented the applicant and shared an aerial photo of the land to describe the location of the existing house and where the subdivision is being requested. He went on to explain that if the subdivision is approved, one lot will have 2.874 acres and the other will have 3.358. Mr. Peterson also noted that a Shoreland permit will be required from the NH Department of Environmental Services before building permits can be issued for the proposed lot because of its proximity to the river. He also mentioned that he was notified by the Fire Marshal that the existing street numbers will need to be changed for several homes in order to comply with E911 requirements.

**The Board voted 5-0-0 to accept the application as complete, on a motion made by Lynn Christensen and seconded by Nelson Disco.**

There was no public comment.

**The Board voted 5-0-0 to grant conditional final approval on a motion made by Lynn Christensen and seconded by Paul McLaughlin. 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 applicable to the project and provide copies to the Community Development Department, as applicable.
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. The applicant shall address the following comments from the Public Works Department as applicable:
  - a. The sight distance shall be verified for the driveway entrance by the engineer. A policy on Geometric Design of Highways and Streets (AASHTO) shall be used along with a design speed of 40 MPH to determine the sight distance required at the entrance.
  - b. Please add a note that prior to any driveway changes, the plans shall be reviewed and approved by Community Development and the Public Works Administration prior to construction.
  - c. Section 4.18 (a) monuments shall be set at all street intersections, points of curves and angle points along County Road. The monuments shall be concrete or granite bound markers. These bounds shall be 4 inches square by 4 feet.
5. The applicant shall address any forthcoming comments from other municipal departments & boards/commissions, as applicable.
6. The applicant shall address the following Planning Staff Technical Comments:

- a. Revise Note 3 to state that the subject parcel is located on the Aquifer Conservation District (not protection).
- b. The deed information for Map 3A Lot 61 does not match the Town's assessing records, please revise.
- c. The owner information for Map 4A Lot 65-1 does not match the Town's assessing records, please revise.
- d. The label for Zone X says "see note #9." The explanation for Zone X is in the legend, not in the notes.
- e. The lines in the legend for "easement" and "wetland setback" do not appear to match the lines drawn on the plan, please revise.
- f. The "edge of river" line on the western side of the river was drawn with the "wetland" line in the legend, however, the river is marked on the eastern side with the "river" line in the legend. Please clarify this line work.
- g. The legend shows a "high water" line. Staff does not see such a line drawn on the plans.
- h. An approximate location for the existing house's effluent disposal area should be shown on the plan.

**The following "General and Subsequent Conditions of Approval" are also be 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.
2. The applicant shall obtain right-of-way permits from the Public Works Department for all new driveways.
3. The entire proposed lot 3A-65-2 is within the 250' Protected Shoreland Limits. They will be required to get the appropriate permits in the future to make any changes to their lot, house driveway etc.  
  
Public Works requests that erosion control plans be provided for the proposed construction on lot 3A-65-2. The plans should be reviewed Public Works prior to issuance of building permits.
4. The applicant shall address the any forthcoming comments from the Fire Department, as related to property addressing and fire code compliance, as applicable.
5. **Robert Jones (applicant/owner) and Lloyd Maclean (owner)** – Review for acceptance and consideration of final approval for a lot line adjustment. The parcels are located at 47 Lamson

Drive and 19 Winchester Drive in the R-4 (residential) district. Tax Map 2B, Lots 175 and 176. Case #PB2021-30.

Mr. Price advised the Board that the lot line adjustment is being requested because there is a stone wall that separates the two properties that was always thought to be the property line, however a recent survey has shown that it is not. The home owners are now seeking the adjustment to officially make the stone wall the property divider.

Robert Jones (applicant/owner) stated that they are seeking the lot line adjustment as indicated by Mr. Price. He also added that they have already received the appropriate variances from the Zoning Board of Adjustment.

**The Board voted 5-0-0 to accept the application as complete, on a motion made by Paul McLaughlin and seconded by Nelson Disco.**

There was no public comment.

**The Board voted 5-0-0 to grant conditional final approval, on a motion made by Nelson Disco 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 any required State approvals/permits applicable to the project and provide copies to the Community Development Department, as applicable.
3. The applicant shall provide draft copies of any applicable legal documents for review, if applicable and at the applicant's expense, by the Town's Legal Counsel.
4. The applicant shall address any forthcoming comments from other municipal departments & boards/commissions, as applicable.
5. The applicant shall address the following Planning Staff Technical Comments:
  - a. Number all notes on the plan in a clear plan notes section.
  - b. Revise the note referencing the granting of the variances to read as follows: "On June 30, 2021, the Zoning Board of Adjustment granted a variance under Section 3.02 of the Zoning Ordinance to permit lot 175 to have 18,644 s.f. of lot area whereas 40,000 s.f. is required, and 120' of frontage whereas 150' is required. The ZBA also granted a variance under Section 3.02 of the Zoning Ordinance to permit Lot 176 to have 27,628 s.f. of lot area whereas 40,000 s.f. is required."
  - c. Identify Map and Lot numbers for all abutting lots in their proper locations, not just in list form.
  - d. Section 4.05.d & 4.06.1.n – Identify Hillsborough County Registry of Deeds book & page information for abutting property owners, identify buildings within 200' of the boundaries of the subject parcels and identify driveways within 300' on Lamson & Winchester Drive.

- e. Section 4.05.g – Identify setbacks for an R-4 lot for both Lot 175 & 176.
- f. Section 4.06.1.k – Add the following statement to the plan: “The Subdivision Regulations of the Town of Merrimack are a part of this plat, and approval of this plat is contingent on completion of all the requirements of said Subdivision Regulations, excepting only any variances or modifications made in writing by the Board or any variances granted by the Zoning Board of Adjustment and attached hereto”.
- g. Section 4.18.a – The rebar indicated as having been set to delineate the location of the lot line along Lamson Drive separating the two lots shall be a concrete or granite bound marker as required by the regulations.
- h. Indicate that the subject lots are serviced by Merrimack Village District for public water and municipal sewer.
- i. Correct the spelling of “Jones” under the listed owners of record.

**The following “General and Subsequent Conditions of Approval” are also be 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.
2. The applicant shall address the any forthcoming comments from the Fire Department, as related to property addressing and fire code compliance, as applicable.

**6. Discussion/possible action regarding other items of concern**

- 408 DW Highway – Request to reinstate an expired plan.

Mr. Price explained to the Board that the owner of this property (Madi Choueiri) received all of the necessary approvals to open a restaurant at the location in March of 2016. At that time Mr. Choueiri began working on remodeling the building when his financing suddenly fell through and he was not able to find financial backing until recently. With new financing secured, he went to pull the necessary building permits to restart the project. The Building Department staff was unable to grant the permits because the site plan approval had expired on March 1, 2021. The applicant is now asking the Board if he can go through the waiver of full site plan process again to proceed forward, but by reinstating his previously-approved plan rather than having to start over.

Mr. Choueiri stated he is not making any changes from the original approval and is requesting to be able to move forward with a new waiver approval. The Board discussed whether or not they are in favor of using the regulations that were in place for 2016 (2014 Subdivision Regulations) or holding the applicant accountable to the new regulations (2019 Site Plan Regulations). Nelson Disco asked Mr. Price if he knows what the difference is in the regulations from 2014 to now and Mr. Price advised him that it would be nearly impossible



to compare them because the most recent iteration was a complete overhaul from the previous version.

The Board agreed that the old regulations should be upheld and they would support a new application for a waiver of full site plan using the previous plan. Mr. Choueiri is going to work with staff on getting on the agenda for the first meeting in September (September 7<sup>th</sup>).

**7. Approval of Minutes — July 20, 2021**

**The Board voted 4-0-1 to approve the minutes of July 20, 2021 as submitted, on a motion made by Lynn Christensen and seconded by Barbara Healey. Nelson Disco abstained.**

**8. Adjourn**

**The Board voted 5-0-0 to adjourn at 7:50 p.m. on a motion made by Lynn Christensen and seconded by Barbara Healey.**