



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD APPROVED MINUTES TUESDAY DECEMBER 20, 2022

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, December 20, 2022 in the Matthew Thornton Room.

Members Present:

- Paul McLaughlin (Vice Chair)
- Brian Dano
- Maureen Tracey - Alternate
- Nelson Disco - Alternate
- Town Councilor Barbara Healey - Ex-Officio

Members Absent:

- Robert Best (Chair)
- Lynn Christensen
- Jaimie von Schoen
- Neil Anketell

Staff Present: Robert Price, Planning & Zoning Administrator, and Colleen Olsen, Assistant Planner

1. Call to Order

Vice Chair Paul McLaughlin called the meeting to order at 6:30 p.m. and led everyone in the Pledge of Allegiance. He then seated Alternates Nelson Disco & Maureen Tracey for Robert Best & Lynn Christensen.

2. Planning & Zoning Administrator's Report

Mr. Price introduced Coleen Olsen, the new Assistant Planner, and explained that she will be attending the next several meetings with him as she gets acclimated to her new role.

3. Consent Agenda

- Regional Impact Determinations*
- Extension Request: L&W Supply Site Plan*
- Level Acres: Phase 2 & 3 Roadway/Infrastructure Bond Reduction Request.*
- Chestnut Hill: Phase I Roadway Acceptance Recommendation & Roadway/Infrastructure Bond Estimates & Reduction Requests (Phases I, II, & III)*

Nelson Disco asked if the Madeline Bennett Lane sewer issue was addressed and Mr. Price confirmed that it was.

The Board voted 5-0-0 to approve the consent agenda, on a motion made by Brian Dano and seconded by Barbara Healey.

- 4. Black Diamond Holdings, LLC (applicant) and MM Realty Trust (owner)** – Continued review for final approval of a site plan for the redevelopment of an existing automotive/junkyard use into a 102,600 square foot warehouse and associated site improvements. The parcel is located at 734 DW Highway in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 7E, Lot 31. Case # PB2022-36. ***This item is continued from the October 18, and November 15, 2022 Planning Board Meetings.***

At the applicant's request, the Board voted 5-0-0 to continue the hearing to January 17, 2022 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion made by Nelson Disco and seconded by Maureen Tracey.

- 5. John J. Flatley Company (applicant/owner)** - Continued Review for consideration of an amendment to a previously approved Mixed Use Development Conditional Use Permit, calling for the replacement of the previously proposed 20,000 square foot planned retail space with a 52,000 square foot self-storage facility. The parcels are located at 645, 673, 685, 703, and 707 DW Highway and 5 Gilbert Drive in the I-1 (Industrial), Aquifer Conservation and Wellhead Protection Districts. Tax Map 6E, Lots 3-1, 3-3, 3-4, 3-5, 3-6, and 3-7. Case # PB2022-38. ***This item is continued from the October 18, and November 15, 2022 Planning Board Meetings.***

At the applicant's request, the Board voted 5-0-0 to continue the hearing to January 3, 2022 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion made by Nelson Disco and seconded by Barbara Healey.

- 6. Starten Realty, LLC (applicant/owner)** – Continued review for acceptance and 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 Overly Districts. Tax Map 4D-3, Lot 002. Case #PB2022-40. ***This item is continued from the October 18, 2022 Planning Board Meeting.***

At the applicant's request, the Board voted 5-0-0 to continue the hearing to January 17, 2022 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion made by Nelson Disco and seconded by Brian Dano.

At the applicant's request, the Board opened and discussed both items 7 & 8 concurrently.

- 7. LMG Merrimack, LLC (applicant) and Pennichuck Corporation and LMG Merrimack, LLC (owners)** – Continued review for acceptance and consideration of final approval for a lot line adjustment. The parcels are located south of Harris Pond Drive on Daniel Webster Highway in the I-1 (Industrial), and Aquifer Conservation Districts. Tax Map 1D, Lots 1 and 1-6. Case # PB2022-44. ***This item is continued from the December 6, 2022 Planning Board Meeting.***

- 8. LMG Merrimack, LLC (applicant/owner)** – Continued review for acceptance and consideration of final approval for a site plan to construct a 100,115 square foot warehouse building. The parcel

is located south of Harris Pond Drive on Daniel Webster Highway in the I-1 (Industrial), and Aquifer Conservation Districts. Tax Map 1D, Lot 1-6. Case # PB2022-45. ***This item is continued from the December 6, 2022 Planning Board Meeting.***

Mr. Price prefaced the presentation by explaining that the lot in question is located on DW Highway just south of the entrance to Harris Pond and is currently undeveloped. The applicant is seeking a lot line adjustment to gain additional square footage for the parcel in order to accommodate a 100,115 square foot warehouse building, which is the subject of the accompanying site plan application before the Board.

Jim Petropulos (Hayner-Swanson, Inc.) & Robert Bollinger (Greenman-Pedersen, Inc.) presented both applications (agenda items 7 and 8) to the Board. Mr. Petropulos began by sharing a copy of the Lot Line Adjustment Plan and showing the current boundary lines between the applicant's lot and the neighboring lot, owned by Pennichuck Cooperation. He shared the zoning information and topography of the site, indicating that test pits revealed sandy soils and no wetlands on the premises. He demonstrated the proposed placement of the new lot line, which would reduce the Pennichuck land by 2.9 acres and increase the applicant's lot by the same amount. Mr. Petropulos pointed out that both parcels will still be compliant with zoning requirements if the lot line adjustment is approved.

Mr. Petropulos then turned his attention to the site plan and shared a copy of the plan with the Board to demonstrate the proposed layout. He explained that the applicant is hoping to construct a 100,115 square foot building that is suitable for a warehouse or light assembly/industry use. The one story building is currently configured as two 50,000 units, each with a small office space. The rear of the building will contain 27 loading bays and 10 trailer spaces, and the entire site will have 133 parking spaces, which is 5 more than what is required by the town. Access to the building will be from a single driveway off of Harris Pond Drive, which is a privately owned road.

Mr. Petropulos discussed the stormwater and landscape plans before sharing the results of the traffic study which estimated 36 new AM peak trips (28 in and 8 out) and 38 PM peak trips (11 in and 27 out). He added that this section of DW Highway has wide shoulders which allows for an easy turn onto Harris Pond Drive.

Before wrapping up his presentation, Mr. Petropulos introduced the one waiver that is being requested by the applicant which is for section 3.11.h.l.i of the Site Plan Regulations. This regulation requires that 10% of the interior parking lot be landscaped and the plan is currently proposing 4%. The lot currently includes parking for 133 vehicles which leaves little opportunity to introduce significant interior landscaping within these areas. The applicant feels that the design does strike a balance between green spaces and parking area, especially with the large landscaped area between the parking lot and DW Highway.

Mr. Price advised the Board that peer review comments were received that afternoon and were minor in nature, so staff is comfortable recommending conditional approval of the site plan at this time.

The Board voted 5-0-0 to accept both the lot line adjustment and site plan applications as complete for review, on a motion by Nelson Disco and seconded by Brian Dano.

Mr. Disco asked for more details on the traffic study. Mr. Bollinger prefaced his presentation by stating that the proposal only called for a short traffic analysis but the applicant wanted to have

a full study done as there had not been any recent projects in that end of town that included a full study. Mr. Bollinger reiterated the AM and PM peak numbers provided by Mr. Petropulos and clarified that those numbers include all traffic, (i.e. employees, deliveries, etc.). He added that the study resulted in only a 1-2 % increase in traffic also factors in the Residences located on Benning Court (Edgebrook). Vice Chair McLaughlin asked if they anticipate their truck traffic going North or South and Mr. Bollinger responded that they estimated a 50/50 split.

Mr. Disco asked about the wireless communication tower access and Mr. Petropulos used the plan to demonstrate the location of the access easement, which is an obligation of the property to maintain. They also briefly discussed an old stone bridge that is on the Pennichuck Cooperation property that has nothing to do with the site in question. Mr. Petropulos also addressed questions about the types of vegetation being planted and clarified the lighting plan shows that there is no lighting spillover to adjacent properties.

Brian Dano asked Mr. Petropulos if he withdrew the waiver for sidewalks that was submitted. Mr. Petropulos replied that he was told by Mr. Price that the decision to require sidewalks is a function of the Planning Board and is not required by the Site Plan Regulations outright. He also confirmed an internal sidewalk along Harris Pond Drive already exists, but nothing is planned along the DW Highway and there is nothing nearby either.

Maureen Tracey asked about the Pennichuck and DOT land that is adjacent to the property and the potential of it being developed. Mr. Petropulos addressed the question as best he could from his years of experience but the land is not owned by his client and is not part of the discussion at hand. Ms. Tracey also asked about the traffic for delivery trucks and whether or not they trucks leaving the site for deliveries was factored into the traffic study. Mr. Petropulos clarified that they do not have any tenants for the building yet so the use is still undetermined but Mr. Bollinger confirmed that the traffic analysis did include all potential scenarios.

Councilor Healey asked for clarification on where the snow storage areas are. Mr. Petropulos stated that they are shown on sheet six of the plan that was submitted and demonstrated the location on the plan he was using as a visual reference. Councilor Healey also expressed concerns that this is one of about seven warehouses currently being proposed or developed in town and asked what makes this one different to compete with all of the others. Mr. Petropulos responded that the parcel in question is zoned appropriately for the use and that his client has the right to develop his land in accordance with zoning.

Public Comment:

Bill Fallon (12 Merrimack Drive) is a resident of Harris Pond and expressed concerns that their management company was not notified as an abutter. He also questioned the use of Harris Pond Drive as access to their site because it is a private road and the Harris Pond residents will not be able to afford to maintain it if it is getting so much more use from trucks turning into and out of the site. He also relayed safety concerns with all of the traffic that will be coming from the site because, even though the parcel is zoned industrial, there is a lot of residential units in the area and a lot of people walk their pets along Harris Pond Drive.

Mr. Price clarified that the Harris Pond condominiums are not an abutter to the property in question because the DOT land separates the two lots. As for the zoning, the parcel is zoned Industrial-1 and the proposed use is allowed in the I-1 District. The various residential uses along DW Highway do not change the zoning of the parcel in question. Mr. Price also confirmed that

there is not a sidewalk on the side of DW Highway this parcel is located on, however, there is a sidewalk on the other side of the road and a crosswalk is now available across from Benning Court (Edgebrook mixed use development), at the northerly intersection of Harris Pond Drive with DW Highway.

Mr. Petropulos shared that the closest condo is 320 feet from the property line and 400 feet from the proposed building. He also pointed out that the subject property sits lower than the Harris Pond Development and that there is a wooded buffer that will remain intact. He also demonstrated that the lights from any vehicles leaving the site will be directed towards the Pennichuck property and not Harris Pond. He also referenced an easement that was granted when Harris Pond was developed that allows the property in question the right to access their land through the use of Harris Pond Drive. Councilor Healey asked Mr. Price if staff has reviewed the document mentioned and Mr. Price replied that the document is in the file but he did not personally review it.

Councilor Healey shared her opinion that she feels as if Harris Pond should have been notified since the parcel's access is on their road and that the easement language should be reviewed by the Town's legal counsel. Ms. Tracey agreed with Councilor Healey and added her own concerns about the Board continually waiving the landscaping requirements and not requiring sidewalks. She also has concerns with the amount of warehouses being developed in town and if each of them have a 1-2% traffic increase that will begin to add up. She expressed concerns that Merrimack is going to start to look and feel more like a city rather than a town.

Mr. Price clarified that Harris Pond Drive actually sits on the applicant's property. Mr. Bollinger also reaffirmed that the traffic generated from this proposal can easily be accommodated by the existing roadway without any mitigation.

Mr. Disco shared his feelings that there are a lot of places in town that sidewalks are needed, however he does not feel that this is one of them.

The Board voted 5-0-0 to find that with the recommended conditions of approval, the lot line adjustment meets all applicable regulatory requirements, and to grant conditional final approval to the lot line adjustment with the following precedent conditions to be fulfilled within 6 months and prior to plan signing, unless otherwise specified, on a motion made by Brian Dano and seconded by Barbara Healey:

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 note any waivers granted by the Board on the final plans and mylars (including Section, and date granted) as applicable.
4. The applicant shall provide draft copies of any additional applicable legal documents for review at the applicant's expense, by the Town's Legal Counsel.
5. The applicant shall address any forthcoming comments from any municipal departments/boards, as applicable.

6. The applicant shall address the following Planning Staff Technical Comments:
 - a. The entirety of lot 1 is not shown in the plan set, as required by the regulations. The applicant shall show the entirety of the lot on the plans, or request a waiver (in writing and with justification) for the Board’s consideration.
 - b. Applicant shall revise Note 2 on sheet 1, properly indicating a 100’ setback from DW Highway for commercial uses (the 50’ indicated is incorrect) and also to add the requirement for a 50’ landscape setback (no parking or pavement) from DW Highway as required by the ordinance;
 - c. Applicant shall add a legend to sheet 1 and ensure all line types and symbols are described properly;
 - d. Applicant shall graphically indicate the property setbacks on the parcels as required by the regulations;
 - e. Applicant shall indicate all monuments to be set (ensuring they are the proper type) in accordance with the regulations.

The following general and subsequent conditions are 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. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant.
3. The applicant shall address any forthcoming comments from the Fire Department, related to property addressing, as applicable.

The Board voted 3-2-0 to grant a waiver from Section 3.11.1.1.i pertaining to interior landscaping in parking lots, citing that specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations, on a motion made by Brian Dano and seconded by Nelson Disco. Maureen Tracey and Barbara Healey voted in opposition.

The Board voted 4-1-0 to find that with the granted waiver, the recommended conditions of approval and the additional conditions imposed by the Board, the site plan meets all applicable regulatory requirements, and to grant conditional final approval of the site plan with the following precedent conditions to be fulfilled within 6 months and prior to plan signing, unless otherwise specified, on a motion made by Nelson Disco and seconded by Brian Dano. Maureen Tracey voted in opposition.

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. The applicant shall provide a letter from Pennichuck Water Works indicating the availability of public water to the project.
5. The applicant shall address the comments from the town's peer review consultant, Fuss & O'Neill, as applicable.
6. The recorded document that allows access to Harris Pond Drive shall be reviewed by the Town's Legal Counsel to ensure access from the subject parcel to Harris Pond Drive is permissible.
7. The access to the existing wireless communication tower on site shall be more clearly delineated on the plan.
8. The applicant shall update all plan pages to reference only no-phosphate fertilizers per the Merrimack Conservation Commission.
9. The applicant shall address the following Planning Staff Technical Comments:
 - a. Applicant shall note on the plan that "No salt or chemical de-icers are to be used for winter maintenance, and winter maintenance shall be performed by a Green Sno-Pro certified (or functional equivalent certification) contractor" per Section 4.11.3t.
 - b. Applicant to remove sidewalk waiver shown on Sheet 1, Waiver note 1;
 - c. The parking calculation on Sheet 1 omits the proposed office use for each tenant. Assuming both are 400 s.f., 2 spaces need to be added to the parking calculation for the office space (1 space per each 400 s.f. of office/warehouse/industrial flex space). This would bring the total required spaces to 128, not 126.
 - d. Sheet 20 – Applicant shall note all proposed fixtures shall be full cut-off.
 - e. Sheet 20 -Applicant shall identify the Color Rendering Index for each fixture.
 - f. Sheet 20 – Applicant shall identify the uniformity ratio on the plan.

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.

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 any forthcoming comments from the Fire Department, as related to property addressing and fire code compliance, as applicable (that are not deemed precedent conditions).
- 9. S.J. Torres (applicant) and Orrin H. Connell Family Trust (owner)** – Continued review for consideration of a waiver of full site plan review to permit a variety of temporary “event” uses on site. The parcel is located at 454 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly Housing, and Town Center Overlay Districts. Tax Map 5D-4, Lot 54. PB2022-46. This item is continued from the December 6, 2022 Planning Board Meeting.

At the applicant’s request, the Board voted 5-0-0 to continue the hearing to January 17, 2022 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion made by Nelson Disco and seconded by Barbara Healey.

- 10. Ronald Rosenfeld (applicant) and Garrett and Jillian Soucy and Roseneiro Trust of 2014 (owner)** - Consideration of an amendment to a conditionally approved Lot Line Adjustment, seeking to remove condition of approval #6e, imposed by the Planning Board at its June 4, 2021 meeting which requires the provision of easement documentation to allow an existing driveway encroachment onto abutting property to remain or removal of that encroachment. The parcels are located at 12 and 14 Dodier Court in the R-1 (Residential, by soils) and Aquifer Conservation Districts. Tax Map 7C, Lots 47-1 and 47-2. Case # PB2021-13

Due to an issue with the legal notice, this agenda item was not heard by the Board, and was re-noticed for January 3, 2023.

11. Discussion/possible action regarding other items of concern

Ms. Tracey expressed concerns that the Board is issuing too many waivers for landscaping and sidewalks. Vice Chair McLaughlin commented that when it comes to a warehouse proposal, he personally would rather see the vegetation around the building to mask it than in the parking lot itself. Mr. Disco added that he believes that the regulation was intended for large developments so that we do not end up with a massive parking lot that looks like a sea of asphalt. Ms. Tracey

stated that she is going to take a look at the regulations and make some recommendations because she does not want Merrimack to turn into a city. She also feels that there is a lot of pedestrian traffic in the southern end of town. Various Board members shared their thoughts on sidewalks throughout town. Councilor Healey asked Mr. Price when the Board can look at making regulation changes and Mr. Price explained that it can be done at any time of the year.

12. Approval of Minutes — December 6, 2022

The Board voted 5-0-0 to approve the minutes of December 6, 2022, as amended, on a motion made by Nelson Disco and seconded by Barbara Healey. Barbara Healey and Brian Dano abstained.

13. Adjourn

The Board voted 5-0-0 to adjourn at 8:30 p.m., on a motion made by Maureen Tracey and seconded by Barbara Healey.