



Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

Fax 603 424-1408

Town Hall - Lower level - East Wing

www.merrimacknh.gov

Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD APPROVED MINUTES TUESDAY FEBRUARY 21, 2023

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, February 21, 2023 in the Matthew Thornton Room.

Members Present:

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

Members Absent:

- Robert Best (Chair)
- Brian Dano
- 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 seated Haleem Mediouni, Maureen Tracey and Nelson Disco for Bob Best, Neil Anketell and Brian Dano respectively.

2. Planning & Zoning Administrator's Report

None

3. Consent Agenda

No items for this meeting

- 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, November 15, December 20, 2022, and January 17, 2023 Planning Board Meetings.***

Robert Price prefaced the presentation with a short recap of this project's history. He reminded the Board that the applicant was last before the Board on January 17, where the only item holding up a decision from the Board was the peer review of the traffic analysis that was required by NHDOT. That peer review has been completed, and only a minor comment resulted from the review (which is noted in the recommended conditions of approval). In addition to the above, staff continues to note a retaining wall on the property that is proposed within the site's building setback, however, staff believes that the applicant is proposing to reconfigure the proposal to eliminate the need for a variance.

Matt Peterson (Keach-Nordstrom Associates, Inc.) presented the application to the Board. He briefly walked through the results of the traffic analysis indicating that the peak P.M. trips is 38 and peak A.M. is 31. He then shared a copy of the site plan to show that the height of the retaining wall that was mentioned by Mr. Price has been reduced to 4 feet at its highest point so that it no longer considered a structure and can remain in the proposed location. He explained that a sidewalk and bike rack have been added to the plans but they do not intend on adding any Electric Vehicle charging stations unless required by the Board. Mr. Peterson wrapped up his presentation by advising the Board that they have received comments from NHDES and the Merrimack Fire Department and are in the process of addressing those now.

Nelson Disco asked Mr. Peterson if he has plans that show the sidewalk as the plans he received do not show it. Mr. Peterson passed out a copy of the revised grading plan sheet that shows the sidewalk location. Mr. Disco then asked about the comments from NHDOT and Mr. Peterson explained NHDOT has requested that they re-stripe DW Highway to create an actual turning lane.

Mr. Peterson shared the building elevations to the Board and briefly discussed the drainage plans for the site. Vice Chair McLaughlin asked about the comments from the Fire Department and Mr. Peterson responded that they have requested access to the third side of the building and he is in the process of revising the plans to accommodate that request. Vice Chair McLaughlin then asked Mr. Price if staff is ok handling that piece administratively and Mr. Price replied that it can be handled as a condition of approval.

Maureen Tracey brought up the topic of the EV charging stations and shared her opinion that she feels they should be added. Mr. Disco and Councilor Healey both voiced their opinions that they do not feel they are necessary.

Public Comment:

Fire Marshal John Manuele indicated that aside from the access request that Mr. Petersen had mentioned, the Fire Department is also requiring 2 fire hydrants be added to the site. Fire Marshal Manuele demonstrated the desired locations for hydrants to be added and Mr. Peterson responded that it will not be a problem adding them.

The Board voted 7-0-0 to find that with the proposed conditions of approval, the site plan application meets 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 Nelson Disco 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, 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 (proposed access/drainage easement), 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, as applicable.
5. The applicant shall address the comments from the town's peer review consultant, Fuss & O'Neill, as applicable (including those from the February 7, 2023 traffic review letter).
6. The applicant shall revise the retaining wall design to be less than 4' in height or obtain a variance for the wall to be located within the building setbacks (per the Zoning Ordinance & Building Code, any retaining wall that is 4' in height or greater is considered a structure and subject to setback requirements & permitting).
7. The applicant shall meet with Merrimack Village District staff and address any of their comments or requirements related to the proposed connection to the public water system.
8. The applicant shall address the following comments from the Fire Department:
 - a. The Merrimack Department of Fire Rescue requires a minimum 3 side access to any building of the proposed size and type. The proposed site plan only shows 2 side access and is unacceptable for construction.
 - b. The plan show only 1 hydrant located on the entrance road. Based on the size of the building it is required to have a minimum of 2 more hydrants located in proximity to the proposed building at locations approved by the Merrimack Department of Fire Rescue.
9. The applicant shall address the following comments from the Public Works Department:
 - a. It shall be noted on the plans that all monuments are to be set by a licensed land surveyor prior to the issuance of a Certificate of Occupancy.
 - b. The State of NH Department of Environmental Services Septic Approval Number shall be added to the site plan.
 - c. It shall be noted on the plan that the property owner shall be responsible for providing inspection reports of the on-site drainage system to the Community Development Department by June 30 annually.
 - d. The applicant shall prepare and submit an Operations & Maintenance Plan for the on-site drainage system for review.

- e. This section of Daniel Webster Highway is under State of New Hampshire DOT jurisdiction and review. An NHDOT Driveway Permit will be required for any work done within the right of way, and such permit approval number shall be noted on the plan.

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

- a. Revise Sheet 3, Note 14 to indicate the site is served by Merrimack Village District, not Pennichuck Water Works.
- b. Applicant shall include the building elevations in the overall plan set.

11. The applicant shall address any conditions imposed by the Planning Board at the hearing, as applicable.

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 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, as related to property addressing and fire code compliance.
 - a. Due to the large size of this building multiple Knox key boxes shall be required for emergency access. The number and location of these boxes will be determined by this office upon review of building plans.

- b. 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.
 - c. The entire building shall be protected by an approved NFPA-72 compliant fire alarm system. Plans shall be provided to this office for review and approval before a permit can be issued.
 - d. The developer shall have the entire building surveyed to determine if bi-directional radio amplification is needed to ensure that proper radio reception for Merrimack emergency responders both inside and outside the proposed building. If it is determined that amplifiers are necessary then the developer shall install and successfully test the amplifiers before a C of O can be signed. (NFPA 1, section 11.10)
 - e. In keeping with other buildings of this type recently approved by this office interior and/or exterior stairs shall be required for emergency roof access. The number and locations of the stairs will be determined by this office with input from the developers engineering consultant.
 - f. The developer shall have all plans reviewed by a New Hampshire licensed Fire Protection Engineer for compliance in all State and NFPA fire codes. This review shall include sprinkler, fire alarm, emergency communication, access and emergency egress, etc. The FPE's report shall be forwarded to this office for review.
7. The applicant shall address any applicable comments from Merrimack Village District related to by-law compliance, ownership/maintenance of water infrastructure requirements, or any other comments deemed to be general and subsequent to this approval.
5. **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 Overlay Districts. Tax Map 4D-3, Lot 002. Case #PB2022-40. ***This item is continued from the November 15 & December 20, 2022, & January 17, 2023 Planning Board Meetings.***

At the applicant's request, the Board voted 7-0-0 to continue this hearing to March 21, 2023 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion by Lynn Christensen and seconded by Nelson Disco.

6. **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 & December 20, 2022, & January 17, 2023 Planning Board Meetings.***

Matt Peterson (Keach-Nordstrom Associates, Inc.) presented the application to the Board. Mr. Peterson began by summarizing the commentary from last meeting which resulted in three key concerns from the Board members, noise, approval of other tenants in the complex and parking.

He began by stating that getting every tenant in the complex to agree to the events could be problematic so they asked if the Board would be open to a condition of approval that the applicant would have to reappear in front of the Board if any complaints are received. As for the parking and noise, Mr. Torres is working on obtaining approval for off-site parking now and for noise is proposing that the performers be limited to acoustic only and no more than two people per act.

A discussion about the noise and location of the nearest residents ensued and Mr. Price confirmed that there are residences on both Woodbury Street and Hadley Road. He also mentioned that the Community Development Department did receive noise complaints about that plaza last year but was uncertain if the noise was coming from Tomahawk Tavern or another business. Councilor Healey mentioned that it could be the Italian restaurant as they do karaoke every Thursday night and that does get loud. Jaimie von Schoen asked if any residents spoke against the proposal at the last meeting and Mr. Peterson confirmed that there was no public testimony. The question was raised as to if the Italian restaurant has approvals for karaoke outside and Mr. Price explained that there is nothing prohibiting them from doing it and pointed out that the town does not have a noise ordinance.

Mr. Disco stated that he is the one that initially brought up the noise concerns and even with all the discussion, he is still concerned about it. He added that he is not comfortable approving something that reverts back to the Planning Board if a complaint is received and recommended that any language of the sort be reviewed by the town's legal counsel. Councilor Healey voiced her concerns on proceeding down this path because there is not a noise ordinance in town so there is no way to gauge if an event is too loud. She also commented that this could set a precedence for other approvals down the road. Mr. Disco also raised concerns with blocking off the access road that leads to Woodbury Street.

Mr. Peterson demonstrated the entrance points on the plan and pointed out that section that would be blocked off.

Public Comment:

Fire Marshal Manuele advised Mr. Peterson that if they do not put any tables or chairs in the area of the access road leading to Woodbury Street, and block it off instead with something that can be easily moved in the event of an emergency (such as sawhorses) he does not see any concerns with blocking it off.

Ms. von Schoen commented that she would prefer to have the Woodbury Street access blocked off with something sturdier than a sawhorse to prevent people from driving through the barrier. Fire Marshal Manuel explained that they have to try to strike a balance when it comes to these things because emergency vehicles still need access in case of an emergency on-site. In this case where it is only a few events a year and not a summer-long occurrence, he feels the sawhorses would be sufficient. They discussed possibly doing combination of the water filled barriers with sawhorses and Fire Marshal Manuele stated that they could work with the applicant on finding a good option that works for everyone.

Mr. Disco asked about the existing storage containers and what is happening with the encroachment issue. Mr. Price advised the Board that it is an issue that still needs to be resolved and is a staff recommended condition of approval. He added if the events plan is not approved, then the shipping containers will still require a variance for their current location.

The Board voted 6-1-0 to continue this hearing to March 21, 2023 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion by Lynn Christensen and seconded by Jaimie von Schoen. Nelson Disco voted in opposition.

7. **McDonald's USA, LLC (applicant) and CP Merrimack, LLC (owner)** – Continued review for consideration of a waiver of full site plan to reconfigure the existing single order point drive-thru with a dual order point configuration. The parcel is located at 9 Dobson Way in the C-2 (General Commercial) & Aquifer Conservation Districts, and Wellhead Protection Area. Tax Map 4D-, Lot 054-03. Case #PB2022-47. ***This item is continued from the December 6, 2022 & January 17, 2023 Planning Board Meetings.***

At the applicant's request, the Board voted 7-0-0 to continue this hearing to March 21, 2023 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion by Lynn Christensen and seconded by Barbara Healey.

8. **Nick Napior (applicant) and Robert Napior Revocable Trust (owner)** – Continued review for consideration of a waiver of full site plan review to convert an existing boat storage and service facility into an automotive service facility, thus allowing for automotive repair, service, and storage uses and associated site improvements. The parcel is located at 54 Daniel Webster Highway in the Industrial (I-1) and Aquifer Conservation Districts. Tax Map 2D, Lot 29. Case # PB2023- 06. ***This item is continued from the February 7, 2023 Planning Board Meeting.***

Mr. Price began by reminding the Board that the applicant met with the Planning Board on February 7, 2023 to introduce the application. Since that meeting, the applicant has submitted the requested minor traffic analysis outlining the impact of the proposed business. The analysis indicates that minimal traffic impacts are expected by the proposed use. The application has already been accepted as complete and the waiver of full site plan was granted at the February 7, 2023 meeting so the only action left is a decision by the Board.

Nathan Chamberlin (Fieldstone Land Consultants, PLCC) presented the application to the Board. He began by reminding the Board that the parcel is the site of the old Skip's Marine and the current owner is proposing to use the space as a hobby shop to restore vehicles. He added that there was not any trip generation numbers for the previous use so VHB started fresh and concluded that there would be no more than 10 trips on the AM peak and 14 in PM peak. He added that staff has also requested that they obtain NHDOT signoff for the driveway access on the DW Highway and the applicant is agreeable to that as a condition of approval.

Mr. Disco asked if there are sidewalks on the site or the adjacent property and Mr. Price confirmed that there is a sidewalk in front of the property as well as one across DW Highway.

No public comments were received.

The Board voted 7-0-0 to find that with the granted waiver of full site plan review and the proposed conditions of approval, the site plan application meets 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 Barbara Healey and seconded by Nelson Disco:

1. Final plans to be signed by all property owners. The appropriate professional endorsements and signatures shall also be added to the final plans.
2. The applicant shall obtain all required State approvals/permits, note the approvals/permits on the final plans and provide copies to the Community Development Department, as applicable.
3. Any waivers granted (including applicable regulation, 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 provide written verification that an updated NHDOT Driveway Access permit is not applicable, or provide a copy of the updated permit as may be deemed necessary from NHDOT.
5. The applicant shall address any comments from municipal departments, boards, or committees, as applicable.
6. The applicant shall address any conditions imposed by the Planning Board at the hearing, as applicable.
7. The applicant shall address the following Planning Staff Technical Comments:
 - a. Revise note 5 (or provide a supplementary note) indicating how the proposed site meets the applicable Zoning requirements (for example indicate the actual setbacks of the building in comparison to the requirements from the ordinance) as required by Section 4.11.
 - b. Revise note 13 to indicate that the lot is serviced by municipal sewer and not private septic.
 - c. Add a note indicating the existing and proposed use as required by Section 4.11.
 - d. Add a note (or revise note 18) indicating the parking requirements from the regulations and the amount of parking provided, in order to verify compliance with the regulations and as required by Section 4.11.
 - e. Add a note indicating prior ZBA decisions (there are at least 2 for this site) as required by Section 4.11.
 - f. If determined applicable from NHDOT, add a note indicating the Driveway Access permit number as required by Section 4.11 (and Condition of Approval #2 above).

The following general and subsequent conditions are also placed on the approval:

1. 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);

2. The applicant shall address the following comments from the Fire Department, as related to property addressing and fire code compliance:
 - a. This building was required to have a full NFPA-13 compliant sprinkler system installed when it was built in 2005. There is a set of sprinkler plans from Kerry Fire Protection dated 2/6/2006 for this building but for reasons unknown by this office the sprinkler system was never installed by the previous owner. A fire sprinkler system will need to be installed before this office can approve the change of use.
 - b. This building had been fitted with an approved fire alarm system according to our records. This system shall be inspected by a fire alarm contractor to ensure that it is still fully functional and is being monitored as required by NFPA-72. It should be noted that removing or making inoperable an existing fire alarm system is a violation of state fire code subject to fines or imprisonment. (NFPA-1, section 10.7.1)

9. Discussion/possible action regarding other items of concern

None

10. Approval of Minutes — February 7, 2023

The Board voted 5-0-2 to approve the minutes of February 7, 2023 as written on a motion made by Lynn Christensen and seconded by Nelson Disco. Maureen Tracey and Haleem Mediouni abstained.

11. Adjourn

The Board voted 7-0-0 to adjourn at 7:30 p.m., on a motion made by Lynn Christensen and seconded by Barbara Healey.