



# Town of Merrimack, New Hampshire

Community Development Department

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Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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## MERRIMACK PLANNING BOARD

### APPROVED MINUTES

**TUESDAY, FEBRUARY 3, 2015**

Planning Board members present: Robert Best, Alastair Millns, Tom Koenig, Desirea Falt, and Alternate Nelson Disco.

Planning Board members absent: Michael Redding and Lynn Christensen.

Staff present: Assistant Planner Donna Pohli and Recording Secretary Zina Jordan.

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

Robert Best called the meeting to order at 7:30 p.m. and designated Nelson Disco to sit for the vacant full member position.

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

**The Board voted 5-0-0 to determine that the Townsend Oil & Propane and AutoFair Realty II Site Plans are not of regional impact, on a motion made by Tom Koenig and seconded by Nelson Disco.**

#### **3. JBD Realty, LLC (owner/applicant) – Review for acceptance and consideration of Final Approval of an application for a site plan for an interim change-of-use as a contractor's yard for vehicle, equipment and plant material storage. The parcel is located at 35 Railroad Avenue in the Industrial (I-1) & Aquifer Conservation Districts. Portions of the parcel are also subject to the Flood Hazard Conservation District. Tax Map 5D-1, Lot 007.**

Donna Pohli explained that the 20,000 square foot warehouse the Planning Board conditionally approved on March 6, 2013, was never constructed and that the applicant is before the Board to discuss an interim use.

Steven Keach, Keach-Nordstrom Associates, Inc., said the entrance to the warehouse would have faced south, the driveway would have been off Railroad Avenue, and the existing building would have been demolished. The owner's business would occupy 10,000 square feet and a tenant would occupy the remaining 10,000 square feet. Due to current economic conditions and lack of a tenant, JBD has been unable to justify construction of the approved building at this time and has been forced to lease the property in its current condition until he can. Since the lessor is a landscape contractor, an interim site plan and change-of-use approval are needed until the approved plan can be implemented. Outside Unlimited, which landscapes large sites, has been using the property as a contractor's yard to store vehicles, equipment and plant material. Most equipment consists of small dump trucks, trailer equipment, panel trucks and vans.

Employees park their cars and take the trucks to work. Mulch and plant materials may be piled temporarily. Most go directly from nurseries to job/building sites.

The applicant accepts all staff conditions.

The Merrimack Conservation Commission (MCC) made three suggestions, which are incorporated as Condition #5. JBD Realty Owner Jeff Dupont agreed not to use salt or de-icing compounds. JBD does not store any salt or de-icing compounds on site. There will be no landscape changes and no fertilizer would be used on stored plants. JBD does not have a license to fertilize and does not store any fertilizer on site. Steve Keach explained that plants are balled in burlap, mulched and watered. Plants go to the job site; nothing is planted on site.

Steve Keach said that Jeff Dupont knew he had to come to the Planning Board for the warehouse site plan, but he was unaware that he had to do so for a change-of-use. Steve Keach said it is arguable that this is a change-of-use. There has been no significant earthwork since the site was re-graded and the yard area was created in the late '70s-early '80s.

Chairman Best reminded the applicant that storm water runoff management was discussed at the time of the warehouse application. Steve Keach replied that there would be a significant increase in impervious surface in the future. He engineered a detention area. The site is fairly well drained. This plan uses the same surface and has no impact on runoff. The only difference is parking of some vehicles and temporary storage of some plants. Steve Keach's field check found no significant changes.

Jeff Dupont said that snow is pushed toward the fence. He plows around the building only. In winter, all employees take all company vehicles home.

Alastair Millns stated that this use is less injurious than the previous bus company because it uses fewer vehicles and smaller snow plows that make smaller snow piles.

Staff recommends that the Board vote to accept the application and waive full site plan review, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow it to make an informed decision.

**The Board voted 5-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Desirea Falt.**

Alastair Millns noted that a comprehensive site report was done in 2013.

**The Board voted 5-0-0 to waive full site plan review, on a motion made by Alastair Millns and seconded by Desirea Falt.**

Steve Keach said the applicant does not want the interim site plan to supersede the previous site plan. Note 1 of the plan states that it is an interim/temporary use. Donna Pohli suggested adding a condition that, depending on changes in the Ordinance or the previously approved plan, administrative approval may be acceptable to change the use back to the previously approved warehouse site plan. The Board wanted to make it clear that the interim use shall not extend any statutory deadlines for the previous warehouse site plan.

## **Public comment**

David Cota, 29 & 31 Railroad Avenue, supports the use as long as the grounds are kept clean and there are no large trucks. The applicant's backyard is his front yard.

Nelson Disco suggested adding a condition of approval that the applicant shall address any forthcoming comments from the Lower Merrimack River Advisory Committee (LMRLAC).

Chairman Best suggested adding a condition of approval to add a note stating that no non-functioning or non-registered vehicles will be on site and no vehicle repairs shall occur on site.

Alastair Millns was of the opinion that the applicant was negligent in waiting a year to appear before the Planning Board. Chairman Best agreed, but felt it was outweighed by allowing people to do the right thing and to come before the Board to fix a situation.

**The Board voted 5-0-0 to grant Final Approval, with the following conditions, on a motion made by Nelson Disco and seconded by Desirea Falt.**

1. Final plans to be signed by the Applicant and Property Owner;
2. Any waivers granted shall be listed and described on the Final Plan;
3. Applicant shall address any forthcoming comments from MVD;
4. Applicant shall address any forthcoming comments from the Fire Department;
5. Applicant shall address any forthcoming comments from LMRLAC, (as applicable);
6. Applicant shall address the following comments from the Conservation Commission (as applicable):
  - i. The Commission appreciates the applicant's non-use of salt or de-icing compounds on the property and would like that to be a condition of approval for the Planning Board;
  - ii. The Commission understands the plans do not show any landscaping changes but for education recommends that only low phosphate, slow release nitrogen fertilizers be used. The Commission further recommends that the applicant first utilizes a soil testing facility to determine what levels and applications rates may be necessary before doing any application of fertilizers on the site;
  - iii. The Commission recommends that if fertilizers are to be stored on the property that they remain in their original containers and not be stored outside;
7. Address planning staff technical comments. (Below)

### Planning Staff Technical Comments

- a. Add a note to state that all signage must comply with the Town's signage requirements;

- b. Add a note to state that the owner understands that the Public Works Department Wastewater Division may visit the sewer easement occasionally for the purposes of maintenance and repair. Any vehicles/equipment in the affected area will have to be relocated during those events, if requested by Town Staff;
- c. Applicant to add a handicap parking sign in front of the handicap parking space;
- d. Applicant to add days and hours of operation as a note on the plan;
- e. Applicant shall add plant storage area or note on plan indicating approximate location of trees/planting storage/growing area;
- f. Applicant shall add the T-shape area and area on the east side of the building to the legend or add a leading note;
- g. Applicant shall add the following note, "No non-functioning or non-registered vehicles will be on site. Furthermore, no vehicle repairs shall occur on site";
- h. Applicant shall add to General Note #1 on the plan, that depending on changes in the ordinance or the previously approved plan (CDD Plan # 615B or HCRD #37987), that administrative approval may be acceptable to change the use back to the previously approved warehouse site plan. Furthermore, this interim use shall not extend any statutory deadlines in regards to CDD Plan #615B and HCRD #37987).

**4. Boomer McLoud Car Audio (applicant) and GFI Merrimack LLC (owner) –** Review for acceptance and consideration of Final Approval of an application for a site plan to construct a 7,500 s.f., two-story car audio/electronics retail sales and service building. The parcel is located at 5 Executive Park Drive in the C-2 (Commercial) and Aquifer Conservation Districts. Tax Map 4D, Lot 073.

Earle Blatchford, Senior Project Manager, Hayner/Swanson, Inc., said the 1.65 acres are bordered by commercially zoned properties on the west and north, land owned by the State on the east, and the F.E. Everett Turnpike on the south. The property is mostly wooded, with Naticook Brook and the Naticook Brook Sewer Interceptor crossing the property along the northern boundary. There are steep slopes near the Brook in the northerly third of the site. The Brook runs through a 72" culvert to the Turnpike. The applicant would not disturb the narrow band of wetland or the flood plain. The subdivision dates from the late '70s and the lot has been vacant for 40 years. There is good visibility from and access to the Turnpike.

The project proposes a two-story, 7,500 square foot retail building on two floors because of the topography in back. There is a 4' height difference between the lower and upper levels. There would be 18 parking spaces, including two handicap spaces and one service bay, on the upper level, and seven employee spaces, including four service bays, on the lower level. The fully sprinklered building has the Fire Department's approval. Utilities would be underground. Merrimack Village District (MVD) has submitted a water availability letter. NH Department of Environmental Services (DES) has granted a Sewer Connection Permit. A gravity sewer would tie into a manhole in the street. A catch basin with gas traps would go to an underground

detention and infiltration system, which is designed for both 25-year and 50-year storms. All storm water would remain in the system and go into the ground. Runoff would be effectively treated. There would be full cut-off energy efficient LED lights, landscaping, and a New England style building with a gray metal gabled roof and white vinyl siding. Stairs would be only on the inside of the building; they are not needed outside. The MCC approved the plan on September 14, 2014, and recommended using non-phosphorous slow releasing fertilizer, which would be noted on the plan.

There is no sign plan at this time. There would probably be no building sign; there may be a ground sign in the future. Most of the business is done on-line by appointment. Because of the grading, slope and ridge, only one piece of the roofline or the side of the building would be seen from the highway. There are trees on the State's land. There would be grass on a berm that is too steep to plant. The owner does not want to screen the business from the Turnpike and wants it to be seen. There are trees on the local road. Nelson Disco commented that there would be no State screening if another lane were added. Earle Blatchford said the State is no longer concerned with hiding businesses from the Turnpike.

Peter Flynn, Flynn Construction Corporation, said the successful business is relocating from Nashua because it needs more space. Mobile electronics (car stereos, car starters, GPS systems) is a clean business. Noise stays within the building.

Chairman Best said it is perfect to site this type of business next to a highway.

Staff recommends that the Board vote to accept the application, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow it to make an informed decision.

**The Board voted 5-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Desirea Falt.**

Peter Flynn agreed to Desirea Falt's and Chairman Best's suggestion to add a condition of approval that the applicant shall add an awning or some other way to provide façade differences on the front of the building to the satisfaction of the Community Development Staff.

Donna Pohli suggested adding a condition of approval under Planning Staff Technical Comments that elevations be revised to use the terms "North", "South", "East", and "West" rather than "Front", "Right Side", "Left Side", and "Rear".

There was no public comment.

Earle Blatchford requested a waiver from the sidewalk regulation. The applicant feels it would be impractical for the following reasons: The only public sidewalk along Executive Park Drive is a short isolated section in front of Cinemagic, which is over 500' from the proposed project site. The nearest sidewalk in the other direction is 1,000'+/- away at the corner of Amherst Road. There is no public sidewalk planned along Executive Park Drive. Construction of an isolated section of sidewalk without connection to a larger sidewalk system is a waste of resources. Maintenance of an

isolated section of sidewalk would be problematic for the Public Works Department (PWD).

Desirea Falt, who chairs the Bicycle/Pedestrian Master Plan Committee, said a sidewalk would have gone from Shaws to Cinemagic, but the wide road will be reconfigured. A sidewalk should not be installed piecemeal, but the Bicycle/Pedestrian Master Plan is not yet in place. A sidewalk would make sense if a hotel and mixed used development were built. Chairman Best noted that these uses are not close together, so people will not walk there. There might be a sidewalk if the road were narrowed. This is not important enough to the Town to be a priority in the Sidewalk Master Plan.

Alastair Millns cited the criterion 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.

**The Board voted 5-0-0 to waive the requirements of Section 7.05(D)(19) - Paved Pedestrian Way - of the Subdivision Regulations – on a motion made by Alastair Millns and seconded by Desirea Falt.**

Staff recommends that the Board vote to grant conditional Final Approval to the application, with precedent conditions to be fulfilled within six months and prior to plan signing, unless otherwise specified.

**The Board voted 5-0-0 to grant Final Approval, with the following conditions, on a motion made by Alastair Millns and seconded by Desirea Falt.**

1. Final plans and mylars to provide all professional endorsements and be signed by all property owners;
2. The applicant shall note any waivers granted by the Board on the plan (including Section, and date granted) as applicable;
3. The applicant shall add an awning or some other way to provide façade differences on the front of the building to the satisfaction of the Community Development Staff;
4. The applicant shall address the following comments from the Public Works Department:
  - a. On sheet 7 of 15: add a note “and mortar seal joint connection” to drainage detail where drain pipe connects to existing DMH w/ Kor-N-Seal gasket;
  - b. According to the applicant, DMH 1 (which then flows into the public system) will only see flow from the site under 50 year storm events. The applicant shall verify that the existing system handle additional flood flows;
  - c. A note should be added to the plans indicating that the drainage pipe from DMH 1 to DMH is to remain private;
  - d. At the north driveway entrance, some beam guardrail needs to be removed as it is in front of the drive entrance. The new BGR should tie into the existing BGR via a radius section of rail or some configuration that meets NHDOT standards. This detail should be specified on the plans;

- e. A section detail should be added for the island removal and repair showing boxing out for 12" gravel, 6" crushed gravel, and 3" of pavement (2" base, 1" top);
  - f. The area where the median is removed will require a painted island to be installed. Detail needs to be shown on plans in accordance with NHDOT specs;
  - g. On the landscape plan it appears the plantings may overhang the ROW and effect site distance. Plantings should be situated so that the mature size is outside of the ROW. (Especially on the north driveway as site distance would be severely compromised by overgrowth);
5. The applicant shall address the following comments from MVD:
- a. On plan page 3/15 under Construction Notes: #4 Further plan review will be required by Merrimack Village District if blasting is necessary;
  - b. On plan page 3/15 under Utility Notes: #8 proposed Flushing Hydrant is not shown on the plan;
  - c. Under Water Notes: on plan page 12/15 proposed sprinkler system shall be reviewed and approved by Merrimack Fire Department (not MVD);
6. The applicant shall address the following comments from the Conservation Commission (as applicable, it appears that modifications to the plans reviewed by the Conservation Commission in September 2014 have been revised to address these comments):
- a. The Commission appreciates the applicant's non-use of salt or de-icing compounds on the site;
  - b. The Commission recommends that only no phosphate, slow release nitrogen fertilizers be used. Due to the vicinity to Naticook Brook, the Commission recommends no phosphates be used in any fertilizer application. The Commission further recommends that the applicant's contractor and later users first utilize a soil testing facility to determine what levels and applications rates may be necessary before doing any application of fertilizes on the site. This is as opposed to using the current concentrations and application rates as noted on the site plans;
7. The applicant shall address all applicable comments from the Town's peer review consultant, CLD;
8. The applicant shall address the following planning staff technical comments:
- a. The applicant has provided a "letter report" regarding the traffic generation for the site, which appears sufficient for the scope of this project. The applicant shall address any traffic comments prepared by our peer review consultant as applicable;
  - b. Address the following relative to the Master Site Plan, Sheet 1 of 15:
    - i. Per the Town Engineer's comments, indicate the painted island that will be on Executive Park Dr (on this and all applicable sheets);

- ii. Update the references to “Chapter 412” in note #14 to read “Chapter 167” as the chapter for the Stormwater Ordinance has recently changed;
- iii. Update note #2 to include Aquifer Conservation District Zoning;
- c. The applicant has indicated a future sign location on Sheet 4 of 15. Provide details for compliance with the requirements of the Zoning Ordinance;
- d. The applicant should note the appropriate buffers (indicating that the buffers are n/a based on abutting land uses) from Section 10.01.4 of the regulations on the Landscape Plan;
- e. Consider replacing the proposed White Pine in the proposed landscaping areas with White Spruce or another evergreen variety with better lower level evergreen foliage;
- f. Sheet 14, note #11 indicates irrigation for the landscaped areas, but irrigation is not indicated on any of the plan sheets. Revise and update as applicable;
- g. Provide appropriate notes in the lighting fixture details indicating full cut-off fixtures as required by the regulations;
- h. Provide the required CRI information on the illuminations plans as required by the regulations;
- i. Indicate the dimensions of the proposed wall signage shown on the building elevations sheet to ensure compliance with Zoning Ordinance requirements;
- j. Revise elevations to use the terms “North”, “South”, “East”, and “West” rather than “Front”, “Right Side”, “Left Side”, and “Rear”.

General and subsequent conditions

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 submit an As-Built Plan prepared by a qualified professional Engineer or Licensed Land Surveyor) to the Community Development Department prior to the issuance of a Certificate of Occupancy;
3. As this proposal is for a new building, 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 the Fire Marshall for review and approval before a building permit can be issued;
4. The building shall be protected by an approved NFPA-72 fire alarm system. Plans shall be provided to the Fire Marshall for review and approval before a building permit can be issued.

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



– **Joseph Michael and Jill V. Bureau Revocable Trust** – Voluntary Lot Merger for Tax Map 3B, Lots 025 & 026, also known as 62 Lamson Drive and 2 Peaslee Road.

The Planning Board Chairman and Secretary signed the Voluntary Lot Merger document. There was no discussion.

**6. Approval of Minutes – January 20, 2015**

The minutes of January 20, 2015, were approved as submitted, by a vote of 5-0-0, on a motion made by Desirea Falt and seconded by Alastair Millns.

**7. Adjourn**

The meeting adjourned at 8:49 p.m., by a vote of 5-0-0, on a motion made by Tom Koenig and seconded by Alastair Millns.