



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD APPROVED MINUTES TUESDAY FEBRUARY 7, 2023

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, February 7, 2023 in the Matthew Thornton Room.

Members Present:

- Robert Best (Chair)
- Paul McLaughlin (Vice Chair)
- Lynn Christensen
- Brian Dano
- Nelson Disco – Alternate (arrived at 6:35)
- Town Councilor Barbara Healey - Ex-Officio

Members Absent:

- Jaimie von Schoen
- Neil Anketell
- Maureen Tracey – Alternate
- Haleem Mediouni - Alternate

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

1. Call to Order

Chair Robert Best called the meeting to order at 6:30 p.m. and led everyone in the Pledge of Allegiance.

2. Planning & Zoning Administrator's Report

None

3. Consent Agenda

No items on the Consent Agenda for this meeting.

Chairman Best took the opportunity to remind the Board that when there are consent agenda items to review them prior to the start of the meeting so the Board can move swiftly through the agenda item as intended.

4. As Life Goes On, LLC (applicant) and Gordon House Assisted Living Residence (owners) – Continued review for consideration of final approval for an amendment to a conditionally

approved site plan to raze and rebuild a portion of the existing building to convert it to a 24 bed assisted living facility. The parcel is located at 585 Daniel Webster Highway in the C-1 (Limited Commercial), R-4 (Residential), Aquifer Conservation, and Elderly Housing Overlay Districts. Tax Map 6D-1, Lot 46. Case #PB2020-27. **This item is continued from the December 6, 2022 & January 3, 2023 Planning Board Meetings.**

At the applicant's request, the Board voted 5-0-0 to continue this hearing to March 7, 2023 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion by Paul McLaughlin and seconded by Lynn Christensen.

Nelson Disco arrived to the meeting at 6:35 p.m. Chairman Best appointed Mr. Disco to sit for Neil Anketell.

5. **Robert Parker (applicant) and BC FE 29 Manchester, LLC (owner)** – Continued review for consideration of final approval for a site plan to construct a 39,800 square foot warehouse building. The parcel is located at 29 Manchester Street in the in the I-1 (Industrial), and Aquifer Conservation Districts. Tax Map 2D, Lot 004-07. Case # PB2023-04. **This item is continued from the January 17, 2023 Planning Board Meeting.**

Mr. Price prefaced the discussion by reminding the Board that the applicant presented the proposal at the January 17th Planning Board meeting and the Board seemed pretty satisfied with what was presented, however the peer review comments had not been received at that time so the item was continued. The peer review comments have since been received and there was not any significant feedback that would prevent the Board from taking action on the plan.

Sean Reardon (Tetra Tech, Inc.) presented the application to the Board. He began by sharing a copy of the Site Plan and showing the location of the existing property markers and indicating that one of the peer review comments was that there should be another marker added along the rear property line and that the iron pins should be converted to granite bounds. Since the markers were established for a previously approved project and are more than adequate, the applicant is seeking a waiver from this requirement.

The Board voted 5-0-1 to grant a waiver from Section 3.02.a of the Site Plan Regulations (Monuments), 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 Lynn Christensen and seconded by Paul McLaughlin. Nelson Disco abstained.

Mr. Reardon then shared with the Board that the applicant has decided to extend the sidewalk at the entrance to the property down to the subsequent property line. Mr. Disco indicated that he did not see that shown on the plan and Mr. Reardon clarified that it will be part of the plan revisions. The Board then discussed the back of the building again in an effort to recall what they discussed at the last meeting regarding the design standard that indicates "No uninterrupted length of any facade shall exceed 50 horizontal feet" (3.12.d.ii). The Board determined that the horizontal changes in color that are shown on the plan are sufficient to satisfy the criteria in the regulations.

No public comment was received.

The Board voted 6-0-0 to find that with the granted waivers and the proposed conditions of approval, the site plan application meets all applicable regulatory requirements and further, to grant conditional final approval of the site plan subject to the following precedent conditions to be fulfilled within 6 months and prior to signing of the plan, 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. Once received, the applicant shall address the comments from the town's peer review consultant, Fuss & O'Neill, as applicable.
7. The applicant shall address any forthcoming comments from Pennichuck Water Works, as applicable.
8. The applicant shall address any conditions imposed by the Planning Board at the hearing, as applicable.
9. The applicant shall address the following Planning Staff Technical Comments:
 - a. Cover Sheet, note 6 has a misspelling of the word "to".
 - b. Sheet C130, Note 3 – Revise this note to include mention of the Aquifer Conservation District.
 - c. Sheet L1 – Applicant shall note all proposed fixtures shall be full cut-off.
 - d. Sheet L1 -Applicant shall identify the Color Rendering Index for all fixtures, not just the pole lights.
 - e. Sheet L1 – Applicant shall identify the uniformity ratio on the plan.
 - f. As required by the Site Plan Regulations, site monuments shall be set in accordance with Section 3.02.b, which reads: *"Lot corners and points of curvature along the right of way line shall be marked by a stone or concrete monument 4" x 4" x 36" (minimum). All other lot corners and angle points along property lines shall be marked by 1" diameter iron pipe or 5/8 " steel rebar at least 30" in length or a drill hole set in an existing stonewall."*

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).
- 6. Merrimack Parcel A, LLC (applicant) and Merrimack Parcel A, LLC and Slate Merrimack Acquisition, LLC (owners) –** Continued review for consideration of an amendment to a previously approved Mixed Use Development Conditional Use Permit, calling for the replacement of 93,720 s.f. of office space, 37,400 s.f. of retail, 15,800 s.f. of restaurant space and a 5,000 s.f. event center as part of Phase II with 208 multi-family residential units, 5,000 s.f. of office space, 6,500 s.f. of retail space, 8,000 s.f. of restaurant space and a reduction of the 120-room hotel approved as part of Phase I to 100 rooms. The parcels are located at 1, 2, 3 and 4 Lexington Court in the I-2 (Industrial) & Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 3C, Lots 191-2U1-2U4. Case # PB2023-05. **This item is continued from the January 17, 2023 Planning Board Meeting.**

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

7. **Nick Napior (applicant) and Robert Napior Revocable Trust (owner) –** 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.

Mr. Price prefaced the presentation by informing the Board that applicant is seeking a waiver of full site plan review in order to permit the conversion of an existing boat storage and service facility (former Skip's Marine) into an automotive service facility to allow for automotive repair, service and storage uses. The applicant has verbally advised staff that the automotive repair will be for personal use only, however since the application does not mention that its personal use only and there is no way to enforce it, staff recommends that the Board require the applicant provide a minor traffic analysis (per Section 3.14.b). Mr. Price also advised the Board that Fire Department comments were received earlier that day and they are requiring that a sprinkler and alarm system be added to the building.

Nathan Chamberlin of Fieldstone Land Consultants, PLCC and Nick Napior, applicant, presented the application to the Board. He began by explaining that the applicant is seeking approval to convert the old Skip's Marine to an automotive hobby shop. He indicated that they are aware of the requirements from the Fire Department and have no concerns in installing the necessary systems. Mr. Chamberlin also indicated that the applicant will not be using the space for commercial automotive repairs but may occasionally sell a used car onsite. Mr. Price interjected to clarify that the site is not zoned for used car sales and would require a variance from the Zoning Board of Adjustment to be allowed.

The Board voted 6-0-0 to grant the waiver of full site plan review and accept the application as complete, on a motion made by Lynn Christensen and seconded by Paul McLaughlin.

No public comments were received.

Mr. Disco asked about the large number of parking spaces onsite and what they will be used for. Mr. Napior responded that he intends to re-stripe the existing spaces but does not necessarily intend to use them to clutter the property with cars. He added that he is interested in the site mainly for the indoor storage and the parking spaces are pre-existing.

The Board voted 6-0-0 to continue this hearing to February 21, 2023 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion by Brian Dano and seconded by Lynn Christensen.

8. **Keith Pasquale (applicant) KTK Realty Trust (owner)** – Consideration of an amendment to an approved site plan to waive the requirements of Section 6.01.c of the Site Plan Regulations (which requires all on site improvements be completed prior to the issuance of a certificate of occupancy) to allow for the majority of required site improvements to be bonded instead of completed prior to issuance of the certificate of occupancy. The parcel is located at 20 Star Drive in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 3D-1, Lot 012. Case # PB2023-07.

Mr. Price began by reminding the Board that the site plan for this parcel was conditionally approved last year and signed and recorded earlier this year. That site plan approval was appealed by abutters, and in November 2022, the approval by the Planning Board was upheld in Superior Court. Staff notes that the abutters have appealed the Superior Court decision to the NH Supreme Court, which has not set a date for arguments in the case.

The applicant is now before the Board seeking to amend their site plan approval by requesting a waiver of the requirements of Section 6.01.c of the Site Plan Regulations to allow for the majority of required site improvements to be bonded instead of completed prior to issuance of the certificate of occupancy. Allowing the work to be bonded would also allow staff to sign off on the applicant's DMV paperwork which has not been done as none of the required improvements have been completed at this time. Staff does not support the request for bonding as not requiring any improvements to be completed prior to occupancy is the reason the drainage problem was not dealt with in the past.

David Morin (Berkshire Hathaway) presented the application to the Board. Mr. Morin presented his case to the Board. Mr. Morin read from the waiver request letter that was submitted by the applicant to substantiate the reasons for the request. (A copy of this letter can be found in the project file which is located at the Merrimack Town Hall in the Community Development Department.)

Chairman Best clarified that the applicant is seeking a waiver from Section 6.01.c because Section 6.01.d which was referenced in the letter is regarding landscaping which is not what is being done. Mr. Morin argued that the majority of the work being done is stormwater management which is landscaping as they are hiring a landscaper to do it. Chairman Best stated that a landscaper may be completing the work but stormwater is site work and not landscaping. Mr. Morin added that the ground is frozen now so it's not ideal weather for digging culverts.

Mr. Disco asked why the site improvements have taken so long to complete if the plan was conditionally approved last year and Mr. Morin responded that the Court appeal is what held them up, they did not get the court decision until November 2022. Discussion between the Board and Mr. Morin continued around the Court case and whether or not the stay is still in place and Chairman Best clarified that it is not, as the applicant would not be able to make any requests to the Board if it was. Councilor Healey asked what has been done since November and Mr. Morin advised that they completed the building upgrades that were required by the Building and Fire Departments. Mr. Price also added that until the stay was lifted, the applicant was not able to complete any of the conditions of approval. Once it was lifted, the applicant focused on getting the updates to the plan made so that it could be signed and recorded, allowing them to finally begin work on the improvements shown on the plan.

Chairman Best shared his opinions that he is inclined to agree with the staff recommendation that granting the waiver could set a precedent for future applicants and that allowing the previous business to occupy the space without completing the drainage work is how this problem came to be in the first place.

The waiver and amendment request was withdrawn by the applicant.

- 9. Keith Pasquale (applicant) KTK Realty Trust (owner) – Review for consideration of a waiver of full site plan review to allow used automotive sales and storage in addition to the existing use (Northshore Trailer & Suspension). The parcel is located at 20 Star Drive in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 3D-1, Lot 012. Case # PB2023-08.**

Mr. Price began by stating that the applicant was granted a variance by the Zoning Board of Adjustment to permit the proposed use on December 28, 2022 and is now before the Board seeking a waiver of full site plan review to permit sales & storage of used automobiles on the

property. The staff memo references two items that need to be clarified with the applicant. The first one is regarding a note on the plan that reads “the proposed development is to establish a sales and storage of used automobiles in 12,000 s.f. of the existing building.” The Board should clarify with the applicant precisely how much space within the 12,000 s.f. building is proposed to be used by the automobile sales use. Secondly, staff notes that the plan indicates automotive service as part of the sales & storage business by the way the parking calculation is worded. The Board should discuss whether service of the automobiles is proposed because if it is, the application and legal notice do not include it and the project would need to be re-noticed for a new hearing, and new application materials submitted to include service.

David Morin, Berkshire Hathaway presented the application to the Board. Mr. Morin read from the cover letter that was submitted by the applicant to provide background on the site and explain why a waiver of full site plan is being requested. (A copy of this letter can be found in the project file which is located at the Merrimack Town Hall in the Community Development Department.) Mr. Morin then clarified that Mr. Pasquale will not be servicing any vehicles on site and is only interested in buying and selling classic cars. He typically only has 4-5 transactions per month and any cars that he takes into his possession to sell will be kept inside. Mr. Morin was unsure of how much square footage would be used for the car storage as Mr. Pasquale is trying to lease a portion of the warehouse space but cannot envision more than 1,000 square feet being used for vehicles.

The Board voted 6-0-0 to accept the application as complete, on a motion made by Barbara Healey and seconded by Lynn Christensen.

The Board voted 6-0-0 to grant the waiver of full site plan review, citing that strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations, on a motion made by Paul McLaughlin and seconded by Lynn Christensen.

Public Comments:

Richard Kalika, owner of an unnumbered parcel off Star Drive, began by correcting the date in which the stay was lifted by the Court, which according to him, was May 2022 at his request. He then challenged the fact that the plans were signed on January 3rd as the plan is still under appeal and no notice was given to abutters. He also alleged that the Waiver of Full Site Plan application was not signed by the applicant. Mr. Kalika continued by indicating that he believes the plan that was signed is invalid because it is still in litigation. Chairman Best asked Mr. Kalika to limit his points to those having to do with the request at hand, which is the allowance of automotive sales on site. Mr. Kalika argued that the site is non-conforming and they should not have been able to occupy the space for the last 2 years and now they want a non-conforming use approved. Chairman Best clarified that the applicant received a variance to permit the used car sale use so it is not nonconforming. Mr. Kalika argued that they were not at the ZBA hearing and have submitted an appeal to the town. Chairman Best stated that the Planning Board does not have any jurisdiction to overturn a ZBA decision nor do they have to stall projects when a ZBA appeal is submitted.

Mr. Kalika stated that the rear setback of the property is 40 feet and the building is not 40 feet from the property line. Chairman Best advised that if the property is non-conforming the applicant is not required to move the building to make it conforming as part of his request. Mr. Kalika then alleged that the applicant has interior building space that was not shown on the plan and that the parking calculation is incorrect. He referenced pictures that were in a packet of

information he handed out that show that where the tractor trailers are being kept and argued that they do not belong there and added that they are parked in an easement. (The packet can be found in the project file which is located at the Merrimack Town Hall in the Community Development Department.)

Chairman Best reminded Mr. Kalika again to limit his comments to the request at hand and re-stated that just because he is requesting to add a use to the site does not mean he has to fix all of the nonconformities. Mr. Kalika stated that he wanted his opinion put on the record that the use is nonconforming and the property was paved so that the stormwater runs off the property and into the roadway then onto the property belonging to the Doty Group. He continued by stating that shortly after the chemical item was brought before the Court, a swale was dug on the Doty's Group property without his knowledge and permission. He added that he felt that this is an alteration of terrain without the approval of the landowner. The Star Drive easement and turn-around is a surface easement, the Doty Group and KTK own to the center of that easement underneath the pavement. Digging the swale required the approval of the Doty Group and the approval was not given. Mr. Kalika continued by stating that he believed that when you are adding a new use, you have to consider stormwater and where it is going. You also have to consider the parking that the regulations require. He further claimed that the applicant hid the actual square footage of his building from the Board and what the purpose of it is, stating that office space requires more parking than other uses. He also stated that he did not account for service bays in his parking calculation. According to Mr. Kalika's calculation, the site requires 39 spaces and not the 21 spaces that the site has. He contended that the applicant is trying to add additional spaces in the easement which he cannot do because all of the property owners on Star drive have rights to the land in which the easement is on. He shared that he believes that the applicant did not account for 3,075 square feet of office space and walked the Board through his parking calculations.

Chairman Best interjected to advise Mr. Kalika that the easement is not within the jurisdiction of the Planning Board. Mr. Kalika turned his attention back to the parking spaces and how he feels that they do not have enough of them and Chairman Best reminded him that the applicant stated that there are no service bays, paint bays or office space required as the majority of the business is done online. He is storing the cars inside and only foresees the need for one space for a customer to park to come look at the vehicle inside the building. He further explained that the way he is interpreting the parking calculation is incorrect and that aside from using the parking calculation the Planning Board can look at what is being proposed and make a determination as to the number of spaces needed.

Mr. Kalika then claimed that there is no ground level access for the applicant to get the cars into the building and there is only a loading dock, Chairman Best maintained that issue is for the applicant to figure out and is not up to the Planning Board to solve. Mr. Kalika stated that the Board is approving a plan that will be recorded at the Registry of Deeds that in his opinion contains false information and the Board has been made aware of the falsities so that is a problem. Mr. Kalika contended that the plan never went through Stormwater mitigation and Chairman Best advised him that it had and was mentioned in the Court decision which is still a valid decision even though he believes it is not because it is under appeal. Mr. Kalika argued that the use on the property makes it a high load site which was not taken into consideration during the peer review process.

Mr. Kalika continued to contend that the use and the site are non-conforming, that the portion of the building in question was built after 1977 so it should have to conform to today's Zoning

regulations and that the parking calculations are incorrect because there is interior office space that was not accounted for.

Chairman Best asked Mr. Morin again to confirm the number of parking spaces they foresee needing for the used car sales and he responded zero. He stated that the cars will arrive on flatbed truck and brought inside. Councilor Healey asked how the cars will be brought into the building and Mr. Morin replied, through the loading dock on flatbed trucks. She then clarified that no additional site work is needed to make it possible and Mr. Morin confirmed that there is not any site work needed.

Chairman Best advised Mr. Morin that staff has recommended that they make the site plan improvements a condition of approval for this request and Mr. Morin confirmed that he understands and thinks they can get the work started soon. Chairman Best also re-confirmed that no additional office space is required for the requested use and Mr. Morin confirmed that everything is done online.

The Board voted 6-0-0 to find that with the granted waiver of full site plan review and the recommended conditions of approval, the application meets all applicable regulatory requirements necessary, and further, to grant conditional final approval subject to the following precedent conditions to be fulfilled within 6 months and prior to signing of the plan, unless otherwise specified on a motion made by Paul McLaughlin and seconded by Lynn Christensen:

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, if any are applicable.
3. Any waivers granted (including Section and date granted, and also including the waiver of full site plan review if 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 draft copies of any 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 Merrimack Village District, as applicable.
6. The applicant shall address any forthcoming comments from the Public Works Department, as applicable.
7. The applicant shall address any forthcoming comments from the Wastewater Division of Public Works, as applicable.
8. The applicant shall address the following Planning Staff Technical Comments:
 - a. Under the parking calculation note, Automotive Sales and Service shall be revised to read just Automotive Sales.

- b. Under Notes, revise Note 2 to clarify precisely how much space in the 12,000 s.f. warehouse portion of the building will be used for the proposed automobile sales use.
 - c. Applicant shall note on the plan any storage of used automobiles for sale that be entirely indoors.
9. Final Approval of this plan (plan signing) shall be contingent on completion of all site improvements shown on the plan approved (signed) by the Planning Board dated January 3, 2023 and recorded at the Hillsborough County Registry of Deeds as Plan #41681; the complete version of which is on file with the Community Development Department as Plan #255-M.

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 any forthcoming comments from the Fire Department, as related to property addressing and fire code compliance, as applicable (that are not deemed precedent conditions).

10. Discussion/possible action regarding other items of concern

11. Approval of Minutes — January 17, 2023

The Board voted 5-0-1 to approve the minutes of January 17, 2023, as amended, on a motion made by Nelson Disco and seconded by Barbara Healey. Lynn Christensen abstained.

12. Adjourn

The Board voted 6-0-0 to adjourn at 8:15 p.m., on a motion made by Brian Dano and seconded by Paul McLaughlin.