



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

## MERRIMACK PLANNING BOARD

### MINUTES

**TUESDAY, JANUARY 21, 2020**

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, January 21, 2020 in the Matthew Thornton Room.

Robert Best, Chairman presided.

#### Members Present:

- Alastair Millns (Vice Chairman)
- Neil Anketell
- Lynn Christensen
- Nelson Disco
- Paul McLaughlin
- Councilor Bill Boyd, Ex-Officio (arrived at approximately 7:15)

#### Members Absent:

- Dan Ricker

Staff Present: Tim Thompson, Community Development Director

**1. Call to Order:** Chairman Best called the meeting to order at 7:00 p.m. and appointed Nelson Disco into a voting position in place of Dan Ricker.

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

- None

**3. RCL Realty, LLC (applicant/owner)** – Conceptual discussion of amendments to a previously approved subdivision (through lot mergers and lot line adjustments). The parcels are located on Elizabeth Drive and Charles Road in the R-1 and R-2 (Residential) Districts. Tax Map 3A, Lots 010, 011, 012, 013, 014, 025, 026, and 027. Case # PB2020-03.

Tim Thompson summarized the project by explaining that the original subdivision was approved back in 1969 and the applicant is now seeking approval to build out some of the remaining lots, through a revision to the original design of the subdivision. Ten of the 19 lots have been developed and after receiving feedback from the Board on the first layout for the remaining lots, the developer is now ready to present a revised conceptual plan, following a previous conceptual discussion in January 2019.

Steve Keach, Project Engineer, Keach-Nordstrom Associates, outlined the project by walking through the various topographical and road grade challenges with the remaining land. He explained that in order

to make the necessary improvements to Charles Road, they will need to cut into one of the proposed lots (3A/027) so that lot is now going to be eliminated and not developed. Mr. Keach also mentioned that his office has been working with the Department of Public Works (DPW) to ensure the proposed road changes meet the Town's requirements but if they follow through with this plan, they will need to seek a waiver because a 15 foot section of the road is at a vertical grade of 9%, which is greater than what is currently allowed (8% is the current maximum). Mr. Keach also addressed the concerns presented by DPW regarding access to the far end of Charles Road from the new road that will need to be developed by explaining that they will ensure access is present per statutory requirements. Mr. Keach concluded his presentation by stating that the Applicant is not intending to pursue the development of Squires Drive (which is depicted on the plan, as was part of the 1969 subdivision), however they intend to construct a better turn-around for DPW on Elizabeth Drive.

Mr. Keach answered various questions from the Board ranging from the intent of the parcels on Squires Drive (which was previously addressed in his presentation) and the access to lots 3A/13 & 14 (both noted as 14 on the plan that was presented). Chairman Best also advised Mr. Keach that fire hydrants will need to be considered. Chairman Best concluded by recommending that the Applicant pursue the necessary variances with the Zoning Board as needed for frontage and solve for access to the lots on the end before formally presenting to the Planning Board again. Tim Thompson also recommended that the Applicant and Engineer continue to work closely with DPW as well.

No public comment was received.

4. **Dorinne Whynott (applicant) and SAD Development (owner)** – Continued review for acceptance and consideration of a Waiver of Full Site Plan Review for a dog daycare/training/boarding business. The parcel is located at 257 Daniel Webster Highway in the I-1 (Industrial), Aquifer Conservation District. Tax Map 3D-2, Lot 036. Case #PB2020-04. **This item is continued from the January 7, 2020 meeting.**

Tim Thompson summarized the project by advising the Board that the Applicant is interested in using the existing 6,600 square foot building located at 257 DW Highway (the old Fallon's Furniture) as a dog daycare, training and boarding business. The business will also utilize a 3,850 square foot fenced in outdoor area as a dog play area. He also mentioned that the Applicant is seeking a waiver for parking and that DPW has expressed concerns about the pet waste run-off, which is a common concern for this type of business.

Andrew Prolman, Attorney, Prunier and Prolman, presented the project by explaining that the applicant is a Merrimack resident that has a successful dog walking business which includes 30 employees and 3,000 clients and she is looking to broaden her business with this location. The waiver of full site plan is being requested because very few changes will be made to the exterior of the building. The fence for the play area will be a six foot solid vinyl fence and the play area itself will be turf over dirt. Attorney Prolman also specified that the business will be open M-F 6 am - 7pm for day care and training services and will be open all week around the clock for boarding. The boarding will consist of 48 kennels (10 cats and 38 dogs) and there will be approximately 5 employees on staff, with someone on site at all times. Attorney Prolman addressed the pet waste run-off by explaining that there will be a small dumpster on wheels located in the play area and the feces will be picked up continuously and the dumpster will be wheeled out to be emptied. Additionally, the outside and inside areas will be sprayed down with an EPA approved sanitizing wash.

The Board discussed the parking waiver request and compared the number of dogs being cared for at this business with those like it in town. Tim Thompson also clarified that this type of business has a lot of turnover with cars in the parking lot because people are just dropping off and picking up their pets.

The Board ultimately referred back to the applicant to ask if they feel comfortable with the number of spaces available knowing that it's not acceptable for clients to be parking on Star Drive or DW Highway. Attorney Prolman responded that they are very confident that they have enough parking spaces and can even foresee asking for additional dogs to be allowed in the future. Chairman Best also asked how the drainage is going to work with the dog urine being washed away.

Attorney Prolman explained that Granite Engineering is currently working on the drainage issue and they are aware of the requests made by DPW and will incorporate them into their design plan. The topic of lighting was also raised and Attorney Prolman explained that there are no current plans to add additional lighting, however, he would be in favor of adding a condition to the approval stating that they will be compliant with lighting regulations so that if additional lights are needed, they do not need to appear in front of the Board again. Tim Thompson confirmed that staff would be ok with this condition. The question was also raised by a member of the Board about whether or not they felt that the retail component would impact parking. Attorney Prolman explained that they do not foresee that being an issue because the retail component is going to be very small (approximately 100 square feet) and is a service to the customers (brushes, leashes, collars, etc.) so they do not expect a lot of walk in traffic for the merchandise. Additional concerns around parking were raised by the Board as well as questions about when training would be conducted and what impact that would have on parking. Applicant Dorrine Whynott answered the questions by explaining that typically training lasts for about an hour and is conducted in the evening after daycare. She also specified that the training will be conducted inside and not in the parking lot or in the play area.

**The Board voted 7-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Bill Boyd.**

**The Board voted 7-0-0 to grant a waiver of full site plan review, on a motion made by Alastair Millns and seconded by Bill Boyd.**

**There was no public comment.**

**The Board voted 7-0-0 to grant a waiver to Section 3.11 (Parking), on a motion made by Alastair Millns and seconded by Nelson Disco.**

**The Board voted 7-0-0 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 Alastair Millns and seconded by Bill Boyd:**

1. Final plans to be signed by all property owners. The appropriate professional endorsements and signatures shall also be added to the final plans as applicable;
2. The applicant shall obtain all required State approvals/permits as may be applicable, note the approvals/permits on the plan and provide copies to the Community Development Department;
3. 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;
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 the following comments from the Public Works Department, as applicable:
  - a. This section of Daniel Webster Highway is under State of New Hampshire Department of Transportation Jurisdiction and Review. NH DOT permit will be required for any work done within the Right of Way (ROW);
  - b. If any work will be done within the ROW of Star Drive a Driveway Permit shall be obtained from the Town of Merrimack Highway Department.
  - c. The stormwater runoff from the playpen area will flow into an existing catch basin located on the property. The catch basin then discharges directly to a small brook that will continue to take any contaminates directly to the Merrimack River. The Merrimack River is on the impaired waters 303D list; therefore the following questions/comments are offered:
    - i. The applicant shall note the type of surface that will be within the “Play Area”;
    - ii. A plan shall be prepared and submitted for approval regarding the pet waste pickup and how it is to be handled then disposed of;
    - iii. The applicant shall indicate how stormwater runoff from the “play area” will be treated;
    - iv. Catch basins that will be receiving the runoff containing the concentrated contaminants from the playpen area shall be changed to a solid cover so that any effluent will not enter into the system directly;
7. The applicant shall address any forthcoming comments from the Wastewater Division, as applicable;
8. The applicant shall address the following Planning Staff Technical Comments:
  - a. The following typical plan notes should be added to the plan:
    - i. Current property owner information;
    - ii. Applicant information;
    - iii. Purpose of plan note;
    - iv. Zoning district;
    - v. Notes regarding waivers (waiver of full site plan review);
    - vi. Water source information;
    - vii. Sewer source information;

- b. Applicant shall clarify maximum number of dogs served by the facility on the plan;
- c. Applicant shall note number of employees;
- d. Add the following note to the plan: All improvements shown on the plan (an annotated version of CDD Plan #899), have already been constructed/completed.
- e. Applicant shall show ADA-compliant parking on the plan.

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

- 1. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
- 2. Should the applicant propose any additional outdoor site illumination, it shall be reviewed and approved by the Community Development Department for compliance with Section 3.13 of the Site Plan Regulations prior to any issuance of any permits for and/or construction of new outdoor lighting;
- 3. The applicant shall address any forthcoming comments relative to code compliance from the Fire Department, as applicable; x
- 4. The applicant shall address any forthcoming comments relative to code compliance from the Building Department, as applicable.

**5. Consideration of Adoption of the Route 3 Bicycle/Pedestrian Plan prepared by Nashua Regional Planning Commission.**

Tim Thompson summarized the project by explaining that this was recently discussed back in October 2019 and at that time the Board determined that this should be an amendment to the 2013 Master Plan. The plan was compiled by the Nashua Regional Planning Commission who worked closely with the Planning Board. Many months of research and data collection went into the plan, including a survey at one of the last town elections. He also explained that the adoption of this plan is key in requiring developers to make improvements to pedestrian facilities outside of the urban compact (which is the area North of Bedford Road and South of Greeley Street). Sidewalk plans have been a primary focus for the town but it made sense to consolidate efforts and add the bike plan to do both at the same time.

Chairman Best explained that this is not necessarily a plan that means were going to start building soon, like any other item on the Master Plan; it's a planning guidance document that outlines what the town would like to do when the opportunity arises.

Four Merrimack High School Civics students (Alexandria Pereira, Connor Bobbit, Jon Heimberg, and Jeffrey Burke), spoke in favor of adding sidewalks to town. Alexandria stated that they are doing a project for school on how the lack of sidewalks has impacted residents of the town. She went on to explain that she has posted her concerns on the Merrimack Forum and has gotten a lot of positive feedback from residents. The locations that they are suggesting the addition of sidewalks are:

- Gilbert Crossing apartment complex to the Library
- The Middle School down Baboosic Lake Road

The students stated that the sidewalk from the Middle School down Baboosic Lake Road is among one of the favorites because there are not a lot of sidewalks in that area now and parents want their children to be able to walk to school safely. They also added that it would be a way to connect that side of town with the center of town (Town Hall, the High School and Upper Elementary School, etc.).

Councilor Boyd advised the students that the Town Council will be reviewing the proposed 2020-2021 Town Budget at the January 29<sup>th</sup> Town Council meeting and suggested that the students attend to weigh in on the matter of sidewalks. The Council is considering allocating \$200,000 from the unexpended fund balance for sidewalks.

Ben Niles (11 Fernwood Dr) spoke in opposition of the Route 3 Bicycle/Pedestrian Plan. He stated he is not opposed to all sidewalks and does support them in the downtown area and villages; he does not support the idea of building them from the Nashua line to the Bedford line. He also expressed the need to get feedback from the Department of Transportation because some of the plan does not correspond with their “best practices.” Mr. Niles went on to cite a number of concerns ranging from cost to traffic (a detailed list of the points discussed are attached to these minutes). During the conclusion of his arguments, Mr. Niles also commented on the maintenance involved with sidewalks and expressed how the ones we currently have in town are in disrepair and he believes that DPW does not understand the responsibility involved with maintaining the sidewalks accurately.

Nelson Disco commented that although Mr. Niles had some valid points, he believes the plan should be adopted because it’s not a commitment of money and just an overall plan which can be accomplished a little at a time. Tim Thompson added to that comment by suggesting that the Board think of the plan as the broad overview and all of the details and research being requested would be done when you start to get into funding and implementation. At this stage in the planning, it does not make any sense to spend the time or money on the analysis needed for the actual construction details of all the sidewalks.

Alastair Millns raised a concern about the impact on the Route 3 corridor during construction of the FE Everett Turnpike widening, because the Town is already facing an anticipated traffic issue when the Turnpike is widened. Councilman Boyd also commented that he is in favor of sidewalks but believes the discussions should be part of a new Master Plan or a plan on its own and not an amendment to the 2013 Master Plan. Additional discussions took place about the length of time this plan has been in existence and the work that has been done to date and whether or not it should be part of the Master plan or a standalone plan, not tied to the Master Plan at all. Tim Thompson reminded the Board that during the November 5, 2019 meeting, this topic was discussed and the Board decided to post the public hearing notice as an amendment to the 2013 Master Plan.

**The Board voted 5-2-0 to adopt the plan as an appendix to the 2013 Town Master Plan, on a motion made by Nelson Disco and seconded by Robert Best. Alastair Millns and Bill Boyd voted in opposition.**

**6. Workshop Discussion – Various potential Zoning Ordinance amendments (Definitions, Non-Conforming lots, Signs, Telecommunication Towers).**

Tim Thompson began by explaining that he and his staff have developed some minor updates and revisions to the Zoning Ordinance to modernize it and make it easier to administer and enforce. He referenced a memo that was drafted by him and dated January 14, 2020 for this discussion.

Nelson Disco asked for clarification on the changes being made to the Telecommunication Tower language. Tim Thompson explained that there are four changes and the first change is aligning the requirements into one section of the Ordinance. Currently the information is spread out amongst

various sections, making it hard to administer, so staff is recommending that it be moved to one new section (2.02.6.1) with references to other districts as needed. The next revision is changing the requirements for towers in residential districts from a Special Exception to a Conditional Use Permit (CUP). The reason for this change is that a Special Exception is handled by the ZBA but the specifics around a telecommunications tower align better with the Planning Board so it makes more sense for it to be handled by the Planning Board. The third change is updating the Ordinance to include all of the changes to RSA 12-K, which are the state laws regarding Telecommunication Towers (as well as changing federal regulations and case law) and lastly there will be a provision on the height of the towers. Chairman Best asked how the height would work. Tim Thompson explained that for new towers he is recommending a maximum of 120 feet. He arrived at this number by looking at surrounding communities and what has been approved in the past locally in Merrimack.

Councilor Boyd also asked for clarification on the updates on travel trailers. Tim explained that the updates are primarily to clarify what is meant by the term “travel trailer” so that it can be enforced. He also clarified that the Community Development department would be responsible for enforcing the Ordinance language and staying in someone’s driveway in a travel trailer for a short period of time would be allowed as it is not a permanent situation.

Clarification was also given on the change to the sign language in which an off premise sign is to be considered a billboard if it is larger than 150 square feet. This is not intending to change the requirements for off premise signs but rather to clarify what is considered billboard. Home Occupations were also discussed. The section is proposed to be re-written to ensure compliance with the powers granted to the Planning Board under state law and language was added to require firearm businesses be decided by the Planning Board and not administratively.

The Board decided that they would like to see a formal presentation of the changes and concluded that the Public Hearing on March 17<sup>th</sup> would be the best time to do this.

## **7. Discussion/possible action regarding other items of concern**

Bill asked for an update on whether or not Emery and Garrett have been contacted about doing a sodium chloride in groundwater presentation for the Board. Tim Thompson explained that he wanted to clarify whether they wanted the Planning Board to sit in on a Council meeting or if they want their own meeting. Councilman Boyd explained that he felt it was more specific to the Planning Board and Chairman Best replied that he would attend either way. Tim Thompson commented that he will work with MVD to get the presentation scheduled and Nelson Disco suggested he include DPW as well.

## **8. Approval of Minutes - January 7, 2020**

**The Board voted 5-0-2 to approve the minutes of January 7, 2020, as submitted, on a motion made by Alastair Millns and seconded by Nelson Disco. Paul McLaughlin and Lynn Christensen abstained.**

## **9. Adjourn**

**The Board voted 7-0-0 to adjourn at 9:48 p.m., on a motion made by Bill Boyd and seconded by Paul McLaughlin.**