



Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY JANUARY 3, 2023

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, January 3, 2023 in the Matthew Thornton Room.

Members Present:

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

Members Absent:

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

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 Alternates Haleem Mediouni, Maureen Tracey & Nelson Disco for Lynn Christensen, Jaimie von Schoen & Robert Best, respectively.

2. Planning & Zoning Administrator's Report

3. Consent Agenda

- Regional Impact Determinations*
- NeighborWorks Site Plan- Roadway Maintenance Bond Release*
- Extension request: Anheuser-Busch - 'the Hamlet' apartments Site Plan (#PB2022-05)*
- Extension request: 57 - 59 DW Highway Warehouse Project (# PB2021-19).*

The Board voted 7-0-0 to approve the consent agenda, on a motion made by Barbra Healey and seconded by Nelson Disco.

4. Ronald Rosenfeld (applicant) and Garrett and Jillian Soucy and Roseneiro Trust of 2014 (owner) - Consideration of an amendment to a conditionally approved Lot Line Adjustment,

seeking to remove condition of approval #6e, imposed by the Planning Board at its June 4, 2021 meeting which requires the provision of easement documentation to allow an existing driveway encroachment onto abutting property to remain or removal of that encroachment. The parcels are located at 12 and 14 Dodier Court in the R-1 (Residential, by soils) and Aquifer Conservation Districts. Tax Map 7C, Lots 47-1 and 47-2. Case # PB2021-13.

Robert Price began by advising the Board that in June of 2021 the Planning Board conditionally approved a lot line adjustment between the 2 lots in question. Part of the associated precedent conditions of approval was a condition (precedent condition #6e), stating “Staff notes the paved drive and gravel area benefitting Lot 47-1 encroaches onto Lot 54. Applicant shall provide easement documentation that allows this encroachment to exist, or remove the encroachments prior to final approval.”

Mr. Price added that the applicant requested, and was granted, 2 extensions of the conditional approval to allow for time to meet the conditions of approval (most recently an extension was granted on December 6, 2022).

Mr. Price concluded by stating that the request to amend the approval before the Board now asks that the Board remove the above referenced precedent condition of approval. The applicant has provided written documentation from the property owner at 7 Circle Drive (Lot 54 referenced in the condition) that the encroachment is allowed to continue, but does not wish to enter into an easement agreement and reserves the right to require its removal in the future. Staff is satisfied with this approach and if the Board agrees, the condition would need to be removed in order to finalize the plans.

Nelson Disco asked if staff asked the Town’s attorney for feedback and Mr. Price explained that there was not a need to because the lots are privately owned so the encroachment is a civil matter. Mr. Disco then asked if they have the authority to approve the plan with the encroachment and Mr. Price replied that the plan can be approved and added that when similar issues have occurred in the past, the Board has just stated that they are aware of the encroachment and are not supporting it with the approval of the plan.

Attorney Alec Buchanan was present to represent the applicant and advised the Board that due to the cost associated with correcting the encroachment, the neighbors have agreed to let it stand for the time being. He also stated that they still need to finalize deeds and mortgages so it may be another 6 months before the plans are finalized.

Maureen Tracey asked what happens when the home owners want to correct the encroachment issues and Mr. Price explained that it is a civil matter so they would handle it privately. He also clarified that the encroachment is a portion of the driveway benefitting lot 47-1 onto lot 54. Lot 47-1 is not landlocked, so correction of the encroachment has no impact on access to the lot.

No public comments were received.

The Board voted 7-0-0 to grant the amendment to the lot line adjustment, 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 by Nelson Disco and seconded by Brian Dano:

1. All precedent conditions from the Decision Letter dated June 4, 2021, except for precedent condition #6.e which is now deleted, shall be addressed prior to final approval (plan signature) by the Planning Board.

The following General and Subsequent Conditions of Approval are also be placed on the approval:

1. All General & Subsequent Conditions from the Decision Letter dated June 4, 2021 shall remain in effect for the amended Lot Line Adjustment.
5. **John J. Flatley Company (applicant/owner)** - Continued Review for consideration of an amendment to a previously approved Mixed Use Development Conditional Use Permit, calling for the replacement of the previously proposed 20,000 square foot planned retail space with a 52,000 square foot self-storage facility. The parcels are located at 645, 673, 685, 703, and 707 DW Highway and 5 Gilbert Drive in the I-1 (Industrial), Aquifer Conservation and Wellhead Protection Districts. Tax Map 6E, Lots 3-1, 3-3, 3-4, 3-5, 3-6, and 3-7. Case # PB2022-38. **This item is continued from the October 18, November 15, and December 20, 2022 Planning Board Meetings.**

Mr. Price prefaced the presentation by providing some background on the project. He explained that the peer review of the traffic analysis originally concluded that the proposal did not meet the Town's regulations. However since that time, the applicant has provided clarifying information relative to the traffic impact analysis done in 2014 for the original CUP approval. This clarification indicates to the satisfaction of staff that the Ordinance criterion is met and the self-storage use will result in a reduction in traffic compared to the retail use that was originally approved.

Nathan Chamberlin (Fieldstone Land Consultants) & Kevin Walker (John Flatley Company) presented the application to the Board. Mr. Chamberlain began by reminding the Board that the CUP amendment request is to change 20,000 square feet of space that was approved as retail to a 52,000 square foot climate controlled self-storage facility. Mr. Walker also explained that the traffic engineer (Vanasse & Associates) clarified the traffic analysis to focus on the change from retail to self-storage and they concluded that the change of use would result in a reduction of traffic.

Vice-Chair McLaughlin asked Mr. Price what the comments were from the peer review and Mr. Price replied that the comments were very technical in nature but the end result was that they needed more information to confirm that the traffic analysis meets Town regulations. The applicant has since provided that information to staff who is in agreement that the regulations have now been met. Mr. Disco asked if the peer review firm is in agreement and Mr. Price advised that the Community Development Director reviewed it himself and he does not believe it was sent back for a second peer review.

Councilor Healey asked why they did not receive detailed plans for the self-storage facility and Vice-Chair McLaughlin clarified that the request before the Board is to amend the CUP master plan. If the Board grants the amendment, the applicant will then have to submit an application to the Board for site plan approval. Mr. Price agreed and added that the approval of the CUP would only give the applicant permission to apply for site plan approval, and that approving the CUP amendment does not give the applicant permission to construct anything.

Ms. Tracey asked about the results of the Fiscal analysis that was provided and Mr. Walker replied that the change to the self-storage will result in a \$31,153 increase in tax revenue for the town. Mr. Anketell asked if the self-storage facility will be accessible from Gilbert Crossing because he believes that the apartments are driving the requested change in use. Mr. Walker clarified that the proximity to Gilbert Crossing has little to do with the request; adding that John Flatley Company has several other facilities like this and has had success with them.

No public comments were received.

The Board voted 6-1-0 to find that the application meets the required criteria from the Zoning Ordinance to allow for the CUP to be amended, and to further grant conditional final approval to the amended CUP application 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 by Brian Dano and seconded by Haleem Mediouni. Neil Anketell voted in opposition.

1. The applicant shall resolve the site plan violation for the flex-industrial site (cutting of existing vegetation that was to remain) by obtaining final amended site plan approval for a landscape plan to address the loss of buffer/vegetation at the site prior to any final approval being granted for this amended Conditional Use Permit;
2. CUP Phasing shall be noted on the Master Site Development Plan in accordance with the Board's determination of appropriate phasing for the project;
3. All future phases of development (regardless of sequencing) shall be required to provide updated fiscal impact analyses to ensure that each phase of the project remains fiscally positive to the Town (the Town reserves the right to require peer review, at the applicant's expense, if necessary for fiscal impact analyses, as determined by the Community Development Director);
4. The project's Development Agreement shall be revised as applicable based on the phasing decision made by the Board at the Public Hearing, reviewed and approved by Community Development Department staff and, if necessary, the Town's Legal Counsel (at the applicant's expense);
5. The applicant shall provide an updated narrative package (as necessary following any revisions necessary by the Planning Board's decision) containing all revisions to the project including, but not limited to, project narrative, fiscal impact analysis, phasing documents/materials, traffic impact analysis, and any other information that is amended by the current application;
6. The applicant shall address any forthcoming comments from municipal departments as applicable to the CUP application;
7. The applicant shall address all applicable traffic impact analysis review comments from the Town's peer review consultant, Fuss & O'Neill, relative to the technical clarifications and corrections needed;

8. Address the following planning staff technical comments relative to the revised Master Site Development Plan:
 - a. The applicant shall verify that all lot lines are correctly shown on the plan, and use a consistent line type/color for all lot lines;
 - b. Note 5 shall be revised to clearly indicate the reduction of retail/commercial space (in addition to the already noted addition of the self-storage facility);
 - c. The plans indicate the size of the self-storage facility to be 73,442 square feet, which is not consistent with the submitted written materials and information which list the self-storage to be 52,000 square feet. The plan should be revised to 52,000 square feet as was verbally stated by the applicant at the initial public hearing;
 - d. Note 7 shall be revised to simply refer to the approved site plans for the previously approved phases of the project (Gilbert Crossing, Flex Industrial, High Bay);
 - e. Note 13 shall be revised to simply refer to the amended development agreement that will be recorded at the Registry of Deeds prior to the final approval of the amended CUP for all phasing requirements;
 - f. The applicant shall ensure that all notes are consistent on both sheets of the Master Site Development Plans once revisions are made;
 - g. The date in the main title block shall be updated to 2022 reflect that this is a new amended CUP application, and remove the prior revisions noted in the revision block (start this as a new plan with Revision K being the initial entry in the revision block).

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

1. The approval of this amended Conditional Use Permit does not authorize the applicant to undertake any construction related to the proposed development. The applicant must subsequently obtain subdivision approval for the platting of individual lots and site plan approvals for buildings or sites within the mixed use development in accordance with the Town of Merrimack Site Plan Regulations, Subdivision Regulations (as applicable), and Section 2.02.4.D.6 of the Zoning Ordinance;
2. Final Architectural design review of all proposed structures/facilities shall be required at the time of the subsequent site plan applications to ensure compliance with Section 3.12 of the Site Plan Regulations and Section 15.03.D.3 of the Zoning Ordinance as applicable;
3. The applicant is responsible for obtaining any federal, state, or local permits that may be required as part of any subsequent subdivision or site plan approval following the granting of this amended Conditional Use Permit;

4. The applicant is permitted to undertake minor deviations (including but not limited to building orientation on a site, decreases in density or building size, etc.) from the Master Site Development Plan and amended Conditional Use Permit documentation in such instances where the deviations do not increase the impacts to the Town as demonstrated through the traffic impact analysis or fiscal impact analysis. Deviations that increase impacts or those which the Community Development Department is not comfortable making an administrative determination of impact, shall require the applicant to return to the Planning Board to amend the Conditional Use Permit approvals. In no circumstance shall any uses permitted through the approval of this Conditional Use Permit be modified/changed without an amended Conditional Use Permit approval from the Planning Board;
 5. If this amended Conditional Use Permit approval is not acted upon within a period of two (2) years from the date of the final endorsement by the Planning Board (for all phases following Phase 1), then the amended approval shall be null and void. Actions sufficient to vest an approval for this amended conditional use permit include Planning Board site plan or subdivision approval (for any phase amended by this approval), issuance of a building permit, or a Certificate of Occupancy issued by the Building Department where no Planning Board approval or building permit is required. However, should any subsequent site plan or subdivision approval or building permit expire unused after the conclusion of the two-year validity period provided for herein, the amended conditional use permit granted as a precondition to said site plan or subdivision approval or permit shall become void as well;
 6. Should the applicant need to extend the two-year validity period, the applicant shall demonstrate to the satisfaction of the Planning Board that it was impossible or impractical to receive the necessary approvals to move forward in reliance on the amended conditional use permit granted within two years;
 7. Any renewal/extension application shall be filed with the Planning Board no sooner than 90 days, nor later than 30 days, prior to the expiration of the Conditional Use Permit;
 8. The Planning Board may, in its sole discretion, grant such extension of the above validity period as it deems warranted.
6. **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 Planning Board Meeting.***

Mr. Price prefaced the presentation with some background information on the project, explaining that in 2020, the applicant received conditional final approval to convert the 10,500 sq. ft. building into a 24-bed group assisted living group home. Since that the conditional approval in 2020, the applicant has performed evaluations of the existing building related to the feasibility of converting the space to assisted living. As a result of these evaluations, the findings indicate that the former day spa and restaurant portion of the building are in worse condition than originally anticipated and are beyond repair. Because of this, the applicant is now before the Board

requesting an amendment to the conditionally approved site plan, which removes the dilapidated portion of the building and replaces it with a new structure, resulting in a mix of both existing and new building areas to accommodate the assisted living use of the property.

He added that the staff memo does note that because of the split zoning of the lot, and the voluntary demolition/reconstruction proposed, the new structure will require a variance for the side setback in the R-4 District. However during a conversation with the applicant's engineer today, it was indicated the applicant could (and prefers to) alter the plan to eliminate the need for the variance. If the Board grants conditional approval tonight, they would just need to revise the proposed conditions of approval to require an amended plan be submitted to staff showing that the setbacks are met prior to final approval.

Nathan Chamberlin (Fieldstone Land Consultants) presented the application to the Board. He shared a copy of the Existing Conditions Plan to show which sections of the building are going to remain intact and which will be razed and re-built. He also demonstrated the existing encroachment into the side set back and reiterated that the plan will be re-designed so that the setbacks will all be met. He pointed out the location of a horseshoe driveway that is currently existing and will remain for medical transportation needs. He also briefly walked through the plans to show some changes that were made based on the conditions of the original approval and shared the renderings of the building.

The question was raised about whether or not the Historical Society needed to be notified and Mr. Price confirmed that there are no requirements to do so, however Councilor Healey is part of the Historical Society and she contended that they should be made aware when a historic building is being razed. Vice-Chair McLaughlin asked if the Fire Department provided any comments on the revised plans and Mr. Price confirmed that they have not yet commented on the revisions but noted their comments from the original submittal regarded sprinklers, alarms and access to the building. Ms. Tracey questioned why there are only 2 accessible parking spaces and inquired about the emergency plan for the second floor residents when the elevator cannot be used. Mr. Chamberlain explained that the two parking spaces is actually one more than what is required by the Americans with Disabilities Act and that access to emergency exits is part of the building code process.

Nelson Disco shared his opinion that he is not comfortable approving a plan that needs to be amended due to the encroachment issue and several Board members agreed. Board members also expressed their confusion with the existing horseshoe drive that is located on the property because it does not connect to the building and would not be very helpful to emergency personnel. They also expressed a desire to see a building elevation from Maple Street in addition to the one provided from DW Highway, and more information on the atrium and if it is accessible to the residents. Several Board members expressed their feelings that there should be some sort of outdoor space for the residents.

Public comment

Robert Stengel (3 Pleasant Street) stated that the proposed dumpster location is facing his dining room and wants to know what the plan is for trash removal as he is concerned about odors and pests. He also questioned the lighting plan as he does not want to have bright lights shining into his property and overflow parking potentially being a problem on Pleasant Street. He concluded by adding that he agrees that a patio would be a nice addition for the residents.

Vice-Chair McLaughlin asked Mr. Price if there are regulations on when dumpsters can be emptied and he confirmed there is not. Mr. Chamberlain confirmed that the dumpster is enclosed and the Board discussed potentially adding a condition of approval for dumpster removal times and frequency. Mr. Chamberlain also informed the Board that the lighting plan calls for shielded and downcast lights and there is no light spillover at the property lines.

The discussion of sidewalks was brought up again and whether or not one should be required on Maple Street. Mr. Anketell reminded the Board that they already hashed that out when it was conditionally approved the first time. Mr. Price agreed that it was previously discussed but clarified that since the plan is now being amended, the Board can make changes to their original approvals. Several Board members agreed that they would like to see a sidewalk added along the property's Maple Street frontage.

Ms. Tracey asked if the parking requirements are being met as there does not seem to be enough parking available on site. Mr. Price confirmed that the regulation requires 20 spaces and the applicant is showing 20 spaces on the plan. Mr. Anketell also expressed concerns with parking and if overflow would be forced onto Pleasant street. Vice-Chair McLaughlin clarified that there isn't anything they can do if they meet the required parking required by the regulations.

The Board voted 7-0-0 to continue the hearing to February 7, 2023 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion by Nelson Disco and seconded by Barbara Healey.

7. **526 DW, LLC (applicant/owner)** – Review for consideration of an amendment to a previously approved Site Plan requesting the removal of parking space wheel stops as currently required by the approved plan. The parcel is located at 526 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation & Elderly Housing Overlay Districts and Wellhead Protection Area. Tax Map 5D-2, Lot 001. PB2023-01.

Due to an issue with the legal notice, this agenda item was not heard by the Board, and was re-noticed for January 17, 2023.

8. Discussion/possible action regarding other items of concern

None

9. Approval of Minutes — December 20, 2022

The Board voted 6-0-1 to approve the minutes of December 20, 2022, as amended, on a motion made by Nelson Disco and seconded by Barbara Healey. Neil Anketell abstained.

10. Adjourn

The Board voted 7-0-0 to adjourn at 7:55 p.m., on a motion made by Barbara Healey and seconded by Neil Anketell.