



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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## MERRIMACK PLANNING BOARD

### APPROVED MINUTES

**TUESDAY, JULY 16, 2019**

Planning Board members present: Robert Best, Alastair Millns, Ex-Officio Bill Boyd, Paul McLaughlin, and Alternate Nelson Disco

Planning Board members absent: Lynn Christensen, Dan Ricker and Neil Anketell

Staff present: Community Development Director Tim Thompson and Recording Secretary Zina Jordan

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

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

**The Board voted 5-0-0 to determine that the OVP Management and Crosswoods Path III site plans are not of regional impact, on a motion made by Alastair Millns and seconded by Bill Boyd.**

Tim Thompson has received 18 applications for the position of Assistant Planner, and expects to interview finalists next week.

Chairman Best welcomed Paul McLaughlin back to the Planning Board.

- 5. Crosswoods Path III, LLC (applicant) and DW Development, LLC (owner) -** Review for acceptance and consideration of final approval for a site plan to construct 21 multi-family residential and 3 office units. The parcel is located at 747 Daniel Webster Highway in the I-1 (Industrial), Aquifer Conservation, and Planned Residential Development Overlay Districts. Tax Map 7E, Lot 046-54. Case # PB2019 -23.

This agenda item was discussed before agenda item #3.

Tim Thompson said that the applicant obtained a variance for dwelling unit density in order to construct the residential units. The existing Planned Unit Development (PUD) approval, which was intended for commercial use, must be amended first to allow a residential use. Amending PUD approval would require the Crosswoods Path Homeowners Association to be part of the application. Staff recommends that this not be treated as an "amendment" to the previous site plan from 2013, as the proposal is not in any way similar to the 2013 plan, which was never constructed.

Tim Thompson explained that, if the site plan is not accepted as complete prior to the adoption of new site plan regulations (public hearing scheduled August 6, 2019), the site plan would be subject to the new regulations. He recommended the Board make a determination that the application could proceed under the current regulations. Bill

Boyd asked whether the Planning Board could discuss traffic. Tim Thompson said that when a traffic impact analysis was done in 2013 (for 3 buildings of professional office with a greater traffic impact than the current proposal), NHDOT did not require improvements.

**The Board voted 5-0-0 to allow the application to proceed under existing regulations in the event that the plan is not accepted as complete prior to the adoption of new site plan regulations, on a motion made by Alastair Millns and seconded by Bill Boyd.**

Staff recommends continuing this item to August 20, 2019, to allow the applicant time to prepare an amendment to the Crosswoods Path PUD and to address concerns raised by municipal departments' review.

**The Board voted 5-0-0 to continue both the application acceptance and public hearing to August 20, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Bill Boyd and seconded by Alastair Millns.**

**3. T&S Real Estate Holdings, LLC (applicant/owner)** – Continued review for consideration of a site plan for modifications to the previously-approved site plan regarding parking and buffers. The parcel is located at 280 Daniel Webster Highway in the I-1 (Industrial) and Aquifer Conservation District. Tax Map 3D-2, Lot 11. Case #PB2019-18. **This item is continued from the June 4, 2019 Planning Board meeting.**

This agenda item was discussed after agenda item #5.

Tim Thompson explained that, given the extremely minor nature of the front setback encroachment and because the applicant has reduced the plan's scope to remove essentially all expansion efforts that were undertaken without approval (and is likely due to a minor measurement error during the original construction on the site), staff concurs that intent to comply with the setback exists and is willing to interpret the encroachment as being grandfathered at the present time with no further action required.

Kevin Anderson, Meridian Land Services, Inc., said the rear buffer was the abutters' focus at the last meeting. The applicant has since enhanced that buffer to satisfy the Country Crossing Association. Proposed is a 2' berm with a 6' privacy fence on top and 14 8'-high arborvitae that would mature to 12'-14' behind it. After a meeting with the condominium representatives, they allowed the applicant to plant on their property six 7'-8'-tall white pines that would mature to 30'-40'. The 1987 variance takes care of the sign in the front setback.

### **Public comment**

Michael Moy, 50 Sentry Way, showed photos from several locations that show the buffers and borders before and after trees were removed. He claimed that their removal lessened the density of the buffers, did little for noise abatement or preventing automobile headlights from shining into the condominium at night. Other concerns are seeing the building, delivery vehicle noises and idling, employees taking breaks behind

the building, and dumpster use. Country Crossing had to put in rocks to prevent flooding. He wanted the trees and berm on the condominium property to be replaced similar to the way they were before.

Although Bill Boyd said the impact on Country Crossing is not germane to the proposal and should be a conversation between the Association and the applicant, Chairman Best explained that the Planning Board is being asked to approve landscaping that is not completely on the applicant's property but is also on the abutters' property.

Jim Cobb, 14 Flintlock Lane #34, President of the Country Crossing Association Board, stated that Michael Moy accurately represented the association's thoughts. In the original plan, a berm followed the property line on Country Crossing in order to hold back water from emptying into the containment pond. Additional water last year filled that pond. The Association is asking for a remedy. Jim Cobb said it is important to place trees and brush on top of the berm and to pull out the sump pump and rip rap. The previous berm should be replaced as it was originally approved. The Association does not want problems with the containment pond.

Alastair Millns noted that the berm, catch basin and rip rap would be removed and the area loamed and seeded. Jim Cobb said the previous berm was larger. The developer created two cuts for catch basins through the berm. He warned against reducing the effectiveness of the drainage structure. Chairman Best explained that the Planning Board cannot require the applicant to place a drainage structure on someone else's property. That would have to be part of a private agreement. The applicant cannot allow runoff onto abutters' property. Tim Thompson added that there would be a decrease in the amount of drainage leaving the applicant's property due to the removal of the paving/parking that was constructed without approval.

Jim Cobb's concerns were drainage and an adequate buffer, which he understands the Association may have to discuss with the applicant. He is pleased at how well the applicant works with them.

Tim Thompson recommended that if the Board moves forward with approval, that they add a condition to the plan noting the agreement between the applicant and association regarding the buffer on the southerly property line, provide a copy of the agreement for the Town's file, and record the agreement Registry of Deeds.

Kevin Anderson confirmed that the drainage structure and rip rap would be removed and that there would be no additional plantings on the Association's property nor any of their trees cut. He would make a solid buffer. The new pavement was removed and the land graded to its previous level so there would be no flow to the abutting property. Nelson Disco said this sounds like what Michael Moy was asking for.

The applicant seeks a waiver from the minimum parking requirements to provide 25 rather than the required 48 spaces. Although a variance was previously granted for 23 spaces in 1987, the variance is no longer applicable, since the Ordinance language it relied upon no longer exists. Kevin Anderson cited an unwritten agreement to use VFW spaces next door for overflow parking. All parking is contained on site. Alastair Millns

and Bill Boyd assured the Board that they have not encountered any parking issues there.

Alastair Millns cited 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 7.03.E – Parking – on a motion made by Alastair Millns and seconded by Bill Boyd.**

Tim Thompson said that arborvitae is among the thickest possible tree buffers, so there should be no concern about noise. There are no limits on delivery hours on the original site plan.

Chairman Best recommended Conditions of approval dealing with deliveries and idling of vehicles.

Steven Soucy, Owner, T&S Real Estate Holdings, LLC, described delivery and dumpster hours and the circulation pattern. He will tell delivery trucks what the limitations are.

**The Board voted 5-0-0 to grant final approval, with the following conditions, on a motion made by Alastair Millns and seconded by Bill Boyd.**

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.

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 (as may be applicable), note the approvals/permits on the plan and provide copies to the Department;
3. The applicant shall note the waiver granted (including Section and date granted) by the Planning Board;
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 add a note to the plan indicating the agreement between the applicant and abutting condominium association regarding the buffer on the southerly property line, provide a copy of the agreement to the Community Development Department file, and record the agreement at the Hillsborough County Registry of Deeds, as applicable;
6. The applicant shall add a note that all deliveries shall be limited to "normal business hours";

7. The applicant shall add appropriate signage to the plan indicating “no idling” of delivery vehicles on the site;
8. The applicant shall address the following comments from the Conservation Commission:
  - a. Applicant shall note on the plan that soils shall be tested prior to the application of any fertilizers in the planting areas;
  - b. Applicant shall note on the plan that any fertilizers used on site shall be no phosphate, slow release nitrogen compounds;
  - c. Applicant shall note on the plan that all seeding and plantings shall be native; no invasive plants shall be used;
  - d. Applicant shall note on the plan that the use of salt and other de-icing compounds shall be performed by a NH Certified Green SnowPro applicator;
9. The applicant shall address any forthcoming comments from the Fire Department, as applicable;
10. The applicant shall address the following comments from the Public Works Department:
  - a. It shall be noted that there will not be any parking allowed along Smith Road;
  - b. Applicant to note on the plan that any work is to be done within the Smith Road right of way shall require a ROW permit from the Town of Merrimack Highway Division prior to the work commencing;
11. The applicant shall address the following Planning Staff technical comments:
  - a. Applicant shall revise Sheet 1, Note 6 to remove mention of the parking variance and instead note the parking waiver (as granted by the Planning Board);
  - b. Applicant shall note the 1988 variances pertaining to the existing ground sign on the plan;
  - c. Applicant shall note the 1987 variance that permitted the commercial plaza in the Industrial district on the plan;
  - d. The applicant shall add Planning Board signature blocks on appropriate sheets of the plan set. In addition, please note that the block should have lines for “Chair” and “Vice Chair” as per the Board’s current structure (the position of Secretary was renamed Vice Chair in June 2017);
  - e. Applicant shall note the property is located in the Aquifer Conservation District;
  - f. Applicant shall note water and sewer sources on the plan;
  - g. The statement under Section 7.05.D.16 shall be added to the plans.

**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 shall submit an As-Built Plan prepared by a qualified professional (Professional Engineer or Licensed land Surveyor, registered/licensed in New Hampshire) to the Community Development Department prior to the issuance of a Certificate of Occupancy for the building (or other applicable means of securing final permitting from the Building Division if a CO is not applicable);
3. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant.
4. The applicant shall address any comments from the Fire Department, as related to building fire code compliance, sprinkler systems, building addressing, etc., as applicable (that are not deemed precedent conditions);
5. The applicant shall address any forthcoming comments from the Building Department, as applicable.

**4. Hoyle, Tanner & Associates, Inc. (applicant) and OVP Management, Inc. (owner) – Continued review for acceptance and consideration of final approval for a site plan to construct 40 multi- family residential units. The parcel is located at 360 Daniel Webster Highway in the C-2 (General Commercial), Aquifer Conservation, Elderly Housing and Planned Residential Development Overlay Districts. Tax Map 4D-3, Lot 001. Case #PB2019-22. This item is continued from the July 2, 2019 Planning Board meeting.**

Robert Best recused himself from discussing and voting on this agenda item. Alastair Millns assumed the chair.

Tim Thompson explained that a retroactive conversion of this site into a PUD would make several tenants in the existing tenant mix nonconforming uses. Utilizing PUD standards would allow for far greater density than is sought. Staff suggested that, rather than pursue a PUD approval, the applicant should instead seek a special exception to permit the proposed residential use in the C-2 District as well as a variance to permit the proposed residential density from the Zoning Board of Adjustment (ZBA).

Robert Barsamian, OVP Management, said that Merrimack 360 Plaza is 95% full. The addition of a credit union and Thai restaurant will leave only one space left for lease. The apartment complex proposed behind it would create a mixed-use residential component.

Bill Davidson, Hoyle, Tanner & Associates, Inc., said there would be 96 parking spaces for 40 units with Fire Department access on three sides. There would be 20 one-bedroom and 20 two-bedroom units.

Tim Thompson explained that, if the application were accepted for review at this meeting, the current regulations would apply. If not, the new regulations would apply. Peer review is currently underway but has not yet been completed. Nelson Disco was reluctant to grant approval under the current rules because of proposed changes in drainage regulations and because DPW has not yet commented.

Alastair Millns was concerned about traffic on D.W. Highway, particularly the increase at the lights. Bill Boyd, noting that there would be no stop sign on Allen Drive, was concerned about 96 more cars at the apartments creating much more traffic.

Robert Barsamian said peer review would address those issues. He reminded the Board that there used to be a supermarket, bank and restaurant with a much heavier traffic count on the site. The Plaza would be more service and food driven. Not much more can be done at the intersection. Peak traffic is caused more by surrounding apartments and stores than by this project. A pedestrian crossing or a sidewalk that might address traffic issues would be considered after peer review.

Bill Boyd suggested a pedestrian link from the condominiums on the south to the retail project. Tim Thompson said that DPW would ask for a sidewalk on the frontage. Nelson Disco was concerned about road layout. People must walk or drive through a parking area to get to the development on the hill. Tim Thompson said that the Fire Department would likely address that issue in their comments.

Bill Davidson said that engineering review of drainage has begun. The parcel has good soils. The applicant will go through the Alteration of Terrain process with NH Department of Environmental Services (DES).

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 3-1-0 to accept the application for review, on a motion made by Bill Boyd and seconded by Alastair Millns. Nelson Disco voted in opposition.**

Staff recommends that the Board continue the application to August 20, 2019 in order to allow time for the applicant to address comments received during municipal department and peer review and to prepare any applications for the July 31, 2019, ZBA meeting

**The Board voted 4-0-0 to continue the public hearing to August 20, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Bill Boyd and seconded by Paul McLaughlin.**

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

Alastair Millns relinquished the chair; Robert Best assumed the chair.

**The Board voted 5-0-0 to establish a performance bond of \$91,545.43 for NeighborWorks/Angelo Lane, on a motion made by Bill Boyd and seconded by Alastair Millns.**

**7. Approval of Minutes - July 2, 2019**

**The minutes of July 2, 2019, were approved as submitted, by a vote of 5-0-0, on a motion made by Alastair Millns and seconded by Nelson Disco.**

**8. Adjourn**

**The meeting was adjourned at 8:57 p.m., by a vote of 5-0-0, on a motion made by Bill Boyd and seconded by Paul McLaughlin.**