



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

603 424-3531

Fax 603 424-1408

www.merrimacknh.gov

MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY JULY 18, 2023

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, July 18, 2023 in the Matthew Thornton Room.

Members Present:

- Robert Best (Chair)
- Brian Dano
- Lynn Christensen
- Neil Anketell
- Town Councilor Barbara Healey - Ex-Officio
- Haleem Mediouni – Alternate

Members Absent:

- Jaimie von Schoen
- Maureen Tracey – Alternate
- Nelson Disco – Alternate

Staff Present: Robert Price, Planning & Zoning Administrator

1. Call to Order

Chair Robert Best called the meeting to order at 6:31 p.m. and led everyone in the Pledge of Allegiance. He then seated Alternate Haleem Mediouni for Jaime von Schoen.

2. Election of Officers – Vice Chair

The Board voted 5-0-1 to elect Lynn Christensen as Vice Chair on a motion made by Barbara Healey and seconded by Brian Dano. Lynn Christensen abstained.

3. Consent Agenda

- Extension Request: 12 & 14 Dodier Court lot line adjustment (#PB2021-13)
- Extension Request: 57-59 DW Highway site plan (#PB2021-19)
- Extension Request: Flatley CUP amendment for self-storage (#PB2022-38).
- Extension Request: Anheuser-Busch hamlet apartment conversion WFSPR (#PB2022-05)
- Extension Request: Thomas More College site plan (#PB2021-23)
- Extension Request: 526 DW, LLC (Vault) site plan amendment (#PB2022-21)
- Regional Impact Determinations

1 **The Board voted 6-0-0 to approve the Consent Agenda, on a motion made by Lynn**
2 **Christensen and seconded by Brian Dano.**

- 3
4 **4. Starten Realty, LLC (applicant/owner)** – Continued review for consideration of final approval
5 for a site plan for the addition of a gas station, convenience store and drive-thru coffee shop at
6 the site of an existing car wash. The parcel is located at 376 DW Highway in the C-2 (General
7 Commercial), Aquifer Conservation, and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 002.
8 Case #PB2022-40. ***This item is continued from the November 15 & December 20, 2022, and***
9 ***January 17, February 21, March 21, April 18, & June 6, 2023 Planning Board Meetings.***

10
11 Robert Price prefaced the presentation by advising the Board that revised plans were recently
12 received but staff feels there are still three issues that remain unresolved:

- 13
14 1. The landscaping plan does not propose any landscaping along the southerly property line.
15
16 2. The Fire Department indicated that the submitted turning plan shows there would be
17 extreme difficulty in maneuvering even a single piece of apparatus around the property due
18 to the crowding of buildings and gas islands.
19
20 3. The Fire Department has expressed concern since the initial set of plans were submitted that
21 there is no bypass lane for the drive-thru.

22
23 Chair Best asked if there is any particular reason that this project has been on the agenda nine
24 times. Mr. Price stated that there have been several plan revisions and requests to continue from
25 the applicant and suggested that question be directed to the applicant for further clarification.
26 Chair Best explained that the reason he questioned the longevity is because when projects take
27 this long to resolve, interested parties may lose sight of it.

28
29 David Frothingham, Wilcox & Barton presented the application to the Board. He reiterated a
30 couple of the changes that were discussed at the last meeting (site circulation, and relocating the
31 dumpster) and then turned his attention to the current revisions. He shared a copy of the canopy
32 plan and called out the changes that have been made to the design to ensure it will fit in with the
33 character of the surrounding properties. Mr. Frothingham briefly explained the fire suppression
34 system and indicated that there have not been any decisions made on signage for the canopy.
35 Chair Best responded that signage is not within the Planning Board's purview and asked Mr. Price
36 how staff handles it. Mr. Price replied that all signs require a sign permit application and are
37 reviewed against the signage criteria in the Zoning Ordinance.

38
39 Mr. Frothingham shared a copy of the Circulation Plan to address the Fire Department's concerns
40 with site circulation. He stated that he used large buses and fire trucks to create the plan and all
41 vehicles were able to maneuver around the site. He agreed that the larger vehicles are more
42 challenging because of the overhang of the vehicles, but is confident that the wheel base does in
43 fact fit and meets the standards. The fuel tanker trucks were discussed at length as the applicant
44 is proposing that the delivery trucks use the exit lane to enter the site and only make deliveries
45 after hours. Chair Best asked how the truck drivers will know that they need to ignore the signs
46 posted on the site and maneuver the parking lot in reverse. Mr. Frothingham replied that the
47 drivers are given instructions for their deliveries and this response was challenged by the Chair
48 because instructions are not always followed.
49

1 Mr. Frothingham addressed the absence of the by-pass lane by indicating that they have allowed
2 as much space as possible to bypass the drive through lane but once you turn around the building,
3 there is not enough room to advance past a car at the window.
4

5 As for the concerns with the lack of landscaping on the southern edge of the property, Mr.
6 Frothingham informed the Board that he will have the landscape architect take another look at it
7 to see what can be added in that area.
8

9 Councilor Healey asked where the inlets for the fuel deliveries are located and Mr. Frothingham
10 pointed them out on the plan. She then asked if anyone has consulted with the tanker drivers to
11 see if they feel the site is too tight to maneuver around. Mr. Frothingham replied that this is
12 actually a large site compared to some they deliver to.
13

14 Chair Best commented on the landscaping and suggested that a fence could also be a possible
15 barrier between this site and the neighboring one. He then asked Mr. Price if there are any
16 screening regulations in the ordinance that they need to be mindful of. Mr. Price replied that there
17 is not and it was just raised as a discussion point because it's currently an unpleasant void in the
18 landscaping between the properties that could be addressed.
19

20 Chair Best asked if there have been any instances in which a project has been approved without
21 a by-pass lane and Fire Marshal John Manuele responded that to his knowledge anytime a by-
22 pass lane has been requested by the Fire Department in the last 20 years, one has been provided.
23 This discussion brought up concerns with the circulation of the site again and Fire Marshal
24 Manuele commented that under perfect conditions a fire truck can maneuver the site if needed,
25 but once you add obstacles such as vehicles or even snow piles, the maneuverability becomes
26 challenging at best. Mr. Frothingham advised that they do have snow storage designated on the
27 plan but can also remove the snow completely off site if needed. The Board briefly discussed the
28 removal of the snow as an option and Mr. Price recommended that they make it a condition of
29 approval should the Board opt to grant approval to this project.
30

31 No public comments were received.
32

33 Vice Chair Christensen shared her concerns that the site is too congested and added that she
34 would have no problems approving the plan if the drive thru coffee shop was not included. The
35 lack of space for emergency vehicles was also a concern voiced by Councilor Healey. An extensive
36 conversation about the intensity of the site ensued and Mr. Frothingham asked if he could have a
37 straw vote to gauge how the Board would vote if they were deciding right now. Most Board
38 members stated they would vote it down and Brian Dano and Chair Best were undecided but
39 stated they would prefer to see the design without the coffee shop. Mr. Frothingham requested
40 a continuance so he could speak to his client.
41

42 **The Board voted 6-0-0 to continue the public hearing to August 15, 2023 at 6:30 p.m. in**
43 **the Matthew Thornton Room, with no further written notice to abutters, on a motion by**
44 **Brian Dano and seconded by Barbara Healey.**
45

- 46 **5. Jonathan and Patricia Schippani (applicants/owners) and Matthew and Theresa Fletcher**
47 **Family Trust (owner) - Review for acceptance and consideration of a 4-lot subdivision. The**
48 **parcels are located at 11 and 12 Harrington Drive in the R-1 (Residential by map) district. Tax**
49 **Map 5B Lots 241 and 242. Case #PB2023-17.**
50

1 Mr. Price prefaced the presentation by explaining that the two lots in question are seeking
2 approval for a lot line adjustment that will allow them to subdivide the remaining area to create
3 two additional house lots with frontage on Old Blood Road.

4
5 Matt Peterson (Keach-Nordstrom Associates) presented the application to the Board. Mr.
6 Peterson began by sharing an aerial view of the properties in question to demonstrate the
7 approximate location of the two new lots that are being proposed. He provided some history of
8 the existing lot on Harrington Drive and showed the property lines as they exist today. He went
9 on to explain that one of the newly proposed lots required and received a variance because there
10 is only 38,000 square feet of contiguous non-wetland area whereas 100,000 square feet is
11 required. Mr. Peterson shared the lot sizes of all four lots and shared a copy of the subdivision
12 plan to show the proposed house locations for the two new lots.

13
14 **The Board voted 6-0-0 to accept the application as complete, on a motion made by Lynn**
15 **Christensen and seconded by Barbara Healey.**

16
17 **Public comment**

18
19 Eduard Depanasse (11 Old Blood Road) asked where the driveways are going to be located for
20 the four lots.

21
22 Mr. Peterson responded by explaining that the two existing lots have driveways on Harrington
23 Drive and the two new lots will have driveways on Old Blood Road.

24
25 **The Board voted 6-0-0 to find that with the proposed conditions of approval, the**
26 **application meets all applicable regulatory requirements necessary and further, to grant**
27 **conditional final approval to the application subject to the following precedent conditions**
28 **to be fulfilled within 6 months and prior to final approval (signing) of the plan, unless**
29 **otherwise specified on a motion made by Brian Dano and seconded by Barbara Healey:**

- 30
31 1. Final plans and mylars to be signed by all property owners. The appropriate professional
32 endorsements and signatures shall also be added to the final plans and mylars.
33
34 2. The applicant shall obtain all required State approvals/permits applicable to the project and
35 provide copies to the Community Development Department, as applicable.
36
37 3. The applicant shall address the following comments from the Public Works Department:
38
39 a. Please add a note to indicate that prior to any work, a Right of Way (ROW) permit
40 from the Highway Division of Public Works will be required. Any driveway changes
41 shall be reviewed and approved by Community Development and the Public Works
42 Administration prior to construction.
43
44 b. Driveway entrances shall conform to Section 4.13.1 under the Roadway and Utility
45 Standards and shall be noted on the plans. The proposed driveway entrance location
46 shall be shown on the plans (see section 4.17 (c)).
47
48 c. The sight distance for the new driveways shall be verified by the engineer. A policy
49 on Geometric Design of Highways and Streets (AASHTO) shall be used along with a
50 design speed of 30 MPH to determine the sight distance required at the entrance.

- d. Under section 4.12.1 there shall be a dedication by deed and plat to provide at least 25 feet from the center line of the existing town road or ROW for the future widening of streets where existing road widths are insufficient for present standards or are of such a nature as to cause traffic hazards;
 - e. Section 4.18 (a) monuments shall be set at all street intersections, points of curves and angle points along Old Blood Road and Harrington Drive. The monuments shall be concrete or granite bound markers. These bounds shall be 4 inches square by 4 feet;
4. The applicant shall address any other forthcoming comments from any municipal departments, as applicable.
 5. The applicant shall provide a letter from Merrimack Village District indicating the availability of public water to the project.
 6. The applicant shall address the following Planning Staff Technical Comments:
 - a. The applicant shall revise the Planning Board Signature Block on sheet 1, to be designed as shown below:

Approved by the Merrimack, NH Planning Board on: _____

Certified by:

Chair: _____

Vice Chair: _____
 - b. Revise Note 3 to clarify that the properties are in the R-1 (Residential *by map*) District.
 - c. Revise Note 4 to specify that Lot 242-1 was permitted to have a non-contiguous upland area of 38,326 s.f. whereas 100,000 s.f. is required.
 - d. Revise Note 12 to indicate the full plan is on file at the *Community Development Department* instead of *Merrimack Planning Offices*.

The following general and subsequent conditions also apply:

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.

1 3. The applicant shall address any forthcoming comments from the Fire Department, related to
2 property addressing, as applicable.
3

4 **6. Fidelity Investments (applicant) and FMR Merrimack Realty Trust FID (owner) – Review**
5 for acceptance and consideration of final approval for a waiver of full site plan review to permit
6 utility upgrades on the Fidelity campus. The parcel is located at 1 Spartan Way in the I-2
7 (Industrial) & Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 3C, Lot 191.
8 Case #PB2023-18.
9

10 Mr. Price prefaced the presentation by explaining that the applicant is proposing to make some
11 electrical upgrades by way of running electrical infrastructure from an existing Eversource line
12 to the building on 1 Spartan Way. The reason it's before the Board is because they are proposing
13 above ground wiring and the Site Plan Regulations call for underground utilities. They have
14 applied for a Waiver of Full Site Plan Review so granting the waiver would eliminate the need to
15 follow the regulation for underground utilities.
16

17 Mark Verostick (VHB, Inc.) & Ken Dodd (Fidelity Investments) presented the application to the
18 Board. Mr. Verostick began by sharing a copy of the site plan that shows the area of the proposed
19 improvements and walked the Board through the proposed changes. He explained that the
20 reason they are proposing above ground lines is because the existence of ledge on the site makes
21 it difficult to install them underground. He added that there are wetlands in the area too, so even
22 though the above ground poles encroach into the wetland buffer, it's less intense than digging for
23 underground utilities would be.
24

25 Neil Anketell asked if the power will be coming from the existing solar array and Mr. Verostick
26 responded that it is not, it's going to tie into an existing Eversource line.
27

28 Councilor Healey asked why it's necessary if there is already power at the Spartan Way building
29 and Mr. Verostick replied that it is for resiliency to avoid power outages and down time.
30

31 Ken Dodd explained that there are a couple reasons for the project. The first reason is to replace
32 the existing switchgear because it was originally installed in the 70's. The second reason is to add
33 a second power source into 1 Spartan Way which currently only has one. The other building on
34 Contra Way is a Data Center so it already has two lines and they would like each building to have
35 two. The other benefit of the project is that it will allow them the flexibility of choosing which
36 building to direct the energy from the solar array to. It is currently being used at the Contra Way
37 building but this upgrade would allow them to switch between the two buildings.
38

39 **The Board voted 6-0-0 to grant a waiver of full site plan review, citing that strict**
40 **conformity would pose an unnecessary hardship to the applicant and the waiver would**
41 **not be contrary to the spirit and intent of the regulations, and further, to accept the**
42 **application as complete, on a motion made by Lynn Christensen and seconded by Haleem**
43 **Mediouni.**
44

45 No public comments were received.
46

47 **The Board voted 6-0-0 to find that with the granted waiver of full site plan review and the**
48 **proposed conditions of approval that the application meets all applicable regulatory**
49 **requirements necessary, and further, to grant conditional final approval to the application**
50 **subject to the following precedent conditions to be fulfilled within 6 months and prior to**

final approval (signing) of the plan, unless otherwise specified on a motion made by Barbara Healey and seconded by Brian Dano:

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 waiver of full site plan review shall be noted on the final plan.
4. The applicant shall address any forthcoming comments from municipal departments, boards, or committees, as applicable.
5. The applicant shall address the following Planning Staff Technical Comments:
 - a. The applicant has not provided most of the required plan notes (from Section 4.11) which should be added to the site layout plan:
 - i. The plat shall contain the following statement: "The Site Plan Regulations of the Town of Merrimack are a part of this plat, and approval of this plat is contingent on completion of all the requirements of said Site Plan Regulations, excepting only any variances or modifications made in writing by the Board or any variances granted by the Zoning Board of Adjustment and attached hereto"
 - ii. Note the following: "If, during construction, it becomes apparent that deficiencies exist in the approved design drawings, the owner shall be required to correct the deficiencies to meet the requirements of the regulations at no expense to the Town"
 - iii. Note the following: "If, during construction, it becomes apparent that additional erosion control measures are required to stop any erosion on the construction site due to actual site conditions, the Owner shall be required to install the necessary erosion protection at no expense to the Town."
 - iv. Note the following, if applicable (if there is greater than 20,000 square feet of land disturbance): "This project is subject to the requirements of the Town of Merrimack Stormwater Management Standards (Chapter 167 of the Merrimack Town Code). A pre-construction meeting with the Community Development Department and Public Works Department shall take place at least two weeks prior to commencement of earth disturbance."
 - v. A note stating: "On-site drainage shall be the responsibility of the owner and a long term inspection and maintenance plan shall be provided at the time of the pre-construction meeting. Every year semi-annual or annual reports shall be submitted to the Community Development Department."
 - vi. For parcels within the Aquifer Conservation District and/or a Wellhead Protection Area, a note stating that no salt or chemical de-icers are to be used for winter maintenance, and that winter maintenance shall be performed by a Green Sno-Pro certified (or functional equivalent certification) contractor;
 - vii. Note the following: "In accordance with Section 6.01 of the Merrimack Site Plan Regulations and RSA § 676:13, all improvements specified on these site

plans shall be constructed, completed, inspected and approved by the Town of Merrimack prior to the issuance of a certificate of occupancy."

- b. The applicant shall add the Planning Board Signature Block on all site plan sheets, to be designed as shown below:

Approved by the Merrimack, NH Planning Board on: _____

Certified by:

Chair: _____

Vice Chair: _____

- c. On Sheet C-1, delete general note 1 as Note 1 on the same sheet outlines the same.

- d. On sheet C-1, please add the parcel's zoning designation.

6. The applicant shall address any conditions imposed by the Planning Board at the hearing, as applicable.

The following general and subsequent conditions also apply:

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).

7. **Michael Currier (applicant/owner) and The Merrimack Congregation of Jehovah's Witnesses (owner)** - Review for acceptance and consideration of a lot line adjustment. The parcels are located at 75A and 59 Wire Road in the R-1 (Residential by soils) and Aquifer Conservation Districts. Tax Map 6C, Lots 231-1 and Tax Map 6D, Lot 526-1. Case #PB2023-19.

Mr. Price began by stating that this application proposes a lot line adjustment which will transfer approximately eight acres of undeveloped land from the Jehovah's Witness property to the Currier property. He then advised the Board that no waivers were initially received, however the applicant submitted two (both pertaining to the installation of permanent boundary markers) late today.

Trevor Yandow (Meridian Land Services) and Michael Currier (75A Wire Road) presented the application to the Board. Mr. Yandow shared a copy of the Lot Line Adjustment (LLA) Plan that shows the layout proposed new lot lines for the two lots in question. The proposal conveys approximately 8 acres of land from the Merrimack Congregation of Jehovah's Witnesses lot to the lot owned by Michael Currier. Mr. Yandow also conveyed that if the LLA is approved, both lots will still comply with Zoning regulations for size, the Currier lot will become 24.5 acres and the Church lot will become 3.5. He then explained that the two waivers being requested are for the

1 Currier lot because all of the monuments for the Church lot were located however they were
2 unable to find the monuments on the Northern corners of the Currier lot. When the lot was
3 constructed in 1999, the monuments were in place and shown on that plot plan but they are
4 hoping to get a waiver for identifying them on the plan and installing them if needed. He used
5 reference plans to show the locations of the markers that would need to be shown on the current
6 plan and installed if necessary.

7
8 **The Board voted 6-0-0 to grant waivers from Sections 4.17.f & 4.18.a of the Subdivision**
9 **Regulations each pertaining to the installation of permanent boundary markers, citing**
10 **that strict conformity would pose an unnecessary hardship to the applicant and the waiver**
11 **would not be contrary to the spirit and intent of the regulations, on a motion made by Lynn**
12 **Christensen and seconded by Barbara Healey.**

13
14 **Public comment**

15
16 Martin Lyons (63 Wire Road) asked what the newly acquired property is going to be used for.

17
18 Chair Best commented that from a Planning Board perspective, they have no jurisdiction to
19 require the applicant to inform their intentions for the land but they can share it if they choose.

20
21 Mr. Currier explained that they currently own a horse farm so they intend to clean it up and make
22 trails for riding.

23
24 **The Board voted 6-0-0 to accept the application as complete, on a motion made by Lynn**
25 **Christensen and seconded by Barbara Healey.**

26
27 **The Board voted 6-0-0 to find that with the granted waivers and the proposed conditions**
28 **of approval, the application meets all applicable regulatory requirements necessary, and**
29 **further, to grant conditional final approval to the application subject to the following**
30 **precedent conditions to be fulfilled within 6 months and prior to final approval (signing)**
31 **of the plan, unless otherwise specified on a motion made by Neil Anketell and seconded by**
32 **Barbara Healey:**

- 33
34 1. Final plans and mylars to be signed by all property owners. The appropriate professional
35 endorsements and signatures shall also be added to the final plans and mylars.
36
37 2. The applicant shall obtain all required State approvals/permits applicable to the project and
38 provide copies to the Community Development Department, as applicable.
39
40 3. The applicant shall note all waivers granted by the Board on the final plans and mylars
41 (including Section, and date granted).
42
43 4. The applicant shall address any forthcoming comments from any municipal
44 departments/boards, as applicable.
45
46 5. The applicant shall address the following Planning Staff Technical Comments:
47
48 a. The applicant shall revise the Planning Board Signature Block on all plan sheets, to be
49 designed as shown below:
50

Approved by the Merrimack, NH Planning Board on: _____

Certified by:

Chair: _____

Vice Chair: _____

b. Please revise Note 7 to clarify that the properties are within the Aquifer Conservation District (delete “overlay”).

c. Please revise the ownership information on the plan for:

i. Map 6C/Lot 232-1 (no longer Edmonds)

ii. Map 6D/Lot 526-1 (no longer Adsit)

The following general and subsequent conditions also apply:

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. The applicant shall address any forthcoming comments from the Fire Department, related to property addressing, as applicable.

8. Dougherty Zibolis, LLC (applicant/owner) - Review for acceptance and consideration of final approval for a site plan to construct a two story, 15,000 SF office/warehouse building with associated site improvements. The parcel is located at 101 Herrick Street in the C-2 (General Commercial), I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 3D-2, Lot 020 Case #PB2023-20

At the applicant’s request, the Board voted 6-0-0 to continue the public hearing to September 5, 2023 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion by Lynn Christensen and seconded by Barbara Healey.

9. Public Hearing – Zoning Ordinance Amendments (as referred by the Town Council) proposing the repeal of Section 2.02.4.D (Mixed Use Developments Permitted in the I-1 District by Conditional Use Permit) and the correction of Section numbers in the remainder of Section 2.02.4

Barbara Healey recused herself from this item.

1 Mr. Price read portions of the memo* from Tim Thompson dated July 7, 2023 to explain the
2 Zoning Ordinance Amendments being made by the Town Council and the reason for them. The
3 basic premise is that the Town Council has proposed a Zoning Amendment that repeals Section
4 2.02.4.D of the Zoning Ordinance which regards Mixed Use Development Conditional Use
5 Permits, and the correction of subsequent numbering errors in the remainder of Section 2.02.4.
6 The goal would be to go through the Master Plan process first and then consider reinstatement
7 of the repealed section afterward depending on the outcome of the Master Plan process.

8
9 Chair Best raised concerns that he thought the Mixed Use Section was an amendment that was
10 voted on by the residents before the Town Council was instituted (when the Town still operated
11 under a Board of Selectmen) so he is uncertain if it can be changed without another vote. He also
12 questioned what this change will do for exiting mixed use developments in town and stated that
13 he feels that the Board should consult with the town's legal counsel before rendering a
14 recommendation either for or against the changes.

15
16 Vice Chair Christensen stated that when the Town switched from a Board of Selectmen to a Town
17 Council the Zoning Ordinance amendments switched from being a town voted decision to one of
18 the Town Council. Chair Best commented that he would feel more comfortable consulting with
19 the town's legal counsel to understand the legal aspects of the change and how it will impact
20 existing mixed use developments.

21
22 *A copy of this memo is available at the Merrimack Town Hall in the Community Development
23 Department.

24
25 **Public comment**

26
27 Gordon Leedy (representing the Merrimack Park Place Mixed Use CUP project located on
28 Lexington Court, off Premium Outlets Boulevard) spoke in opposition of the change. He thinks
29 the repealing the entire section is a mistake and updating it to be more specific with definitions
30 and intentions would be a better alternative. He went on to state that the changes would mean
31 that any existing mixed used development that wants to make changes to their CUP, would need
32 to do so through the Zoning Board of Adjustment (ZBA) which (in his opinion) is ill-equipped to
33 do so. He went on to say that the Council is going to want to make the changes to the Zoning
34 Ordinance in conjunction with the Master Plan, which can take years to develop. This means that
35 the financing for all of the current mixed use projects could be in jeopardy because banks look
36 for certainty, which is not in place if the section is removed from the Ordinance. Mr. Leedy
37 recommended making changes to the section instead of repealing it entirely.

38
39 Chair Best reiterated that he would like to see the discussion continued to allow time for the
40 Board to consult with the town's legal counsel to better understand the action being requested
41 and to determine if an alternative action can be recommended. He added that he does not
42 understand the urgency of the matter because there are not many 50 acre parcels of land in town
43 that this section of the Ordinance would even apply to. He added that he is also worried that this
44 change could be considered spot zoning, which is not allowed in NH. All other Board members
45 commented that they are in agreement that the discussion should be continued to allow time for
46 the Board to consult with the town's legal counsel.

47
48 Mr. Leedy asked if the Town Council will also be holding a public hearing prior to voting on the
49 changes and Mr. Price confirmed that they will hold a public hearing on the matter.
50

1 **The Board voted 5-0-0 to continue the public hearing to August 15, 2023 at 6:30 p.m. in**
2 **the Matthew Thornton Room to obtain legal advice on substance and process, on a motion**
3 **made by Lynn Christensen and seconded by Neil Anketell.**

4
5 *Barbara Healey returned to her seat for the remainder of the meeting.*
6

7 **10. Planning & Zoning Administrator’s Report & Discussion/possible action regarding other**
8 **items of concern**
9

10 Mr. Price advised that there are no projects scheduled for the August 1st meeting so the Board
11 needs to decide if they would like to cancel the meeting. The Board agreed to cancel the August
12 1, 2023 meeting.
13

14 Vice Chair Christensen reminded everyone to take a look at the training that is available for new
15 Planning and Zoning members because it is informative and worthwhile.
16

17 Chair Best gave an update on membership, Brian Dano has applied to the Zoning Board and this
18 will most likely be his last meeting on the Planning Board if the Council grants his appointment
19 to the ZBA. Haleem is up for re-appointment, but is seeking to be moved into a full-member
20 position. He also noted that there is a brand new applicant that has applied as well.
21

22 **11. Approval of Minutes — June 20, 2023**
23

24 **The Board voted 6-0-0 to approve the minutes of June 20, 2023 as presented, on a motion**
25 **made by Lynn Christensen and seconded by Barbara Healey.**
26

27 **12. Adjourn**
28

29 **The Board voted 6-0-0 to adjourn at 8:26 p.m., on a motion made by Barbara Healey and**
30 **seconded by Brian Dano.**
31