



Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY, JULY 7, 2015

Planning Board members present: Robert Best, Alastair Millns, Tom Mahon, Desirea Falt, and Alternates Nelson Disco and Jeff Sebring.

Planning Board members absent: Michael Redding and Lynn Christensen.

Staff present: Community Development Director Tim Thompson, Assistant Planner Donna Pohli and Recording Secretary Zina Jordan.

1. Call to Order

Robert Best called the meeting to order at 7:32 p.m. and designated Nelson Disco and Jeff Sebring to sit for Michael Redding and the vacant full member position, respectively.

2. Planning & Zoning Administrator's Report

Tim Thompson announced that, as of August 4, 2015, Planning Board meetings will begin at 7:00 p.m.

Tim Thompson informed the Board that the Merrimack Hotel site was sold to a group that is looking at different options. He suggested that they implement some economic revitalization according to the Master Plan. He urged the Planning Board to push the project and Shaw's up the priority list for some kind of overlay district with a Conditional Use Permit/flexible zoning. The Planning Board agreed. Tim Thompson will hold workshops and produce zoning amendments.

Tim Thompson announced that, on July 16, 2015, a Town Council public hearing will be held concerning alternate treatment centers for medical marijuana, following which the Planning Board will make a recommendation to Town Council in August. The language is similar to that in Dover, Concord and Laconia. There will be a conditional use permit process in addition to site plan review for extra scrutiny.

Donna Pohli will leave Merrimack at the end of the week to accept a position as Assistant City Planner in Dover. Tim Thompson expressed his gratitude for her service for over two years, describing her as an asset to the community and offering his congratulations. Donna Pohli thanked the Planning Board for its assistance. Chairman Best agreed that she deserves the opportunity. She did a great job and the Planning Board wishes her the best.

Tim Thompson referred to a June 30, 2015 memo from Attorney Patricia Panciocco, Baroff Professional Association, listing her reasons for disagreeing with the Board's decision not to reinstate its earlier approval of the Valleyview Drive two-lot subdivision

and asking for a rehearing at this meeting. She is contemplating a legal appeal. Legal Counsel advises that the Planning Board may either reconsider its June 16, 2015 denial to reinstate the conditional final approval or it could consider the new application filed by the applicant at its July 21, 2015, meeting. Tim Thompson explained that the Planning Board based its June 16, 2015 decision on erroneous information. The conditions of approval for the subdivision were not related to the administrative approval for the improvements to the emergency access road. All conditions of approval were met before the November 11, 2014 expiration of the plan. Chairman Best agreed that he incorrectly stated the status of the conditions.

The Board voted 6-0-0 to reconsider the Planning Board's June 16, 2015, denial of the request to reinstate conditional final approval to the Valleyview Drive two-lot subdivision on July 21, 2015, in the Matthew Thornton Meeting Room, at 7:30 p.m., on a motion made by Nelson Disco and seconded by Desirea Falt.

Tim Thompson agreed to Alastair Millns' request that the Board receive the full history of the item.

Although this was not a public hearing, the Planning Board allowed Attorney Panciocco to present her case. She stated that she has a tremendous problem: she can either take the risk that the Planning Board will approve the two-lot subdivision on July 21, 2015, or make an appeal in Superior Court. She is not sure what to do.

The applicant asked for only one waiver, for the sidewalk, that was routinely granted whenever the Planning Board considered the subdivision. Since the site plan meets regulations, the Planning Board must approve it.

Attorney Panciocco stated that there have been three public notices. Any comments have been addressed. Adequate notice has been met, although the applicant will take the risk of another public notice.

The applicant is asking to create two lots, whereas there were six in 1966. The biggest problem is testimony about the emergency road and traffic. This plan received administrative approval on August 24, 2012, with no abutter or public notice. All Town departments have commented and the improvements were bonded.

The biggest complaint is the connection of the north and south ends of Valleyview Drive. The Fire Department will not allow a gate. The abutters were not notified of the emergency road connection. Attorney Panciocco is not convinced that additional notice is required.

In 2007 the District Court said all land use boards can reverse themselves within the 30-day appeal period before a case goes to court so the Planning Board can explain its decision.

The emergency road issue is still not resolved because the authority to limit traffic there was questioned by staff and the Planning Board and must go to Town Council, but that is unrelated to the two-lot subdivision.

Attorney Panciocco asked the Planning Board to reverse its decision at this meeting.

Tim Thompson stated that Legal Counsel specifically recommends that the Planning Board not consider the 2012 administrative approval. The decision to reinstate the former approval and vote on the waiver must have public notice, but there was none for tonight's decision to reconsider.

Attorney Panciocco said that notices went out to all interested parties for the June 16, 2015, meeting, when the Planning Board decided not to reinstate the project. The Planning Board heard abutter testimony. The Board should reconsider tonight. No notice harms only the applicant, who is willing to assume the risk.

Chairman Best said government works when there is notice and transparency. It was an error to say that separate conditions of approval were not met; that is why the Board agreed to reconsider. It did not say it was punishing bad behavior. The neighbors did not know the Board would discuss the issue again tonight. Desirea Falt said there must be public notice because the issue was closed on June 16, 2015. Alastair Millns said that whenever consideration is deferred, the place, time and date must be made clear with public notice, but the Board did not do that. Open government gives the abutters the right to discuss the issue again. No notice increases the risk to the Board. Citizens have the right to notification. Chairman Best preferred to err on the side of transparency. Nelson Disco agreed that, since the matter is not on tonight's agenda, it should not be decided at this meeting.

3. Madi Choueiri (applicant/owner) – Review for acceptance and consideration of Final Approval for a waiver of full site plan review for a restaurant located at 480 D.W. Highway in the C-1 (Limited Commercial), Elderly and Town Center Overlay and Aquifer Conservation Districts. Tax Map 5D-3, Lot 046. This agenda item is continued from the June 2, 2015 Planning Board meeting.

Donna Pohli said the applicant has returned with a revised floor plan after hearing the Planning Boards' suggestions on June 2, 2015. He did not, however, make any modifications to the submitted site plan.

Madi Choueiri, 480 D.W. Highway, said the seating area on the terrace area is on the floor plan. Mr. Choueiri stated that Mr. Joseph of the senior center has no problem with Madi Choueiri using its parking lot. The church deacon does not either, but cannot write a letter to that effect because his staff is at a meeting tonight. He has promised to write one.

Chairman Best said what is needed is more formal than a letter, namely a permanent parking cross-easement document that is recorded at the Registry of Deeds. Madi Choueiri did not discuss such a document with either party. He said there is plenty of parking on the side street coming out of the Library and there are no cars in the neighborhood from 5:00-6:00 p.m. Chairman Best does not want to authorize parking on Church Street or at the Library unless such a document gives a permanent right to use the lot(s). The plan does not define a curb between the parking lot and Church Street.

Madi Choueiri said he showed a line for cars to park on the plan. There is a 20' entrance. There will be 40 seats. Chairman Best noted 59 seats on the plan: 12 outside and 47 inside. Madi Choueiri said that includes extra seats on the terrace. Chairman Best explained that they must be counted on the submission. The Planning Board must determine the number of parking spaces based on the number of seats and employees. There are 17 parking spaces on the property. Madi Choueiri counted two employees in addition to himself and his wife. Lebanese food takes more preparation time than serving time. It is prepared 1-2 hours before opening. Hours of operation would be 11:00 a.m.-1:00 a.m., with two employees on each shift. Chairman Best said that would require a minimum of 24 spaces. A cross-easement is needed with either the church or the senior center for at least eight spaces. Noting that the Town owns the Library and senior center, Madi Choueiri asked from whom he should get an easement. Nelson Disco said the Town delegated senior center management to a group which has to do it to their satisfaction. They probably have the authority to sublet parking. Chairman Best stated that the Planning Board requires a permanent easement, which is different. Tom Mahon said Town Council would have to execute an easement, whereas the church controls its own property. Chairman Best said that a cross-easement for eight spaces could be a condition of approval.

Nelson Disco listed other items missing from the site plan: a meeting between Madi Choueiri and staff; road setback from Route 3 for the additional porch; clearly defined paved area (where does it end on the north side?); whether the 10 spaces are paved; future sidewalk easement, especially through the hillside; delineated entrance to the parking lot; evidence of landscaping changes; architectural elevations; dumpster location; corrected typo in Note 1.

Madi Choueiri said he spoke to someone at the front desk of the Community Development Department, who said he had only to note on the plan the location of the umbrellas and seating and where he would get extra parking. He explained the dumpster location to the Board at the previous meeting. Chairman Best reminded him he was to meet with staff so they could show him how to put parking and other details on the plan. The plans must be consistent. Where is the grass area? Where does the pavement end? Where is the dumpster located?

Desirea Falt offered her professional (architectural) assistance to help create a new set of plans. She will recuse herself from voting on the application. Tim Thompson pointed out that it is not appropriate for staff to design plans; their job is to review plans for compliance to the regulations. The best course is for Desirea Falt to help design them and for staff to review them.

Chairman Best noted for the record that the application has not been accepted as complete for review.

The Board voted 5-0-1 to continue this item to August 4, 2015, in the Matthew Thornton Meeting Room, at 7:00 p.m., on a motion made by Alastair Millns and seconded by Jeff Sebring. Desirea Falt abstained.

- 4. Robert Lavoie (applicant) and Gregg R. Kennedy (owner) – Review for acceptance and consideration of Final Approval of an application for a 2-lot minor subdivision. The parcel is located at 8 Fuller Mill Road in the R-1 (Residential) District. Tax Map 4B, Lot 153. This agenda item is continued from the June 16, 2015 Planning Board meeting.**

Tim Thompson explained that the application has still to resolve map and soils issues.

At the applicant's request, the Board voted 5-0-0 to continue this item to August 4, 2015, in the Matthew Thornton Meeting Room, at 7:00 p.m., on a motion made by Alastair Millns and seconded by Tom Mahon. (Desirea Falt had briefly left the room and did not vote on this item.)

- 5. Jerry F. Levin (applicant) and Crosswoods Path III (owner) – Pre-Submission Hearing to discuss a proposal to convert an office building to a multi-family residential building located at 1 Crosswoods Path Boulevard in the C-2 (General Commercial), Planned Residential Overlay, and Aquifer Conservation Districts. Tax Map 7E, Lot 046-053.**

Tim Thompson said that the Board heard a pre-submission proposal to convert commercial offices to a multi-family residential building on August 13, 2013. The applicant will ask the Zoning Board of Adjustment (ZBA) for a density variance. 18 units complies with Crosswoods Path PUD zoning. 110 residential units do not exceed the 430 maximum. There are sufficient professional office buildings on the site. The applicant is asking to waive full site plan review.

Jerry Levin, 1 Crosswoods Path, said that, despite a last-ditch effort, he was unable to rent the office space. He proposes 21 units: 9 one-bedroom and 12 two-bedroom units. There is growing demand for one-bedroom units. Balconies will be added to the outside. He does not intend to touch the grounds, landscaping, or handicap access. The site plan will not change. This would be a rental building, not a condominium. There would be 90+ parking spaces, whereas 50-60 are required.

Chairman Best wanted more landscaping and asked what would be done with so much parking. Jerry Levin does not know. He might turn some of it into grass, especially on the right side. He has a cross-easement with the condominium behind and with the single-family homes. His building pays to belong to the home-owners association. The restaurant was turned into three offices. Jerry Levin does not sell properties; he builds and rents them. He will submit a landscaping plan.

Nelson Disco asked whether Jerry Levin would mix commercial and residential uses in the building. Jerry Levin replied that one tenant, a lab, wants to stay and he wants to keep it, but wonders how renters would feel about a lab across from where they live. It is complicated. People do not want commercial uses in the same building where they live unless they are on the ground level and the residential units are above them. The access is Crosswoods Path Boulevard. There is no access on D.W. Highway. The commercial sign would be removed. The building has sprinklers and Town water and sewer.

Tim Thompson will ask NH DOT (Department of Transportation) to confirm that no State permit is necessary.

Desirea Falt said this would help with the lack of workforce housing in Merrimack and it should be encouraged. It fills a community need.

It was the Planning Board's consensus to waive full site plan review.

6. El Tapatio Mexicano Restaurant, LLC. (applicant), and Pennichuck Square Limited Partnership, c/o Renwood Companies (owner) – Review for acceptance and consideration of Final Approval of an application for a waiver of full site plan review and a parking waiver to add an outdoor seating area. The parcel is located at 709 Milford Road, Unit 4C, in the C-2 (General Commercial) and Aquifer Conservation Districts, and the Wellhead Protection Area. Tax Map 2B, Lot 360.

Donna Pohli explained that a one-day approval for outdoor seating on the patio on Cinco de Mayo worked well.

Arturo Aguirre, General Manager, El Tapatio Mexicano, said that Fire Chief Manuele is using the patio as an example. People raved about it. It increases the appeal of the restaurant. He would like to extend the permit.

Tim Thompson explained that a waiver was granted in 2011 to 14 spaces from the 62 parking space requirement. Now El Tapatio wants a waiver to 14 spaces from the current 56 space requirement. There are no parking issues in Pennichuck Square. Arturo Aguirre said that the owner of Pennichuck Square signed off on condition that he can revoke the waiver for another tenant.

Jeff Sebring asked whether limited parking caused a loss of business. Arturo Aguirre stated that business has increased. He is talking to the owner about using the rear lot for parking. Chairman Best noted that customers can park anywhere on the site. Arturo Aguirre said that most other businesses, except the two restaurants, get traffic before El Tapatio opens and close at 5:00 p.m., before El Tapatio's rush. There is no scheduling conflict. Chairman Best noted that El Tapatio traffic brings business to the other stores.

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 6-0-0 to accept the application for review, on a motion made by Desirea Falt and seconded by Jeff Sebring.

The Board voted 6-0-0 to waive full site plan review, on a motion made by Alastair Millns and seconded by Nelson Disco.

There was no public comment.

Alastair Millns said there is plenty of parking all the time, even on Friday night. Most shops are open 9:00 a.m.-5:00 p.m. He 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 6-0-0 to waive the requirements of Section 7.03.E (Table 1) of the Subdivision Regulations – Parking – on a motion made by Alastair Millns and seconded by Jeff Sebring.

Alastair Millns noted that only 20 of the 24 outside seats are used, but Tim Thompson explained that the parking waiver is based on 24 seats.

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.

The Board voted 6-0-0 to grant final approval, with the following conditions, on motion made by Alastair Millns and seconded by Desirea Falt.

1. Final plans to be signed by the applicant and property owner;
2. Any waivers granted shall be listed and described on the final plan;
3. Applicant shall address any forthcoming comments from MVD;
4. Applicant shall address any forthcoming comments from the Wastewater Division;
5. Applicant shall address any forthcoming comments from the Public Works Department;
6. Applicant shall address any forthcoming comments from the Fire Department;
7. Applicant shall address any forthcoming comments from the Conservation Commission (as applicable);
8. Address the following staff technical comments:
 - a. Include the street address number on the annotated site plan;
 - b. Number the notes that are currently in paragraph form on the annotated site plan.

7. Discussion/possible action regarding other items of concern

The Board voted 6-0-0 to establish the \$559,820 performance bond for the Windy Hollow Subdivision, on a motion made by Nelson Disco and seconded by Alastair Millns.

Alastair Millns expressed appreciation for Robert Best's chairmanship of the July 4 celebration.

8. Approval of Minutes – June 16, 2015

The minutes of June 16, 2015, were accepted, with changes, by a vote of 6-0-0, on a motion made by Desirea Falt and seconded by Nelson Disco.

9. Adjourn

The meeting was adjourned at 8:58 p.m., by a vote of 6-0-0, on a motion made by Alastair Millns and seconded by Jeff Sebring.