



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

## MERRIMACK PLANNING BOARD

JUNE 16, 2015

### APPROVED MEETING MINUTES

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, June 16, 2015 at 7:30 p.m. in the Matthew Thornton Room.

Chairman Robert Best presided:

Members of the Board Present:     Alastair Millns, Secretary  
   Lynn Christensen  
   Desirea Falt  
   Councilor Thomas Mahon  
   Nelson Disco, Alternate  
   Jeff Sebring, Alternate

Members of the Board Absent:     Michael Redding

Also in Attendance:                 Donna Pohli, Assistant Planner  
   Emily Edwards, Planning Intern

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#### 1. Call to Order

The next meeting of the Planning Board will be conducted on Tuesday, July 7, 2015 at 7:30 p.m. in the Matthew Thornton Road.

Chairman Best appointed Jeff Sebring to sit for the vacant full member position and Nelson Disco to sit for Michael Redding.

Chairman Best informed the viewing audience of receipt of requests to continue Item #s 6 and 7.

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

Donna Pohli, Assistant Planner, spoke of the determinations for regional impact for the Fortin/Nitro Site Plan, the Lavoie/Kennedy Subdivision, and the Flatley Site Plan. Chairman Best remarked based on the recommendation from Staff, the first two are fairly clearly cut, and not likely to be of regional impact, and there is reason for discussion around the Flatley Site Plan as a regional impact.

Member Disco stated agreement with Staff's position and recommendation on the first two. However, believes the Flatley Site Plan should be considered to be a regional impact. Although a small portion, the Flatley Site Plan is part of a very large development. He recommended the Board make it part of a plan of regional impact, and notify the appropriate abutters; the Nashua Regional Planning Commission (NRPC) and the Town of Litchfield as a courtesy.

Councilor Mahon stated agreement with Member Disco's remarks, and suggested, as a courtesy, the Town of Bedford be notified as well as they have significant development at their end of Route 3. He commented 7-8 years ago discussions took place with the Town of Bedford around cooperative work in terms of public safety issues for that stretch because of impacts of the development on both ends of the highway.

Member Millns suggested Bedford would become aware as a result of notification to the NRPC and the Town of Litchfield. Chairman Best noted the official regional impact determination statutorily requires notification to the NRPC and makes Litchfield an abutter. There is the opportunity to provide a courtesy notice to Bedford.

He stated Tim Thompson, Director, Community Development, has commented that in his past experience a courtesy notice to the Town of Litchfield might suffice as well as a formal finding of regional impact. Chairman Best stated his belief it is slightly less expensive for the department to manage the courtesy notification as opposed to the regional impact notification, which has procedural standards that have to be complied with.

Councilor Mahon noted Bedford is in the Southern New Hampshire planning district not the Nashua regional planning district. Member Millns agreed with providing a courtesy notification to the Town of Bedford. Member Disco stated his preference for formal notification to be provided to the NRPC and the Town of Litchfield and a courtesy notice to the Town of Bedford. Member Christensen questioned if formal notification is required to all of the NRPC communities. Chairman Best replied, if making a regional impact recommendation, formal notification is required to both the NRPC and the Town of Litchfield.

**MOTION BY MEMBER CHRISTENSEN THAT THE FORTIN/NITROF SITE PLAN AND LAVOIE/KENNEDY SUBDIVISION ARE NOT OF REGIONAL IMPACT**  
**MOTION SECONDED BY COUNCILOR MAHON**  
**MOTION CARRIED**  
**7-0-0**

**MOTION BY MEMBER DISCO THAT THE FLATLEY SITE PLAN IS OF REGIONAL IMPACT AND THAT THE LEGAL NOTIFICATIONS BE PROVIDED AS WELL AS A COURTESY NOTICE TO THE TOWN OF BEDFORD**  
**MOTION SECONDED BY MEMBER SEBRING**

**MOTION CARRIED**  
**7-0-0**

**3. Recommendation to call the Performance Bond for Valleyview Revocable Trust (emergency access way/roadway improvements)**

Assistant Planner Pohli informed the Board the Performance Bond was for the improvements associated with the development of 4 lots of record handled administratively. The bond is now due.

Patricia Panciocco, Esq., Baroff Professional Association spoke of having been before the Board last month when additional time was granted. She stated significant progress has been made on the work required to complete the secured improvements. She spoke of the punch list provided by the Public Works Department, which identifies all remaining items that need to be completed up to and including final paving. Attorney Panciocco stated the items checked off have been completed, and it is likely others have been completed by this time. The remaining items are associated with the final paving. The intent had been for final paving to be completed on June 12<sup>th</sup>. Difficulties associated with the coordination of aspects such as the sweeping and weather conditions, did not allow that to occur.

The Applicant is currently awaiting notification from the paving company of the date paving will be done. Once that is known, all other aspects will be coordinated, and the punch list will be completed.

When asked Attorney Panciocco stated it was her client who checked the items off the list as they were completed. She stated her belief Kyle Fox, Deputy Director, Public Works Department, was at the site earlier in the day, and verified the items were completed. She commented Steven Keach, Keach-Nordstrom Associates, Inc. has worked on the project with her client from inception.

Chairman Best remarked the letter from Brox Industries (Brox) talks about rain that occurred for a couple of days over the past week or two. However, promises were made beginning last July, that this project would take about two weeks. He is of the opinion the items could have been completed prior to this time. Attorney Panciocco reiterated some of the items remaining cannot be done until a schedule is identified for paving. Chairman Best commented if we were in the December or January timeframe and the argument was it is too cold to pave, he would buy into that, but it is June, and paving activities have been going on for several months. Attorney Panciocco stated her understanding of that. She stated the problem they are now experiencing is too much demand and not enough pavers.

Chairman Best questioned if all remaining items would be addressed by Brox. Mr. Michael Maggio, FSB Consulting, stated the punch list was received on June 9, 2015. Since that time, all items marked with a check

mark have been completed. Deputy Director Fox was onsite earlier in the day to review the work, and reminded them to have the sweeper present on the day paving is done. Brox was all set to pave today, but they could not get out. That is the reason a letter was provided stating they were not able to get to the site today. They have stated they will more than likely have the work completed later this week. Items that are circled were supposed to be completed on Monday or Tuesday of this week. Weather prohibited that work from being completed.

Chairman Best questioned if Brox has been engaged and hired to complete all of the remaining items. Mr. Maggio responded Brox has been hired to do some of the work. Items such as road sweeping have to be done in conjunction with the paving schedule. With regard to the loaming and seeding of slopes, the slopes have all been loamed, but were not seeded because of the rain the previous day. He stated they would be seeded the following morning. With regard to repairing the swales on the side of the road, they have been repaired and need to be seeded and jutte matting put down. Weather prohibited that from being completed the prior day.

Mr. Maggio spoke of the item to remove the field trailer and temporary power panel. He stated there was no temporary power. The power that was to it was removed, and the trailer was supposed to be removed the prior day, but was postponed because of rain. The statement was made that it would be removed the following morning. Brox will skim the low point in the road where new base pavement meets existing, shim the area gauged by the track excavator, and pave top. Mr. Maggio reiterated Brox sent a letter indicating the inability to get the work done because of rain. Shoulder gravel cannot be installed until after the final coat of pavement.

Member Millns commented on his recollection May 2015 was the driest month of May there has ever been in New Hampshire. He stated three weeks passed between the last meeting and June 9<sup>th</sup> when the punch list was provided, and questioned what work was completed in that timeframe. He remarked as the individual in charge of the project, Mr. Maggio should not need Deputy Director Fox to tell him what needs to be done; he is supposed to understand that. He spoke of a meeting in early August of last year when the Board was assured the job would be completed by Thanksgiving 2014.

When asked if Deputy Director Fox has provided comment, Assistant Planner Pohli stated she last spoke with Deputy Director Fox the prior day. Member Sebring questioned whether the Board could be afforded the opportunity to inspect the site, and if Deputy Director Fox could be present. Chairman Best replied the Board has the legal right to do so, and could invite Deputy Director Fox to participate. The Board, as a whole, could identify a Saturday to conduct a site walk or, if the matter were continued, individual Board members could utilize the opportunity to visit the site.

Attorney Panciocco stated she contacted Deputy Director Fox the prior Friday to try to schedule a time for him to visit the site either the prior day or earlier in this day so that he would be able to provide the Board an update on the status of the work. The response she received was that he does not do that. Chairman Best stated that to be correct; that is not done as a matter of course. However, the Friday before the Tuesday meeting on a process that has lasted for more than a year is, despite their best efforts, a bit of a last minute call. Attorney Panciocco stated she did not have any documentation prior to Friday, it only arrived earlier in the week, and she was trying to breach the gap for the Board. Chairman Best commented he is sympathetic to her role, but her client could walk the site and identify all of the items Deputy Director Fox identified.

Mr. Maggio stated they have been working on the project diligently. Member Millns stated objection to the use of the word diligently noting he has been to the site many times and found nobody working. Chairman Best stated his agreement diligently is a word that couldn't be more misused than to say it applies to this project.

Attorney Panciocco remarked we can't change the past, the Board does have security, and it is within the Board's power to call the bond or to let the project move towards fruition. She added she was not involved in the project early on; however, has followed through on what she committed to doing. The project has a long history. It had a rough start. There was a plan approved of a very old subdivision. There were a number of things encountered during the construction phase that had to be dealt with. There were a lot of site constraints, e.g., steep topography, ledge, an additional \$70,000 worth of underdrains that were added, etc. That is not an excuse. The project should not have gone on this long, but the past cannot be changed. Chairman Best remarked he understands all of the difficulties cited, however, the Merrimack Premium Outlets were built in less time than it has taken to get a 12' wide access road.

Attorney Panciocco stated she can tell the Board a lot of her clients are having trouble getting help because of the increase in demand. Chairman Best stated he does not disagree, but if someone had been on the phone with

Brox in January saying the first chance you get I need you to do this, they would have been first in line. He remarked he wants to give the benefit of the doubt as often as possible, Steve Keach has a good name and reputation and has bought the client a little bit of time, Brox Industries is a good company with a good reputation as well, but they are not going to be doing all of this work. Member Christensen noted only 3 of the remaining items would be addressed by Brox. Member Millns noted Brox has not yet provided a date for the work to be done. Attorney Panciocco stated that to be correct; Brox has not provided an exact date.

Chairman Best commented item #10 - repair swale on left side of the road, reseed to obtain stable growth, not only has nothing to do with paving, but should have been done at the first opportunity to control erosion. Item #11 - loam and seed all slope and ROW areas to achieve stable growth, is not on a waiting list for dry weather. Member Christensen stated Item #15 - locate (flag up) all proposed and found property markers on site should have been completed months ago. Attorney Panciocco stated those have been located. She has spoken with Mr. Keach about that herself, and learned his field crews have been very busy. They want to come out and do that, the as built, etc. all at once. That is not something her client has asked to be deferred, he has actually made several calls to have them come out. Member Christensen reiterated they are not done. Chairman Best spoke of being frustrated there was a list of 30 incomplete items on the 9<sup>th</sup>.

Member Falt commented clearly the pattern of the applicant has been to do as much work as possible just before the deadline. She stated the last time the Board discussed not calling the bond the feeling was it is better that they finish the work. The question now is if the Town would take on the remaining items on the list. Chairman Best stated his impression the pattern is, do a few things right before we have to show up before the Board.

Attorney Panciocco stated her opinion to have her client to get this done. She reiterated she knows he tried to schedule the paving. Member Millns commented the reason the Board had been promised the work would be completed by last Thanksgiving was because that is when the paving plants would be closed. The Board was assured the paving would be completed before Thanksgiving of last year. Chairman Best stated the client represented to the Board that it could be done faster than that, and a member of the Board suggested allowing 45 days rather than 30. Then we ended up all the way out to Thanksgiving, which was probably closer to 60 days.

Attorney Panciocco reiterated there are no excuses, and remarked "I guess it is pick your poison now; let him do it or call the bond and have the Town do it." Chairman Best stated if Deputy Director Fox is put in charge of it, it will get done. That is the one thing he knows for sure.

Member Millns stated concern if the project continues to be pushed out the Board would be sending a signal to any and every contractor that we don't hold people's feet to the fire.

Attorney Panciocco questioned the timing requested when the work was first approved. Chairman Best stated his recollection it was administratively approved in 2012 and a promise was made that it would be completed within a few weeks. It lingered into becoming involved in a second project, which is the two-lot subdivision that is Item #4 on the agenda.

Member Millns questioned what Attorney Panciocco, on behalf of her client, wished the Board to do. Attorney Panciocco stated understanding of the Board's frustration, and that of the residents in the area. She stated the only thing she could request of the Board was to give her client until the Board's July meeting to complete the items. She stated that to be the only option before her unless the Board wished to call the bond. She stated her belief the work would be completed faster if left in her client's hands.

Member Disco stated the Board's experience shows otherwise. At this point, there have been so many extensions, he is of the opinion the Board should call the bond and utilize the funds to get the work completed. He noted instances such as this are the reason a bond is required. Member Sebring questioned if the Board would hear from abutters. Chairman Best remarked he is unsure if the Board conducts a Public Hearing with respect to calling a bond. However, did not object to allowing the public to address the Board.

Councilor Mahon suggested it may be that Mr. Maggio would be able to get the paving done quicker than the Town could. He believed that typically the Town would try to fold such a project into the planned paving for the season due to economies of scale, etc. It is likely the Town has already gone out to bid for its paving projects. It was agreed the items not associated with paving could be completed in a timely fashion. Chairman Best commented the road to be paved is an emergency access road, which hopefully will not be driven on. He does

not believe a delay in paving would impact abutters. He also commented on the quality of work that would be expected if it were overseen by Deputy Director Fox, and stated his complete confidence in that.

Member Millns noted the letter from Brox speaks of "past rain events" and goes on to reference rain on Monday and Tuesday of this week.

Attorney Panciocco stated there were a few intermittent downpours, and when there is a down pour on a job site that is waiting to be paved, it often times disturbs the underlying gravels requiring them to be rehabilitated and dried out before work can resume. Chairman Best remarked if that occurs to Brox on another site then coming to this site is a perfect solution for them since this one has already got its base coat down. He stated the bigger concern for him is hearing from her client that today's rain kept Brox from completing the work today, but the letter provided was written yesterday.

Attorney Panciocco stated a willingness to contact Brox personally, put them on the spot, and get back to Director Thompson with clearer information. Member Sebring stated agreement with comments made regarding the quality of work that would result if overseen by Director Fox. Attorney Panciocco stated Deputy Director Fox is onsite when the paving is performed. Chairman Best commented the last time paving was done it had to be torn out because it was done when it was too cold. Member Christensen remarked if in the Applicant has been in contact with Brox and is in line to have the work performed, she agrees having Brox do the work would get it completed faster. She suggested the possibility of extending the deadline until the Board's next meeting with the understanding, if the work is not complete by that time, there would be no further discussion. Councilor Mahon questioned if the completion date had to be tied to a meeting date. Chairman Best stated he has seen other Boards approve items contingent upon completion by a date certain. In the absence of completion, the approval lapsed. He stated uncertainty the Board has the authority to conditionally call a bond. Member Disco stated a meeting date could be called if necessary.

#### Public Comment

Dave Hammond, 18 Valleyview Drive

Stated 100% of the work being done currently is on the house being built across the street rather than the roadway. A few days in advance of this meeting is when work on the road began.

He stated if a delay in the paving were to result from the Board calling the bond, it would have zero impact on him personally. He commented the delay has been over a year already. The base coat is down, and waiting a few more months would have no impact to him. He stated his support of calling the bond, and his belief doing so would ensure the road work was done correctly. It would also eliminate the need for him to be present at another meeting two weeks from now just to hear again the same excuses that have been heard for the past two years.

Shauna Amick, 11 Valleyview Drive

Stated appreciation of the conversation noting she has been discouraged by the project. She spoke of the comment made regarding the message that would be sent to other contractors should the Board not call the bond, and stated it would be a message to residents as well. She stated she has been heartbroken over having moved here as she has felt like the Planning Board is sending a very clear message to the residents of Valleyview that they are of no value, and that an out-of-state businessman has more value in Merrimack than the actual residents do.

When asked for her recommendation on the decision of whether or not to call the bond, she stated it is a difficult decision. She agreed with making the next meeting and requiring the work to be completed prior to the meeting. She remarked on the one hand she feels the Board would be putting off the inevitable by providing additional time. On the other, it may take more time if the Town were to take over supervision of the work. She stated her agreement with her neighbors it doesn't matter to them whether it is paved next week or in August or September. If anything, not having Mr. Maggio's crew working on the house will keep the contractors from driving on the new grass that has been planted.

She spoke of having come before the Board at a previous meeting and requested people stop using the access road as a Town Road. Whatever action the Board took at that time worked for a while as the crew stopped using

the road. Unfortunately, that use has started again. They remove the orange cones and leave them off to the side. Tire tracks can be seen on the new grass that has been planted.

Chairman Best clarified the house that is under construction isn't affected by what the Board is considering. Mr. Maggio wishes to subdivide the lot the house is on to allow yet another house. That issue is Item #4 on the Board's agenda. Ms. Amick questioned what could be done to prohibit use of the access road. Member Sebring questioned, beyond keeping the street from being used for general access, are there any activities she would like to see done early; particularly given the likelihood of a longer period of time being required should the Town take over responsibility for the remainder of the items on the punch list. Ms. Amick stated a desire to see the street swept. Living on a hill it becomes a safety issue.

Member Christensen spoke of her recollection of the discussion around the use of the road. The fact that behavior stopped for a while and started back up again shows a disregard for requirements put in place. She suggested if the Board were to call the bond and had to wait for paving, the Town would have total control and could block that road off and stop that access. She stated her support of calling the bond.

When discussing the matter a month or two ago Mr. Maggio stated he would get control of the contractors and sent the Board an email the following day with a photo of barrels blocking the road. Chairman Best noted the barrels have been removed and cars are traveling down the road.

Attorney Panciocco questioned what is supposed to block that road long term, e.g., gated. Chairman Best stated it would not be gated per the administrative approval.

Attorney Panciocco stated her desire for the Board to provide an additional two weeks, and stated, if the work is not completed by that time, she would expect the bond to be called. Chairman Best stated his support of calling the bond commenting the Board has provided enough drop dead deadlines, and they don't mean anything to the applicant.

**MOTION BY MEMBER MILLNS TO CALL THE PERFORMANCE BOND FOR THE VALLEYVIEW REVOCABLE TRUST ON THE BASIS OF CONTINUOUS FAILURE TO MEET PROMISED DEADLINES, WHICH HAVE BEEN MADE SINCE AUGUST 2014 AND HAVE RESULTED IN THE BOARD'S LOSS OF CONFIDENCE IN THE JOB BEING COMPLETED TO ITS SATISFACTION IN A TIMELY FASHION**  
**MOTION SECONDED BY MEMBER FALT**

**MOTION CARRIED**  
**7-0-0**

- 4. Keach-Nordstrom Associates, Inc. (applicant) and Valleyview Revocable Trust, Carol Maggio, Trustee (owner)** – Discussion and possible action regarding a request for a reinstatement of conditional final approval and a six month extension for compliance with conditions of an approval granted by the Planning Board on July 23, 2013 and July 8, 2014 to subdivide one lot into two single-family residential lots located at 15 Valleyview Drive in the R (Residential) District. Tax Map 5C, Lot 142. ***This item is continued from the April 21, 2015 and May 19, 2015 Planning Board meetings.***

Assistant Planner Pohli stated based on the action the Board has taken with regard to calling the bond, Staff recommends the Board deny the associated request to reinstate and extend the approval for the two-lot subdivision.

Patricia Panciocco, Esq., Baroff Professional Association stated the bond is more than sufficient to cover the cost of the remaining work. She commented the purpose of requiring a bond is to avoid a situation occurring where taxpayer dollars have to be expended to complete road work, etc. associated with a project the Planning Board has to approve. With ample funds available, there is no risk to the taxpayers. Therefore, there is no basis to deny the two-lot subdivision. She noted the Board has conditioned approval on the work being completed. The road will be finished one way or another. The money is there and the Town is now placed in a precarious position.

To tie the two together is almost double security. There is excessive money put aside in cash to secure the work being done, there is no need to hold up the two-lot subdivision. There are no improvements required to approve

the additional lot. Attorney Panciocco suggested to hold up the additional lot and hold the money is like double bonding, and that is inconsistent with the reading of the Statute and unauthorized. Member Christensen stated she would be willing to consider the two-lot subdivision after the road is complete. Until that road is completed there is no frontage.

Attorney Panciocco stated there is frontage because you have the security. She reiterated there is double security; holding up a subdivision approval on a two-lot subdivision and holding a bond for the same improvements. She stated that is not authorized under State Statute 674:36 III.

Chairman Best stated the road is part of a different proposal and a different subdivision. Attorney Panciocco stated it is, and has nothing to do with the two-lot subdivision at all. Chairman Best stated the two-lot subdivision had conditions of approval placed on July 20, 2013 that were extended in 2014. As we sit here today, they are still not met.

Attorney Panciocco stated it should never have been a condition of that approval. She remarked she understands why the Board did that, but it is not authorized under the Statute; to hold up another approval because something is deficient on a separate application. She retracted by stating it was not a separate application as the four lots existed. She stated it to be the road building, and reiterated there is double security. She remarked she was not sure she was explaining that well enough, but the Board is holding the lot hostage.

Chairman Best stated he heard what she was explaining, but the Board disagrees. Attorney Panciocco suggested the Statute be read. Chairman Best stated the road is not related to the two-lot subdivision. The road is part of the administrative approval for the roadwork associated with the development of 4 lots of record, which just had its bond called. This two-lot subdivision had conditions of approval, which have not been met.

Attorney Panciocco stated it to have been an unauthorized condition to impose on a two-lot subdivision that the road be completed when the Town had full security for that. She reiterated there is the need to read State Statute. Chairman Best stated he has, and respectfully disagrees with the position. Attorney Panciocco stated that is exactly what case law says. She remarked she double checked it to make sure it didn't change. Chairman Best stated it is not a question of the law it is a question of the facts. The road is not a part of the two-lot subdivision. It is not a condition of approval for the two-lot subdivision. It is not linked to the two-lot subdivision. It is part of the administrative approval.

Attorney Panciocco questioned why the completion of the improvements on the administrative approval was made a condition of this. Chairman Best stated it was not. Attorney Panciocco stated she was told it was. Chairman Best remarked her client came before the Board and promised that he would connect the two and said he would get the first one done in order to get the two-lot approval. Attorney Panciocco responded so you called his bond and that is the consequence for not having that road completed, but the other two-lot subdivision is completely independent. It shouldn't be bootstrapped together. Chairman Best reiterated he heard the argument, he simply did not agree with it.

Attorney Panciocco restated that is what the law says. State Statute 674:36 III states "in lieu of". She stated her belief her client has the zoning relief that was required. This is basically putting a lot line on a plan that formerly had four lots on that side of the street in the old plan from 1973. There were four lots on that side of the road. They were merged somewhere. Her client got the zoning relief, and came in with a plan for two lots, which was approved once before.

Member Christensen questioned if there were conditions on the approval. Assistant Planner Pohli stated there were two different decision letters. One was dated July 9<sup>th</sup> for the two-lot subdivision, and identified the need for a compliance hearing before September 30<sup>th</sup> to verify the Applicant controls the contractor's use of the emergency access lane, the construction of the access lane and the addition of the water line, and to make sure the existing road is restored to its original condition or better per the Administrative Approval dated August 24<sup>th</sup>. There was also a note to be added to recording sheet that no construction vehicles associated with the Applicant can use the emergency access road unless doing work within the emergency access road, and all conditions of the approval dated July 25<sup>th</sup>. Within those conditions, #2 states the Applicant is responsible for recording the plan, including the LCHIP fee, and any related documents at the Hillsborough County Registry of Deeds, and that was never done. Attorney Panciocco stated she spoke with Keach's office about that, and from what she understands they never delivered the mylar.

Member Sebring questioned if the matter could be postponed for two weeks and the Board obtain a legal opinion on the matter. Chairman Best stated that could be decided as the course of action by a vote of the Board. He noted he would not vote in favor of such a motion. Member Disco remarked he was not involved in the original subdivision and is not clear on the issue. However, is willing to accept the Chairman's interpretation of the legal aspects being discussed.

Chairman Best stated if Mr. Maggio were to come in the next day with a new application for a subdivision that would be different than extending something that was approved virtually two years ago, and still doesn't have its conditions of approval met after extending deadlines as often as the Board has.

Member Millns questioned if he was correct in thinking when something has conditions of approval there is a time limit put to it. If the conditions are not met, the Board has the right to say conditions have not been met despite extensions, the application fails. If the Applicant wishes to put forth a new application that would be his privilege.

Attorney Panciocco stated she does not know what the original conditions were, and believes she heard there are a few different ones. She is unclear of a deadline associated with the conditions of approval. She stated quite frankly those things are all very important. There is a lot at stake for her client. She commented she knows he has made some mistakes, but she would ask the Board to again renew and allow him two weeks. She spoke of Director Thompson not being present and someone she believed has been involved in the whole process. She questioned if Assistant Planner Pohli was on board at the beginning. Assistant Planner Pohli stated she was present for the original reinstatement extension. Attorney Panciocco questioned what the conditions were.

Assistant Planner Pohli stated on July 25, 2013 the matter was before the Board for review for acceptance and consideration of final approval of an application proposing to subdivide one lot into two single-family residential lots. The Planning Board voted 5-0-0 to accept the jurisdiction of the application, 5-0-0 to grant the waiver of sidewalks, and 3-2 to grant the final conditional approval of the project subject to the following conditions to be fulfilled within 6 months and prior to the signing of the plan:

1. Final plans and mylars to be signed by all property owners. The Licensed Land Surveyor shall also sign and seal final plans and mylars;
2. The applicant is responsible for recording the plan (including \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) and any related documents at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
3. Any waivers granted shall be listed and described on the recordable sheet of the Final Plan set;
4. Copy of State Subdivision approval to be submitted to the Community Development Department. General Note #18, Sheet 1 of 2 to be revised to include the Approval Number and expiration date;
  5. Satisfactorily address any forthcoming comments to be received from the Fire, Public Works and Building Departments;
6. Address planning staff technical comments.

There were 7 technical comments, which were crossed off as having been done. Assistant Planner Pohli remarked it appears as though the remaining condition was the recording of the plan. Also mylars were not received.

The Applicant came back before the Board on July 8, 2014. The decision letter dated July 9, 2014 states: "The Board voted 5-1-0 to reinstate and extend final approval to September 30, 2014, with the additional condition that a compliance hearing occurs before September 30, 2014, to verify that the applicant controls its contractors' use of the emergency access lane, the construction of the access lane, and the addition of the water line, and to make sure the existing road is restored to its original condition or better per the Administrative Approval dated August 24, 2012."

Attorney Panciocco stated that kind of mixed the road in with it. She questioned the associated deadline. Assistant Planner Pohli reiterated the vote was to reinstate and extend conditional approval to September 30, 2014. Attorney Panciocco asked for clarification that the conditions from July 2014 were not met either. Assistant Planner Pohli stated that to be correct. Attorney Panciocco questioned if that was the most recent decision, and was informed it was.



Attorney Panciocco stated she was unaware this was on the agenda, and they had not asked for it to be placed on the agenda. Member Millns noted, at its last meeting, the Board stated it would be on this agenda. Chairman Best commented the approval the Board is considering reinstating expired in November of 2014. It is 8 months expired after being extended for a year.

Attorney Panciocco questioned if it was on the agenda as a new item, and was informed it is a request from her client to reinstate prior approval and provide an additional 6 month extension. Attorney Panciocco questioned what the 6 months was needed to accomplish on the two-lot subdivision. Chairman Best reiterated the request was from her client. He added every piece of the process hinges on her client's promises and credibility, and after all that has transpired, he doesn't have any credibility.

Attorney Panciocco stated she understands, and reiterated she would like the opportunity to assist him. Member Christensen stated there is an opportunity to bring it forward as a new application. Member Millns remarked there would be nothing at stake. Attorney Panciocco stated there is nothing at stake, her client could come back with it now and doesn't have to worry about building the road.

**MOTION BY MEMBER MILLNS TO DENY THE REQUEST TO REINSTATE AND EXTEND CONDITIONAL APPROVAL FOR THE PROPOSED TWO-LOT SUBDIVISION  
MOTION SECONDED BY MEMBER CHRISTENSEN**

ON THE QUESTION

Member Millns stated if the Applicant wishes to come back before the Board in the future to discuss this project the Board would entertain a new application.

*Chairman Best opened the floor for public comment at 8:52 p.m.*

Public Comment

Dave Hammond, 18 Valleyview Drive

Spoke of having come before the Board last month, and expressed his frustration with how things have progressed with the request to subdivide the lot. He stated he and his wife feel as though, whether denying this application or approving a new application, approving splitting that lot would reward the Applicant for behavior that is unacceptable. It would indicate to the residents of Valleyview that their best interests may not be at the forefront of the minds of the Planning Board members. He stated their recommendation would be to deny the request. He stated, if a new application is brought forward, he will again request the Board deny it.

*Chairman Best declared the public hearing closed at 8:54 p.m.*

**MOTION CARRIED  
7-0-0**

- 5. Mario Fortin and Nitrof Investments, LLC. (applicant/owner)** – Review for acceptance and consideration of Final Approval of a waiver of full site plan review to construct an 18'x 60' storage shed addition to the existing 5,432 s.f. building. The parcel is located at 82 D.W. Highway in the I-1(Industrial) and Aquifer Conservation Districts. Tax Map 2D, Lot 040.

Mr. Mario Fortin, 82 D.W. Highway, stated the parcel includes an existing slab (20' x 60'). He would like to enclose it, and use it as a storage shed. He spoke of having marked up a previously approved plan from 1987, which he would like the Board to consider.

When asked, he stated he owns a drywall company, and intends on storing leftover materials from job sites. At present, materials are left on the open slab and are visible to passersby. Chairman Best commented the structure is more of an addition than a shed because it will touch the building. He questioned if it would be sided to resemble the existing building. Mr. Fortin stated his intent to redo the entire building with an exterior insulation and finishing system (EIFS), which is similar to Styrofoam stucco.

Chairman Best commented on some confusion created by marking up an existing plan to identify changes. He questioned use of the existing oil and grit trap. Mr. Fortin stated there is no existing oil trap. He remarked the drawing is old, and the facility was used by a plumbing company when he bought the building. He stated he could promise the trap is not there now. When asked about the septic system, he stated his belief it is serviced by Town sewer.

Member Millns questioned the height of the proposed addition relative to the existing building, and was told the addition would be smaller than the building. Member Falt questioned the existing length of the building. Mr. Fortin stated the existing building is 50' in length. Mr. Fortin stated the wash bay shown on the plan no longer exists.

Member Sebring stated a desire for the drawings to be re-done. Chairman Best commented although he too finds them complicated, typically, with small projects, the Board is as flexible as possible to avoid the requirement for the Applicant to pay engineering and architect fees to re-draw something that might be able to be explained. The Board generally determines if it can move forward with what is presented or will request the Applicant work with staff to provide a cleaner document.

Member Sebring questioned if there is an entrance from the old building at the shed, and was told there is. Chairman Best questioned if the shed would have exterior doors, and was told it would have a garage door and a regular door, which would be located in the back of the building. Member Falt stated it would be helpful if elevations were identified on the drawing. When asked, Mr. Fortin stated it would be a sloped roof. When asked about drainage, he stated there to be gutters that direct water on each side. Member Disco questioned where water flow goes from the edge of the property. Mr. Fortin stated the front of the building is all grass and water runs out onto the grass. Member Falt stated the roof would be draining off towards the edge of the shed, which is 2' off of the property line. There will be a roof gutter there with a downspout dropping right at the property line. There is the need for assurance that water that is dropping at that property line isn't then drifting down into the neighboring property. Mr. Fortin stated it can't. He remarked there is dirt there, and the neighbor's yard is higher than his (4-5').

**MOTION BY MEMBER CHRISTENSEN TO ACCEPT THE APPLICATION AS SUBSTANTIALLY COMPLETE  
MOTION SECONDED BY MEMBER FALT**

**MOTION CARRIED  
7-0-0**

Member Millns questioned if the Applicant was in receipt of a copy of the communication from Director Thompson. Mr. Fortin was provided a copy. Member Millns requested the Applicant review the letter in advance of any further comments.

Chairman Best commented he took a minute to look at Google Earth and Member Christensen reviewed Google Maps to verify the remarks with respect to the elevations, and it does appear to be the case that his site is quite a bit lower than the neighboring site. He stated agreement with the comments made regarding cleaning up the plan and removing items no longer existing on the property. Should the Board vote for final approval, he suggested a condition be a meeting with Staff to have it reproduced in an accurate way.

Member Disco commented on a number of parking spaces shown on the rear of the site, and questioned if they are used. Mr. Fortin stated they would be utilized, but they only have about 5 vehicles. The parking lot is paved, but old. When asked, he stated he has approximately 30 employees. Only 3 work in the office. The remaining employees work in the field (MA) and don't park onsite. Mr. Fortin informed the Board the neighbor behind his property has a landscaping company without parking spaces. He allows the employees of his neighbor's business to park on his property. When asked, he stated his neighbor accesses his property through Mr. Fortin's property.

*Chairman Best opened the floor for public comment at 9:09 p.m.*

Public Comment - None

*Chairman Best declared the public hearing closed at 9:09 p.m.*

**MOTION BY MEMBER FALT TO WAIVE THE REQUIREMENT FOR FULL SITE PLAN REVIEW AS REQUESTED BY THE APPLICANT NOTING 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  
MOTION SECONDED BY MEMBER SEBRING**

**MOTION CARRIED  
7-0-0**

**MOTION BY MEMBER MILLNS TO GRANT CONDITIONAL FINAL APPROVAL, SUBJECT TO THE FOLLOWING PRECEDENT CONDITIONS TO BE FULFILLED WITHIN 6 MONTHS AND PRIOR TO PLAN SIGNING, UNLESS OTHERWISE SPECIFIED  
MOTION SECONDED BY MEMBER CHRISTENSEN**

ON THE QUESTION

Member Falt remarked the Zoning Board of Adjustment approved the structure being 2' from the property line. However, there will be some construction restrictions associated with the building permit in terms of fire safety that Mr. Fortin should be aware of.

1. Final plans to be signed by the Applicant and property owner;
2. Any waivers granted shall be noted with the Section number and date of approval on the final plan;
3. The Applicant shall coordinate with NHDOT District 5 to determine if an updated driveway permit is required for this application. Please provide either written verification that no updated permit is required, or provide a copy of the updated permit for the Community Development Department file and note the permit approval number on the plan;
4. The Applicant shall address any forthcoming comments from the Fire Department (as applicable);
5. The Applicant shall address any forthcoming comments from the Building Division (as applicable);
6. The Applicant shall address any forthcoming comments from the Wastewater Division (as applicable);
7. The Applicant shall address any forthcoming comments from the Conservation Commission (as applicable);
8. Address the following Planning Staff Technical Comments:

**Planning Staff Technical Comments**

- a. The Applicant shall update the Variance Note (#3), indicating the date of the ZBA approval;
- b. The Applicant shall clarify the plan markups, to clearly indicate the location of the proposed storage shed addition, which is not clear from the current plan and remove any obsolete items in order to make the plan match what is actually present on site;
- c. The Applicant shall clarify/indicate any additional site improvements that are proposed as part of the application (beyond that of the construction of the addition) as applicable;
- d. The Applicant shall further modify the plan as follows:
  - i. Mark-up/cover the sign detail to indicate the proposed signage for Fortin Drywall (currently indicates NH Hydraulic, Inc.);
  - ii. Mark-up/modify the titleblock to indicate the current Applicant and property owner;
  - iii. Cover-up the previous Planning Board signature block from 1987, and provide a new signature block for this application.

**MOTION CARRIED**  
**7-0-0**

6. **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.

Chairman Best noted receipt of an email requesting an extension to July 7, 2015.

**MOTION BY MEMBER MILLNS TO CONTINUE THE ITEM TO THE JULY 7, 2015 PLANNING BOARD MEETING AT 7:30 P.M. IN THE MATTHEW THORNTON ROOM WITH NO FURTHER NOTIFICATION TO ABUTTERS**  
**MOTION SECONDED BY MEMBER FALT**

**MOTION CARRIED**  
**7-0-0**

7. **John J. Flatley Company (applicant/owner)** – Review for acceptance and consideration of Final Approval of an application for a site plan to construct 240 multi-family residences, clubhouse, and associated parking and drainage improvements, per the requirements of the Flatley mixed use Conditional Use Permit. The parcels are located at # 645, 673, 685, 703 and 707 D.W. Highway in the I-1 (Industrial), Aquifer Conservation and Wellhead Protection Districts. Tax Map 6E, Lots 003-01, 003-03, 003-04, 003-05 & 003-06.

Chairman Best stated the Applicant has requested a continuance. Assistant Planner Pohli noted staff has pointed out the Site Plan cannot be accepted by the Planning Board until the Conditional Use Permit (CUP) is signed off on, and it has not received final approval. That is the purpose for the request for continuance. Chairman Best stated his understanding the CUP's final approval is an issue of a development agreement with the Town. Assistant Planner Pohli stated that to be correct.

**MOTION BY MEMBER MILLNS TO CONTINUE THE ITEM TO THE JULY 21, 2015 PLANNING BOARD MEETING AT 7:30 P.M. IN THE MATTHEW THORNTON ROOM WITH NO FURTHER NOTIFICATION TO ABUTTERS**  
**MOTION SECONDED BY MEMBER DISCO**

**MOTION CARRIED**  
**7-0-0**

**8. Discussion/possible action regarding other items of concern.**

- Potential establishment of a Performance Bond for Tomasian Cluster Subdivision. (Tentative)

Chairman Best stated the item is not ready for Board action. He questioned if members had any items of concern. Member Millns noted the August 4<sup>th</sup> meeting will be a joint meeting with the Conservation Commission. Chairman Best commented the Conservation Commission, in addition to the soils presentation, wishes to discuss the types of recommendations they have forwarded to the Board.

**9. Approval of Minutes – June 2, 2015**

*The Board discussed and requested several revisions.*

**MOTION BY MEMBER FALT TO APPROVE AS AMENDED**  
**MOTION SECONDED BY MEMBER DISCO**

**MOTION CARRIED**  
**7-0-0**

**10. Adjourn**

**MOTION BY MEMBER MILLNS TO ADJOURN  
MOTION SECONDED BY MEMBER DISCO**

**MOTION CARRIED  
7-0-0**

The June 16, 2015 meeting of the Merrimack Planning Board was adjourned at 9:23 p.m.

Submitted by Dawn MacMillan