



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD

APPROVED MINUTES

June 2, 2015

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, June 2, 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 (arrived at 7:43 p.m.)
Desirea Falt
Councilor Thomas Mahon
Nelson Disco, Alternate
Jeff Sebring, Alternate

Members of the Board Absent: Michael Redding

Also in Attendance: Tim Thompson, Director, Community Development
Emily Edwards, Planning Intern

1. Call to Order

Chairman Best noted the next meeting of the Planning Board will be conducted on June 16, 2015 at 7:30 p.m. in the Matthew Thornton Road.

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

2. Planning & Zoning Administrator's Report

None.

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.

Tim Thompson, Director, Community Development, noted the Board's packet included a memorandum from Donna Pohli, Assistant Planner. The proposed project is at the site of the former Pizza Man at the corner of Church Street and D.W. Highway. The Applicant is seeking a waiver of full Site Plan review. The Zoning Board of Adjustment (ZBA) granted a Special Exception to allow the restaurant use on this parcel back in December of 2014. The memo outlines the items believed important for discussion.

Mr. Madi Choueiri read the following letter into the record:

"I would like to establish a full service restaurant which will seat approximately 40 people. This location was formerly a restaurant called "The Pizza Man" and is grandfathered in under zoning rules for a restaurant.

480 DW Highway is an excellent location for a restaurant. There are no other Lebanese French style restaurants in the area. We are hoping to bring a different dining experience that is not only refined and

elegant, but also accessible to all with affordable pricing. It will be excellent for the community to experience diverse food choices and will also make Merrimack more of a destination for people who live outside the community.

This location was formerly a restaurant. There is plenty of parking in the existing lot. I do not plan on changing the footprint of the building. My restaurant will be positive for the neighborhood as it will offer a walkable dining option for neighbors, the seniors next door, YMCA patrons, etc.

The parking lot is located behind the building which has an entrance on Church St beside the cemetery. This lot will be safe for vehicles and customers. There is no need for street parking.

Having owned a restaurant in Paris, France, I plan on having top notch kitchen equipment and an extremely pleasant dining atmosphere. I plan on meeting all town requirements ie: wheelchair access, restrooms, etc. Please see picture of proposed façade. Best Regards,"

Chairman Best stated the first action of the Planning Board was to determine if the application is complete and allows them to make a decision. He noted staff has not made a recommendation one way or the other as to completeness, and suggested the reason for staff's position is that the Applicant is asking for a waiver of a full site plan review, which brings the Board less than the normal amount of information. Director Thompson stated that to be correct.

Chairman Best commented the Site Plan shows the building fairly reasonably, but does not necessarily show where seating for the restaurant is intended. He asked for additional clarification.

Mr. Choueiri referred to the diagram provided. Chairman Best noted the document identifies 5 booths, 5 tables, and 7 seats at a bar. He questioned if there would be outdoor seating. Mr. Choueiri stated there would be; two umbrellas on each side and four seats for each umbrella. Chairman Best remarked that would account for another 16 seats. That would mean a total of 63 seats for the restaurant. Mr. Choueiri stated his calculation to be 4 people for every car.

Chairman Best stated the usual standard for restaurants is 3 people per parking space, which at 63 seats would be 21 parking spaces plus some for staff. He questioned the number of available spaces, and was informed there are 17. When asked about the number of employees, Mr. Choueiri stated there would be 2 employees for each shift. He explained he and his wife would be cooking and the two employees would be support staff. Chairman Best remarked with 4 people working there and 17 parking spaces that would leave 13 spaces for customers, which would not be sufficient for the number of tables under the parking rules unless a request is made for part of that provision to be waived and the argument made for how that would be managed.

Mr. Choueiri responded the Senior Center and the church have ample parking. He would make a request of them to grant his business permission to utilize their parking lots. Chairman Best remarked the neighboring parking at the Senior Center or the Church could be considered for his restaurant if an agreement were to be reached with them (in writing). Without a written agreement, the Board cannot consider that parking in its deliberations. He suggested that may be something the Applicant would have to accomplish in order to get through the process. Mr. Choueiri stated he would make that request.

When asked about the Site Plan provided, Mr. Choueiri stated he utilized the existing plan and made adjustments to it. When asked if he altered the way the parking spaces are laid out, he stated he had not. When questioned about the distance for vehicles driving between the parking lanes, Mr. Choueiri responded there is plenty. He added if he parked cars he could come in, take a left and park, and back out with no problem. The exact dimensions he was unsure of. When asked if there would be a dumpster onsite, Mr. Choueiri stated that there would be. It would be located in the back near the stairs leading to the area of the building where the cooler would be located. When asked if he has contacted any vendors with regard to a dumpster to determine if there is sufficient room in the parking lot for their vehicles to come in and out. Mr. Choueiri stated there will be sufficient space. Chairman Best noted it is part of the Board's responsibility to ensure there is ample space.

Member Millns pointed to the grass area on the northern side of the property, and questioned if that area has been considered to create additional parking. Mr. Choueiri stated all of the parking comes to the grass area.

If additional parking is required by the Board, that is an option; however, that grass area is used for snow storage.

Chairman Best questioned the origin of the drawing provided that depicted what is envisioned as the façade of the property. Mr. Choueiri stated he created the drawing approx. 10 years ago. Chairman Best noted the drawing does not match up with the plan provided, e.g., in the drawing, the outdoor seating area is wider than the building and the front porch area is neither identified on the plan or existing today. Mr. Choueiri stated that would be constructed. Chairman Best noted the letter states the footprint of the building would not be changed. Mr. Choueiri responded there would be no cement construction; the deck would be constructed of wood.

Chairman Best questioned the will of the Board with regard to a determination of completeness. Member Disco stated his opinion the plan is not complete, and requested the Board be provided with a Site Plan that identifies all aspects of the project. He noted the drawing of the building layout needs to include the porch area and how it all fits on the property. The drawing also conflicts with statements made regarding the number of outdoor seating spaces, etc.

Mr. Choueiri stated the measurements for the seating area are identical on the Site Plan and the floor plan. Chairman Best provided further clarification of the example of the discrepancy in the number of outdoor seating spaces by pointing to the drawing, which depicts 48 outdoor seats, which differs from the discussion around 16 outdoor seats. Mr. Choueiri commented when you make a drawing for the outside of the building you want to make it look good. If the Board is unhappy with the drawing he could reduce the number of umbrella tables. Chairman Best stated he does not wish for the Applicant to change the proposal; what he is looking for is consistency with all information provided.

Member Christensen questioned the number of tables and chairs proposed for the outside seating area. Mr. Choueiri responded four. Member Christensen stated that is not what is shown in the drawing. Mr. Choueiri acknowledged that. Member Christensen stated and Mr. Choueiri agreed, what is being proposed is a total of four tables each with four seats to be located on the outside of the building.

Member Millns stated agreement it is difficult see how the two plans are supposed to line up. The Site Plan shows 27.7' for the shortest side of the building. If you take that 27.7' it seems to tie up with the seating plan from the back edge as far up to where the entrance is, and the other 9' odd is the bit that is covered in glass when looking at the drawing. He stated it would be much easier to have something clearly documented. Although he can understand the desire to achieve cost savings, he believes it would be a relatively small cost to have a very simple Site Plan prepared in such a way that the Board can clearly identify what is intended.

Member Falt spoke of the floor plan, which appears to have been completed by New Hampshire Restaurant Equipment, and her impression that the company reviewed the size of the facility and number of tables and seats that would be appropriate to fit in that place. Mr. Choueiri stated they visited the site and took measurements. She suggested the simple thing to do, to be able to provide the Board with the information it desires, is to amend the floor plan by identifying where the patio will be and the outdoor seating (inclusive of dimensions). If adding to the existing structure that needs to be noted as a building permit will be required. Director Thompson stated it is also necessary for the Site Plan to be consistent with the revised floor plan. Chairman Best clarified there is the need for dimensions to be identified, e.g., how wide and long parking spaces are, the amount of space between them, where the dumpster would be located, whether a fence would be constructed around it, etc.

Chairman Best walked the Applicant through the discrepancies that have caused some confusion. It was explained the area of the floor plan where the booths are depicted is actually under the overhang of the roof, which, is depicted in the drawing behind the glassed enclosure. There will be a new porch constructed on the outside (wood). That proposed addition of the wooden porch should be drawn on the floor plan and dimensions identified.

Chairman Best suggested, in addition to the requested corrections to the plans that Mr. Choueiri speak with the neighboring facilities to come to an agreement relative to parking. He stated the full standard for parking to be 1 space per 3 seats plus 1 for each employee. Speaking with regard to the proposed addition of a porch on the front of the structure, Director Thompson stated the front setback in the Town Center Overlay District is 30' from the property line. If that cannot be met, it would be necessary for the Applicant to appear before the Zoning Board of Adjustment with a variance request.

Chairman Best spoke of the configuration of the driveway entrance, and questioned if, as part of the approval, the Board wished for that to be narrowed down to create a defined driveway rather than open pavement along the whole front, would the Applicant be amenable to that. Mr. Choueiri stated he would.

Chairman Best questioned if sidewalks would be proposed for the front of the property. Mr. Choueiri commented several months back someone from the Town tried to put a sidewalk in the front of the building. If they cannot afford to do so, he does not believe he would. Chairman Best stated if sidewalks were not intended to be part of the proposal there would be the need to request a waiver from the regulation that states a sidewalk has to be constructed.

Chairman Best asked if the Applicant was aware the Town Center Committee has discussed closing off that end of Church Street. Mr. Choueiri remarked they have been talking about it for ten years. Chairman Best questioned if the proposal would be affected if the end of Church Street were to close. Mr. Choueiri stated it would not. When asked about signage, Mr. Choueiri stated people interested in eating Lebanese or French food will find the restaurant.

Member Christensen stressed the need to consider how parking would be accessed if the end of Church Street were closed. Mr. Choueiri responded he was not going to worry about that.

Member Sebring questioned hours of operation, and was informed the restaurant would serve lunch and dinner. Director Thompson noted the plan states the business would be open Tuesday through Sunday 11:00 a.m. to 1:00 a.m. Mr. Choueiri remarked that is what you put on paper, but when you don't have customers you close at 9:00 p.m.

Member Disco stated the expectation the Applicant consider how to move forward with regard to the sidewalk requirement. Mr. Choueiri stated if required to construct a sidewalk he would withdraw the application. He spoke of experience as an owner of a gas station and the Town requesting he put up \$20,000 for a sidewalk. The monies were provided and a sidewalk constructed. The road was built higher than the sidewalk causing water to come into his gas station. He complained for three years, and his complaints fell on deaf ears. The day he got a backhoe and started digging to give the water a place to go, he received a great deal of attention. He reiterated if required to construct a sidewalk he would quit.

Member Disco reiterated the regulations require sidewalks. Chairman Best stated an Applicant can request a waiver of the sidewalk requirement and make the argument for why it is not feasible. The Board could then consider that request. He reiterated the choices are to either include a sidewalk in the plans or seek a waiver. When asked, Chairman Best stated a sidewalk has to be a 5' wide, paved pedestrian way that does not slope more than 10 degrees. Mr. Choueiri stated he would likely request a waiver for the sidewalk. Chairman Best commented the paved area in the front of the building is essentially sidewalk already. It is that last little piece where the steep hill is where it gets to Church Street that would be the section where it would be required.

Mr. Choueiri remarked before anyone asks for the pile of dirt to be removed from the site they should first call the electric company and request the pole located in the middle of the street be removed. Chairman Best remarked when making an argument for a waiver of the sidewalk requirement it is those types of issues that should be discussed.

Member Disco stated if the sidewalk is determined not feasible, he would request, at minimum, an easement be provided for the future construction of a sidewalk.

MOTION BY MEMBER MILLNS TO CONTINUE THE APPLICATION TO JULY 7, 2015 AT 7:30 P.M. IN THE MATTHEW THORNTON MEETING ROOM WITH NO FURTHER NOTIFICATION TO ABUTTERS

MOTION SECONDED BY MEMBER CHRISTENSEN

MOTION CARRIED

7-0-0

- 4. Merrimack Premium Outlets, LLC. (applicant/owner) –** Review for acceptance and consideration of Final Approval of an application for a minor subdivision of one lot into two lots. The parcel is located at 80 Premium Outlets Boulevard in the I-2 (Industrial) and Aquifer Conservation Districts, and Wellhead Protection Area. Tax Map 3C, Lot 191-1.

Director Thompson stated the Board's packet included a memo from Donna Pohli, Assistant Planner and Emily Edwards, Planning Intern, regarding the project. The proposal is to subdivide the existing Merrimack Premium Outlets (MPO) project into two parcels; 111.6 acre parcel and 32.4 acre parcel. The smaller of the two parcels will eventually be the second phase of development at the MPO. The project received a variance from the ZBA in 2013 to allow for the subdivision without the 100 acre requirement. It is consistent with the Conditional Use Permit (CUP) and all Site Plan approvals that have gone forth to this point. It is expected this will then set the stage for a Site Plan submittal, at some point in the future, for the expansion of the facility.

Mr. Gordon Leedy, Landscape Architect/Planner, VHB, remarked the plan is straightforward. As explained, there is a 144± acre parcel that is the main part of the MPO project. Being proposed is subdividing that into two parcels. The purpose would be to separate out the Phase II area. The original Master Plan approval process included an additional area of development to the north where the current parking lot is and a proposal for a parking deck. Mr. Leedy highlighted the area on the Site Plan where the line has been drawn so that the existing development is fully conforming in every respect and allows Merrimack Premium Outlets, LLC to go forward with separate financing on the Phase II area.

Mr. Leedy stated there would be no change on the ground immediately as a result of the proposed project. That will be the subject of a future Site Plan Application. The project conforms in all respects with the CUP as well as the Site Plan approval granted by the Board. It is simply to allow Merrimack Premium Outlets to go forward with their plans for further development.

Member Disco questioned if the intent is to keep both parcels in the same ownership. Mr. Leedy stated that to be the current plan; however, noted it likely will be separate entities. Special purpose entities were set up for ownership of these properties, but it will be managed by the same group and leased by the same group, and ultimately the parent company would be Simon Premium Outlets.

MOTION BY MILLNS TO ACCEPT THE APPLICATION FOR REVIEW
MOTION SECONDED BY MEMBER CHRISTENSEN
MOTION CARRIED
7-0-0

Chairman Best questioned if there were any waivers as part of the application. Mr. Leedy stated there to be a Waiver Application for waiving a portion of Section 4.06.1(l) of Subdivision Regulations with respect to location of monuments to be set. What is being requested is that within the developed portion of the property, since the monuments would be set in pavement or in a plaza area, that the requirement for monuments at the corners is waived and the other applicable monuments be set elsewhere on the property. He remarked since there are no setback requirements and because it will truly continue to function as one development, they would rather not have that kind of demarcation sitting in the middle of a sidewalk for example.

MOTION BY MEMBER DISCO TO WAIVE THE REQUIREMENTS OF SECTION 4.06.1(l) – LOCATION OF MONUMENTS BETWEEN THE TWO PROPERTIES WITHIN THE PARKING AND BUILDING AREA 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 CHRISTENSEN
MOTION CARRIED
7-0-0

Chairman Best opened the floor for public comment at 8:17 p.m.

Public Comment – None

Chairman Best declared the public hearing closed at 8:17 p.m.

Chairman Best questioned the timeline for Phase II. Mr. Leedy stated the timeline is dependent on demand for leasing and their determination on corporate priorities. He is of the impression the desire is for construction to begin sometime next year.

Chairman Best questioned the pad sites on the lower end that were identified for hotel, restaurant, etc., if there is any specific future thinking that could be shared regarding that. Mr. Leedy responded there is nothing right now. They are in the process of considering options for that site, but a solid timeframe has not yet been determined.

**MOTION BY MEMBER MILLNS TO GRANT FINAL APPROVAL, WITH THE FOLLOWING PRECEDENT CONDITIONS TO BE FULFILLED WITHIN 6 MONTHS AND PRIOR TO PLAN SIGNING, UNLESS OTHERWISE SPECIFIED.
MOTION SECONDED BY COUNCILOR MAHON.**

1. Final plans to be signed by the Applicant and Property Owner;
2. Any waivers granted shall be listed with the section number and date of approval on the Final Plan;
3. Applicant shall address any forthcoming comments from the Department of Public Works (as applicable);
4. Address any forthcoming comments from the Assessing and Fire Departments, including future numbering of the proposed lots and addressing requirements (as applicable);
5. Address any forthcoming comments from the Conservation Commission (as applicable);
6. Address any forthcoming comments from the Merrimack Village District (as applicable);
7. Address planning staff technical comments:
 - a. Applicant to add a note to the plan indicating that the plan is to be recorded at HCRD and that a copy is on file with the Community Development Department;
 - b. Applicant to add a note indicating the availability of public water and sewer services;
 - c. Applicant to add the owners address to the title block of the plan.

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

1. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
2. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant.

**MOTION CARRIED
7-0-0**

5. **Button Homes, LLC. (applicant) and Donna Kazmirchuk (owner)** – Request to amend previously granted conditional approval from the April 7, 2015 Planning Board for a minor subdivision of one lot into two single-family residential lots located at 71 Bedford Road in the R (Residential) and Aquifer Conservation Districts. Tax Map 6D, Lot 090.

Director Thompson stated the Applicants are requesting that the Board consider removing the requirement for an easement over the drainage pipe and culvert between their property and that of the Baptist Church. He remarked staff was willing to listen to what the Applicants had to say, and would offer a recommendation following the presentation. He noted the request is to amend approval that was already granted; therefore, there is no need for acceptance.

Mr. Brian Button, Button Homes, LLC, stated he has contacted the church with regard to granting an easement to the culvert that crosses his property line and with a request to tie into the manhole on their property, but has not received a response. As it is believed the church is not interested in being granted an easement for the culvert,

the desire is now to gain approval to waive the requirement. They remain hopeful they will be successful in obtaining an easement to tie into the manhole.

Chairman Best stated the requirement for an easement over the culvert, the drainage structure that crosses his property, is a fairly important piece to the puzzle. If something were to happen to that drainage line someone has to have a right to do something about it. He asked for additional clarification as to why the Board would want to remove that requirement.

Mr. Button stated the culvert does not impact the property that is being subdivided it impacts the church property because it is the church property that is being drained. If they had not put that culvert in (1978) the water would just flow back towards the front of the property, which doesn't impact either of the buildable areas where construction will take place.

Chairman Best responded that is why you would use an easement for that. He provided the example of a power line going across; it would not be power for the particular parcels it would simply be crossing the property.

Mr. Button requested clarification if the church does not want an easement he would have to put easements on each parcel. Ms. Laurie DeRochers, co-applicant, remarked they have no issue with granting the easement. The church does not want it.

Mr. Button stated they had intended to give the church a 20' easement to go down through that line if they ever had to replace it. They have not heard back from the church with regard to that offer. Chairman Best questioned the type of outreach that was made. Mr. Button stated they have emailed on several occasions. Ms. DeRochers added in the last communication received, the Pastor stated he was waiting to hear from his elders. It has been several months since that last communication.

Chairman Best stated if the Board does not require the easement, and something happens to the culvert it might be the Applicants' responsibility to replace/repair it. He questioned if that is something they were open to understanding that financial burden could be as much as the construction of a house. Ms. DeRochers stated she does not want the responsibility for the culvert. Chairman Best stated, from the Planning Board standpoint, as they look at a subdivision where there is essentially a utility structure crossing it, somehow they have to understand who is responsible for it either by an easement or the property owners taking responsibility for it. If both parties indicate they do not want to take responsibility, the Board has an application it cannot approve because the issue is not resolved.

Ms. DeRochers questioned if the culvert is necessary. Chairman Best stated his belief that it drains quite a bit of land that has been constructed on. If it were removed all of the water that is going through it would go elsewhere. He added he was not suggesting they do that as he believes they would open themselves up to legal liability for pushing water off onto someone else's property.

Mr. Button remarked the culvert was originally placed there because the owner did not want the water running across his field.

Chairman Best opened the floor for public comment; however, no one expressed a desire to address the Board.

Chairman Best reiterated he did not believe the Board could proceed without someone taking responsibility. He commented if neither of the property owners, there is always something that could be presented to the Town although he is unsure if there is a process for that. He commented it does drain some public roadways.

Ms. DeRochers questioned why the Town would not be responsible. Chairman Best commented, ideally all of that would have been sorted out before the first shovel went in the ground, but since it wasn't it leaves the situation where everybody stands back saying not mine. The Planning Board cannot force someone to do it.

Ms. DeRochers asked for clarification if, according to the Planning Board, the only two choices are they maintain it or the church maintains it. Chairman Best stated someone has to agree to be the holder of the easement. He suggested it may be that the Town could try to help open the lines of communication with the church. Ms. DeRochers asked for clarification the Board does not believe the culvert only benefits the church. Chairman Best responded from what he understands it was put in there when the Cathy Drive subdivision was constructed. That helped to make that area buildable as well.

Councilor Mahon questioned who installed the culvert. Mr. Button stated the Town put it in. He said his father-in-law worked for the Town at that time and is aware the Town put it in. Ms. DeRochers stated confusion; if it benefits all of those other properties why they are not responsible. Chairman Best responded if it were being put in today, before the first shovel hit the ground that would be on paper stating responsibility. Nobody did that back in the day. Councilor Mahon questioned if there would be record in the Town as to why and who put it in. Director Thompson stated there is nothing his department has been able to find. When asked, Mr. Button stated his belief it was constructed in 1978.

Mr. Button stated, after the property, the culvert is gone. It was continued and has been washed out and not even used anymore. He questioned again why it can't simply be allowed to flow the way it used to instead of going through the pipe. Director Thompson suggested if their engineer could come up with a drainage plan that says that will not increase any rate of runoff to any of the abutting properties that would be another alternative; have the designer come up with an alternative solution to ensure they are not out of compliance with the regulations from a drainage perspective.

Chairman Best remarked that is a pretty creative solution. He stated part of the driveway crosses over the culvert. That piece would probably be something that would have to be replaced as they put in a new driveway, but for the rest of it, if they have an engineer that can identify drainage swales or something that allows that to run over ground, end up in the same place, and not increase runoff they may have a solution that makes the culvert and the necessity of an easement go away.

Mr. Button remarked he had hoped they could replace the portion under the new driveway that was going to go just a little bit further away from the old culvert and let it flow the way it used to down its natural path. Chairman Best questioned how much of the two-lot subdivision was covered by water when it was flowing in that natural path. Mr. Button stated it stays within a 4' swath down. Today, when snow melts, that area still flows even though the culvert is there because the culvert is just draining the church. The property that is being divided drains through the natural drainage swale.

Chairman Best remarked if that were to be done there would be no need for an easement because the culvert under the driveway would be the Applicant's responsibility as part of his driveway not because it drains someone else's property. Chairman Best questioned if they would be able to work with whoever was assisting in laying out the subdivision to come up with an engineering plan on that. Mr. Buttons stated he probably could. Chairman Best stated the Board could look at something like that at a future meeting to see if some relief could be provided.

Ms. DeRochers questioned if there is a means of working that into the approval so that, if they acquire that information, it could simply be approved. When asked if that could be done as a conditional approval, Director Thompson responded he would probably say no at this point. With the original application the services of the peer review consultant were not retained because there were no proposed changes to the drainage design. If that is to occur there is the need to establish escrow for peer review and have that reviewed by our engineering consultant. He stated his recommendation would be to table indefinitely and then reconvene when the application is done. The only fee that would be required at that point would be for notification of abutters.

Chairman Best explained for projects where a redesign of drainage is proposed, the Town hires, and the Applicant pays the cost of, an engineering firm to provide an opinion on whether or not what has been proposed will work and is appropriate. Mr. Button stated he could meet with the engineer the following day; however, he is unsure of the timeframe necessary to complete a new design. He suggested it could be done in two weeks' time. Chairman Best spoke of the time necessary for the engineering firm to conduct its review. He questioned if it would be best for the Board to continue to a date certain or provide the Applicant the opportunity to come forward when ready to proceed. Director Thompson reiterated the only fees that would be involved would be related to abutter notification in terms of the continuance if moved to a date uncertain. Once the submission is presented with the drainage information the consultant would then come up with an estimate for what the escrow would need to be to cover the cost. Mr. Button stated the abutter notification fee has already been incurred on two occasions each costing in the area of \$525 (75 abutters).

When asked, Director Thompson stated once the information is provided and the escrow paid, the turnaround time from CLD for peer review is 10 working days.

Ms. DeRochers questioned if the option remains for someone to take responsibility for the easement. Director Thompson stated, if the Applicant were able to come to an agreement with the church, and the church signs off

on the easement the amendment request could be withdrawn and they could move forward with the plan as it was approved in April.

Ms. DeRochers questioned the sewer easement. Chairman Best stated the sewer easement across the church property is something the Planning Board has no control to grant relief on. The Applicant needs to get an agreement from the church or go out to the road and get the sewer in the roadway.

**MOTION BY MEMBER CHRISTENSEN TO TABLE THE APPLICATION UNTIL JULY 21, 2015 AT 7:30 P.M. IN THE MATTHEW THORNTON MEETING ROOM WITH NO FURTHER NOTIFICATION TO ABUTTERS.
MOTION SECONDED BY MEMBER FALT.**

**MOTION CARRIED
7-0-0**

- 6. 526 DW LLC. (applicant/owner)** – Review for consideration of Final Approval for a site plan to construct a 44,000 s.f. commercial storage building located at 526 DW Highway in the C-2 (Commercial) and Aquifer Conservation Districts, Wellhead Protection Area, and 100-year and 500-year Flood Hazard Areas. Tax Map 5D-2, Lot 001. ***This item is continued from the May 19, 2015 Planning Board meeting.***

Director Thompson stated CLD comments for this project were received earlier in the day (3:45 p.m.), were reviewed with staff, and sent to Mr. Mitchell's office. Staff did not find any significant obstacles within those comments that they believe would be an impediment to the approval of the project. A new waiver request letter was received seeking two waivers; both related to the landscape requirements. Staff is comfortable if the Board wishes to move forward with conditional approval.

Mr. Eric Mitchell, President, Eric Mitchell & Associates, noted his receipt of the CLD report, and stated he had the opportunity to review each item, and concurs with Director Thompson and staff that there are no design elements that require input by the Board. Items identified in the CLD report can be addressed if the Board were to consider conditional approval. There are two waiver requests relative to landscaping.

Member Millns questioned if Mr. Mitchell had read the communication provided by Jillian Harris, AICP, Planning & Zoning Administrator, which identified areas to be addressed, e.g., the minimum 24' wide access road serving all sides of the proposed building, etc. Mr. Mitchell commented the memorandum came out a few weeks ago. They did change the width to 24' as requested. Standpipes were requested for the outside of the building. The architect has put that into the plans with access doors. The one issue discussed with the Fire Department was the requirement of 40' between buildings. The plan proposes 30' between the buildings. The owners spoke with the Fire Department, and 30' has been agreed to providing the area between the buildings is paved. Mr. Mitchell stated they would ensure all plans are acceptable to Fire and all other departments before coming back before the Board.

Member Disco remarked when the application was last before the Board he questioned the drainage. Mr. Mitchell responded water from the new building does flow to the rear of the property. There is an infiltration basin there with no outlet just as an overflow. It is all intended to infiltrate. Testing has been done to determine the rate of infiltration into the soil. It has been determined the pond itself can handle what they have in it without needing an outlet. It only has an overflow in case something becomes plugged. All is intended to infiltrate into the ground and not to go over the surface. Member Disco questioned if the calculations show that for the 50-year storm, and was told they do.

Member Disco noted the Board voted the Applicant did not need to pave the sidewalk north of his property to the property line. However, it was stated an easement would be granted. Member Disco stated his desire for the area of the easement to be clearly identified on the plans, and that it is delineated in some way on the ground (grass part). He stated he would leave it to the Applicant to create a path that is clearly defined, e.g., fencing, curbing, posts, etc. He simply wants walkers to clearly understand where you can and should be walking. Mr. Mitchell remarked much of the area around the buildings, that is intended to be driven on, is chipped up pavement. That same material could be placed on the pathway on top of the existing gravel. They could do striping down along the edge of the pavement so people can walk there, and the easement will be given, as condition of approval, for the entire front of the property.

With regard to the two waiver requests, Mr. Mitchell stated they are both related to landscaping. The first is to Section 10.01.1 on non-residential site plan landscaping. On the site itself, there is landscaping along the front of the existing building. The proposed building is actually to the rear of the existing building, not truly accessible or meant to be for public use. It is only as a destination for people to leave their vehicles or RVs. They believe the area in the front is sufficient, for the motoring public to go by, to be landscaped. Any disturbed area will be loamed and seeded.

The second waiver request is for Section 10.01.4. There is a buffer required between this zone and the residential, which is on the southerly side of the property. However, the public service company right-of-way, although zoned residential, is not used as residential (about 150' wide). They do not believe a buffer should be required where they have the public service line there, and there are no buildings within 150'.

MOTION BY MEMBER FALT TO WAIVE THE REQUIREMENTS OF SECTION 10.01.1 NON-RESIDENTIAL SITE PLAN, LANDSCAPING STANDARDS AND SECTION 10.01.4 BUFFERS, 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 CHRISTENSEN.

MOTION CARRIED

7-0-0

Chairman Best opened the floor for public comment at 8:48 p.m.

Public Comment – None

Chairman Best declared the public hearing closed at 8:48 p.m.

MOTION BY MEMBER MILLNS TO GRANT FINAL APPROVAL WITH THE FOLLOWING PRECEDENT CONDITIONS TO BE FULFILLED WITHIN 6 MONTHS AND PRIOR TO PLAN SIGNING, UNLESS OTHERWISE SPECIFIED.

MOTION SECONDED BY MEMBER DISCO.

1. Final plans and mylars to provide all professional endorsements and be signed by all property owners;
2. The applicant shall note any waivers granted by the Board on the plan (including Section, and date granted) as applicable;
3. The applicant shall provide for appropriate "marking" of the sidewalk area within the proposed sidewalk easement from the northerly entrance to the northerly property line through use of re-cycled or re-purposed paving materials;
4. The applicant shall indicate any proposed easements on the plan, as applicable, including utility and sidewalk easements. A draft copy of any proposed easements and any applicable legal documents to be submitted to the Community Development Department for review and approval by the town's legal counsel (legal review shall be performed at the applicant's expense);
5. The applicant shall address all applicable forthcoming comments from the Town's peer review consultant, CLD;
6. The applicant shall address any forthcoming comments from the Public Works Department (as applicable);
7. The applicant shall address the following comments from the Fire Department:
 - a. The Town of Merrimack, Department of Fire Rescue, Office of the Fire Marshal requires (NFPA 1 Chapter 18) that fire department access roads be constructed and maintained so that fire apparatus can effectively operate during an emergency. The location of the access road(s) must provide for positioning of the fire apparatus to allow access to all sides of the structure. Unique building or occupancy conditions may trigger additional requirements from the Office of the Fire Marshal;

- i. A minimum 24 foot wide access road serving all sides of the proposed building is required. The plans show portions of the road to be 24' and others to be only 22';
 - ii. The distance between the proposed building and the existing vehicle storage building is not shown on the plans. A minimum of 40 feet between buildings is required for proper emergency vehicle deployment;
 - b. Because of the current orientation and stacking congestion of the existing intersection of Daniel Webster Highway and McGaw bridge road the main access to the proposed new building shall be moved to a location north of the existing building located at 526 Daniel Webster Highway;
 - i. The proposed building shall be assigned the address of 528 Daniel Webster Highway;
8. The applicant shall address the following comments from MVD:
- a. Fire and domestic services must be separate unless the Fire Department requires a hydrant near the new building;
 - b. No de-icing compounds to be used on site;
9. The applicant shall address the following comments from the Conservation Commission, as applicable:
- a. The Commission requests the applicant use a NH Green SnoPro certified contractor(s) on their site to limit any use of salt or de-icing compounds on the site;
 - b. The Commission recommends that only low phosphate, slow release nitrogen fertilizers be used as part of this project and in the future at the entire site. The Commission further recommends that the applicant's contractor considers utilizing a soil testing facility to determine what levels and applications rates may be necessary before doing any application of fertilizes on the site and then later for regular maintenance of the landscaping;
 - c. The Commission requests that all references of the use of hay on the plans be removed and replaced with straw;
 - d. The Commission also requests that the Planning Department, Planning Board, and CLD do their normal review of the final Storm Water Management Plan to ensure storm events are adequately handled on site and would not overwhelm the proposed storm water devices being proposed. The Commission would like to see a copy of the final report once available;
10. The applicant shall address the following planning staff technical comments:
- a. Please address the following relative to the Master Site Plan, Sheet 1 of 10:
 - i. Please add the following statement to sheet 1 per Section 4.06.1.k of the Subdivision Regulations: "The Subdivision 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 Subdivision Regulations, excepting only variances or modifications made in writing by the Board or any variances granted by the Zoning Board of Adjustment and attached hereto";
 - ii. Applicant to include the following statement that references the Stormwater Management Ordinance: "This project is subject to the requirements of the Town of Merrimack Stormwater Management Standards (Chapter 167 of the Town's code of ordinances). A Pre-construction meeting with the Town of Merrimack Community Development Department and Public Works Department shall take place at least two weeks prior to commencement of disturbance in accordance with Chapter 167 of the Stormwater Management Standards adopted by the Town of Merrimack Town Council on July 21, 2011";
 - iii. Please remove note #8 and include Flood Hazard Conservation Zoning in note #4;

- iv. Please add the following to note #9: "See December 18, 2013 Decision of the ZBA, Case #2013-36";
- v. Please add "Merrimack Village District" water and "municipal" sewer to note #10;
- vi. Please revise the parking calculations in note #11 to be consistent with the requirements for "storage, self serve" as 1 per 250 storage units plus 2 per employee;
- vii. Please show existing parking spaces for the current building on sheet 1;
- b. The applicant shall include locations of all monuments to be set at street intersections, points of curvature and tangency of curved streets and at angles of lots;
- c. The applicant has not provided information regarding the traffic generation for the site. The applicant shall address any traffic comments prepared by our peer review consultant as applicable;
- d. Please provide appropriate lighting plan details in the plan set as required by the regulations (Section 11.04); or request a waiver as necessary;
- e. Please indicate the dimensions of the proposed wall signage shown on the building elevations sheet to ensure compliance with Zoning Ordinance requirements.

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

1. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
2. All proposed easements and any applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
3. The applicant shall submit an As-Built Plan prepared by a qualified professional (Professional Engineer or Licensed Land Surveyor) to the Community Development Department prior to the issuance of a Certificate of Occupancy;
4. Per the Fire Marshal, the entire building shall be protected by an approved NFPA-13 compliant fire sprinkler system. (Town of Merrimack Building Zoning Ordinance and Building Code, Section 11) Plans shall be provided to the Fire Marshal for review and approval before a permit can be issued;
5. Per the Fire Marshal, due to the unique hazards associated with a vehicle storage building a pressurized standpipe system shall be installed in conjunction with the sprinkler system. The standpipe system shall have a valved connection point located in the center of each perimeter wall and with an outward opening emergency exit door located within 3 feet of the standpipe;
6. Per the Fire Marshal, the building shall be protected by an approved NFPA-72 fire alarm system. Plans shall be provided to the Fire Marshal for review and approval before a permit can be issued;
7. Per the Wastewater Division, this project will require a flow assessment and sewer connection application to determine the sewer connection fee. The new building will have a separate bill from the existing building.

MOTION CARRIED

7-0-0

7. **Old Blood Properties, LLC. and Joseph K. and Mary El Kareh (co-applicants/co-owners)** – Review for consideration of Final Approval of an application for a cluster subdivision proposing 72 cluster residential lots and 4 open space lots located at Old Blood Road in the R-1 (Residential) District. Tax Map 5B, Lots 001-01, 002, 003, 003-01, 005, 006, 007, 008, 009 and 231. ***This item is continued from the December 16, 2014, January 6, 2015, January 20, 2015, February 17, 2015, March 17, 2015, April 21, 2015 and May 19, 2015 Planning Board meetings.***

Director Thompson noted the Board's packet included a memo from him dated May 28, 2015. The project has been ongoing for many years. Revised plans were received from the Applicant on May 13th. The Application was continued until this time as staff was not afforded sufficient time to complete a full review in time for the Board's last meeting. Staff has completed the final review. The major unresolved item, at this time, is the subject of phasing of the project. Staff recommends the Board discuss that with the Applicant. Staff now has the four official waiver requests, which are summarized in the memorandum as well as recommendations from both the Public Works (PWD) and Community Development Departments.

Mr. Ken Clinton, President, Meridian Land Services, Inc., remarked since last before the Board they more thoroughly reviewed the CLD peer review comments in conjunction with comments provided by Wastewater, the PWD, and other staff and departments. Plan revisions were made and a handful of outstanding items requiring clarification either through the Community Development Department or further discussions with Kyle Fox, Deputy Director, PWD were identified. Meetings were conducted with both, which resulted in additional revisions to the plan, which are not included in the current set, and identification of what might be outstanding or incidentals to make final revisions.

Mr. Clinton remarked, as a result of the meeting with Deputy Director Fox, the number of waiver requests was reduced to four, and Deputy Director Fox's endorsement was gained. Given the likelihood of the waivers being supported by Town staff and departments, they felt it appropriate to move forward with the filing of the New Hampshire Department of Environmental Services (NH DES) Wetlands Permit. Mr. Clinton met with the Conservation Commission and discussed the wetlands permit and the associated crossings; three onsite. Tim Tenhave, Chairman, Conservation Commission (Commission), provided a memorandum that spoke favorably about the project and included comments.

During the meeting with the Commission, they discussed seed mixture along the edge of the disturbed wetlands. Deputy Director Fox had expressed the desire for 5' of separation between either the right-of-way or easement limits to the face of the retaining walls and the wetland crossing to provide ample room to maintain the face of those walls. The Commission wanted to ensure it is a wetlands seed mix used in that area. That was agreed to.

The Commission expressed a desire for some control, in the future, with regard to fertilizer use. Mr. Clinton remarked as much as he understood the comment and agreed in theory of their position he does not see a binding way to bring fertilizer restriction forward to individual landowners that would be enforceable. He commented the Planning Board has, in the past, recognized that although the intent is good, putting such a restriction in place has been recognized as not feasible. He informed the Commission he would once again bring this up to the Board; however, stated his opinion it is not proper to put language in a deed that is not enforceable and to have the builder, developer, real estate agent, or another continue to bring this issue forward to potential and future buyers.

Chairman Best noted Mr. Tenhave's memorandum recognizes the limitations and suggests only that the Applicant manage the fertilizer control as a part of the development.

The Commission looked at Wetland Crossing #1 (initial culvert when entering the property). Where two 24" culverts are identified, they suggested a box culvert be utilized instead. Mr. Clinton remarked even though the second 24" culvert is unnecessary from an engineering calculation, it is actually there for additional critter passage. Although he recognizes the Commission's point of view, he is unwilling to simply make that change at this time. He noted such a change may be triggered through pending wetland comments from NH DES. If that recommendation appears on their list, it will be addressed at that time.

The Board and Mr. Clinton continued to discuss the Commission's comments and phasing the project including paving and drainage for each phase. Chairman Best remarked as part of the approval, the Board could say they have to go all the way to what has been drawn as a hammerhead. Mr. Clinton responded he understands the desire to consider that as a condition, but would not say that is an absolute. There are too many unknowns.

Chairman Best pointed to the east side of the intersection and questioned if there are drainage structures that impact residents on Merrymeeting Drive or in that area or if all of the drainage structures that are important to them are already part of the plan. Mr. Clinton responded, in short, no; Merrymeeting Drive and other Old Blood Road residences are all treated and protected by the two spurs that meet up at the four-way. If you consider the location of the three internal detention basins, they treat certain sections of roadway. Once you pass the drainage

basin and come down the hill towards the four-way some of that drainage to the four-way is going down towards Madeline Bennett and some is coming down towards Old Blood Road, but they are being intersected and collected by the downslope drainage basins.

Chairman Best remarked if they built the two legs as Phase I and then proceeded up the roadway in any manner the developer thought correct, but had to build the drainage structures as they got that far down, in terms of the three swales, is that something that would be acceptable. Mr. Clinton commented conceivably a developer could build up to the corner without having to install the drainage basin. Chairman Best questioned if the drainage basin would be protecting the lots below it. Mr. Clinton stated it would not be protecting them it would be collecting any stormwater drainage from on top. Chairman Best stated houses are being constructed in its natural course below that drainage basin. Mr. Clinton pointed to the area of a swale noting it would intercept runoff from that grouping of lots. He commented he did not believe there was the need to get that particular with the phasing as long as it is understood the suggested turnarounds are there to aid in the options of construction not necessarily to direct someone how to build it.

Chairman Best remarked he understands that, but saying that the two legs off of Old Blood Road are going to be built first with all of their drainage structures goes a long way towards what a phasing plan has to accomplish, which is to say you are not going to build a bunch of houses and then disappear before we protect the people on Merrymeeting Road, etc.

Mr. Clinton commented he thinks it would be entirely appropriate if that were a part of a condition; that the two legs (Chestnut Hill Road and Madeline Bennett) were constructed first with the appropriate drainage. That would then protect the interests of the abutters located downslope.

Chairman Best asked how the Board would know that, within the subdivision, development will proceed in a way that doesn't get any of the homes in trouble with regard to drainage. Mr. Clinton responded as long as the properties seeking a Certificate of Occupancy have the pavement and signoff by Town staff that would cover the Town. If a developer came in and said I would like to have a temporary turnaround on Lot 37 that is not unreasonable. He does not know that it is the smartest location for one. One was not provided for specifically, but it could be done, and he would not want to preclude that possibility.

Director Thompson clarified the staff position in regard to phasing by stating ultimately the main point of what they wished to accomplish has been captured, which is that the legs connecting to Madeline Bennett and to Old Blood Road are the first phase and that anything beyond that is voluntary on the part of the developer. There should be some depiction of conceptual phasing, but he does not believe it needs to be something that is required in terms of either order or the number of lots. There needs to be something shown on the plan that indicates some level of phasing has been considered for the project per the requirements of the ordinance.

Chairman Best commented he was looking to flesh out whether there is any engineering problem that arises from letting that develop in a way other than all the way up to the hammerheads. Director Thompson stated his belief the primary issue that will drive phasing is the amount of bonding the developer will have to put up for the roadway construction. That will probably be the driving factor in terms of where these phases are going to take place.

Chairman Best asked for clarification, the first part of the loop across the north was almost 2,000 ft. to the hammerhead. Mr. Clinton stated it to be 2,047 linear feet. Chairman Best commented on the amount of bonding that would be required. Mr. Clinton remarked that is why he stated he is unsure who will ultimately construct this and what their bonding ability would be. When asked which is the shortest of the three segments of road, Mr. Clinton stated it to be the southerly first third, which is about 1,520 lineal feet.

Mr. Clinton stated his certainty he and Director Thompson could craft a note that addresses the certainty of the connections from Old Blood Road and Madeline Bennett to the intersection, e.g., identify it by stations stating it is understood these would be constructed with appropriate drainage and utilities prior to issuance of building permits and/or Certificate of Occupancy, etc.

Member Disco remarked the Board originally discussed fixing the existing snag in the sewer line that goes along Madeline Bennett and feeds the school. He stated that to be part of this project, and something for which he does not believe the Board has seen a plan. Mr. Clinton stated the plan to fix it is actually the original sewer design plan itself. There is no new design. The installation, due to either installation practices or the nature of the soil in

the ground itself, resulted in some deficiencies. The design plan is the plan to be used as the solution. Member Disco stated his opinion that should be included as part of Phase I of the so-called legs. Mr. Clinton commented Note #10 on the Site Plan states in part: "The sewer repair for Baboosic Lake Road must be completed and accepted by Public Works prior to issuance of any building permits."

Director Thompson called attention to the addition of a technical comment that states the need to either show those plans in the plan set or to add the proper reference to the design plans.

Member Millns stated Sheet SP-1 identifies 1 flashing 20 mph school limit sign, but not the other. Director Thompson stated that is addressed in comments from both him and the PWD. Member Millns noted on the top of the sheet there is identification of bend signs with a 20 mph sign, and asked for clarification noting the minimum speed limit in this State is 25 mph except for school signs with flashing yellows. Mr. Clinton stated the signs were put in at the request of Deputy Director Fox due to the curve sweeping around from where Madeline Bennett is now to the relocated portion. Member Millns asked that they be the recommended yellow signs not the standard ones. Director Thompson stated they are the yellow warning signs.

Member Millns stated buses trying to come out of the school drive are going to be stuck because they will not know whether there are cars coming up Madeline Bennett. There is the problem of parents coming up, you don't know whether they are going to swing around or come into the school drive. The Board was provided with examples of signage utilized in some other communities to indicate to motorists the necessity of giving a directional sign. They do not appear on the site plans, which he does not understand. He reiterated buses will not get out of that school drive in the desired time. He stated his desire for the directional signs to be installed in the area where the 20 mph yellow sign is planned to instruct motorists to indicate whether they are entering the school drive. Mr. Clinton stated the information was received, and was discussed with Deputy Director Fox. It was decided that was not appropriate, it was additional signage that was not necessarily needed at this location. There was a comment regarding potential sign fatigue. He stated an understanding for the comments and concerns; however, reiterated it was decided that was not necessary at this location at this time.

Member Christensen questioned the possibility of designating a no-left turn during specific hours. Director Thompson noted there is no left turn. It is the through movement of the road.

Member Falt spoke of similar signs located in Amherst on Baboosic to Spring Road where it splits coming from the Town of Amherst toward Merrimack. If you are sitting there waiting for a light it lets you know you need to use your directional. She did not believe it would result in too much signage, and stated it to be a small compromise considering the concern stated.

Mr. Clinton stated he would be happy to ask for reconsideration by the PWD. He stated a willingness to erect the signs if the PWD would accept them and maintain them. Chairman Best commented there is no reason why the Town would object to that, it is whether the sign ought to be there in the first place.

Member Millns remarked similar signs are posted in Amherst, Milford, and Hollis. Member Christensen questioned the effect. Mr. Millns provided assurances they have a positive impact. Member Christensen stated she has no objection to their placement as they would encourage motorists to do what they should be doing. Chairman Best stated those same signs were at the intersection of Baboosic Lake Road and McQuestion Road before the red light went in. He resides two blocks from there, used that intersection regularly, and can state motorists did not observe those signs. Member Millns stated even if every other motorist uses their directional it will alleviate some of the problem.

Chairman Best stated Madeline Bennett is the through movement; turning into the school is a right turn, which ought to be signaled. That is where there ought to be a signal. No signal means the motorist is going to the Chestnut Hill subdivision. Member Millns commented if motorists are encouraged to use their directional signals that would give the bus drivers or anyone else trying to come out of the school drive a chance. Chairman Best stated he does not object to the signage. Mr. Clinton stated he would pose the question, and ultimately the decision will be that of Deputy Director Fox. Chairman Best remarked he is unaware of where the jurisdiction stops and starts on something like that because it is not part of the subdivision.

Member Disco stated his opinion the decision should be left to the PWD, and that Deputy Director Fox is the person to make those kinds of decisions. Member Christensen stated the Board could encourage him to allow that sign. Member Disco stated he is satisfied with the Applicant posing the question one more time.

Councilor Mahon suggested forwarding something to the Town Council suggesting use of such signage in that area might be helpful. Member Millns commented it is relevant because a few meetings prior Deputy Director Fox put on a presentation, on record, that if the system doesn't work the Town will fix it. He suggested the Town Council ought to know that they are on the hook. Deputy Director Fox put the Town on the hook for putting this system right if anything goes wrong. Chairman Best remarked he is uncertain if "on the hook" is the right terminology or whether a sign before the first shovel hits the ground is a solution to a problem that does not yet exist, but either way he does not believe the cost of a \$100 sign, if it ends up being the solution, is going to be the obstacle to this. He questioned the will of the Board with regard to forwarding a communication to the Town Council and the School Board suggesting the Planning Board supports a use directional sign. Director Thompson stated the letter would be addressed to the Town Council. Chairman Best commented the Town Council is the only one with authority over the road, but the School Board could be copied as a matter of courtesy. Councilor Mahon stated the Town Council has no authority over that road yet. The road has not been accepted.

The consensus of the Board was for a memo to be prepared for the Chairman's signature and addressed to the Town Council regarding the use of the use turn signal sign.

Chairman Best opened the floor for public comment at 9:30 p.m.

Public Comment

Rebecca Statz, 11 Bradford Drive, Merrimack Bus Driver, STA

Ms. Statz stated she has been a bus driver for the Town of Merrimack for eight years, and is employed with STA. She stated she did not represent STA; however, did represent a number of concerned bus drivers. She spoke of having appeared before the Board at its last meeting and the concerns she brought forward. She begged the Board to take into consideration that area is already heavily congested at many times during the day (not only during times of pick-up and drop-off). It is very difficult for the bus drivers to negotiate that on most days. One of the concerns the bus drivers have is what would happen with the staging of the second wave of buses that are currently staged on Madeline Bennett waiting at dismissal time as there is not sufficient room for all buses to encircle the school proper. In addition, they have a number of Provider vans who, at the moment, park in the cut-out, which would be eliminated by the proposed plan

Another concern is with buses at a stop and Madeline Bennett having the right-of-way, which it would. Buses will have to stop and wait and wait and wait. Last year an experiment was conducted where each bus was held for 5 seconds. She commented 5 seconds is nowhere near the amount of time the buses will have to wait to be able to get out.

She stated motorists should be signaling at least 100' before a turn. Most motorists will be focused on the big wave of yellow buses and concerned if they don't speed up they will get stuck behind them. Ms. Statz stated her opinion it would be very difficult to maintain and enforce a 20 mph speed limit.

The buses, without an indication, have to assume the motorist is going to be continuing on to the left into Chestnut Hill. Pausing like that may not seem to be a big deal, but 5 seconds multiplied exponentially by the number of buses adds up quickly. Given Madeline Bennett is truly a keyhole entrance to that school (no other way in or out), if something were to occur in that turn area, the buses would be completely frozen in place.

What happens at the Middle School and to some extent at the High School determines to a large extent what time the buses will be able to get to the next destination. Ms. Statz remarked she drops off at the high school, goes to the middle school, and from there directly to Back River Road to start picking up for Reeds Ferry. She has at best a 2-3 minute window, which is not a lot, especially during inclement weather and slow driving. Having to wait, the buses will get to the point where they will not be able to meet the obligations to the students they are supposed to be picking up. It is a domino effect. She commented on the impact on the school if there are consistent long-term delays because the buses cannot get out.

She requested, if the Board does nothing else, that it require the signage. She reiterated the climate is against the bus driver; get where you are going faster than the bus. Even with 100' of notice, buses cannot accelerate fast enough to make it clearly through an intersection. There is the need for more notice than that, and without it, they have to sit and wait. She spoke of having attended a safety meeting earlier in the day, and the saying that was repeated; "observe, but don't rely".

Laurette Cillo, 26 McElwain Street, Merrimack Bus Driver, STA

Stated she has been driving a bus for 40 years. During that time she has watched the Town grow. She has watched parents who are impatient and don't want to be behind a bus. She stated agreement with the comments made by Ms. Statz. She spoke of children that are walking, riding, skateboarding, etc., and the level of awareness that is required in a school zone. She stated her opinion the safety of the children should be the number 1 priority.

Chairman Best declared the public hearing closed at 9:41 p.m.

Mr. Clinton stated there to be four waiver requests all of which are road related, and have been discussed to some degree preliminary with the Board for several months now. The first is from Section 4.12.b – Street Design; specifically it is for the area as you leave Old Blood Road just prior to its entrance with the four lot hammerhead. A waiver is being sought to allow the road grade to be 1% where the regulation minimum for new roads is 1.5%. The reduction in percent grade is sought to allow the road to be lower at the first wetland crossing. Increasing at a higher grade would result in a higher wetland crossing. With a higher wetland crossing the footprint of the wetland impact would be larger. Because they are coming from an existing road into a new road, Deputy Director Fox felt it appropriate, and was supportive of the waiver.

The waiver request for Section 4.18.b – Right of Way Work, has to do with slopes of side fill. The road was once proposed to be 1-1 slopes. The regulation Deputy Director Fox follows is 3-1. A compromise was reached at 2-1.

The waiver request for Section 4.12.d – Street Design, is related to the grades as you approach an intersection. There is generally a swale/low point before approaching an intersection, which helps drainage to prevent water from flowing into an intersection. Given the nature of the four-way intersection, Deputy Director Fox felt it appropriate to waive the road grade coming from this section of the road to the four-way.

The waiver request for Section 4.20 – Pedestrian Ways & Sidewalks is a partial waiver having two parts; eliminating the grass strip when reaching a pinch point of wetlands and property ownership on the classic section of Old Blood Road as it approaches the school driveway. There is simply not enough road width they have the right to construct within to include that grass strip. Removal of that was supported by Deputy Director Fox.

After going through the last design revisions and meeting with Deputy Director Fox, it was determined appropriate to ask for a waiver for the entire section of road without sidewalks. That has multiple levels. The last time this was discussed they were to look at the impacts of a partial sidewalk/spur along the frontage of Lot 1 versus the necessity to go all the way down to the existing Old Blood Road.

In their evaluation, they simply cannot warrant the construction and the increased impact at the wetland crossing to support the sidewalk spur. The key points are there are no sidewalks down at Old Blood, the Prince Subdivision and the fourth lot that join the Prince Subdivision both had that requirement of sidewalks waived. There is no connectivity, and each of the 71 internal lots proposed will have its own direct access to sidewalks within, which he believes substantially meets the purpose and intent of the sidewalks. Any further request for sidewalks coming down to where there is no connectivity would actually be a financial hardship to try to expand an already substantial design on that wetland crossing.

Chairman Best commented the requests related to road construction or the grass strip by Madeline Bennett are fairly simple and straightforward, and with Deputy Director Fox's support he could not think of any reason why he wouldn't personally support them. With regard to the request to waive the sidewalk requirements on the spur towards Old Blood Road, he can understand what was stated in terms of having considered all of the options with either segment of sidewalk on either side of the crossing, etc. He stated he is personally satisfied Mr. Clinton has done his best at trying to identify a design that works.

Member Disco stated he would have preferred to go with a sidewalk on the water crossing. He stated his understanding of the arguments. He commented he is uncertain he is convinced by the arguments, but for what benefit it would gain it probably is worth a waiver in this circumstance because of the unusual terrain and the potential impact to wetlands.

MOTION BY MEMBER DISCO TO WAIVE THE REQUIREMENTS OF SECTIONS 4.12.B – STREET DESIGN, 4.12.D – STREET DESIGN, 4.18.B – RIGHT OF WAY WORK, AND 4.20 – PEDESTRIAN WAYS & SIDEWALKS NOTING STRICT CONFORMITY WOULD POSE AN UNNECESSARY HARDSHIP TO THE APPLICANT AND THE WAIVER WOULD NOT BE CONTRARY TO THE SPIRIT AND INTENT OF THE REGULATIONS.

MOTION SECONDED BY MEMBER CHRISTENSEN.

MOTION CARRIED

7-0-0

Member Disco requested clarification as to the four areas of common land. Mr. Clinton stated there remain 4 open space parcels; two of which will have a formal easement granted to the Merrimack Conservation Commission for their expanded oversight and enforcement. The northerly strip, which abuts the existing Commission easement is 19.9 acres and is known as Lot 5B-5. That will have not just typical open space covenants and restrictions, but further conservation easement over it. The next is the middle area known as Lot 5B-7, which is 17.1 acres and will have the open space covenants and restrictions. The remaining area is open space between the relocated road and the Class VI portion of Old Blood Road known as Lot 5B-8. It is 4 acres and will simply have the open space covenants and restrictions on it. The largest piece of property, open space Lot 5B-2 is 81 acres. It is also going to have the same covenants and restrictions for open space with the Commission oversight easement.

Total open space on the property is 122.6 acres, which is 63% of the overall area. The conservation easement will be 101 acres. It well exceeds the requirement for open space.

Chairman Best commented he likes everything that is built into the subdivision. He stated his big concern has always been the bus traffic. He remarked it is a lingering concern for him to see that it plays out like everybody that is a traffic engineer predicts it will, and he hopes it will. It is his big concern, but not such a concern that he would not support the approval being sought. He stated his hope, as the project goes forward, if there are ways the Applicant can be sensitive to how this thing plays out in ten years as you are building house #17 or 21 or whatever number you are up to, to be proactive with solutions and work with the Town on those kinds of things.

Mr. Clinton remarked if he is still involved in any way he has an interest in making sure it is done right. If there is a problem he is certainly hopeful he will be involved to help fix it.

Chairman Best commented he does have confidence and faith in the work of Deputy Director Fox and the other traffic engineers who have commented on it. They have the expertise he does not. Those who have expressed concern are lay people making an opinion without having all of the training the traffic people do.

MOTION BY MEMBER DISCO TO GRANT FINAL APPROVAL WITH THE FOLLOWING PRECEDENT CONDITIONS TO BE FULFILLED WITHIN 12 MONTHS AND PRIOR TO PLAN SIGNING, UNLESS OTHERWISE SPECIFIED.

MOTION SECONDED BY MEMBER FALT.

1. Final plans and mylars to be signed by all property owners. The Licensed Land Surveyor, Professional Engineer, Certified Soil Scientist, and Certified Wetland Scientist shall also sign and seal final plans and mylars;
2. The applicant shall note all waivers granted by the Board on the plan (including Section, and date granted) as applicable;
3. The applicant shall obtain all applicable state permits (AOT, Wetlands, NHDES Sewer Connection), note permit approvals on the plans, and provide copies to Community Development;
4. The applicant shall provide draft copies of any legal documents (easements and required Homeowners Association/Condominium Declaration from Section 3.08.18 of the Zoning Ordinance) for review, at the applicant's expense, by the Town's Legal Counsel;

5. The applicant shall provide verification from the Town Engineer that the proposed relocation of Old Blood Road meets the approval of the Public Works Department as required by the terms of the Conservation Easement on Map 5B, Lot 10 (Middle School Property);
6. The applicant shall address the comments from the Town's peer review consultant, CLD, as applicable;
7. The applicant shall address the following comments from the Public Works Department as applicable:
 - a. From Sta. 33+25+/- to 36+00, the road is placed to one side of the ROW. A sight distance easement extending a distance of 25' from centerline of road should be granted to the Town;
 - b. Underdrain should be shown on both sides of the road in all cut section areas – add the underdrain to the typical section on both sides for clarity. Underdrain may be eliminated during construction by Town Engineer if conditions warrant;
 - c. A grading plan should be developed for the intersection areas so the contractor can tell which roads are primary (carrying crown) and secondary (matching profile). The cross sections do show that the 36 stationing is primary to the 80 stationing but having a grading plan to show elevations at curblines is helpful;
 - d. On cross sections, any slopes different than 3:1 should be labeled;
 - e. Stamped shop drawings for the box culvert must be submitted to Public Works for review and approval. Must meet NHDOT specifications;
 - f. Location of 2nd school zone flashing sign needs to be shown;
8. The applicant shall coordinate with the Wastewater Division for sewer permitting locally and with NHDES;
9. The applicant shall address any forthcoming comments from the Fire Department, as applicable;
10. The applicant shall address the following comments from the Conservation Commission as applicable:
 - a. The Commission requests the applicant uses only a wetland seed mix at all retaining walls and other improvements being proposed along the roadways that are near wetlands, culverts, etc.;
 - b. The Commission realizes there is no way to make recommendations that would flow to the eventual property owners of the homes that will be built in this subdivision. The Commission knows that seeding and plantings will need to be done as part of the road preparations and other infrastructure needed for the development. Given that, the Commission proposes that only no phosphate, slow release nitrogen fertilizers be used as part of this aspect of the project. The Commission further recommends that the applicant's contractor considers utilizing a soil testing facility to determine what levels and applications rates may be necessary before doing any application of fertilizers on the site especially given the proximity to wetlands in the area;
 - c. The Commission recommends that one culvert be modified from what was presented. It is location C-6 as noted on plan sheet P-3. This is proposed to be 2 separate 24" HDPE pipes. The Commission would like to see a box culvert of an adequate size used instead. This culvert is to allow for the water drainage between two wet areas. The Commission believes a box culvert in this location would provide for better travel between the wet areas by the various small creatures that find their home in these wetlands, ponds, and their surrounding uplands;
11. Address the following Planning Staff Technical Comments:
 - a. The plan set does not contain plans or information regarding the required upgrade to the off-site sewer system (Baboosic Lake Road to the Middle School), which is a condition of the variances granted by the Zoning Board that permits the cluster subdivision and the proposed increase in permitted residential density. The applicant should add the appropriate plans to the plan set, or provide proper reference notes to plans that meet the approval of Public Works and the Wastewater Division;

- b. The applicant shall obtain the approval of the Fire Department for street names and verify the proposed lot numbering is approved with the Assessing Department, and street addressing for the proposed lots with the Fire Department (and revise the plans accordingly, as necessary);
- c. Please indicate the location of the "School Speed Limit" sign/lighting on the approach to the intersection with Madeline Bennett on the relocated Old Blood Road (currently only shown on the Madeline Bennett approach, *also requested by Public Works*);
- d. Please add/revise the following notes to the plans:
 - i. Please add notes relative to the requirements of Section 3.08 of the Zoning Ordinance relative to Cluster Subdivisions:
 - 1. Note explaining how density was calculated;
 - 2. Note the residential net density of the developed portion of the site;
 - 3. Open space requirement and actual amount of open space provided;
 - 3. Note how the open space is to be protected;
- e. Please add appropriate notes describing proposed project phasing (and depict graphically on the plans as applicable);
- f. Please place the Planning Board "signature block" in a consistent location on the plans (preferably on the right side of the sheets above the titleblock) as much as is practicable;
- g. The applicant shall verify that the "Cluster Subdivision Plan" sheets (Sheets #6-11) meet the requirements of the Hillsborough County Registry of Deeds for recording purposes (and revise/add sheets to the plan set as necessary). Staff understands that typically the Registry does not record plans that have topography on them.

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

- 1. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
- 2. All proposed easements and any applicable legal documents (including the required Homeowners Association/Condominium Declaration from Section 3.08.18 of the Zoning Ordinance) shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
- 3. As required by Section 3.08.13(f) of the Zoning Ordinance, all deeds transferring any interest in the real property included in the development shall specify that the common land/open space parcels in the development are acknowledged to be part of the residential use and do not qualify for "current use" real estate tax appraisal and assessment under NH RSA 79-A;
- 4. As stipulated in Section 3.08.18 of the Zoning Ordinance, any proposed changes to the project's Articles of Association or the Condominium Declaration following the final approval of the project shall require the prior written approval of the Planning Board.

MOTION CARRIED

6-1-0

Member Millns voted in opposition

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

- Preliminary discussion of soils information for potential ordinance amendments (as requested by

Pete Gagnon)

Director Thompson stated the current plan is to meet tomorrow morning with Mr. Gagnon. The last meeting had to be postponed.

Director Thompson informed the Board of a discussion he had with Matt Caron, Vice Chairman, Conservation Commission relative to a lot of the issues Mr. Clinton brought forward regarding fertilizer and the Commission's desire at various points to have that part of Deeds with single-family development. Mr. Caron requested the Board consider the possibility of conducting a joint meeting with the Commission at some point in the next few months to discuss some of the items of concern the Commission has seen as repeated items, and to open up the lines of communication between the two boards so that everyone is on the same page.

Chairman Best stated several of the Commission's suggestions seem to be consistent from the applications, e.g., the use of straw instead of hay, slow release fertilizer, no salt use in any of the wellhead or aquifer protection districts, etc. He questioned if that is something that could be considered as an amendment to the Site Plan Regulations so that they occur automatically. Director Thompson stated those are things that are part of the Master Plan process. The Merrimack Village District has also been doing some work on that. They were really the key component his staff has been waiting to get some final discussion with in terms of their concerns and recommendations before broaching that subject in terms of amendments.

Chairman Best questioned the will of the Board. The consensus of the Board was to hold a joint meeting. Chairman Best questioned if there are other groups or individuals that should be a part of that discussion. Director Thompson responded, based on the brief discussion he had with Mr. Caron, he believes the desire to be more of the types of things discussed, and ensuring everybody is clear as to what the expectations of both boards are of each other moving forward. When asked, Director Thompson stated, by State law, when conducting joint meetings the Planning Board Chairman runs the meeting. Chairman Best requested that Director Thompson arrange for an invitational memo to the Conservation Commission and determine when a joint meeting would fit into the Board's schedule.

Member Falt commented on having submitted her email requesting reappointment.

9. Approval of Minutes – May 19, 2015

The following amendments were offered:

Page 2, third paragraph, fourth sentence: amend to read: "She went on to explain that everything went wrong for the Applicant."

Page 2, Line 20; replace "to complete" with "to ensure completion of"

Page 2, Line 24; sentence should end with "but he feels it is still better to have the applicant do the work than to pull the bond."

**MOTION BY MEMBER MILLNS TO APPROVE AS AMENDED.
MOTION SECONDED BY MEMBER CHRISTENSEN.**

**MOTION CARRIED
7-0-0**

10. Adjourn

**MOTION BY MEMBER MILLNS TO ADJOURN.
MOTION SECONDED BY MEMBER SEBRING.**

**MOTION CARRIED
7-0-0**

The June 2, 2015 meeting of the Merrimack Planning Board was adjourned at 10:03 p.m.