



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY JUNE 20, 2023

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, June 20 2023 in the Matthew Thornton Room.

Members Present:

- Robert Best (Chair)
- Paul McLaughlin (Vice Chair)
- Brian Dano
- Lynn Christensen
- Jaimie von Schoen
- Neil Anketell
- Town Councilor Barbara Healey - Ex-Officio
- Haleem Mediouni – Alternate
- Nelson Disco – Alternate

Members Absent:

- Maureen Tracey – Alternate

Staff Present: Tim Thompson, AICP, Community Development Director

1. Call to Order

Chair Robert Best called the meeting to order at 6:30 p.m. and led everyone in the Pledge of Allegiance.

2. Consent Agenda

- a. Extension Request: L&W Supply site plan located at 17 Smith Road (#PB2021-46).

The Board voted 7-0-0 to approve the Consent Agenda, on a motion made by Lynn Christensen and seconded by Brian Dano.

- ### 3. Merrimack Parcel A, LLC (applicant) and Merrimack Parcel A, LLC and Slate Merrimack Acquisition, LLC (owners) – Continued review for consideration of an amendment to a previously approved Mixed Use Development Conditional Use Permit, calling for the replacement of 93,720 s.f. of office space, 37,400 s.f. of retail, 15,800 s.f. of restaurant space and a 5,000 s.f. event center as part of Phase II with 178 multi-family residential units, 5,000 s.f. of office space, 7,400 s.f. of retail space, 8,000 s.f. of restaurant space, and an increase of the 7,600 s.f. of restaurant space approved as part of Phase I to 8,000 s.f. as well as a reduction of the 120-room

1 hotel approved as part of Phase I to 110 rooms. The parcels are located at 1, 2, 3 and 4 Lexington
2 Court in the I-2 (Industrial) & Aquifer Conservation Districts and Wellhead Protection Area. Tax
3 Map 3C, Lots 191-2U1-191-2U4. Case # PB2023-05. ***This item is continued from the April 4,***
4 ***May 2, and May 16, 2023 Planning Board Meetings.***
5

6 Mr. Thompson prefaced the presentation with a brief summary of where the project stands. He
7 reminded everyone that the last continuance was granted so that the Board could meet with the
8 Town's Legal Counsel and that meeting has taken place. He also reminded the Board that the
9 public hearing session was closed at the last meeting so the Board has the option to begin
10 deliberations immediately or re-open the public hearing. Mr. Thompson wrapped up his
11 summary by indicating that staff's recommendation on this matter has not changed and they are
12 in favor of option 2 in the staff memo dated May 12, 2023 (which is to deny the request).
13

14 Morgan Hollis (Gottesman & Hollis, P.A.) & Gordon Leedy (Tighe & Bond) presented the
15 application to the Board. Mr. Hollis stated that he has no new material to present to the Board
16 but would like to address the staff recommendation. He pointed out that there was a motion made
17 at the last meeting to approve the application that was seconded, however it was ultimately
18 withdrawn to allow the Board time to meet with the Town's Legal Counsel. He then read the
19 recommended staff motion from the memo dated May 12, 2023 (which is to deny the request)
20 and argued that there is no reason to support a denial because he feels that they have met all of
21 the necessary criteria to grant the request. He then walked through a timeline of Zoning Board
22 actions regarding this project consisting of the following:
23

- 24 • 2015: A variance was requested and granted by the ZBA to allow mixed use on the
25 property.
- 26 • 2019: The applicant requested an amendment to the CUP to remove most of the
27 commercial space and replace it with 208 residential units. Staff determined that in order
28 for the Planning Board to consider the amendment, a variance would be needed for the
29 increased density. A variance was requested and granted by the ZBA to allow up to 208
30 residential units.
31

32 Mr. Hollis stated that staff has consistently argued that the Planning Board determines density
33 but questioned whether or not that is accurate since they had to obtain a variance for the
34 increased density and even had to request an extension of the variance that was granted to ensure
35 it did not expire. He re-stated his opinion that the Planning Board's function is to determine if the
36 application meets the CUP criteria outlined in the Zoning Ordinance, and feels that they have.
37 There has been discussion about the term "mixed use" and whether or not this application meets
38 the definition however, since the term is not defined in the Ordinance, it is open to interpretation.
39 Mr. Hollis pointed out that the staff memo mentions that the proposed density exceeds anything
40 in Merrimack and surrounding cities. He does not disagree that it may be the densest project in
41 town but he has worked on many others in Nashua that have a density greater than this. He
42 recited several portions of section 2.02.4 of the Zoning Ordinance including 2.02.4.e that states
43 "The Planning Board may in its sole discretion require more or less stringent dimensional
44 requirements than those referenced above to facilitate the integration and connections between
45 mixed use areas being developed, and to provide reasonable buffering and separation between
46 proposed residential, commercial and industrial uses." His interpretation of this language is that
47 this means that the density is not a flat number and can be altered by the Planning Board as long
48 as the CUP criteria is met, which he feels it has been. He opined that the Board cannot deny the
49 request simply because it is "too much" they need to point to a specific criteria and provide a
50 reason why they feel it isn't being met.

1
2 Mr. Leedy encouraged the Board to look at the project's intensity from a traffic and layout
3 perspective rather than the number of units. He advised the Board that this new plan has more
4 open space than what was originally approved and in addition to that, the traffic numbers have
5 decreased with the increase in residential use.
6

7 Public comment
8

9 Mike Mills, (7 Arbor Street) commented that he feels that the meeting minutes need to provide
10 more information so that the abutters can properly respond to what is being proposed. He wants
11 to know how many floors the proposed building is and could not find this information anywhere
12 in the minutes. Mr. Thompson interjected to advise Mr. Mills that there is not a site plan being
13 presented at this time, it is a CUP discussion which would allow the applicant to move forward to
14 the site plan process where such design information would be required.
15

16 Mr. Mills mentioned a proposed development of an asphalt plant in Nashua was recently denied
17 because their Planning Board determined that it was going to have an adverse effect on the
18 surrounding neighbors. He compared that project to this one because he feels that this proposal
19 will negatively impact the existing neighbors behind the property and stated that the proposed
20 building will only be 240 feet away from the closest single family home behind the development.
21 He continued by stating that the lighting on the existing building is already excessive and the
22 abutters have shown several pictures that demonstrate how bright the lights already are. He can't
23 believe the Board is now considering approving another building that is much closer without
24 knowing the impacts it will have on the adjacent neighborhood. He stressed that the proposal is
25 going to destroy the neighborhood that people have lived in for 30, 40 and 50 years.
26

27 Mr. Mills then asked if there are meeting minutes from the Board's meeting with the Board's Legal
28 Counsel. Chair Best explained that the meeting was what is referred to as a "non-meeting" under
29 state statute and the law stipulates that minutes do not have to be taken at non-meetings. Mr.
30 Mills expressed his dissatisfaction with the fact that minutes were not made available to the town
31 residents and Chair Best reminded Mr. Mills that it is a State law and not something the town has
32 control over. Mr. Mills then expressed concerns that there is conflicting information about the
33 hotel being under construction and when the roundabout is going to be built.
34

35 Mr. Mills also shared his belief that he feels the application was not properly filed because the
36 owner of the existing Slate building did not sign the application so in his opinion, the Planning
37 Board meeting should never have taken place. He continued to express his belief that the details
38 of the project need to be known prior to a decision being made so that a determination can be
39 made if there is an adverse impact on the surrounding neighbors. He expressed frustration with
40 the fact that developers are getting approvals for projects that initially appeal to the Board and
41 then subsequently amending them to suit their needs and the Board is letting it happen. He
42 implored the Board to deny the project due to the impacts on the surrounding neighbors.
43

44 Mr. Thompson addressed some of comments made by Mr. Hollis during his presentation. He
45 started by informing the Board that when the CUP was first approved, the existing building was
46 approved for 192 units and was later amended to allow for 224. At the time this change was made,
47 a variance was not determined to be necessary because staff felt it was reasonably consistent
48 with the 2015 variance that was granted allowing the applicant to proceed to the Planning Board
49 for a mixed use CUP where such a project is not permitted. The reason this new request needed
50 a variance is because staff made the determination that the proposal is significantly different than

1 what the ZBA approved in 2015, and because of that, it required additional relief. The ZBA did
2 grant the variance, allowing the applicant to proceed forward to the Planning Board to make the
3 final determination on the density as per the ordinance. Mr. Thompson urged the Board to
4 consider the significance of the changes being made to the project and the character of other
5 multi-family developments that have been recently approved in town.
6

7 Chair Best asked the Board members if they want to go back through the CUP criteria again and
8 discuss each point separately and Lynn Christensen responded that she feels she has enough
9 information to make a decision. Neil Anketell shared his opinion that the proposal is drastically
10 different than what was originally approved and he does not support it, it looks nothing like what
11 was originally approved and does not feel that it is right for Merrimack.
12

13 **A motion to deny the applicant's request for relief from the dimensional/density**
14 **requirements (Section 2.02.4.D.4.e) for being far in excess of reasonable density found**
15 **anywhere in Merrimack, being 37.5 times more dense than standard density or 6.28 times**
16 **denser than PUD density requirements, and inconsistent with the levels of increased**
17 **density that have been approved either through variance or dimensional relief in a mixed**
18 **use CUP or every recent high-density residential development in Merrimack, failed on a 3-**
19 **4-0 vote, on a motion made by Barbara Healey and seconded by Paul McLaughlin. Robert**
20 **Best, Lynn Christensen, Brian Dano, and Jaimie von Schoen voted in opposition.**
21

22 Chair Best shared his feelings that the notion of counting density by the number of apartments is
23 not a functional metric and pointed out that the town does not do the same for office space. He
24 feels that other factors like green space and traffic have to be considered and the applicant has
25 demonstrated that both of these impacts have improved with this proposal.
26

27 Councilor Healey argued that the criterion stipulating there should be no negative impact on the
28 existing neighbors is not being met because these neighbors are definitely going to be impacted
29 due to the proposed building's proximity to their homes. She added that she cannot in good
30 conscience vote to approve a project that has a density of 40.84 units per acre.
31

32 Mrs. Christensen stated that she supports the proposal because New Hampshire needs more
33 housing and the location is appropriate for the use. She added that a lot of the abutter feedback
34 (such as lighting and landscaping) can be discussed during the site plan review.
35

36 Mr. Disco shared his opinion that if he was seated as a voting member and not in an alternate
37 capacity, he would agree with Mrs. Christensen and Chairman Best.
38

39 Mr. Thompson provided an overview of the potential conditions of approval that were provided
40 as the 3rd option in the May staff recommendation memo. The requirement of a development
41 agreement was discussed and the Board determined that they would like to have a development
42 agreement for the project. The phasing of the site was also discussed and the Board agreed on
43 the order of the future development that will be outlined in the development agreement.
44

45 **The Board voted 4-3-0 to find that dimensional relief for the additional requested density**
46 **was reasonable, that the CUP application had met all necessary ordinance criteria, and**
47 **further, grant conditional final approval to the amended CUP application subject to the**
48 **following precedent conditions to be fulfilled within 12 months and prior to Final**
49 **Approval (signing of the CUP document and Master Site Development Plan), unless**

otherwise specified, on a motion made by Lynn Christensen and seconded by Brian Dano (Paul McLaughlin, Neil Anketell, and Barbara Healey voted in opposition):

1. The applicant shall revise the Master Site Development Plan and narrative application package as necessary to include all amendments to the CUP as approved by the Planning Board (replacing any plans and narrative portions of the package that are being changed by the amendment);
2. The applicant shall address any forthcoming comments from the municipal departments, boards, and committees as deemed applicable to the amended CUP by the Community Development Department;
3. The applicant shall include as part of the final submission of the Conditional Use Permit package a new/updated page which includes a signature block for the Planning Board's final endorsement of the amended CUP and a full size copy of the Master Site Development Plan for Board signatures;
4. The applicant shall obtain written verification from Merrimack Village District and the Town Wastewater Division indicating that the proposed CUP will provide adequate and appropriate public infrastructure to ensure the proper operation of the proposed mixed uses (as required by the ordinance);
5. The applicant shall provide for review by the Town's Legal Counsel (at the applicant's expense), a Development Agreement specifying the phasing, timing and sequence of the improvements contained within the development and any other such development-related information typically included in other mixed use development agreements the Town has entered into for other mixed use projects. The following phasing sequencing shall be incorporated into the agreement (and also noted on the Master Site Development Plan):
 - a. First: Completion of the required roundabout (intersection of Premium Outlets Blvd and Lexington Ct per the currently approved Phase 1 site plan) prior to issuance of a Certificate of Occupancy for the Hotel and/or the Restaurant that are sub-phases of Phase 1.
 - b. Second: 110 Room Hotel or 8,000 square foot Restaurant indicated as sub-phases in Phase 1 of the currently approved site plan.
 - c. Third: 110 Room Hotel or 8,000 square foot Restaurant indicated as sub-phases in Phase 1 of the currently approved site plan (whichever is not completed second);
 - d. Fourth: Improvements associated with Phase 2 (additional residential and all other non-residential construction), which shall be constructed concurrently and not separated into sub-phases.
6. The applicant shall address the following relative to the Fiscal Impact Analysis:
 - a. The analysis only estimates school aged children using two recent projects. The Town has consistently required the school-aged children multiplier to be from the NH Housing Finance Authority's statewide analysis (0.17 school aged children per multi-family unit). As such the report shall be revised to use the same methodology as was used with the currently-approved CUP:

- i. The Planning Board approved multipliers from the currently approved CUP shall be utilized: NHHFA's multiplier of 0.17 for the 2-bedroom units, 0.0 for studio units, and 0.046 for 1 bedroom units.
 - ii. The report shall be updated to address the increased estimate and fiscal impacts.
7. All future phases of development (regardless of sequencing) shall be required to provide updated fiscal impact analyses to ensure that each phase of the project remains fiscally positive to the Town (the Town reserves the right to require peer review, at the applicant's expense, if necessary for fiscal impact analyses, as determined by the Community Development Department).

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

1. The approval of this amended Conditional Use Permit does not authorize the applicant to undertake any construction related to the proposed development. The applicant must subsequently obtain subdivision approval for the platting of individual lots and site plan approvals for buildings or sites within the mixed use development in accordance with the Town of Merrimack Site Plan Regulations, Subdivision Regulations (as applicable), and Section 2.02.4.D.6 of the Zoning Ordinance.
2. Final Architectural design review of all proposed structures/facilities shall be required at the time of the subsequent site plan applications to ensure compliance with Section 3.12 of the Site Plan Regulations and Section 15.03.D.3 of the Zoning Ordinance as applicable.
3. The applicant is responsible for obtaining any federal, state, or local permits that may be required as part of any subsequent subdivision or site plan approval following the granting of this amended Conditional Use Permit.
4. The applicant is permitted to undertake minor deviations (including but not limited to building orientation on a site, decreases in density or building size, etc.) from the Master Site Development Plan and amended Conditional Use Permit documentation in such instances where the deviations do not increase the impacts to the Town as demonstrated through the traffic impact analysis or fiscal impact analysis. Deviations that increase impacts or those which the Community Development Department is not comfortable making an administrative determination of impact, shall require the applicant to return to the Planning Board to amend the Conditional Use Permit approvals. In no circumstance shall any uses permitted through the approval of this Conditional Use Permit be modified/changed without an amended Conditional Use Permit approval from the Planning Board.
5. If this amended Conditional Use Permit approval is not acted upon within a period of two (2) years from the date of the final endorsement by the Planning Board (for all phases following Phase 1), then the amended approval shall be null and void. Actions sufficient to vest an approval for this amended conditional use permit include Planning Board site plan or subdivision approval (for any phase amended by this approval), issuance of a building permit, or a Certificate of Occupancy issued by the Building Department where no Planning Board approval or building permit is required. However, should any subsequent site plan or subdivision approval or building permit expire unused after the conclusion of the two-year

1 validity period provided for herein, the amended conditional use permit granted as a
2 precondition to said site plan or subdivision approval or permit shall become void as well.

3
4 6. Should the applicant need to extend the two-year validity period, the applicant shall
5 demonstrate to the satisfaction of the Planning Board that it was impossible or impractical to
6 receive the necessary approvals to move forward in reliance on the amended conditional use
7 permit granted within two years.

8
9 7. Any renewal/extension application shall be filed with the Planning Board no sooner than 90
10 days, nor later than 30 days, prior to the expiration of the Conditional Use Permit.

11
12 8. The Planning Board may, in its sole discretion, grant such extension of the above validity
13 period as it deems warranted.

14
15 **4. Planning & Zoning Administrator's Report/Discussion/possible action regarding other**
16 **items of concern**

17
18 Chair Best announced that Paul McLaughlin is not renewing his term as a Board member and
19 Brian Dano is transferring to the Zoning Board. Mr. Thompson advised the alternates that they
20 should let Becky Thompson know if they are interested in becoming a full member.

21
22 Brian Dano asked if the Board can come up with a definition of mixed use. Mr. Thompson replied
23 that it can be done but the Board is about to embark on a new Master Plan, which will provide
24 policy direction for the future, so he encouraged the Board to wait until after that process is
25 complete. Chair Best added that there are also not any parcels left in town that meet the 50 acre
26 requirement.

27
28 Mr. Thompson responded to the statement from Attorney Hollis regarding his suggestion that a
29 motion was missing from the May 2 minutes, stating that the discussion of it would be included
30 in the minutes for tonight, and that the Board need not reopen the vote on the previous minutes.

31
32 **5. Approval of Minutes — June 6, 2023**

33
34 **The Board voted 5-0-2 to approve the minutes of June 6, 2023 as presented, on a motion**
35 **made by Lynn Christensen and seconded by Jaimie von Schoen. Paul McLaughlin and Neil**
36 **Anketell abstained.**

37
38 **6. Adjourn**

39
40 **The Board voted 7-0-0 to adjourn at 7:47 p.m., on a motion made by Barbara Healey and**
41 **seconded by Paul McLaughlin.**