



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY, MARCH 19, 2019

Planning Board members present: Robert Best, Alastair Millns, Tom Koenig, Lynn Christensen, Neil Anketell, and Alternate Nelson Disco

Planning Board members absent: Michael Redding and Dan Ricker

Staff present: Assistant Planner Kellie Shamel and Recording Secretary Zina Jordan

1. Call to Order

Robert Best called the meeting to order at 7:00 p.m. and designated Nelson Disco to sit for Michael Redding.

2. Planning & Zoning Administrator's Report

The Board voted 6-0-0 to determine that Silver Realty, LLC residential subdivision is not of regional impact, on a motion made by Alastair Millns and seconded by Lynn Christensen.

- 3. John Flatley Company (applicant) & Gilbert Crossing, LLC & John J. Flatley (owners)** – Re-opened public hearing (due to the decision to deny the application made on February 19, 2019, lacking the required quorum) for consideration of an amendment to a previously approved Mixed Use Development Conditional Use Permit. The parcels are located at 645, 673, 685, 703, and 707 Daniel Webster Highway in the I-1 (Industrial), Aquifer Conservation and Wellhead Protection Districts. Tax Map 6E, Lots 003-01, 003-03, 003-04, 003-05, and 003-06.

Withdrawn by applicant

- 4. Merrimack Parcel A, LLC. (applicant/owner)** – Continued review of an amendment to the previously approved mixed use site plan for Phase I of the "Merrimack Park Place" project, proposing an additional 32 multi-family residential units and a modification of 17,000 s.f. of specialty retail and restaurant space into a subsequent phase. The parcel is located at 10 Premium Outlets Boulevard in the I-2 (Industrial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 3C, Lot 191-02. Case # PB2019-06. **This item is continued from the February 19, 2019, meeting.**

At applicant's request, the Board voted 6-0-0 to continue this agenda item to April 16, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Alastair Millns and seconded by Lynn Christensen.

- 5. Brett Vaughn (applicant) & Brett W. Vaughn Revocable Trust (owner) –**
Consideration of an amendment to a previously approved subdivision (Oak Ridge) to permit blasting on site during construction. The parcel is located at 123 Wilson Hill Road in the R-1 (Residential) District. Tax Map 4A, Lot 023. Case # PB2019-07.

The Merrimack Conservation Commission (MCC) recommended a condition on the subdivision approval: “since the applicant reported that there would be no blasting during the construction of this project, the Commission recommends the applicant remove all references to blasting from the plan”.

Owner Brett Vaughn, 123 Wilson Hill Road, met with abutters to gain their support for the subdivision. Although he told the MCC and the abutters that he would not have to blast, he has since learned that it is an efficient, simple, safe, and highly regulated way to remove ledge. The other option is hammer drilling from six weeks to two months for eight hours a day. Brett Vaughn described the blast area at the road entrance from Wilson Hill Road. He said it would be approximately 6’ deep and 200’ long and additional blasting may be necessary 2’ in the retention pond.

Chairman Best asked whether ledge under the retention pond would affect drainage. Mr. Vaughn said he was not sure but he could ask his engineer.

Public comment

Chairman Best read a supporting letter from Shawn & Alyson Farrell, 124 Wilson Hill Road. A hammer drill would cause significant noise and would prolong construction by as much as a couple of months. They prefer blasting because it is a quicker and quieter option.

Michael Redding, 105 Wilson Hill Road, wrote in opposition. He claimed that blasting would contaminate and damage drinking water wells at abutting properties because of highly toxic chemicals that can be infiltrated through the ground surface and into the bedrock aquifer. Drinking water wells at abutting residences are recharged by rain water infiltration through the ground surface from the nearby watershed. The bedrock aquifer in this area provides a significant source of water for many abutting wells. Blasting may also cause damage to water production rates of abutting drinking water wells. It would stress the bedrock aquifer and result in collapse of the lineaments and fissures and likely make the wells dry. Other options can be used instead of blasting that would provide the same result: hoe ramming and nonexplosive demolition agent would provide effective removal of bedrock without causing damage to abutting wells.

Fred Grimes, 117 Wilson Hill Road, is concerned about the effect of blasting on his well. He said Brett Vaughn agreed not to blast in order to get abutters’ approval of the proposed subdivision. Chairman Best noted that, sometimes the situation changes and the applicant must return to the Planning Board.

John Eldridge, 101 Wilson Hill Road, said there could be contamination of his well and cracking of his home foundation. There are some shallow water sources and rock formations in the area. Changes to the water supply are of concern. Who would be responsible for remediation? What is the blasting contractor’s track record? What

blasting material would be used? John Eldridge suggested pre-blast testing of wells for water quality and quantity for after-blasting comparison.

Evan Peters, 121 Wilson Hill Road, has a home 500' from the potential blast site. He worries about the root systems of large pine trees on his property and trees falling on his home if the ground shifts.

Jim Wood, 119 Wilson Hill Road, spoke to Fire Marshal John Manuele and to the State geologist about blasting. Both the Town and State have strong regulations. It has already cost him \$40,000 for his only working well. There is no other place on his property to drill another well. The State geologist told him that the chances of the ledge cracking are slim, but that contamination is more likely. If blasting causes any problems, Jim Wood would have to move because he would have no well. As of July 1, there is no water in the dry season on his property. He must protect his well and would have no recourse if blasting causes problems.

Tony Cappuccio, 111 Wilson Hill Road, was also concerned about well damage and contamination. There is very little recourse. Why decide to blast now after having done so many studies that said it is not necessary? Chairman Best replied that every applicant has the ability to ask to change his application. Tony Cappuccio questioned the accuracy of the numerous engineering studies. If hammer blasting is safer, it is a good tradeoff for the extra time and cost. Tony Cappuccio asked whether the buffer/conservation land would be recorded in deeds and suggested that copies be sent to abutters and posted on signs.

Fire Marshal John Manuele described the extensive blasting process at Merrimack Premium Outlets (MPO). He said Merrimack blasting requirements are more stringent than the State's. The blaster on that project was certified and insured. A pre-blast survey was done and the affected distance doubled during the MPO project. Test wells were checked for water quality. A blasting permit lists when one may blast; the applicant notifies the Fire Department each time. Blasting mats are laid to prevent rocks flying out of the blast area. Discussion ensued about why wells were contaminated during construction and blasting at Home Depot several years ago. Fire Marshal Manuele said the residue from the emulsion used in blasting may cause contamination, but no one knows how widespread it would be. In his 13 years as Fire Marshal, there has been no foundation damage from blasting that he is aware of. Most of the land behind the applicant's is open land. He does not know how many abutters are within the blasting district, nor has he seen or reviewed a blasting plan.

Jason Riley, Maine Drilling & Blasting, did the blasting at MPO, which consisted of 1.3 million yards, a 90' cut, and 15,000 yards blasted at a time. For the MPO project two wells were the main concern. There were no issues with wells or contamination. Blasting is safe. Approximately 30,000 yards would be blasted for Brett Vaughn's road. Jason Riley said he could blast as close as 20' from a home. He listed projects he has done, including Route 93 from Exits 3-5. He described the best management practices he follows. Jason Riley does not leave large concentrations of residual in place; he crushes and removes it. He carries \$5 million of insurance, but he does not know how much his insurance company has paid out in claims against him. The Vaughn blasting

would take 10-15 days/20-30 blasts. The deepest hole would be 10'-13' deep, 1,500 square feet each with a 3" diameter hole. Because of the hard rock, wells would not be affected nor fissures created. Brett Vaughn said that hammering would take six weeks-two months. Jason Riley said that rock fractures would be within the blast hole and not go beyond it. Residual vibration dissipates as it moves farther from the blast hole. Wells in the ground would not be affected or dry up. There was no contamination on any of his projects. Discussion ensued about MPO blasting issues, which Marshal Manuele said had to shut down temporarily when seismic testing exceeded limits.

Brett Vaughn said there are perhaps three homes within the 1,500' blasting area.

Lynn Christensen asked why blasting is suddenly needed after many studies stated that it is not. Chairman Best suggested a change in conditions. Blasting is a matter of time, and convenience, but safety is the most important consideration. Nelson Disco claimed that ANFO caused contamination at Home Depot. Alastair Millns said that two months of hammer drilling is objectionable. He would agree only if a blasting survey covered and restored wells' production rates. A well must be drilled at no cost to the abutter if blasting affects the water. Lynn Christensen preferred one big blast but worried about affecting a well that cannot be moved. Tom Koenig said the concern is any risk to the water supply that cannot be replaced, even though the risk is small. The Farrells are the only abutters who support blasting. Chairman Best thought the issues had been resolved and would not have approved the subdivision if Brett Vaughn had asked to blast. He said Michael Redding is a civil engineer and his letter is persuasive. Chairman Best preferred the nuisance of hammer drilling rather than risking blasting affecting wells. Home Depot was constructed 15 years ago; things are different now. There is a lot of blasting in Merrimack, but the Vaughn property is close to fragile wells.

The Board voted 5-1-0 to deny the amendment, on a motion made by Nelson Disco and seconded by Tom Koenig. Alastair Millns voted in opposition.

- 6. Silver Realty, LLC. (applicant/owner)** – Review for acceptance and consideration of a 2 lot residential subdivision. The parcel is located at 102 Bean Road in the R-1 (Residential, by map) and Aquifer Conservation Districts. Tax Map 6C, Lot 145. Case # PB2019-08.

Kellie Shamel informed that Board that, on November 28, 2018, the Zoning Board of Adjustment (ZBA) granted a variance to permit a two-lot subdivision with one lot having 145' of frontage whereas 250' is required. With the exception of frontage on one lot, both lots comply with Zoning Ordinance lot and yard requirements.

Tucker McCarthy, Engineer, Keach-Nordstrom Associates, Inc., said the existing house is on a 7.5-acre lot that will be divided into a 106,000+ square foot lot and a 219,000 square foot new lot. There is adequate Town water and private septic systems. The applicant has applied for septic system approval from the State.

Staff recommends that the Board vote to accept the application, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow it to make an informed decision.

The Board voted 6-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Lynn Christensen.

Tucker McCarthy received comments from the Public Works Department (PWD). Contrary to what they say, the distance for the right-of-way and the required 25' from the center line for future road widening are already on the plan. Other comments deal with sight lines. The original house lot would have 300' of frontage and the new lot would have 145'.

Public comment

Tucker McCarthy said that several abutters submitted letters of support when the application was before the ZBA.

John Normand, 98 Bean Road, asked whether any other variances for wells or septic systems would be granted. Chairman Best replied that ZBA frontage variance was the only variance request to the ZBA.

Attorney Gerald Prunier, 50 Trafalgar Square, Nashua, asked for a waiver from sidewalk requirements, because it makes no sense to have one for only two lots on Bean Road, which has no sidewalk.

Alastair Millns cited the criterion that specific circumstances relative to the site plan or conditions of the land in such site plan indicate that the waiver will properly carry out the spirit and intent of the regulations.

The Board voted 6-0-0 to grant a waiver from the requirements of Section 4.06.1.r and 4.20 – Paved Pedestrian Way or Sidewalk – on a motion made by Alastair Millns and seconded by Nelson Disco.

Staff recommends that the Board vote to grant conditional Final Approval to the application, with precedent conditions to be fulfilled within six months and prior to plan signing, unless otherwise specified.

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

1. Final plans and mylars to be signed by all property owners. The appropriate professional endorsements and signatures shall also be added to the final plans and mylars;
2. The applicant shall obtain all required State approvals/permits (NHDES Subdivision and any others as may be applicable), note the approvals/permits on the final plans and mylars and provide copies to the Community Development Department;
3. The applicant shall note all waivers granted by the Board on the final plans and mylars (including Section, and date granted) as applicable;
4. The applicant shall provide draft copies of any applicable legal documents for review, at the applicant's expense, by the Town's Legal Counsel;

5. The applicant shall address any forthcoming comments from the Building Department, as applicable;
6. The applicant shall address any forthcoming comments from the Public Works Department and/or Highway Division, as applicable;
 - a. 1. What is the width of the existing ROW from the centerline of the road? The Plan should reflect this and follow the guidelines of Section 4.12.1: *Section 4.12.1 Provision For Future Widening or Upgrading of Streets "... the Board shall require dedication by deed and platted in general accordance with the typical sections herein, at least 25 feet from the centerline of the existing Town Road or right of way for the future widening of streets where existing road widths are insufficient for present standards or are of such a nature as to cause traffic hazards."*
 - b. The driveway line of sight shall be maintained.
 - c. The development of the lot shall still allow to continue to flow to the rear of the lot and not become ponded to impact the road or the neighboring lots.
7. The applicant shall address any forthcoming comments from the Merrimack Village District, as applicable;
8. The applicant shall address any forthcoming comments from the Fire Department, as applicable;
9. The applicant shall address the following Planning Staff Technical Comments:
 - a. The applicant shall add a Planning Board signature blocks to the plan for "Chair" and "Vice Chair" per the Board's current structure;
 - b. The applicant shall set an appropriate monument (granite bound) at the northerly property corner at Bean Road for proposed lot 145-1, since the existing iron pipe is not located at the actual property corner;
10. The applicant shall address any conditions made by the Planning Board during the public hearing;

Staff also recommends that the following general and subsequent conditions be 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;
3. The applicant shall obtain right-of-way permits from the Public Works Department for all new driveways.

- 7. Kinsley Osgood-Barnard (applicant/owner)** – Review for acceptance and consideration of a Waiver of Full Site Plan Review for a dog daycare/grooming/boarding business. The parcel is located at 9 Harris Avenue in the C-1 (Limited Commercial), Aquifer Conservation and Elderly Housing Overlay Districts and Wellhead Protection Area. Tax Map 6D-1, Lot 038. Case #PB2019-09.

At applicant's request, the Board voted 6-0-0 to continue this agenda item to April 16, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Alastair Millns and seconded by Neil Anketell.

8. Discussion/possible action regarding other items of concern

At applicant's request, the Board voted 6-0-0 to extend the Patriots Car Wash Site Plan conditional approval by six months to September 18, 2019, on a motion made by Alastair Millns and seconded by Lynn Christensen.

Chairman Best explained that an applicant has one year to begin substantially after Planning Board approval of a subdivision. Kellie Shamel explained that currently, there is no time requirement for a Planning Board approved site plan to be constructed as the Board currently does not specify what items would constitute active and substantial development, or substantial completion. As such, approvals do not expire once the conditions of approval are met and the plan is signed/recorded unless regulatory changes render the approved plan noncompliant.

9. Approval of Minutes -February 19, 2019

The minutes of February 19, 2019, were approved as submitted, by a vote of 6-0-0, on a motion made by Lynn Christensen and seconded by Nelson Disco.

10. Adjourn

The meeting was adjourned at 8:33 p.m., by a vote of 6-0-0, on a motion made by Alastair Millns and seconded by Lynn Christensen.