



Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

Fax 603 424-1408

Town Hall - Lower level - East Wing

www.merrimacknh.gov

Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY MAY 16, 2023

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, May 16, 2023 in the Matthew Thornton Room.

Members Present:

- Robert Best (Chair) (arrived at 6:34 p.m.)
- Brian Dano
- Lynn Christensen
- Town Councilor Barbara Healey - Ex-Officio
- Maureen Tracey – Alternate
- Nelson Disco – Alternate

Members Absent:

- Paul McLaughlin (Vice Chair)
- Jaimie von Schoen
- Neil Anketell
- Haleem Mediouni – Alternate

Staff Present: Robert Price, Planning & Zoning Administrator

1. Call to Order

Member Lynn Christensen called the meeting to order at 6:32 p.m. and led everyone in the Pledge of Allegiance. She then seated Alternates Maureen Tracey & Nelson Disco for Neil Anketell & Jaimie von Schoen respectively.

2. Consent Agenda

- a. Extension request: 106 Herrick Street Site Plan (#PB2022-39)

The Board voted 5-0-0 to approve the consent agenda, on a motion made by Maureen Tracey and seconded by Barbara Healey.

The Board took up agenda item 4 before item 3.

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

None

Member Christensen indicated the Board would take a short recess to allow time for Chair Robert Best to arrive.

Chair Best arrived to the meeting at 6:34 p.m. and called the meeting back to order.

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

Mr. Price prefaced the presentation by summarizing the staff memo that was written by Community Development Director Tim Thompson. In the memo, Mr. Thompson rebuts attorney Hollis' arguments at the last meeting regarding the interpretation of density not being a dimensional standard in the Zoning Ordinance as well as the historical interpretation of the Ordinance language regarding density. The memo also reviews several options for possible actions the Board can take, however Mr. Thompson is strongly recommending that the Board continue the meeting until June 20th so that he can attend the meeting as he understands the history of this parcel more than any other staff member. He added that a continuance will also allow staff and the Board time to confer with the Town's legal counsel as any Board decision has a high likelihood of an appeal.

Morgan Hollis (Gottesman & Hollis, P.A.) & Gordon Leedy (Tighe & Bond) presented the application to the Board. Mr. Hollis stated that he would like to see a decision made rather than continuing again because the new memo contains conditions of approval which was the reason the Board opted not to approve the project at the last meeting. He continued to say that he is not interested in spending any more time discussing the various interpretations of the Zoning ordinance and will have to agree to disagree with staff.

Chair Best stated that he promised the abutters that they would get another opportunity to speak at this meeting and would like to open the public hearing to allow them a chance to speak again.

Public comment

Chair Best re-opened the Public Hearing with a request that everyone try to refrain from repeating comments that were made in previous meetings.

Mike Mills (7 Arbor Street) began his comments by indicating that he has spoken against this project several times but is reserving his right to represent the neighbors if this project gets approved. He then stated that he has spent a lot of time researching the Planning Board processes and procedures and has some concerns with the way things have been handled for this project, beginning with the application. The whole of the property has two different owners (Merrimack Parcel A, LLC and Slate Merrimack Acquisition, LLC) but only one owner (Tom Monahan for

Merrimack Parcel A, LLC) signed the application. He added that there is not even a separate signature line on the application for a second owner. He also argued that since the ownership is in an LLC, anyone signing on behalf of that LLC needs to identify their role in the association on whatever it is they are signing. Mr. Mills also commented that he recalls discussion about the lot being 4.5 acres but none of the lots in question are that size so he is not sure if several lots are being combined to make up the 4.5 acres. He then shared concerns regarding various practices of the Board including opening and closing of public sessions within a meeting and continuing projects without additional written notice to the abutters. He spoke about the density and how he feels that it is too much development for the space and expressed concerns that the buffer between the site and their neighborhood will be used for people walking their dogs and for kids to play. Mr. Mills also shared concerns for the neighbors that have lived in the area for 40-50 years and are now having their neighborhood destroyed by this project and urged the Board not to approve it on the basis that it is not what was originally presented.

Nancy Harrington (11 Spruce Street) submitted a letter* opposing the project. Chair Best read the letter into the record.

**A copy of the letter can be found in the Case project file located within the Community Development Department at the Merrimack Town Hall.*

Beth Burns (5 Spruce Street) expressed concerns with the height of the proposed apartment building and encouraged the Board to limit it to only two stories. The traffic, noise and lighting from the development are all great concerns of the abutting neighborhood. Ms. Burns also shared that she is worried that the roundabout is not being built sooner and is concerned that they will decide there is not enough room and scrap the idea which will cause people to use the emergency exit. She addressed the buffer space and the desire of the neighbors to leave it as it and not remove any trees or put any structures in it because it is the only thing separating the two areas.

Barbara Asketh (1 Spruce Street) stated that she feels that the Board should grant staff's request for a continuance as the applicant has been granted several continuances themselves up to this point. She spoke about the impact of the project on the neighborhood and how the apartment is going to look like a giant wall behind their homes. Now that the plan has changed and there is not as much mixed use as originally planned, she fears there will be a negative impact on their property values.

Lynn Christensen asked staff when the roundabout is supposed to be constructed. Robert Price reviewed what is in each phase of the approved site plan, indicating that the hotel and roundabout are in line to be constructed next (in Phase 1B). He added that the hotel would not receive a Certificate of Occupancy if the roundabout is not constructed. This discussion led to the question of what has received site plan approval and Mr. Price and Mr. Leedy responded accordingly. The Board had some questions about the hotel and event space that was part of the original approval and Mr. Leedy shared a copy of the approved CUP plan and approved site plan to demonstrate what is currently approved.

Nelson Disco and Councilor Healey both shared their beliefs that the Board should grant a continuance to allow time to hold a non meeting with the Town's Legal Counsel under RSA 91-A and most Board members agreed. Chair Best shared his beliefs that the Board should make its decision based on what has been presented to them regardless of the threat of appeal. He also shared opinions related to the role of staff in advising the Board.

Maureen Tracey shared that she feels that they have no choice but to involve the Town's Legal Counsel at this point because the Board has been pretty expressive in their comments that the plan has evolved drastically over time and the discussion has now come down to the legal definition of density. The question of precedence was raised by several Board members and they agreed that it is a topic that could be discussed with Legal Counsel. They also decided that they would like to discuss the potential differences of density and dimensional requirements.

The Board voted 6-0-0 to continue the public hearing to June 20, 2023 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion by Lynn Christensen and seconded by Barbara Healey.

5. Approval of Minutes — May 2, 2023

The Board voted 6-0-0 to approve the minutes of May 2, 2023 as amended on a motion made by Lynn Christensen and seconded by Barbara Healey.

The Board revisited agenda item 4 after item 5.

4. (Revisited) Planning & Zoning Administrator's Report & Discussion/possible action regarding other items of concern

Brian Dano asked if the staff could supply recommended motions for both a denial and an approval for all projects. Mr. Price stated that he would discuss with the appropriate Town staff and would report back at a future meeting.

6. Adjourn

The Board voted 6-0-0 to adjourn at 7:50 p.m., on a motion made by Barbara Healey and seconded by Brian Dano.