



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

## **MERRIMACK PLANNING BOARD APPROVED MINUTES TUESDAY, MAY 19, 2015**

Planning Board members present: Robert Best, Alastair Millns, Tom Mahon, Michael Redding, Lynn Christensen, Desirea Falt, and Alternates Nelson Disco and Jeff Sebring.

Staff present: Community Development Director Tim Thompson and Recording Secretary Zina Jordan.

### **1. Call to Order**

Robert Best called the meeting to order at 7:30 p.m. and designated Nelson Disco to sit for the vacant full member position.

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

Tim Thompson/staff recommends that the Board determine that two projects are not of regional impact: Madi Choueri seeks 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 Overlay, and Aquifer Conservation Districts. Merrimack Premium Outlets seeks review for acceptance and consideration of Final Approval for an application for a minor subdivision of one lot into two lots for financing purposes. This will allow it to move forward in the coming months with a site plan for Phase II to construct 100,000 square feet of additional retail space.

**The Board voted 7-0-0 to determine that the Madi Choueri Site Plan and Merrimack Premium Outlets Subdivision are not of regional impact, on a motion made by Alastair Millns and seconded by Lynn Christensen.**

Matt Fortin could not accept an alternate position on the Planning Board because he moved to Florida. So the position is still vacant. Desirea Falt's position will expire on June 30, 2015.

Emily Edwards, a student at Dalhousie University, will be the summer Community Development intern. She will help with plan reviews and the preliminary Economic Development website update.

### **4. Recommendation to call the Performance Bond for Valleyview Revocable Trust (emergency access way)**

This item was considered before agenda item #3.

Tim Thompson summarized the history. On July 23, 2013, the Board granted conditional final approval to an application proposing to subdivide one lot into two single-family residential lots. It granted reinstatement and extension with a condition of approval that there be a compliance hearing on September 30, 2014. At that meeting, the Board required the applicant to finish the emergency access way and to bring all neighboring properties back to order by November 7, 2014. As of April 15, 2015, the water main was installed and the neighbor's retaining wall was mostly restored, but the emergency access way was not finished and the street and other properties were not restored. The contractor is working diligently to complete the improvements.

The performance bond for the Administrative Approval, which was the origin of the required emergency access way, comes due in May 2015. Staff recommends that the Board grant an extension of the bond's validity period to June 17, 2015. This should allow enough time for work to be completed, or the Board could call the bond on June 16, 2015.

Nelson Disco wanted a commitment that the work be finished by June 17, 2015. Chairman Best noted that the applicant is spending money and trying to complete the work. Lynn Christensen asked if the work is acceptable and if there are sufficient surety funds if the bond were called and the Town must complete the work. Tim Thompson replied that the work was inspected and reviewed and is acceptable and there are more than enough surety funds to cover the rest of the work. Alastair Millns noted that PWD would have to subcontract the work. The fastest way to complete it is to leave things as they are.

Attorney Pat Panciocco explained that Michael Maggio hired her last week. She met with him and Keach-Nordstrom and will also speak to Tim Thompson. It is clear that the Planning Board has been very patient. She went on to explain that everything went wrong for the applicant. Great progress was made this week. The Board has the applicant's attention. Attorney Panciocco will make a list of what must be done for the PWD to approve. She is a little concerned about heavy equipment work yet to be done on the lots and applying top coat prematurely. The equipment should not be left on the road. Perhaps the Board should wait 60 days to put down top coat before removing all equipment from the public road. Everything else should be done by June 16, 2015, although she cannot make a 100% promise.

Chairman Best opined that Michael Maggio does not want to destroy his new road with heavy equipment. Attorney Panciocco said the site is steep and very rocky. She will work with staff to ensure completion of 100% of the work. Chairman Best said attorney involvement is appropriate, but noted that the issues are man-made and not due to nature. Michael Maggio knew that from the start. Attorney Panciocco agreed. Chairman Best stated that the Planning Board has already waited a long time and is now being asked to wait longer, but he feels it is still better to have the applicant do the work than to pull the bond.

**The Board voted 7-0-0 to extend the validity period of the performance surety to June 17, 2015, on a motion made by Alastair Millns and seconded by Desirea Falt.**

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

This item was considered after agenda item #4.

Tim Thompson said that, as part of the two-lot subdivision approval, the Board required the completion of the improvements associated with the Administrative Approval for the development of four lots of record in August 2012. These improvements include the emergency access way and other roadway, grading, and drainage improvements. Completion of these improvements has not happened and has been a source of constant frustration for the Board and abutting property owners. The applicant received several extensions, most recently on July 23, 2013, and on July 8, 2014. The last one expired December 2014. Based on the action

taken by the Board on the Bond, Staff recommends the Board continue this application to the June 16, 2015, meeting.

**Public comment**

Dave Hammond, 18 Valleyview Drive, cited one year of delays and excuses. He tried to resolve issues at his home for 10 months. It is a frustrating and painful process. Michael Maggio, FHB Consulting, claims he is not his responsible for fixing the problem. Dave Hammond requested that the Board deny reinstatement of conditional approval. When Chairman Best noted that such action would stop construction, Dave Hammond agreed with the recommended extension to June 16, 2015, but wanted the Board to pull the bond if the work is not finished by then.

Steve Amick, 11 Valleyview Drive, conceded that there has been great progress: curbs were replaced, the road graded, top soil put down, and the area was hydro-seeded. However Michael Maggio must finish before the Board allows the subdivision and building a new house. There is a lot left to do. The top coat is expected within the next month. Michael Maggio left a mess of trees and machinery in front of Steve Amick's house for three years, is discourteous and drives on the emergency access road. He should continue to clean up his mess before "hammering another nail". Heavy equipment can be taken care of later.

**The Board voted 7-0-0 to continue this item to June 16, 2015, in the Matthew Thornton Meeting Room, at 7:30 p.m., on a motion made by Lynn Christensen and seconded by Desirea Falt.**

- 5. 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 and April 21, 2015, Planning Board meetings.***

Tim Thompson explained that, because the plans were not received until late on May 13, 2015, there was not enough time for departmental review. He suggested a continuance to June 2, 2015, when it is expected that the application will be ready for conditional Final Approval. Alastair Millns was concerned about lack of public notice, but Tim Thompson explained that Final Approval was never sought at any previous meetings. Now that CLD has reviewed the application, this will be the first request for Final Approval. Chairman Best said that it is the general public who wish to speak about traffic and that abutters would be notified. Tim Thompson said they were recently notified when a wetland permit was submitted to the State. Lynn Christensen noted that interested parties are paying attention and will come if they wish to speak.

**The Board voted 7-0-0 to continue this item to June 2, 2015, in the Matthew Thornton Meeting Room, at 7:30 p.m., on a motion made by Lynn Christensen and seconded by Tom Mahon.**

- 6. 526 DW LLC. (applicant/owner)** – Review for acceptance and 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.

Tim Thompson said that Vault Motor Storage proposes a 44,000 square foot building in the back of the lot for additional storage of vehicles, boats and RVs, the same as the existing buildings. There was no escrow for CLD until late last week, so there has been no peer review. Staff recommends continuing the application to June 2, 2015, so that CLD can complete its review.

Chairman Best complimented the applicant on improvements to the site.

Eric Mitchell, President, Eric Mitchell & Associates, LLS, said 44,000 square feet would be added to the existing 65,000 square feet. The 24'-high walls plus a peaked roof will make the building 30' high. It will be one story with vehicle storage inside. There will be no outside vehicle storage. The Zoning Board of Adjustment (ZBA) granted a Variance to allow light manufacturing, but the proposed tenant dropped out, leaving Vault Motor Storage as the sole use. The applicant can satisfy Fire Department and staff conditions.

Charles Morgan, Owner, 526 D.W Highway, LLC, requested conditional approval at this meeting because this is prime building time. He wants to finish the work by October-November 2015, in time for his prime season. Chairman Best explained that he could not sign before June 2, 2015, because there are no plans or peer review. There is no timing difference between continuance and conditional approval. Tim Thompson repeated that CLD comments would not be finished before June 2, 2015.

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 7-0-0 to accept the application for review, on a motion made by Desirea Falt and seconded by Lynn Christensen.**

Nelson Disco asked how the drainage would work. Eric Mitchell explained that the site is very sandy and drains to the rear. Storm water will be directed with a combination of open and closed drainage to one infiltration pond located in back of the site. There is an emergency spillway if the pond gets too full. Overflow goes to a small wetland in the rear that is part of the 100-year floodplain. There is not much overflow. Water eventually drains to Baboosic Brook.

Michael Redding asked if storm water improvements are only for the new building. Eric Mitchell replied that they are for the increase in runoff from the back 2/3 of the site. Much of it now goes to D.W. Highway.

Chairman Best wanted to see drainage calculations for the front as well, since Zyla's, the previous owner, never submitted them. Eric Mitchell said there was never a problem. He will discuss it with PWD.

Michael Redding asked how roof runoff would be managed on the new building. Eric Mitchell said water would not come off over the overhead doors, but between the two buildings to catch basins at the four corners of the building. Some would drain to D.W. Highway and some to the ground. All of it would go to the catch basins.

Michael Redding said de-icing compounds should be limited. Eric Mitchell said he would put Merrimack Conservation Commission (MCC) recommendations for Green SnoPro and no use of fertilizers on the plan. Tim Thompson said that, although MCC recommended using Green SnoPro and limiting de-icing, the Merrimack Village District (MVD) recommended no de-icing because of the Wellhead Protection Area. Charles Morgan said he clears snow as soon as possible before ice builds up and agrees to no salt use.

Michael Redding asked about vehicle spillage. Charles Morgan said 330 high-end, expensive vehicles were stored last year with no leaks. Catch pans are placed under any drip. There is epoxy paint on the floors, which are very clean. That is why people use this storage. There are no windows, dust or floor drains.

Michael Redding wanted maintenance and spillage plans.

Tim Thompson explained that, because this is a commercial rather than an industrial zone, the façade need not be broken up at specified intervals.

Charles Morgan said he may seek a variance from the ZBA for a lighted sign facing D.W. Highway. Chairman Best said the existing externally illuminated sign at the front of the property is very tasteful.

There was no public comment.

Eric Mitchell asked for a waiver from the sidewalk requirement. Due to the fact that most of the frontage is paved to the property line, he requested providing the required easement rather than constructing a walkway. Lynn Christensen wanted the easement to be plowed and pedestrian accessible in winter. Eric Mitchell said 2/3 of the frontage is paved next to the right-of-way. It makes sense for a sidewalk in the easement rather than in the right-of-way. It is proposed to leave the last 1/3 grass or gravel. There is none next door or to Reeds Ferry. It is a distance to any other sidewalk. The easement could potentially be a future sidewalk. Chairman Best noted a sidewalk on the opposite side of the street. He agreed with Lynn Christensen that the applicant need not pave over grass, but part of what is there could be partitioned to be a sidewalk. There is just enough to get onto the next lot. No one would see a white line in winter. Perhaps there could be a curb stop. Eric Mitchell objected that a curb stop could not be plowed in winter. Lynn Christensen agreed to Charles Morgan's proposal of a 4" stripe and plowing toward the middle rather than down to the grass. He said that very few people walk by there.

Nelson Disco agreed that very few people use the parking lot. He recommended a) a 5' painted walk across the paved area with curb stops; b) crosswalks across the two open entrances so people can walk along the path; c) paving the north section to the property line. Noting that curb stops cannot be plowed, Chairman Best said paint is enough. Charles Morgan said the only uses are the farmers' market and antique cars cruise nights. Chairman Best said it is generous of the applicant to be responsible for clearing snow off the sidewalk.

Lynn Christensen cited the criterion that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of the regulations.

**The Board voted 6-1-0 to waive the requirements of Section 7.05.D.19 – Sidewalks – with the conditions that there be crosswalk-type striping across the driveways to delineate the walkway and that snow not be allowed to accumulate in that area, on a motion made by Lynn Christensen and seconded by Tom Mahon. Nelson Disco voted in the negative.**

**A motion made by Nelson Disco and seconded by Desirea Falt to amend the waiver to require the applicant to pave a 200' sidewalk on the north side to the edge of the property failed, 3-4-0. Alastair Millns, Tom Mahon, Lynn Christensen, and Desirea Falt voted in the negative.**

Although Michael Redding wanted the applicant to be responsible for maintaining a sidewalk in the easement, Tim Thompson said it is the Town's and not the applicant's responsibility.

Staff recommends that the Board continue the application to the June 2, 2015, Planning Board meeting as the Town's peer review consultant has not yet reviewed the proposal.

Charles Morgan agreed to wait to June 2, 2015. He wants to make the site a showcase and to franchise Vault Motor Storage across New Hampshire. Both Town Council and the Planning Board said they like the look of the property today after years of vacancy.

**The Board voted 7-0-0 to continue this item to June 2, 2015, in the Matthew Thornton Meeting Room, at 7:30 p.m., on a motion made by Lynn Christensen and seconded by Alastair Millns.**

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

- Preliminary discussion of soils information for potential ordinance amendments (as requested by Pete Gagnon) Postponed.

**8. Approval of Minutes – May 5, 2015**

**The minutes of May 5, 2015, were approved, with changes, by a vote of 7-0-0, on a motion made by Alastair Millns and seconded by Lynn Christensen.**

**9. Adjourn**

**The meeting adjourned at 8:45 p.m., by a vote of 7-0-0, on a motion made by Alastair Millns and seconded by Desirea Falt.**