



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY, JANUARY 17, 2012

Planning Board members present: Robert Best, Alastair Millns, John Segedy, Nelson Disco, Tom Koenig, Lynn Christensen, Michael Redding, and Alternate Pete Gagnon (arrived 7:40 p.m.)

Community Development staff: Community Development Director Tim Thompson, Assistant Planner Jeff Morrisette, and Recording Secretary Zina Jordan.

1. Call to Order

Robert Best called the meeting to order at 7:30 p.m.

2. Planning & Zoning Administrator's Report

None.

- 3. Atrium Medical Corporation (applicant) and Rykel Company, Inc. (Owner)** – Review for consideration of Final Approval of a Non-Residential application proposing to construct an approximately 311,700 s.f. medical/office/research and development manufacturing facility located at 50 Robert Milligan Parkway in the I-1, Industrial and Aquifer Conservation Districts. Tax Map 2D, Lot 078. **This agenda item is continued from the December 6, 2011 Planning Board meeting.**

At the applicant's request, the Board voted 7-0-0 to **continue** this item to February 7, 2012, in the Town Hall Meeting Room, at 7:30 p.m., on a motion made by John Segedy and seconded by Alastair Millns.

- 4. Old Blood Properties, LLC (Applicant) and Earth Realty Corporation (Owner)** – Pre-Submission Hearing to discuss a proposed Yield Plan for a 66-lot single-family residential subdivision plan located in the R-1, Residential District. (The Yield Plan establishes the total number of lots that may be permitted in the proposed cluster subdivision). Parcels accessed off Old Blood Road. Tax Map 5B, Lots 001-1, 002, 003, 003-1, 005, 006, 007, 008, 009 and 231. **This agenda item is continued from the January 3, 2012 Planning Board Meeting.**

Attorney Greg Michael, Bernstein Shur, represented the applicant.

At the applicant's request, the Board voted 7-0-0 to **continue** this item to February 7, 2012, in the Town Hall Meeting Room, at 7:30 p.m., on a motion made by Tom Koenig and seconded by John Segedy.

5. Arenco Inc. (applicant) and Jopat Real Estate Enterprises, LLC. (owner) – Review for consideration of Final Approval of a site plan to construct three single-story duplex style buildings for office and commercial daycare uses. The subject property is part of the Crosswoods Path Planned Unit Development (PUD) and was formerly approved for a 4,550-SF restaurant facility. The parcel is located at 747 Daniel Webster Highway and lies within the I-1 (Industrial), C-2 (General Commercial), R (Residential), PRD and Aquifer Conservation Zoning Districts. Tax Map 7E, Lot 046-54. **This agenda item is continued from the December 13, 2011 Planning Board meeting.**

Pete Gagnon arrived at 7:40 p.m.

Kent Worden, Architect and President, Arenco Inc., said the 2.5-acre parcel lies at the corner of Crosswoods Path Boulevard and D.W. Highway. A PSNH utility easement/right-of-way runs through the site. 81 parking spaces and two driveway cuts were previously approved for a restaurant. There would be three 4,000 square foot buildings, each of which would house two units. Construction would occur as the market allows. Most of the 63 spaces are under the power lines. Some of the parking between the landscape islands would be designated as “future parking” and constructed on an as-needed basis. The house on the corner was razed. The curb cut on D.W. Highway associated with the previous dwelling will be removed. Kent Worden prefers not to build all 63 spaces. All staff comments are minor and easily accommodated. There would be 63% proposed green space rather than the current 66%. Lighting would be on shorter poles because PSNH limits their height under the right-of-way. There would be parking over the hill and a series of ramps and walkways to the buildings that would be well screened from Crosswoods Path by buildings and underbrush. The plan is appropriate for professional offices, but there are no tenants as yet.

Tim Thompson explained that no parking waiver is needed because the plan would designate “future parking”.

Kent Worden sought a sidewalk waiver. There is now an existing sidewalk on the southerly side of Crosswoods Path Boulevard in the vicinity of the proposed driveway entrance to this project. Proposed is a stretch of sidewalk along the applicant’s driveway entrance and a crosswalk to connect the proposed sidewalk to the existing sidewalk located on Crosswoods Path Boulevard. He does not want to cut trees for a sidewalk. There are no sidewalks anywhere along D.W. Highway in the vicinity of the project. Nelson Disco asked how the sidewalk would connect to the existing sidewalk on Crosswoods Path Boulevard on the south side of the road. Kent Worden replied that he could install a sidewalk to connect from the crosswalk into the parking area on his site. Tom Koenig noted a walkway across the Merrimack River via the new airport access road that terminates on D.W. Highway. It could be connected eventually and a sidewalk installed along the applicant’s frontage so that people could walk across the river. Kent Worden stated that, because of the slopes, a sidewalk along the D.W. Highway frontage could not

be done without building a retaining wall, which is prohibitively expensive. There is a 6'-8' drop. The parking lot would have the maximum slope going uphill. Kent Worden agreed to Jeff Morrisette's suggestion of a sidewalk easement for a future sidewalk. Lynn Christensen noted that the street is higher than the land. She suggested setting a sidewalk into the land farther from the street to be more level. Kent Worden agreed that is a possibility, but he is already at maximum slope and wants to keep the area green. He does not want to install an unattractive wall or rip rap. Alastair Millns asked about widening ramps and landings in the area between Unit 2 and the parking lot to make a sidewalk parallel to D.W. Highway. Kent Worden wondered whether the Town would really plow it. It is not practical. People would take the shortcut through the green area. Tim Thomson agreed with Jeff Morrisette's suggestion as a reasonable compromise. A sidewalk could eventually be built, but not for something of this size and scale. Chairman Best asked what the Planning Board did in other sites in this area. Jeff Morrisette stated that Nuthin' But Good Time has no sidewalk because it has no frontage and ArcPoint Labs appeared before the Board only for a change of use with no external improvements or site work. Alastair Millns said building a sidewalk would pose an unnecessary hardship to the applicant. He and Nelson Disco agreed that the waiver would properly carry out the spirit and intent of the regulations.

The Board voted 6-1-0 to **waive** the requirements of Section 7.04.4(r) - Pedestrian Ways and Sidewalks - of the Subdivision Regulations, with the following conditions, on a motion made by Nelson Disco and seconded by Lynn Christensen. Tom Koenig voted in the negative.

1. The applicant to grant a sidewalk easement to the Town of Merrimack along D.W. Highway;
2. Install an onsite sidewalk and crosswalk within Crosswoods Path Boulevard to connect to the existing sidewalk along the southerly side of Crosswoods Path Boulevard.

Nelson Disco asked about phasing. Kent Worden will return to the Planning Board if phasing is necessary.

There was no public comment.

Kent Worden sought a waiver from the True North arrow requirement because the previously approved plan was approved with a different north arrow. Alastair Millns noted that the plans were approved many years ago without a True North Arrow. It is unreasonable and an unnecessary hardship to redo the plans only for that purpose. Jeff Morrisette stated that the project is part of the overall PUD development and was approved with a particular reference arrow. There is no value/benefit in updating the plan to show True North on an old site. To locate True North properly could potentially add extensive fieldwork and additional cost depending on the availability of gear. John Segedy objected that no gear is required and there is no need to go into the field. One can just look it up. Jeff Morrisette disagreed, saying that, depending on circumstances, sometimes additional

fieldwork may be required. Alastair Millns asked whether the Town would require filing a new record to replace prior plans at the Registry of Deeds. Jeff Morrisette said it would not. Alastair Millns saw little point in requiring a True North Arrow.

The Board voted 5-2-0 to **waive** the requirements of Section 4.06.1(3) - True North Arrow - of the Subdivision Regulations, on a motion made by Alastair Millns and seconded by Nelson Disco. John Segedy and Tom Koenig voted in the negative.

Chairman Best noted that, although the allowable commercial area of the PUD would be increased, no waiver is required. By granting approval, the Board would exercise its discretionary authority to increase the allowable square footage of commercial area of the PUD.

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

The Board voted 7-0-0 to **grant** final approval, with the following conditions, on a motion made by Alastair Millns and seconded by Nelson Disco.

1. Final plans and mylars to be signed by all property owners. The Licensed Land Surveyor and Professional Engineer (as appropriate) shall also sign and seal final plans and mylars;
2. The applicant is responsible for all fees (including \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) associated with Recording the plan and any related documents at the Hillsborough County Registry of Deeds;
3. Any waivers granted shall be listed and fully described on the Final Plan set on a recordable sheet;
4. The applicant to receive an updated Driveway Permit from the NHDOT. The Driveway Permit number and expiration date shall be added to a recordable plan sheet;
5. Building elevations are to be incorporated into the final plan set and sheet numbering sequence and be noted on the Sheet Index. Building elevations to show/note all proposed building materials, building dimensions, wall pack lighting and any rooftop mechanical equipment and be drawn to scale in the final plan sets. Elevations also to note North, South, East, and West elevations. Building elevations to comply with the Transitional District design requirements set forth in Section 12.04(3) of the Subdivision Regulations;
6. Unless securing a waiver(s) from the Buffer Requirements, applicant to demonstrate compliance with Section 10.01(4) of the Subdivision Regulations relative to buffers, specifically Buffer Category B along the property line adjacent to the self-storage units (Map 7E Lot 042) and Buffer Category C adjacent to the common area for the single-family detached condominiums. The applicant shall demonstrate compliance with the Buffer requirements to the Community Development Department

- staff (utilizing a combination of existing vegetation and proposed plantings) prior to securing any Certificates of Occupancy for the project;
7. The applicant shall satisfactorily address the one comment received from the Conservation Commission requesting “straw” instead of “hay” bales and to minimize the use of ice melting compounds;
 8. The applicant shall satisfactorily address any forthcoming comments from the Merrimack Fire Department;
 9. The applicant shall satisfactorily address any forthcoming comments from the Town of Merrimack Wastewater Division of DPW;
 10. The applicant shall satisfactorily address peer review comments from the Town’s review consultant, CLD;
 11. As portions of the proposed parking area lie in very close proximity to the parking setback, the Applicant shall submit a partial as-built plan prepared by a Licensed Land Surveyor documenting compliance with the parking setback requirements from Daniel Webster Highway. At the applicant’s discretion, the As-Built Plan may be coupled with the Certified Plot Plan (See Section 6.01 of the Subdivision Regulations) to be submitted to the Building Department prior to issuance of a Certificate of Occupancy;
 12. Add a note to the plan stating that, prior to issuance of the first building permit, temporary orange construction fencing to be installed for protection during construction around mature trees to be retained;
 13. The Applicant shall grant the Town of Merrimack a sidewalk easement to allow for the future construction of a sidewalk along DW Highway;
 14. The Applicant shall install an onsite sidewalk at the easterly side of their driveway entrance and a crosswalk within Crosswoods Path Boulevard to connect to the existing sidewalk located along the southerly side of Crosswoods Path Boulevard;
 15. Address Planning Staff Technical Comments (Below)

Planning Staff Technical Comments

1. Revise the plan and notes to list minimum lot dimensional and setback criteria for the R (Assume R-4 due to availability of sewer and water), I-1 (Industrial) and C-2 (General Commercial) Zones. The plan and notes shall also be revised to incorporate the additional relevant criteria (50-foot building setback to Daniel Webster Highway and 20-foot setback for parking, signage and other improvements, except landscaping and access ways) from Note 6 in Section 3.02(A) of the Zoning Ordinance;
2. As the area of total disturbance exceeds the 20,000 SF threshold, the Applicant is advised that the project must comply with the Town of Merrimack Stormwater Management Standards (Chapter 412 of the Town Code);
3. Applicant to update the list of proposed uses and provide associated parking calculations to demonstrate compliance with the parking standards set forth in Section 7.02 of the Subdivision Regulations;

4. Applicant to revise the Lighting Plan (Sheet 6 of 10, or other sheet as appropriate) to demonstrate compliance with Section 11 of the Subdivision Regulations - Outdoor Lighting Standards - including but not limited to full cutoff requirement and uniformity ratio;
5. The applicant to add a note to a recordable plan sheet stating that "A copy of the full plan set is available for viewing at the Town of Merrimack Community Development Department.";
6. Applicant to address the following minor plan comments:
 - i. The applicant to confirm the current ownership of Map 7E, Lot 035 and update the plan set as required;
 - ii. The applicant to correct the residential zoning line label to read as "R Residential" instead of "R-1 Residential".

6. Inland Diversified Real Estate Services, LLC. (Applicant) and Inland Diversified Merrimack Village, LLC. (owner) – Review for Acceptance and consideration for Final Approval of a request for waiver of full site plan review to permit a proposed change of use to convert 1,400 s.f. of retail space to a take out/sit-down restaurant use for Sweet Ginger Thai restaurant, located at 6 Dobson Way, Suite E, in the C-2, General Commercial and Aquifer Conservation Districts. Tax Map 3D, Lot 003-2.

Robert Best recused himself from discussing and voting on item #6. He designated Alastair Millns to act as chairman. Alastair Millns designated Pete Gagnon to sit for Robert Best until his return.

Bridget Goggin, Commercial Property Manager, Inland Diversified Real Estate Service, said that, although the property is short on parking spaces, there is more parking space to the north for overflow. Alastair Millns asked whether she had discussed the proposal with other tenants, which Bridget Goggin had not done. Jeff Morrisette stated that there is no requirement to notify them.

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 John Segedy and seconded by Nelson Disco.

Nelson Disco saw no issue with parking, since many spaces are provided and the lot is empty most of the time.

Public Comment

Ann Tanguay, 5 Sherwood Lane, lives behind the proposed restaurant. There is plenty of parking. She asked for the location of the dumpsters and complained that others are emptied and banged on the ground at 3:00 a.m. every other morning. A higher fence is needed. She also complained about parties in the alleyway behind the building in summer, but the police never catch anyone. Bridget Goggin said Ann Tanguay could call her at anytime

about rowdy youth and she would contact the police. Inland has never been notified about it. Tenants handle trash directly, but she will contact Allied Waste to change the schedule. A fence would not prevent noise, but she will try to address 3:00 a.m. trash pickup.

The Board voted 7-0-0 to **waive** full site plan review, on a motion made by Nelson Disco and seconded by John Segedy.

The applicant sought a parking waiver. Nelson Disco would grant one based on the specific circumstances relative to the site plan and that the waiver will properly carry out the spirit and intent of the regulations. There is more than sufficient parking. Tom Koenig said it is not so vacant in the evening, when more people are in the restaurants. The Board already allocated extra spaces to other shops. This parking may push out parking for the liquor store and Radio Shack and tax the area in front of the building. The other tenants do not even know of this proposal. Bridget Goggin said the restaurant has in-and-out customers. 60% of the restaurant business is take-out, 30% is dine-in, and 9% is delivery. Takeout transactions take 5-10 minutes. There is constant movement, traffic and parking. Alastair Millns suggested requiring staff not to park near the restaurant. Bridget Goggin said twice yearly she sends a letter asking them to park in the main lot. Nelson Disco noted that nobody parks in the front row when the stores open. Bridget Goggin said the restaurant would promote the other businesses. There are 15 spaces on the outer edges of the center and both the liquor store and Radio Shack have spaces around the corner.

The Board voted 6-1-0 to **waive** the parking requirements, on a motion made by Nelson Disco and seconded by Lynn Christensen. Tom Koenig voted in the negative.

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

The Board voted 7-0-0 to **grant** final approval, with the following conditions, on a motion made by Nelson Disco and seconded by Lynn Christensen.

1. Final plans to be signed by the applicant and property owner;
2. Any waivers granted shall be listed and fully described on the Final Plan;
3. The applicant to obtain written permission (or document existing permission) from the property owner that allows use of the parking located on Map 3D Lot 003-1;
4. The applicant shall satisfactorily address any forthcoming comments from the Town of Merrimack Wastewater division of DPW;
5. Address Planning Staff Technical Comment. (Below)

Planning Staff Technical Comment

1. The applicant to work with staff to prepare a Final Plan that clearly describes the proposed use, the location of the proposed use, the gross floor

area, the total number of seats, parking calculations, and any waivers granted by the Board.

7. Discussion/possible action regarding other items of concern

Robert Best returned to the Board and the chairmanship. Pete Gagnon returned to alternate status.

Board members noted colored and/or flashing lights at the following locations: Galaxy Gas Station, Harley Davidson, GS Market, S & P Quick Stop, as well as presidential candidate signs still on Route 101A. Staff will look into the alleged violations.

Nelson Disco asked whether the Board must require a True North arrow on plans and why two are necessary, especially if it is so complex and expensive to locate. Tim Thompson stated that staff and the Public Works Department (PWD) are reviewing regulations. That is one issue they will discuss with the Board. John Segedy said it was required before, but one surveyor said expensive equipment is required. Publications show the deviation of magnetic north from true north. All one need do is look it up. It changes over time, but the publications are updated. No special equipment is necessary. Michael Redding said money could not be an issue if the regulations require a True North Arrow based on a reference book. Chairman Best reminded the Board that John Segedy had distributed a study showing how much magnetic north moves, so it is better to base it on something that does not change so much.

8. Approval of Minutes

The minutes of December 6, 2011, were **approved**, with changes, by a vote of 6-0-1, on a motion made by John Segedy and seconded by Alastair Millns. Tom Koenig abstained.

9. Adjourn

The meeting **adjourned** at 8:40 p.m., by a vote of 7-0-0, on a motion made by Alastair Millns and seconded by John Segedy.