



Town of Merrimack, New Hampshire

Community Development Department

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Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MERRIMACK PLANNING BOARD APPROVED MINUTES TUESDAY, JUNE 3, 2014

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, June 3, 2014 at 7:30 p.m. in the Matthew Thornton Room.

Chairman Robert Best presided:

Members of the Board Present: Alastair Millns, Secretary
Stanley Bonislowski
Lynn Christensen
Desirea Falt
Michael Redding
Nelson Disco, Alternate
Councilman Thomas Koenig

Members of the Board Absent: None

Also in Attendance: Timothy Thompson, AICP, Director, Community Development
Jillian Harris, AICP, Planning & Zoning Administrator
Colleen Ferreira, 380 D.W. Highway
Felisha Chronowski, 380 D.W. Highway
Kenneth Clinton, President, Meridian Land Services, Inc.
Thomas Carr, Meridian Land Services

1. Call to Order

Chairman Best noted the next meeting of the Planning Board is scheduled for June 17, 2014.

2. Planning & Zoning Administrator's Report

None.

3. Colleen Ferreira, Chilly Willy's Ice Cream & Hot Dogs, LLC. (applicant) and Windsup Properties III, LLC. (owner)

Review for acceptance and consideration of Final Approval for a waiver of full site plan review to permit outdoor seating for Chilly Willy's Ice Cream & Hot Dog restaurant. The parcel is located at 380 D.W. Highway in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 4D-3, Lot 004.

Director Thompson informed the Board the Applicant was recently granted Administrative Approval to occupy the former Skate & Snow Retail Shop at the Skyline Mall. That approval allows for indoor seating only. The approved seating is at the limit for the amount of available parking. The Applicant is seeking outdoor seating requiring a parking waiver, which could not be addressed administratively.

The Applicant is before the Board for consideration of a waiver of full site plan review, outdoor seating, and a parking waiver. When asked about the difference between the parking requirement and what is available, Director Thompson stated 11 spaces are required, which are in place today. To accommodate outdoor seating, the regulations require 20 spaces.

Section 7.03(F) - Parking

Ms. Colleen Ferreira stated the desire to place 4 picnic tables in the lawn/grassy area as well as an additional booth inside the restaurant. Because the indoor seating was allotted 11 spaces and is in the form of booths, the number of booths allowed is six (6).

Chairman Best questioned the limitation of 11 spaces. Director Thompson responded the number is determined per the requirement for the unit itself. Ms. Ferreira stated the restaurant size to be approximately 2,000 sq. ft.; however, noted the number of seating spaces is determined by the number of parking spaces allotted. She commented most of the parking spots remain empty throughout most of the day and evening.

Chairman Best questioned whether all of the stores within the mall are occupied, and was informed they are. It was noted one of the storefronts is utilized for storage and another is closed during the summer months. When asked if the outdoor seating would be utilized year-round, Ms. Ferreira stated the seating would be utilized from Memorial Day to Labor Day. When asked, she stated the landlord and other tenants of the mall are aware of the request being made. Abutter notifications were sent out and a conversation has taken place with the landlord, who was required to sign off on the site plan, etc. indicating his agreement.

MOTION BY MEMBER MILLNS TO ACCEPT THE APPLICATION FOR REVIEW
MOTION SECONDED BY MEMBER BONISLAWSKI
MOTION CARRIED
7-0-0

Member Millns questioned who would be moving the food between the building and the picnic tables, and was informed the individuals purchasing the food would. When asked about trash containment in the area of the picnic tables, Ms. Ferreira stated a minimum of 2 barrels would be placed in the area of the picnic tables, and emptied regularly. Ms. Ferreira added the picnic tables will be far enough away from the road so as not to be anywhere near the right-of-way. There will be curb stops in place.

Member Bonislowski questioned who owns the 16 parking spaces adjacent to the property. Chairman Best stated the total number of spaces is allocated to the entirety of the site, 11 of which are allotted to the Applicant. Director Thompson stated the parking requirement to be for the overall site; there is no specific tenant requirement for individual spaces. As the site has redeveloped with different occupancies over the years, each individual unit has been based on the appropriate parking requirement. The site plan was originally based on a completely retail establishment. There have been changes over time in use and the ratio for each individual unit. Eleven is what is allowed per the occupancy of the remainder of the site. Member Bonislowski commented what he wished to relay is the availability of extra parking near the establishment. Director Thompson agreed additional spaces are available; however, in terms of the requirements, there is not.

Chairman Best spoke of three of the spaces being utilized by employees of the business, and questioned whether the Applicant was willing to require employees to park towards the back of the building. Ms. Ferreira stated agreement. Councilor Koenig questioned the amount of space allocated to the business. Ms. Ferreira stated the four parking spots in the front of the building serve as her storefront. Councilor Koenig remarked there is nothing to protect patrons in the area of the street. Ms.

Ferreira suggested King Kone has the same situation. Chairman Best commented he is not sure he would use their parking or location of picnic tables as the optimal standard.

Ms. Ferreira added, being concerned, she contacted the Merrimack Police Department seeking information relative to any incidents that may have occurred at King Kone as a result of the vicinity between the picnic tables and the street. She was informed in the 41 years it has been in business there has not been a single safety incident.

Councilor Koenig stated his concern is with motorists going down D.W. Highway. With no barrier between the picnic tables and the highway, with the exception of 5-10' of grass, he is concerned with the possibility of children darting out into the street. Ms. Ferreira stated a willingness to install bushes or whatever else the Board deemed necessary from a standpoint of safety. She informed the Board she has already spoken with the landlord who has stated, if such an issue were raised, he would not object to any changes that need to occur to allow for the use of picnic tables.

Member Christensen stated she too has a concern relative to safety of the patrons, and would not be in favor of allowing the use of picnic tables without some sort of barrier in place. Director Thompson cautioned the Board if looking to require either some sort of landscaping or fencing that they ensure it is not something that would impede the sight distance exiting the driveway.

Ms. Felisha Chronowski questioned whether the barrier would need to be kept out of the right-of-way, and noted the area is small. Ms. Ferreira stated her belief there would be sufficient room to accommodate fencing without impacting the right-of-way. Director Thompson stated agreement there is sufficient distance between the area where the tables are proposed and the property line. He stated his belief that the easement is likely a utility easement.

Public Comment - None

MOTION BY MEMBER BONISLAWSKI TO GRANT THE WAIVER OF FULL SITE PLAN REVIEW NOTING STRICT CONFORMITY WOULD POSE AN UNNECESSARY HARDSHIP TO THE APPLICANT AND THE WAIVER WOULD NOT BE CONTRARY TO THE SPIRIT AND INTENT OF THE REGULATIONS

MOTION SECONDED BY MEMBER MILLNS

MOTION CARRIED

7-0-0

MOTION BY MEMBER MILLNS TO WAIVE SECTION 7.03(F) – PARKING, OF THE SUBDIVISION REGULATIONS NOTING THE SPECIFIC CIRCUMSTANCES RELATIVE TO THE SITE PLAN INDICATE THE WAIVER WOULD NOT BE CONTRARY TO THE SPIRIT AND INTENT OF THE REGULATIONS

MOTION SECONDED BY MEMBER CHRISTENSEN

ON THE QUESTION

Councilor Koenig asked for clarification that the waiver is for up to 20 spaces. He noted there to be two issues of seating; indoor and outdoor. He requested clarification that the motion was to waive both requirements. Member Millns stated his intent to allow for up to 20 spaces so that both the inside booth and outside tables could be approved. Chairman Best clarified what was being waived was the requirement for 20 spaces as only 11 are present. He questioned the will of the Board with regard to discussing the two requests separately. The consensus was to vote on the motion as stated.

Member Falt remarked with the building being owned by a single entity and consisting of two restaurants, the owner will have to manage the remainder of the parking. Director Thompson

responded if there were any other changes in tenancy that would be a change in use it would come back to the Community Development Department where it would be reviewed to ensure sufficient parking. If not meeting parking requirements, the matter would be brought before the Board for further discussion.

When asked how the 11 spaces came to be required, Director Thompson explained there was a retail requirement of 1 space per 250 sq. ft. The change of use requires it to be evaluated on a different parking standard. When asked how it was determined there were 11 allotted. Director Thompson stated the remaining tenants were reviewed to see what the uses were; 11 spaces were determined to be remaining on the site. The calculation is done any time dealing with a multi-tenant building such as this. The tenants and their individual requirements are reviewed and a determination made as to what is needed for the individual tenant. Chairman Best remarked with respect to the entirety of the site the 11 available is under the modern calculation taking into account everything else going on in the building not the approval from 1988. Director Thompson stated that to be correct.

Councilor Koenig commented, if approved as proposed, would it be considered the business is taking up 20 spaces? Director Thompson responded it would be considered that the Board granted the waiver to allow that tenancy to have 11 spaces when it would normally require 20. When asked if that has ever been done for any of the other tenants in the mall, Director Thompson responded anything that has happened since the original approval has been evaluated on a case-by-case basis. The most recent was the Doggie Spaw. When asked if there have been any other parking waivers within this same mall such as Billy's, he responded that pre-dated his employment with the Town.

MOTION CARRIED

6-1-0

Councilor Koenig voted in opposition.

MOTION BY MEMBER MILLNS TO GRANT FINAL APPROVAL SUBJECT TO THE FOLLOWING CONDITIONS TO BE FULFILLED WITHIN 6 MONTHS AND PRIOR TO PLAN SIGNING, UNLESS OTHERWISE SPECIFIED:

1. Final plans to be signed by the Applicant and Property Owner;
2. All waivers granted by the Board shall be listed and fully described on the Final Plan;
3. Applicant shall revise the plan to indicate a split rail (or comparable alternative barrier) fence along the area proposed for outdoor seating to the satisfaction of the Community Development Department Staff;
4. Final plan to be address any forthcoming comments from the Fire and Public Works Departments;
5. Address planning staff technical comments. (Below)

Planning Staff Technical Comments

1. The applicant shall add to note 1 on the plan that: "The purpose of the plan is to add 1 additional indoor booth and outdoor seating (4 picnic tables) at Chilly Willy's Hot Dog and Ice Cream Restaurant";
2. The applicant shall expand note 3 on the plan, that the Board granted a Parking waiver of Section 7.03(F) to allow a total of 7 booths (3.5' long) inside and 4 picnic tables (6' long) outside, with 3 employees (including owners) to total 20 spaces required, and 11 spaces provided.

3. The applicant shall add the (administratively approved) signed plan as a reference plan in the notes;
4. The applicant shall add a note of the plan acknowledging that any signage shall require a sign permit from the Building Department.

ON THE QUESTION

Chairman Best stated a desire for the Board to be specific about the location of the fencing, and suggested it be located in front of the last 3-4 parking spaces and then round the corner (L shaped). He also suggested it be waist high as opposed to a 6' fence. Member Christensen suggested it be placed along the driveway entrance and then across the front along D.W. Highway, e.g., across all six spaces and some of the grass all the way to the exit, to roughly the property line and up the property line some distance. Member Millns stated a desire for the fencing to extend a few feet in the direction of the building (westerly). It was noted the motion includes language requiring the fencing be acceptable to the Community Development Department, which should provide the confidence it will be addressed in accordance with the Board's desires and in a manner in which not to interfere with site distance of motorists.

When asked for clarification, Director Thompson stated the only thing that prevented the department from administratively approving the additional seating indoors was the parking requirement.

MOTION SECONDED BY MEMBER CHRISTENSEN

MOTION CARRIED

5-2-0

Councilor Koenig and Member Bonislowski voted in opposition.

4. Old Blood Properties, LLC. and Joseph K. and Mary El Kareh (co-applicants/co-owners)

- Pre-submission hearing for the Chestnut Hill Cluster Subdivision proposing to consolidate and re-subdivide 10 lots into 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.

Director Thompson commented this is the 3rd pre-submission hearing on the project since Meridian Land Services has taken it over. The primary interest is in receiving feedback from the Board relative to the intersection of the proposed connection to Madeline Bennett Way. The Applicant is on the Highway Safety Committee's agenda for next week.

Kenneth Clinton, President, Meridian Land Services, Inc., remarked the project is a cluster sub-division of 71 lots. When last before the Board, March 4, 2014, a few new design aspects were introduced with the intention of being able to wrap up a few key items and return with a more thorough plan in advance of finalization of the application. Unfortunately, the desired level of progress has not yet been met, due to two items in particular.

Since last before the Board, a meeting was conducted with representatives of SAU26, during which they shared their concerns. Their comments, together with those received at various meetings with Town staff, were considered for the development of what is believed an appropriate intersection design of Madeline Bennett Way. He noted preliminary endorsements of the plan have been garnered from the Community Development Department, Fire Department, and the Public Works Department; specifically for Madeline Bennett Way at the intersection with the school driveway.

Meridian also met with the Highway Safety Committee and explained the proposal in broad terms with focus on the two access points; southerly coming off of Old Blood Road and northerly adjacent to the middle school. Having not seen the plan previously in great detail, the Committee asked for additional time to consider what was presented and weigh some of the concerns with the School Department. The Police Chief had an opportunity to sit down with Matt Shevenell, Business Administrator and Richard Desmond, Transportation Coordinator, in advance of that meeting, and shared some of their concerns.

The analysis of an inspection of the property performed in the March 2013 timeframe was slightly different from the 2008-2009 analysis conducted by another consultant, e.g., certain areas did not qualify or were not as active as vernal pools. The area at the entrance to the property off of Old Blood Road is now seen as an active vernal pool. As a critical aspect of the entrance into the property, a special meeting with New Hampshire Department of Environmental Services (NHDES) was requested. Invited to the meeting were representatives from the Army Corps of Engineers (Army Corps) as well as the Environmental Protection Agency (EPA). Collectively they oversee wetland permitting at the beginning of a project and during construction.

They recognize the duration of the design process; goes back to 2004 when the initial Prince property was subdivided and has moved forward sporadically during the slowdown in the economy. When Meridian picked it up it inherited a certain level of set design pieces, the entrance into the property being one of them; although they did go through a fairly extensive analysis of what the alternatives might be. Ultimately the initial road crossing adjacent to what is now identified as a vernal pool was fairly fixed. During the joint meeting, the group somewhat reluctantly understood and agreed the area is where the crossing will be. However, they had several design requirements they requested be considered.

One such request was for reduced or no salt zones. As the road will ultimately be a public road, however the Town wishes to maintain it in relationship to adjacent vernal pools will be up to the Planning Board. Another request was that vertical facing granite curb not be utilized; the various inhabitants of vernal pools don't easily scale vertical granite curbing. One of the larger requests was to ensure the upland mitigation is handled properly. Once a project exceeds 10,000 square feet of wetland impact there is a requirement to set aside and protect a 10/1 ratio of area. Impacts will be onsite as well as a result of replacement of four culverts located between Old Blood Road and Wilson Hill Road and at the end of the cul-de-sac at the Madeline Bennett intersection (wetlands to the south will be impacted). Cumulatively there will be approximately 15,000 square feet of wetland impact. The ratio would result in approximately 3.45 acres of what NHDES would require to have as protected upland mitigation.

By protected; open space designation is not good enough, Deed restriction is not good enough. What they require is third-party oversight by an entity that is robust enough to have the personnel resources and to some degree financial resources to oversee, inspect, and possibly pursue enforcement action. To that end, a meeting was scheduled with the Merrimack Conservation Commission. At its meeting the prior evening, the Commission agreed, in principle, and will be providing a letter stating their agreement, to oversee such an easement. A 23 acre open space parcel wraps around the north edge and abuts the school property, which is also subject to a conservation easement held by the Commission. To the south there is an 86 acre open space parcel, which likewise could be placed under a form of conservation easement. The verbal understanding is the Commission is agreeable to acceptance of an easement on the 23 acre open space to the north, which would more than satisfy NHDES requirements. The Commission may be agreeable to the 86 acre open space also being placed under a formal conservation easement. He remarked from an environmentally sensitive standpoint, the southerly area of 86 acres is more valuable because it has numerous vernal pools on it with the various wetland areas disbursed throughout it. Once in receipt of the letter from the Commission the wetlands application will be completed and submitted to NHDES.

Chairman Best questioned, if not for the NHDES requirement, what would have occurred with the open space parcels? Mr. Clinton responded the regulation simply states that it must be protected as open space, which is fairly vague. It is not to be developed. It would be noted and restricted to be undeveloped and left as is or if the Homeowners' Association was to own it fractionally, they could form some guidelines of how it could be used recreationally, etc. In accordance with regulations you don't have to deed it outside of the Homeowners' Association. As an open space sub-division you have an obligation to have some level of guidelines for its management and oversight, but it doesn't have to be to a third party. It could be conveyed to the Town subject to a Conservation Easement, the external open space parcels (109 acres) could be handed in one manner and the remainder (21 acres internal loop) with a different level of oversight and protection. There is a 5 acre open space parcel, which really doesn't have a fraction of the value the others do and is more a buffer to the properties along Meetinghouse Road.

Chairman Best remarked, in terms of the use of the property, he is comfortable all of the spaces set aside for open space will not be used for anything whether by deed restriction or otherwise. He questioned if addressed through a conservation easement, would that change the tax impact on the property. Mr. Clinton stated his impression it would; however, noted that is not his area of expertise. He stated he would obtain the information on tax impact and make the Board aware. He commented he does not know it to be a substantial amount and the tradeoff for the benefit of the public having the Commission either manage it as an easement or perhaps the Town own it as fee with the Commission managing the easement would likely outweigh the tax impact.

Mr. Clinton stated Meridian will be seeking waivers from road standards. In the case of the first crossing, a road waiver would be sought to minimize the impact of the wetland. In order to bring the road in from the existing entrance of the hammerhead that was approved and is largely constructed, they have to adhere to restrictions; within 200' of an intersection you have to be at 1.5% grade and the desire is less of a grade (flatter) leaving the intersection. The more level they leave the intersection the less fill would be required in the first crossing. The less fill required means less width of impact.

Chairman Best questioned the appearance of an active vernal pool. Mr. Clinton remarked he has been in this business for a long time. He went to the location and walked along the shore and did not see any eggs. Egg masses are attached to branches. Tom Carr was present, and walked out into the pond; about a foot and a half below the surface he found an egg mass attached to a small branch. He counted in the vicinity of 20-30 egg masses in the area. When asked if that is the requirement to identify an area as a vernal pool, Mr. Clinton responded egg masses of salamander and wood frogs are the typical creatures. He added one year out of the three that location had been investigated it was deemed a vernal pool.

With respect to the slope of the new road to the Chestnut Hill Sub-division, Chairman Best stated his understanding as you traverse down the hill you have to bottom out and be going upslope as you touch Old Blood Road to keep water from sheet flowing down the road onto Old Blood Road. Mr. Clinton stated that to be correct. In this case the primary travel route along Old Blood Road as you head north towards the entrance will still be this very road. It will be a little tricky as far as the name change, but the access road into the sub-division is not subject to the negative 2% because it is the main through road. It is all the same grade. It is not the same scenario as a brand new road coming in at a T intersection where the runoff would be stopped from entering onto the travel way. This is one smoothly flowing continuing travel way. Mr. Clinton identified the area proposed to be at 1% grade.

Mr. Clinton stated he has met with Kyle Fox, Deputy Director, Public Works Department/Town Engineer, and he was, in theory, agreeable to proceeding and filing a formal waiver request. Chairman Best commented when you make it shallower for the bulk of the area you also make it steeper at the very end. Mr. Clinton stated that to be correct; 7.25% leaving the vertical curve.

In addition, the applicant will be seeking a side slope waiver. The side slope requirement for fill slopes is typically 4:1. They are seeking a 1:1 section through an area with the provision it will be stabilized. He noted there to be a fairly narrow window as an adjacent property has been conveyed out by a prior sub-division. There was a right-of-way slope and drainage easement obtained on that lot to some degree (35' in width at closest point). To ensure there is proper separation from the vernal pool, they are looking to do side slopes of 1:1 with riprap covering. Deputy Director Fox was also agreeable to that, in theory. When asked, he stated the vertical distance to be covered at 1:1 on the side slope would be approximately 8' at its deepest point. The option to that, if the height was too great or difficulties were experienced, would be a partial retaining wall (2-4') to offset the 1:1 in order to keep the width. The principle is to try to keep the initial crossing as minimal as possible and manage it.

Relative to sidewalks, Mr. Clinton remarked a commitment has been made that all of the new roads and the connection to the Madeline Bennett school driveway connection all have sidewalks. Sidewalk requirements include a 3' grass strip between edge of pavement and sidewalk. With Cape Cod berm it allows a little separation. If a car tire were to ride up on the curb there is extra width and a grass strip to prevent any type of further encroachment onto the sidewalk. That creates a wider road box. He stated his desire for consideration of not having sidewalks at all through the initial section. All of the new lots will be served by sidewalks if allowable, and the sidewalks would continue all the way down to the school. Old Blood Road will not have sidewalks. That was discussed in the past. For the four lots on the hammerhead, the requirement was waived back in 2004 and there are no requirements to provide sidewalks on Old Blood Road as part of that approval. There won't be connectivity in a larger sense. That would allow the road box to be brought in a little, which reduces the wetland impact. An alternative might be in the elimination of the grass strip. To do that it might be necessary to boost the nature of the curb, which somewhat goes against what NHDES wanted regarding vertical curbs.

Mr. Clinton reiterated what he wishes to relay is that Meridian will be pursuing some of these options all in the name of trying to reduce the impact. It is not yet known whether the request will be for complete 1:1 slope, short retaining wall, elimination of sidewalk, reduction of grass width separation, etc.

Chairman Best stated he would rather have a sidewalk and reduce the grass strip at that crossing. Councilor Koenig commented wouldn't a 3-4' retaining wall be worse than a 3-4" granite curb? Mr. Clinton responded he had the same thought; if a salamander can't get up to the road what will it matter. When asked if there is a culvert under the crossing, Mr. Clinton stated the nature of the crossing is one that is very uncommon in his business where water sheds off the hill and this is almost a break point where water literally goes in both directions. It is a bit of an anomaly. Effectively it is within 50-100' of the point where, as water sheds down the hill from the top east towards Old Blood Road, it wants to go both directions. Conventional drainage calculations don't exactly work here where you might have to size a culvert for a certain storm. Being at a high point in a wetland where water goes both ways you can almost say theoretically you don't need a culvert. However, they are proposing a 4' x 4' box culvert at this location to be able to convey some water at high periods.

In high periods of rain and water there is some flow that is predominantly to the north out of the edge of the vernal pool. There is some overflowing during certain periods of year, which is when the 4' x 4' box culvert will be most operational and when critters will take advantage of it to a large extent. If made to be the least impact it would mean a shorter culvert box. Member Redding stated his preference for a retaining wall rather than a steep slope of 1:1 for the challenges relative to stability. Mr. Clinton remarked he understands the point, but when talking with Deputy Director Fox about retaining walls his response is no.

Member Bonislowski questioned the requirement for monitoring of vernal pools. Mr. Clinton stated there is an obligation when pursuing a project to inspect the wetlands. If not during a vernal pool season there is an obligation to identify what has the classifications or typical characteristics of a vernal

pool. Member Bonislowski questioned the responsibilities the Conservation Commission would be taking on. Mr. Clinton remarked during the Commission meeting the prior evening one of the topics discussed was that NHDES may ask for vernal pool creation on some of the open space in the 86 acres to the south. He shared with the Commission Meridian did not intend to pursue that as part of the initial design as they do not think it is warranted. The Commission was not in favor of it either, and they specifically did not want to have ownership of or required maintenance or follow up to a created vernal pool.

Chairman Best commented on the statement made that NHDES requires an easement be put into the hands of the Commission because they have the ability to maintain, enforce, etc. He added if there are retaining walls, maintenance would be an issue for the Town. If the retaining walls were within the section of the easement they would be the responsibility of the Conservation Commission. Mr. Clinton remarked he does not believe Meridian will strongly pursue those. They will revisit, but his initial impression is they will not all end up in the final design.

Mr. Clinton stated the same issues regarding minimizing impact to wetlands hold true at the Madeline Bennett intersection. If allowed to tighten up the sidewalk, reduce the 3' grass strip down to the curb and also have 1:1 side slopes it would assist in reducing the wetland impact. That is more important here due to the proximity of the abutter on Merrymeeting Drive. The nature of the curve is such that if they didn't have the 1:1 slopes they may need a retaining wall and/or a grading easement onto the abutter's property. In that area there is a 4½ - 5' elevation change so a 1:1 slope would not be that intrusive. Some of the same minimizing waivers that may be sought for the initial entrance off of Old Blood hold true but to a lesser extent on the Madeline Bennett side.

The only other potential waiver being considered; on a site where they encounter ledge, there are ledge cuts, and the ledge is found to be suitable to be solid enough that they have 1:1 cut slope.

Member Disco stated his appreciation of the level of information provided and consideration given to alternatives. He encouraged the Applicant to continue to keep a sidewalk in the plan. With regard to curbing he noted there is an approach utilizing a slanted granite curb, which may solve the issue identified.

Speaking of the intersection, Madeline Bennett Lane at the middle school driveway entrance, Mr. Clinton remarked it is a complicated matter because of the nature of how the right-of-ways were created prior to the school's existence, how they were then modified during the design process, and how they were left.

With the current plan, although the overall picture is that Madeline Bennett Lane is designed to be a public road, it is not a public road in the sense that it is not accepted. It is maintained by the Town and used as a public way. Since the school was built it has effectively been an extension of the driveway. From the school standpoint it is their driveway. However, working with Community Development, the Fire Department, and the Public Works Department, Meridian has received preliminary endorsements of the current design.

As you come from the Baboosic Lake intersection, with controlled lights, and drive down the driveway (36' paved), the center lane is for emergency use only, the right lane is to travel to the school, and the opposite lane to travel back to the lights. The middle lane is for safety purposes because it is an extremely long dead-end road with no other outlet/access. It was always intended to have further access points either to the north or south on Old Blood. It comes down to what is the proper connection of the school driveway to the public road. At its simplest point Madeline Bennett Lane is to be a public road. Old Blood Road is a public road. The public road is the primary use and feature of this road. The driveway for the school is just that, a driveway, and secondary in nature. A public road

and its through capabilities and connections take precedence from a design standpoint over any driveway.

It is suggested to make use of the center lane. The school has a use of that lane they feel is very important for them specifically at pick-up in the afternoons (stack buses). That is on a public road and creates a public nuisance. To try to help alleviate that and create a better situation, they propose dedicating a right-turn lane coming up towards the school and creating what would have been, in previous years, the middle safety lane as a through lane. The middle lane is no longer needed since they are providing a connection all the way through the sub-division; Old Blood Road all the way out to Wilson Hill Road. As motorists enter the school the dedicated right-turn lane can then enter into two lanes. Pavement would have to be removed from the cul-de-sac, the sidewalk would have to be reconnected, and a section of the bump-out at the back end of the cul-de-sac would have to be removed. One of the sticking points with the bus company is upon exit, as with any other driveway, you would need to stop at a stop line prior to entering the public road. They felt this might cause an undue amount of delay to their routing. Mr. Clinton commented there will be some cumulative build up, but it is not substantial as to affect the overall routing in town. He does not see any evidence of that nor has any been presented.

Mr. Clinton noted the Deed of Easements that was conveyed by the School District to the Conservation Commission allows for this very upgrade and realignment of Old Blood Road. It is understood this will be modified in the future. There was no conception of when it would occur, but understood, at one point in time, Old Blood Road would be upgraded and the connectivity would be made. He stated it to be a safe, proper design for both the general public traveling on a public right-of-way as well as the school.

Mr. Clinton stated his surprise there is only the one single sign on Madeline Bennett indicating a school. He remarked other schools in town have the standard sign as well as posted speed limit of 20 mph and a flashing light during the prime drop off/pick up periods, which are absent along Madeline Bennett. Signage is being proposed. The standard is 200' from intersection. They are proposing signage, from each direction, at 300', which would create a 600' wide 20 mph zone during drop-off/pick-up periods.

Member Falt questioned whether consideration has been given to a three-way stop; stop all straight through traffic and then Madeline so that when you get to the driveway everyone else has to stop. Mr. Clinton stated his understanding of the concept, and commented he thinks it fair to say they have thought of pretty much everything. In fact, this has been discussed at the Highway Safety Committee meeting; not only stop signs, but having a traffic light installed, etc. These traffic control measures are not proper on a public road, e.g., to have a public road stop for the short intermittent periods of school drop-off and pick-up. To have a stop sign there and have the general public required to stop 24/7 no matter whether school is in session or not would actually breed a likely unsafe scenario where people would tend to get accustomed to rolling through and not stopping at all. The traffic light scenario; the volume of traffic is nowhere near the threshold of a traffic light let alone the cost to the Town to maintain it. Traffic calming patterns or devices other than what is shown on the plan are excessive for the area. He remarked he is cognizant it is a school and the concern is public safety; this plan is properly designed for that.

Chairman Best commented in this proposal and somewhat of the prior proposal they have smoothed the transition from Madeline Bennett onto Old Blood Road, making it a transition that occurs without a T junction or a stop sign. Generally when two roads intersect each other they do it a 90 degree angle, and there is a stop sign. To say that is an unsafe situation seems to fight the evidence of every other intersection around. He stated understanding there is a driveway coming off of this one and that he is not necessarily opposed to the idea, as it may work. However, when talking about what is in the best interest of the public; a greater amount of the public is getting down this road to go to the school and back every day than the number that will live in the sub-division. In terms of which is the greater good

for the public he is not convinced he is persuaded with the argument presented. He added he understands there is a difference between a public way and a driveway and he does not necessarily think the school has to be held harmless so that they get the full benefit of what they had before, but if we jam up the traffic at the school the Town will hear from parents, teachers, the busing company, etc. He remarked he is okay with creating the smooth transition between Old Blood and Madeline, but it does have to accommodate and take into account not creating a terrible situation at the school.

Mr. Clinton spoke of the number of months the issue has been looked at and the number of meetings that have been conducted around this issue. The less desirable design that was shared the last time he was before the Board was too complex to resolve the issue. The current design is the proper design, and endorsements have been gained from Town staff and departments save the Highway safety Committee, which all things considered they don't have the same level of expertise and background as some of the people who have already endorsed the plan.

Chairman Best remarked it may be the right design, and the Board will learn more about the design, he just wished to express when discussing it, the school is not the population that uses the road, it is the public that are going back and forth to the school. Mr. Clinton reiterated the current design is the safest design for all involved.

Member Millns stated concern with motorists entering the school coming from Old Blood Road blocking the roadway at which point the whole system falls apart. He added, when talking about the bus routes, if there is a hold up at the middle school there will be delay at the high school. He recommended something be put in place to prevent blockage. Chairman Best suggested a no left turn off of Old Blood Road down to the school's driveway. Mr. Clinton remarked what is being discussed is stacking trying to go in and that means how they function internally is not working. The only way to alleviate those concerns is to have a traffic control officer assigned there for a certain period during the school days. The intersection can be fixed so that it is safe for everybody in that sense. As far as enforcement/proper usage of the intersection, that can only be controlled by a traffic control officer being there.

Chairman Best disagreed with the suggestion of the need for a traffic control officer, and stated if one is needed it is not designed right. He remarked he is not suggesting it is a failure on the part of Meridian as he believes the layout of the middle school is not effective for the traffic. The consequence is if they can't get traffic into their site smoothly they will sit in the road as a part of the process. You have to accommodate the fact that expected traffic has to get into that school somehow. Mr. Clinton stated where this all heads is that they are at a bit of an impasse. Although they have collected various endorsements by key staff and departments, ultimately they may not be able to get over a point where they can fix the school's issue because it is how they operate with their buses and internal traffic pattern which creates this issue. He stated the desire for direction. He noted the Town has the definitive determination as far as what the Applicant shall do with regard to the realignment and upgrade of the road. It says so in the Conservation Easement Deed. He remarked they have gone through this process for several months and have reached a point to be able to say this is the best thing to do. It doesn't solve all of the problems. Some problems they cannot solve because they don't have the jurisdiction to tell the buses how to stack, stage, and create the internal traffic patterns.

He questioned if, for whatever reason, the Traffic Safety Committee cannot endorse the plan, where do they go from there? They already have endorsement from Community Development, the Town Engineer, Fire Department, etc. He questioned where else they could go to show this is the best design. He stated they are the professionals that are saying this is the correct thing to do. Chairman Best responded one place they can go, as a Planning Board, is to peer review, and get some independent evaluation of how the traffic will flow, etc. Director Thompson stated Paul Konieczka from CLD Consulting Services (CLD) is one of the members of the Highway Safety Committee. Mr. Clinton noted, at the last meeting of the Highway Safety Committee Mr. Konieczka made sure everyone in the

room understood that not only was he there as a member of that committee but he was also a review engineer through CLD that would ultimately be seeing the plan. Mr. Clinton remarked he got the impression while Mr. Konieczka had some opinions to share he was a little bit hesitant to come to the forefront.

Chairman Best remarked a concern he has in terms of how it operates within the school is if they get enough buses trying to leave there that are stacked up that reach the point where the parent drop-off area is in that intersection with the parking lot then the buses start to block the way that traffic can turn and flow on the site. If you started to get back to that stage he would start to say he would not buy this as something that would be effective and working. If you can say pretty consistently that would only occur 15 minutes a day during school days he would start to be moved.

Mr. Clinton stated he could appreciate the position the Board is in; however, he is at impasse as far as how to proceed. The resolution of the intersection goes to their ability to complete the wetlands permit, which is an impact directly to the south. This is a paramount issue for them to clear. Chairman Best stated if what is presented is the best design then the next step for Meridian, in terms of what he would like to see, is for them to have the data to say what this will look like in practice in terms of wait times at the intersection or service at the intersection, etc. Mr. Clinton responded he is not sure how that data could be collected without having the buses stop upon exit in which case they would have to perform some sort of study to show that. He is not sure if that would yield definitive results because they would also have to have someone at the same time at the intersection (lights) doing the same type of analysis. He stated, instinctively, he does not believe that would show any great delay. He is unsure it could be quantified.

Chairman Best remarked the buses go clockwise around the building, come around the back of the building and try to get back onto Madeline Bennett Road and have to turn left across that traffic. If there is incoming traffic their turning left will block that, which will lead to the backup. Mr. Clinton stated he does not believe he could acquire data that would be able to convince that backup would not occur. It is an internal configuration problem with how they operate at the school. All they can address is the proper connection of their driveway to the town road. Chairman Best stated what is known is how much traffic will be produced off of their road with 72 homes plus a few more from Old Blood Road. They can do trip calculations to say what will be going by at rush hour and what is the wait time for someone trying to get out of the driveway, and use that to try to figure out what the backup will be.

Director Thompson remarked the other factor is that the peak hour for the general traffic on the roadway will not correlate with the peak for the school bus usage. Chairman Best stated the afternoon usage will not, but the morning usage comes close. Mr. Clinton stated, in witnessing the traffic patterns in the area, it is the afternoon that really causes the problem. Member Millns stated agreement.

Member Bonislowski questioned what would occur if the SAU does not like anything that is approved. Mr. Clinton spoke of the recorded Deed of the Merrimack School District Conservation Easement. The easement allows for the road to be re-aligned and upgraded. Paragraph 3 of page 5 reads: "The proposed design shall encroach on the easement area of no greater than is necessary in the opinion of the Town Engineers to accomplish the re-alignment of the road. Notwithstanding that the final location of Old Blood Road shall be determined by the Town, the Grantor shall have the right to provide input and written comment on the location prior to a final determination. If there is a conflict between the Grantor's proposed location and the Town's, the Town's determination shall be final."

Mr. Clinton remarked enough Town level endorsements have been accumulated that they are ready to proceed. He is not sure what else the Highway Safety Committee could add to the discussion as it has received the same presentation provided the Board. Mr. Clinton remarked there are times when input from different sides conflict with one another. In this instance the weight of the solution/the proper

design is so much on the Town side as endorsed with the proper safety considerations than on the school side, meaning no disrespect, and that is where they are in the design process.

Member Disco suggested CLD be asked to conduct a review. He commented the information presented appears to be the proper direction. Councilor Koenig stated his appreciation for the changes that have been brought forth; simplifying the intersection, realizing the driveway concept. He commented the delay of the buses coming out of the area is much less than the delay at the light at Baboosic, which was put in by the School District. He does not believe there would be an impact on bus traffic out of the area by a stop at the end of the driveway. The only thing that could muddy it up is motorists coming from the Chestnut Hill area and wanting to turn into the school. Member Millns agreed, and added the delay to a bus, provided motorists heading into the area for pick-up don't block the road, is nothing.

Chairman Best thanked Meridian for the changes made. He suggested the simplest way to bring these two roads together at a 90 degree intersection with a stop sign would also require there to be a stop at the middle school driveway. He agreed with the suggestion of having CLD take a preliminary look at the design and provide input. Director Thompson remarked he and Mr. Clinton have discussed having CLD conduct a review prior to the formal submission being made to the Planning Board.

Mr. Clinton stated his understanding the recommendation is for CLD to have a focused look at this particular issue, weigh in, and if favorable to the current design, within reason as determined by the Community Development Department, they could proceed with their design in advance of coming back to the Planning Board. The Board stated agreement.

Public Comment -

Scott Messina, 36 Old Blood Road

Stated he does not fully grasp how the developers are going to construct the subdivision, and is curious how it will affect his property. Having just moved into his residence in March, he signed an Easement as part of the acquisition. He would like to understand the impact to his property given the proximity of his residence to that intersection. He also noted the existence of an underground propane tank in the vicinity. He questioned how built up the road would be.

Chairman Best told Mr. Messina, as an abutter, he will receive notification as the process proceeds. He noted in terms of impact one of the issues most concerning to most of the neighbors is drainage/runoff, which is an area the Planning Board reviews. The Applicant is required to have no increase in water runoff from its property onto abutting properties. He added an easement signed that allows for some things to occur that would not normally occur between abutters, is something the Board would not necessarily get involved in. Mr. Clinton stated he was aware Mr. Messina has concerns, and would be happy to receive his call. He offered to provide him additional detail if he wished to visit the office.

Chairman Best commented the sense he received from the Board with regard to the two wetlands crossings was to keep the sidewalks in if possible and there will be flexibility on other options that have to be taken to reduce the size. Member Redding clarified the definition of the review with CLD is simply to identify this is a safe intersection and that there are no other potential options that would create a more efficient intersection. That is it. Chairman Best stated agreement, and commented he is in favor of the suggestion for the school zone flashing 20 mph signs for some distance both directions down the road.

5. Meridian Land Services (applicant) and Brett W. Vaughn Revocable Trust (owner) –

Review for acceptance and consideration of Final Approval for a lot line adjustment between an unnumbered parcel on South Grater Road and 123 Wilson Hill Road in the R-1 (Residential) District. Tax Map 4A, Lot 015 and Tax Map 4A, Lot 023.

Ms. Harris informed the Board the application is for a lot line adjustment between Tax Map 4A, Lot 015 and Tax Map 4A, Lot 023 both owned by Brett Vaughn. It would essentially be making Lot 015 smaller and Lot 023 larger. It is important to note the smaller parcel is to be accessed via the Class VI portion of South Grater Road, which was permitted by the Town Council earlier this year.

Thomas Carr, Meridian Land Services, stated the lot line adjustment is between two approximately 30-acre lots (Lot 023 is 29.5 acres/Lot 015 is 33.1 acres). Lot 023 has access off of Wilson Hill Road. He noted, back in January, he was before the Board with a driveway plan for recommendation to Town Council to utilize South Grater Road for access to the lot. That was ultimately granted.

The applicant would like to annex 29.6 acres from Lot 015 to his primary residence, Lot 023, and reduce the area of Lot 015 to 2.917 acres. The lot has been designed to encompass the entire driveway grading presented back in January. There are no easements, wetland crossings, or other permits required. Although not a subdivision plan because the area of Lot 015 will be reduced to less than 5 acres, there is the need to apply to the New Hampshire Subsurface Systems Bureau for subdivision approval.

Mr. Carr stated a waiver request was submitted earlier in the day pursuant to a full boundary survey of both parcels. As noted in the plan, there are many reference plans that have boundary surveys. Lot 015 currently does have a full boundary survey that is recorded at the Registry of Deeds by Nolte Associates. Being requested is to not have to conduct a boundary survey for Lot 023, which is the Applicant's primary residence. It is an existing developed lot, is surrounded by stone walls, and since the lot is not being made smaller, they do not see it as entirely necessary to do a complete boundary survey on that lot.

Director Thompson stated the Board could deem those requirements as unnecessary per Section 4.07 of the regulations. It is only if the Board deems that those would be necessary that those waivers would need to be considered.

Chairman Best stated the property abuts the property of Member Redding. He questioned whether Mr. Redding felt that created a conflict, noting he did not necessarily believe it would. Mr. Redding stated he was comfortable sitting for the case unless any Board members wished for him to recuse.

MOTION BY MEMBER CHRISTENSEN TO ACCEPT THE APPLICATION FOR REVIEW

MOTION SECONDED BY MEMBER FALT

MOTION CARRIED

7-0-0

Chairman Best questioned the will of the Board with respect to the boundary markers. He stated he does not believe the boundary line survey is a necessary part of the review.

The Consensus of the Board was boundary survey and boundary markers for the larger lot are not necessary.

Public Comment – None

Councilor Koenig commented the size and shape of the proposed change to Lot 015 seems a bit odd; small, juts into and does not come up with a straight line off of abutting properties, etc., and questioned the reasoning behind those choices. Mr. Carr displayed a copy of the driveway plan. The bump-out on the top is to address the grading for a safety turn-out (fire apparatus, etc.).

MOTION BY MEMBER MILLNS TO GRANT FINAL APPROVAL WITH THE FOLLOWING CONDITIONS TO BE FULFILLED WITHIN 6 MONTHS AND PRIOR TO PLAN SIGNING; UNLESS OTHERWISE SPECIFIED

1. Final plans and mylars to be signed by all property owners. All appropriate professional endorsements shall also be added to the final plans and mylars;
2. The applicant shall note any waivers granted by the Board on the plan (including Section, and date granted) as applicable;
3. The applicant shall obtain and note on the plan all required state permits and submit copies to the Community Development Department;
4. Address the following planning staff technical comments:
 - a. Please add a note to the plan referencing the authorization by the Town Council regarding the ability for lot 4A/015 to be granted a building permit on a Class VI public highway.

The following General and Subsequent Conditions are also placed on the approval:

1. The applicant is responsible for recording the plan(s) (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) and any related documents 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. If applicable, a draft copy of any proposed easements and any applicable legal documents to be submitted to the Community Development Department for review and approval by the town's legal counsel (legal review shall be performed at the applicant's expense). Said documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant, as applicable.

**MOTION SECONDED BY MEMBER BONISLAWSKI
MOTION CARRIED**

6-0-1

Member Falt Abstained

When asked for an anticipated timeline, Mr. Carr stated his belief there is no immediate groundbreaking to put the driveway in. He believes the Applicant's desire was to get through this process and annex the land to his parent parcel. He is of the belief, at this time, the Applicant will come to a decision as to whether to construct himself or market it.

When asked about discussion at the Town Council meeting relative to meeting with abutters, Mr. Carr stated a meeting was conducted on the site, which was attended by several abutters. That was discussed with Town Council at its meeting. Conditions of approval were basically that the driveway be built substantially according to the plan with consideration to the abutters as long as it was approvable with Deputy Director Fox. Director Thompson noted there is; however, a requirement for an on-site pre-construction meeting, meaning before any work can begin, a meeting must take place at the site

with Town staff to review the proposal to ensure it is constructed in accordance with the condition the Council provided. At that time abutters would have the opportunity to provide comment.

6. Discussion/possible action regarding other items of concern.

Director Thompson questioned whether Chairman Best has followed up on the Sidewalk Subcommittee invitation (7:30 p.m. on June 24, 2014 in the Community Development Conference Room). Chairman Best commented, having received a letter from Director Thompson, he took that as meaning the letter was sent. He requested Director Thompson send the letter.

Member Redding commented abutters have brought forward the potential issue of availability of water for development. When not providing public water, there are no regulations the Board enforces; would be through a State process, e.g., whether you could develop a well that would be sufficient.

Residents have expressed concern there are certain parcels that are challenging. He questioned the Board's opinion of whether that is an issue the Board should look to address, e.g., whether the availability of water, as a community, is going to be an issue and something that should stay on the radar as climate change happens and other aspects of that impact our community, and how best, as a Board, we can serve the community to regulate that or keep an eye on it as that moves forward.

Chairman Best commented that does touch on something that the Master Plan includes as it talks to looking at the salt in wells, the water supply, watering restrictions that are in place in the summer and dry seasons, etc., and trying to figure out the ability to develop other sources, etc. Generality is in the Master Plan stating the need to look at those resources.

In terms of review of plans and whether or not that would be weighed in an approval process to see what water source is available, there has been some larger commercial developments that are on Town water that were required to provide a letter from MVD stating water is available. If not on the MVD and up high on Wilson Hill Road where the wells are tough you might have that question come up where you have sub-divided something into buildable lots and there isn't any water to be had. He remarked he is unsure there is in place a regulatory approach that looks at that.

Director Thompson added he is not clear the authority exists, under State law, to do something beyond State law. That would be something that would have to be looked into. Member Redding stated his understanding the Town of Windham has a regulation that addresses that. Chairman Best commented, for him, it would go hand in hand with the requirements for planning for dealing with septic or sewerage. He suggested the subject be given consideration in more detail when those issues arise.

When asked if he has a sense of the percentage of the Town that receives its water supply from MVD and what percentage is on its own, Member Disco responded he does not. He added, historically that has been left to the developer or property owner to either provide through MVD, if available, or onsite wells. Larger lots for the most part have gotten away with it because there has been enough water historically. One of the worst locations in Town is Wilson Hill Road. Many of those had to go very deep and do fracking to make the well work. He remarked he is unsure if there are limits as to what the Town can and cannot require, e.g., can a decision be made to disallow sub-division if water is unavailable. It is required for occupancy.

Director Thompson stated he has a rough map that identifies services areas for MVD. It does not include the Pennichuck service area. He offered to make that available.

Chairman Best remarked it is a great point to keep in mind as applicants come forward. He does not necessarily believe it to be at the stage where you start writing those things into the site plan review,

but as applicants are before the Board the question of have you thought about your water supply could be thrown out.

7. Approval of Minutes – May 20, 2014.

Merrimack Planning Board – May 20, 2014

**MOTION BY MEMBER BONISLAWSKI TO APPROVE AS SUBMITTED
MOTION SECONDED BY MEMBER MILLNS
MOTION CARRIED
7-0-0**

8. Adjourn

**MOTION BY MEMBER MILLNS TO ADJOURN
MOTION SECONDED BY MEMBER BONISLAWSKI
MOTION CARRIED
7-0-0**

The June 3, 2014 meeting of the Merrimack Planning Board was adjourned at 9:50 p.m.