



Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD VIRTUAL MEETING APPROVED MINUTES TUESDAY, NOVEMBER 10, 2020 7:00 P.M.

Due to the COVID-19 crisis, and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Planning Board is authorized to meet electronically.

As stated on the agenda, the meeting was aired live on Merrimack TV and the Merrimack TV Facebook Live page (<http://www.facebook.com/merrimacktv>). Telephone access was available for members of the public wishing to speak during the Public Hearing or provide public comment. Also identified on the agenda was the opportunity for general public comment to be submitted leading up to the start of the meeting via email to CommDev@MerrimackNH.Gov.

Members of the Board and Town Staff were participating via Zoom. In accordance with RSA 91-A: 2 III, each member of the Board was asked to state, for the record, where they were, and who, if anyone was with them.

1. Call to Order

Robert Best called the virtual meeting to order at 7:05 p.m. and read the procedures & processes for the virtual meeting. He appointed Nelson Disco to vote for Lynn Christensen.

Roll Call:

- Nelson Disco (Alternate) stated he was present at home and alone in the room he was in.
- Alastair Millns (Vice Chair) stated he was present at home and alone in the room he was in.
- Paul McLaughlin stated he was present at home and alone in the room he was in.
- Neil Anketell stated he was present at home and alone in the room he was in.
- Councilor Bill Boyd (Ex-Officio) stated he was present at home and alone in the room he was in.
- Robert Best (Chair) stated he was present at his office in Concord and alone in the room he was in.

Members Absent:

- Lynn Christensen

Staff Present: Robert Price, Planning and Zoning Administrator (alone and participating remotely from his office at Merrimack Town Hall)

2. Planning & Zoning Administrator's Report

The Board voted 6-0-0 by roll call vote to determine that the 106 Herrick Street and As Life Goes On, LLC site plans are not of regional impact, on a motion made by Bill Boyd and seconded by Nelson Disco.

3. Granger Revocable Trust (applicant/owner) - Continued review for acceptance and consideration of final approval for a two lot subdivision. The parcel is located at 225 Naticook

Road in the R-4 (Residential, by soils) District, Aquifer Conservation, and Wellhead Protection Areas. Tax Map 2B, Lot 034. Case # PB2020-11. **This item is continued from the June 16, July 21, August 18, September 15, and October 20, 2020 Planning Board meetings.**

At the applicant's request, the Board voted 6-0-0 by roll call vote to continue both the application's acceptance and public hearing to an undetermined future date on a motion made by Alastair Millns and seconded by Nelson Disco. The continuation will require re-notification of abutters at the applicant's expense once resubmitted for a future hearing.

4. **John Flatley Company (applicant/owner)** - Continued review for acceptance and consideration of a Site Plan to construct 100,000 square feet of research & development/warehouse in 3 proposed buildings and associated site improvements, per the requirements of the Flatley Mixed Use Conditional Use Permit. The parcel is located at 685 Daniel Webster Highway in the I-1 (Industrial) district and the Aquifer Conservation and Wellhead Protection Areas. Tax Map 6E, Lot 003-04. Case #PB2020-19. **This item is continued from the September 1, October 6, and October 20, 2020 Planning Board meetings.**

Robert Best recused himself.

Chairman Best stepped down and Vice Chairman, Alastair Millns presided;

Robert Price advised the Board that the applicant has submitted the traffic study and building renderings that were not received in time for the last meeting, so at this time, staff is recommending that the application be accepted as complete so the review process can begin.

Kevin Walker (Project Manager, John Flatley Company) and Chad Branon, (Civil Engineer, Fieldstone Land) presented the project on behalf of the applicant. Mr. Branon began by sharing the site plan and providing an overview of the location, layout and zoning. He continued by explaining that the applicant is proposing to develop three industrial flex buildings on the front 11 acres of the property. Mr. Branon further explained that the three buildings will total 100,000 square feet but the unit sizes and usage within the buildings will depend on the user, which is why they are referred to as "flex buildings." He discussed the size of each building and walked through some proposed layouts before turning his attention to parking, traffic flow and site access. Mr. Branon also touched base on traffic report, stating that they will continue to work with staff on any feedback received and then discussed the stormwater plan. The applicant has been working with the Department of Environmental Services on the plan, which will consist of a series of underground chambers that will be captured and filtered and then ultimately routed into the Merrimack River. The applicant has submitted a waiver in regards to the stormwater requirements but is in the process of working with the Environmental Protection Agency (EPA) on the documentation to support the waiver.

Mr. Branon concluded by stating that the applicant and project team intend to seek all necessary state permits and will work with staff to address any feedback and update the plan as needed.

Vice Chairman Millns opened up the discussion to Board members.

The traffic study was discussed and Robert Price advised the Board that the study was received from the applicant and was more of an analysis than a complete study. Feedback was received from Fuss & O'Neill as well as the Community Development Director (Tim Thompson) and a new trip generation calculation has been requested because the original one was based on the CUP's Master Site Development Plan condition (the conceptual layout of uses that are part of the CUP, but are not permitted for development until site plan approval) and not the existing

condition (vacant land). As such, the analysis shows a decrease in traffic trips when the land itself does not currently generate any vehicle trips.

The question was raised as to if the construction was going to be done in phases or all at once and Kevin Walker responded that the current plan is to do it all at once. Mr. Walker also addressed the traffic report by stating that the original proposal for the site was retail use. The change in use to the flex buildings cuts the vehicle trips down significantly. He also added that the plan does not call for any widening of the road as there is plenty of existing space for restriping of the existing roadway to create a dedicated turning lane.

Nelson Disco commented on the building renderings that were submitted and expressed concern that they appear to be very industrial looking. Mr. Walker responded by advising Mr. Disco that they are still working through the design and are in agreement that they do not want anything too industrial looking to be constructed. Mr. Disco added that he feels that the proposed buildings should be designed so as to somewhat distract from the size and visibility of the abutting St. Gobain building.

Mr. Walker also touched base briefly on the landscaping plan and the intent to keep some of the trees in the front of the parcel to help cut down on headlight glare into Webster Green.

Vice Chairman Millns asked if signage has been considered as he is concerned with the appearance of the parcel if multiple signs are erected. Mr. Walker indicated that he envisions one sign that will indicate the companies located on the property.

Councilor Boyd asked if the stormwater system being proposed is designed to treat PFAS. Mr. Branon stated that the system does not treat PFAS and was developed based on the recommendations from DES. Councilor Boyd expressed concerns of the contaminants going into the river and getting into the Pennichuck Well that is being constructed to provide drinking water to the residents in South Merrimack as well as Litchfield. Mr. Walker responded by explaining he will be meeting with the Merrimack Village District (MVD) Board as soon as the water line plans for the entire site are established. Mr. Branon added that the plans were developed with guidance from DES and the recommended plan is the least likely to disturb any existing pollutants. He also stated that MVD has been advised of the plans.

Mr. Branon also answered questions about the dock elevation for the proposed buildings and the status of the Alteration of Terrain permit. Councilor Boyd also asked about the soil mitigation plan and Kevin Walker advised the Board that DES will require the plan prior to construction and it will be similar to what was done for Gilbert Crossing.

Robert Price clarified that the staff recommendation is to accept the application as complete so that the applicant can receive feedback from the Planning Board and public and employ the feedback into the plan.

Neil Anketell asked for clarification on what the term "flex" means as he is concerned that it is too broad and opens up the use for whatever the applicant wants. Mr. Walker clarified that the term flex is basically referring to the size of the space the tenant is seeking. The use will be a combination of office space and warehouse or just strictly warehouse for manufacturing/industrial companies. Mr. Branon also added that proposed uses will be compliant with the industrial zone.

The Board voted 3-2-0 by roll call vote to accept the application for review, on a motion made by Nelson Disco and seconded by Bill Boyd. Neil Anketell and Paul McLaughlin voted in opposition.

Vice Chairman Millns advised the Board that the applicant has submitted a waiver request from the Town of Merrimack Code of Ordinances, Chapter 167, however the Board does not have jurisdiction to waive the requirements of this Chapter; the Community Development and Public Works Departments do. Therefore the Board cannot act on this (or any other) waiver until the project has received all state and federal permits and Town Staff is in a position to make recommendations on the stormwater waivers.

Public Comments:

Katharine Hodge (44 Belmont Drive) expressed the following concerns:

- PFAS contamination - Ms. Hodge pointed out that although the PFAS is an existing problem on the site, it becomes something that needs to be managed by the applicant once the land is developed. She also raised the concern about a statement that was made regarding not wanting to disturb the soil. Ms. Hodge feels that any development of the site will disturb the soil and the contaminants will penetrate into the ground water which is where the drinking water is obtained.
- Traffic study - The traffic study was conducted in the middle of the afternoon on a summer day and not during the peak times (the morning and afternoon commute) when the traffic is at its worse. She would also like an explanation on how another lane is going to fit without widening the road.
- Aesthetics - Ms. Hodge is concerned that the removal of all of the trees in front of St. Gobain is going to ruin the view for everyone on DW Highway. She also expressed her disapproval that Mr. Walker stated that they will “try” to take another look at the design to make it less industrial looking.
- Peer Review and Plan Errors- Ms. Hodge urged the Board to take a look at the comments from the peer review because she feels that the applicant has not addressed any of the concerns raised. She also urged the Board to take a closer look at the plan as she feels that there are a lot of errors including not enough parking spaces for what is being proposed.

Mr. Branon responded by explaining that they have reviewed the peer review comments and are in the process of updating the plan to reflect their recommendations. He also explained that they understand PFAS is an existing issue and they working with the State to address all of the concerns and come up with the best solution for the site. He then added that he is not going to elaborate any further as it's important for them to get the approvals in place first.

Vice Chairman Millns reminded the public that once a point is made by a caller, there is no need to re-address it again.

Don Provencher (6 Wasserman Heights and Chair of the MVD Board of Commissioners) advised the Board that the MVD Commissioners met and drafted a letter that was provided to the Community Development Department late in the afternoon of November 10th. Vice Chairman Millns informed Mr. Provencher that since packets are mailed to the Board ahead of time, they are not in receipt of the letter. Mr. Provencher read the letter from the MVD Board of Commissioners* and asked for clarification on a previous statement made by Mr. Branon regarding not being able to meet the peak discharge rate of runoff.

**The letter from the MVD Board of Commissioners can be found in the project file at the Community Development office.*

Mr. Branon responded by explaining that the design that they landed on was what DES recommended and that they (DES) did not want them to have any more stormwater

management practices on site than what is necessary. They felt with the location being so close to the brook and river, it made more sense to treat the runoff and get it into the stream/river.

Ashley Tenhave (75 Shelburne Rd) voiced concerns about the following:

- Contaminants - The dust filled with PFOAs that will be caused by the construction will impact the residents of Webster Green across the street. She feels as if the residents of Webster Green and Merrimack have enough concerns with the problems St. Gobain have caused and do not want Flatley adding to them.
- Proposed entrance - Ms. Tenhave spoke in opposition of the proposed entrance across the Street from Webster Green. The residents of Webster Green already have a difficult time getting in and out of their entrance without adding 18 wheelers into the equation. She also added that the bus stop for the children that live at Webster Green is at that intersection which is a big safety concern. The residents of Webster Green have asked Flatley to consider moving the entrance and have gotten no response so they are asking the Board to step in.
- Noise and Light Pollution - This is a big concern to the neighbors as they feel that the large trucks coming in and out of the development are going to generate a lot of noise. Flatley has given no indication as to the hours of operation for the proposed businesses so there is major concern that 18 wheelers will be coming and going at all hours of the night. The potential of illuminated signs was also a concern as the lights may shine into the homes of the residents across the street.

Katie Poirier (11 Kimberly Dr, unit 21) voiced the following concerns:

- Department comments - Feedback has not been received by the Fire Department yet.
- Master plan - Three buildings are included in this phase and if they are not all completed at the same time the master plan will need to be updated.
- Traffic review and Entrance - Ms. Poirier expressed concerns with the traffic study and the position of the entrance across from Webster Green. She also added that she is concerned with the amount of air pollution that the addition of diesel trucks will bring to an area already dealing with pollutants from St. Gobain.
- Re-notification to abutters - Ms. Poirier stated that she previously requested that the applicant re-notify abutters each time this project appears on an agenda and her request was never addressed.

Margo Hembree (40 Shelburne Rd) echoed the concerns of the previous residents regarding the air pollution, noise pollution and proposed entrance. She also requested that if the entrance is constructed as planned, that they add a traffic light and crosswalks.

Paul McLaughlin advised the Board that he is also on the Board at MVD but has recused himself from anything related to this project due to his status on the Planning Board.

Katharine Hodge (44 Belmont Drive) spoke again regarding the following:

- Soil Removal - When the Gilbert Crossing development was under construction they removed soil from the premises even though they were specifically advised they could not. They initially denied that it happened and then ultimately confessed. Soil removal is going to be a big concern with this new development.
- Unknown Pipe - A pipe that runs from the edge of DW Highway through the St. Gobain property was installed and DES does not seem to know anything about it.
- Snow Storage - There is a known problem with salt in the town wells and there is a proposed snow storage area right near the stormwater treatment area. This should be addressed and was mentioned in the peer review.

Chad Branon addressed the public comments with the following remarks:

- Lighting - A detailed light plan has been submitted that depicts the intensity of the lights and demonstrates that there will be no light pollution off the property.
- Signs - they are not currently seeking any approvals for signs but when they do they will be subject to a building permit.
- Department Comments - Feedback has not been received from all departments but this is out of their control. As comments are received, they will be addressed.
- Peer Review Comments - They are in the process of going through the comments from Fuss & O'Neill and once all of the issues are ironed out, they will submit revised plans.
- Traffic - The road is under the jurisdiction of the DOT and they cannot just propose a signal if one is not necessary. This project went through a DOT traffic review with the original CUP proposal and since the new use will reduce the anticipated traffic from that review, they cannot foresee a traffic light being approved.
- Entrance - Mr. Branon stated that they will take the comments under advisement but it is both common and good engineering practice to construct a new entrance across from an existing one. This helps reduce turning conflicts and creates good visibility for safe traffic patterns. He added that if they shift the entrance to the east or west, it will be directly in front of resident's homes instead of the access corridor. They have no concerns with adding bus stop signs or other signs regarding the entrance as needed.
- Noise Pollution - Mr. Branon pointed out that the use that they are proposing is an allowed use in the industrial zone and they have tried to be considerate of the neighboring properties in their design.
- Crosswalk - With the traffic issues that have been raised, a crosswalk does not seem viable in this location.
- Soil Disruption - The soil management plan is an important component of this development and the applicant is sensitive to the current conditions of the site. The applicant feels that they have submitted a responsible plan for the development of the site and have been and will continue to work with the state.
- Stormwater and Snow Storage - The feedback from all sources (Conservation Commission, MVD and the public) is appreciated and will help them develop revised plans.

The Board voted 5-0-0 by roll call vote to continue this item to December 1, 2020, on a motion made by Bill Boyd and seconded by Nelson Disco.

Robert Best resumed as Chair.

- 5. Corey Knight (applicant) and Sanco Realty Trust (owner)** - Review for acceptance and consideration of a Site Plan to construct an automobile dealership and repair facility. The parcel is located at 106 Herrick Street in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 3D-2, Lot 021. Case #PB2020-26

Robert Price provided an overview of the project by explaining that the applicant is proposing to construct an automobile dealership on what is now a vacant lot. The Zoning Board granted a Special Exception to allow for auto sales and service in August 2020.

Jeff Kevan, (TF Moran, Inc.), and Corey Knight, (applicant) were in attendance to present the project to the Board. Mr. Kevan began by providing an outline of the location and zone of the parcel in question. He then explained that the applicant is proposing to construct an automobile dealership that focuses on the sale and service of BMWs. Due to the specialized nature of the business, the inventory is much lower than that of a regular dealership.

Mr. Kevan continued his presentation by sharing the site plan and demonstrating the layout of the proposed one story, 9,459 square foot building. The entrance to the parking lot will be off of Herrick Street and the front of the building will face DW Highway. There will be 89 parking spaces in total and roughly 2,000 square feet of the building will be used for indoor sales with the rest being used for the repair side of the business. He then walked through the stormwater plan and the topography of the land and the utilities. The applicant is currently working with Eversource to replace an existing pole and run underground utilities to the site. Mr. Kevan also explained that the applicant is seeking a landscaping waiver to allow 1,223 square feet of landscaping whereas 2,422 square feet is required. He touched base on the landscaping and lighting plan that was included in the site plan and talked briefly about the trip generation memo that was provided.

The Board asked some general questions about the trip generation memo, landscaping and sidewalks. Nelson Disco recommended that they work with Public Works to extend the landscaping plan into the right of way on Herrick Street. He also stated that he would like to see a sidewalk installed along DW Highway similar to what was approved for Mi-Box. Chairman Best explained that the Master plan does not prioritize sidewalks in this particular section of DW Highway and Robert Price added that a sidewalk is not being constructed for Mi-Box as they received a waiver from the Planning Board to not require a sidewalk on September 5, 2017. It was also noted no other sidewalks exist on DW Highway in the immediate vicinity.

The Board voted 6-0-0 by roll call vote to accept the application for review, on a motion made by Bill Boyd and seconded by Neil Anketell.

Councilor Boyd asked for clarification on what a “stabilized construction entrance” is that was referenced on page three of the site plan. Mr. Kevan explained that it is a construction entrance/exit designed to help clean the tires of construction debris before leaving the site. Councilor Boyd also asked for clarification from Chairman Best as to whether or not the site plan should include the strategy for removing gas and oil from the site. Chairman Best responded that the requirement depends on the use of the property and it has been a stand that the Board has taken in the past on similar uses. He also added that he noticed the proposal of floor drains in the repair area of the building and this is not something that the Board would support because it adds to the likelihood that oils would wash into the drainage system. He further added that he had a conversation about this project with the town engineer and Public Works is going to need a better understanding of how the proposed drainage system connects to the town system because structures that have the potential to carry oil gasoline are not supported by DPW to be connected to the town system.

Councilor Boyd asked what type of glass would be used in the building and Mr. Kevan stated he did not know off hand but noted the building will sit below the road by 10 feet. Neil Anketell pointed out that the index has the landscaping plan listed as page seven and it is actually on page nine. He also asked for clarification on the height of light poles and was advised they are 20 feet high. Mr. Kevan commented that the typos and the addition of the light pole height will be fixed on the revised plans. Nelson Disco asked for an explanation on the drainage plan and Mr. Kevan referred him to page 15 of the site plan and walked him through the proposed system. Chairman Best asked if the system is going to require an operations & maintenance plan because if so, the Board will require a copy of the operations & maintenance plan to be filed with the town for review. Additional discussions took place about the drainage system and the Board commented that they did not feel the drainage plans were clearly laid out. Robert Price advised the Board members that the plan is being reviewed by Fuss & O'Neill and if the plans are incomplete or unclear, they will note that on their review.

Mr. Kevan walked through the plans for snow removal and explained that there is very little space on the property for snow storage so anything more than a small storm will have to be

hauled off site. Chairman Best advised Mr. Kevan that the site plan needs to stipulate the plan for snow removal and must also state that the snow cannot be stored in any of the parking spaces or on the pavement.

Paul McLaughlin left the meeting at 9:47 p.m.

Chairman Best asked for clarification on whether or not the parcel is located in the Aquifer Conservation district. Robert Price responded that the parcel is in the Aquifer Conservation District so all of the regulations regarding salt and de-icing will apply. Mr. Kevan added that the applicant is meeting with the Conservation Commission next week. The conversation then turned to the probability of moving the entrance to align with the Mi-Box entrance and Mr. Kevan stated that he was just made aware of that request but will certainly look into it to see if it can be done.

Chairman Best then brought up the subject of sidewalks again and the Board had a lengthy discussion about the topic, ultimately deciding that they would not recommend a sidewalk at this parcel.

There was no public comment.

The Board voted 5-0-0 by roll call vote to continue this item to December 15, 2020, on a motion made by Bill Boyd and seconded by Nelson Disco.

- 6. As Life Goes On, LLC (applicant) and Phyllis and Laura Benson (owners)** - Review for acceptance and consideration of a Site Plan to convert an existing building (currently vacant, most recently a former personal service use) to a 24 bed assisted living facility. The parcel is located at 585 Daniel Webster Highway in the C-1 (Limited Commercial) and R-4 (Residential), Aquifer Conservation, and Elderly Housing Overlay Districts. Tax Map 6D-1, Lot 046. Case #PB2020-27

At the applicant's request, the Board voted 5-0-0 by roll call vote to continue this item to December 1, 2020, on a motion made by Bill Boyd and seconded by Neil Anketell.

7. Discussion/possible action regarding other items of concern

- The Board discussed an article from a local paper about a Planning Board member in another town being asked to recuse himself from a project and whether or not they would have taken the same action.
- Robert Price asked the Board to consider how they would like portable storage containers handled. They have become more common and the regulations currently do not cover them. The Board each shared their views on how they should be handled. Various opinions were discussed but everyone seemed in agreement that there should be a time limitation as to how long they can be kept on a property. Neil added that he is also in favor of time limits as long as they can be extended. The Board also agreed some sort of approval should be required. Robert is going to take the feedback and draft an amendment to the regulations for review.

8. Approval of Minutes — October 6, 2020

The Board voted 5-0-0 by roll call vote to approve the minutes of October 20, as drafted, on a motion made by Bill Boyd and seconded by Nelson Disco.

9. Adjourn

The Board voted 5-0-0 by roll call vote to adjourn at 10:41 p.m., on a motion made by Bill Boyd and seconded by Nelson Disco.