



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 SPECIAL MEETING

APPROVED MINUTES

TUESDAY, NOVEMBER 13, 2018

Planning Board members present: Robert Best, Alastair Millns, Tom Koenig, Neil Anketell (arrived 7:04 p.m.), and Alternate Nelson Disco.

Planning Board members absent: Michael Redding, Lynn Christensen and Dan Ricker.

Staff present: Planning and Zoning Administrator Robert Price, Assistant Planner Kellie Shamel and Recording Secretary Zina Jordan.

1. Call to Order

Robert Best called the meeting to order at 7:00 p.m. and designated Nelson Disco to sit for Michael Redding.

2. Planning & Zoning Administrator's Report

The Board voted 4-0-0 to determine that S&H Land Services subdivision and Edgebrook Heights subdivision & site plan are not of regional impact, on a motion made by Tom Koenig and seconded by Nelson Disco.

3. Synergy Self Storage, LLC. (applicant/owner) — Continued review for acceptance and consideration of a site plan review for modifications to the previously approved site plan regarding access and parking. The parcel is located at 403 Daniel Webster Highway in the I-1 (Industrial), Aquifer Conservation and Elderly Housing Overlay Districts. A portion of the parcel is subject to the Flood Hazard Conservation District. Tax Map 4D-3, Lot 084-01. This item is continued from the August 7, and September 18, 2018, Planning Board meetings.

Neil Anketell arrived at 7:04 p.m.

Robert Price informed the Board that that applicant had submitted a more complete set of plans to correct the deficiencies on site. "No Parking" signs and paint markings are proposed along the driveway to the northerly side of the building and the encroachment onto the abutting property to the east would be removed.

Doug MacGuire, The Dubay Group, said he improved the drainage. Since recently-dug test pits revealed that the separation to the water table is shallower than what was expected, the originally-proposed infiltration practices cannot be utilized. He is now proposing a small wet pond to dilute and treat contaminants. It has more capacity to redirect and reduce flow for all storm events. The small amount of pavement that encroaches onto the abutting lot would be removed. Fuss & O'Neill peer review indicates that there may be a need for an Alteration of Terrain Permit, given the total

square footage of disturbance that has taken place and suggested that the NH DES Alteration of Terrain Bureau determine if the project as a whole now requires such a permit. There were no technical comments. Since the upland now exceeds 100,000 square feet, drainage must be upgraded again. There would be both a wet pond and an underground infiltration system, which meet the intent of Alteration of Terrain.

Chairman Best requested that the applicant note the landscaping and lighting plans from the original site plan by reference and asked about the small encroachment to the north. Doug MacGuire said the abutter to the north has agreed to a small easement. Chairman Best suggested that either the easement or removal of the encroachment be a condition of approval. Doug MacGuire reiterated that the encroachment on parking to the east would be removed. Chairman Best requested putting diagonal yellow stripes where no parking is allowed in addition to signage and wording on the pavement.

Doug MacGuire explained how a wet pond works. He would add a Cape Cod berm on the east side of the driveway so there would be no flow onto the abutting property. It would drain down into the wet pond on the west where topography would guide the water to the pond. Chairman Best instructed the applicant to be sure that all water and/or petroleum oil goes off the pavement into the wet pond and can be treated. Doug MacGuire stated that the NH Department of Environmental Services (DES) recognizes this method when approving an Alteration of Terrain Permit. Fuss & O'Neill reviewed the written report as well as the drainage analysis. Doug MacGuire explained how a small pond outlet control device would slow down the water. Chairman Best instructed the applicant to place an oil-water separator at the outlet of the wet pond. Doug MacGuire said an existing condition is that there is no outlet from the large pond.

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 5-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Nelson Disco.

There was no public comment.

The applicant requests a waiver to construct a 25' driveway radius at the property line. The Wright Avenue access connection has roughly 15' radii. The driveway is already constructed and it would not be possible to achieve the 25' driveway radii without encroaching past the existing lot lines. This is due to the minimum frontage of only 50' in this location. The driveway is not a main access point, is gated and has only a one-way traffic pattern. The reduced radii constructed are adequate for the very limited access needs of this driveway.

Robert Price stated that the Public Works Department (PWD) has not indicated they are opposed to a waiver from driveway width.

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

The Board voted 5-0-0 to grant a waiver from the requirements of Section 7.05.20.C – Driveway Width – on a motion made by Alastair Millns and seconded by Nelson Disco.

Robert Price stated that the applicant must get a Right-of-Way Permit.

The Board voted 5-0-0 to grant final approval, with the following conditions, on a motion made by Alastair Millns and seconded by Neil Anketell.

1. Final plans and mylars to be signed by all property owners. The appropriate professional endorsements and signatures shall also be added to the final plans and mylars;
2. The applicant shall obtain all required State approvals/permits as may be applicable, note the approvals/permits on the plan and provide copies to the Community Development Department;
3. Any waivers granted (including Section and date granted) and/or any changes requested by the Planning Board shall be listed and fully described on the final plan, as applicable;
4. The applicant shall provide draft copies of any applicable legal documents for review, at the applicant's expense, by the Town's Legal Counsel;
5. The applicant shall address the comments from the town's peer review consultant, CLD/Fuss & O'Neill, as applicable;
6. There are several plans that are typically required as part of a full site plan application that are not included in the submission (existing conditions, landscaping, grading, etc.) The Applicant shall provide notes that include proper references to the sheets in the previously approved site plan set on file with the Town;
7. The applicant shall address any forthcoming comments from the Building Department, as applicable;
8. The applicant shall address any forthcoming comments from the Fire Department, as applicable;
9. The applicant shall address any forthcoming comments from Merrimack Village District, as applicable;
10. The applicant shall address the following comments from the Police Department, as applicable:
11. The applicant shall address the following comments from the Public Works Department, as applicable:
 - a. The driveway [to Wright Avenue] has already been paved and a Right of Way Permit was not obtained. The driveway was therefore not constructed as required under 4.13.1 Driveways and 7.05.D.20 Driveways and Access Roads; Commercial Sites. As a result, drainage issues that originate at SRS Petroleum Structures, LLC are now settling at the end of the driveway. The

proposed curb should be extended to meet the existing Wright Avenue pavement. The end of the curb shall be flattened to prevent catching by the snow plow;

- b. The applicant shall obtain a right-of-way permit from the Highway Division of Public Works for the Wright Avenue access;
12. The applicant shall address any forthcoming comments from the Wastewater Division, as applicable;
13. The applicant shall address the following conditions made by the Planning Board during the public hearing:
- a. Clean up labeling on Sheet 4 (Map & Lot text overwriting);
 - b. Clean up labeling for proposed cape cod berm on Sheet 5;
 - c. Add cape cod berm along westerly side of vehicular storage area adjacent to wetland on Map 4D-3, Lot 091, on Sheet 6;
 - d. Add oil/water separator to proposed wet pond;
 - e. Written support of the waiver from Section 7.05.D.20.c (Driveway Width) shall be provided by the Public Works Department.

The following general and subsequent conditions are also placed on the approval:

- 1. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) 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. The applicant shall submit an As-Built Plan prepared by a qualified professional (Professional Engineer or Licensed land Surveyor, registered/licensed in New Hampshire) to the Community Development Department prior to the issuance of a Certificate of Occupancy for the building;
 - 3. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant.
- 4. Peter Olivier and Sherri Olivier (applicants) and Siam04 Realty (owner) —** Continued Review for acceptance and consideration of a waiver of full site plan review to permit employee parking for an off-site landscaping business as well as employee and tractor trailer parking for an off-site moving business, both of which are in addition to the existing on-site restaurant use. The parcel is located at 75 Daniel Webster Highway in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 2D, Lot 028. This item is continued from the June 19, July 17, September 4, and October 2, 2018 meetings.

Robert Price explained that the applicant has requested a continuance to another meeting, but at this time Staff cannot recommend that the Board vote to accept the application as the submitted plans and information do not provide sufficient information to invoke the Board's jurisdiction and to allow the Board to make an informed decision and therefore should be determined to be incomplete.

The Board voted 5-0-0 that the application is incomplete and cannot be accepted for review, on a motion made by Alastair Millns and seconded by Nelson Disco.

5. Mark Rivet (applicant/owner) and FPL, LLC, Fraser Square Realty, LLC, & Daniel Hock (owners) — Continued Review for acceptance and consideration of final approval for a lot line adjustment. The parcels are located at 425 Daniel Webster Highway, 2 & 4 Railroad Avenue and an unnumbered parcel off Railroad Avenue in the C-2 (General Commercial) and Aquifer Conservation, Flood Hazard Conservation, Elderly and Town Center Overlay Districts. Tax Map 5D-4, Lots 077, 078, 079 & 080. This item is continued from the September 4, and October 2, 2018 meeting.

Robert Price informed the Board that the applicant owns most of the lots in question. Land would be taken from the large parcel and given to the smaller ones, which do not comply with the minimum lot size requirements of the Town Overlay District. On October 31, 2018, the Zoning Board of Adjustment (ZBA) granted multiple Special Exceptions for the dimensional-related deficiencies involved.

Chad Branon, Civil Engineer, Fieldstone Land Consultants, LLC, said the lot line adjustments between the parcels and resulting elimination of all existing encroachments would make each of the smaller lots more conforming. Wetlands and a flood plain on the large lot limit its use.

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 5-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Nelson Disco.

There was no public comment.

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

The Board voted 5-0-0 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 appropriate professional endorsements and signatures shall also be added to the final plans and mylars;
2. The applicant shall provide draft copies of any applicable legal documents for review, at the applicant's expense, by the Town's Legal Counsel;

3. The applicant shall address the following comments from the Public Works Department:
 - a. Applicant shall revise Note 12 to include along the existing right-of-way, per Town of Merrimack Subdivision Regulations, Section 4.06.1.i;
4. The applicant shall address the following Planning Staff Technical Comments:
 - a. Revise the signature block by changing “Secretary” to “Vice Chairman”;
 - b. Revise Note 4 to include Town Center Overlay District, and include dimensional requirements specified under Section 2.02.13.E of the Town of Merrimack Zoning Ordinance;
 - c. Add notes describing all Special Exceptions granted by the Zoning Board of Adjustment on October 31, 2018;

The following general and subsequent conditions are also placed on the approval:

1. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) 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. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
- 6. Mark Rivet (applicant/owner)** — Continued Review for acceptance and consideration of a site plan for the construction of a 1,890 s.f. garage and function room addition and associated site improvements. The parcels are located at 425 Daniel Webster Highway in the C-2 (General Commercial) and Aquifer Conservation, Flood Hazard Conservation, Elderly and Town Center Overlay Districts. Tax Map 5D-4, Lots 077 & 078. This item is continued from the September 4, and October 2, 2018 meeting.

Chad Branon, Civil Engineer, Fieldstone Land Consultants, LLC, noted the square footage of the garage has increased from the originally proposed 1,890 s.f. to 1,920 s.f. The lot containing the funeral home has municipal sewer and Merrimack Village District (MVD) water. Lot 78 is vacant. Additions would be at the rear of the funeral home. The parking lot would be improved and expanded with 20 new spaces into Lot 78. There would be an agreement between two lots for the parking rights. Catch basins would drain the lot to an infiltration basin. Current parking spaces on Lot 77 would be improved to be ADA (Americans for Disabilities Act) accessible. Two more spaces would be added in the front. PWD has reviewed the plan; the applicant awaits peer review. Connecting Lots 75 and 76 to the parking lot would improve traffic flow. Ornamental rocks would be removed.

Mark Rivet, 3 Tennis Court, explained the parking for each lot. Cars would not back onto Route 3. Chad Branon said that grading on the perimeter necessitates installation

of a retaining wall. Robert Best and Alastair Millns disagreed about whether to allow traffic on all three curb cuts to leave the site simultaneously. Chad Branon would maintain one direction only going into and around the funeral home.

Mark Rivet said the function room would be for memorial services or for a meal upstairs. He also noted his intention to rent the facility to anyone seeking to utilize the space. It would be used for services while the funeral home itself is renovated. There would be an elevator to the second floor. Chad Branon said that the function room would be above the first floor, which would be a garage for funeral home vehicles.

Nelson Disco suggested a fence/barrier at the edge of the slope. Chad Branon said he would relocate the ornamental rocks there. Chairman Best suggested concrete wheel stops, but Chad Branon objected that they do not remain anchored to asphalt over time and damage parking lots. It is a long-term maintenance issue. Chairman Best suggested planting bushes or installing a split rail fence.

There was no public comment.

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 5-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Nelson Disco.

Based on the information available to date, staff recommends that the Board continue the application to December 18, 2018, in order to allow for peer review to be completed and the applicant to address comments when received.

The Board voted 5-0-0 to continue this item to December 18, 2018, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Alastair Millns and seconded by Nelson Disco.

- 7. Bradford's Driving School (applicant) and City Bay Realty, LLC (owner) –**
Review for acceptance and consideration of a waiver of full site plan review to permit a driver education business to locate within an existing commercial plaza. The parcel is located at 416 Daniel Webster Highway in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 5D-4, Lot 003.

Kellie Shamel explained that, because the business is in the C-2 District, this use must go to the Planning Board rather than be determined by administrative decision. This is because the proposed use is not listed as a permitted use in the Zoning Ordinance; however there is precedent of the Planning Board having approved a similar use elsewhere in the community within the C-2 District without it having obtained zoning relief. As a result, it was determined that educational facilities are considered permitted uses in the C-2 District only with Planning Board approval.

Mike Bradford, Bradford's Driving School, said that law enforcement is concerned about mixing a driving school and a day care in the same complex. The concern is safety of the children using the outdoors and the inexperience of the driving school students and

the potential risk. The driving school would be on the opposite side of the building from the day care. The children's play area is in back and the driving school is in front. Child care operating hours are 7:00 a.m.-6:00 p.m., whereas driving school operating hours are 6:30 p.m.-8:30 p.m. There is one two-hour class a day for six days. The day care is closed on weekends, when the driving school is open from 9:00 a.m.-11:00 a.m. The use is classroom teaching. Road lessons are elsewhere. The school picks up and drops off students at their homes or at designated meeting spots. Driving lessons are in one hour increments. There are no assigned parking spaces. Classroom students are 15-16 years old, with some adult students. Mike Bradford and three employees are certified driving instructors. They use the school's four vehicles that have dual pedals and brakes, then will take them home. Most parents do not stay while students are in class, so there is no parking problem. The State mandates a maximum of 30 students per class. There are 216 spaces available whereas 19 are required. There are no plans to offer classes for senior drivers. Mike Bradford showed the location of the school, which Chairman Best instructed be noted on the plan. Chairman Best previously had no issue with the AAA driving school next to "Nuthin' But Good Times". This one has minimal overlap with the day care facility.

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 5-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Nelson Disco.

Chairman Best noted that there would be no physical change to the site.

The Board voted 5-0-0 to waive full site plan review, on a motion made by Alastair Millns and seconded by Nelson Disco.

There was no public comment.

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

The Board voted 5-0-0 to grant final approval, with the following conditions, on a motion made by Alastair Millns and seconded by Nelson Disco.

1. Final plans to be signed by all property owners;
2. The applicant shall obtain all required State approvals/permits as may be applicable, note the approvals/permits on the plan and provide copies to the Community Development Department;
3. The applicant shall provide draft copies of any applicable legal documents for review, at the applicant's expense, by the Town's Legal Counsel;
4. The applicant shall show the location of Unit G on the plan, as requested by the Public Works Department and required by the Planning Board during the public hearing.

8. S&H Land Services (applicant) and Loraine E. Poor Revocable Trust of 2018 (owner) – Review for acceptance and consideration of final approval for a subdivision of one lot into two lots. The parcel is located at 31 Wilson Hill Road in the R-1 (Residential) and Aquifer Conservation District. Tax Map 5B, Lot 220.

Kellie Shamel noted that the lot is currently the site of a single-family residence that is abutted entirely by residential uses.

Robert Degan, Land Surveyor, S&H Land Services, said the lot would be halved to make two residential lots. Both would exceed R-1 District size requirements. The applicant has already received the required NHDES subdivision approval. There are no setback or wetland issues. The structure labeled as proposed for removal on the plan has already been removed.

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 5-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Nelson Disco.

The applicant seeks a sidewalk waiver. He proposes to create one new building lot on Wilson Hill Road, where there are no existing sidewalks within the project's vicinity.

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

The Board voted 5-0-0 to grant a waiver from the requirements of Section 4.06.I.r. – Paved Pedestrian Way or Sidewalk – on a motion made by Alastair Millns and seconded by Nelson Disco.

Robert Price stated that PWD requires a 25' easement from the centerline of the road to create the typically required right-of-way width, which the applicant has agreed to provide.

There was no public comment.

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

The Board voted 5-0-0 to grant 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 appropriate professional endorsements and signatures shall also be added to the final plans and mylars;
2. The applicant shall obtain all required State approvals/permits, note the approvals/permits on the final plans and mylars and provide copies to the Community Development Department;

3. The applicant shall note all waivers granted by the Board on the final plans and mylars (including Section, and date granted) as applicable;
4. The applicant shall provide draft copies of any applicable legal documents for review, at the applicant's expense, by the Town's Legal Counsel;
5. The applicant shall address the following comments from the Public Works Department:

- a. What is the width of the existing ROW from the centerline of the road? The Plan should reflect this and follow the guidelines of Section 4.12.1.

Section 4.12.1 Provision For Future Widening or Upgrading of Streets "... the Board shall require dedication by deed and platted in general accordance with the typical sections herein, at least 25 feet from the centerline of the existing Town Road or right of way for the future widening of streets where existing road widths are insufficient for present standards or are of such a nature as to cause traffic hazards." Provision of an easement is acceptable to meet this condition.

- b. On Sheet 2 of 2 a new driveway entrance is being proposed:
 - i. The proposed driveway entrance construction shall conform to Section 4.13.1 under the Roadway and Utility Standards and shall be noted on the plans.
 - ii. Revise Note 8 to indicate "any work within the public right of way on Wilson Hill Road will require a right of way permit from the Highway Division of Public Works. The proposed driveway location shall be reviewed and approved.

6. The applicant shall address the following Planning Staff Technical Comments:
 - a. The applicant shall add a Planning Board signature block to the plan for "Chair" and "Vice Chair" per the Board's current structure

The following general and subsequent conditions are also placed on the approval:

1. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) 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. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
3. The applicant shall obtain right-of-way permits from the Public Works Department for all new driveways.

9. Edgebrook Heights, LLC (applicant) and Edgebrook Heights, LLC, Wigston Properties, LLC & Q. Peter Nash 1987 Revocable Trust 1 (owners) – Review for acceptance and consideration of final approval for a Conditional Use Permit to permit a future mixed-use development consisting of retail, commercial, multi-family residential and elderly housing. The parcels are located at 1, 39, 55 & two unnumbered parcels off Daniel Webster Highway in the I-1 (Industrial), Aquifer Conservation and Flood Hazard Conservation Districts. Tax Map 1E, Lots 004-1 & 004-2, and Map 2E, Lots 006-2, 007 & 009.

The application calls for the eventual construction of 34,400 s.f. of commercial/retail/office space, a 4,000 s.f. convenience store with 12 gasoline fueling positions, 76 units of elderly housing, and 156 units of multi-family residential spread across three buildings (with an associated clubhouse).

Robert Price explained that this item, the Conditional Use Permit, is just permission for the applicant to proceed with a site plan application. Chairman Best added that the applicant scaled back the footprint, although the number of units remains the same as when the Conditional Use Permit (CUP) was approved in 2014.

Tom Zajac, Civil Engineer, Hayner/Swanson, Inc., said that five lots exist on 36 acres. There are a number of mixed, commercial and residential uses on this part of D.W. Highway. The land is relatively flat along D.W. Highway, but the slope to Pennichuck Brook is a 50'-60' elevation change. Most of the site is wooded. The site, which is in the 100-year flood plain, has deep sandy soils, municipal sewer, Pennichuck water and utilities. In the 1980s, it was originally designed as an office park with 130 spaces. In 2001 an industrial building was approved. In 2014 the CUP was approved, but the approval lapsed. In 2013, the ZBA granted a variance, but staff has since determined that variances are not required and that it is the Planning Board rather than the ZBA that can decide density. The plan is similar to the 2014 CUP plan. The 400'-long entry drive would be named Benning Court, which would be one lane in and two lanes out with a roundabout at the end. Future lot owners would share maintenance of the private road. Access to the curb cut and the number of spaces would be evaluated at the time of site plan review. Lot C would have two commercial buildings totaling 15,000 s.f. and 16 parking spaces. Lot D, the largest lot, would have four-story multi-family senior housing with 76 units of 1-2 bedroom apartments, 116 parking spaces, 46 of which would be in the lower level parking garage. The new private drive would be called Pioneer Way, which would have 156 multi-family units of 1-2 bedrooms and 287 parking spaces, including 78 on the lower level. The roundabout would be for emergency vehicles and school bus turnarounds. There would be a clubhouse and patio area on the south and a fenced dog park on the north. Façades would be broken up and roof utilities would be screened.

The improvements to the plan include having four rather than five lots, senior housing rather than assisted living, three rather than five multi-family buildings, and fewer parking spaces, which means better buffers and open space.

The Fiscal Impact Study shows a positive net impact of \$390,000 each year at full build-out. The traffic study concludes that the existing three-way intersection at D.W.

Highway should be amended to a four-way intersection with a signal and pedestrian improvements. The road would operate at Service Level B.

Senior housing would be rentals. Roads and utilities would be private. It would be the owners' responsibility to maintain utilities and the driveway. All buildings would have sprinklers. There would be access/fire lanes on three sides of residential buildings. Buffers would be determined at the time of site plan review and subject to a third party agreement.

Tom Zajac said the applicant would adhere to Merrimack Conservation Commission (MCC) recommendations about Green SnoPro and fertilizers. There would be 287 rather than 393 parking spaces, for which a waiver would be sought at the time of a site plan application. Soils are favorable for recharge. There would be rain gardens and a large infiltration basin that would discharge to Pennichuck Brook.

Attorney Brad Westgate, Winer & Bennett, said the applicant came to a settlement agreement with Nanocomp and NIP, which had appealed the 2014 CUP. Since that time, the NIP property has been sold to a new owner, 57-59 D.W. Highway, LLC, and the case has been settled. Attorney Westgate explained the berm, fence, buffer, where ingress and egress can be used for residential or retail use. Fences/gates must be placed on the common drive with Nanocomp and a 6' fence/berm along the railroad. Nothing is planned for the other side of the railroad, which is not a viable piece of land. According to the settlement, if Parcel A is commercial, it must have a fence and emergency gate. If it is retail, it must be fenced off from the neighbors' use and a private road used with a possible emergency access.

Chairman Best said that the Planning Board wants the lots and uses to be integrated and not fenced off from each other. Otherwise it would not really be a CUP.

Tom Zajac explained that the settlement agreement outlines several possible iterations. This plan is possible without a fence in the middle. Buffering and fencing could be put at the rear of Lot A. Chairman Best instructed the applicant to show where additional parking at the residential buildings could be if necessary.

Tom Zajac said a small office or professional service would be in the two retail/commercial buildings. A ground sign would inform the public what businesses are there. Unlike Chairman Best, Tom Zajac thinks it would be seen from D.W. Highway because of the elevations. Chairman Best countered that 500' from the road makes it an unusual configuration. He does not want the applicant to ask for relief from the commercial use later but to adhere to the CUP Master Plan, in which it is a fundamental element. The applicant must be sure it can work.

Tom Zajac said that the phasing has changed since 2014: Phase 1 would consist of road and infrastructure, residential portion/buildings 1-4, clubhouse, and intersection improvements. Phase 2 would consist of commercial buildings on Lot C. Phase 3 would consist of a gas station, a retail building on Lot B and a commercial building on Lot A.

Tom Koenig suggested completing the commercial portion before the residential. Chairman Best stated that if the project were financially positive in each phase, the commercial use could be built later. The 2014 Fiscal Impact Study has been updated. Community Development Director Tim Thompson reviewed the updated analysis, and found the findings consistent with the original 2014 analysis, with a few minor comments to be addressed.

Attorney Westgate summarized the fiscal impact on Town departments: Taxes from the entire project would be \$700,000 minus Town costs of \$306,000, which is a \$390,000 annual net positive impact. If the CUP is phased, Lot D (residential) would generate \$433,000 in taxes minus a cost of \$147,000, for a net positive impact of \$280,000. Senior living would add \$120,000. Phase 2 (retail) would have a negative impact because of the Police cost. The number of school-age children would be 27. Functioning components attract more components/uses, so phasing is reasonable.

Chairman Best noted that several Planning Board members had trouble reading the plan and report and do not want to make a decision at this meeting.

Steve Pernaw, Steve Pernaw & Company, Inc., did the traffic study after scope meeting with NH Department of Transportation (DOT). The study was done on a Wednesday and a Thursday in September 2018. He used higher conditions without this project and with Bowers Landing and again with this development. He concluded that there would be 300 extra trips at peak hours, mostly to the north. The p.m. impact would be an 8% increase to the north and a 4% increase to the south. The road is now below capacity at 69%. It would be 71% with the CUP, leaving plenty of room for growth. At Level of Service B there would be only short queues and delays. Steve Pernaw recommends a southbound turn lane on Route 3. Route 3 northbound should have an exclusive right turn lane. There should be one inbound and two outbound lanes at the residential driveway and an exclusive pedestrian phase to cross Route 3. The driveway island should have signs. Steve Pernaw did not consider the possibility of three lanes both ways on the Turnpike from Exit 8 to Route 293 because the State and the Town told him at the scoping meeting that studying the impacts between Exit 10 and at the Henri Bourque Highway was enough. He agreed with Alastair Millns that the CUP would add traffic to the north.

Chairman Best listed what the Planning Board wanted for the applicant at its next meeting: 1) The status of Parcel A and whether it would be fenced off, which the Planning Board would not accept; 2) How the commercial use would be phased. Alastair Millns did not want the applicant to be prevented from developing the parcel because it is difficult to fill commercial space, especially if the CUP would be tax positive. Tom Koenig repeated that the CUP must have an integrated commercial use, otherwise the applicant will build the residential and walk away. Nelson Disco wondered whether the idea behind a CUP is passé, since there are so many vacant commercial properties in Merrimack. Chairman Best replied that the current economy is the best time for a commercial component.

Attorney Westgate noted that Flatley was allowed to build four out of five buildings before adding the commercial component. Edgebrook would install the infrastructure

first. The Town acknowledged the existence of the settlement agreement, but it is not bound by it. The emergency access from Lot A is permitted, but it is not mandated by the agreement. The cul-de-sac on the private road can service the entire project. Chairman Best said it is the Fire Department's decision. Tom Zajac said the Fire Department liked the fire lanes and moving the access road and that it would evaluate Lots A and B at the time of site plan review.

Public comment

Richard Foote, 129 Indian Rock Road, asked about the impact of the discharge to Pennichuck Brook and on water quality. Chairman Best said it would be up to the peer review and the Planning Board's site plan review. The Planning Board will review each component of the site plan. Water quality is not under its jurisdiction. The biggest concern is fertilizer and salt use, which is under the Planning Board's control. This is not an industrial use that would contaminate, but it is industrial land where a factory could be built.

Chairman Best stated that the Planning Board wants more time to review the materials.

The Board voted 5-0-0 to continue this item to December 4, 2018, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Alastair Millns and seconded by Nelson Disco.

10. Edgebrook Heights, LLC (applicant) and Edgebrook Heights, LLC, Wigston Properties, LLC & Q. Peter Nash 1987 Revocable Trust 1 (owners) – Review for acceptance and consideration of final approval for a boundary consolidation and subdivision plan. The parcels are located at 1, 37, 39 & an unnumbered parcel off Daniel Webster Highway in the I-1 (Industrial), Aquifer Conservation and Flood Hazard Conservation Districts. Tax Map 1E, Lots 004-1 & 004-2, and Map 2E, Lots 007 & 008.

The Board voted 5-0-0 to continue both the acceptance and hearing for this item to December 4, 2018, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Alastair Millns and seconded by Nelson Disco.

11. Edgebrook Heights, LLC (applicant) and Edgebrook Heights, LLC & Q. Peter Nash 1987 Revocable Trust 1 (owners) – Review for acceptance and consideration of final approval for a site plan to construct 232 multi-family residences (156 multi-family and 76 elderly housing units), a clubhouse and associated site improvements per the requirements of the Edgebrook Conditional Use Permit. The parcel is located at 1 Daniel Webster Highway in the I-1 (Industrial), Aquifer Conservation and Flood Hazard Conservation Districts. Tax Map 1E, Lots 004-1 & 004-2, and Map 2E, Lots 007 & 008 (would be located on a newly configured Tax Map 1E, Lot 4-1 of subdivision from Agenda item #10 is approved).

The Board voted 4-1-0 to continue both the acceptance and hearing for this item to December 4, 2018, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a

motion made by Alastair Millns and seconded by Nelson Disco. Tom Koenig voted in opposition.

At 10:15 p.m., the Planning Board agreed to take up new business after 10:00 p.m.

12. Steven R. Soucy (applicant) and T&S Real Estate Holdings, LLC (owner) – Conceptual discussion of a potential site plan for existing site improvements that were constructed without Planning Board approval. The parcel is located at 280 Daniel Webster Highway in the I-1 (Industrial) and Aquifer Conservation District. Tax Map 3D -2, Lot 11.

Robert Price stated that the parking lot had been expanded in several areas, a connection was made to the VFW parking lot and the expanded parking lot encroached into the common land for the abutting condominium as well as into the wooded buffer area at the rear of the property, all without site plan approval. Staff questioned whether new drainage measures had been installed that routed runoff into the detention pond on the abutting common land. The applicant and the Planning Board must discuss how to proceed.

Kevin Anderson, Chief of Engineering, Meridian Land Services, Inc., said the applicant thought these changes were permitted, and incorrectly believed that they did not require site plan approval. Five spaces are on the abutting lot, the large paved area in the rear eliminated the condominium buffer and there is cross-access to the abutting VFW property. Everything revolves around the additional parking. The Planning Board had approved a parking waiver, but the number of spaces is now inadequate. Utilizing the VFW property affords enough parking. Kevin Anderson said he could remove the pavement on the condominium land and create a buffer; however he needs to know if the Planning Board would approve a cross-easement with VFW to use each other's parking spaces. A proposed new tenant, a microbrewery, would skew the parking more and necessitate utilizing the VFW's parking lot.

Chairman Best requested a drainage analysis of impervious surface. He supported the idea of sharing the parking lots with a cross-easement, especially if there is no overlap in hours of operation. There are several similar arrangements in Merrimack. The Planning Board suggested that the applicant pursue a cross-easement. The Planning Board instructed the applicant to be able to accommodate the microbrewery while observing regulations and to provide drainage calculations for the buffer.

There was no public comment.

Chairman Best called a five-minute recess at 10:30 p.m.

13. John J. Flatley Company (applicant/owner) – Conceptual discussion of a potential site plan for three multi -unit commercial buildings 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) and Aquifer Conservation Districts and Wellhead Protection Area.

Robert Best recused himself from discussing and voting on this agenda item. Alastair Millns assumed the chair.

The conceptual CUP plan shows three retail buildings with four units each as well as a 150 seat/sit-down restaurant and other associated site improvements. The approved CUP showed a total of 30,000 s.f. of retail space whereas the concept before the Board has scaled that number down to 27,500 s.f. and shows a revised layout that flips the parking lot and proposed buildings so that the parking lot is adjacent to D.W. Highway. The applicant contends that the conceptual plan does not indicate the required vehicular or pedestrian connection to the multi-family residential portion of the mixed-use development.

Chad Branon, Civil Engineer, Fieldstone Land Consultants, LLC, said that access is shared with St. Gobain. He reworked the layout similar to but better than Tara Commons in Nashua and to try to be more pedestrian-friendly with outside seating, a fountain, patios, display areas, and outdoor seating at the restaurant. The parking exceeds requirements. Access onto D.W. Highway would be maintained. There would be no vehicular connection to the apartment buildings to the south because it is not “applicable”, because of how long the connection would have to be and because it could impact future commercial development. The modifications are based on market feedback. Establishing a vehicular connection now is a hardship; however there could be a pedestrian connection.

Kevin Walker, John J. Flatley Company, said the road to the apartments would be 2,300’ long and would cost \$1-\$2 million to build. He does not know exactly what commercial use would be there; it is up to the businesses who want to come on site.

After discussion of whether the internal roadway was required at this time, per the development agreement, the Planning Board felt further review of the language in the development agreement was needed.

Kevin Walker said that spending so much money would “take this project off the board”. Alastair Millns noted that changing the layout would create a better buffer. Chad Branon said that he turned the site around so that the commercial buildings would be further away from D.W. Highway. The market drove the revision. Kevin Walker stated the revised layout helps shelter people from looking at Saint Gobain in the back. Chad Branon said there would be landscaping with pergolas, patios, etc., to break up the parking. He wants to bring in commercial uses, but to do that he must respond to the market. He does not know whether he would revise other sections also. It depends on the tenants. Nelson Disco noted that, at the site walk, the Planning Board said it did not want the ugliness of storefronts facing Saint Gobain. In his opinion, this is a real improvement. Chad Branon said that tenants want Saint Gobain to be at the back rather than at their front door.

Kevin Walker does not know how this would eventually turn out. He has to work around a large building (Saint Gobain). He could isolate the apartment area, gate it later and make the entry there. Tom Koenig stressed that the Planning Board wants the residences to have easy access to the commercial area. Chad Branon wants to

encourage a pedestrian connection and an active life style (walking). It would make the site more vibrant, like other Flatley properties.

Public comment

Ashley Tenhave, 75 Shelburne Road, the secretary of Webster Green condominiums, said that the residents are concerned about the parking lot, lights and commercial development staring into their backyards/lack of privacy.

Katy Poirier, 11 Kimberley Drive, the treasurer of Webster Green condominiums, said that traffic is another concern. Webster Green asked DOT for assistance with traffic. Noting that it took the Fire Department 15+ minutes to get to Webster Green on Saturday, she said that a connection would add to traffic problems. People cannot get out of the Hilton Drive neighborhood. The lack of access road is a major safety concern. Alastair Millns stated that DOT review and traffic studies three years ago all approved the development; it cannot be stopped. He agreed that an internal connection would take some traffic off D.W. Highway.

Ashley Tenhave did not want lights shining on the houses and asked whether the parking lot would be near the school bus stops.

Alastair Millns suggested that the impact on Webster Green should be taken into account and lessened. Chad Branon said abutters' concerns would be addressed at the time of site plan review. The Ordinance requires downcast lights. This would be an upscale development; no loitering would be allowed.

Katy Poirier said that Merrimack is not a copy of Nashua and this project should not be compared to Tara Commons. Chad Branon countered that Tara Commons is the perfect mixed-use development of the type that the Planning Board seeks.

Alastair Millns relinquished the chair; Robert Best resumed the chair.

14. Discussion/possible action regarding other items of concern

The Board requested that in the future, its one November meeting not be scheduled on an Election Day.

Chairman Best explained that Bradford Driving School was placed on the Board's agenda because regulations do not list the use in any district; therefore the Community Development Department could not provide an administrative approval. He wanted to clear up such "quirks" and advise staff that similar uses should be handled administratively. Robert Price noted that "education" is not listed as a permitted use in any district, which is what led to the applicant coming before the Planning Board; he only had the one previous example to rely on which was a Board approval. Chairman Best said the statutes and ordinances do not mention administrative approvals and asked staff for a plan/outline for how it is determined an Administrative Approval or Planning Board action is appropriate. Nelson Disco wondered whether the Board is fixing a non-existent problem.

15. Approval of Minutes — October 2, 2018

The minutes of October 2, 2018, were approved as submitted, by a vote of 4-0-1, on a motion made by Nelson Disco and seconded by Alastair Millns. Tom Koenig abstained.

16. Adjourn

The meeting was adjourned at 11:28, by a vote of 5-0-0, on a motion made by Alastair Millns and seconded by Nelson Disco.