



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY NOVEMBER 15, 2022

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, November 15, 2022 in the Matthew Thornton Room.

Members Present:

- Paul McLaughlin
- Lynn Christensen
- Brian Dano
- Town Councilor Barbara Healey - Ex-Officio
- Haleem Mediouni – Alternate

Members Absent:

- Robert Best (Chair)
- Neil Anketell
- Jaimie von Schoen
- Maureen Tracey – Alternate
- Nelson Disco – Alternate

Staff Present: Robert Price, Planning & Zoning Administrator

1. Call to Order

Vice Chair Paul McLaughlin called the meeting to order at 6:30 p.m. and led everyone in the Pledge of Allegiance. He then seated Alternate Haleem Mediouni for Robert Best.

2. Planning & Zoning Administrator's Report

None

3. Consent Agenda

- a. *Regional Impact Determinations*

The Board voted 5-0-0 to approve the consent agenda on a motion made by Lynn Christensen and seconded by Barbara Healey.

- 4. **Merrimack Smiles (applicant) and SIAM04 Realty, LLC (owner)** - Review for consideration of final approval for an amendment to a previously conditionally approved site plan to modify the dimensions of a proposed dental office building from approximately 4,500 square feet to

approximately 5,600 square feet. The parcel is located at 75 DW Highway in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 2D, Lot 028. Case # PB2022-16

Robert Price prefaced the presentation by advising the Board that the applicant was issued conditional approval in May but is back before the Board because the final plans that were submitted show a 1,100 square foot increase in the size of the building. Since all of their conditions of approval have been met, RSA 676:4 allows the Board to hold a public hearing to review the changes and if approved, the final plans can be signed so that the applicant can move forward with the process.

Meera Cousens (Civil Design Consultants, Inc.) and Ken Feyl (LFY Architects) presented the application to the Board. Ms. Cousens began by informing the Board that since the May meeting they have addressed all staff and peer review comments, and have received a DOT permit for the driveway and sidewalk. She then listed the changes that have been made to the plan which include:

- The elimination of the basement level of the proposed building.
- A 20 foot addition to the building which shifted the parking and stormwater basin by 10 feet. The size of the basin was not changed as there was no increase to the impervious surface area.
- The vertical granite curbing along the Eastern and Southern side of the parking lot was eliminated.
- The sidewalk that connects the building to DW Highway was eliminated.

Mr. Feyl then shared the architectural renderings of the building to demonstrate what the building will look like with the proposed 20 foot addition.

Lynn Christensen asked if the snow storage was moved and Ms. Cousens conformed that the snow storage areas remain the same. Brian Dano asked if there are any windows in the new addition and Mr. Feyl shared the plan to show the location of the windows.

Public Comment

Bill Fallon (12 Merrimack Drive) asked for clarification on the removal of the sidewalk that was mentioned. Mrs. Christensen confirmed that the applicant is only proposing to eliminate the internal parking lot connection to the sidewalk along DW Highway. The sidewalk along DW Highway will remain.

The Board voted 5-0-0 to grant final approval on a motion made by Lynn Christensen and seconded by Barbara Healey. The following General & Subsequent condition applies:

1. All other general & subsequent conditions of approval, as imposed by the Board on May 3, 2022, shall remain in effect.
5. **Hoyle, Tanner & Associates (applicant) and BAE Systems, Inc. (owner)** – Continued review for acceptance and consideration of final approval of a site plan for the construction of a 5,000 square foot support building, two “radome” structures, and other associated improvements. The parcel is located at 130 DW Highway in the I-1 (Industrial) and Aquifer Conservation Districts.

Tax Map 2D, Lot 6. Case # PB2022-35. ***This item is continued from the October 18, 2022 Planning Board Meeting.***

Mr. Price advised the Board that staff has not received peer review comments back for this project yet, however they are expected later this week. He went on to say that the applicant has submitted four waiver requests for the project and staff supports three of the four with the traffic analysis waiver being the one that is not supported. The applicant is welcome to share their presentation with the Board, however since peer review comments have not been received, staff recommends that no action be taken tonight.

Bill Davidson (Hoyle, Tanner & Associates) presented the application to the Board. He began by providing an overview of the parcel in question and explained that BAE is relocating the operations of their Litchfield facility to Merrimack. He referenced the plan that was submitted to demonstrate the location of the proposed new buildings and to walkthrough the drainage plans. He indicated that the applicant has submitted the Alteration of Terrain Permit to NH DES and is expecting comments the week after Thanksgiving.

Mr. Davidson then reviewed the four waivers being requested which are as follows:

1. Existing Condition Plan: Sections 4.12.a, 4.12.c.2 – These requirements are regarding identifying the existing boundaries of the site, however the site itself is over 135 acres and the proposed additions only impact a fraction of that land.
2. Improvement Plans: Section 4.14.e (Landscape Plan) – Mr. Davidson explained that the area in question will contain vegetation but BAE is a secure site with no public access so they do not feel that landscaping is necessary.
3. Illumination Plans: Section 4.16 – As previously stated, BAE is a secure site with no public access so the applicant feels that an illumination plan is not necessary.
4. Traffic Impact Analysis: Section 3.14 – There are not going to be any new employees onsite so the applicant is requesting a waiver from this requirement as they feel without any additional employees there would be no impact to existing traffic.

Councilor Healey asked for clarification on the location of the proposed buildings on the property and Mr. Davidson used the Existing Conditions plan to show where they are being proposed. Councilor Healey expressed concerns that the existing dome is already visible from DW Highway and now there are going to be two more and this is one of the first sites that is seen when you come into Merrimack from Nashua. She asked if anything is being proposed to obstruct the view and Mr. Davidson explained that there are no plans at this time because the buildings are rather high and it would be difficult to obstruct them.

Mr. Price suggested that the Board offer the applicant feedback on the traffic analysis waiver as that will have an impact on which date staff recommends for continuance. Various Board members voiced their opinions on the traffic waiver and the general consensus was that they would be in favor of granting the waiver. Based on this feedback, Mr. Price shared that staff would recommend continuance to the December 6th meeting because peer review comments are expected soon.

The Board voted 5-0-0 to continue both the application's acceptance and public hearing to December 6, 2022 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion made by Brian Dano and seconded by Barbara Healey.

6. **Black Diamond Holdings, LLC (applicant) and MM Realty Trust (owner)** – Continued review for final approval of a site plan for the redevelopment of an existing automotive/junkyard use into a 102,600 square foot warehouse and associated site improvements. The parcel is located at 734 DW Highway in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 7E, Lot 31. Case # PB2022-36. ***This item is continued from the October 18, 2022 Planning Board Meeting.***

At the applicant's request, the Board voted 5-0-0 to continue both the application's public hearing to December 20, 2022 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion made by Brian Dano and seconded by Lynn Christensen.

7. **John J. Flatley Company (applicant/owner)** – Continued review for final approval of an amendment to a previously approved Mixed Use Development Conditional Use Permit, calling for the replacement of the previously proposed 20,000 square foot planned retail space with a 52,000 square foot self-storage facility. The parcels are located at 645, 673, 685, 703, and 707 DW Highway and 5 Gilbert Drive in the I-1 (Industrial), Aquifer Conservation and Wellhead Protection Districts. Tax Map 6E, Lots 3-1, 3-3, 3-4, 3-5, 3-6, and 3-7. Case # PB2022-38. ***This item is continued from the October 18, 2022 Planning Board Meeting.***

Mr. Price advised the Board that applicant has not submitted any new or revised plans or information since the meeting in October and peer review of the traffic impact analysis has been completed, and their findings were inconclusive. The conclusion of the peer review states:

“We cannot confirm or support the VAI report's conclusion that the Project can be safely accommodated with the construction of the proposed improvements, especially for the 2033 Phase II Build conditions, until revisions to the TIS [traffic impact study] have been made. Our review will continue after receipt of the additional or clarified information.”

Due to these results, staff recommends that the Board either deny the application based on the failure to meet the zoning ordinance criteria or continue to the December 20th meeting to allow the applicant time to revise the traffic analysis.

Chad Branon (Fieldstone Land Consultants) and Kevin Walker (John Flatley Company) presented the application to the Board. Mr. Walker started by addressing the traffic analysis discrepancy. He stated that the peer review looked at the plans as if it were a brand new and did not take into consideration that the traffic study has already been approved for the master plan. The amendment is simply taking a 20,000 square foot retail space and changing it to a self-storage facility which should result in a decrease in traffic. He also pointed out that they will have to submit a traffic analysis again when they submit the application for site plan approval.

Vice Chair McLaughlin shared his opinion that he does not feel comfortable making a decision if the town's peer review consultant is not onboard and Mrs. Christensen and Councilor Healey agreed. Mr. Branon asked if the Board would be willing to conditionally approve the CUP amendment to allow them to work out the discrepancy behind the scenes knowing that a new traffic analysis would be submitted anyway for the site plan process. Mr. Price advised the Board that staff is not in favor of granting any approvals until the matter is resolved. Mrs. Christensen and Vice Chair McLaughlin continued to voice their opposition to making any decisions until the issue is resolved.

No public comments were received.

The Board voted 5-0-0 to continue the public hearing to December 20, 2022 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion made by Haleem Mediouni and seconded by Barbara Healey.

8. **John Flatley Company (applicant/owner)** - Review for consideration of final approval for an amendment to a previously approved site plan to modify the landscaping plan to address excessive cutting of existing vegetation from the approved design. The parcel is located at 685 Daniel Webster Highway in the I-1 (Industrial) and Wellhead Protection Area. Tax Map 6E, Map 003-04. Case #PB2022-41.

Mr. Price offered some background on this application by advising the Board that during construction of the approved flex industrial site, the contractor removed a significant amount of trees along DW Highway that per the approved site plan were supposed to remain in place. Staff sent the applicant a violation letter and they have submitted a revised landscaping plan to address the violation.

Chad Branon (Fieldstone Land Consultants) and Kevin Walker (John Flatley Company) presented the application to the Board. He shared a copy of the revised landscaping plan to give the Board a visual idea of the area in question (i.e. in front of buildings one and two). He stated that clearing limits were flagged appropriately however the landscaping expert that was hired to remove the trees recommended the removal of additional trees outside of the limits due to them being unsafe, diseased and at risk of falling down. The revised landscaping plan calls for 66 new trees to be planted along DW Highway. A landscape architect was engaged during the design process to ensure the placement of the trees would result in maximum growth for screening. The new trees that would be planted are a mixture of red maple, white birch, arborvitaes and white spruce.

Councilor Healey referenced the letter that was submitted from the tree removal company and questioned why it did not identify the disease the trees had or what types of trees were removed. She feels that this would be good information to share with the Conservation Commission so they can be on the lookout for it in other parts of town. She also questioned how they can be certain that the new growth will take if they are not aware of what disease infected the other trees. Mr. Branon stated that he believes a lot of the trees were compromised due to their age so new growth with new soil should not be an issue. He did agree to ask about any specific diseases and share the information with staff. Councilor Healey also asked if the birch trees are clump birch and Mr. Branon stated they are listed as 2 inch caliper white birch trees and believes they are not clump birch because they try not to use those as they are more susceptible to ice damage.

Public Comment

Philip Gault (21 Meetinghouse Road) suggested that they plant chestnut or elm trees as they are more aesthetically pleasing.

Kendall Smith (18 Kimberly Drive) spoke in opposition of the plan and requested that the Board deny it because it is inadequate. He referenced photos that he submitted to Community Development (which can be found in the project file) to demonstrate how his view has changed dramatically since the trees have been removed. He explained that there is an area on the western end of the site that delineated the limit of clearing that was in fact cut. The revised

drawing does not show any new plantings in this area. He also encouraged the Board to have the applicant add and additional comment to the Landscape Details sheet stating that “All plantings associated with revision D dated 10/25/2022 must survive and grow for 5 years after installation” and to add a requirement that the developer submit to the town a report detailing actions taken relative to the requirements of Watering, Soil additives and nutrition and Weed Control during the 5-year establishment period. He questioned the use of red maples as they are not salt tolerant, and the use of deciduous trees as the Town’s site plan regulations indicate that screening should be year round and deciduous trees will not provide screening in the winter. Mr. Smith also argued that the note on the plan about parking being screened from abutting properties is no longer accurate since all of the trees have been removed. He also questioned if Flatley had the unilateral authority to make the decision to remove trees that were supposed to remain in place.

Vice Chair McLaughlin asked Mr. Price to weigh in on the question as to whether or not Flatley had the authority to make the decision to remove the trees. Mr. Price stated that the applicant should have consulted with staff before removing the trees which is why they were issued a violation and why the project is back before the Board.

Ashley Tenhave (75 Shelburne Road) shared her dissatisfaction with the removal of the trees without any approval from the Board. She indicated that not all of the trees were as large as the applicant is claiming and that they offered some screening for the residents at Webster Green. As a result of the removal, the residents are now subject to more noise and dust pollution and will eventually have to deal with headlights in their windows as cars come and go from the site. Ms. Tenhave also added that the southern end of the property does not have adequate coverage and will not offer screening during the winter months. She expressed aggravation with the fact that Flatley took it upon themselves to remove the trees without permission and encouraged the Board to hold them accountable and to not issue them any certificates of occupancy until the landscaping is satisfactory to the abutters.

Kathryn Poirier (11 Kimberly Drive, Unit 21) expressed dissatisfaction with Flatley’s continued refusal to follow Town and State rules and urged the Board to deny their request. Aside from Flatley ignoring the approved plan and removing the trees, she indicated she has made several complaints to the State about the applicant not using a water truck to water the soil which has resulted in excess dust during construction. She suggested that Flatley either add berms along DW Highway or donate arborvitaes to the Webster Green Home Owners Association because they have had to increase their landscaping budget to add additional screening along the front of the development due to the removal of trees on Flatley’s property. She concluded by contesting that not all of the trees removed were pine trees and indicated that there were also maple and oak trees removed and added that the new growth will take years to offer any type of screening to their homes at Webster Green.

Joel Folliard (11 Kimberly Drive, Unit 22, via email*). Mr. Price read Mr. Foillard’s comments into the record and noted that the majority of them applied to agenda item #7 that was continued to the December 20th meeting.

** The letter from Mr. Folliard can be found in the project file at the Community Development office.*

Philip Gault (21 Meetinghouse Road) Added additional comments regarding pine trees at the Webster Green development that he feels should be removed as they are in danger of falling

down. He added that he feels that the John Flatley Company has gone above and beyond to make a safe environment for everyone.

Vice Chair McLaughlin asked if the removal of the trees impacted their Alteration of Terrain permit and Mr. Branon responded that it did not because they did not remove the stumps. He also added that there is environmental monitoring being conducted at the site and reports are submitted to the State. He went on to say that the landscaping plan submitted meets all of the Town's regulations and contended that some of the comments made about them not adhering to the regulation regarding maintaining vegetation are not accurate. The regulations specify that healthy trees should remain and the trees that were removed were not healthy and were removed at the recommendation of an expert for safety reasons. He admitted that they should have discussed the removal of the trees with staff first but insisted it was not done maliciously. Mr. Branon also pointed out that the parking closest to DW Highway that is shown on the plans is not going to be built unless needed and they do not anticipated needing it. This means the only headlights that will be shining across the ROW will be from the entrance/exit. He also addressed the question about the use of red maples by stating that they are set back from the road and not in a place that should be impacted by salt use on DW Highway. Mr. Walker interjected to state although the decision to remove the trees should have been discussed with staff first, he made the call to have them removed immediately because they were a safety issue and the tree removal company was already onsite.

Vice Chair McLaughlin agreed that staff should have been consulted prior to the trees being removed and added that the Town has been working with Flatley for several years on this project and has been more than fair. He also asked when the new growth will be planted and Mr. Walker stated that they cannot do it until it is warm enough to plant (spring 2023) and added that they do not foresee the building being completed until the spring anyway.

Councilor Healey asked if the lighting plan needs to be re-reviewed due to the lack of landscaping and Mr. Price stated he does not believe it is necessary because the lights are not close to the ROW but referred to Mr. Branon. Mr. Branon explained that the lighting plan does not take vegetation into account so there is no need to re-review it. Brian Dano asked if the landscaping company provides warranties the plantings and if so, for how long. Mr. Walker responded that he believes they are warrantied for two years but Flatley doesn't wait that long, if the plantings show distress after the first year, they are replaced. Mrs. Christensen commented that she feels that the mixture of trees being proposed is good, however, she does feel that the southern portion of the site is sparse and would like to see more plantings added. Mr. Branon asked for clarification on the area Mrs. Christensen is referring to and she used the landscaping plan to show the location where she would like to see more trees (in front of building three). Mr. Branon clarified that there was nothing removed in that area and Mrs. Christensen indicated that it doesn't matter if anything was removed, the entire landscaping plan is being re-reviewed at this time.

The Board voted 5-0-0 to find that with the proposed conditions of approval, the amended site plan meets all applicable regulatory requirements and to grant conditional final approval to the application with the following precedent conditions to be fulfilled within 6 months and prior to plan signing, unless otherwise specified,, on a motion made by Lynn Christensen and seconded by Barbara Healey:

1. Final plans to be signed by all property owners.

2. 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.
3. The applicant shall address any forthcoming comments from any applicable municipal departments received within 30 days of the date of conditional approval, as applicable.
4. The applicant shall address the following comments made by the Planning Board during the public hearing:
 - a. Applicant shall provide information to the Community Development Department as to the specific disease that resulted in the cutting of the vegetation originally intended to remain.
 - b. Applicant shall add 10-12 additional evergreens to the plan in the southerly portion of the site along Daniel Webster Highway, to the satisfaction of the Community Development Department.

The following general and subsequent condition is also placed on the approval:

1. All general and subsequent conditions originally placed on the approval on June 15, 2021 shall remain applicable to the project.
9. **Starten Realty, LLC (applicant/owner)** - Review for acceptance and consideration of final approval for a site plan for the addition of a gas station, convenience store and drive-thru coffee shop at the site of an existing car wash. The parcel is located at 376 DW Highway in the C-2 (General Commercial), Aquifer Conservation, and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 002. Case #PB2022-40

At the applicant's request, the Board voted 5-0-0 to continue both the application's acceptance and public hearing to December 20, 2022 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion made by Barbara Healey and seconded by Brian Dano.

10. **Tony Crawford (applicant) and 598 DW Highway, LLC (owner)** - Conceptual discussion of a proposed car wash. The parcel is located at 598 Daniel Webster Highway in the C-1 (Limited Commercial), Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 6D-1, Lot 028. Case #PB2022-42

Mr. Price provided some history on this parcel by explaining that it is located in the C-1 Limited Commercial Zone, however a Special Exception was previously granted by the ZBA to allow for residential use and that Special Exception is good until 7/28/2023. Two residential projects have been proposed for this site and neither one of them received necessary relief from the Zoning Board in order to proceed to the Planning Board for site plan approval. This applicant is not proposing a residential use, he is seeking feedback on a proposed car wash at this location which would require a variance from the ZBA as it is not an allowed use in this zone. Staff has reviewed the conceptual plans and have concerns with the width of the bypass lane. Staff would recommend that the applicant have a discussion with the Fire Department before proceeding forward to ensure the lane is adequate for emergency vehicles. Additionally, staff wanted to

remind the Board that the two prior residential projects received a lot of abutter feedback about privacy, noise and light pollution at the ZBA level so feedback to the applicant specific to these issues is advised.

Erik Poulin (Jones & Beach Engineers) and Tony Crawford (applicant) presented the concept to the Board. Mr. Poulin provided shared the conceptual Site Plan to show the layout of the proposed 3,000 square foot building and vacuum bays. He explained that the car wash will consist of 2 self-service and 2 automatic bays as well as a bypass lane and 3 vacuum stations. He discussed the traffic flow and pointed out the location of the onsite dumpster, employee vehicle parking and proposed privacy fence that would be installed along three sides of the property to help shield abutters from noise and visual nuisances. If the applicant decides to pursue this and submits the project for Site Plan approval, the Site Plan will also include a landscaping plan that will also offering shielding to abutting neighbors. Mr. Poulin added that prior to any Site Plan approval, the applicant would need to apply for several variances from the ZBA but is hoping to get feedback from the Board prior to putting any time or money into it.

Vice Chair McLaughlin started off by sharing that he feels buffering will be an issue for the abutters as this is a very small lot that has residential use behind it. Councilor Healey added that although there are other commercial uses in the area, it is a historical part of town and she's concerned with how a car wash fits into that. She also brought up the PFAS problem in town so that the applicant can be aware of it to address any potential problems ahead of time. Mr. Crawford responded that he has already owned a carwash in town and is aware of the issues but none of the chemicals used at his facility will be a concern. He also added that he would prefer to plant arborvitaes instead of a fence as he has done this at his other locations and they offer a nice, thick natural buffer. The Board seemed to agree that a natural border is better than a fence. Mrs. Christensen shared her opinion that the site is too small for what is being proposed and feels that the use does not fit in with the neighborhood. She also expressed concerns that aside from the trees that were just mentioned, there is no green space. Vice Chair McLaughlin asked about snow storage and Mr. Poulin referenced the green space areas on the plan that would be used for snow storage in the winter. He agreed that it is a small site but feels that the conceptual plans have demonstrated that there is room for what is being proposed. He addressed the historical area concerns but indicating that the applicant is willing to work with the Town and will ensure the building fits in aesthetically.

Mr. Dano asked if a seven car stacking lane is typical for this type of business. Mr. Crawford stated that seven cars is adequate, he has sites in Manchester that can fit 9 but has others that only fit 5. Mr. Poulin added that the stacking provided on site complies with the Town's Site Plan Regulations. Mr. Dano added that his concern is that he would not want to see cars waiting on DW Highway to get into the site and Mr. Crawford replied that typically when people see a line that long they don't wait and come back at another time. Mr. Dano indicated that he is definitely in favor of this lot being developed and likes that the applicant is open to working with the town. Mr. Crawford indicated that he used to live in town and previously owned a carwash in town and would like to do business in Merrimack again.

Vice Chair McLaughlin concluded that the Board does not have any major concerns with proposal but there seems to be a consensus that work will need to be done to make sure it fits in aesthetically with the neighborhood. Mrs. Christensen and Councilor Healey offered some suggestions for features that would make the building blend in more architecturally and Councilor Healey suggested submitting architectural renderings and a landscaping plan to the ZBA when they apply for their variances.

11. Merrimack Parcel A, LLC (applicant) and Merrimack Parcel A, LLC and Slate Merrimack Acquisition, LLC (owners) – Conceptual discussion of a proposed amendment to a previously approved Mixed Use Development Conditional Use Permit, seeking non-binding feedback on potentially revising the future phase of development to include additional residential units and retail use instead of all retail/commercial and a parking structure. The parcels are located at 1, 2, 3 and 4 Lexington Court in the I-2 (Industrial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 3C, Lots 191-2U1-2U4. Case # PB2022-43.

Mr. Price prefaced the presentation by reminding everyone that this applicant was before the Board in April with another conceptual proposal regarding possibly amending the approved CUP to allow more residential units. They are before the Board again with a slight variation to the concept that was discussed in April. This conceptual proposal would reduce the non-residential square footage in the overall project by 68.1% (from 224,380 square feet to 71,581 square feet), and reduce the Phase 2 nonresidential square footage by 93.19% (from 146,920 square feet to 10,000 square feet). In general, the difference between this proposed concept, and that which was presented to the Board in April is a token amount of non-residential development added to the significant increase in residential density. This change is not significantly different than the prior proposal, which was not well received by the Board or the public that was present at the meeting in April. At the last conceptual discussion, Chair Robert Best made a remark that the Board all seemed to agree with in terms of how to consider amendments to approved projects (excerpted from the April 5, 2022 minutes): “Chairman Best ...[stated]... that when he is presented with a change to a project, he considers whether or not he would have approved it if it was the original submission and he would not have approved this [proposal] as a CUP.” Staff suggests that this is a useful method of evaluating the proposed changes proposed to the CUP.

Gordon Leedy (Tighe & Bond) and Thomas Monahan (Merrimack Parcel A, LLC) presented the concept to the Board. Mr. Leedy provided a history of the project going back to the original approvals of Merrimack Premium Outlets (MPO) in 2008. He then shared a copy of the Master Development Plan for the parcels in question which shows 150,000 square feet of retail/commercial space and 160,000 square feet of office space. The approved site plan for that master development plan reflects a 7,500 square foot stand-alone restaurant, a 110 room hotel and vacant land for future development. Mr. Leedy went on to explain that since the CUP was originally approved, the pandemic hit and as a result of that, there is no longer a market for retail or office space which has left the applicant with 4 acres of land that cannot be development. The previous concept did not receive a favorable reaction by the Board so they have reconfigured this proposal to be more in line with what was originally presented. He then walked the Board through the conceptual plan that was submitted, identifying where the commercial and restaurant uses are planned. He also shared conceptual renderings of what the area would look like once completed and pointed out that the commercial components offered will be advantageous to not only the residents of the complex but the community in general. Mr. Leedy then contested the language in the Town’s Zoning Ordinance for “Mixed Use Development” indicating that there is not a clear definition of what this term means. He also disagreed with the way staff is assessing the density and feels that it isn’t right to look at the density in terms of what was approved for residential use because the entire site was approved for mixed use. He went on to say that the original plans that called for 50,000 square feet of retail/commercial space and 160,000 square feet of office space were much more of an intensive use than this one from a traffic perspective and perhaps even from a utility usage standpoint. Mr. Leedy also stated that this new proposal is similar in open space and connectivity to the original plan and that over

10,000 people work within a mile of this location which makes it an ideal location for additional residential units. He also called out several ways in which the plan aligns with the Town's Conditional Use Permit criteria and stated that they feel this plan will be a benefit to the Town.

Mrs. Christensen stated that when this project was first presented, she was excited about the aspect of having a place for young professionals to live, work and play however the new proposal does not offer the support services that were originally presented. The small restaurant and limited commercial space is not enough to support the number of residential units being proposed and she would like to see more of those types of uses added.

Councilor Healey raised concerns about the traffic and whether or not one entrance/exit that is also used by MPO can handle all of the additional traffic that would be generated by so many residential units. Mr. Leedy responded by reminding everyone that when MPO was built, the Town made the decision that they only wanted one entrance/exit so that is all that is ever going to be there. He also stated that the traffic studies that have been done for the additional units do not show any major increases and in fact show better results with the residential units compared to the retail/commercial.

Vice Chair McLaughlin commented that he just does not feel that the new proposal is mixed use with only 10,000 square feet of retail and argued that there are other mixed use developments in town that are doing well.

Mr. Leedy argued that there is no standard in the Town's ordinances so if 10,000 is not enough then what is? Mrs. Christensen responded that she doesn't know what the magic square footage number is but would like to see more support services added.

Mr. Monahan discussed the challenges with finding tenants that will pay the lease fees for commercial space when there are cheaper options in town. He also mentioned that they received a variance from the Zoning Board to increase the density by no more than 208 units.

Mr. Dano asked if there were any lease restrictions on the property and Mr. Leedy confirmed that there are some no compete restrictions with MPO.

Public Comment

Beth Burns (5 Spruce Street, via email*). Vice Chair McLaughlin summarized Ms. Burns comments which were in opposition to the conceptual plans for various reasons.

* The letter from Ms. Burns can be found in the project file at the Community Development office

12. Discussion/possible action regarding other items of concern

None.

13. Approval of Minutes — November 1, 2022

The Board voted 3-0-2 to approve the minutes of November 1, 2022, as submitted, on a motion made by Lynn Christensen and seconded by Haleem Mediouni. Barbara Healey and Paul McLaughlin abstained.

14. Adjourn

The Board voted 5-0-0 to adjourn at 9:11 p.m. on a motion made by Lynn Christensen and seconded by Brian Dano.