



Town of Merrimack, New Hampshire

Community Development Department

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Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MERRIMACK PLANNING BOARD APPROVED MINUTES TUESDAY, NOVEMBER 7, 2023

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, November 7, 2023 in the Matthew Thornton Room.

Members Present:

- Robert Best (Chair)
- Lynn Christensen (Vice Chair)
- Town Councilor Barbara Healey (Ex-Officio)
- Jaimie von Schoen
- Kevin Peters
- Haleem Mediouni
- Mark Williams – Alternate
- Nelson Disco – Alternate
- Maureen Tracey – Alternate

Members Absent:

- None

Staff Present:

- Robert Price, Community Development Director

1. Call to Order

Chair Robert Best called the meeting to order at 6:30 p.m. and led everyone in the Pledge of Allegiance. He then seated Alternate Maureen Tracey for the currently-vacant member seat.

2. Consent Agenda

- *Establishment & Subsequent Reduction of Performance Bond – Normandy Estates*

The Board voted 7-0-0 to approve the consent agenda, on a motion made by Barbara Healey and seconded by Maureen Tracey.

3. Extension Request

- *Ultimate Bimmer Site Plan – 106 Herrick Street (#PB2022-39)*

Chairman Best tabled this item until later in the agenda to allow time for the engineer representing this applicant to be present for discussion.

- 4. Dougherty Zibolis, LLC (applicant/owner)** – Continued review for acceptance and consideration of final approval for a site plan to construct a two story, 15,000 SF office/warehouse building with associated site improvements. The parcel is located at 101 Herrick Street in the C-2 (General Commercial), I-1 (Industrial) and Aquifer Conservation

Districts. Tax Map 3D-2, Lot 20 Case #PB2023-20. ***This item is continued from the July 18, September 5 & October 3, 2023 Planning Board meetings.***

Robert Price stated that he had a phone call with the engineer today who stated that they've had plans revised and are close to being ready to re-submit, but they've been holding due to the architectural design not yet being complete and the traffic study is still being finished up. They have decided to hold off and send a complete package once these outstanding items are finalized. They are confident that they will be ready to go by December 19th and will have a package to submit by the end of next week so staff can begin departmental review.

Chairman Best stated that the Board can grant their request, but they should send a message that there will be no continuance beyond December 19th without a complete submittal having been made first to attend that meeting.

At the applicant's request, the Board voted 7-0-0 to continue the application's acceptance & public hearing to December 19, 2023 at 6:30 p.m. in the Matthew Thornton Room, with no further written notice to abutters, on a motion made by Lynn Christensen and seconded by Barbara Healey.

5. **Enterprise Holdings Inc. (applicant) and Helios Investments, LLC (owner)** – Continued review for acceptance and consideration of final approval for a site plan to expand the parking & vehicle storage area for an existing car rental facility. The parcel is located at 302 Continental Blvd in the R-4 (Residential), and Aquifer Conservation Districts. Tax Map 2B, Lot 32 Case #PB2023-25. ***This item is continued from the September 19 & October 3, 2023 Planning Board meetings.***

Robert Price stated that the applicant was last before the Board on October 3rd, at which time the Board had comments regarding location of handicap parking spaces and concerns about the amount of existing vegetation that was being taken back. The applicant has made some revisions to the plan. Initially, the applicant had requested waivers from Sections 4.17 and 4.12.18.viii, but Mr. Price believes that these waivers might now be moot with these revisions. There is an additional waiver that's been added that relates to lighting (Section 3.13(e)3(i), in which its equivalent was granted during the 2015 approval and was just asked to be resubmitted under the current Site Plan Regulations. The applicant also submitted a traffic memo, which was peer reviewed by Fuss & O'Neill, the Town's peer review consultant. Fuss & O'Neill indicated that the applicant hasn't noted that the increased vehicle storage is going to impact the trip generation other than to say that there is no change to the number of trips. Fuss & O'Neill says they don't believe there will be no impact, however the impact from the site will likely not substantially impact the surrounding roadways.

Katie Weiss of Bedford Design Consultants was present to speak to the Board about the expansion of the parking lot area for Enterprise on Continental Boulevard. Ms. Weiss stated that after their last meeting, she did a site walk along with the owner to review some of the abutter concerns that were brought up at the time. She presented a revised plan to the Board showing that they have moved the parking lot further away from the abutter and relocated 2 ADA parking spaces. They also took the 8ft fence that was down lower and put it up at the top at the same level as the parking lot, and added an additional light. For the landscape plan, they took the three shrubs that were lower and moved them up in front of the leveled fence, and took three shrubs in line from the abutter's house so when they grow they will be able to help shield lighting a little bit more.

They also kept an area of trees to help buffer with the abutter, and on the right side they kept the area of trees that would have been removed if they hadn't shifted the parking lot. Ms. Weiss did show an area of four trees that are coming down due to the parking lot shifting up.

She then discussed that they are asking for a lighting waiver for a portion of the proposed parking lot that is the "drive aisle" that will not meet their regulations for lighting. They would like to keep this area darker for the neighbors despite the Regulations requiring the area be more brightly-lit. Chairman Best asked if the area of concern is accessed by the public or staff only, in which Ms. Weiss stated that this area is for staff only and they would be familiar with the conditions.

Ms. Weiss then briefly discussed the traffic letter, sharing the results of their analysis, as the Board requested. Next, Ms. Weiss talked about the lights in the area of the Autofair storage lot. Their lighting consultant stated that there isn't any light trespass happening on the ground as the light is way too far away for that. The abutter is seeing the actual fixture itself as it's about 40' higher than where the abutter is, and the owner is willing to shield the lights as an option to fix this issue. Chairman Best agreed that the quickest and simplest answer would be to get some shields on the lights, and Ms. Weiss stated that she will let the owner know.

Chairman Best then stated that they do not need the 15 inch tree waiver, they do need the lighting waiver, and he clarified that they do not need the traffic waiver as Ms. Weiss submitted the traffic letter.

The Board voted 7-0-0 to grant a waiver from Section 3.13.e.3.i of the Site Plan Regulations regarding parking lot lighting levels, citing that strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations, on a motion made by Maureen Tracey and seconded by Haleem Mediouni.

No public comments were received.

The Board voted 7-0-0 to find that with the granted waivers and proposed conditions of approval, the application meets all applicable regulatory requirements necessary and further, to grant conditional final approval to the application subject to the following conditions to be fulfilled within 6 months and prior to signing of the plan, unless otherwise specified, on a motion made by Lynn Christensen and seconded by Barbara Healey:

1. Final plans and mylars to be signed by the actual property owner, not the authorized party. 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 applicable to the project and provide copies to the Community Development Department, as applicable;
3. The applicant shall note any 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 comments from the town's peer review consultant, Fuss & O'Neill;
6. The applicant shall address the following comments from the Public Works Department:
 - a. On sheet 7 of 10, please revise note 3, section A of the Site Maintenance and Inspection Program to include the full requirements of stormwater control inspections. The Town of Merrimack standards require E&S control inspections to occur weekly and after any storm event of ¼" or more for sites that have greater than 20,000 square feet of ground disturbance. The inspections are to be performed by a qualified individual with EPA CGP Site Inspection Training or equivalent. Reports for each site inspection shall be generated per the approved project SWPPP and sent to Community Development.
7. The applicant shall address any forthcoming comments from the Wastewater Division of Public Works, as applicable;
8. The applicant shall meet with Merrimack Village District staff and address any of their comments or requirements;
9. The applicant shall address the following Planning Staff Technical Comments:
 - a. Revise Note 7 on Sheet 1 to state "Aquifer Conservation District" not "Protection";
 - b. Applicant shall add proposed light symbol to legends provided on sheet 3 to sheet 6;
 - c. Applicant shall add detail of proposed lighting fixture on sheet 6;
10. The applicant shall physically install shielding on the existing parking lot lights that were described and shown to the Board during the November 7, 2023 Planning Board meeting;

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 is responsible for recording any proposed easements and/or applicable legal documents at the Hillsborough County Registry of Deeds at the expense of the applicant. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
3. Prior to the issuance of a Certificate of Occupancy or Unit Completion, as applicable, the applicant shall submit a mylar copy of an As-Built Plan, prepared by a NH Licensed Land Surveyor to the Community Development Department. The plan shall contain the information outlined for an Existing Conditions Plan under Section 4.12 of the Site Plan Regulations;

4. The applicant shall provide the .dwg files of the as-built plan to the Public Works Department, and provide paper copies of the as-built plan to any municipal Department that may require them;
 5. The applicant shall address any forthcoming comments from the Building Department, as related to building code compliance and permit application, as applicable (that are not deemed precedent conditions);
 6. The applicant shall address any forthcoming comments from the Fire Department, as related to property addressing and fire code compliance, as applicable (that are not deemed precedent conditions).
6. **Colt Refining Inc. (applicant) and King Herrick, LLC and Evan Realty, LLC (owners) –** Continued review for acceptance and consideration of final approval for a site plan to construct a 97,600 s.f. light industrial facility with associated site improvements. The parcels are located at 12A Star Drive, and unnumbered parcels off Herrick Street and King Street in the in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 3D-1, Lots 2-1 & 20-1 and Tax Map 3D-2, Lot 20-1. Case #PB2023-27. ***This item is continued from October 17, 2023 Planning Board meeting.***

Robert Price summarized that this is the first physical appearance before the Board from the applicant, and the site plan being presented is going to be for a 97,600 ft light industrial facilities and associated site improvements. The proposal required a special exception from the Zoning Board to allow minor impacts in the 25 foot wetland buffer, which was granted at the last ZBA meeting at the end of October. The applicant has submitted three waiver requests for the application. Staff recommends the Board accept the application as complete and conditional final approval pending tonight's discussion.

Jason Hill of TF Moran was present on behalf of the owner and applicant to speak to the Board about the three parcels that will be merged subsequent to approval, forming the subject property. This project is an expansion of Colt Refining's existing operations at 12A Star Drive in the Industrial District. This addition would also bring about an estimated 50-60 new employees by the end of next year, so there is a lot to do to get this project approved and shovel ready. Mr. Hill presented the Board with a map of the vicinity Colt Refining is looking to expand to, along with a street view and site plan. He shared that they are not proposing any actual wetland impacts. He stated that they did receive some comments from Town staff and through peer review from Fuss & O'Neill, and they have reviewed and will resubmit updated plans with some corrections. Mr. Hill stated that he will need to get Town Council approval for extinguishing an unused & unbuilt turnaround off the end of King Street for the new development. He has been in touch with DPW and there are no issues with accommodating that request, so he does not anticipate this being a difficult task. He also mentioned he will be submitting a partial waiver for a façade facing the railroad side of the building because it's over 200 feet.

The Board voted 7-0-0 to accept the application as complete for review, on a motion made by Barbara Healey and seconded by Jaimie von Schoen.

The Board then discussed the drainage system, in which Mr. Hill shared that this system is made up of several catch basins that drain into the loading dock area that have underground filtration systems that outlet into a swale around the existing Colt Refining building that flows into a

wetland that is drained by a culvert. The Board also touched upon snow removal and the building façade.

Arvid Dahlbloom, 10 King Street stated that he bought his home right before covid and the area was originally all trees before the applicant bought the property. He shared that he has a one-year old daughter and his neighborhood is full of children, and he wants to clarify if King Street is going to have increased traffic as there are a lot of children who play in the street. He is also concerned about building a fence to keep his child safe and would like to propose having that built to separate his property from the Colt Refining property.

Chairman Best thanked Mr. Dahlbloom for his comments and stated that he does not believe that the applicant will use King Street as access to their site. He further believes that the applicant does not want children playing in the area either and would most likely want some type of fence erected as well to protect their property from being accessed by children.

Richard Kalika, owner of an unnumbered parcel located off Star Drive stated he is representing the Doty Group, who abuts the property. He shared that he has concerns with the properties on the other side of the railroad. He specifically noted concerns with the drainage impact to the CMI Leasing property across the railroad, and presented plans and deeds he researched outlining that there are drainage rights that go under the railroad that cannot be altered or negatively impacted.

Robert Scannell of Space Optics Research Lab and Scannell Family Real Estate (15 Caron Street) shared that he is an abutter on the northern side. He then stated that there is an emergency access easement that runs through their property to get to what used to be the pole barn on the Colt Refining property. They would prefer not to have their property encumbered by that easement if the applicant is having the easement removed. Likewise, power went to that property across their property and there is a utility easement that the applicant is petitioning to have removed; they would like to have their property treated in kind. Lastly, he is also concerned about ensuring that they're not going to have snow runoff coming onto their property and he is wondering if they can petition for relief at some point in the future. Chairman Best asked for clarification as to what easement burdens Mr. Scannell's property, in which Mr. Scannell stated that there is a pole on their property line that brings power underground to their property and to the pole barn.

Sandra Scannell of Space Optics Research Lab and Scannell Family Real Estate (15 Caron Street) stated she is concerned that Colt Refining deals with hazardous waste on the property, and wanted to ensure nothing would be kept outside or risk contaminating her property. She also shared State of NH permitting that Colt Refining has.

The public hearing was closed and the applicant returned to speak to the Board.

First, the Board reviewed the fence concerns brought up. Mr. Hill shared that the applicant was open to building some type of fence around the King St. access, but that they have already proposed a "green fence" design with landscaping that should meet and provide the buffer that is sought after. He agreed to put in more shrubbery to put in more of a buffer. Chairman Best stated that this type of buffering is required, and children are harder to buffer than the elements, so some type of fence extending north and south of King St. to fit with the landscaping fence to stop a child or dog from running through would be preferred. Mr. Hill stated that this is acceptable, or they could provide an allowance for the residents to put their own fences up.

Next, the Board asked Mr. Hill to discuss the access easement that exists and whether it's being obstructed by the plans presented tonight. Mr. Hill shared that he is not familiar with the usage but he confirmed that they have no intent to plow snow in the area and they intend to be a neighborly business and make accommodations for them to get through, and their changes would improve access. Chairman Best asked Mr. Hill to talk about the culverts and easements that support them, in which Mr. Hill shared that the project is reducing the overall rate of runoff, so there is no issue with capacity reduction.

Mr. Hill then addressed Mr. Scannell's concerns about the pole barn electricity, and agreed that he will not have snow storage along that narrow strip of land that separates Colt Refining from Space Optics.

Mr. Hill also addressed the hazardous waste concern, stating that the metals are stored and packed and sent off site and there isn't any significant amounts of hazardous chemicals involved in the processing or disassembly. Chairman Best summarized that it appeared Colt Refining has the necessary permits for their existing operations in place with the State of NH and stressed such permits are the State's jurisdiction.

The Board voted 7-0-0 to grant a waiver from Section 3.11.1.1.ii of the Site Plan Regulations regarding parking lot lighting levels, citing that specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations, on a motion made by Lynn Christensen and seconded by Haleem Mediouni.

The Board voted 7-0-0 to grant a waiver from Section 3.08.c.4 of the Site Plan Regulations regarding new driveway placement in proximity to an existing driveway, citing that strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations, on a motion made by Lynn Christensen and seconded by Barbara Healey.

The Board voted 7-0-0 to continue the public hearing to December 19, 2023 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 Haleem Mediouni.

The Board took up Item 3 after Item 6.

3. Extension Request

- *Ultimate Bimmer Site Plan – 106 Herrick Street (#PB2022-39)*

Robert Price shared that the conditional approval is for a used car lot. The previous applicant who got the plan conditionally approved has relocated further down DW Highway and is currently in operation, so they will not be the anticipated user of this property. The applicant is understandably trying to keep this approval alive as it enhances the sale price of the lot that is now for sale, however any future user of the property would have to come back to the Planning Board for a new design & approval anyway.

Jason Hill of TF Moran asked to be granted an extension of 6 months to allow them to handle the conditions that have imposed on their project and figure out how their plans will change. Mr. Price shared that the staff's hang up on this was that the plan was already conditionally approved

once, then was withdrawn, then the applicant moved, resubmitted, got it re-conditionally approved, and we are at the exact same point where no changes have been made for a few years now. Chairman Best stated he is not averse to granting the extension because the Board will have a chance to review a new application when a definitive use is ultimately determined.

The Board voted 7-0-0 to grant a 6-month extension of the conditional approval, on a motion made by Lynn Christensen and seconded by Jaimie von Schoen.

7. **Bowers Landing of Merrimack II, LLC. (applicant/owner)** - Review for consideration of an amendment to a previously approved site plan to add 22 additional parking spaces and associated site improvements. The parcel is located at 42 Bowers Landing Drive in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 1D, Lot 1-4-1A. Case #PB2023-28

Robert Price shared that this is a waiver of a full site plan review. Bowers Landing Apartments is an approved site and is currently under construction. Building 1 on the right hand side of the plan is completed and at least partially occupied, with the other two buildings across the street currently under construction. The applicant is coming before the Board to add some additional parking spaces on the property as they found that they don't quite have enough from an operational standpoint. The one staff concern is that in the submittal package, there was no revision to the landscaping plan that was approved, so it doesn't really show how the landscaping will be dealt with that is being lost to accommodate the extra parking spaces. Mr. Price also shared that for building 1, trees that were proposed there originally are not currently in that location but that was worked out as part of the Certificate of Occupancy process to relocate the trees elsewhere on the property so the area can be used for snow storage as there is quite a bit of a tree buffer naturally there already.

Matt Peterson with Keach-Nordstrom Associates was present representing the proposed site plan modifications for Bowers Landing. He shared that they have found that with the price of rent, most one bedroom apartments are being shared by two people, so the usual one parking spot per one bedroom unit calculation is not sufficient enough for this apartment complex. They are proposing 9 parking spaces on the right side of unit 1, and 13 parking spaces on the left side of the other two buildings. The additional 22 parking spaces will equal to 4,000 square feet of additional pavement, which can easily be accommodated by the existing drainage system.

The Board voted 7-0-0 to accept the application as complete for review, and to grant a waiver of full site plan review, citing that strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations, on a motion made by Lynn Christensen and seconded by Haleem Mediouni.

There was no public comment.

The Board voted 7-0-0 to find that with the granted waiver of full site plan review and proposed conditions of approval, the application meets all applicable regulatory requirements necessary and further, to grant conditional final approval to the application subject to the following conditions to be fulfilled within 6 months and prior to signing of the plan, 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. The appropriate professional endorsements and signatures shall also be added to the final plans;
2. The applicant shall obtain all required State approvals/permits applicable to the project and provide copies to the Community Development Department, as applicable;
3. Any waivers granted (including applicable regulation, 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 address any forthcoming comments from municipal departments, boards, or committees, as applicable;
5. The applicant shall address any conditions imposed by the Planning Board at the hearing, as applicable;
6. The applicant shall address the following Planning Staff Technical Comments:
 - a. Revise sheet 1 to remove reference block in top right corner;
 - b. Submit a revised landscaping plan to show relocated trees for buildings 2 and 3 that meet the intent of the original approval, as determined by Community Development;
 - c. Add relocated snow storage areas to sheet 1;

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

1. All general & subsequent conditions from the original approval (dated December 1, 2020) remain in effect and apply to the project moving forward.
- 8. Ashoke Rampuria (applicant) and Ootzie Properties- MHT LLC (owners) – Review for consideration of an amendment to a previously approved site plan to permit research & testing and light industrial uses in addition to the already-approved warehouse use on the property. The parcel is located at 7 Crow’s Nest Circle in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 2D, Lot 21. Case # PB2023-29.**

Robert Price stated that this is an approved project that is currently under construction. The plan was approved as a warehouse use, but submitted plans to the building department showed a manufacturing use was not accounted for on the original plan, so the applicant is coming back to get that addressed to add light industrial and research & testing uses in addition to the warehouse use. Staff has no concerns or problems with this because the newly proposed uses are permitted, and noted this site is on septic as sewer is not available to it despite being right in front of the wastewater treatment plant.

Matt Routhier of TF Moran was present on behalf of the applicant to share that they are looking to change the approved uses on the plan to warehouse, light industrial and research & testing. He noted the construction of the site was originally approved as two phases, but was subsequently Administratively Approved to be three phases in accordance to the lender’s wishes. The applicant has a proposed tenant for unit 1 that is more of an engineering, research and

development business, which doesn't necessarily fall into warehousing or manufacturing use, so they would like to ask the Board for approval to allow for light industrial and manufacturing in lieu of strictly warehouse as originally proposed. Ashoke Rampuria, owner and developer, was also present to speak to the Board. He shared that the first unit is 60,000 s.f. and has 18,000ft of mezzanine area, while noting the other units are proposed to be roughly 40,000 s.f. each.

There was no public comment.

The Board voted 7-0-0 to find that with the proposed conditions of approval, the application meets all applicable regulatory requirements necessary and further, to grant conditional final approval to the application subject to the following conditions to be fulfilled within 6 months and prior to signing of the plan, on a motion made by Lynn Christensen and seconded by Barbara Healey.

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 address any forthcoming comments from municipal boards, commissions, and departments, as applicable;

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. *Please note: HCRD requires the site plan bear both a licensed land surveyor's stamp and professional engineer's stamp to be recorded;*
2. The applicant is responsible for recording any proposed easements and/or applicable legal documents at the Hillsborough County Registry of Deeds at the expense of the applicant. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
3. All other general and subsequent conditions placed on the original site plan conditional approval (conditionally approved on 11/1/2022) and as subsequently amended shall continue to be in place with this amended site plan approval; as applicable;

9. Planning & Zoning Administrator's Report & Discussion/possible action regarding other items of concern

Robert Price asked the Board to consider if they want to move to granting conditional approvals for 12 months instead of 6, based on the fact that state permitting is having a hard time getting them done in 6 months now, and the Board is getting extension requests on virtually every project they get. Chairman Best stated he is in favor of this as he's noticed they've had occasions where extension requests are the only items on their agendas. The Board was in agreement of this as well.

Chairman Best noted interviews are being conducted to fill the open member seat vacated by Neil Anketell.

10. Approval of Minutes — October 17, 2023

The Board voted 7-0-0 to approve the minutes of October 17, 2023 as presented, on a motion made by Lynn Christensen and seconded by Jaimie von Schoen. Barbara Healey abstained.

11. Adjourn

The Board voted 7-0-0 to adjourn at 9:40 p.m., on a motion made by Lynn Christensen and seconded by Barbara Healey.