



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, OCTOBER 20, 2015

Planning Board members present: Robert Best (left at 8:00 p.m.), Alastair Millns, Tom Mahon, Lynn Christensen, Desirea Falt, Vincent Russo (arrived 7:02 p.m.), and Alternate Nelson Disco.

Planning Board members absent: Michael Redding and Alternate Jeff Sebring.

Staff present: Planning and Zoning Administrator Jillian Harris 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

Jillian Harris reported that Robert Price would assume the position of Assistant Planner on October 30, 2015.

3. Pennichuck Water Works, Inc. (applicant) and Southwood Corporation (owner)

– Review for consideration of Final Approval of an application for a 2-lot subdivision. The parcel is located at 16 Daniel Webster Highway and Manchester Street in the I-1 (Industrial), Aquifer Conservation Districts and 100-year and 500-year Flood Hazard areas. Tax Map 1D, Lot 001.

Vincent Russo arrived at 7:02 p.m.

James Petropulos, Vice President/Principal Engineer, Hayner/Swanson, Inc., explained that Proposed Lot 1 would be 77.9 acres and remain as is; proposed Lot 1-5 would be 7.591 acres with the proposed construction of a 35,045 square foot water distribution facility. The commercial portion of the Harris Pond project abuts the property to the north. The treatment plant and watershed land abuts the property to the south and west. The southerly border is Pennichuck Brook, which also serves as the Town/City line between Merrimack and Nashua. The property contains a cell tower set back 200' from D.W. Highway, water treatment lagoons and restricted buffer areas along Supply and Harris Ponds. The majority of the site is wooded. There is a 24" water main and a 36-drain line on the eastern part of the uniquely-shape lot that has frontage on D.W. Highway.

Nelson Disco asked whether access to Lot 1-5 would be via an easement across Lot 1. James Petropulos replied that access would be directly from a proposed new driveway

on D.W. Highway, for which a NH Department of Transportation (DOT) Permit is expected soon.

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 7-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Desirea Falt.

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 7-0-0 to grant final approval, with the following precedent conditions to be fulfilled within 6 months and prior to signing of the plan, unless otherwise specified, 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 note all waivers granted by the Board on the plan (including Section, and date granted) as applicable;
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 address any forthcoming comments from the Fire Department, as applicable;
5. The applicant shall address any forthcoming comments from the Conservation Commission as applicable.

General and subsequent conditions

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.
- 4. Pennichuck Water Works, Inc. (applicant) and Southwood Corporation (owner)**
– Review for consideration of Final Approval of an application for site plan review to construct a 35,045 s.f. water distribution facility. The parcel is located at 16 Daniel Webster Highway and Manchester Street in the I-1 (Industrial), Aquifer Conservation Districts and 100-year and 500-year Flood Hazard areas. Tax Map 1D, Lot 001.

James Petropulos, Vice President/Principal Engineer, Hayner/Swanson, Inc., said the one-story, 35,045 square foot distribution facility would provide Pennichuck with more space to operate this part of the business and bring the operation closer to the neighboring treatment plant. There would be offices in front and space for equipment, vehicle and material storage and repair rooms. Parking would be along the south side of the building and vehicle storage along the north side. Drive-through doors in front and back would allow service vehicles to load and park within the building. Other site improvements include outdoor storage areas for earth materials and pipe, a gated driveway for security and new site lighting. The site would be serviced by telephone, electric, gas, and water. Hours of operation would be 6:00 a.m.-6:00 p.m., Monday-Friday, with 35-40 employees. That number would change during a water main crisis. Given the number of employees and light traffic for the proposed use, there would be no significant impact to local traffic. James Petropulos described a typical employee's day.

There would be a two lane entry/exit. The driveway would be widened with a right turn pocket. There would be a sliding gate for employees. Visitors must stop and be checked in before gaining access.

Because there is no sewer, Pennichuck proposes a very small subsurface septic system in front that would service the sanitary flow. A combination of recharge/storage basins would accommodate the new runoff created by the proposed impervious area. Water would be piped to a holding tank in back. Runoff would be captured in three storm water areas to be filtrated and recharged with no increase in runoff from the site. All water would go into the wooded area. A Septic System Permit from NH DES is expected soon.

The applicant has submitted a TEC traffic report stating that a left or right turn pocket is not warranted.

Full-Cutoff lights would be installed.

James Petropulos showed the architectural renderings. There would be a flat roof over the office portion of the building and a pitched roof over the vehicle storage and maintenance areas. The exterior would be a combination of masonry block and metal panels.

Pennichuck hopes to break ground in late winter of 2016 and complete the project in eight months.

The Merrimack Conservation Commission (MCC) made a positive recommendation with the conditions that only no phosphate, slow release fertilizers be used and that the applicant's contractor first utilize a soil testing facility to determine what levels and applications rates may be necessary before doing any application of fertilizers on the site.

Desirea Falt asked whether lights would be building-mounted. James Petropulos said they would be, especially for security behind the building. There would be a canopy with three lights on the side and one in back.

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 7-0-0 to accept the application for review, on a motion made by Desirea Falt and seconded by Lynn Christensen.

There was no public comment.

Pennichuck seeks a waiver for a driveway of 39' wide rather than 36'. Access to the proposed distribution facility is provided by a new site driveway along D.W. Highway. The facility will support the Pennichuck Water Works water line maintenance crews and construction vehicles. The site driveway contains one 15'-wide entrance lane, one 12'-wide left-turn egress lane and one 12'-wide right-turn egress lane. The lane widths would allow larger vehicles to enter and exit the site from D.W. Highway safely.

Nelson Disco cited 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.

The Board voted 7-0-0 to waive the requirements of Section 7.05(D)(20)(c) – Driveway Width – of the Site Plan Regulations, on a motion made by Nelson Disco and seconded by Desirea Falt.

Pennichuck seeks a landscape/streetscape waiver rather than installing a frontage strip between a paved or built-on portion of the site and an abutting right-of-way for three reasons: 1) This would minimize the impact and disturbed area at the entrance of the project by utilizing steep slopes along both sides of the entrance drive. 2) A frontage strip would require four deciduous shade trees to be planted along 3:1 slide slopes or within the D.W. Highway right-of-way. 3) The site is surrounded by mature forest that would block the main body of the site from view along D.W. Highway.

Robert Best and Lynn Christensen said that, since the area is already wooded, a waiver is not necessary. The frontage is the driveway slope. No new trees are necessary. There would be just a small cut/disturbance. Desirea Falt asked what would prevent erosion on the slopes. James Petropulos said there would be a blanket of matting with fescue or a similar plant that does not have to be mowed. Nelson Disco wanted at least some ground cover to prevent erosion on the bank and to make an attractive entrance. He asked whether there would be a path for pedestrian use of the bridge and whether the drainage swale would cut off parts of the path. Donald Ware, Chief Operating Officer, Pennichuck Water Works, Inc., said there is no intent to walk there. Employees would drive across D.W. Highway between lots. This would be a stand-alone building. The two facilities share one communication line and have little to do with each other operationally. The stone arch bridge is off site. James Petropulos said the bridge would not be disrupted. There is not much activity between the two lots, but nothing prevents someone from walking from one to the other. He showed where the road would be and offered to lay down stone dust for foot traffic. Nelson Disco was concerned about the grade. James Petropulos said the path must be disconnected to install the road; after that it would be reconnected. Donald Ware said that, because there is a 90° entrance on a steep grade through the woods, drivers on the road would

never see the building. Mirror matting would be installed, seeded and let grow wild. Anything but wildflowers would tip over and be damaged. Everything behind the driveway is wooded. Robert Best added that Pennichuck wants to make the entrance as inconspicuous as possible.

Nelson Disco cited 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.

The Board voted 7-0-0 to waive the requirements of Section 10.01.3 – Streetscapes – of the Site Plan Regulations, on a motion made by Nelson Disco and seconded by Lynn Christensen.

Pennichuck seeks a sidewalk waiver along the approximately 190 linear feet of frontage along D.W. Highway for three reasons: 1) This section of D.W. Highway does not contain sidewalks along either side of the road. The nearest sidewalk is located approximately 1,000' to the south in Nashua. 2) The site is unique in that the building(s) and parking areas are significantly set back from the roadway. The site contains internal sidewalks leading from the parking area to the building. Providing a new pedestrian connection from the site to the roadway would prove difficult and expensive due to the topographic conditions. It is likely that portions of the sidewalk construction along the site driveway may need additional retaining walls and guardrails due to steep slopes. 3) This section of D. W. Highway (NH Route 3) is controlled and operated by NH DOT, which will not support new sidewalk construction along this section of D.W. Highway without a Town sidewalk plan in place.

Desirea Falt cited 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.

The Board voted 7-0-0 to waive the requirements of Section 7.05(D)(19) – Sidewalk or Paved Pedestrian Way – of the Site Plan Regulations, on a motion made by Desirea Falt and seconded by Tom Mahon.

Pennichuck seeks a waiver of underground utilities (sewer, water and gas) and to provide overhead electric and telecommunication services from D.W. Highway to the proposed distribution facility for the following two reasons: 1) Requiring an underground service on D.W. Highway to the proposed facility (700±') would result in a significant cost for the proposed project. 2) Existing electric and telecommunication lines are overhead along D.W. Highway. The proposed overhead lines will not be readily visible from D.W. Highway due to the site topography and existing trees as well as the angle that the proposed overhead lines would enter the site relative to D.W. Highway.

Alastair Millns wanted underground service, noting that if Pennichuck could dig the street for gas, it could do so to bury wires. Don Ware said it would require a new trench and cost \$35,000 extra. No one would see the overhead wires. Alastair Millns noted that it is required by regulation because the Planning Board wants to bury as many power lines as possible. Nelson Disco disagreed: the lines would be out of sight and on Pennichuck's site and would not be visually annoying. Robert Best added that the surrounding properties would not be developed for commercial or residential use, so the

public would have no contact with the lines. There are no homes, so only Pennichuck would be affected. Vincent Russo agreed with Alastair Millns because underground lines are better protected. Lynn Christensen disagreed, saying that the lines would be kept clear from the elements and would not be visible. There are no buildings nearby that would be affected. Alastair Millns did not want to make an exception that would prompt other such requests.

Nelson Disco cited 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.

The Board voted 5-2-0 to waive the requirements of Section 4.15 – Underground Utilities – of the Site Plan Regulations, on a motion made by Lynn Christensen and seconded by Tom Mahon. Alastair Millns and Vincent Russo voted in the negative.

Desirea Falt asked whether there would be signs. James Petropulos said that none are planned, but that the applicant would do whatever the Fire Department asks.

Alastair Millns asked the reason for the stub on the north before the gate, which James Petropulos explained is a way for lost vehicles to back out.

Donald Ware said the side of the building is 290' wide. Desirea Falt noted that regulations require jogs of a minimum of 2' to break up anything more than 200' wide. James Petropulos said recessed doors break up the long elevation. No one would see the building from D.W. Highway. Lynn Christensen said a dormer overhang would satisfy the regulation. Desirea Falt agreed that, since no one can see the building, the breakup is not required. Awnings would cover the doors. Nelson Disco agreed, since the property is gated and completely out of public sight. Robert Best said the Planning Board defers to staff's determination and Jillian Harris said it meets regulations. No action is required.

Noting the presence of an Omnipoint cell tower, Alastair Millns said all cell towers must be documented and money bonded for their removal. The Community Development Department agreed to research the matter.

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 7-0-0 to grant final approval, with the following precedent conditions to be fulfilled within 6 months and prior to signing of the plan, unless otherwise specified, on a motion made by Desirea Falt and seconded by Lynn Christensen.

1. Final plans and mylars to provide all professional endorsements and be signed by all property owners;
2. The applicant shall obtain all required State Permits (NHDES AOT, NHDES Sewage Disposal, and NHDOT Driveway), provide copies of the permits to the

Community Development Department, and note the approvals in the notes on the plan;

3. The applicant shall note any waivers granted by the Board on the plan (including Section, and date granted) as applicable;
4. The applicant shall address the following comments from the Conservation Commission, as deemed applicable by the Planning Board:
 - a. The Commission recommends that only no phosphate, slow release fertilizers be used. This is due to proximity of the site to Pennichuck Brook, which empties not too far away into the Merrimack River;
 - b. The Commission further recommends that the applicant's contractor first utilize a soil testing facility to determine what levels and applications rates may be necessary before doing any application of fertilizers on the site;
5. The applicant shall address any remaining applicable comments from the Town's peer review consultant, CLD;
6. The applicant shall address the following planning staff technical comments:
 - a. The applicant shall provide (and indicate on the plans) appropriate screening for the proposed dumpsters, as required by the regulations, and provide details for the screening as applicable;
 - b. The applicant has not indicated any proposed signage. Should any signage be proposed, please indicate the locations on all appropriate sheets, and provide details for compliance with the requirements of the Zoning Ordinance;
 - c. The applicant should note the appropriate buffers (indicating that the buffers are n/a based on abutting land uses) from Section 10.01.4 of the regulations on the Landscape Plan;
 - d. Provide appropriate notes in the lighting fixture details indicating full cut-off fixtures as required by the regulations.

General and subsequent conditions

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) to the Community Development Department prior to the issuance of a Certificate of Occupancy.
3. The Town of Merrimack, Department of Fire Rescue, Office of the Fire Marshal requires (NFPA 1 Chapter 18) that fire department access roads be constructed and maintained so that fire apparatus can effectively operate during an emergency. The location of the access road(s) must provide for positioning of the fire apparatus to allow access to all sides of the structure. Unique building or

occupancy conditions may trigger additional requirements from the Office of the Fire Marshal;

4. The entire building shall be protected by an approved NFPA-13 compliant fire sprinkler system (Town of Merrimack Building Zoning Ordinance and Building Code, Section 11). Plans shall be provided to the Fire Marshall for review and approval before a building permit can be issued for the project;
5. The building shall be protected by an approved NFPA-72 fire alarm system. Plans shall be provided to the Fire Marshall for review and approval before a building permit can be issued.

5. John J. Flatley Company (applicant/owner) – Review for consideration of Final Approval of amendments to the previously granted Mixed Use Conditional Use Permit, approved by the Planning Board on September 1, 2015. The parcels are located at # 645, 673, 685, 703 and 707 D.W. Highway in the I-1 (Industrial), Aquifer Conservation and Wellhead Protection Districts. Tax Map 6E, Lots 003-01, 003-03, 003-04, 003-05 & 003-06.

Robert Best recused himself from discussing and voting on this item and left the meeting at 8:00 p.m.

Alastair Millns assumed the chair.

Kevin Walker, John J. Flatley Company, said that the Mark Fougère Planning and Development Fiscal Impact Study concluded that both the apartments and the entire site would have a positive impact. If only the apartments were built, the benefit would be \$675,155. That includes property and motor vehicle taxes and ambulance revenue. The total cost based on apartment construction only would be \$147,640. That includes Police Department services of \$37,040, Fire Department services of \$34,500 and schools impact of \$76,100. The Town would have to hire one police officer and perhaps one firefighter for a cost of \$84,000, for a net benefit of \$515,055.

Lynn Christensen asked for a comparison with Tara Heights in Nashua, which Kevin Walker said is 2½ times as large and has a similar impact. Lynn Christensen and Tom Mahon noted that the Town would have to hire four rather than one firefighter in order to cover all four shifts. Tom Mahon admitted the Town might have to do so anyway.

Kevin Walker wanted the Planning Board to accept an Amended Development Agreement rewording of Phase 2.

Original wording: "Second phase to include any portion of the non-residential/commercial development located to the south of the St. Gobain shared driveway, including construction of both pedestrian and vehicular connections to the residential phase of the project, if applicable."

Suggested amended wording: "Second phase to include any portion of the non-residential/commercial development, including buildings and/or commercial parking facilities, located to the south of the St. Gobain shared driveway, including construction of both pedestrian and vehicular connections of the approved non-residential commercial development to the residential phase of the project, if applicable."

In Kevin Walker's opinion, access parking for the Homeland Restaurant plus a commercial use should allow construction of a fifth apartment building. He proposed halving the clubhouse, with the second half to be used as a leasing office for the apartments that would later be used for commercial leasing. It would likely have five employees. Residents would not have access. In other words, Phase 2 would have two commercial uses.

As to the pedestrian and vehicular connection, it makes no sense to connect a 3,300' road from St. Gobain to the apartments. The road may change depending on what else someone may want to build. That language should be changed. The closest apartment would now be 148' rather than 96' from the property line, creating a buffer of over 50'. The walking trail would be revised according to the MCC's suggestions.

The Planning Board could say that a Certificate of Occupancy could not be granted until both the car park and leasing office are constructed.

Lynn Christensen considered leasing space to be residential until commercial space is built because it is for apartment residents. She asked what progress had been made attracting commercial customers. Kevin Walker said he has been contacted by several companies, including a micro-brewery and an auto workshop. Alastair Millns wanted to know that every effort has been made to develop the commercial property.

Tom Mahon said that the Planning Board takes preference over the MCC concerning the path. The MCC cannot make a formal approval. Kevin Walker said the MCC backed the project with modifications to the bridge across the wetland. The applicant intends to follow its recommendations.

Nelson Disco objected that parking is not what the Planning Board intended as a commercial use. Alastair Millns worried about setting a precedent.

Public comment

Tom Koenig, 1 Danforth Road, who sat on the Planning Board during the initial discussions, said it is difficult to swallow a parking lot or a leasing office as a commercial use. A leasing office is typically part of a new apartment building that is closed when it is fully rented. The clubhouse area would be cut in half. This is a slippery slope. There are other mixed uses in Merrimack that cannot fill commercial space and want to change to residential. Tom Koenig urged the Planning Board not to accept the amended wording. It is important to connect the residential and commercial areas so there is no need for anyone to cross D.W. Highway. People must be able to share the mixed uses on the property without going onto D.W. Highway.

Alastair Millns did not like dividing the clubhouse and suggested that the applicant build a separate leasing office toward the north end of the site that could be adapted for something else in the future. Kevin Walker said the goal is to interconnect the apartments and the commercial uses, but he wants to construct the site economically. He and the Board discussed several options about where the road would be located depending on various potential uses. By amending the wording, Kevin Walker said he would not have to build certain sections of the road now. For example, he noted that St. Gobain no longer needs the water tower, which may come down and allow him to

develop something else. He must know what is going where before developing the road and he wants to keep his options open.

Lynn Christensen asked what practical changes the amended wording (adding “approved non-residential/commercial development”) would make to the plan. Kevin Walker said he would need to do anything until the Planning Board found it “applicable”. Lynn Christensen said he could do it without the new wording. Kevin Walker asked if the Planning Board wants him to build a roadway to and from certain points, but Lynn Christensen countered that he must build a road for anything commercial. Kevin Walker said he would if the Board determined it was “applicable”.

Jillian Harris said the big change in the proposed wording is “including commercial and parking facilities” rather than “if applicable”, which exists in the original wording. It would allow the applicant to build a fifth residential building with Homestead Restaurant parking and a leasing office. Lynn Christensen and Desirea Falt noted that has nothing to do with a road, which was never part of the discussion. Alastair Millns clarified that the original wording means the applicant must build a commercial building before being allowed to construct a fifth residential building, while the proposed amended wording means that building a leasing office and a parking area for the Homestead Restaurant would allow the applicant to construct a fifth residential building. If the applicant were to build a separate commercial building that is not near the residential development, there would be no need to change the approval. Kevin Walker agreed to do so.

The consensus of the Planning Board was that the applicant must build a commercial building separate from the residential area before a fifth residential building can be built and occupied and that an amendment is not necessary.

The applicant withdrew the request for an amendment.

6. Discussion/possible action regarding other items of concern

None.

7. Approval of Minutes – October 6, 2015

The minutes of October 6, 2015, were approved as submitted, by a vote of 6-0-0, on a motion made by Lynn Christensen and seconded by Nelson Disco.

8. Adjourn

The meeting adjourned at 8:53 p.m., by a vote of 6-0-0, on a motion made by Lynn Christensen and seconded by Tom Mahon.