



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD APPROVED MINUTES TUESDAY OCTOBER 4, 2022

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, October 4, 2022 in the Matthew Thornton Room.

Members Present:

- Robert Best (Chair)
- Town Councilor Barbara Healey - Ex-Officio
- Neil Anketell
- Lynn Christensen
- Maureen Tracey – Alternate
- Nelson Disco – Alternate

Members Absent:

- Paul McLaughlin (Vice Chair)
- Jaimie von Schoen
- Brian Dano
- Haleem Mediouni – Alternate

Staff Present: Tim Thompson, AICP, Community Development

1. Call to Order

Chair Robert Best called the meeting to order at 6:30 p.m. and led the Pledge of Allegiance. He then seated Alternates Nelson Disco and Maureen Tracey for Paul McLaughlin and Jaimie von Schoen, respectively.

2. Planning & Zoning Administrator's Report

Tim Thompson provided an update on the vacant Assistant Planner position.

3. Consent Agenda

- Regional Impact Determinations*
- Road Acceptance and Bond Release Request for the roads located in Greenfield Farms (Orchard Drive, Baldwin Court, McIntosh Court Cider Court, Crab Tree Court, Bushel Court and Harvest Court)*

The Board voted 6-0-0 to approve the consent agenda on a motion made by Lynn Christensen and seconded by Barbara Healey.

- 4. Bowers Landing of Merrimack II, LLC. (applicant/owner)** – Review for acceptance and consideration of final approval for a two lot subdivision. The parcel is located off Bowers Landing Drive in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 1D, Lot 001-04. Case #PB2022-31.

Mr. Thompson prefaced the presentation by providing an overview of the recent development at Bowers Landing and advising the Board that the Zoning Board of Adjustment granted a necessary variance to allow the subdivision on a lot without frontage on a Class V road. He also pointed out that the subdivision will not result in any new development as one of the lots already contains detached condominiums and the other has an approved site plan for apartment buildings.

Matt Peterson (Keach Nordstrom Associates, Inc.) and Andrew Prolman, Esq., presented the application to the Board. Mr. Peterson shared the subdivision plan to show where the lot line is being proposed that would divide the single family condominiums from the garden style apartments. He explained that the Ponds at Crown Point Home Owner's Association (HOA) has requested the subdivision because the insurance practices are different for detached condos versus apartments and this will also allow each development to maintain their own landscaping and snow removal services. Mr. Peterson also pointed out that lots without frontage are allowed in the Industrial district (which Bowers Landing is in) but staff determined the variance was necessary because the use is residential.

Mr. Thompson clarified that Townsend Place may be single family condominiums but from a zoning perspective it is considered multi-family because they are all on the same lot.

The Board voted 6-0-0 to accept the application as complete for review, on a motion made by Nelson Disco and seconded by Lynn Christensen.

The Board decided by consensus that a Topographic plan is not necessary for this project under the provisions of Section 4.07 of the Subdivision Regulations.

Nelson Disco asked for clarification on what is happening to a piece of land shown on the plan to the left of Bowers Landing Drive just past where you enter on Manchester Street. Mr. Peterson confirmed that that piece of land is common land for the detached condominiums. Mr. Disco also asked how many buildings are being constructed for the apartments because the plan only shows one. Mr. Peterson confirmed that there is one foundation already complete so that is what is shown on the plan right now but the apartments will include a total of three buildings.

There was no public comment.

The Board voted 6-0-0 to find that with the conditions of approval the subdivision meets all necessary regulatory requirements and to grant conditional final approval 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 Nelson Disco:

1. Final plans and mylars to be signed by all property owners. The appropriate professional endorsements and signatures shall also be added to the final plans and mylars;
2. The applicant shall obtain all required State approvals/permits 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 additional applicable legal documents for review at the applicant's expense, by the Town's Legal Counsel;
5. The applicant shall address the following comments from the Public Works Department:
 - a. Under section 4.18.a, boundary monuments shall be placed at all street intersections, points of curves and angle points. Monuments shall be concrete or granite bound markers. They have not been noted on the plans especially along Manchester Street.
 - b. There shall be a note added to the plans that the roads, drainage and the sewerage system are to remain and also be maintained privately. In addition, the line of sight from Bowers Landing Drive onto Manchester Street shall be kept clear at all times (especially during the winter months from snow piles).
 - c. All reporting requirements and any other provisions established during the site plan process, including but not limited to Occupancy Permits and As-Builts etc. to the Town shall remain in effect. It shall be noted that the requirements established will run with the land in perpetuity.
6. The applicant shall address the following Planning Staff Technical Comments:
 - a. Revise Note 3 to remove mention of the PUD zoning requirements and instead indicate the I-1 zoning requirements for residential uses, which refers you to R-4 for a multi-family residence.
 - b. Add a separate note that reads as follows" On July 24, 1986, the Zoning Board of Adjustment granted a variance to permit a Planned Unit Development on the property."
 - c. Revise Note 7 to indicate plans will be on file with the Town of Merrimack Community Development Department, not Merrimack Planning Offices.

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

1. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department.
2. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant.
5. **Stewart's Ambulance Service (applicant) and WB Properties, LLC (Owner)** - Review for acceptance and consideration of final approval of a Waiver of Full Site Plan to construct an accessory residential dormitory space within the existing building. The parcel is located at 26 Columbia Circle, Unit D in the I-1 (Industrial), Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 24. Case # PB2022-32.

Mr. Thompson advised the Board that this project came to light as a result of a recent inspection by the Fire Department. Stewart's Ambulance is a 24-hour operation so they have overnight accommodations for their employees, however the dormitory use was never permitted by the town. The applicant has since received a Special Exception from the ZBA to allow the dormitory use and are here before the Planning Board with a Waiver of Full Site Plan. There will be no exterior changes to the building and the applicant is working with the Fire Department to ensure the overnight quarters meet all applicable building and fire codes.

Donald Welford (Senior VP, Stewart's Ambulance Service) presented the application to the Board. He reiterated what Mr. Thompson said and added that Fire walls and sprinklers are being added to the overnight quarters to ensure the area is up to code.

Mr. Disco asked if any action is being taken on the encroachment from the neighboring property that is visible from the aerial photo of the property in question. Mr. Thompson commented that staff only investigates issues like that when a complaint is made because we do not have the staff to pursue proactive enforcement. Chairman Best added that when something like this has occurred in the past that the Board has added a comment to their approval indicating that they are not supporting the encroachment. Mr. Best asked Mr. Thompson if they need to add a condition that states the dormitory use is ancillary to the Ambulance Service and not an ordinary residential apartment. Mr. Thompson stated that if the Board so chooses they can add a condition to the approval that states the dormitory use is ancillary and is not construed to be a separate individual rental unit.

The Board voted 6-0-0 to accept the application as complete for review, on a motion made by Nelson Disco and seconded by Barbara Healey.

There was no public comment.

The Board voted 6-0-0 to grant a waiver of full site plan review, on a motion made by Lynn Christensen and seconded by Barbara Healey.

Neil Anketell asked how many beds are included in the dormitory. Mr. Welford responded that there are two bedrooms that each contain 2 beds and they are only used when an employee works a 24-hour shift. Mr. Anketell asked if there is a kitchen space in the dormitory too and Mr. Welford stated that there is a sink, microwave and refrigerator but no stove. Lynn Christensen asked how many vehicles are onsite and Mr. Welford responded that there are 3-4.

The Board voted 6-0-0 to find that with the granted waiver and conditions of approval, all necessary regulatory requirements had been met and to grant conditional final approval 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 Maureen Tracey:

1. The applicant shall obtain all required State approvals/permits and provide copies to the Community Development Department, as applicable;
2. The applicant shall provide draft copies of any applicable legal documents for review at the applicant's expense, by the Town's Legal Counsel;

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

1. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
 2. 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);
 3. 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. Howe Distribution, LLC (applicant) and Ootzie Properties-MHT, LLC (Owner)** - Review for acceptance and consideration of final approval of a Site Plan Review to construct a 340,000 square foot warehouse building and associated site improvements. The parcel is located on Crow's Nest Circle in the I-1 (Industrial) and Aquifer Conservation Districts Tax Map 2D, Lot 21. Case # PB2022-33.

Mr. Thompson provided some history on the parcel in question indicating that it was subdivided in 2015 for a potential warehouse for the NH Liquor Commission. The project was not the selected bid by the state (a site in Bow was selected and has since been constructed) and the property has sat undeveloped since that time. The current proposal is for a 340,000 +/- square foot high cube warehouse with 300 parking spaces and 88 loading docks. The application indicates that the warehouse could possibly contain several different tenants and that they are proposing a 24-hour three shift operation. The staff memo indicates that there was a traffic analysis submitted that has been sent out for peer review, however this type of use typically generates a low amount of traffic because the trips are generally off-peak hours.

Mr. Thompson added that Daniel Webster Highway at Mast Road, which is the street connecting to Crow's Nest Circle, is a 4 lane road with plenty of capacity. The applicant has submitted a waiver from the building design standards however this project is specifically exempt from those standards under the language of the Site Plan Regulations, so the waiver is not necessary. Mr. Thompson noted that there are inconsistencies in the plan regarding the size of the building that need to be clarified and that since peer review comments have not yet been received, staff recommends that the public hearing be continued to the November 1st meeting. Mr. Thompson added that he identified a potential setback encroachment after the memo was written but did want to call out that because this lot has frontage on both Mast Road and Crows Nest Circle, the current design may be encroaching in the front setbacks and may need to either be re-designed or the applicant may need a variance.

Matt Routhier & Bob Duval (TF Moran) and Ashoke Rampuria (applicant), presented the application to the Board. Mr. Routhier began by sharing the Site Layout Plan to demonstrate the layout of the proposed warehouse on the 18 acre lot. He used the plan to show the two access points that are being suggested, one is truck access only and is located on Crow's Nest Circle just past the intersection with Mast Road and the other is for regular vehicular traffic and is located at the end of Crow's Nest Circle in the cul-de-sac. He went on to state that water service to the facility will come from Pennichuck Water Works and that a private septic system will be used as there is not a connection to municipal sewer at this location. He spoke briefly about the stormwater plan and addressed the square footage discrepancy by indicating that the building

itself is approximately 339,000 square feet and then there is another 20,000 square foot mezzanine that may be added. Mr. Routhier added that the Traffic Study revealed no significant impact to the surrounding roadways and they are scheduled to meet with the Conservation Commission on October 10th.

Chairman Best asked about the plans for snow storage/removal and Mr. Routhier responded that they plan to store it at the far end of the building near the loading areas but will truck it off-site if there is any excess of what can be stored. Chairman Best asked if the snow will be removed from the roof as well or just the parking lot and Mr. Routhier confirmed that it will just be removed from the parking lot as the roof is designed to handle the snow and there are drains that will carry the runoff into the infiltration basins.

Chairman Best then asked what the grassy area depicted on the plan near Mast Road is intended for and was advised that this will be used for infiltration basins for the roof and two of the parking lots. The rest will be handled through the underground systems that will be located under the concrete loading pads. Mr. Routhier then demonstrated on the plan where these systems are located, discussed how they worked and also pointed out the location of the leach fields.

Chairman Best asked about the access point on Crow's Nest Circle and whether or not it is the applicant's property or existing through an easement. Mr. Routhier confirmed that it is an access and slope easement that was created when the land was subdivided. He then asked if they submitted any plans that show the turning radii for the trucks and Mr. Routhier indicated that all of the turning studies were done but were not submitted. The plan calls for all of the trucks to turn around and exist the same way as they entered in order to keep all of the truck traffic in the rear of the building.

Councilor Healey asked about the sewer connection and why they are not using public sewer since the Wastewater Treatment facility is located at the end of Mast Road. Chairman Best and Mr. Thompson both responded that a sewer connection is not possible because the lines that run to the facility are high pressure interceptor lines, not service lines, and cannot be tapped into for service to a new sewer connection.

Chairman Best asked about the location of dumpsters and Mr. Routhier explained that they will most likely be places in the rear of the building on the concrete pads but confirmed that the final placement is something that will be finalized when there are tenants in the building. Chairman Best stated that the final plans should show the placement of the dumpsters or at least a couple possibilities so that staff can determine if they were placed in the right places during final inspection, and comply with the Site Plan Regulations regarding screening requirements.

Chairman Best asked if the warehouse is going to be a manual facility or robotic and whether or not there are intentions to use the railroad at all. Mr. Rampuria confirmed that the facility will be manual and that there are not any plans to use the railroad. Chairman Best asked if the 200 parking spaces that are proposed are because they anticipate the need for that many or they just included that many because they had the space. Mr. Rampuria responded that since they do not know which tenants will be leasing the space, they are erring on the side of caution to ensure there is enough parking.

Mr. Routhier pointed out the retaining walls that are being proposed around the site at the request of Chairman Best. They also briefly discussed a culvert that is on Crow's Nest Circle and the stormwater plan. Mr. Routhier confirmed all stormwater is all being managed on-site.

Chairman Best asked if Crow's Nest Circle is a town accepted road and Mr. Thompson confirmed that it is and added that it has been blocked off with a jersey barrier however because the Police Department was having issues with some of the activities that were occurring down there.

Councilor Healey advised the applicant that the State has plans to expand the railroad tracks behind their property and it might not have an impact on their project but she wanted to at least make them aware of it. Mr. Routhier thanked her for the information and stated that there is about 50-70 feet from the property line to the center of the tracks.

Maureen Tracey asked about the ability of trucks to turn around on Mast Road if they miss the entrance to the site. Mr. Routhier indicated that he has been out to the site doing test pits and sees no problems with trucks correcting themselves if they miss the entrance. Mrs. Tracey then raised a concern about the traffic coming to and from the facility with a 24-hour operation and said she is envisioning a FedEx or UPS warehouse. Mr. Duval responded by indicating that they are proposing a High Cube warehouse which is different than a distribution center. This facility will store large bulky items and will utilize both large tractor trailer trucks and box trucks.

Chairman Best asked the applicant if they would like the Board to vote on completeness which would start the 65-day clock for review and Mr. Routhier responded that they would like to get going as soon as possible so they would like the Board to vote on completeness. Chairman Best reminded Mr. Routhier that the items that they discussed that were missing from the submittal, such as the vehicle turning plans will need to be submitted for review prior to a decision being rendered. Mr. Routhier asked if the Board if they foresee any concerns with the waivers being requested (Interior Parking landscaping and 5' setback for trees from pavement). Mr. Thompson and various Board members offered their opinions on the waivers (which will still need to be voted on during a future meeting) but given the location and size of the proposed building no one had any immediate concerns with them.

The Board voted 6-0-0 to accept the application as complete for review, on a motion made by Nelson Disco and seconded by Neil Anketell.

There was no public comment.

The Board voted 6-0-0 to continue the public hearing to November 1, 2022 at 6:30 p.m. in the Matthew Thornton Room on a motion made by Nelson Disco and seconded by Neil Anketell.

7. Discussion/possible action regarding other items of concern

Mr. Thompson reviewed some statutory changes from the most recent NH legislative session that impact land use boards. The first change is that all land use boards need to issue written findings as part of their decisions. Going forward, staff is going to phrase recommendations so that the findings will be encompassed within the recommendation. This is a significant change because in the past, findings were only necessary for denials but they are now required for all decisions.

Another change that was made was to the 65-day review clock once an application has been accepted as complete. If the Board does not make a decision within 65 days then the governing body has to approve the application. If the governing body fails to approve the application then the case moves to the Superior Court as an expedited appeal. There used to be a clause that would allow the Town Council a 90-day extension but that has been eliminated with this change.

Projects that pertain to religious uses no longer require site plan approval with the exception of heights, yard sizes, area setbacks and building coverage. Boards are not allowed to review lighting, signs, noise, on-site drainage, erosion sediment control, layout of streets, sidewalks, utilities installation, open space, landscaping, parking access management, etc. Councilor Healey asked how this change will impact the Town's MS4 Permit if drainage can't be reviewed. Mr. Thompson responded that he is not sure how that will work.

The last change that was discussed is that any incentives given to elderly housing will automatically apply to workforce housing as of July 1, 2023. This means that the ordinance language needs to be reviewed prior to July 2023 to determine if any changes need to be made because after July 1st, the elderly housing standards will also apply to workforce housing.

Mr. Disco asked if they give a definition on religious use and Mr. Thompson stated that they did not provide a definition.

8. Approval of Minutes — September 6, 2022

The Board voted 6-0-to approve the minutes of September 6, 2022, as amended, on a motion made by Lynn Christensen and seconded by Barbara Healey.

9. Adjourn

The Board voted 6-0-0 to adjourn at 7:47 p.m. on a motion made by Barbara Healey and seconded by Jaime van Schoen.