



Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD VIRTUAL MEETING APPROVED MINUTES TUESDAY, SEPTEMBER 1, 2020 7:00 P.M.

Due to the COVID-19 crisis, and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Planning Board is authorized to meet electronically.

As stated on the agenda, the meeting was aired live on Merrimack TV and the Merrimack TV Facebook Live page (<http://www.facebook.com/merrimacktv>). Telephone access was available for members of the public wishing to speak during the Public Hearing or provide public comment. Also identified on the agenda was the opportunity for general public comment to be submitted leading up to the start of the meeting via email to CommDev@MerrimackNH.Gov.

Members of the Board and Town Staff were participating via Zoom. In accordance with RSA 91-A: 2 III, each member of the Board was asked to state, for the record, where they were, and who, if anyone was with them.

1. Call to Order

Chairman Robert Best called the virtual meeting to order at 7:02 p.m. He then read the procedures and processes for the virtual meeting.

Roll Call:

- Robert Best (Chair) stated he was present at his office in Concord, and alone in the room he was in.
- Alastair Millns (Vice Chair) stated he was present at home and alone in the room he was in.
- Paul McLaughlin stated he was present at home and alone in the room he was in.
- Neil Anketell stated he was present at home and his wife was in the room he was in.
- Councilor Bill Boyd (Ex-Officio) stated he was present at home and alone in the room he was in.
- Nelson Disco (Alternate) stated he was present at home and alone in the room he was in.

Members Absent:

- Lynn Christensen

Staff Present: Tim Thompson, Community Development Director (alone and participating remotely from his home in Concord)

Chairman Best appointed Nelson Disco into a voting position for Lynn Christensen.

2. Planning & Zoning Administrator's Report

The Board voted 5-1-0 by roll call vote to determine that the Flatley Industrial/Flex Site Plan is not of regional impact, on a motion made by Bill Boyd and seconded by Alastair Millns. Nelson Disco voted in the negative.

The Board took up item 6 out of order

- 6. John Flatley Company (applicant/owner)** - Review for acceptance and consideration of a Site Plan to construct 100,000 square feet of research & development/warehouse in 3 proposed buildings and associated site improvements, per the requirements of the Flatley Mixed Use Conditional Use Permit. The parcel is located at 685 Daniel Webster Highway in the I-1 (Industrial) and Wellhead Protection Area. Tax Map 6E, Map 003-04. Case #PB2020-19.

At the applicant's request, the Board voted 6-0-0 by roll call vote to continue both the application's acceptance and public hearing to October 6, 2020, on a motion made by Alastair Millns and seconded by Bill Boyd.

- 3. Public Hearing - Zoning Ordinance Amendments - The Planning Board will consider amendments to the Zoning Ordinance, pursuant to RSA 675:6 and 675:7.** The general purpose of the amendments is to address repeated ordinance administration and/or enforcement tasks (Definitions, ordinance references, Home Occupations, dimensional requirement clarifications, travel trailers, references and modifications to ensure compliance with the State Building Code, signs) as well as amend the ordinance by updating and reformatting the Telecommunications Tower section (full details located in the notice of public hearing and with the Community Development Department).

Tim Thompson began by explaining that the proposed amendments to the Zoning Ordinance were completed by staff and previously reviewed by the Planning Board in two separate workshops. The original plan was to wait until in-person meetings were re-established to move forward with the public hearing, but the Planning Board made the decision in July to conduct the public hearing virtually. Tim then shared his screen to review the presentation of the proposed changes.*

**The minutes outline the discussion points only. The full list of proposed changes is available on the Town's website at*

https://www.merrimacknh.gov/sites/g/files/vyhlf3456/f/news/noph_zoning_full_090120.pdf

Proposed Changes Discussion:

Section 1.03.A.31 - Add a new term and definition for "Kennel" Councilor Boyd questioned how this definition would impact residents that have multiple dogs or breed dogs for sale. Tim Thompson confirmed that those instances would not be considered a kennel under the new definition and it is specific to those individuals operating an approved kennel business in Merrimack.

Section 1.03.A.52 - Update definition of "Setback, Side yard" to clarify that accessory buildings must meet side yard setback requirements. Tim Thompson clarified that this definition is being amended to call attention to the fact that accessory dwellings need to meet side setbacks because the current definition only mentions the principal building. He also clarified that a shed less than 160 square feet is not considered a structure and does not need to meet setback requirements. General discussions regarding what is considered a structure and retaining walls also took place.

Section 1.03.A.58 - Revise definition of "Travel Trailer" to clarify they do not have a permanent foundation and are primarily intended for temporary occupancy or travel. Eliminate weight and length descriptions, and include reference to their being referred to

as recreational vehicles or campers. General discussions about what constitutes an RV took place and Tim Thompson explained that the new definition is meant to apply generally to any travel vehicle (pulled or otherwise) that can be lived in. He also clarified that the revised change to the definition is being proposed to get rid of the length and weight limits so that staff can enforce any violations regarding these types of vehicles being used as a second dwelling on a property. Chairman Best mentioned that these have been used during the pandemic to house people that need to be quarantined and asked whether or not the new definition would impact that option. Tim Thompson confirmed that the change to the definition would not have an impact on that purpose.

Section 2.02.A.9 - Added Electric Vehicle Charging Stations as a permitted use. Tim Thompson explained that this change allows the electric charging stations anywhere in town and the only time Planning Board approval would be required is when there are multiple stations as part of a site plan. He also clarified that the appropriate permits would still be required. He also addressed some additional questions from Councilor Boyd regarding current charging stations in town and inspections requirements.

Section 2.02.1.A.2 - Complete rewrite of Home Occupation section. This section was broken into two levels in order to engage the Planning Board in approvals for Home Occupations that meet a certain criteria. The Ordinance was written so that any Firearm business or other Home Occupation not meeting the level one criteria would need to be presented to the Planning Board as a Conditional Use Permit. All Home Occupations that meet level one criteria would continue to be approved by staff as an Administrative Approval. Councilor Boyd asked if verbiage in section 2.02.1.1 should be updated to delineate between aircraft that is manned vs unmanned (i.e model airplanes and drones). Tim Thompson explained that this was not a section that was earmarked for change so he was not prepared to discuss it but promised he would look into it.

Section 2.02.6.1 - New section regarding personal wireless service facilities and telecommunications towers. This is a brand new section that takes all of the language that was in various places throughout the Ordinance and puts it together in one location. The new proposed process requires approval through the Planning Board (CUP in the Residential & Commercial Districts and Site Plan/CUP for the Industrial District) and removes any involvement of the Zoning Board. Councilor Boyd asked if the Federal government determines the criteria for denying an application and if so, does that language need to be included in the Zoning Ordinance. Tim Thompson confirmed that there are Federal requirements that require written justification for all denials and that language is in both the Zoning Ordinance and the Site Plan Regulations.

Section 3.05 - Revise to clarify that any structure, not just a single-family residence, can be built on a nonconforming lot. Chairman Best asked if we need to clarify that a structure can be built on a non-conforming lot as long as it is a permitted use. Tim advised Chairman Best that section three is specific to lot and yard regulations and section and permitted uses are outlined in section two.

Section 4.04 - New section specific to travel trailers that outlines allowances for parking of both occupied and unoccupied travel trailers. Councilor Boyd asked about the language in section 4.04.A.1 that limits residents to one travel trailer per parcel and raised that concern that it could be feasible for people to have more than one so should we be stipulating a limit? Tim Thompson confirmed that as it currently stands the section only applies to travel trailers in manufactured housing parks or manufactured housing subdivisions. The discussion turned to whether or not the Board should propose a limit on the number of “non-motorized” vehicles a home owner can have on their property. The Board had a variety of opinions on the topic but ultimately decided that it warrants further discussion outside of the current amendment discussion.

Tim Thompson prefaced the discussion of Section 11 by stating that the changes are related to the state Fire and Building code and therefore not made by his staff, so he is not able to rationalize why the changes were made.

Chairman Best remarked that with all of the codes that are in place there is a great chance of conflicts amongst the codes and asked who is responsible for resolving those conflicts. Tim directed him to the appeals language in proposed Section 11.07.F).

Section 11.21 - Fire Department Access Road requirements. There was some general discussion surrounding this entire section but the Board had the biggest concerns with section 11.21.J. This section was added by the Fire Department and requires any residential development with more than 25 units to have two access points. This requirement would mean that several brand new developments are non-conforming. After discussing several options the decision was made to ask the Fire Department to take another look at the section and hold another public hearing.

Section 17.05.4 - Add new term "Billboard" and corresponding definition. Concerns were raised by the Board regarding the size that is stipulated in this definition (150 sq. ft.) because typical billboards are much larger (+/- 750 sq. ft.). Tim clarified that off premise billboards are not permitted at all, and the definition was added just to define what constitutes a billboard. After discussing specific signs both in and around Merrimack, the Board decided that they were ok with the size outlined in the definition.

Section 17.07 - Prohibited Sign in all Districts. The Board asked what the logic was behind changing the frequency limits for the electronic signs (section 17.07.4). Tim Thompson explained that the change is being made because shortening the time to 10 minutes allows more flexibility while still maintaining safety standards for vehicles driving by and from enforcement perspective, sitting in front of a sign for 20 minutes waiting for it to change is time consuming. Additionally, language was added that allows the electronic display of the time and temperature to change every five minutes. The Board was in agreement with the change to 10 minutes but requested that the time and temperature restriction be shortened to 15 seconds.

Section 17.08 - Temporary Signs. Tim Thompson explained that the biggest change to this section was the requirement that all temporary signs be issued a permit. The town has always had provisions on how long temporary signs could be displayed but it was impossible to enforce because permits were not issued so the length of time could not be determined. The Board discussed various points throughout the section and asked if language could be added that offers relief to special town events (i.e. Rib Fest, The 4th of July Celebration, etc.) because these events often have specific sign requirements that do not necessarily conform to the Ordinance. Additional discussions arose regarding the placement of signs and whether or not the sign placement should be 10 feet from the edge of pavement instead of the property line. Tim Thompson advised the Board that he would discuss the topic with the town's legal counsel to determine if that change can be made.

There was no public comment.

The Board voted 6-0-0 by roll call vote to continue the public hearing to October 20, 2020, on a motion made by Bill Boyd and seconded by Nelson Disco.

The Board took a four minute recess and resumed at 9:24.

- 4. Synergy Storage Structures, LLC (petitioner/owner) -** Continued review for consideration of an amendment to a previously conditionally approved Site Plan regarding access and parking. The parcel is located at 403 Daniel Webster Highway in the I-1 (Industrial), Aquifer Conservation and

Elderly Housing Overlay Districts. A portion of the parcel is subject to the Flood Hazard Conservation District. Tax Map 4D-3, Lot 84-01. **This item is continued from the July 21, and August 18, 2020 Planning Board meetings.**

Tim Thompson briefly summarized the project and explained that Public Works is not in favor of granting the waiver being sought by the applicant. The condition of approval necessitating the waiver in question is

"All driveway entrances (regardless of the presence of curbing on the highway) shall be curbed from the edge of the highway to at least the end of the radii at the driveway throat."

Chairman Best shared the memo from Town Engineer Dawn Tuomala (dated August 24, 2020) in which she cites her reasons for opposing the waiver.

Christopher Ross, (applicant & owner) and Joel Sikkila (Synergy Self Storage) spoke on behalf of the project and stated their case for not wanting to install the curbing. They stated that it's an existing driveway that has been in place for decades and that adding the curbing would cause flooding to their property. Mr. Sikkila added that any paving they add would be destroyed in one winter by the wing plows used by the town to clear snow.

Chairman Best relayed his understanding of a conversation he had with Dawn Tuomala regarding the curbing, which is that adding the curbing will actually prevent stormwater from running into his property and will not add to it. Mr. Ross contends that his engineer (The Dubai Group) disagrees that the curbing will help with the water run-off and in fact agrees that it will make it worse.

The Board independently reviewed the response from the Dubai group and continued to discuss the grade of the road, frequency of vehicles on Wright Avenue and reviewed visuals of the road and entrance being discussed on Google Maps and the Merrimack Geographic Information System (GIS).

Mr. Sikkila asked what the recourse is if they install the curbing and find out that it is flooding their property. Chairman Best advised Mr. Sikkila that if that were to happen, they could ask the Planning Board to amend the approval to allow the removal of the curbing.

The Board voted 6-0-0 by roll call vote to continue the application's acceptance and public hearing to October 6, 2020, on a motion made by Alastair Millns and seconded by Bill Boyd.

- 5. Christopher Ross, LLC (applicant/owner)** - Continued review for acceptance and consideration of a Waiver of Full Site Plan Review for the conversion of current retail space into 12 multi-family residential units including building additions totaling approximately 848 square feet. The parcel is located at 401 Daniel Webster Highway in the C-1 (Limited Commercial) Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 083. Case # PB2020-14. **This item is continued from the July 21, and August 18, 2020 Planning Board meetings.**

Tim Thompson provided an update on this project and advised the Board that although some progress was made Staff still feels that this submittal is incomplete. He went on to say that a single page site plan was submitted to staff on August 13, 2020 and nothing else was submitted (i.e. no narrative and no waiver requests). Following the July meeting, the applicant was advised that since the Board was not in favor of a waiver for all site plan requirements, individual waivers would be needed for the sections of the regulations they wanted relief from. Since waivers were not received, the plan was reviewed as if all regulations apply and the staff memo was written accordingly.

Mr. Ross provided an overview of the project for Neil Anketell and Paul McLaughlin as they were not present at the last meeting and then turned the presentation over to Joel Sikkila.

Mr. Sikkila advised the Board that the plans do not call for any changes to the site itself and the only change will be to the building itself so therefore a full site plan is not needed. Mr. Sikkila then walked the Board through the staff recommendations and provided commentary on the items the applicant disagrees with. Tim Thompson interjected and explained that some of the recommendations may not apply but since staff did not receive any waivers or any responses from their previous comments, the memo was written accordingly.

Chairman Best added that he believes the application is almost ready to be accepted but the Board needs to know what specific aspects of the Site Plan waivers are being requested for because a waiver from all requirements is too broad. Mr. Sikkila asked why waivers are needed if nothing is changing and there was a site plan done for the building when Mr. Ross first renovated it. Chairman Best explained that there are new site plan regulations in place now and the use is different so therefore the new regulations apply. Mr. Sikkila asked if a formal waiver request is needed for each item and Chairman Best responded that yes, each item that you are seeking a waiver from needs its own request and supporting documents/rationale as to why the applicant feels the requirement is not needed.

The Board voted 6-0-0 by roll call vote to continue the application's acceptance and public hearing to October 6, 2020, on a motion made by Alastair Millns and seconded by Bill Boyd.

6. Discussion/possible action regarding other items of concern

Councilor Boyd mentioned the Save Hudson NH group petition regarding the large "Amazon project" in Hudson that was started by residents of Hudson opposing the development of Green Meadow golf course. Although Merrimack is not a part of the regional impact notice, he encouraged the Board to follow the progress of the project in the news. Tim Thompson commented that a packet was received from the Save Hudson NH advocacy group and the documents were scanned and sent via email to the Planning Board.

7. Approval of Minutes — August 18, 2020

The Board voted 5-0-1 by roll call vote to approve the minutes of August 18, 2020, as submitted, on a motion made by Alastair Millns and seconded by Nelson Disco. Neil Anketell abstained.

8. Adjourn

The Board voted 6-0-0 by roll call vote to adjourn at 10:56 p.m., on a motion made by Alastair Millns and seconded by Nelson Disco.