



# 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, SEPTEMBER 18, 2018**

Members of the Board Present: Robert Best, Chairman  
Alastair Millns, Vice Chairman  
Neil Anketell  
Dan Ricker  
Nelson Disco, Alternate  
Councilor Thomas Koenig

Members of the Board Absent: Michael Redding  
Lynn Christensen

Also in Attendance: Kellie Shamel, Assistant Planner

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### **1. Call to Order**

The next meeting of the Planning Board will be conducted on October 2, 2018 at 7:00 p.m. in the Matthew Thornton Room.

Chairman Best appointed Nelson Disco to sit for Lynn Christensen.

### **2. Planning & Zoning Administrator's Report - None**

- 3. Synergy Self Storage, LLC. (applicant/owner) -** Continued review for acceptance and consideration of a site plan review for modifications to the previously 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 084-01. **This item is continued from the August 7, 2018 Planning Board meeting.**

The applicant has requested the matter be continued until the Board's November 6<sup>th</sup> meeting in order to facilitate peer review of drainage design.

Vice Chairman Millns stated the matter has been dragging on for 8 months. During that time, the applicant has been parking vehicles and renting the space, in the absence of approval to do so. He has felt and expressed for some time, the Board is being taken for a ride by this applicant. If the request to postpone is approved, he would like it to be made clear that if it isn't provided complete and in an approvable state on that date, the Board should act to penalize the applicant.

Chairman Best noted the Board's course of action is simply to not advance the application towards approval or to deny it. The Community Development Department would then have choices to make regarding enforcement. The applicant can simply submit another application the next day. He commented on the importance of getting the peer review of the drainage done and the Board having the ability to review it before the applicant comes forward.

Vice Chairman Millns remarked the applicant has not yet provided revised plans. At this point, the applicant should have been able to submit plans for the peer consultants to review. Kellie Shamel, Assistant Planner, indicated the department was informed it would receive plans this week. To her knowledge nothing has been received. Tim Thompson, Community Development Director, has been in contact with the engineer via email.

Chairman Best commented he was under the impression they were to be provided by the end of last week. Ms. Shamel remarked the applicant needed to do additional testing as a result of some of the drainage changes that are occurring. Their engineer was putting together the changes and a plan for the Town to review.

Member Ricker questioned the procedure that would be followed if the Board did not grant the continuance and was informed the Board would conduct a hearing with the information submitted to date, which is nothing, and then would have to vote whether or not to approve.

The applicant has done construction without any prior approval, and as the Community Development Department has challenged that, he can either face an enforcement action or come before the Board seeking approval for what has been constructed. If the Board were to make a final decision, at this time, which was not approval, the applicant would no longer have an application in process and the department would move forward with an enforcement action for having built a commercial development without any approvals.

Member Ricker stated agreement with the remarks of Vice Chairman Millns commenting it has been a long time with no information. Vice Chairman Millns remarked it is not only that it has been a period of 8 months, it is that it has been a period of 8 months during which the applicant has been using the facility, which he created, and is taking in money from people who are parking their possessions on his site. He suggested the Board grant this last continuance with a request that staff notify the applicant the application has been continued; however, if failing to produce this for the November 6<sup>th</sup> meeting, the Board will recommend action.

**Alastair Millns made a motion to continue the acceptance and public hearing to November 6, 2018 at 7:00 P.M. with a staff to relay to the applicant that there will be no further continuances.**

#### ON THE QUESTION

Member Disco seconded the motion and remarked he completely concurs with the sentiments expressed; it should be made clear the Board will deny the application if it is not approvable at the November 6<sup>th</sup> meeting. That requires all conditions to be met, all peer review done, etc.

Member Anketell stated his agreement. He has noted vehicles onsite that are leaking oil and spoke of the absence of protection to the water low line areas with a drainage system, etc. He does not believe it should be used unless an approved space with the appropriate conditions in place.

Member Ricker agreed the applicant has been given ample opportunity. He believes the application should be denied without continuance.

Chairman Best noted the motion on the floor was to grant the continuance as a final continuance. The application will meet its final disposition on November 6<sup>th</sup>. He stated his understanding of promises made in the last week to have things done and provided the Board in time for this meeting. That did not occur. He is more troubled by that than the 8 month history as that is a promise that was made last week in terms of having some plans in the hopper.

Ms. Shamel remarked it is Tuesday, and the updated information she has is that it was promised by the end of this week.

Chairman Best clarified he was speaking to communications that the plans would be in by the end of last week, and that they would not necessarily have peer review completed but would be submitted in time for this meeting. Vice Chairman Millns added they were to be complete with the necessary funds to pay the outside consultant.

## **MOTION CARRIED**

### **3-2-1**

*Members Best and Ricker voted in the opposition*

*Member Disco Abstained*

**4. Patriot's Car Wash (applicant/owner) - Continued review for acceptance and consideration of a waiver of full site plan review to permit an automobile service/repair station addition. The parcel is located at 376 Daniel Webster Highway in the C-2 (Commercial) and Aquifer Conservation Districts. Tax Map 4D-3, Lot 002. This item is continued from the July 17, 2018 and August 21, 2018 meeting.**

Ms. Shamel stated the applicant submitted a new plan, on August 27<sup>th</sup>, which appears to address a lot of the Board's discussion. However, staff noted this iteration has a scale of 1" to 20', which, if accurate, would mean the existing car wash building is located only 10' from the property line. That would require relief from the Zoning Board of Adjustment (ZBA). When constructed, the requirement was 20'. The applicant either needs to provide a plan with an accurate scale or seek the necessary relief from the ZBA.

Chairman Best addressed the applicant commenting, aside from the scale, he captured/addressed every item the Board noted.

Ronnie Ghannem, Owner, Patriot's Car Wash, stated the scale was relative to the full size plan and the copies provided the Board referenced that full size plan. He noted the distance to be approx. 32' from the property line.

Mr. Ghannem spoke of having modified the plan based on the Board's recommendations. Lighting will be mounted around the new structure (10-11' high). The plan identifies the owner of record. Notation was made the property is serviced by Town water and sewer. The proposed structure is 74' from the D.W. Highway, 53' from Zel Management property, and 74' from Sky mall. The plan reference is Site Plan 4D-3-2 #639.

Measurements were taken and identified an additional 15 (9' x 18' @ 90° angle) spaces can be added adhering to the regulations. Also noted on the plan was the maximum number of employees, etc. A sprinkler system will be installed on the property based on the recommendations of the Fire Department. The department did say they would not require a sprinkler system to be installed on the existing car wash bay. Floor drainage will be added to the self-service car wash (not required inside the garages).

Vice Chairman Millns questioned if the applicant has read the letter staff sent dated September 14, 2018 and was informed he had.

When asked for clarification on the issue of a paint booth, Mr. Ghannem remarked based on information provided by the New Hampshire Department of Environmental Services (NHDES), there are no requirements for a filtration system if you use less than 500 gallons paint/year. Exhaust fans have to be a minimum of 4' above the highest ceiling level. Based on the recommendation, if not using more than 500 gallons paint/year you can paint on the subject property as long as the exhaust fans are installed in the ceiling and up 3' from the highest roof. The property will be inspected to ensure compliance.

Mr. Ghannem commented on the amount of paint required per car given the types of repairs, e.g., bumper, side panel. It is very unlikely he would reach the 500 gallons/year threshold. He noted the requirement for a paint booth if working with insurance companies. As soon as financially feasible, a paint booth will be added.

Member Ricker questioned if the paint booth would have to be registered with NHDES and was told it would. He questioned if the number of gallons must be reported and was told a state inspector will visit the site. Mr. Ghannem is uncertain it is regulated beyond unannounced visit(s). He has not asked the question of how that is tracked. Vice Chairman Millns stated his belief they will look to receipts for purchases.

Member Disco suggested the plan identify where the paint booth would be located. Mr. Ghannem stated it would be located within one of the proposed bays. The only requirement for a paint booth is the fire sprinkler system, and that will be spread throughout the addition. When ordering a paint booth kit, it comes with the venting, and is installed with the filtration system.

The bay addition (touchless wash) would be connected to the existing drainage system, which utilizes an oil/water separator (inspected yearly by the town). It is cleaned yearly by a service company. The drains go first into an oil/water separator and then into the sewer drainage system.

Member Anketell noted the plan indicates 22 parking spots. The staff memo indicates a change in the note on the plan from 25 to 22.

**Alastair Millns made a motion to accept the application as complete. Neil Anketell seconded the motion.**

**MOTION CARRIED  
6-0-0**

**Alastair Millns made a motion to grant a waiver of full site plan review, noting 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. Dan Ricker seconded the motion.**

**MOTION CARRIED  
6-0-0**

*Chairman Best opened the floor for public comment at 7:38 p.m.*

No public testimony was offered.

*Chairman Best declared the Public Hearing closed at 7:39 p.m.*

Councilor Koenig suggested the staff recommendation under #13 (a)(i), request the language be changed so that the word “lot” follows the word “subject”.

**Nelson Disco made a motion to grant conditional final approval with the following precedent conditions to be fulfilled within six months and prior to plan signing, unless otherwise specified. Neil Anketell seconded the motion.**

1. Final plans to be signed by all property owners;
2. The applicant shall obtain all required State approvals/permits as may be applicable, note the approvals/permits on the plan and provide copies to the Community Development Department;
3. Any waivers granted (including Section and date granted) and/or any changes requested by the Planning Board shall be listed and fully described on the final plan, as applicable;
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 any forthcoming comments from the Building Department, as applicable;

6. The applicant shall address any forthcoming comments from the Conservation Commission, as applicable;
7. The applicant shall address any forthcoming comments from the Police Department, as applicable;
8. The applicant shall address any forthcoming comments from the Merrimack Village District, as applicable;
9. The applicant shall address any forthcoming comments from the Public Works Department, as applicable;
  - a. The plan provided was prepared in 1985 by a company that is no longer in business. There are stamps on the plan, have these people been properly notified per RSA 676:4 I (2)?;
  - b. A note shall be added to the plans stating that a ROW permit shall be obtained from the Highway Division of Public Works prior to any construction disturbance within the ROW;
  - c. A drainage certification shall be put on the plans as specified in section 4.16(c);
  - d. As per section 4.18(a) Right of Way Work – monuments shall be set at all street intersections....;
  - e. A Storm Drainage Report was not submitted per Section 7.02.E and Section 7.05.D.13;
  - f. Was the existing sign installed in the location that it was proposed on the previous site plan (per Section 7.05.D9)?;
  - g. Intersection Roads and Driveways were not shown as required by Section 7.05.D.12;
  - h. The statement under Section 7.05.D.16 should be added to the plans;
  - i. All commercial/industrial non-residential site plans shall provide for a paved pedestrian way or sidewalk along all existing or proposed streets per Section 7.05.D.19;
  - j. There shall be a pre-construction meeting prior to beginning construction per the Town of Merrimack Construction Standards Appendix D Construction Related Regulations. The SWPPP shall be reviewed and weekly reports and/or large storm events reported to Community Development;
  - k. A note shall be added to the plan stating that on-site drainage shall be the responsibility of the owner. A long term inspection and maintenance plan shall be provided at the time

of the Pre-Construction meeting. Every year Semi-annual or Annual reports shall be submitted to the Town of Merrimack Community Development;

10. The applicant shall address the following comments from the Wastewater Division:

- a. Upon review of the plan submitted June 29, 2018 we have concerns as to what will be the intended use of the garage bays? Is this going to be a repair facility? If so no floor drains are permitted in the garage bay area.

11. The applicant shall address any forthcoming comments from the Fire Department, as applicable;

- a. 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. Based on the above noted plans access to this building is acceptable for construction b. Due to the change of use of this building from a car wash to mixed use with an automotive repair/bodywork and painting component as well as a change in area of over 50 percent of floor area, an NFPA 13 compliant fire sprinkler system shall be installed in the entire building. This is required under Section 11 of the Town of Merrimack Building Code. c. It is unknown if this building currently has an NFPA-72 compliant fire alarm system. If there is an existing system that is compliant the new addition shall be connected to the system. If there is not an existing compliant system, or if the existing system is not capable of having the addition connected to it a new NFPA-72 compliant system shall be installed. d. As the proposal is for a new auto body repair and painting facility, the owner is required to contact the State of New Hampshire Department of Environmental Services and obtain all required permits relating to auto spraying operations air emissions and hazardous waste management. Copies of these permits shall be provided to this office.

12. The applicant shall address any conditions made by the Planning Board during the public hearing;

13. The applicant shall address the following Planning Staff technical comments:

- a. The applicant shall correct the following notes on the plan:
  - i. The fourth bullet add the word “lot” following “subject”;
  - ii. The ninth bullet should state “17 striped parking spaces and 12 stacking spaces are required. 22 striped spaces and sufficient stacking spaces are provided”;
  - iii. In the first sentence of the subdivision regulations paragraph replace “toen” with “Town” and replace “subdvidion” with “subdivision”;
  - iv. In the second sentence in the second paragraph replace “pla” with “plan”;
- b. The applicant shall show all building setbacks required by the zoning district;

- c. The applicant shall either provide a plan with an accurate scale, or seek the required relief from the Zoning Board of Adjustment for the perceived encroachment of the existing car wash building, as applicable;
- d. The following typical plan notes should be added to the plan:
  - i. Building setbacks;
  - ii. Stormwater Ordinance note;
    - 1. Applicant shall add the following to the plan: “This project is subject to the requirements of the Town of Merrimack Stormwater Management Standards (Chapter 167 of the Merrimack Town Code). A pre-construction meeting with the Community Development Department and Public Works Department shall take place at least two weeks prior to commencement of earth disturbance.”
  - iii. ROW permits note;
  - iv. Notes regarding required State Permits;
  - v. Notes regarding waivers;
- e. The applicant shall add Planning Board signature blocks on appropriate sheets of the plan set. In addition, please note that the block should have lines for “Chair” and “Vice Chair” as per the Board’s current structure the position of Secretary was renamed Vice Chair in June 2017;
- f. Applicant shall add the following notes to the plan:
  - i. The purpose of this plan is to permit an automobile service and repair station addition to the existing building for Patriot’s Car Wash;
  - ii. The property is located in the C-2 (General Commercial) and Aquifer Conservation Districts;
  - iii. The property is serviced by public water (MVD) and sewer;
  - iv. Required parking for the proposal is 17 striped parking spaces and 12 stacking spaces are required. 22 striped spaces and sufficient stacking spaces are provided;
  - v. A Right of Way permit is required from the Department of Public Works;
  - vi. All signage will comply with Town regulations and be properly permitted;

## **MOTION CARRIED**

**6-0-0**

- 5. Crosswoods Path III, LLC. (applicant) and DW Development, LLC (owner) –**  
Conceptual discussion of a potential site plan for a redesign of previously approved (but not constructed) professional office units into a mixed use 21-unit multi-family residential



building with attached office space. The parcel is located at 747 Daniel Webster Highway in the C-2 (Commercial) I-1 (Industrial) R (Residential) and Aquifer Conservation Districts. Tax Map 7E, Lot 046-54.

Chairman Best stated the Board was addressing the item as a conceptual site plan, which permits the applicant the opportunity to provide a proposal for a general discussion and obtain feedback.

Brad Westgate, Esq., Winer and Bennett, LLP, noted he represents the applicant, Christopher Bova, Principal, Crosswoods Path III, LLC.

The property has approx. 2.5 acres on the east side of D.W. Highway and 250+ feet of frontage on D.W. Highway. It is a vacant parcel that is situated within three zones. The site is part of the Crosswoods Path PUD. Prior approvals for the property did not come to fruition. Planned Unit Developments (PUDs) have non-residential use requirements.

The applicant would like to replicate the building located at 1 Crosswoods Path Boulevard, which is a 21 unit apartment building (former office bldg.) on the same side of D.W. Highway just south of this property. Attorney Westgate remarked approx. 3 years ago he was before the Zoning Board of Adjustment (ZBA) seeking a variance on the density requirements in the PUD regulation to convert that office building into the 21 apartment units. He believes the project was also before the Planning Board as there were minimal site changes converting it from office space to the 21 units.

Attorney Westgate remarked the idea of stand-alone commercial/office space in that setting and part of Town and in the context of that PUD just wasn't viable. The residential use seems to be more compatible with that property.

In addition to the 21 units of residential space, the concept includes 1,500 sq. ft. of office space likely divided into 3 units. The conceptual plan also shows outside storage units in the northeast corner. Mr. Bova has decided to dispense with that. The office space would likely not be located where depicted, but perhaps flipped to face northeast.

The residential mix proposed is 12 two-bedroom units and 9 one-bedroom units. The mix, square footage and ground floor mini storage areas for tenants proposed in the conceptual plan, are similar to those in the existing building on the other side of Crosswoods Path Boulevard.

The density variance specifically pertains to Section 15.06, Table I - Dwelling Unit Density, of the zoning Ordinance, which identifies the number of units in multi-family buildings that are allowed in a PUD; up to 6 units per acre of two-bedroom units and 7 one-bedroom units per acre. Theoretically 3.3 acres would be needed for the proposed mix. The PUD regulation allows up to 400 dwelling units in a PUD and 131 are currently constructed.

When asked how the office spaces would be utilized, Christopher Bova, Principal, Crosswoods Path III, LLC, responded one of the offices would be utilized as a rental office. The other two would be rented out. Chairman Best stated final plans should include notes pertaining to the types of tenancy expected.

Chairman Best stated his initial concern to be whether the office spaces will be viable. If not, does it make sense to consider a proposal that just has the residential component? He understands the PUD talks about mixing commercial and residential. His understanding of the motivation behind that is to ensure a complicated development like this ends up being tax positive for the Town. But also knows some of the recent residential developments have been tax positive without commercial developments. It is more of a philosophical decision for the Board to make as it considers what to do with PUDs in general or PUDs that have been in the past that may need some different relief.

Attorney Westgate stated his belief this lot, with the existing approvals, is the only commercial component of the Crosswoods Path PUD approval because of the office building's conversion to the residential use. If there is not a commercial component to this application there would be no more commercial element to the PUD approval.

Chairman Best questioned if the rental office would count towards the requirement for commercial given it is for the residential properties and was informed it would. He commented upon first review, he thought he liked it better with commercial development on the site and it fit with the PUD regulations. But as he thought about it more he wondered why the Board would stick with those kinds of concerns. He spoke of the number of individuals present and interested in the application stating his belief some of the concerns will likely be with increased traffic, noise, and the kinds of things a site like this would develop. He spoke of how the previously approved uses would have been much more impactful in those regards.

Attorney Westgate remarked they would have to discuss with staff whether a variance would be needed to undo the PUD commercial component or whether that would be at the Planning Board level.

Chairman Best spoke of the information relative to the density variance and proposing the Board consider giving indication to the ZBA whether it looks favorably or not. Variances are issued by them, and they have to apply their five statutory criteria to decide a variance. Whether the Board thinks it fits in with the plan aesthetically or not probably isn't terribly impactful on their decisions. From his standpoint, the backdrop for that was figuring out what the land will support in terms of water, septic drainage, etc., and when you are on Town water and sewer you have kind of taken away most of those problems. On a flat lot with some open space to it you will not really have stormwater problems to deal with.

Councilor Koenig stated he was disappointed to see the conceptual plan come forward. He was present when the conversion of the office space was done and did not appreciate that. He believed it to be an end-run around the whole PUD program to have built a building and said I can't rent it out, so I need to turn it into apartments in order to make it viable. That approval was given and there are now apartments or houses all through the development. There was a note that commercial would be placed underneath the powerlines, and now the applicant is indicating the desire to construct 21 more units. He does not feel that is within the spirit of the PUD.

He understands it is difficult to rent the space, but that must have been known to some degree when walking into this program. He was present when the request was to convert the commercial

into apartments, and now they are trying to use that structure as justification for the density on the other one. He does not believe we need to say that is there because we allowed that density, it is there because they came before the ZBA and said it could not be rented and required relief, which was provided. He does not believe that argument should be utilized for the density. If it doesn't meet the density it doesn't meet it. That is the way the Board should go forward.

Vice Chairman Millns remarked he understands the point of the PUD and the Board should try to uphold it if possible, but he does understand that part of town, because of the relatively poor access.

Member Disco stated his agreement with Chairman Best and Councilor Koenig; this is constructing from the ground up, which is a different situation than a building that was constructed for a purpose and then that purpose had to be changed. He would prefer to see it stay commercial.

Member Ricker echoed the remarks of his colleagues. When asked if he is familiar with the PFOA and PFOS groundwater contamination issues in Merrimack, Attorney Westgate stated he is. Member Ricker commented the property is about a mile away from Saint-Gobain. Ongoing construction in areas that have high levels of PFOAs have had to obtain permitting from NHDES. He suggested if coming back before the Board with a plan, that it includes data relative to how this issue would be addressed.

Chairman Best commented his colleagues seem to be less equivocal than he was on the question of retaining the commercial element of the PUD. He stated the desire to hear from the neighbors believing their concerns about traffic, etc. will lean towards one kind of development or another. It may be that compared to having a restaurant there with all of that associated traffic, there may be a sense that this is a better choice.

Mr. Bova noted he is not the original owner. It was the original owner who did the PUD in 1999. He does not currently own that piece. The property is owned by David Whittemore, DW Development, LLC. Since 1999, there have been multiple restaurants that have gone away, office space that no one has utilized.

Chairman Best stated his belief the applicant was bringing forward the information relative to him having not been the owner at the time to demonstrate he did not make the promises about commercial development, etc. If you acquire the property you acquire it with its history. The applicant that brought the PUD forward had a proposal about commercial and residential. It may be a fact of life that the commercial isn't viable, but he is uncertain that entitles him to an equitable argument for relief.

*Chairman Best opened the floor for public comment at 8:09 p.m.*

Patrick Dwyer, 22 Kearsarge Lane

Noted he is an abutter to the south and the current Chairman of the ZBA. He spoke of concerns related to traffic and commented taking a left-hand turn out of the site is difficult at best. The State will not put a light there, and traffic will only increase when the first phase of the project goes in

down the road. Adding another 21 apartments may not seem like a lot, but right now he is understands that 5 large multi-family projects are already in process; Flatley (240), NeighborWorks (45), Executive Park Drive (280) and for the mixed use at the outlets (192). He is aware of a couple of small developments that have been put in via subdivision of lots, and a few who have taken the older homes and remodeled them into multi-family homes. He questioned the need for additional apartments.

He was on the ZBA when the office building came before it for relief. It had been approx. 30% occupied over 15 years. For relief it made sense to convert that. It does not make sense to use that as an argument for putting in a building of the same size.

According to [NewEnglandCommercialproperty.com](http://NewEnglandCommercialproperty.com) there are 15<sup>+</sup> locations in Merrimack for open office space, equal to over 201,000 sq. ft. That is not including industrial, retail, and open land. We have not filled the office space we have in town.

One of the criteria utilized by the ZBA is diminish of property values. Mr. Dwyer stated his belief that a diminishment of property values will be seen by the residents on the Kearsage Lane cul-de-sac. When you drive into Crosswoods Path it is lined with trees, which adds an appealing aesthetic value. Eversource went through and clear cut anything over 10', which took down a lot of the trees. With the construction of an apartment complex, he is concerned more trees would be lost resulting in increased noise and an effect of sun and wind. He believes there are other uses that would be more beneficial to the community.

Chairman Best questioned if the residents of Crosswoods have been contacted about acquiring the property and making it the desired walking trails. Mr. Dwyer remarked, conceptually, it has been thought about. Chairman Best commented the reason for bringing it up is that the applicant has, as a matter of right, the ability to do commercial development there today. The question is not the choice between open space or this, the question is between commercial or this. Mr. Dwyer commented he would personally like to see green space.

Member Ricker questioned if a traffic study would be worthwhile. Mr. Dwyer responded he believes it would be, but it is a State road and the State is not going to install a traffic light with a traffic light half a mile in each direction. Member Ricker spoke of the level of accuracy of traffic reports noting they can factor in all aspects of how traffic is impacted. Chairman Best echoed the comments regarding the sophistication the traffic engineers have that they can factor in what will come out of the pending developments without having to wait to see it happen.

Vice Chairman Millns commented the NH Office of Strategic Initiatives (formerly Office of Energy and Planning), during their April meeting, pointed out clearly if no new houses were constructed in Merrimack, they would run out of space for move-ins within 30 days. The southern half of the State is chronically short on housing. Chairman Best noted there are about 1,200 housing units in various stages of the approval process in town.

Kristopher Godsoe, 9 Monadnock Lane

Stated he is the President of the Homeowners' Association (HOA). They own the roads and common areas. There is a condo association as well. He spoke of an access easement on the road referenced in the plan. That is not a town road. He has gone through all of his notes, having been President for 8-9 years. He cannot find any reference to an access easement off of their road. Chairman Best stated it would have been part of the original PUD approvals to allow them to have that access, and actually require them to have that access off of that road. It is likely when they were originally done they were in common ownership and you don't have easements with yourself in common ownership.

Mr. Godsoe stated part of his concern is that they have trees that provide aesthetics and are a major selling point for the neighborhood. He too is concerned with the potential for the loss of trees. The drawings he has seen indicate the project would remove almost all of the trees at the front end that they were allowed to keep from PSNH, and which have been there for about 18 years. Chairman Best noted if an application comes forward a landscaping plan would be part of it. Considering the aesthetics is what that landscaping plan is all about.

Mr. Godsoe stated concern if vegetation is removed from the top of the slope without being diverted elsewhere, rainfall and the erosion that will occur will travel into the backyards of the members residing on the cul-de-sac on Kearsage Lane. He commented on an original retaining wall that collapsed because of runoff.

Chairman Best remarked, as part of a site plan, they would have to show their engineering designs for how to address stormwater, drainage, etc. Not only do they have to come up with some science/solution that will deal with that, since they will not be able to build drainage areas underneath the powerlines because of the easement, they have a limited footprint.

With regard to consideration of the possibility of purchasing the land, Mr. Godsoe remarked the Association had just started talking about it.

Kevin O'Kelley, 27 Kearsarge Lane

Stated the plans for the community stipulate where the easements are. There is no such easement for parcel 2. He stated appreciation of the observation of the type of development that would otherwise go into the property (commercial). He commented a lot of the residents of the community commute to Boston. If a commercial establishment is put in, which would not open until 8:30 - 9:00 a.m., they can get out of the community. He agreed with the idea of a traffic study. When the traffic comes in will be really important to the community. He stated concern with the sheer number of apartments being constructed. He spoke of the environment in that part of town and how it will massively change given the new development less than a mile away.

Touching again upon the easement, he stated cutting into Crosswoods Path Boulevard would incur financial problems for the HOA, which has to maintain the road. He questioned if the developer has spoken with the storage facility next door. If he were to connect his parking lot to the upper parking lot of that facility, he doesn't need an easement with Crosswoods.

Chairman Best noted the Planning Board does not have the power to grant easements. Whatever that is, the applicant would have to demonstrate his right, and he assumes he can because there have been developments approved there in the past with curb cut on Crosswoods Path Boulevard.

Mr. O'Kelley stated the easement for Crosswoods Path number 1, which was the site which was commercial and went to apartments, is described in the documents. That is the only one he has. Number 2 is the parcel across the street from Crosswoods Path where there isn't any. The issue of the PFOAs is going to be massive. They will be digging up a massive amount of soil on top of a huge hill. The runoff will end up in his neighbor's backyard.

Linda Feldeisen, 27 Kearsarge Lane

In addition to a member of the HOA, she is the Board Treasurer. She spoke of the existing traffic congestion when looking to get to the highway. She is concerned with cut-ins to Crosswoods Path Boulevard and touched upon the amount of vehicular traffic that would put a burden on that section of road, which would result in increased maintenance requirements.

Chairman Best commented he would be surprised if whatever documents that give them the right to use it don't also obligate them to contribute towards the cost of maintenance and repairs. Ms. Feldeisen stated they currently don't use any resources. Nobody that owns that property is paying any funds. She is not certain there is a way through the Covenants to recoup money. That is a concern.

She questioned where a bus stop might be located noting the current traffic at the gazebo where their neighborhood stop is located.

She heard conversation around what would take place because of the actual construction. The air quality is a concern to her. She agreed the opportunity for the property to become common green space is appealing.

Member Ricker spoke of the lighting issue the development had experienced and questioned if there were concerns relative to that. At one point it was gas lighting, which was converted to solar, and resulted in electrical. He stated his assumption if the clear cut is allowed and the electrical is disrupted in any way, they would be compensated. Ms. Feldeisen responded the previous speakers were on the board at that time and put an extensive effort into planning and the approval process. She indicated she was not sure there are electrical lines going through on that side of the road. She is of the opinion it would have been nice to have extra lights put on the curve, but it wasn't in the plan. If this is allowed to take place, she believes there would be the need for extra lighting at the cut-in (none currently).

Natalia Bairamova, 26 Crosswoods Path Blvd.

Stated agreement the commercial space that was converted to residential should not be utilized as an example of why apartments should be approved for this site. The situations are completely different.

The difference between the last time a use was approved and this, is the awareness of contaminants in the area. She urged the applicant, if moving forward, to do his due diligence in this regard.

Ms. Bairamova spoke of having been involved in a car accident on that road. She totaled a new car in an accident for which she was at fault. When asked, she stated it to have been the left turn. She described the scenario that exists. She called the State inquiring about a traffic light. They suggested they should do a traffic study. Another department stated it was looked into and input was provided. It was decided the 21 apartments will not affect traffic. She remarked a traffic study and an environmental study should be required. She would love to have the HOA purchase the land. It is her assumption adequate funds are not available.

With regard to a scenario of commercial or residential, she stated her preference to be commercial; particularly if it could be off-hours from the residential traffic.

With regard to lighting, originally the property had a single owner and the cost of the gas lights was paid as a single bill. After it became two associations, the HOA took on that cost. When they wished to switch to electric, the condo association was not on in favor; particularly given they had not been absorbing any of the cost with the gas lights. Currently there are very nice electric lights that came at the cost of a loan. There is concern with any damage that could result from construction.

Richard Neveux, 29 Kearsarge Lane

Noted his property would be closest to the new development. He echoed the concerns of all of the previous speakers. He is concerned with the 2.3 acre variance going to 3.1; how close that would be to his property line, and whether they would take down the tree barrier. One of the reasons he purchased the property was the aesthetic value it offered. He is concerned with removal of the soil (potential for contaminants to become airborne) and erosion.

Chairman Best noted the density variance, if requested and approved, would not have an impact on the property footprint, it would simply permit additional apartments in the building than would ordinarily be allowed.

Donna Bailey, 5 Crosswoods Path Blvd.

Remarked she was representing herself but is also a member of the HOA Board. She spoke of having been in attendance for the 2013 meeting when the discussion was held for approval of office space. At the time, the discussion included many of these same topics. One of the decisions made was approval of a curb cut onto Crosswoods Path Boulevard itself. That would be located directly across from building 5. Concerns were expressed with the orientation of the buildings; back of buildings would be facing the condos and the front going down the hill. There were concerns expressed about the lighting pollution. She stated agreement not enough lights were put in when changing over to the existing system. Additional lighting is a critical consideration.

The condo association pays a monthly fee to the HOA for maintenance/upkeep that occurs with Crosswoods Path Boulevard as a private road, e.g., snow plowing, landscaping, etc.

She explained the existing traffic situation in the area of Crosswoods Path Boulevard and suggested the existing traffic lights on the roadway be synchronized. During construction there has to be a provision for cutting the land area that is sloped and blocks traffic. It takes a minimal amount of obstruction to block the view.

Chairman Best commented he likes the concept of synchronizing the lights. He is uncertain what would be involved in getting the State on board with the idea.

Ms. Bailey noted that development has a single point of ingress/egress. There is an emergency access available for emergency responders.

Richard Neveux, 29 Kearsarge Lane

Remarked were the proposal allowed to go through and the trees cut down at the top of the hill, he would be faced with the last thing he expected when he purchased his home; having an apartment building at the top of the hill looking down on his home. That would negatively impact his property value.

*Chairman Best declared the Public Hearing closed at 9:22 p.m.*

Attorney Westgate thanked the Board for the opportunity noting the intent to present the conceptual plan and listen to input.

The matters that come before the Board in a site plan application have to deal with erosion control, details of landscaping, lighting, access, conceivably traffic studies, etc. All of those types of things are analyzed fully before any presentation is made.

Attorney Westgate remarked they have the message the Board is not of the mind to make any specific comment to the ZBA relative to the density variance. That point was made well.

He would like to know how other Board members feel in regard to whether PUDs in particular parts of town present viable commercial alternatives. The notion of relatively minor commercial component to a PUD is perhaps just putting a flag on a mountaintop but not serving the fundamental goal that may have existed 20 years ago when the ordinance was established.

Chairman Best remarked the concept of a Mixed Use Conditional Use Permit (CUP) development isn't the same as a PUD but they do have some common features in terms of putting commercial/industrial and residential developments together on one site for common master planning for the site. There are 3 Mixed Use CUPs that are in the works; Flatley property, south end project by Nashua Corp. and one near the outlet mall. In all three cases they have been firm in holding the applicants to having commercial development as a part of getting their residential done. There has been discussion of phasing to allow them to get their feet on the ground with some residential and then come back with commercial. Part of that discussion, with all of them,



has been doing a financial study to ensure they are tax revenue positive at every phase of the development, e.g., commercial does not have the same type of demand on services as residential.

Chairman Best commented the commercial development in the PUD was not supposed to be dominimous, it was supposed to be both sides of the entryway with the offices that are now apartments and whatever was going to be developed on this side of the development. They are only dominimous because we have now given some ground to help out the developer. If this site doesn't become commercial, there isn't any. What has been proposed is a little bit of commercial and another dose of residential added to it whereas previous iterations of plans have indicated this site and the one across the way were to be the commercial development. He does not think of it as insignificant commercial development. He is uncertain what it might be, but as originally envisioned, it was supposed to be fairly substantial and not just co-existing, but in some ways synergistic.

Attorney Westgate commented in the PUD setting just the simple numbers of a project that now has 131 residential units, just isn't a large enough number of residential units to have a substantial impact or be interactive or collaborative with a commercial component. Chairman Best responded it has to be something the rest of the town would support. Attorney Westgate remarked you couple that with the location of this part of town, and the two factors pull the viability of commercial use down.

Chairman Best responded it may be, but there is some significance to the fact that at some point in the past, the developer chose their path. That decision was made to take advantage of the PUD regulations as they stood to get what exists at Crosswoods Path.

The decision of whether the PUD concept has sustained viability going forward is not a decision the Board makes with an application on the table, but more in terms of when it is time to redo the Master Plan and decide in big concepts how the town is planned and laid out.

Chairman Best remarked he believes the applicant's toughest challenge will be in convincing the Board to want to do residential here instead of holding it to the commercial element of the PUD. Most of the residents who spoke have some technical issues about landscaping, erosion, etc., but fundamentally the residential use is what they are most concerned about. Chairman Best informed the public if there is an official submission, abutters would be notified.

## **6. Discussion/possible action regarding other items of concern**

- Mi-Box New England, LLC. (applicant) and TW Bridge Associates, LLC. (owner) — Request for an extension of final approval of a site plan for the construction of a 39,100 s.f. self-storage facility, 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 020. This item was conditionally approved at the October 3, 2017 Planning Board meeting.

The request is to provide additional time for the applicant to complete the required conditions of approval.

**Alastair Millns made a motion to grant a six month extension to Mi-Box New England, LLC site plan (to April 3, 2019). Tom Koenig seconded the motion.**

ON THE QUESTION

Member Ricker questioned the reasoning for the extension. Ms. Shamel stated the understanding to be a delay with State permitting. Councilor Koenig noted there was also discussion of drainage that comes off D.W. Highway and across their property.

Vice Chairman Millns commented with the NHDOT you are lucky if you can get it done in less than 12 months. Chairman Best noted the Board has had discussions, at the master plan level, around automatically giving longer periods of time for applicants to meet the conditions of approval just because this happens often.

Member Disco questioned how the Board provided the applicant permission to put the boxes in the parking lot directly on the road (Continental property). Chairman Best indicated he requested staff provide information on when that was approved (April 2016), and watched the video of the meeting. There was zero discussion about where they could put their Mi-Boxes. Their plan includes a note of the desire and intent to put them in any unused parking space. Because the Board never changed that, it was ultimately what was approved. He commented what is clear with the current application is that Herrick Street, when completed, replaces the Continental Boulevard location.

**MOTION CARRIED  
6-0-0**

Executive Park Drive

Member Ricker spoke of Executive Park Drive having been sold to SMC Management out of Everett, MA. He questioned if it is possible for the Board to construct a letter to the new owner to appear before the Board to ensure their understanding they are required to abide by the plans that have been approved. Chairman Best stated the Board has not done anything like that in the past. When they go to get their permits they will be reminded they have a site plan approval they are obligated to abide by.

Member Ricker stated his belief they will break ground this fall. They are not supposed to break ground until the town has the NHDOT letter for the traffic lights and peer to peer system. He questioned if the Community Development Department has that letter. Chairman Best stated his recollection the Board had signed that plan, which would have meant that all conditions of approval had been met.

Ms. Shamel stated she is would need to check the file for the letter, but is aware that Robert Price, Planning & Zoning Administrator, and Tim Thompson, Director, Community Development Department, met with the new owners.

Member Ricker stated the letter to be a huge factor of the project. Without the NHDOT support, he is uncertain the article is correct. Ms. Shamel stated the plans are signed. The department has final plans and mylars. Chairman Best restated whatever the conditions of approval are would have been met in order to get the plans signed. He stated his belief when the Board dealt with the question of getting the light installed, it was tied to the Certificate of Occupancy.

Member Ricker stated the desire for the Board to be made aware of big milestones. The letter is a huge piece of the puzzle. Vice Chairman Millns remarked he is aware the NHDOT provided verbal assurance that they were very excited about it and would watch it with great interest.

Member Ricker requested the Board be made aware of whether or not the letter has been received. Chairman Best stated whether the letter has been received or not, it was clear in their approval that the entire thing is contingent upon the lights being in and running.

Chairman Best stated staff could be asked to provide the Board regular updates as to how this and other projects are moving along. The Board requested an update be provided on this project. It was suggested staff provide updates on the major projects every meeting or every other meeting as part of the Planning & Zoning Administrator's Report. The current request is for updates to be provided on the following projects; Merrimack Park Place, Flatley, Executive Park Drive, NeighborWorks, Overlook, Greenfield Farms.

#### Flatley Property

Member Ricker questioned if staff has seen the letter addressed to Mr. Flatley from Clark Freise, Assistant Commissioner, NHDES, dated September 7<sup>th</sup>. The letter noted four items that if not complied with would result in the State pulling the Alteration of Terrain (AoT) permit; one being they are currently under construction on more than five acres, which is contrary to project plans. They have not produced a Stormwater Prevention Plan, have not reported rainfall 24 hours after it occurs, are not monitoring their wells, and have not done the groundwater management plan.

Member Ricker stated it to be a major project with a lot of eyes on it. There is concern with the PFOA and PFOS. They are not complying with what the Board said they could do. He questioned who is accountable, who oversees this, and what can be done to make them address the issues before they continue.

Chairman Best responded NHDES is making them fix it as those are all NHDES issues. They are not Planning Board issues.

Ms. Shamel commented one of the items was about providing stormwater reports. That does come through the Community Development Department. She did not personally see the letter but believes Mr. Price and Director Thompson are aware of it. If recalling correctly, she believes Mr. Price has been in contact with Flatley and they did provide the stormwater reports that had not been submitted.

Member Ricker remarked what he finds most bothersome is that for conditional final approval they needed an AoT permit, which they got from NHDES. They are not abiding by it. He asked,

if they are in violation shouldn't they also be in violation of the plans. Chairman Best responded only if NHDES pulls their permit. Ms. Shamel stated, at this time they have a permit, and are therefore in compliance. Chairman Best stated if the permit were pulled, NHDES is the one that stops them from building.

Member Ricker restated his question of how the work is monitored. Councilor Koenig stated the Town is monitoring it the best it can. Anything the town is capable of monitoring in that respect they are doing. When asked for an example, Councilor Koenig stated there are discussions with the developers out there to understand what is going on. They have gone out and asked questions specifically about have you been removing soil, etc. Member Ricker questioned those results. Councilor Koenig responded he is aware a report is being put together.

Member Ricker stated the letter reads in part "Since May 14<sup>th</sup> NHDES recommended that Flatley develop a soil and groundwater management plan to minimize the potential for exasperation, expansion of existing soil and groundwater contamination at the Flatley property." They have not done that as of yet. Councilor Koenig agreed that is true. It is a NHDES requirement.

Member Ricker stated Flatley seems like they are not doing what is in the best interest of this project. We need checks and balances to do that. Asking them how they are operating is not the way to do it.

Councilor Koenig stated the Board does not have control over those things. Member Ricker responded the Board has control of its plan. Councilor Koenig stated they are following our plan. They have not deviated from the plan we approved. Chairman Best noted none of the issues listed are within the jurisdiction of the Board to regulate. He noted the language in the letter began since May we have "recommended". Frankly, if Flatley wants to thumb their nose at a recommendation he does not know that even NHDES will do anything about that. If it were a requirement NHDES could enforce it, but the Board does not have the authority to come behind NHDES and say we think you should do a stormwater plan that suits our view of things.

From this viewpoint, the Board is dealing with things like building permits, fire permits, driveway permits, and those kinds of inspections that occur related to those.

Member Ricker stated his understanding. He reiterated it seems like they are doing things in the shadows. He does not appreciate that and does not believe the Board, or the residents should appreciate that. They are working on a property that has been documented to be contaminated. They should be doing it better than anybody else. The letter shows that Flatley needs to be accountable at least on the Board's end. However, the Board has to do that, it needs to do it.

The question of whether the town received a copy of the letter from NHDES was asked. Councilor Koenig indicated the Town Manager has the letter noting that is where he received a copy. When asked why he had not shared the letter with the Board, Councilor Koenig replied it is not something that the Planning Board has jurisdiction over. It is not something that we can control. The Town Manager is in contact with NHDES, is in contact with Flatley, they are working the issues out as best they can. The Board approved their plan before the PFOA and PFOS became an issue. Now they are working with an approved plan. If we were to approve

the plan today it might be completely different than what it is, but it is what it is, and we have to live with that and work with it as best we can. When asked, he responded if NHDES were to pull the AoT permit they would have to cease and desist until they could get an AoT permit.

Chairman Best commented there is another component of this to understand how the process of ordinarily enforcing the site plan conditions and that is not the Planning Board going out and inspecting properties or hauling an applicant before it to answer for some shortcoming. The way that all of that happens is you have to file a request for service with the department identifying the issue and then the department does the enforcement. It is not the Board's choice or regulation, which is in accordance with State Statute in terms of what planning boards are entitled to do.

He does not know the details of the letter as he has not seen it. He is not certain if those are simply a matter of filing the right forms and checking the boxes or whether those things substantively deal with the possibility that they are harming the environment.

#### Merrimack 360

Vice Chairman Millns spoke of the Merrimack 360 plan (former Shaw's site) noting one of the food areas has "disappeared on the tarmac." Chairman Best commented the fact that they paved over a pad site just means that they don't have anybody in mind right now. Member Ricker spoke of being pleased with the manner in which they handled the construction site that is currently going up. He was concerned with active construction in the middle of a parking lot with a group of businesses that are open. It seems they are maintaining it very well.

#### **Approval of Minutes - September 4, 2018**

**Alastair Millns made a motion to approve the minutes of the September 4, 2018 meeting, as submitted. Neil Anketell seconded the motion.**

#### **MOTION CARRIED**

**5-0-1**

*Member Disco Abstained*

#### **7. Adjourn**

**Alastair Millns made a motion to adjourn. Nelson Disco seconded the motion.**

#### **MOTION CARRIED**

**6-0-0**

The September 18, 2018 meeting of the Merrimack Planning Board was adjourned at 10:10 p.m.

Submitted by Dawn M. MacMillan