



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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## MERRIMACK PLANNING BOARD

### APPROVED MINUTES

**TUESDAY, SEPTEMBER 3, 2019**

A regular meeting of the Merrimack Planning Board was conducted on Tuesday, September 3, 2019 in the Matthew Thornton Room.

Robert Best, Chairman presided.

#### Members of the Board Present:

- Alastair Millns (Vice Chairman)
- Neil Anketell
- Dan Ricker
- Councilor Bill Boyd, Ex-Officio
- Paul McLaughlin
- Nelson Disco (Alternate) - arrived at 7:19 p.m.

Members of the Board absent: Lynn Christensen

Staff Present: Tim Thompson, Community Development Director

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**1. Call to Order:** Chairman Best called the meeting to order at 7:01 p.m.

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#### **2. Planning & Zoning Administrator's Report**

Tim Thompson stated that the open Assistant Planner position has been filled. Casey Wolfe will be joining the Community Development team on September 30, 2019. Casey is a recent Graduate of UNH and currently resides in Manchester.

Bill Boyd asked if the recording secretary for the Town Council (Dawn MacMillan) has been approached about taking minutes for the Planning Board Meetings following the resignation of Zina Jordan. Tim Thompson explained that it had been determined that it would not be possible due to her commitment to the Conservation Commission meetings and other Boards/Committees she provides minutes for.

Alastair Millns raised the concern again about flutter flags and referenced the gas station across from Burger King, citing that they now have several flags advertising various items available at their location. He asked if the town has given up on trying to stop these flags from being displayed. Tim Thompson explained that the Community Development Department addresses concerns as they come in on Service Requests because we do not have enough staff to search them out.

Chairman Best encouraged members to register for a conference with the municipal association (NHMA), and to coordinate with staff if interested.

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- 3. Public Hearing – Creation of Site Plan Regulations** - The Planning Board will continue the public hearing to consider adoption of separate and updated Site Plan Regulations (currently contained as several sections within the Subdivision Regulations), pursuant to RSA 675:6 and 675:7. **This item is continued from the August 6, 2019 meeting.**

Tim Thompson provided an update as to what has occurred since the August 6<sup>th</sup> meeting. Feedback received from Nelson Disco as well as Public Works has been incorporated into Site Plan Regulations. He noted that he had a discussion with Nelson Disco earlier that afternoon (9/3) and confirmed that Nelson was satisfied with the changes. He then recommended that the Board move forward with adopting the new regulations if they were also comfortable with the changes.

Chairman Best opened the public hearing. No public comments were received

**Alastair Millns made a motion to adopt the new Site Plan Regulations as posted for the 9/3 meeting. Motion seconded by Dan Ricker.**

**Discussion on the motion:** Bill Boyd asked Alastair Millns if he agreed that Nelson Disco was comfortable with the changes since Alastair was included in the Tuesday afternoon discussion. Alastair Millns confirmed that Mr. Disco was satisfied. Tim Thompson clarified that the only section of Mr. Disco's written comments that were not addressed was the landscaping section, which the Board had determined was OK at the August public hearing.

**MOTION CARRIED  
6-0-0**

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- 4. Public Hearing – Amendment of Subdivision Regulations** - The Planning Board will continue the public hearing to consider amending the Subdivision Regulations to remove all sections pertaining to non-residential site plan review, pursuant to RSA 675:6 and 675:7. **This item is continued from the August 6, 2019 meeting.**

Tim Thompson explained the majority of the updates that were made were the removal of the site plan information because they now have their own set of regulations. He commented that the intent of these changes was to simply separate the site plan regulations from the subdivision regulations. These amendments are intended to be temporary, as Staff plans to overhaul the Subdivision Regulations in a similar manner as was just completed with the Site Plan Regulations, hopefully within the next 6-8 months

Chairman Best opened the public hearing. No public comments were received.

Bill Boyd asked if Nelson Disco was comfortable with the changes to the subdivision regulations. Tim Thompson responded that he did not go through them section by section with Mr. Disco because the changes at this time were only removal of the site plan content.

**Alastair Millns made a motion to adopt the new Site Plan Regulations as posted for the 9/3 meeting. Motion seconded by Paul McLaughlin.**

**MOTION CARRIED**  
**6-0-0**

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*Nelson Disco arrived at 7:19 p.m. Chairman Best appointed him to sit for Lynn Christensen.*

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- 5. Merrimack Parcel A, LLC (applicant/owner)** – Continued review of an amendment to the previously approved mixed use site plan for Phase I of the “Merrimack Park Place” project, proposing an additional 32 multi-family residential units and removal of 84,200 square feet of office & restaurant space, specialty retail, and an event center from Phase I to be included in a subsequent phase. The parcel is located at 10 Premium Outlets Boulevard in the I-2 (Industrial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 3C, Lot 191-02. Case # PB2019-25. **This item is continued from the August 6, 2019 meeting.**

Tim Thompson stated that this project was last heard on August 6, 2019. Since then the peer review has been completed and most of the issues raised by that review have been addressed to the satisfaction of the staff. He also stated that Planning and Zoning Administrator Robert Price had noted two items (truck turning movements for WB-67 trucks, and sidewalk details) that were outlined in the peer review that should be discussed with the Board.

David Fenstermacher, project manager, VHB, summarized the changes made to the project and stated that they met with the Conservation Commission on August 19<sup>th</sup> and no issues were raised. He addressed several items from the previous meeting and review comments including: the existing berm that is near the proposed roundabout, noted that ADA ramps and crosswalks have been added to allow access from the residences to the clubhouse, enhanced safety by adding some stop bars and additional stop signs to improve safety and circulation, snow storage, additional lighting added to the back of the residential building, and stormwater.

The Board and applicant agreed that the sidewalk detail would be revised to meet requirements of Public Works and that the site is adequately designed for WB-50 trucks, such that the WB-67 comments need not be addressed.

Nelson Disco asked what the plans are for the empty space for phase 2 because there are no noted plans for what is intended. David Fenstermacher explained that it is on the landscaping plan to be loamed and seeded (sheet L1).

Nelson Disco asked about Fire Department review, sidewalk connectivity, and pedestrian access to Dunkin Donuts across Continental Blvd. David Fenstermacher confirmed that they met with Fire, confirmed that the sidewalk network is connected. Tim Thompson stated that despite Public Works’ comment regarding connection across Continental Blvd, he did not recommend it. He indicated that the traffic generated from this project is less than what was originally anticipated when the premium outlets were approved, that traffic will be re-evaluated during phase 2, and that he is uncertain how a pedestrian study could be done because ITE does not have generation rates for pedestrians. He reiterated that there is no substantial reason to re-open the traffic study at this phase of the project. Chairman Best stated that although the concept of pedestrian studies is worthwhile and could use additional discussion by the Board, he cautioned the Board not to try and be innovative with the way the applicant’s project is being presented. If the Board is interested, it could see about getting NRPC to come and do some education.

Nelson Disco agreed that they should not try to solve it for now but thinks it should be put on their “to do” list.

Chairman Best opened the hearing for public comment.

Chairman Best read written comments from Beth Burns, 5 Spruce St, regarding her concerns with the current opioid crisis and its connection to local hotels (see project file at Community Development for the full comments). Chairman Best explained that his perception of the issue is there are certain types of hotels that are adding to the problem and the one being proposed does not fall into the same category (i.e. extended stay, cash hotels). David Fenstermacher responded to the comments by agreeing with Chairman Best that the type of hotel being proposed is a different type of hotel than what has been referenced. Tom Monahan, property owner, offered that the hotel will be a Marriott hotel and will be managed by a professional group - one of the best in the country. He has had discussions with Police Chief Roy.

Chairman Best closed the public hearing.

**Alastair Millns made a motion to grant conditional Final Approval of the amended site plan, subject to the following precedent conditions to be fulfilled within 6 months and prior to signing of the plan, unless otherwise specified:**

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, note the approvals/permits on the final plans and mylars and provide copies to the Community Development Department, as applicable;
3. The applicant shall note all waivers granted by the Board on the final plans and mylars (including Section, and date granted) as applicable;
4. The applicant shall provide draft copies of any applicable legal documents for review, at the applicant's expense, by the Town's Legal Counsel;
5. The applicant shall address any forthcoming comments from the Town's peer review consultant, Fuss & O'Neill, 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 Building Division, as applicable;
8. The applicant shall address any forthcoming comments from the Fire Department, as applicable;
9. The applicant shall address any forthcoming comments from Merrimack Village District, as applicable;
10. The applicant shall address the following comments from the Public Works Department:

- a. A Stormwater Operations and Maintenance Manual shall be provided at the Pre-Construction meeting. The manual shall also provide the reporting schedule during all phases of construction and also assign responsibility of annual reporting, along with the appropriate documentation/inspection sheets for each BMP. All reports shall be provided to the Community Development Department within the appropriate time frames;
  - b. Access to the property shall be off of Industrial Drive by Premium Outlets Boulevard (a private road). Industrial Drive is State maintained; the permit should be renewed by the NH Department of Transportation for the new plans;
  - c. No building floor drains are to be connected to either the sewage or drainage systems on the property;
  - d. On Sheet C-8, there shall be 12 inches of compacted gravel, not 8 inches;
11. The applicant shall address the following comments from the Wastewater Division:
- a. The flow allocation permit must be amended by this department before plans can be approved. Anticipated needs shall be provided per building;
  - b. Sewer connection permits will be issued for each building individually and these must be applied and paid for prior to construction of said buildings;
  - c. Sheet 10 – no manhole steps permitted;
  - d. Sheet 12 – all 8” pipe must have a minimum slope of .005 per Town of Merrimack Standards;
12. The applicant shall provide elevation drawings of the proposed hotel and restaurant in the plan set;
13. The applicant shall address the following Planning Staff Technical Comment: Revise Sheet C-1, Utility Note 1(d) to say Consolidated Communications instead of Fairpoint.

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

1. All General and subsequent conditions placed on the original site plan conditional approval (conditionally approved on 3/6/2018) shall continue to be in place with this amended site plan approval, as applicable.

**Motion seconded by Bill Boyd.**

**MOTION CARRIED**

**7-0-0**

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- 6. John Flatley Company (applicant) & Gilbert Crossing, LLC & John J. Flatley (owners) –** Continued review for consideration of an amendment to a previously approved Mixed Use Development Conditional Use Permit. The parcels are located at 645, 673, 685, 703, and 707 Daniel

Webster Highway in the I-1 (Industrial), Aquifer Conservation and Wellhead Protection Districts. Tax Map 6E, Lots 003-01, 003-03, 003-04, 003-05, and 003-06. Case # PB2019-27. **This item is continued from the August 20, 2019 meeting.**

Chairman Best recused himself, stepped down, and Vice Chairman, Alastair Millns presided.

Tim Thompson summarized the proposed amendment to the approved Mixed Use Conditional Use Permit (CUP). The proposal is to modify the approved CUP to change the use of the retail and restaurant space to Industrial/Flex uses in front of Saint Gobain. If the change is approved, they would also like the Board to modify the condition for vehicular access as it would not be needed. They are also requesting a modification to the project phasing, to allow the 5<sup>th</sup> residential building to be constructed prior to the non-residential development of the property. He stated that he had requested an updated fiscal impact report based on the proposed changes, but did not receive it until approximately 4:30 pm and has not had a chance to review it. Additionally, if the Board agrees to the amendments a new development plan will be needed. Lastly, he commented that he agrees with the applicant regarding the elimination of the vehicular access condition, this would no longer be needed if the usage change is granted. He clarified that his recommendation is contingent upon a positive fiscal impact, based on the revised study just received.

Kevin Walker, John Flatley Company, and Chad Branon, Fieldstone Land Consultants, presented an overview of the project as originally approved (see project file for details). Chad Branon went on to explain the proposed changes to the plan, which include repurposing the commercial component to be approximately 180,000 sf of retail space; changing the original retail space to Industrial Flex (approximately 100,000-200,000 sf); the phasing of the 5<sup>th</sup> building. The original plan called for the 5<sup>th</sup> building to be built after the non-residential component was finished however, due to the popularity of the project, they would like to build the 5<sup>th</sup> residential building first.

Kevin Walker summarized the new fiscal impact study stating that the apartments are estimated to have a positive fiscal impact of \$557,548 whereas the non-residential component is about half of that (\$296,385).

The Board and applicant discussed the fiscal impact study and school impacts generally, with the understanding that the report still needed to be reviewed by staff.

Neil Anketell asked about the parking. He recalled that the Board had asked for the parking to be moved to the back and now the new plan looks like it's in the front again. Kevin Walker responded that now that the usage is being changed to Industrial Flex, you would want to have the parking in the front of the building because the back of the building will be receiving truck deliveries so the less intense use will be the parking.

Tim Thompson reminded everyone that the plan before them is just for the CUP and if approval is granted, site plan review will be required before any construction can take place.

Various members of the Board asked about pedestrian access/circulation. Chad Branon indicated on the plan where the sidewalks are being proposed along the front of the property. The exact layout and configuration is still to be determined.

Vice Chairman Millns opened the hearing for public comment.

Ashley Tenhave, 75 Shelburne Road, expressed that her biggest concern is the access road that is directly across from Webster Green. The traffic is bad there and now the Webster Green residents will have to

compete with people turning in and out of that road. She also mentioned she is concerned for the safety of the children too because the school bus is there and there is not even a traffic light to slow vehicles down. Tim Thompson explained that if the amendment is approved, a traffic study will be required as part of all future site plans.

Katy Poirier, 11 Kimberly Drive, expressed her concerns about the landscaping. The plan is to remove all of the trees so now the residents of Webster Green will be looking at a parking lot and industrial space instead of trees. She went on to express concerns about the security cameras at the industrial space and the possibility of them looking into people's homes and the chance that the digging will re-contaminate their water.

Jan Jones, 76 Shelburne Road, raised concerns that the back of her property faces DW Highway and now where she sees a tree line will eventually be traffic and buildings. She is concerned that her property value will be diminished due to the project. She also stated that she agrees with all of Katy's points.

Katy Poirier brought up additional concerns about the possible contaminations that the industrial component may bring.

Jan Jones also expressed that the Town does not need additional retail space because there is a lot of retail space along DW Highway that is still vacant.

Katy Poirier also mentioned that the train that runs behind building 5 is a concern because she used to live in the abutting neighborhood and the vibrations would constantly knock her pictures off the walls.

Chad Branon addressed the traffic concerns by citing the lengthy traffic study that was conducted in 2015 when the project was first proposed. The changes that will be made will ultimately help the traffic flow. He went on to say that the Industrial use will have less of an impact on traffic than the commercial use would. He continued to explain the land is already zoned for Industrial flex usage (even without the CUP) so they believe they are utilizing the land as it was intended and look forward to providing landscaping details on the site plan. He reiterated that there are some costs associated with the fiscal study but the overall result is a positive gain to the town. He continued, explaining that the retail component has been scaled back from what was originally presented. Tim Thompson interjected that the retail space is just a place holder in the CUP for now and will require an additional amendment to the CUP when the changes are finalized by the developer.

Bill Boyd commented that he believes that the residents of Webster Green are not being unreasonable asking for a buffer to shield their view from what essentially looks like a parking lot. Tim Thompson again reminded everyone that this is just a CUP and landscaping, traffic, circulation and other things will be addressed in the site plan.

Dan Ricker asked if there would be continued monitoring of the soils from DES. Kevin Walker answered that there will be continued monitoring from DES throughout the completion of the project. The communication has been very good between DES and the project team throughout the project.

**Bill Boyd made a motion to continue this item to September 17, 2019, at 7:00 p.m., in the Matthew Thornton Meeting Room. Motion Seconded by Neil Anketell.**

**MOTION CARRIED  
6-0-0**

Vice Chairman Millns stepped down and Chairman Best resumed as Chair.

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

Neil Anketell brought up a concern about various properties around town that look neglected and/or abandoned. Tim Thompson responded that Merrimack does not have a town maintenance code to address such issues. The only time Community Development can intervene now is if the property is approaching “junkyard” status.

Chairman Best allowed a comment from a meeting attendee Ben Niles (Zoning Board Alternate Member and Merrimack resident) who reiterated Neil’s concerns about unkempt properties, citing that he has a property in his neighborhood that has 3 foot high weeds. He stressed the need for action by the town when property owners do not maintain their lots. Alastair Millns expressed that he understands Mr. Niles’ frustration but understands how difficult it is for the town council to manage. He referenced a case in the town of Salem in which a property owner had an abundance of printers on his lawn and the town had a hard time invoking action.

Chairman Best thanked Mr. Niles for his feedback but explained to him that he had to shut down any further public comment as the Planning Board does not have a public comment agenda item. The Board recommended that Mr. Niles attend a Town Council meeting because they have 2 public comment periods on their agendas.

Paul McLaughlin asked where to refer residents that are complaining about potential illegal home businesses. Tim Thompson explained that service request forms are available online and in the Community Development office and once one is completed; Community Development can investigate the claim and take action as necessary. Chairman Best interjected that he has had issues in the past with residents not wanting their name associated with a complaint so in those cases he has submitted the request for them using his name as the submitter.

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#### **8. Approval of Minutes — August 20, 2019**

**Motion by Bill Boyd to approve the minutes of the August 20, 2019 meeting, as presented. Motion seconded by Alastair Millns.**

**MOTION CARRIED**

**5-0-2. Neil Anketell and Paul McLaughlin abstained.**

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#### **9. Adjourn**

**Motion by Alastair Millns to adjourn the meeting. Motion seconded by Bill Boyd.**

**MOTION CARRIED**

**7-0-0**



The September 3, 2019 meeting of the Merrimack Planning Board was adjourned at 9:05 p.m.