



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT

APPROVED MINUTES

WEDNESDAY, MAY 31, 2017

Members present: Patrick Dwyer, Tony Pellegrino, Richard Conescu, Lynn Christensen and Alternate Leonard Worster.

Member absent: Fran L'Heureux.

Staff present: Planning and Zoning Administrator Jillian Harris and Recording Secretary Zina Jordan.

1. Call to Order

Patrick Dwyer called the meeting to order at 7:00 p.m. and designated Leonard Worster to sit for Fran L'Heureux.

Patrick Dwyer expressed the Board's condolences to the family of Stanley Bonislowski, who had been a long-time Planning and Zoning Board member.

2. Roll Call

Patrick Dwyer led the pledge of allegiance and swore in members of the public who would be testifying. Richard Conescu read the preamble.

- 3. 4 Executive Park Drive, LLC. (petitioner/owner)** - Special Exception under Section 2.02.3(C)(1) of the Zoning Ordinance to permit a residential use within the C-2 District. The parcels are located at 4 and 6 Executive Park Drive in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 4D, Lots 076 & 077. Case # 2017-12.

The Board agreed to consider agenda items #3 and #4 together.

Attorney Greg Michael, Bernstein Shur, said the Planning Board was supportive of the project to be located on the former Merrimack Hotel site. Proposed are 280 garden-style rental units and 552 parking spaces on a 16-acre parcel. Continental Boulevard changed the previous character west of the F.E. Everett Turnpike. The 2013-2014 Master Plan clearly identifies areas adjacent to the Turnpike that are logical places for multi-family residential development with the ability to walk to restaurants, stores and cinema. The hotel has been demolished. In the past two years, the owner has had no success finding a commercial developer for this parcel. The new Shaw's Plaza is really not new, since the stores at the old Shaw's Plaza just relocated there. The Master plan also calls for looking for opportunities to revitalize underutilized and vacant sites and to allow for greater land use flexibility. Residential use would not exacerbate the existing traffic situation. Tax revenues are expected to be \$400,000+ annually. If the applicant

were to build a PUD, 225-250 units would be allowed, per the PUD density allowances. New Hampshire does not have enough affordable housing. This project would use existing services and businesses in the area. The Master Plan suggests mixed use and higher density where appropriate and less use of automobiles. A sidewalk is proposed for the entire length of Executive Park Drive in front of the subject parcels. Commercial uses rely on traffic. The dead-end road makes this site unique. There would be no significant impact.

Attorney Michael read the Special Exception criteria from the Ordinance into the record.

As to #1, appropriate location, Patrick Dwyer questioned how apartments alone could be considered mixed use. Attorney Michael said the project is within walking distance to entertainment, office space, restaurants, and other services to the south, which could create a shadow mixed-use neighborhood.

As to #2, affect on the neighborhood, Richard Conescu noted southbound traffic backup on the Exit 11 ramp and opined that tweaking the traffic light would slow traffic toward Exit 11. Cars going left on Turkey Hill Road would wait even longer. A changing traffic light would impair the neighborhood. Attorney Michael replied that a commercial use would create significantly more traffic and impact.

Jason Plourde, Beta Group, said his traffic study of commercial space and a restaurant vs. 280 apartments showed that retail use would generate 4,700 more trips daily than an apartment development. Richard Conescu stated that any light modification would allow more traffic to the exit road and have a dramatic impact on the neighborhood to the west. He asked how lights would assist traffic. Jason Plourde said an adaptive signal senses whether a car is waiting for a light and continually adjusts. It is not pre-timed. There would be fewer backups. The change in technology would be an improvement. The applicant would work with the Public Works Department (PWD), NH Department of Transportation (DOT) and the NH Bureau of Turnpikes. The State will make the final decision.

Lynn Christensen noted that traffic is a Planning Board issue. This site will be developed somehow. The question is what development would best minimize the impact to the surrounding area and provide the best opportunities for Merrimack residents. She fears commercial development with a company of 3,000-4,000 employees driving at peak hours. There would be a maximum of 500 cars with apartments, which is much less than a commercial use. There will be issues at the intersection no matter what.

Public comment

Elaine Batchelder, 17 Bigwood Drive, said the Woodspring Suites Hotel would be a big enhancement and was worth the wait. She wanted to ensure a commercial use on the site. Apartments would have many children and cause traffic congestion. A medical building would be a better use.

Rene Bourgeois, 23 Bigwood Drive, said 280 units would worsen traffic. Crosswalks would delay traffic even more.

Attorney Michael said this is the best proposal for this site.

Patrick Dwyer doubted that people would walk to Shaw's or the medical facility and that this is really a mixed use.

Lynn Christensen said commercial traffic could be significantly worse. The Planning Board will study the traffic issue. There are no good answers. Residential use in this commercial area is reasonable. Three other mixed-use properties proposed a combination of commercial and residential uses, but the developers wanted to build the residential component first because there is little demand for commercial space. This site is adjacent to the F.E. Everett Turnpike and fits the Master Plan.

Jason Plourde discussed various improvements with the State during a conceptual discussion. That was the source of the adaptive signal idea.

Leonard Worster said traffic is not an issue for the Zoning Board (ZBA). There would be short trip traffic on the site. The backup is from a different part of town. The State encourages putting residential use near commercial use. This is a logical site for this use.

The Board voted 3-2-0 to grant the Special Exception, with the following conditions, on a motion made by Lynn Christensen and seconded by Leonard Worster. Patrick Dwyer and Richard Conescu voted in the negative.

1. Petitioner to obtain Zoning Board approval for the variance (Case #2017-13) regarding the location of multi-family residential development on a parcel west of the F.E. Everett Turnpike and residential density; and
2. Petitioner to obtain Planning Board approval of any associated site plans for multi-family residential use of the subject parcels.

Findings of Fact

1. The specific site is an appropriate location for the proposed use in terms of overall community development because it is an oversized and buffered swath of land that is located on a dead-end street adjacent to the Turnpike. It is within walking distance to entertainment, office space, restaurants, and other services to the south, which could create a shadow mixed-use neighborhood. The project seeks to improve the existing underutilized neighborhood, which is characterized by high vacancy rates and a history of general underuse. The project aspires to stabilize and enhance the neighborhood by allowing the creation of a vibrant, mixed-use neighborhood.

The historic inability to develop the property successfully and the Master Plan identification of the property as an opportunity zone provide further evidence that residential use is appropriate. Given that the property previously housed a 200+ room hotel, increased density is an appropriate use for this area. The project will serve a needed demand for rental homes in Town. The attempt to facilitate mixed-use development by providing residential use is consistent with modern and sound planning techniques;

2. The proposed use, as developed, will not adversely affect the neighborhood because it is located on a dead-end street and buffered by the Turnpike,

Naticook Brook and commercial parcels. The neighborhood is naturally buffered, including from existing residences to the west. The property seeks to create vibrancy on land that has been unsuccessfully used for decades. The addition of multi-family residential homes will be consistent with the nature of the Executive Park neighborhood. The project will be serviced by municipal sewer service and Merrimack Village District (MVD) water. On-site wells and septic systems are not a concern.

The applicant has arranged for a full traffic study. The results indicate that the project would not degrade the overall traffic conditions. Technical changes in the area's signalization would actually provide marginal improvements;

3. There will be no nuisance or serious hazard to vehicles or pedestrian because the project has been thoroughly vetted to ensure against nuisances or hazards to vehicles or pedestrians. It proposes 552 parking spaces for 180 rental homes, which is ample for residents and guests. Sidewalks are an integral component and would allow pedestrians to walk safely within the neighborhood. Comprehensive redevelopment of the property would allow for the design and construction of points of ingress and egress that comply with modern engineering and safety standards. The dead-end nature of Executive Park Drive and the convenient Access to surrounding services and the Turnpike provide further safeguards against nuisance or safety hazards. Significant buffers to the west will protect against any nuisance to adjacent residential properties. Traffic study results indicate that overall traffic conditions would not be degraded, with marginal improvements by means of signalization adjustments. The applicant is working with PWD concerning sidewalks. There would be appropriate signage;
 4. Adequate and appropriate facilities will be provided for the proper operation of the proposed uses because rental homes would utilize municipal sewer and MVD water, which ensures adequate and appropriate water and sewer service. 552 parking spaces are adequate for apartment residents and their guests. Natural gas and electricity will also service the homes. The proposed community and rental homes will be designed and built using modern materials and in conformance with modern building code requirements.
- 4. 4 Executive Park Drive, LLC. (petitioner/owner)** - Variances under Section 3.02 and Section 3.02, Note 2 of the Zoning Ordinance to permit a residential use west of the F.E. Everett Turnpike with an approximate residential density of 13.3 units per acre. The parcels are located at 4 and 6 Executive Park Drive in the C-2 (General Commercial) and Aquifer Conservation Districts. Tax Map 4D, Lots 076 & 077. Case # 2017-13.

Attorney Greg Michael, Bernstein Shur, referenced his comments from agenda item #3. He stated that people's habits have changed and, according to the Master Plan, they want walkable living.

Attorney Michael read the statutory criteria into the record.

Public comment

Susan Ducharme, 21 Bigwood Drive, was concerned about how close the buffer is between the hotel and the abutters and its impact on Naticook Brook. Removing more trees means she can hear highway traffic more. Richard Conescu explained that a large company with higher density can be put on the parcel without an appearance before the ZBA. Patrick Dwyer explained that buffers and the final number of units are Planning Board issues. He agreed that the last two buildings are very close to homes and that a residential use does not belong on the site. Susan Ducharme noted that company employees would return home at the end of the day, whereas apartment dwellers would use the property 24 hours a day.

Bob Hebert, 3 Heidi Lane, said the building would be almost 30' higher than his house, would diminish the value of his home and affect people living there. Residents are more important than acquiring revenue for the Town. There would probably be two people per unit, each having a car. Parking is inadequate. A crosswalk and a stop button on the signal would tie up traffic at peak hours.

Attorney Michael repeated that experts said there would be less traffic than with a commercial use. The owner is entitled to a reasonable use of his property. The site has lacked a tenant for over ten years. There will be good controls. There is no height restriction for commercial uses and they require less of a buffer. The closest house is over 300' away and the buffers are 100'. As much buffer as possible would be retained. Two buildings on parcel #6 could be moved toward the front of the site. The project is not close to abutting homes.

Patrick Dwyer stated that he felt the applicant did not meet criteria #3, substantial justice; #4, values of surrounding properties; and #5, hardship.

Richard Conescu said there is a fear that there would be an impact on the values of surrounding properties, but there may be less damage than with a large company that can build nearer to the property line.

Lynn Christensen was concerned about the two buildings. She disagreed about the buffers, which she claimed are not 300' from the homes. She agreed with the hardship criterion about how long the property has been marketed and has been a vacant eyesore. There is a dearth of rental units in Merrimack for young professionals with no children. This type of housing is what they say they want. There are less than 0.6 children per unit in condominiums, which are similar to the proposed development. If the project generates revenue, that would help the Town. The ZBA should look at the proximity to the Turnpike rather than whether the development would be east or west of it. The Elderly Overlay District west of the Turnpike has a much higher density. This is close to the F.E. Everett Turnpike. It is not in a residential area. Commercial uses and a highway are near it. The project might give the Town leverage to convince DOT to change the signals at the intersection.

Leonard Worster agreed about the hardship: The Hilton was not self-sustaining and no proposals worked out. If this project is viable; it would satisfy the hardship criterion.

The Board voted 3-2-0 to grant the Variances, with the following conditions, on a motion made by Lynn Christensen and seconded by Leonard Worster. Patrick Dwyer and Richard Conescu voted in the negative.

1. Petitioner to obtain Zoning Board approval for the Special Exception to allow multi-family residential use on the property (Case #2017-12); and
2. Petitioner to obtain Planning Board approval of any associated site plans for multi-family residential use of the subject parcels.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the project meets the objectives of the Ordinance and the principles of the Master Plan concerning creativity, flexibility, and the development of underutilized land. The granting of the variance would not be contrary to the public interest because not allowing residential use west of the F.E. Everett Turnpike serves no useful purpose. The project reflects the reality of the new retail market. It would provide needed rental homes in a location that is well suited for the proposed project. Residential use would allow for the creation of a neighborhood that will stabilize and enhance existing nearby retail, restaurant, office, and entertainment businesses.

The property's location adjacent to Naticook Brook and the Turnpike on a dead-end road naturally buffer surrounding neighborhoods. Municipal sewer, MVD water, and natural gas ensure that the project will be appropriately serviced. The project's history highlights how it is consistent with the public interest. Given that the property was previously used for a 208 room hotel and convention center, increased densities and use are not new to the area. The project would not alter the essential character of the neighborhood, but seeks to revitalize an opportunity zone in a manner consistent with the Master Plan's direction.

Recognizing the importance of traffic in this part of Town, the applicant has already arranged for a full traffic survey whose results indicate that the project would not degrade the overall traffic conditions. Technical changes to the area's signalization would provide marginal improvements. No matter to what use the property is put, traffic would be affected;

2. The spirit of the Ordinance is observed because the property is located along the edge of the residential zone and immediately adjacent to the Turnpike such that residential use and increased densities are not unreasonable or out of character with the neighborhood. The project would provide a valuable need for rental homes in Town on land that has historically been associated with greater dwelling densities and would not degrade area traffic.

The applicant has taken great efforts to protect against adverse impacts from the project and believes that the proposal would create a more vibrant and mixed-use neighborhood on land that has been historically underutilized. The current vacancy of the nearby office building (approximately 40%) and the underuse of the D'Angelo Plaza indicate that the neighborhood's lack of productivity will not

change given the current market and zoning factors. Rather than continue with the *status quo*, the applicant seeks to stabilize and enhance the existing nearby businesses. Housing supports commercial uses.

3. Granting this variance would do substantial justice because the project has been thoughtfully designed with the goal of creating a vibrant neighborhood with mixed-use components on underutilized land in a manner that will stabilize and enhance the existing surrounding businesses. Denying the application ignores new economic realities and will reinforce the *status quo*, which has proven to be unfeasible and will not result in appreciable gain to the public.

Denial would prevent the revitalization and reuse of land that has remained stagnant for years. Because the surrounding roads do not allow for economically feasible retail development of the property, denying this request would result in significant loss to the applicant and prevent the reasonable use of the property;

4. The values of the surrounding properties would not be diminished because the proposed residential community seeks to revitalize an underutilized neighborhood, in part by allowing for a mix of nearby uses (including entertainment, office, residential, and retail) to complement one another in a way that would stabilize and enhance the neighborhood and the existing nearby businesses. The project will be serviced by municipal sewer and MVD water, so that on-site septic and wells are not issues;
5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
 - a) No fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property because the property is unique in its size, location and history. It consists of a large swath of developable and contiguous land running parallel to the Turnpike, at the outer edge of the commercial district near the residential district. The property is further distinguished from surrounding land in that it is located on a dead-end road with adjacent underutilized commercial, entertainment and restaurant uses. The property's history is unique for its years of underutilization. The proposal acknowledges the fundamental market changes away from traditional brick and mortar spaces. The property is special in that variances are needed to allow it to be used creatively and to anchor the revitalization of the Executive Park Drive neighborhood in a manner that would stabilize and enhance the surrounding businesses.

The presumed purpose of the Ordinance's prohibition of multi-family residences west of the Turnpike and its maximum density requirement is to ensure safe and reasonable placement of higher-density residential development. The proposed use is consistent with the Master Plan, which acknowledges that the property is an opportunity zone. It also calls for creative and flexible land use design. The traditional commercial and retail uses that are allowed as a matter of right on the property ignore the new reality of retail markets and are becoming obsolete in

light of online sales. The Town's existing roadway structure is inadequate for the property to be fully developed for retail use in an economically feasible manner. The project seeks to create a residential community that would allow for the revitalization of the neighborhood and the existing businesses. The applicant is entitled to a reasonable return on his investment. Years of vacancy with no financial return is a hardship;

- b) The proposed use is a reasonable one because the proposed residential community is located on a dead-end street adjacent to the Turnpike, near entertainment, commercial buildings, retail uses, and restaurants. The resulting mixed-use neighborhood would provide the foundation for a vibrant development of land that has been historically underutilized and would lead to the stabilization and enhancement of nearby businesses and offices.

6. Timothy A. Peloquin, LLS. (petitioner) and Eriks Jurgins (owner) – Variance under Section 2.02.7(6) of the Zoning Ordinance to permit the construction of a single family dwelling 20' from a wetland whereas 40' is required. The parcel is located at 12 Carrie Drive in the R-1 (Residential) and Aquifer Conservation Districts. Tax Map 5B, Lot 176. Case # 2017-15.

This agenda item was discussed before agenda item #5.

Timothy Peloquin, Promised Land Survey, said the buildable lot has been vacant since subdivisions in 1967 and 1972. Eriks Jurgins got State septic approval and wants to donate the proposed dwelling to Habitat for Humanity. It would be a very small use. Timothy Peloquin surveyed the boundary lines, located the wetland and placed the septic system. A 24' x 32' two-bedroom home could be placed on the lot. It is 20' to the wetland at the closest point. The septic system would be 13' from the lot line whereas 20' are required; the State requires only 10'. Most septic systems in the neighborhood are 10' from the property line.

Timothy Peloquin read the statutory criteria into the record.

Public comment

Julie & Aidan Seltsam-Wilps, who live at 8 Carrie Drive and own 10 Carrie Drive, said there is a substantial moisture problem in the neighborhood. The water table has been rising. Two 100-year storms flooded their basement. The water in question is a swamp rather than a wetland. More information is needed about not displacing more water, which will impact the neighborhood. Trees absorb water and should not be removed. Soil samples should be taken during average rainfall conditions by a third party to decide what is/is not a wetland.

Timothy Peloquin showed the 1967 culvert's location on the west portion of the lot, which is flat and does not drain. Wetlands do not change on a yearly basis. There is no question that it is a wetland. There is also upland for a house. The State approved placing a septic system there. The house would not be built in a wetland, but on the upland. A drainage study is not necessary for building on one lot. Opening the forest would help dry up the area. The yard would absorb and counterbalance runoff from the driveway and roof. There is enough upland for this proposal.

Jillian Harris explained that appearing before the Merrimack Conservation Commission (MCC) is not necessary because the Planning Board is not involved with a single-family building lot of record.

Eric Gaska, 19 Maidstone Drive, has a backyard full of water that drains to the other side of Carrie Drive. He predicted that water would move back to his side. That is the reason for the culvert. This is a bad spot for a home. Eric Gaska's septic system abuts where Eriks Jurgins wants to place his septic system.

Christina Coviello, 145 Baboosic Lake Road, has water in her yard even in the driest years. Ducks float on her lawn. She needs boots to walk her property. Trees absorb water and should not be cut. Christina Coviello is afraid that more water would drain into her yard and affect the value of her home.

Edward Shidlovsky, 11 Maidstone Drive, said there have been several previous attempts to build on the lot. Water moves out of the area. He sometimes needs boots to walk his property. There is water even during a drought. He had to move his leach field toward the wetland area and is concerned about where the water is going.

Jeff Ditman, 7 Carrier Drive, said his sump pump runs frequently. A permanent structure was not allowed to be built on the intervening lot. He predicted water issues and asked why no one built here before if this is a buildable lot.

Timothy Peloquin said that one little lot would not add water beyond its borders. The owner has the right to cut trees. This is not a desirable building lot. A small house on a slab does not violate any wetland ordinance. Grass and a gravel drive would help to absorb water. There would be a negligible impact. The State approved placing the septic system near the neighbor's.

Eriks Jurgins, 12 Carrier Drive, said that, because he could not build what he wanted for himself, he connected to Habitat for Humanity. The wetland area is on the east. He never saw water flow in that area. There is no standing water. There are thick pine trees on the lot. The design is for a new self-cleaning septic tank that does not need a large leach field.

In response to a question, Jillian Harris said there is nothing on the subdivision plan from the 1960s about drainage that can be enforced.

Lynn Christensen saw no hardship. No Planning Board today would determine that this is a buildable lot. The home would encroach on wetland and septic setbacks. The lot is too tight. Patrick Dwyer cited criterion #4, values of surrounding properties, and referred to his comments above. Richard Conescu said there would be no checks and balances were the ZBA to approve the variance. As to #4, neighboring home values would diminish.

The Board voted 5-0-0 to deny the Variance, on a motion made by Richard Conescu and seconded by Lynn Christensen.

5. Timothy A. Peloquin, LLS. (petitioner) and Eriks Jurgins (owner) - Variance under Section 3.02.4 of the Zoning Ordinance to permit the construction of a new septic system 13' from the side property line whereas 20' is required. The parcel is

located at 12 Carrie Drive in the R-1 (Residential) and Aquifer Conservation Districts. Tax Map 5B, Lot 176. Case # 2017-14.

The petitioner elected to withdraw the petition.

- 8. Mi-Box New England, LLC. (petitioner) and TW Bridge Associates, LLC. (owner)** - Variance under Section 3.02, Note 6 of the Zoning Ordinance to permit the construction of a 39,100 s.f. warehouse 25' from the D.W. Highway Right-of-Way whereas 50' is required. The parcel is located at 101 Herrick Street in the C-2 (General Commercial) and I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 3D-2, Lot 020. Case # 2017-17.

This agenda item was discussed before agenda item #7.

Chad Branon, Civil Engineer, Fieldstone Land Consultants, PLLC, said the applicant intends to make this parcel Mi-Box New England headquarters. The topography is steep, a 30' drop from D.W. Highway. Water from D.W. Highway discharges at two locations on the property, which has very sandy soils. Wetlands that would be impacted are the result of unmanaged culvert outfall on a steep slope with soils susceptible to erosion. Runoff from the culvert scoured the soils into the wetland. There is a second culvert under D.W. Highway. Mi-Box needs a large building, 35' high with three floors for most of the building; it would be four floors including a glass tower at the north of the building. Only one story would be seen from D.W. Highway. The building would be put 25' forward on D.W. Highway into the slope. The fill would be used to create a front yard level with the road. Access would be on Herrick Street with 34 parking spaces provided. A pipe would run through the site and outlet at the end of the culvert. Water would go into a plunge pool that would dissipate energy flow of the stormwater and go into the wetland in a responsible manner. There would be no change in drainage patterns. Stormwater runoff would infiltrate into the soil through underground infiltration chambers and eliminate soil erosion from culvert discharge by extending the culvert and then discharging into an engineered basin that would dissipate energy prior to discharge.

Chad Branon read the Special Exception criteria from the Ordinance into the record.

There was no public comment.

The Board voted 5-0-0 to grant the Variance, with the condition that the applicant shall obtain site plan approval from the Planning Board for the proposed warehouse/storage facility, on a motion made by Richard Conescu and seconded by Tony Pellegrino.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because it would allow for the productive use of the existing property, which has been on the market for the better part of the last 20 years and presumably has not been sold due to the topography of the site and the existing drainage from the adjacent state highway runoff. The proposed use is unique and a good fit for the property, since the proposed development will not need access from across Route 3 and can fit with the existing topography and can work with the existing drainage from

the highway system. The proposed development would enhance the visual appearance from the street, allow for productive development of the lot and be consistent with the surrounding properties. It would substantially improve the aesthetics of the parcel and its surroundings. This will be a substantial investment in an area of town that is reserved for this type of use and will add value to the tax base with very little burden on services in return;

2. The spirit of the Ordinance is observed because the proposal is consistent with the surroundings and would allow for its productive use. Six properties have been developed within 50' of Route 3, with the existing buildings ranging from 17'-33' from the right-of-way. Some of these developments even had parking or driveways within this area, further reducing the setback to any improved portion of the property. This property would have a proposed 43' landscaped front lawn area adjacent to a brand-new single-story building that would fit in very nicely in this location. There is adequate space on the properties to support this development. The proposal would not alter the essential character of the neighborhood nor threaten the health, safety or general welfare of the public;
3. Granting this variance would do substantial justice because it would allow a local business to grow and address an increasing demand. The location is desirable because of its proximity to the highway. It would result in no negative impacts to the neighborhood, as the site would be designed to meet and exceed all local regulations and would address drainage deficiencies that urgently exist on site due to the local highway system. The project would have no negative impacts on local services and would increase the Town's tax base. A variance would allow for the productive use of the property while providing responsible growth in the community;
4. The values of the surrounding properties would not be diminished because the use is permitted in the General Commercial Zone. The use is compatible with surrounding uses and would enhance the area. It would improve the property and associated values and local tax base, which ultimately means it would have a positive impact on the community. New construction and development often increase the value of surrounding properties;
5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
 - a) No fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property because the site has been designed with the proposed building 25' from the Route 3 right-of-way to address the property's two special conditions: a 28' elevation drop from the adjacent highway and the existing drainage from the highway system. The building has been designed and positioned to allow for the reasonable development of the property. The

building has been situated into the slope and has been designed to allow for an improvement to the grading along Route 3. The aesthetics from Route 3 would consist of a one-story building with roughly 43' of front yard area, which would include landscaping. Internally the building would be three stories in height to accommodate the grade change and provide for adequate indoor storage.

Denying the variance would result in unnecessary hardship, as it would not allow for the productive use of the property, which has been on the market for a long time but has not sold due to its special conditions that distinguish it from other properties in the area. The proposed use is a good fit with the property's special conditions;

- b) The proposed use is a reasonable one because the proposed development would not alter the essential character of the neighborhood or threaten the safety, health or general welfare of the public. The project would rejuvenate an existing parcel, which would substantially improve the aesthetics of the parcel and its surroundings. The proposed use is permitted in the underlying zoning and would be consistent with its surroundings. There is adequate space on the property to support this redevelopment. The proposal would improve the neighborhood, be consistent with the surroundings and result in no negative impacts to the public.

7. Mi-Box New England, LLC. (petitioner) and TW Bridge Associates, LLC. (owner) -Special Exception under Section 2.02.7(A)(4) of the Zoning Ordinance to permit impacts to a jurisdictional wetland, allowing for the development of the site. The parcel is located at 101 Herrick Street in the C-2 (General Commercial) and I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 3D-2, Lot 020. Case # 2017-16.

This agenda item was discussed after agenda item #8.

Chad Branon, Civil Engineer, Fieldstone Land Consultants, PLLC, read the special exception criteria from the ordinance into the record.

There was no public comment.

The Board voted 5-0-0 to grant the Special Exception, with the following conditions, on a motion made by Lynn Christensen and seconded by Richard Conescu.

1. The applicant shall obtain site plan approval from the Planning Board for the proposed warehouse/storage facility;
2. The applicant shall provide a copy of an approved wetlands permit from NHDES to the Community Development Department.

Findings of Fact

1. To prevent the development of structures and other land uses on or adjacent to wetlands that would contribute to pollution of surface and ground water. The proposed use would not conflict with this purpose because the proposed development of the parcel would employ all appropriate stormwater management and erosion control methods and design. The wetlands that are proposed to be impacted are the result of an unmanaged culvert outfall on a steep slope with soils susceptible to erosion of fine sandy material. The discharge from the culvert outfall continues to erode soil along the cut bank and slope and deposit sediment within the down slope forested wetland areas. The development would infiltrate stormwater runoff into the soil through underground infiltration chambers and eliminate soil erosion from culvert discharge by extending the culvert and then discharging into an engineered basin that would dissipate energy prior to discharge.
2. To prevent the destruction and degradation of natural wetlands that provide flood protection. The proposed use will not conflict with this purpose because the wetlands being impacted are substantially created by stormwater discharge from a culvert and catch basins from D.W. Highway that transitions into a wetland area on the east of the boundary that appears to be a ground water seep at the toe of the slope. The impacted wetlands appear to be artificially created by road drainage culverts, are not within the 100-year flood plain and drain into an adjacent forested wetland east of the subject property. The extended culverts would prevent additional erosion and sedimentation from entering the adjacent wetlands and the engineered outlets at the culvert outfalls would serve to dissipate water energy and allow for proper discharge to downstream areas. These are not flood storage wetlands;
3. To prevent unnecessary or excessive expenses to the Town to provide and maintain essential service and utilities which arise because of inharmonious use of wetlands and adjacent upland areas. The proposed use will not conflict with this purpose because the use would rectify an existing significant erosion problem from the road drainage culverts. The erosion is not only detrimental to the environment by depositing sediment into the adjacent wetland area, but is also creating a safety issue with a steep unstable bank approximately 6'-8' deep through the hillside. The proposed use would provide for properly engineered stormwater basins and similar structures to dissipate energy and trap suspended sediment prior to discharge and infiltration on site;
4. To encourage those uses that can be appropriately and safely located in and around wetland areas. The proposed use will not conflict with this purpose because it would remove an existing and unsafe and environmentally detrimental situation of a steeply eroded unstable bank. The wetlands being impacted are primarily artificially created and provide only minimal functions and values for stormwater treatment and infiltration, although this beneficial function is more than offset by the detrimental situation of excessive erosion from the culvert. The

proposed development is an appropriate low impact use that does not promote significant public involvement and can be safely located adjacent to existing forested wetland areas. There would be no impact to downstream properties or wetlands.

9. Discussion/possible action regarding other items of concern

None.

10. Approval of Minutes - April 26, 2017

The minutes of April 26, 2017, were approved as presented, by a vote of 4-0-1, on a motion made by Lynn Christensen and seconded by Richard Conescu. Tony Pellegrino abstained.

11. Adjourn

The meeting was adjourned at 10:23 p.m., by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Leonard Worster.