



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES WEDNESDAY, OCTOBER 25, 2023

Members Present:

- Richard Conescu (Chair)
- Ben Niles (Vice Chair)
- Lynn Christensen
- Wolfram von Schoen (alternate)
- Charles Mower (alternate)

Members Absent:

- Patrick Dwyer
- Brian Dano

Staff Present

- Colleen Olsen, Assistant Planner

1. Call to Order & Roll Call

Chair Conescu called the meeting to order at 6:30 p.m. Lynn Christensen read the preamble.

Chair Conescu led the Pledge of Allegiance and swore in members of the public who would be testifying. Chair Conescu sat Charles Mower and Wolfram von Schoen for Patrick Dwyer and Brian Dano, respectively.

- 2. Colt Refining Inc. (petitioner) and King Herrick, LLC and Evan Realty, LLC (owners) –** Special Exception under Section 2.02.7 (A) (4) to permit site improvements associated with a proposed site plan for a light industrial building to be constructed within the 25-foot wetland buffer. The parcels are located at 12A Star Drive, and unnumbered parcels off Herrick Street and King Street in the I-1 (Industrial) and Aquifer Conservation Districts. Tax Map 3D-1, Lots 2-1 and 20-1 and Tax Map 3D-2, Lot 20-1. Case #ZBA 2023-32.

Jason Hill, TF Moran, presented the petition. He explained the project is a proposed expansion of the existing operations. The proposed light industrial warehouse is 97,600 square feet and is proposed to the North of the existing facility currently on site. Colt Refining is an e-scrap dismantling company. They break down electronic products and provide raw materials to local aluminum and copper mills and smelters, as well as their own refining operations. Services include manual disassembly, automated mechanical shredding, universal waste shredding, sorting, and packing among others.

A special exception is not being sought for the use itself, just for some of the improvements on site such as drainage and water services. This project went before the Planning Board for a

conceptual discussion a few months ago and received positive feedback. Additionally, they recently submitted a site plan application which will be heard before the Planning Board in November and have already met with the Conservation Commission who gave positive feedback. The plan is to grow the business and be able to occupy the space late next year.

Mr. Hill then displayed some photographs and the site plan to the Board to orient them to the site and to specifically highlight where the proposed building would be placed. He said that all of the recycling and refining operations are completed inside the existing building. He continued to state that the special exception is being sought because of two areas where work is being completed in close proximity to wetland buffers on site. There is a water line to be placed for fire service and domestic for the building which will be a temporary impact. This will be beside the trailer storage lot and involves digging a water line in, but the area will then be revegetated. The second area being disturbed is a drainage outlet which will have a temporary and permanent impacts. He then showed the water line which is approximately 160 square feet of construction and pointed out the 25 foot no disturb wetland buffer. He pointed out the buffer for the drainage outlet as well and said that there would be 410 square feet of construction as well as some grading work.

He displayed a letter from a wetlands scientist which went through the characteristics of the wetlands on site. When talking about the water line extension, he showed photos of the existing conditions and said the area and associated wetland was a treatment swale when TF Moran completed the site plan originally. There is a high water table which has led to the development of a wetland over time. There's an unnamed perennial channel which runs along Star Drive and flows below the location where the storm drain outlet is proposed. Mr. Hill then read through the special exception criteria points.

In relation to drainage, Chair Conescu asked if public water and sewer serviced the building. Mr. Hill confirmed the building had both, but noted that stormwater runoff would be filtered as it left the storm drains and driveways. Mr. von Schoen asked about the location of existing drainage and how it is currently dealt with. Mr. Hill stated it was designed with sheet flow into swales around the perimeter of the site, not with catch basins as Mr. Hill is using. This necessitated the use of vegetative treatment soils in these specific areas. Groundwater is close to the surface on these portions of the site and digging causes emergent wetlands. He spoke of the need for advanced stormwater quality treatment because of Saint-Gobain and noted that because of groundwater conditions on site, a piped system was necessary. Mr. Hill further explained that the current stormwater facilities on site are not up to current AoT standards and have to be upgraded to accommodate the proposed building and parking lot.

Mr. von Schoen expressed concerns with the potential for Sodium Chloride runoff due to the addition of so much paved surface area. Sodium Chloride has been a developing issue in Town. As he understands it there are catch basins intended to catch surface contamination such as runoff from vehicles. This semi-filtered water would then be drained into the wetlands. He asked Mr. Hill if this was correct. Mr. Hill went into more detail regarding the systems they will have in place. Mr. von Schoen asked if there would be storage of recyclable products which may create runoff of chemicals, such as battery acids. Mr. Hill said no and mentioned that Colt Refining doesn't actually use a lot of liquid chemical solvents. Much of the work is manual disassembly. There will not be any contaminated or regulated bulk chemical storage on premise.

Mr. Mower questioned why the petitioner was seeking a special exception rather than a variance, to which Ms. Olsen responded. Mr. Mower noted he was disappointed that such a complex proposal had not been articulated to the general public well thus far. He shared further concerns that the facilities on site would be doubled in size without changing any of the design plans. He reiterated that he did not feel the application or presentation had been clear enough.

Ms. Olsen said the project will go before the Planning Board in November. She noted the plan has also been peer reviewed by Fuss & O'Neill, the Town's peer engineering review consultant for drainage and other design concerns. Various comments were received from Fuss & O'Neill which will need to be addressed before final approval by the Planning Board. She added that any comments received from the Conservation Commission will also need to be addressed before final approval. Mr. Mower said this information was helpful and shared a few other concerns regarding the project. Mr. Hill addressed Mr. Mower and said that maybe he should have clarified the information when responding to Mr. von Schoen's drainage questions.

Mr. Hill addressed one of Mr. Mower's questions saying that a BMP (best management practice) is a technical term for a stormwater treatment system. He noted that these are new systems being installed which are quite costly and state of the art. They've been designed according to State standards and are being peer reviewed. The outcome of this application will affect the Planning Board site plan aspect of the project as this is a critical component of the overall project. He displayed a portion of the drainage report which shows, in detail, how the systems have been designed.

He explained there are two different kinds of systems on site. There are infiltration systems where water goes into the ground and filtration systems where stormwater cannot be infiltrated because of groundwater conditions. Filtration systems filter water through an engineered soil designed and accepted by the State of NH. There is a consent decree because of Saint-Gobain which means that in this area of town, a deeper filter needs to be utilized to remove more pollutants through absorption (using special soil molecules). For this project in particular, there are five or six of each water system. There are about three infiltration systems and the remaining systems are filtration systems. Chair Conescu clarified that the filtration systems are not filtering any product from within the four walls of the building, they are filtering exterior water runoff. Mr. Hill said this was correct. Chair Conescu mentioned that the water quality around the building would probably be better than it is without the building due to these systems. Mr. Hill responded that it would be equivalent to clean runoff. It won't be like a forested area where water falls without containments, but it will be filtered to remove a certain level of containments (levels set by the State of NH) from the runoff. He clarified that the special exception was being sought because the project requires work within the 25-foot wetland buffer. This area is essentially a no disturb buffer. He showed a few further details from the drainage report. Chair Conescu interjected at this point and said this level of detail was probably more appropriate for the Planning Board although the information was very helpful.

Mr. Mower agreed this information was helpful. The information showed there would be some level of impact on the site, but that the design is made to meet the increased demand. Ms. Christensen asked for clarification that the project would not be impacting the wetlands themselves, only the wetland buffer. Mr. Hill said this was correct. Mr. von Schoen asked if the runoff would eventually end up in the wetlands even though no construction would be in the wetlands. Mr. Hill said it would actually only end up in one wetland. The site overall only has runoff from one culvert, the rest will be absorbed into the ground.

Mr. von Schoen said it may have been easier to split this application into two. He said the water hookup is probably an easier request to answer since there likely isn't as much concern about a temporary construction impact. However, the runoff is more concerning. He stated that for the record, Sodium Chloride and de-icing chemicals cannot be filtered out of runoff. There would need to be a specialized system in place to filter those chemical out, but the filtration systems in catch basins would not be capable of it. These chemicals would eventually go out into the wetlands. Mr. Hill said this is why they had volunteered to use the certified Green Sno Pro application program. Discussion briefly touched upon the possibility of creating conditions of approval for this project. Chair Conescu commented that conditions can be attached to a decision, however concerns regarding winter treatment would be in the Planning Board's purview.

In regards to the 36-inch culvert under the railroad tracks, Mr. Hill said the design for the new project will decrease the rate of runoff for all storms. For this reason, they are not seeking to make any changes to the culvert. As far as culvert inspections, he is not sure who owns the culvert but suspects it may be the railroad. Whoever owns the culvert would be responsible for performing the inspections. He reiterated that this project is reducing the runoff to that system. TF Moran prepared a survey and has done their due diligence as far as the easements, since none were found there are none shown on the existing conditions plan. Mr. Hill also said that the comments regarding vegetation could be discussed at the Planning Board level.

Mr. Mower said in concept he'd support the project; however, he feels the application is incomplete. He cited concerns regarding the amount of stormwater runoff from this project, possible easements on site and rights to flow water through culverts. Mr. von Schoen said he understood the reason that runoff into the wetlands was not increasing as a result of this project was because catch basins (not currently on site) will be installed. Mr. Hill said this statement was correct. Mr. von Schoen asked if this was because the pavement and roof surfaces would increase runoff while the catch basins would offset these effects. Mr. Hill said the water would be detained to mitigate the effects of adding pavement, which always increases runoff. The detention of water would mitigate the effects of adding pavement by controlling its release and emulating the amount of existing runoff. He continued to explain how he determined the volume of water that needs to be detained.

Chair Conescu said many of the items being discussed tonight would be heard before the Planning Board in more depth. Ultimately, their decision tonight boiled down to whether or not the petitioner was taking steps to mitigate any disturbances to the wetland buffer resulting from this project. Ms. Olsen added that if the Zoning Board chooses to make a motion, the one provided in the staff memo needs to be slightly revised to say "responses to the Ordinance Criteria" instead of "statutory criteria".

Public Comment:

Richard Kalika (owner of an unnumbered parcel off Star Drive) spoke of several concerns regarding this particular project. He noted that there is a culvert running under the railroad tracks on what he believes is the South side of the property. The culvert goes under Map 3D-1, Lot 4 to the Merrimack River. He does not believe this culvert is designed to handle the extra load that would result from this project. He said this culvert was approved with a condition that it would be inspected and maintained. He does not believe it has been inspected since installation. His second concern was that there is a railroad crossing easement not shown on the plan provided to the Zoning Board for review. Lastly, there is an easement out to Caron Street that is not shown on the plan provided to the Zoning Board for review. In his experience, Colt Refining

is a good business to have in Town. He is concerned however that this particular project may have ill effect on their neighbors. Chair Conescu asked if Mr. Kalika's property was Commercial or Residential, Mr. Kalika responded it was currently vacant Industrial land.

Mr. Kalika said by deed, the culvert under the railroad belonged to the Agway property. They have the responsibility to maintain and inspect the culvert and have the rights to send water through the culvert while others do not. He said he could do a title search regarding the easements he mentioned previously to show their placement. There might be a property line between the existing and proposed building, but he wasn't sure. Mr. Hill responded to the Zoning Board that three lots which will be merged. He showed where the properties would be divided on the plan. He stated this had gone through preliminary review with the Department of Public Works, but it wasn't related to the wetlands buffer discussion. In regards to the culvert, Mr. Hill said that in the State of NH as long as you don't increase the rate of runoff to an abutting property, you have the right to flow the water where you do in the existing conditions. In response to Mr. Kalika's question, Chair Conescu said it doesn't sound like there will be a property line when the three lots are merged. Mr. Kalika said he will provide the Planning Board with evidence of the easements.

Arvid Dahlbloom (10 King Street) had concerns about safety around the site as he has a young child. He asked if the trees around the site would be left and whether or not a fence would be placed around the site. Chair Conescu said these issues were typically addressed with the Planning Board. Ms. Olsen added that this project would be heard before the Planning Board on November 7, 2023.

The Board voted 5-0-0 to find that the petitioner's responses to the ordinance criteria are sufficient, proved each criterion is met, and the Board adopts the petitioner's responses as the Board's findings of fact, and further, to grant the special exception under Section 2.02.7 (A) (4) of the Zoning Ordinance to permit site improvements associated with a proposed site plan for a light industrial building to be constructed within the 25-foot wetland buffer, subject to the condition that the applicant shall obtain site plan approval from the Planning Board for the proposal, on a motion made by Wolfram von Schoen and seconded by Lynn Christensen.

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 will not conflict because:

Two impact areas are associated the Colt Refining project:

- *In the northwestern corner of the currently developed portion of the site, impact to the twenty-five-foot buffer is required to access an adjacent water service. No alternative routes are available which would eliminate all impacts to the buffer. The impacted buffer area occurs in an area adjacent to pavement and other existing disturbances and will be restored after construction with no permanent impacts to the vegetated buffer.*
- *East side wetland buffer impacts are necessary due to the high-water table and the limited options for natural outlets. Additionally, because the site is within the Saint-Gobain plume area, it has increased limitations on groundwater recharge, which makes it unique from other properties in Merrimack. As a result, the only feasible natural outlet is located within the 25-*

foot wetland buffer of a previously disturbed area of this wetland stream which includes an existing outlet from an adjacent stormwater management basin. There is no alternative design which is less impacting on the wetlands buffer. There are no direct impacts to the wetland, and most work will be temporary and restored with the exception of a headwall and stone apron.

- *The proposed stormwater BMP'S will provide water quality treatment of project runoff prior to discharge into the wetlands.*

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 proposed water line impacts in the northwest corner of the site, occur adjacent to and above a narrow wetland with limited flood storage capacity and existing onsite development include pavement and mowed areas. The stream is a narrow conveyance flowing in a southerly direction away from the impacted buffer.*
- *The subject wetlands on the east side drainage project are associated with a perennial stream which flows under the railroad tracks via a 36-inch culvert. The stream and wetland edge occur in a depressed linear channel and do not provide significant flood storage or flood flow alteration potential. The proposed headwall and work in the adjacent buffer would not be expected to reduce the volume of flood storage or the ability of the area to desynchronize flows within the 25-foot wetland buffer.*
- *The proposed project does not involve filling below the floodplain with a flood hazard area.*

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 existing water service in the northwest corner of the site is located almost entirely within the 25-foot wetland buffer. There are no prudent or feasible alternative for access to the existing water system, as a result a Special Exception is required for connection to the existing service to facilitate new development. Any impacts to the buffer will be temporary in nature.*
- *The east side drainage project has no alternative location due to the high water table and the constraints associated with work in the Saint-Gobain plume area. The only feasible outlet occurs in the buffer of the perennial stream crossing the southern edge of the development portion of the existing Colt Refining building in an area of existing disturbance. Most work will be temporary, and areas revegetated except for the headwall and outlet.*

4. To encourage those uses that can be appropriately and safely location in and around wetlands areas. The proposed use will not conflict because:

- *The proposed project has been designed to minimize impacts to the wetlands, eliminating all un-avoidable impacts and minimizing work within the adjacent*

wetland buffers. In the new development areas, retaining walls have been specified to prevent encroachment into buffers where necessary. All buildings and parking areas have been located in the uplands.

- 3. John Flatley Company (petitioner) and John J Flatley (owner) – Re-Hearing of Case # ZBA 2023-27:** Variance under Section 17.10.3 (b) of the Zoning Ordinance to permit placement of a ground sign 1 foot from the front property line whereas a setback of 20 feet is required. The parcel is located at 685 Daniel Webster Highway in the I-1 (Industrial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 6E, Lot 3-4

Chad Branon of Fieldstone Land Consultants and Kevin Walker of John Flatley Company, presented the petition. Mr. Branon gave a brief overview of the project stating that they were requesting a variance to allow a sign to be installed less than 20 feet from the right-of-way. The existing site has been approved for a light industrial flex space development which is currently under construction. This type of a use will be rented to various tenants. The layout for this project has gone through considerable review and the NH Department of Transportation (NHDOT) has given a lot of feedback on the location of the site entrance. The subject entrance of tonight's discussion and the associated ground sign is located across the road from the main entrance to Webster Green.

Mr. Branon explained that from a safety perspective NHDOT has required this particular entrance location and because of this they are dealing with existing site conditions. One of which is a wider than normal right-of-way width of about 24 feet. This is why they are seeking relief from a 20-foot setback down to a 1-foot setback. The distance from the roadway to the proposed sign location is 42.8 feet. This is from the front edge of the sign to Daniel Webster Highway. To give some perspective, the sign directly across the street for Webster Green is 29.5 feet from the same feature on that side of the highway. The proposed sign location is further away from the traveled way than any other sign along this stretch of road that Mr. Branon is aware of. They are proposing it in this location because it is where the right-of-way line is. The location of the right-of-way is very wide and appears to take into account some drainage improvements made by NHDOT in the late 1980s.

The sign could be located along the frontage much closer to the travel way and off site features, but from a safety standpoint it makes sense to have it at the site entrance. If they had to place the sign where the Ordinance requires it, the sign would be almost 63 feet into the property. The sign would then be blocked by landscaping and re-vegetation plans approved by the Planning Board. There is no gain to the public by denying this request because what they are proposing is very similar and more stringent than most signs along this stretch of the road.

Mr. Branon briefly went through the variance criteria. Mr. Branon said this sign location was essentially being proposed for safety purposes which is his main concern from a design standpoint as a professional engineer. In regards to the spirit and intent of the ordinance, positioning a sign 20 feet away is typically a safety item because you want to ensure you aren't impeding sight lines or turning movements along a highway and they are not doing that in this location because they are more than 20 feet from the travel surface. The irregularity of the right-of-way is a hardship which distinguishes it from many other properties and is why they are asking for relief. They believe this variance would not be contrary to the public interest because it is primarily being proposed for safety reasons.

Additionally, the design of the sign will not create any health or safety problems and will provide easily identifiable signage for tenants. He reiterated they believe the spirit of the ordinance is observed as they are not proposing to put the sign in a location where it would be obstructive. There is a significant landscaping plan approved by the Planning Board. The landscaping is not in yet so it is hard to visualize, but there will be a large strip of vegetation along that stretch of highway which is being accounted for in this proposal. He continued to say that diminishing values of surrounding properties is not relevant in this case because the proposed location of the sign is about 43 feet away from the highway and not in close proximity to abutting properties. There should be an improvement as far as safety due to the fact that people may get lost and need to turn around if the sign is not located at the main entrance. The sign location at the entrance is the result of many third party reviews and feedback and the property has gone through a considerable master plan process.

Ms. Christensen questioned why the sign wasn't placed in the proposed location when site plan approval was originally received. Mr. Branon responded that they didn't have a sign designed during site plan approval as it wasn't a strong focus at the time. There was some back and forth regarding the number of signs to be placed on property, how they were labeled on the site plan, and where they were originally to be placed. Mr. Branon confirmed there is only one sign on site. He continued to say that the plan stated that all signs would have to go through a separate review and approval process and that the location of the sign wasn't talked about at all during the site approval process. There could be two signs due to the size of the property, however they are only proposing one sign at the main entrance.

From a safety standpoint, this is where the sign belongs. He clarified Ms. Christensen was correct that there was one sign on the plan and that it was labeled sign number two. He believes the sign was omitted during the NHDOT review process when they were modifying the entrance. Ms. Christensen questioned if she was correct in saying the entrance to the site could be not placed elsewhere due to NHDOT requirements. Mr. Branon confirmed this was correct. Ms. Christensen said she understands there are some unique considerations in this case such as they have to measure from the easement rather than the paved portion of the road. Mr. von Schoen asked if the sign would be illuminated. Mr. Walker said it will probably be illuminated to some degree, they are still deciding on whether it will be externally or internally lit. Mr. von Schoen commented that they should keep in mind that there are residential properties across the street. Mr. Branon and Mr. Walker confirmed this was a consideration. Mr. Branon added the sign is oriented to face the highway, not abutting properties.

Mr. Mower stated he understand the frustration of all involved parties. He understands the application before the Zoning Board and will support the approval of this variance. He explained the Flatley Company has owned land in this portion of Town for quite some time and is now looking to develop it. This is fine, but he feels they missed the mark when communicating with the residents of Merrimack. He mentioned the residents of Webster Green had dealt with the effects of nearby construction as well as pollution from Saint-Gobain for many years now. He feels the Flatley Company misrepresented work they would be completing in this area of Town.

Mr. von Schoen added the Zoning Board doesn't have control over the location of the intersection. That is an independent issue from whether or not it makes sense for the sign to encroach on the easement or not so that flowing traffic can see it easily, have time to properly slow down, and turn into the plaza. The Zoning Board cannot consider the intersection in their decision.

Public comment

Andrea Ireland (15 Kimberly Drive, Unit 33) spoke in opposition of the petition. She recognizes the discussion was in regards to the sign, but had concerns regarding the location of the entrances to Webster Green and this plaza. The entrances are offset by enough to create an issue when more than one individual is trying to take a left hand turn into either of the complexes. She expressed concern that this would cause accidents. In order for someone to turn left into the Flatley property, they have to go in the left hand turning lane for Webster Green creating the potential for accidents as people turning into the Flatley property will also be using this lane for turning. She wasn't sure if there would be a light to direct traffic. She said she has had issues turning safely into Webster Green during construction. She pointed out the sign for Webster Green is up-lit and short and the proposed sign would be massive and back-lit. She said this would be a lot different looking than anything currently in their area.

Chair Conescu said there are plazas along Daniel Webster highway with similar signs and said they were only discussing the location of the sign, not any other details. She said she understood but didn't feel it should be placed closer when, regardless of its position, it would potentially produce a lot of light. She believes this would have a negative effect on the abutters. Chair Conescu asked if Ms. Ireland had seen the location of the sign and she responded that she had. He said if the sign were pushed back it would be in the driveway or behind the building. He said because of this there wasn't an opportunity for them to move the sign back. This was based off of looking at the plans. Ms. Ireland looked at the plans and pointed out her areas of concern. She understands NHDOT approved this, but doesn't feel they paid proper attention to how the placement of the entrance would affect turning traffic to this property as well as Webster Green.

Chair Conescu said at this point, all they could do was find the best possible outcome. Ms. Christensen added that they did not have a choice regarding the location of the entrance; that was dictated by the NHDOT. Mr. von Schoen asked for clarification as to where the entrance would be placed permanently. He noted that on the plans it didn't appear the entrances were offset at all. Mr. Branon said the entrances are not offset, there is offsite work that is going to be done along Daniel Webster Highway to include restriping. This work will help the traffic conditions at the intersection. Mr. von Schoen asked if the way the entrance is displayed on site is how it is currently constructed. Mr. Branon said this was correct. He said there will be work within the right-of-way (not currently depicted on the plan as it was recently ironed out) to include a free right in, a through lane, and a dedicated turning lane. He explained that part of the reason intersections are lined up is to make it easier for drivers to see other vehicles making turns and avoid potential turning conflicts. He stated there had been significant review upon this and that it had been approved by NHDOT. What drivers are experiencing today is not the final product.

Ms. Christensen asked Mr. Branon why Ms. Ireland thinks the entrances are offset. He explained that the entrance is quite wide. The entrance there today is likely to be slightly offset because it is not currently constructed to completion. Chair Conescu said because the roadway is not in its final state. Mr. Branon agreed and said it would be centered once work was completed. Mr. Ireland then questioned why a sign was being erected if the roadwork had not yet been completed. She asked what changes would fix the correction of the offset. Ms. Christensen commented that what Ms. Ireland sees is one lane going into the Flatley site. She is not seeing two lanes with turning radiuses because they aren't built yet. When it is built, the center of the two entrances will match. Ms. Ireland then asked if the whole entrance would be shifted over.

Ms. Christensen replied no, they would expand their entrance to match their plans, currently only one lane of the entrance was completed. Ms. Ireland said this is not what she understood from

Mr. Brannon's comments. She said Mr. Branon had mentioned the whole roadway was already completed and the expansion would occur on the side of Daniel Webster Highway. Ms. Christensen explained there would be expansion along Daniel Webster Highway with additional lanes, but the entrance is very narrow. Ms. Ireland disagreed. Mr. Branon said the entrance is absolutely not completed on their property and is not completed in the State right-of-way. The striping will change significantly which will require cars to stop further away from the intersection. This should mitigate any turning conflicts. All of the striping within the state right of way still needs to be done. He understands the concerns, but noted they are temporary. Mr. Walker clarified that the entrance currently there was granted through a temporary permit from NHDOT just to have access into the site. The current entrance is approximately 20 feet wide and will be much wider when completed.

Ms. Olsen asked when the re-striping would be completed. Mr. Walker said he hopes it will be complete by mid-November but has to work out some issues with Eversource utility pole placement. If timing doesn't work out and utilities haven't been moved, the work will be done first thing in the Spring. Ms. Ireland asked if Daniel Webster Highway is being expanded to allow for turning lanes, how much closer will the sign be to the roadway. Mr. Branon said the traveled way along the entrance of Daniel Webster will not change. They are adding a free right lane into the property, but the new pavement line for the lane is just on the Daniel Webster Highway side of the utility poles shown on the plan. The throughway will not change at all. Chair Conescu said he understands that the lines will be changed to allow for an additional turning lane but there's no change to the pavement in the plan. Mr. Branon said there's no change in the pavement meaning the traveled way will be 43 feet after site improvements are done. The improvements to Daniel Webster Highway are being accounted for in the dimensions he has shared related to the signs location. Ms. Ireland asked if they will receive occupancy before the road improvements and sign is erected. Ms. Christensen said this is probably a question for Staff.

Ms. Olsen said Staff has not yet completed site inspections and they haven't been asked for a Certificate of Occupancy as far as she knows. Mr. Branon said this was not related to the sign because they are speculating what the criteria would be for a Certificate of Occupancy. Ideally the sign would be up before occupancy or close to it because that would allow for individuals to find the location. Mr. Walker said they plan to have the sign up this Fall. Ms. Ireland said that there will then be a blank sign up with nothing on it. Mr. Walker responded the address, and name of the park will be on the sign. Occupants will be added as leases are signed.

Kendall Smith (18 Kimberly Drive) spoke against the petition. What is currently across from the Webster Green is an entrance, but isn't actually the main entrance. The main entrance is located to the North of the traffic lights. Chair Conescu asked if he was referring to the entrance of Saint-Gobain. He replied that he was referring to what Mr. Branon and Mr. Walker kept calling the main entrance. He feels the safest location for the sign is by the traffic lights as there are already proper turning lanes there. He stated he feels the Zoning Board should consider the safest location for this sign. He had some concerns about traffic issues with individuals trying to exit the site. The paperwork submitted for the variance request mentioned the taking which took place by the NHDOT. He didn't realize this had occurred in the 1980's. He felt it was a bad precedent for the Zoning Board to grant a variance based on a property line which was moved years ago. Chair Conescu said the benefit of having a variance is that no precedents are set. Every variance is unique based upon the information for that particular case. He continued that if they look at the design, the entrance (across from Webster Greens entrance) is in fact the main entrance for this project. The property connects to Saint-Gobain, however the entrance at the lights is not Flatley's

main entrance. They would like a sign at their main entrance which should help alleviate some safety concerns.

Mr. Smith said there is currently a sign directing their construction materials into the site using Saint-Gobain's entrance. He questioned why they can't place the proposed sign in that location. He felt this would be safer because there are already traffic lights in place at this entrance. Ms. Christensen said the petitioner doesn't own the land at the Saint-Gobain entrance so they can't place their sign there. Mr. Smith said he is not suggesting they place their sign on Saint-Gobain property but is suggesting they swap the temporary sign directing construction vehicles with the permanent sign being proposed. He had a hard time believing it would be a hardship to place the sign a bit further up the road. He felt if the sign was moved it alleviate concerns of congestion at the already busy intersection where they are currently planning to place the sign. Mr. von Schoen said it sounds like they are now talking about the placement of the entrance rather than the sign. They are here tonight to discuss the sign placement, not whether or not the entrance should be where it is. Also, if there was only one entrance to the property, that would create a lot of through traffic on the property. The current entrance allows traffic to spill out where the concentration of businesses would be making it more convenient for patrons.

Mr. Branon added the entrance across from Webster Green is the main entrance and the only one owned by the John Flatley Company. It is the only place where they can put a sign. The temporary sign was placed at the request of NHDOT because they don't have the offsite improvements done and haven't had the ability to formalize the main entrance to the site. During construction, it is safer for someone to use the temporary entrance because it is formalized. Additionally, temporary signs have less restrictions than permanent ones. Tenants want a sign at the main entrance of the site they are leasing from. Chair Conescu and Ms. Christensen again explained this application is just seeking to put the sign closer to the easement than it would be allowed.

Ms. Christensen asked if the petitioner would be asking for a variance if the drainage easement did not exist. Mr. Branon said no, it would be in conformance if this was the case. Ms. Christensen said they could also move it 20 feet further down the road, however NHDOT had not allowed this. Therefore, they are stuck within the limitations of the easement and that changes where they can place the sign. Mr. Branon said they don't have the ability to change the hardship. Mr. Smith said he didn't understand why the sign could not be placed at the Saint-Gobain entrance where the current temporary construction sign is. If you look at site plan sheet 2, there is a place for a proposed sign number 2. He asked why the plan was labeled this was if it is impossible for a sign to be placed in that location.

Mr. Branon said that sign location is on their property however it is not at the intersection, and individuals will miss the main entrance to the property if the sign were there. Ms. Christensen again noted, they aren't talking about the sign being located elsewhere. They were discussing the sign at this specific location and how close to the highway it can be placed. Mr. Smith said when a variance was first requested for this project he had spoken with the Community Development Department. He had pointed out the proposed sign location did not match up with the site plans and asked if they would be changed by the Planning Board. He was told that the Planning Board does not deal with signs, but that the Zoning Board does. Ms. Christensen said no, it is up to the owner to decide where they want the sign. The item before the Zoning Board is in regards to the Zoning Ordinance saying you have to be 20 feet from, in this case, the right-of-way. This is a hardship because the right-of-way has pushed them into the property line creating a hardship. The Planning Board does not deal with the placement of signs other than confirming it fits with

Zoning Ordinance requirements. The location on the original approved plans is a placeholder, but not where the sign has to go even though that's the plan that was approved.

Chair Conescu clarified that the Zoning Board is legally bound to not provide alternates or suggestions to petitioners to accomplish the projects they seek to undertake. Chair Conescu said if this is what Mr. Smith is advocating for, it is not possible because it would violate the law. Mr. Smith said he is not advocating that at all, he was saying they could approve or deny the application. He was trying to express that it is unfair to the public as this is the only opportunity they have had to comment on the sign. He doesn't understand why it is inappropriate to mention that there are safer locations for it. Ms. Christensen said land owners will frequently mention where they may put a sign when presenting plan to the Planning Board, but the information is irrelevant to them. This is because the Planning Board and Community Development Department have no say where a sign gets placed as long as it meets Zoning requirements. That's the only reason this case is being heard, otherwise Mr. Smith would not have an opportunity to voice concerns regarding the proposed sign. Ms. Olsen added that typically a sign permit is submitted to the Community Development Department for an internal review. This case is only being heard because the petitioner is proposing an encroachment to the front property line. If the sign was 100% in compliance with the ordinance criteria, the sign would be placed as its proposed without discussion or input from any neighbors. As far as signage on the plan, those are meant to be possible locations but they are not binding. Community Development does verify signs will be placed outside of the right-of-way. Ms. Olsen said Mr. Price had noted there was an encroachment into the right-of-way when the petitioner submitted a sign permit and recommended they go before the Zoning Board to have a variance heard and voted on. Mr. Branon continued that he believes the plans approved by the Planning Board included a note stating their signs shall meet regulations set forth by the Town of Merrimack. The sign design itself meets all regulations, but the location is at issue.

Mr. Smith said it seems the Zoning Board can either approve or deny this application without recommending another location. He is hearing it meets all Zoning criteria, but he does not believe this is true. It is not a safe location and in his view, the proposed location would be harmful to the public. He feels it is possible for the Zoning Board to say that not all criteria have been met and deny the application. He says the Zoning Board is saying it is illegal to recommend another location for the sign. He understands this but doesn't think this prevents them from saying that the criteria have not been met. After personally inspecting the site Chair Conescu concluded that it creates more danger for drivers to turn their head 90 degrees to see the sign. It is safer if the sign is located adjacent to Daniel Webster Highway. He didn't know what factual basis Mr. Smith had believing this sign location was a safety concern. Mr. Niles added it doesn't make sense for such a large plaza to have a sign located in a place other than the main entrance. In his opinion, this sign is in the right place.

Mr. Smith said it was his understanding that the location of the curb cut was required by the Fire Department to allow a second exit from the site. Chair Conescu said he could not speak to that but said this was an NHDOT approved entrance.

The Board voted 5-0-0 to find that the petitioner's responses to the statutory criteria are sufficient, proved each criterion is met, and the Board adopts the petitioner's responses as the Board's findings of fact, and further, to grant the variance under Section 17.10.3 (b) of the Zoning Ordinance to permit placement of a ground sign 1 foot from the front property line whereas a setback of 20 feet is required, subject to the condition that the

petitioner shall obtain a sign permit for the proposed ground sign, on a motion made by Charles Mower and seconded by Lynn Christensen.

Findings of Fact:

1. Granting the variance would not be contrary to the public interest because:

Placement of the sign in the new proposed location will allow approaching vehicles to more easily identify the site and the businesses within the site. Easier identification of addresses will also have the added benefit of increased safety for vehicles and pedestrians along Daniel Webster. Due to the right-of-way line, the proposed sign will be located at a similar distance away from the pavement as other signs along Daniel Webster and despite being 1 foot away from the right-of-way, the sign will not create a visual impact greater than the Zoning Ordinance originally intended. The design of the sign will not create any health or safety problems and will provide easily identifiable signage for the tenants and community. For these reasons granting this variance would not be contrary to public interest.

2. The spirit of the ordinance is observed because:

We believe the purpose of the ordinance is to minimize the visual obstruction of signs located too close to roadways and to maintain the visual aesthetic of the Town and safe sight distance of roadways. Due to the wider than typical right-of-way width at the proposed entrance and sign location, the 1-foot setback will still meet the spirit of the Ordinance. The sign will be located at 36 feet from the edge of Daniel Webster Highway which would be standard for a typical lot. The entrance will be landscaped for visual appeal and meets all the site distance requirements. Since this proposal will provide the above and will result in no negative impacts to the public we believe that granting the Variance would observe the spirit of the Ordinance.

3. Granting the variance would do substantial justice because:

Granting this variance would allow for the best location of the sign in the most reasonably visible location. The proposed sign will meet the design standards for signs include square footage, sign height, and letter height. The Daniel Webster right-of-way is restrictive and unnecessarily requires any sign to be further back from the traveled way if strict conformance with the Zoning Ordinance is required. Allowing the sign to be located within 20' of the right-of-way would not impact visual appearance of the neighborhood or have negative impact on safety, and the spirit of the ordinance would be met. Granting this variance would do substantial justice because it would allow for the productive use of the property, as described above. In other words, a denial of this variance request would be an injustice to my client as there would be no apparent gain to the general public by denying this application.

4. Granting the variance would not diminish the values of surrounding properties because:

The existing site is located in the Industrial District and is bordered by a mix of industrial and commercial properties, along with a residential development to the northwest. The commercial and industrial properties have similar signs to advertise their business and therefore the proposed sign for this project will match the visual appearance of the neighborhood and will not diminish the value of the surrounding properties. Additionally, the construction of a sign in this location will aid the business in the newly constructed flex buildings in order to help them grow and thrive. The addition of successful businesses in the area will bring more customers to the site. As a result, we would expect this project to have positive impacts on surrounding property values.

5. Unnecessary hardship:

a. Owing to special conditions of the property that distinguish it from other properties in the area, explain how 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:

The subject parcel 6E-3-4 is 45.44 acres, or 1,979,298 square feet. It is located in the I-1 Industrial District. Section 17.10.3 (b) of the Merrimack Zoning Ordinance requires ground signs in the industrial and commercial district to be set back 20 feet from the edge of any public right-of-way line into the lot. The subject parcel is unique due to a taking that adjusted the right-of-way line into the lot. The taking created a jog that made the ROW lie approximately 24 feet further into the site. This adjustment also pushes the allowable location for a sign further into the site. This adjustment also pushes the allowable location for a sign further into the site and away from the travel way where passerby will have more difficult seeing and reading the sign. Due to the taking, the right-of-way line is now location where a sign would typically be allowed. Based on the above, we do not believe that a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.

b. The proposed use in a reasonable one because:

We believe that the proposed use is a reasonable one for all of the reasons previously stated. The following is an outline of why we believe the proposed use is reasonable:

- *Granting this variance would allow for the installation of a sign in a more visible location.*
- *This project would have no measurable negative impacts on the surroundings or their property values.*
- *The sign location would not be contrary to the public interest.*
- *This project will not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public.*
- *This proposal would in our opinion observe the spirit and intent of the ordinance.*
- *The signs will help new businesses in the recently constructed buildings grow and flourish.*
- *Since this proposal will provide the above and will result in no negative impacts to the public we believe that the proposed location is reasonable.*

a. Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how explain how the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the property:

The subject properties size is unique because of the taking that occurred along the

frontage of the site for Daniel Webster Highway. While other properties in the area are located on section of the highway where the right-of-way width is 60 feet, the subject parcel has a right-of-way width of 84.5 feet. The additional 24.5 feet is entirely skewed toward our client's property. Strict conformance with the ordinance would require the sign to be located nearly 45 feet from the traveled way which is excessive for a sign that's purpose is to identify the businesses on site. Additionally, if the sign to be located where taking ended it would be 85+ feet further west away from the site entrance and in the proposed landscaped areas. Based on these reasons we believe a variance is necessary to enable a reasonable use of the property.

4. Discussion/possible action regarding other items of concern

None

5. Approval of Minutes – September 27, 2023

The Board voted 5-0-0 to approve the minutes of September 27, 2023 as amended, on a motion made by Lynn Christensen and seconded by Wolfram von Schoen.

6. Adjourn

The Board voted 5-0-0 to adjourn at 9:50 p.m., on a motion made by Lynn Christensen and seconded by Wolfram von Schoen.