

NASHUA CITY PLANNING BOARD  
March 21, 2019

The regularly scheduled meeting of the Nashua City Planning Board was held on March 21, 2019 at 7:00 PM in the 3<sup>rd</sup> floor auditorium in City Hall.

Members Present:     Scott LeClair, Chair  
                          Adam Varley, Vice Chair  
                          Mike Pedersen, Mayor's Rep.  
                          Steve Dookran, City Engineer  
                          Maggie Harper

Also Present:         Roger Houston, Planning Department Manager  
                          Linda McGhee, Deputy Planning Manager  
                          Scott McPhie, Planner I

**Approval of Minutes**

March 7, 2019

**MOTION** by Mr. Dookran to approve the minutes of the March 7, 2019 meeting.

**SECONDED** by Mr. Pedersen

**MOTION CARRIED 4-0-1 (Varley abstained)**

**COMMUNICATIONS**

Mr. Houston went over the following items that were received after the case packets were mailed:

- Email correspondence from abutter re: Case #1
- Minutes from the July 19, 2019 discussion re: Sidewalks

**REPORT OF CHAIR, COMMITTEE & LIAISON**

None

**PROCEDURES OF THE MEETING**

Mr. LeClair went into the procedure of the meeting as follows: After the legal notice of each conditional, special use permit, site plan or subdivision plan is read by the Chair, the Board will determine if that the application is complete and ready for

the Board to take jurisdiction. The public hearing will begin at which time the applicant or representative will be given time to present an overview and description of their project. The applicant shall speak to whether or not they agree with recommended staff stipulations. The Board will then have an opportunity to ask questions of the applicant or staff.

The Chair will then ask for testimony from the audience. First anyone wishing to speak in opposition or with concern to the plan may speak. Please come forward to the microphone, state their name and address for the record. This would be the time to ask questions they may have regarding the plan. Next public testimony will come from anyone wishing to speak in favor of the plan. The applicant will then be allowed a rebuttal period at which time they shall speak to any issues or concerns raised by prior public testimony.

One public member will then be granted an opportunity to speak to those issues brought by the applicant during their rebuttal period. The Board will then ask any relevant follow-up questions of the applicant if need be.

After this is completed the public hearing will end and the Board will resume the public meeting at which time the Board will deliberate and vote on the application before us. The Board asks that both sides keep their remarks to the subject at hand and try not to repeat what has already been said.

Above all, the Board wants to be fair to everyone and make the best possible decision based on the testimony presented and all applicable approval criteria established in the Nashua Revised Ordinances for conditional, special use permits, site plans and subdivisions. Thank you for your interest and courteous attention. Please turn off your cell phones and pagers at this time.

**OLD BUSINESS - CONDITIONAL/SPECIAL USE PERMITS**

None

**OLD BUSINESS - SUBDIVISION PLANS**

None

**OLD BUSINESS - SITE PLANS**

None

**NEW BUSINESS - CONDITIONAL/SPECIAL USE PERMITS**

None

**NEW BUSINESS - SUBDIVISION PLANS**

1. David M. & Pamela L. Peabody (Owner) - Application and acceptance of proposed lot line relocation and two-lot subdivision. Property is located at 58 Linton Street. Sheet 129 - Lots 251, 252, and 253. Zoned "RA" Urban Residence. Ward 7.

**MOTION** by Mr. Pedersen that the application is complete and the planning board is ready to take jurisdiction.

**SECONDED** by Ms. Harper

**MOTION CARRIED 5-0**

Richard Maynard, Project Engineer, Maynard & Paquette Engineering Associates Inc., 31 Quincy St, Nashua NH

Mr. Maynard introduced himself to the Board as representing the applicants, David & Pamela Peabody. Mr. Maynard clarified that the title of "subdivision" was not quite correct; there are currently three lots of record, and the proposal is to relocate one lot line and consolidate the remainder. The project is going from three lots to two, with no new lots created. Mr. Maynard gave an overview of the lots and proposed changes.

The applicant is requesting three waivers. The first waiver is from NRO § 190-282(B)(9) which requires the plan to depict physical features within 1,000 feet of the site. The second waiver is from NRO § 190-221(C), which requires underground utilities for new subdivisions. The third waiver is from NRO § 190-212(A)(1), which requires that a sidewalk be located on at least one side of the street.

Mr. Maynard requested a copy of the sidewalk memo Mr. Houston handed out to the Board. He said his understanding was that if there are no new lots being created, then the sidewalk contribution was not required. Stipulation #3 in the Staff Report implies that a contribution is required. Since there are no new lots being created, Mr. Maynard disagrees and says this is an unnecessary burden.

Mr. LeClair asked Staff if they considered this a lot line relocation or subdivision.

Mr. McPhie said that this is a lot line relocation, and also moving and subdividing properties.

Mr. Maynard said there's no subdividing, no new lots. It's all consolidation or lot line relocation.

Mr. Houston said that under state law it is a subdivision, you are changing property lines. They are actually reducing the number of lots from three to two. He doesn't know if they are currently buildable.

Mr. Maynard said they are lots of record.

Mr. Houston said yes they are lots of record, but are they buildable?

Mr. Maynard said yes, recorded as buildable.

Mr. Houston asked, were they under the same ownership since 1976?

Mr. Maynard said it doesn't have to be the same ownership.

Mr. Houston said otherwise they don't meet the standards for buildable lots. It's still technically a subdivision under state law.

Mr. Maynard said no, it falls under the subdivision regulations.

Mr. Houston said it is also adopted as an ordinance.

Mr. Maynard said it's not a subdivision. It falls under the rules of a subdivision, but it's not a subdivision. He showed the Board a GIS printout of the current tax map, depicting three lots of record. He said there are several other lots like this in the neighborhood. He said this is what's called an involuntary merger under the state RSA's (RSA 674:39aa), which made it illegal to force a merger of adjacent properties to conform to the current zoning ordinances. Therefore, these three are nonconforming lots of record. It was his understanding that if no new lots are being created, then sidewalks are not a consideration.

Mr. Pedersen referred to the abutter correspondence from 55 Linton St, regarding concerns of her driveway being blocked during construction. Is the applicant aware that he needs to keep trucks away from the front of her driveway?

Mr. Maynard said he is now. He's not sure who that contractor may have been that blocked her driveway in the past, but if anyone blocks her driveway she should call the police. It's a violation. There's nothing he can do about people violating the law and regulations.

Mr. Pedersen asked if the applicant is aware.

Mr. Maynard said yes, as are all contractors.

Mr. Varley said that they ordinarily would reserve the sidewalk discussion for the public meeting, but to avoid recalling Mr. Maynard up to the stand, he recommended they have a discussion of the appropriate application of the rule here. He understands what Mr. Houston is saying about this case being within the statutory definition, even if the practical definition Mr. Maynard is using says they're not creating any lots. It sounds like it would be within the scope of the ordinance in terms of the requirement of sidewalks. He asked Staff if under the definition the ordinance would apply here.

Mr. Houston said it will. The lots being created are not the same as they were before. However, they do have a letter in the file from the applicant agreeing to pay the sidewalk contribution, so he's not sure why there is an issue.

Mr. Maynard said that the letter says more than the contribution. It also says that these are lots of record, and no new sidewalks should be required. It is also on the plan, under Note #23.

Mr. Varley said that there are three lots now, and there will be two lots afterwards. Those are new lots with new dimensions.

Mr. Maynard said that's baloney. There are fewer lots.

Mr. Varley said if this was a single lot subdivided into two there would be the same physical amount of area.

Mr. Maynard said that doesn't matter. If they were creating two lots from one he would fall under the sidewalk ordinance.

Mr. Dookran asked Mr. Varley to read the applicant's letter out loud.

Mr. Varley read the waiver request letter, dated March 13, 2019.

Mr. Dookran asked Mr. Maynard how this could be considered a lot line relocation.

Mr. Maynard said he is moving one line and eliminating the other.

Mr. Dookran asked what eliminating a line constitutes. Is it a merger?

Mr. Maynard said that on the plan of record, there are three lots. The lot line relocation is to move one of the lines separating the lots to the center, and consolidate the remainder into one lot. He said it falls under the subdivision regulations, but is not a subdivision.

Mr. LeClair asked Mr. Houston if there were just two lots and they were pulling one line out to consolidate them, would the sidewalk requirement kick in there?

Mr. Houston suggested the Board table the case and seek a legal opinion, if Mr. Maynard wants to argue the point. The application says this is a subdivision plan, and it is signed by the owner.

Mr. Dookran agreed.

Mr. LeClair asked Mr. Maynard if the applicant would agree to table the case.

Mr. Maynard said his client would be willing to table the case until the Board could obtain a legal ruling. He requested that the ruling be sent to him before the meeting, so he could review it.

Mr. LeClair said that wouldn't be a problem.

Mr. Dookran asked a question about the lot numbering on the plan.

Mr. Maynard said that they have fixed it.

**SPEAKING IN OPPOSITION OR CONCERN**

None

**SPEAKING IN FAVOR**

None

Mr. LeClair closed the public hearing and moved into the public meeting.

**MOTION** by Mr. Varley to table New Business - Subdivision #1, for the specific purpose of obtaining a review and opinion from Corporation Counsel as to whether the City Sidewalk ordinance would apply to this plan.

**SECONDED** by Mr. Pedersen

**MOTION CARRIED 5-0**

2. The Landing at Nashua LLC (Owner) Anagnost Investments, Inc. (Applicant) - Application and acceptance of proposed three lot subdivision. Property is located at 2 East Spit Brook Road. Sheet A - Lot 218. Zoned "GB/MU" General Business/Mixed Use & "HB" Highway Business. Ward 7.

**MOTION** by Mr. Varley that the application is complete and the planning board is ready to take jurisdiction.

**SECONDED** by Ms. Harper

**MOTION CARRIED 5-0**

Dick Anagnost, Property Manager, Nashua Landing LLC, 1662 Elm St, Manchester NH 03101

Mr. Anagnost introduced himself to the Board as the property manager. He also introduced his co-developer Rob Parsons, and Ken Rhodes of Fuss & O'Neil.

Mr. Anagnost gave an overview of the property and proposed lots. The only action before the Board tonight is a three lot subdivision, but there will be future site plans. They feel it is an imperative to subdivide the land because this is the former WR Grace and Dow Chemical Plant site. There is an activity use restriction put on the site by the New Hampshire Department of Environmental Services (NHDES). They expect to complete approval of their Brownfields application within the next 60 days, after a public hearing. After that, they can move forward. The brownfields will pertain to the two southern lots, and the activity use restriction will remain with northernmost lot.

Ken Rhodes, Fuss & O'Neil, 108 Mrytle St Ste 502, Quincy, MA

Mr. Rhodes introduced himself to the Board. He said this is a straightforward request. There are about 40 acres of land to be divided into three parcels. He said dividing off the land with

area use restrictions from the other two proposed parcels gives the opportunity for two relatively significant development sites. The proposed lot to the south would have complete frontage on East Spit Brook Rd. The middle parcel would have access and frontage off Adventure Way. He said they have worked with Staff to make the subdivision plat comply with city ordinances. He said that as part of the development they intend to link East Spit Brook Rd to Adventure Way. With the cooperation of the city and some northern abutters, they also hope to link up to Daniel Webster Highway as well.

Mr. LeClair asked if the configuration of lot 3 was designed with the intent of capturing the brownfield area still in need of remediation.

Mr. Anagnost said that is the exact configuration of the activity use restriction. There is a small amount of land not subject to the restriction in the lot, but in order to square off the lot lines they included it in the subdivision.

Mr. LeClair asked if the southern extension of the restricted lot is minimized at this point.

Mr. Anagnost said that the extension is exactly the dimensions of the use restriction.

Mr. LeClair said the configuration is less than ideal, but if it is to move the other two lots forward, then it makes sense.

Mr. Dookran said to Mr. Rhodes that the plans don't match the diagram.

Mr. Rhodes said yes, this was an early concept to demonstrate the concept of the subdivision. It is not part of the subdivision set. He clarified the differences.

Mr. Dookran said that a public and emergency crossing easement will be required as a condition of approval. He asked what kind of guiding parameters would be used to establish this road link.

Mr. Rhodes said he doesn't know exactly what the dimension would be yet. One of the early layouts they had for some of the conceptual site plans showed the main drives. The building pads and parking were going to be behind them. He would suggest that the width of the drives onsite should be about 26-ft clear as a minimum, and if they could do a little better with layout, that would be fine. He thinks that anything smaller wouldn't define

itself as a main corridor. They were just trying to show some soft curves on the plan. To the north, one of the things they're trying to do is get the main drive closer to the river and adjacent railroad corridor.

Mr. Anagnost said most likely what they would do is propose a condition of approval that would require conductivity between the lots, and that the ultimate location of the roadway would be at the discretion of the Board when they return for site plan review on each lot.

Mr. Pedersen asked what the status of contamination was.

Mr. Anagnost said the contamination has all been cleaned up except for what remains in the soils onsite of the activity use restricted lot. That area has restrictions on how deep they can excavate, and they can't remove any soils from the site. Going forward, they have a full sign-off from the NHDES and a remedial action plan in place. The plan has been executed except for 30-years of monitoring.

**SPEAKING IN OPPOSITION OR CONCERN**

None

**SPEAKING IN FAVOR**

None

Mr. LeClair closed the public hearing and moved into the public meeting.

Mr. LeClair said that the lot line extension of the restricted lot seems reasonable. It doesn't appear to make the other lots untenable.

Mr. Dookran said he wants to give as much flexibility of dimension and location of the cross access easement as possible. But he is concerned that establishing it for one site at a time will leave limited options for connections to other sites. He wishes they had language requiring them to work together. They have multiple examples in the past where they couldn't work out proper cross access easements between properties.

Mr. LeClair agreed, and said that issue is key on the three lots, especially with Daniel Webster as traffic challenged as it is.

Mr. Varley said they have more opportunity here because they aren't dealing with existing development and redevelopment. In those situations they had issues with binding applicants after the fact. He thinks the Board would have the opportunity here to say effectively that the condition is to each site plan.

Mr. Dookran said that the problem is they will probably just get one site at a time, with the next a year later.

Mr. Varley referred to Stipulation #5 recommended by Staff, requiring a cross easement access across the full length of the property before the lots transfer ownership.

Mr. LeClair said that might be as much as they can do at this point. But he thinks it's certainly in the developer's best interest to improve traffic flow as much as possible.

Mr. Dookran says he'll keep his fingers crossed that it will work out.

Mr. Varley agreed with Mr. LeClair. He said it would be reviewed by Staff and Corporation Counsel, and then recorded so that it would run with the property deeds.

**MOTION** by Mr. Varley to approve New Business - Subdivision #2. It conforms to § 190-138(G) with the following stipulations or waivers:

1. The request for a waiver of § 190-281(D)(10), which requires physical features on site and within 1,000 feet, is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation.
2. Prior to the chair signing the plan, all minor drafting corrections will be made.
3. Prior to the chair signing the plan, all conditions from the Planning Board approval letter will be added to the cover page of the final mylar and paper copies submitted to the City.
4. Prior to the chair signing the plan, the plan electronic file of the subdivision plan shall be submitted to the City of Nashua.
5. The applicant shall provide a public and emergency cross access easement the full length of the property prior to any of the lots being sold or conveyed to different owners, which shall be reviewed and approved by Corporation Counsel and planning staff, and then recorded.

**SECONDED** by Mr. Pedersen

**MOTION CARRIED 6-0**

**NEW BUSINESS - SITE PLANS**

3. 711 West Hollis Street (Owner) - Application and acceptance of proposed site plan for the construction of four single family homes along with one existing home, totaling 5 homes. Property is located at 711 West Hollis Street. Sheet F - Lot 54. Zoned "R9" Suburban Residence. Ward 5.

**MOTION** by Ms. Harper that the application is complete and the planning board is ready to take jurisdiction.

**SECONDED** by Mr. Pedersen

**MOTION CARRIED 6-0**

Richard Maynard, Project Engineer, Maynard & Paquette  
Engineering Associates Inc, 31 Quincy St, Nashua NH

Mr. Maynard introduced himself as representative of the owner, 711 West Hollis St Realty Trust LLC.

Mr. Maynard gave an overview of the lot. Currently, there is a single family house onsite. On December 13<sup>th</sup>, 2016, the Zoning Board of Adjustment granted a variance to allow five principle structures on the lot, with a 22-ft private common driveway, and a stipulation that the side-yard setbacks be 20-ft instead of the 10-ft setback required by the zoning regulations. The site is served by city sewer, water, and gas. Drainage will be handled by several leaching catch basins. Existing topography generally drains down the middle towards the east and west. With the proposed changes, most stormwater will drain towards West Hollis St. Trash will be handled by the curbside with standard city pickup.

The applicant is requesting three waivers. The first waiver is from NRO § 190-221(C), which requires underground utilities for new site plans. The second waiver is from NRO § 190-198, which establishes maximum parking standards. Under the site plan regulations, the maximum allowable spaces per unit would be 1.9 spaces per unit, for a total of 9.5 spaces. They would like to provide two spaces per unit, plus five visitor spaces. One of the visitor spaces will be designated as handicap parking. The third waiver is from NRO § 190-211(B), which sets minimum design

standards for private streets. The 22-ft width common driveway was approved by the Zoning Board, and acceptable to both the Fire Department and Engineering Department.

Mr. Maynard recommended a few minor wording changes to Stipulation #13. He asked why a third party engineer was required for an affidavit, cited Senate Bill 152, and suggested that the Board designate the applicant's firm as design engineer to avoid the need for a third party and still make sure the site is built according to city regulations. He said this has been done in the past. He also suggested minor phrasing changes to Stipulations #10 & #11.

Mr. Maynard added that he spoke to two abutters, unnamed, and that they left earlier in the meeting. He said that they are both comfortable with the project.

Mr. Dookran led a discussion in regards to Mr. Maynard's requested changes to the stipulations. The bill previously cited by Mr. Maynard is not a state law yet.

Mr. LeClair asked about the parking, since there is a ban on the street.

Mr. Maynard said that is correct. He said it is a good practice on projects such as this to have overflow. If this was a multifamily project, there would be designated parking lots. While they could squeeze in additional parking spaces near the houses, it would be better regulated if nonresidents went into the visitor parking.

Mr. Pedersen asked if each house would have its own trash bin out by the road on collection days.

Mr. Maynard said that each house would have its own trash bin, and that they would be placed on Theresa Way, on their driveway.

Mr. Dookran asked if these are condominiums.

Mr. Maynard said the property will be sold to a third party developer, and that hasn't been determined at this point. At a minimum there would be a Homeowners Association, but likely it would be a condo development.

Mr. Pedersen asked if the Fire Department approved the turnaround area.

Mr. Maynard said yes. The Fire Department made them expand the area to accommodate a 45-ft long fire truck.

Ms. Harper asked who would police the parking ban along the driveway, given that this is a private driveway.

Mr. Maynard said it would be the same people who enforce parking in supermarket parking lots. It can be enforced as a fire violation, just like fire lanes and handicap parking spots.

Ms. Harper asked if in addition to "No Parking" signs, would there be a designated fire lane marked on the driveway.

Mr. Maynard said no, his client didn't want them. Nobody renews the lines, and they wear out within a few years. The applicant wanted permanent signs.

Mr. Dookran asked about the grading plan, and the retaining wall showed on the plan. He said that the plan shows grading towards the wall, and wants to know if the stormwater runoff will be directed towards the neighboring property.

Mr. Maynard indicated the plan and showed where the runoff would go. He says it would be less than currently flows in that direction.

Mr. Dookran referred to the cross section of that area, and said he doesn't see drainage to capture runoff past the retaining wall.

Mr. Maynard said that the slope in that area is already reasonably steep.

Mr. Dookran said that his copy of the plans was not nearly as clear. He asked if the retaining wall was set back from the property line.

Mr. Maynard said the wall is probably 40-ft away from the property line.

Mr. Dookran asked if they are still grading down to that level.

Mr. Maynard said that the road would go down to that level, but the grades already exist. There is anywhere from 15-ft to 25-ft of difference in elevation from the site to the property in the rear. They are staying away from the steeper slopes along the property edges.

Mr. Dookran said it seems that they are making the slopes steeper.

Mr. Maynard said correct.

Mr. Dookran asked if was not steep enough to need protection.

Mr. Maynard said it would most likely be a 5:1 or 6:1 slope at its most extreme. The minimum suggested slope should be about 3:1.

Mr. Dookran said that West Hollis St was repaved in 2016, and there is a 5-year moratorium on street opening permits. As per city ordinance, in order to cut into the street he would need to obtain permission from the Board of Public Works.

Mr. Maynard said he was not aware.

Mr. Dookran said the Board needs to stipulate that approval from the Public Works Board then. He said there is no guarantee that the Board would approve it, and if it is denied the project may need to be constructed after the five year moratorium is up.

Mr. Maynard said he understands.

Mr. LeClair asked how close the sewer lines are.

Mr. Maynard said that the existing sewer is in the middle of the street, and the rest of the lines are all along the gutter line.

Mr. LeClair asked if there were any existing stubs.

Mr. Maynard said that the existing house stub was way too small and too old to be reutilized.

Mr. LeClair asked where snow would be placed.

Mr. Maynard indicated on the plan the three locations snow would be plowed to. There will be little plows along the driveway, and plenty of room to place snow.

Mr. LeClair asked about the lighting.

Mr. Maynard said that the only lighting is by the house front doors. There is no parking lot lighting proposed. The site is pretty open, with lots of light from West Hollis St.

Mr. LeClair said his plan was not very clear, and asked Mr. Maynard to show where the fire hydrant would be.

Mr. Maynard indicated it on the plan.

Mr. Dookran asked if it is a driveway or private street. Private streets have to be constructed to city standards unless waived, and driveways do not.

Mr. Varley said they have a stipulation that it will be constructed to city standards.

Mr. Dookran said no, they are seeking a waiver.

Mr. Maynard said it is a private driveway.

Mr. Houston said he believes that each of the units have their own driveway. The driveways then go onto a private street, and the units will be addressed off of that private street. It's not a drive.

Mr. Varley clarified that he originally thought the waiver in Stipulation #3 was for the width.

Mr. Dookran said it is for all standards.

Mr. Varley asked Mr. Maynard if he requested the waiver specifically in respect to the width.

Mr. Maynard said it's already been designated as a private driveway by the Zoning Board. As part of their approval, this is to be a 22-ft wide common driveway. That was acceptable at the time to the Fire Department, with the signage on the street. Engineering Department didn't express any concerns at the time of that approval. He said it is Staff's interpretation that this is a private street, and he would argue that this is a shared and common driveway on a site plan.

Mr. LeClair referred to Sheet 4 of the plan, and asked Mr. Maynard to explain what part of the common drive detail section is inconsistent with city standards for street construction.

Mr. Maynard said the difference is neither here nor there. The fact that you have the same vertical thicknesses and grades of a common driveway versus a city street is just good engineering practice. Whether it is a driveway or a full city street, you use the same standards. Typically an everyday cheap driveway

would only have 3-in of pavement and 6-in of base. This one has 4-in of pavement and 16-in of gravel base. This is built to a little higher standard so it will last 20-30 years.

Mr. Varley asked if he was proposing to build it to the same standards that would apply to a private street. What is it that the applicant is requesting a waiver from in item #3?

Mr. Maynard said that this would be considered a private driveway, 22-ft wide. He does not think he needs the waiver, but that Staff insisted he request the waiver. He thinks he already got approved.

Mr. Varley said that item #3 refers to minimum standards for private streets. So is he requesting a waiver from the width, or something else?

Mr. Maynard said the width. Staff insisted he request that waiver, but his position is that the applicant has been approved by the Zoning Board, accepted by Fire Dept., with no comment from Engineering Dept. for a 22-ft driveway. He did not think they needed this.

Mr. Varley said he understands, but practically, what is the difference? If you're saying that the only difference is the width that helps them understand his intent.

Mr. Maynard replied that it was for practicality. The only difference is the width of 22-ft, because the vertical dimensions are just good engineering practice.

Mr. LeClair asked if there would be curbs.

Mr. Maynard said no.

Mr. Dookran described the characteristics of a street. The street would be 28-ft wide, with curbing and sidewalks. Underground utilities would be spaced out in a certain fashion, and there would be lighting. All of those things aren't being met by this proposed plan.

Mr. Varley asked if that applied whether it was a public or private street.

Mr. Dookran said yes.

Mr. LeClair asked Mr. Maynard if he agreed that the differences are that the drive would be narrower, have no curbs, and not have lighting.

Mr. Maynard said he didn't know what lighting had to do with anything.

Mr. LeClair asked if the statement was accurate.

Mr. Maynard said it was correct, but the lighting part is not relevant.

Mr. Dookran said this is nothing like what they heard earlier today. There is a difference of opinion in what Staff say is required by our standard procedures and regulations, and the item. He suggested they table the case and seek a legal opinion.

Mr. Varley referred to back to the question of ownership. He knows that Mr. Maynard doesn't know how the new owner of the property would characterize the units, but it seems to him that the way this is being presented as a site plan, it would by definition have to be a condo.

Mr. Maynard said no.

Mr. Varley asked what other form of ownership it would be.

Mr. Maynard said that a Homeowners Association, condos, and as rentals are three different types of ownership this could take.

Mr. Varley said that typically with a homeowner's association the individual owners would still own the land on which their house sits. There would be common areas maintained by the homeowner's association, but that is different than single ownership.

Mr. Maynard said correct, it's not a single ownership.

Mr. Varley said then a homeowner's association is not a form of ownership.

Mr. Maynard said yes it is.

Mr. Varley said it's not a form of ownership for the individual owner. They own common areas.

Mr. Maynard said they own it in common, but the house is designated.

Mr. Varley said this is a single lot. The houses that sit on this lot don't own land.

Mr. Maynard said when you have a homeowner's association the house is designated to individuals. The land is owned totally in common and there are no limited common areas.

Mr. Varley said if it's a condo form of ownership, yes.

Mr. Maynard said when it is a condo, there are limited common areas and general common areas.

Mr. Varley asked Staff there could be four rental units onsite as the plan is presented without a condo form of ownership.

Mr. Houston said it is possible, if the property is under one ownership and someone rents them. You could have a condominium that is owned by essentially one owner with several units, and one owner rents them. That's typically how a lot of condo projects work in slow markets, renting the units out. Some of the larger condominiums in the city did that initially towards the tail end of the market, in the 80s. But with what Mr. Maynard is saying here this is what we would consider a private street, because for Fire Dept. and other addressing purposes each of these units come off of a private street, and each of them have their own driveways. You don't name driveways. If each of these units were addressed off of West Hollis St, then Mr. Maynard might have an argument, but they are not. That's not how the Fire Dept. wanted these to be labeled and addressed to meet their safety requirements.

Mr. Maynard said he disagrees, that's not what the Fire Dept. said.

Mr. Houston said he can disagree, but they handled a previous project up the street just like this and had no issues. He said Mr. Maynard seemed to have an issue with a lot of the different requirements. The Board has ordinances; they don't have regulations.

Mr. Varley asked if Staff would typically require submission of condo documents.

Mr. Houston said yes.

Ms. McGhee said one of the conditions of approval is that they have to submit Homeowner's Association documents, because Planning Staff looked at this as a private street. The Homeowner's Association would be responsible for taking care of it. That is item #9.

Mr. Varley said that could be different from condo docs.

Mr. Maynard said there is another form of ownership; 99 Year Land Lease. It's not practical nowadays, but it has been done.

Mr. Pedersen asked Mr. Maynard if he agreed that the drive would be called Theresa Way, but be a private road owned by the people who live there. Each house will have its own property, yet there will be common land that they are all mutually responsible for, like the road and the shared parking. But each landowner will own their house and a little plot of land, but there will be a homeowner's association owned roadway.

Mr. Varley said they won't own a plot of land. It's just one lot.

Mr. Maynard said it is a homeowner's association if it's one lot. The Fire Dept. said they can't use addresses on West Hollis St, and wants them to use addresses on the driveway. Under the 911 rules and regulations, they have to give the drive a name and assign addresses on the named way. They did ask to give it a name of 711 West Hollis St A-B-C-D or dash 1-2-3-4, and Fire Dept. said no. They had to give the driveway a name and the Fire Dept. gave them addresses on this driveway for 911 requirements. The Fire Dept. recognizes it as a driveway, not a road.

Mr. LeClair asked if there were no curbs.

Mr. Maynard said no curbs.

Mr. LeClair asked if there was a reason why he didn't want curbs other than expense.

Mr. Maynard said it detracts from the property. There are many subdivisions in the city without curbs. Some of the better neighborhoods don't have sidewalks or curbs.

Mr. LeClair asked what the benefit of no curbs is.

Mr. Maynard said it's an unnecessary expense, and don't provide anything in this particular situation.

Mr. LeClair asked if the benefit was simply cost. He said that a benefit of curbs is the ability to plow the road.

Mr. Maynard said the lack of curbs makes the project more attractive. It also reduces cost. He repeated his belief that curbs don't provide any benefit in this situation.

A brief discussion of the Zoning Board approval ensued.

Ms. McGhee reviewed Stipulations #10 & #13 with the Board. She referred to a recent similar project nearby, and addressed Staff's reasoning behind considering it a street.

#### **SPEAKING IN OPPOSITION OR CONCERN**

Email from Joanne Bausch, 58 Linton St

#### **SPEAKING IN FAVOR**

None

Mr. LeClair closed the public hearing and moved into the public meeting.

Mr. LeClair asked Mr. Dookran what his opinion was about a third party, in reference to Stipulation #11 & #13.

Mr. Dookran said he heard about the Senate bill being passed.

Mr. Varley said this is Senate Bill 152. This is not something that has been passed, pending House review.

Mr. LeClair asked if it allows designers to inspect their own streets.

Mr. Varley said it doesn't specifically say. He read the current language of the Bill, and said it's not clear from it whether or not the third-party could be the design engineer. He thinks it means that it wouldn't be the applicant.

Mr. Dookran said Staff is recommending a third-party engineer. Having a third party would probably guarantee something that the City and applicant is satisfied with.

Mr. Pedersen said the third party would provide an independent opinion on the scope, design, and cost of the project, as well as the viability of the design. He thinks there is a good reason to have an independent party review these things.

Mr. LeClair said it doesn't look as much like a peer review of the design after the fact.

Mr. Varley said it's basically confirming that the construction was done correctly in accordance with the design.

Mr. LeClair asked if that was the intent of the stipulation.

Mr. Houston said that is correct.

Ms. Harper said the bill references "during" construction, whereas this stipulation is intended for after construction.

Mr. Dookran said this goes hand in hand with the topic of private streets. When work is being done on public streets, the engineering office is able for the most part to provide inspectors. The department doesn't have the resources to do this on private streets. But because they are required to meet the same standards, it's important to have that third party. He knows that Mr. Maynard is suggesting that the design engineer is the best person to do that, but while it might be better cost wise he doesn't think it is necessarily best for the quality of construction.

A discussion of the stipulation wording ensued.

Mr. LeClair said that it seems the only thing being proposed here is a narrower street with no curbs. He asked Mr. Dookran if this generally conforms to a city street.

Mr. Dookran said that the cross section shows the design of driveway ramps and the street. It is essentially trying to achieve what a street should be. Dimensionally it is not the same as a public street. There must be an error on the plan, because it points to a sloped granite curb, 7-in revealed.

Mr. LeClair said it doesn't really show any curb indicated on the plan, but it does have that detail.

Mr. Dookran said if they are going to grant the request for a waiver because this is a private street, they probably need to decide what standards they are waiving.

Mr. Varley suggested width, lighting, curbing, and sidewalks.

Mr. Dookran asked if they want to waive lighting.

Mr. LeClair said that the lighting could be a value issue. If it's dark, it could lower the value to potential residents.

Mr. Dookran said he has inspected larger condominiums with no lighting, and they count on residents to leave on lights. That creates a dark, dangerous, unsafe street.

Mr. LeClair said they could stipulate at least one pole light near the visitor parking.

Mr. Varley said it is a double edged sword because then they potentially impact the abutters.

Mr. Dookran said once they introduce the exterior lighting, then the standards need to be complied with.

Mr. Varley referred to Stipulation #9, and recommended they add condo documents to be submitted to the city as applicable.

Mr. LeClair outlined the wording changes to #13. He asked the Board members how they feel about requesting a work bond from the outset, rather than just landscaping, retaining wall, and final course.

Ms. McGhee said they would want to have a bond in place before the building permit is issued.

Mr. Varley said that what he heard Mr. Maynard saying is that in his view the standard practice allows them to begin the initial elements of road and drainage construction before the bond.

Ms. McGhee said typically applicants get their bond in place, and then have a pre-construction meeting with Staff before their building permit is issued.

Mr. Dookran agreed.

Mr. Varley asked Mr. Dookran about Stipulation #1.

Mr. Dookran said that the applicant is asking for a waiver from installing underground utilities. Whereas it's pretty common practice to grant that on an existing street, for a 1-2 family subdivision, here they are talking about a new street. How would this be the spirit and intent of the regulation if they don't require underground utilities?

Mr. Varley asked if the applicant is connecting off of West Hollis St and then going underground for the rest of the site, would they still need a waiver?

Mr. LeClair said they have in the past they have allowed applicants to go overhead to a point. He said he doesn't see overhead or underground utilities on the plan. He would be inclined to allow setting one pole off of West Hollis St to a location onsite, and from that pole go underground. That may be cleaner than digging under the street.

Mr. Dookran referred to Stipulation #11, and asked Staff if it was intended prior to something.

Ms. McGhee said it would be prior to issuance of a certificate of occupancy. If they could not complete the final course of pavement before the certificate, they would have to remain bonded.

A brief discussion of the stipulation wording ensued.

Mr. Dookran referred to Stipulation #12, and asked if the Fire Dept. was ok with having "No Parking" signs until the last person gets in?

Ms. McGhee said the Fire Dept. didn't specify; they just wanted it completed before the project is completed.

Mr. LeClair recommended they change the wording to require the signs before the first certificate of occupancy.

Mr. Dookran recommended they add a stipulation in regards to the street opening moratorium. He said there is no guarantee that the Board of Public Works will approve digging in the street, and advised the applicant to seek approval before applying for a building permit.

**MOTION** by Mr. Varley to approve New Business - Site Plan #3. It conforms to § 190-146(D) with the following stipulations or waivers:

1. The request for a waiver of § 190-221(C), which requires underground utilities for new site plans, is not granted, finding that the waiver will be contrary to the spirit and intent of the regulation provided the applicant will be able to set one pole on West Hollis Street.

2. The request for a waiver of NRO § 190-198, which establishes maximum parking standards, is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation.
3. The request for a waiver of § 190-211(B), which sets minimum design standards for private streets is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation. The waiver will be limited to width, curbing, and, sidewalks.
4. Prior to the Chair signing the plan, minor drafting corrections will be made.
5. Prior to the Chair signing the plan, all conditions from the Planning Board approval letter will be added to the cover page of the final mylar and paper copies submitted to the City.
6. Prior to the Chair signing the plan, one of the parking spaces located in the visitor parking lot will be designated for handicapped parking.
7. Prior to the issuance of a building permit, all stormwater documents will be submitted to City staff for review and approval and recorded at the Registry of Deeds at the applicant's expense.
8. Prior to the issuance of a building permit, the electronic file of the plan will be submitted to the City of Nashua.
9. Prior to the issuance of a building permit, the applicant shall provide documents establishing a homeowners association which will be responsible for maintaining all property in common ownership and as applicable, condominium documents The homeowner's association documents and as applicable condominium documents and shall be submitted to the Planning Department and Corporation Counsel for review.
10. Prior to issuance of a building permit, the applicant shall provide a guarantee for improvements, including pavement, drainage infrastructure, site landscaping (not including individual unit landscaping), and lighting. The applicant's professional engineer shall provide an estimate of the costs of the improvements for review by the City Engineer who shall determine the guarantee amount. The guarantee shall be in a form acceptable to the City's Corporation Counsel. Reductions in the guarantee (bond, letter of credit or other form of guarantee) shall be processed, from time to time, in the customary manner.

11. Road and driveway construction shall be prior to the issuance of the first certificate of occupancy to base course, with the final course pavement remaining bonded until completion. Upon completion of construction the applicant shall provide the City Engineer with written certification signed by a licensed professional engineer certifying the private street and driveways were installed in accordance with the design as required by a third party engineer selected by City Engineering at the applicant's expense. Inspection reports shall be filed with the City Engineer's Office and the Planning Department.
12. Prior to the issuance of the first Certificate of Occupancy, NO PARKING signs shall be posted on both sides of Theresa Way.
13. Prior to issuance of the final certificate of occupancy for the development, an as-built plan locating all roads, driveways, units, other buildings, utilities and site landscaping shall be completed by a professional land surveyor and submitted to the Planning Department. The as-built plan shall include a statement that all construction was generally completed in accordance with the approved site plan and applicable local regulations. Road construction shall be to base course, with final course pavement remaining bonded until completion.
14. Prior to the issuance of the last Certificate of Occupancy, all site improvements will be completed.
15. All stipulations of the Zoning Board of Adjustment dated December 13, 2016 are incorporated herein.
16. Applicant will need approval from the Board of Public Works due to the 5 year moratorium on the pavement on West Hollis Street.

**SECONDED** by Mr. Pedersen

**MOTION CARRIED 5-0**

4. John J. Flatley Company (Owner) - Application and acceptance of proposed one year extension for a site plan amendment to NR 2165 to construct a 39,300 square foot flexible space (office & warehouse buildings). Property is located at 100-326 Innovative Way (306). Sheet A - Lot 798. Zoned "PI" Park Industrial and "RC" Urban Residence. Ward 8.

**MOTION** by Mr. Pedersen that the application is complete and the planning board is ready to take jurisdiction.

**SECONDED** by Ms. Harper

**MOTION CARRIED 5-0**

Kevin Walker, Project Engineer, John J. Flatley Company, 45 Dan Rd Ste. 320, Canton MA 02021

Mr. Walker introduced himself to the Board as representative for the John J. Flatley Company.

Mr. Walker gave a brief outline of the proposal. They are seeking a one-year extension of a previously approved plan. Nothing has changed to the plan since it was approved. They are starting to get proposals to start moving the project along. They plan to get started within the next year. He is asking for some more time to get their ducks in a row.

Mr. LeClair asked Staff if this is the first one-year extension the applicant has requested.

Mr. McPhie said it was the second.

Mr. Pedersen asked if the applicant is reviewing access to the highway.

Mr. Walker said this was already looked at, as far as Spit Brook Rd. That was brought to the Board's attention when it was originally approved. They are currently working with the Dept. of Transportation to possibly put in a ramp north of the Tara Heights Apartments. He said they are currently working with the Community Development Division towards creating a plan.

Mr. Walker said he received a notice about proposed improvements to Spit Brook Rd, and asked to know more about it.

Mr. Dookran said that the city is proposing to repave a portion of Spit Brook Rd from Gateway Hills down to Daniel Webster Hwy. He asked the applicant if he will be doing work in that area.

Mr. Walker said more likely than not at some point in the next five years. He would like to discuss the topic with the Engineering Dept.

**SPEAKING IN OPPOSITION OR CONCERN**

None

**SPEAKING IN FAVOR**

None

Mr. LeClair closed the public hearing and moved into the public meeting.

**MOTION** by Mr. Pedersen to approve New Business - Site Plan #3. It conforms to § 190-146(D) with the following stipulations or waivers:

1. All prior conditions of approval are incorporated herein and made a part of this plan, unless otherwise determined by the Planning Board.

**SECONDED** by Mr. Varley

**MOTION CARRIED 5-0**

5. John J. Flatley Company (Owner) - Application and acceptance of proposed site plan to construct a 255,272 square foot Research & Development facility. Property is located at 100-300 Innovative Way. Sheet A - Lot 798. Zoned "PI" Park Industrial and "RC" Urban Residence. Ward 8. **(Postponed to the September 12, 2019 Meeting)**

#### **OTHER BUSINESS**

1. Review of tentative agenda to determine proposals of regional impact.

**MOTION** by Mr. Varley that there are no items of regional impact.

**SECONDED** by Mr. Pedersen

**MOTION CARRIED 5-0**

#### **DISCUSSION ITEMS**

Mr. Houston led a discussion in regards to the annual Planning Board training workshop. He suggested 7PM, Thursday, May 9<sup>th</sup>, 2019 as a date. The Board discussed potential topics for the workshop.

Mr. Dookran showed photos of a recently approved private condo development without curbs, and the issues already being seen. They are already receiving complaints from residents about the poor design and road degradation.

**MOTION** to adjourn by Mr. Varley at 9:21 PM.

**SECONDED** by Mr. Pedersen

**MOTION CARRIED 5-0**

APPROVED:

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Mr. LeClair, Chair, Nashua Planning Board

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Prepared by: Kate Poirier

Taped Meeting