

NASHUA CITY PLANNING BOARD
March 24, 2022

The regularly scheduled meeting of the Nashua City Planning Board was held on March 24, 2022 at 7:00PM in the 3rd floor auditorium in City Hall AND via Zoom virtual meeting.

Members Present: Scott LeClair, Chair
 Adam Varley, Vice Chair
 Mike Pedersen, Mayor's Rep.
 Maggie Harper, Secretary
 Dan Hudson, City Engineer
 Ald. John Cathey
 Bob Bollinger
 Larry Hirsch
 Mark Meehan

Also Present: Matt Sullivan, Community Development Director
 Linda McGhee, Deputy Planning Manager
 Scott McPhie, Planner I

ALL VOTES ARE TAKEN BY ROLL CALL

APPROVAL OF MINUTES

February 17, 2022

MOTION by Mr. Bollinger to approve the minutes, as written

SECONDED by Mr. Varley

MOTION CARRIED 8-0-1 (Meehan abstained)

COMMUNICATIONS

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

- A22-0003, 4, 6, 8 Dumaine Rd
 - o Updated plan, decks removed
- A22-0020, 18 Granite St
 - o Updated staff report
 - o Updated Engineering comments from Joe Mendola, Street Construction Engineer

REPORT OF CHAIR, COMMITTEE, & LIAISON

Capital Improvements Committee: Mr. LeClair provided an overview on the new list, which will be on the next Planning agenda.

PROCEDURES OF THE MEETING

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 USE PERMITS

None

OLD BUSINESS - SUBDIVISION PLANS

A21-0177 Jigna & Sachin Patel (Owners). Proposed subdivision amendment to move an existing utility easement. Property is located at 69 Cherrywood Drive. Sheet C. Lot 2755. Zoned R-40-Rural Residence (FUOD overlay). Ward 9.
[TABLED TO THE MARCH 10, 2022 MEETING]

MOTION by Mr. Varley to table the case to the May 19, 2022 meeting

SECONDED by Mr. Meehan

Mr. McPhie said that if no progress is made by this date, the matter will go to Code Enforcement.

MOTION CARRIED 9-0

A22-0012 Daniel F. Wyatt (Owner) - Application and acceptance of proposed two lot subdivision. Property is located at 181-183 Flagstone Drive. Sheet E - Lot 930. Zoned "RC" Urban Residence. Ward 1.

MOTION by Mr. Bollinger that the application is complete and the Planning Board is ready to take jurisdiction

SECONDED by Mr. Hirsch

MOTION CARRIED 9-0

Steve Auger, Civil Engineer, Hayner Swanson Inc., 3 Congress St, Nashua NH

Mr. Auger introduced himself as representative for the owner. With him via Zoom is the owner, and surveyor Paul Liversidge.

Mr. Auger provided an overview of the proposed 2-lot subdivision. He described the site and surrounding properties. The new lot will be developed into a duplex, which will be serviced by Pennichuck water, municipal sewer, gas, and overhead electric. There is an existing 10-ft easement along the western side of the property, granted to New England Telephone. There are a couple of shed encroachments, as noted on the plan, which will either be relocated or razed.

Mr. Auger said the proposed duplex will front on High Pine Ave. The Fire Dept. has assigned the new lot 26-28 High Pine Ave. There will be a single 24-ft driveway on the High Pine frontage. Each unit will have a one-car garage, side by side.

Mr. Auger said before they submitted their application they received a zoning analysis from Kate Poirier in the Zoning Dept., which confirmed that the proposed subdivision would be in compliance with the dimensional standards of the Land Use Code, so that both lots would be able to support a duplex without variance relief from the Zoning Board. The property line will go through one of the existing decks, which will be reconstructed outside of the setbacks as per the recommended conditions of approval.

Mr. Auger said they are proposing three leaching catch basins for stormwater maintenance, as shown on the plan. They have received stormwater comments from Engineering, which they are still working on. He believes the revised plan will satisfy all comments.

Mr. Auger said they are requesting three waivers, as seen in the staff report. He described each in detail.

Mr. Auger said there have been a couple of letters submitted by abutters concerned by this proposal. One was from 27 ¼ High Pine Ave, who was concerned with lot size, sidewalks, driveway safety, and stormwater. They have confirmation from the Zoning Dept. that the proposed lots meet the minimum requirements for size and setbacks. The Land Use Code allows them to apply for a waiver from sidewalks. He described sight line distancing for the driveway and stormwater requirements.

Mr. Auger said there were two letters submitted by the abutter at 175-177 Flagstone Drive, Richard Kalicka, primarily regarding the location of the property line. Their surveyor has responded to each point of Mr. Kalicka's concerns and submitted them as a letter to the Board. If needed by the Board, he can expand further.

Mr. LeClair said the overhead electric service seems like a long run. Will it be high enough off of the road?

Mr. Auger said Eversource had a field worker go out there and evaluate it. This is a unique situation where consolidated communications owns the poles and everyone piggybacks off it. If a pole has to be dropped on the new lot, the owner would have to pay for it. Part of their waiver request was the financial hardship. Eversource told them they can make it happen with the current pole.

Mr. LeClair said it looks like they would have to hit the house at the third story.

Mr. Auger said the duplex is three stories because of the grades. The driveway is the lowest part of the site. It's quite conceivable that they would connect to the highest point of the structure.

Mr. Meehan said the abutter's property is the same way, right down the street.

Mr. Varley referred to Mr. Kalicka's letters and that the surveyor said all of the survey points on the plan are consistent with the attached court order that resulted in the current boundaries. Is that accurate?

Mr. Auger said yes. The distances and the angles all work exactly the same as one of the prior plans. The discrepancy is the plane that the survey was performed on. One of the other plans was performed on another type of surveying plane system, so what differs is the bearings.

Mr. Varley asked the height of the proposed duplex compared to the building onsite.

Mr. Auger said the proposed duplex is roughly 30-ft. The maximum building height is 100-ft.

Mr. Varley asked if it will be around the same height as the existing duplex.

Mr. Auger said it could be a little taller because the existing building does not have a garage. If they had room to set it up like the existing structure, with a driveway on either side, it would be comparable in height.

SPEAKING IN OPPOSITION OR CONCERN

Richard Kalicka, 175-177 Flagstone Dr, Nashua NH

Mr. Kalicka said he is the northern abutter. He said there was a court case that set the boundary and the surveyors bounds do not match that boundary. It's a legally recorded boundary and it is on the deed. The survey does not match those and it needs to. If it's on a different plane, the surveyor should have done the plan on the plane that the deed calls for. This is a subdivision that allows a lot by one square foot of land over minimum requirements.

Mr. Kalicka said there is a drain at the corner of High Pine and Flagstone that takes all drainage for Flagstone Drive. During the

winter, that whole area becomes very icy, and there is a need for a sidewalk. He is looking at a survey that doesn't match the legal description of the property, and said the surveyor should adjust to what is recorded by the Registry of Deeds.

SPEAKING IN FAVOR

None

APPLICANT REBUTTAL

Steve Auger, Civil Engineer

Mr. Auger said they are not doing anything that will increase stormwater drainage in the city street. They are more than handling the stormwater caused by developing the site. They are not making any issues worse. He does not know what sidewalks would do to impact drainage. They are well within their right to request a waiver from sidewalk construction.

Mr. LeClair asked to see the corner drain on the plan.

Mr. Auger indicated the catch basin on the plan.

Mr. LeClair asked if that is within the right of way.

Mr. Auger said correct, that is in the street. It is not on the property.

Mr. LeClair asked if they observed any issues with the site.

Mr. Auger said he didn't do the survey, so no. Based on the proposed location of the house and proposed catch basins, they are not doing anything to add to that catch basin or stormwater in that area.

Mr. LeClair asked if the stormwater infrastructure onsite might improve the situation.

Mr. Auger indicated the site topography. They are created a drainage basin close to the corner to collect stormwater. They are preventing anything that currently flows toward the street.

Mr. Varley said it looks like both lots would be well over the minimum required size. Can the applicant clarify?

Mr. Auger said the existing duplex will be over the requirement by a few hundred square feet of what you need for a duplex. The new lot will be exactly what they need for a duplex. That was stated in the letter received from the Zoning Dept.

Ald. Cathey asked if that means they are right on the money for size, no up or down.

Mr. Auger said correct.

Paul Liversidge, Surveyor, Hayner Swanson Inc.

Mr. Liversidge said he has over 40 years of experience surveying land and prides himself on the quality and correctness of his work. He believes the misunderstanding revolves around the bearing system used on the plan. It appears, although not cited on the record plan, that the record plan as well as the plan submitted to the court were based on the same bearing system. That bearing system was a magnetic observation, done back when the original subdivision was created. Historically, that is common in older surveys.

Mr. Liversidge said in today's day and age we use GPS and we put sites on a horizontal and vertical plane that can be reestablished by other surveyors. It ties everything together. In doing so, they generate bearings on that system. Any new subdivision or site plans are almost always on that system. It's called NAD83, and the projection is called New Hampshire State Plane. It is a grid bearing system, and very close to what you would consider true north.

Mr. Liversidge said that today, a magnetic bearing system varies by about 14.5 degrees to the west. The bearing system that the plan is prepared on has no bearing on the location of the lines on the ground. A surveyor calculates the angular relationship between adjacent lines and determines the boundaries. The angular relationship between the presented plan and the court ordered plan is exactly the same, as are the distances. The only difference is the north orientation. The coordinate system which this plan was prepared on is what the City of Nashua requires, and is the preferred method for surveys in the state.

Mr. Hirsch asked what the differential is between two planes.

Mr. Liversidge said it's an angular difference. Magnetic north is about 14.5 degrees west of true north nowadays. If you are standing

in Nashua and facing actual north, you would have to turn 14.5 degrees to find magnetic north. Magnetic north is somewhere up around Hudson Bay. It's what you see when you drop a compass needle.

Ald. Cathey asked what the difference in square footage would be.

Mr. Liversidge said these property lines and bearings define the exact same geometrical shape. They should be the same. The big area of contention is that the bearings read differently than the plan submitted to the court. The bearings do not define the lot lines. The mathematical relationship between the bearings defines the lot lines. The lot presented here is the same presented in the court decree.

Mr. LeClair asked if he took the presented plan and rotated it 14.5 degrees, it would be difference.

Mr. Liversidge said exactly.

Mr. LeClair asked if it is the same plan, just rotated.

Mr. Liversidge said correct. The system that they are on is the system utilized today for modern surveys. They don't go out in the field today and randomly drop a compass and take a bearing on a line except in extremely remote circumstances. Most everything done today is tied into a coordinate system on GPS.

Mr. Hirsch asked if there is any implication.

Mr. LeClair said the city needs the bearing system in front of them.

Mr. Hudson said every plan recorded should have the datum it's referencing as part of the notation on the plan. You can establish that same system in another datum if it's referenced. The datum they are using is the current, preferred datum.

Mr. Varley said this plan would be recorded and a matter of record in the chain of title.

Ald. Cathey asked if the contention is if the bearing systems are different, if the abutter's systems is correct, would they not have the land area they need to build? Or is it a matter of recording data for the property for record. Is it a procedural thing, or will it affect what is being built?

Mr. Varley said he understands from the abutter that the bearings being referenced in the deed are different than the plan. The surveyor said that the bearings doesn't change the dimensions of the lot. If someone were to look at the original deed and this plan they would see the different bearings, effectively modified by the things recorded after.

Mr. Pedersen asked if magnetic north drifts over time. Will it be somewhere else in 100 years?

Mr. Liversidge said yes. It moves constantly, anywhere between 14-16 degrees to the west. If they wanted to get back on and reestablish it, there is a website where you can enter a year and location and it will tell you what the magnetic declination was at that time.

Mr. Pedersen asked if true north does not drift.

Mr. Liversidge said correct.

Mr. Bollinger asked staff for the most current date of engineering comments.

Ms. McGhee said March 8th.

PUBLIC MEETING

Mr. LeClair closed the public hearing and moved into the public meeting. He summarized the discussion. He understands the confusion, but feels the current survey is being presented as it should be. He doesn't see the value of creating a survey on a different bearing, as it's the same geometry. The ground and the streets don't change where the property is. He thinks the stormwater will be improved, and he is comfortable with the overhead utility request.

Ald. Cathey asked if this is a common occurrence with the planning and redeveloping with varying systems.

Mr. LeClair said they have had old plans with different bearing systems before, that's not uncommon. It would be uncommon to have a new plan reference an old bearing. The current GPS type is ubiquitous for any plan he has reviewed.

Mr. Varley said he suspects there are plenty of cases where the deeds are older and used a different bearing system, but it has never come up as an issue in his memory.

Ald. Cathey asked if they would need more surveying or legal opinions to be comfortable with moving forward.

Mr. LeClair said they rely on staff and city engineering review because they are experts. They are using this survey, and he is comfortable with it.

Mr. Pedersen asked if they are taking more questions from the public.

Mr. LeClair said no.

Mr. Meehan said this neighborhood is very condensed. The applicant met the minimum lot size, but is that the only standard? They're cutting off a deck and wedging this in there just to get the square footage.

Mr. LeClair said he has seen that pretty significantly. It's not out of the norm. The Master Plan is looking for more housing, and taking advantage of a lot to increase housing capacity is in his opinion consistent with the Master Plan so long as the character is consistent with the neighborhood.

Mr. Varley said they have seen a lot of two lot subdivisions over the past few years, which is reflective of not a lot of land with a housing need. That is why they are seeing a lot of infill lots who are taking advantage of smaller lots that just meet the lot requirements. There are other duplexes in the neighborhood. If someone meets the requirements of the ordinance, it better be a very good reason to say that it isn't appropriate.

Ald. Cathey said he spoke to another abutter who asked him to remind the Board of his concerns, specifically for the sidewalk contribution. He asked how the contribution works.

Mr. LeClair said when there aren't a lot of sidewalks in a certain area, according to certain criteria in the ordinance, there is an opportunity for the applicant to contribute to a sidewalk fund in lieu of constructing a piece of sidewalk where there are none. That fund will construct sidewalks in the area instead of just building little pieces all over the place.

Mr. Varley said they have spent a lot of time over the years discussing sidewalks. In addition to specific criteria in the ordinance, the Board has an extra layer of guidance for how to calculate how much should be contributed. The Board has tried hard to apply these standards consistently.

MOTION by Mr. Bollinger to approve New Business - Subdivision Plan A22-0012. It conforms to §190-138(G) with the following stipulations or waivers:

1. The request for a waiver of § 190-282(B)(9), 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. The request for a waiver of § 190-221(C) , which requires underground utilities for new subdivision plans, is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation.
3. The request for a waiver § 190-212(A)(1), which requires that a sidewalk be located on at least one side of the street, is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation. The applicant has agreed to make a contribution in the amount of \$9,980.50 in lieu of sidewalk construction pursuant to §190-212(D)(2), payment to be made prior to recording the plan.
4. Prior to the Chair signing the plan, all minor drafting corrections will be made.
5. Prior to the Chair signing the plan, all comments in a letter from Joe Mendola, Street Construction Engineer, dated March 8, 2022 shall be addressed to the satisfaction of the Division of Public Works.
6. Prior to recording of 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.
7. Prior to recording the plan, the existing deck will be relocated.
8. Prior to any work, a pre-construction meeting shall be held and a financial guarantee shall be approved.

SECONDED by Ms. Harper

MOTION CARRIED 9-0

A22-0002 GIMAK Properties, LLC (Owner) - Application and acceptance of proposed 29-unit multi-family townhouses subdivision with associated condominium documents. Property is located at 4, 6, & 8 Dumaine Avenue. Sheet H - Lots 76, 80 & 109. Zoned "GB" General Business & "PI" Park Industrial/"MU" Mixed Use. Ward 2.

MOTION by Mr. Bollinger that the application is complete and the Planning Board is ready to take jurisdiction

SECONDED by Ms. Harper

MOTION CARRIED 9-0

Mr. LeClair said this case would be heard alongside A22-0003

NEW BUSINESS - SITE PLANS

A22-0003 GIMAK Properties, LLC (Owner) - Application and acceptance of proposed 29-unit multi-family townhouses condominium site plan along with associated site improvements. Property is located at 4, 6, & 8 Dumaine Avenue. Sheet H - Lots 76, 80 & 109. Zoned "GB" General Business & "PI" Park Industrial/"MU" Mixed Use. Ward 2.

MOTION by Mr. Bollinger that the application is complete and the Planning Board is ready to take jurisdiction

SECONDED by Mr. Hirsch

MOTION CARRIED 9-0

Chris Guida, Soil & Wetland Scientist, Fieldstone Land Consultants

Mr. Guida introduced himself as representative for the applicant and owner.

Mr. Guida provided an overview of the subdivision. They plan to merge the three lots, raze the residential homes, and develop a 29-unit condominium development. There is one waiver associated with the subdivision plan, as shown in the staff report.

Mr. Guida presented the proposed site plan to the Board. These three properties straddle the General Business and the Park Industrial/Mixed Use zone. This is a 29-unit proposed condominium, almost identical to the one across the street at 7 Dumaine Ave.

The soils are sandy onsite, and they are proposing a chambered infiltration stormwater system in the middle of the parking lot. They have proposed to remove the decks from the plans, as they would have been above 4-ft in height and would exceed setback requirements.

Mr. Guida said they have provided a site plan suitability report, and would be willing to go through staff comments if necessary. There is one waiver associated with the site plan, as seen in the staff report.

Mr. LeClair asked if some of the units can have a deck on the lower level, but some would be too far off the ground.

Mr. Guida said correct. He showed a concept design for the townhouses. The two-bedroom units would be higher and narrower, which means that the decks would be on the second story. That is not permitted due to setbacks, so they removed them from the plan.

Mr. McPhie said a deck over 4-ft in height uses building setbacks. It would require zoning approval.

Mr. LeClair said it looks like that would be over the garage, which wouldn't be desirable.

Mr. Bollinger referred to the recommended stipulations, which include a contribution to the Amherst St Corridor Fund.

Mr. Guida said they have no issues with that.

A brief discussion of the contribution amount ensued. Mr. Hudson clarified that it which would be \$4,600.00.

Mr. Bollinger asked staff for the most current date of engineering comments.

Mr. McPhie said March 18th, 2022.

Ms. Harper asked for the square footage of land in the General Business zone versus the Park Industrial/Mixed Use zone.

Mr. Guida indicated the square footage calculation of the lots.

Mr. LeClair said they are pretty close in size.

Mr. McPhie provided a brief clarification on the zoning.

SPEAKING IN OPPOSITION OR CONCERN

None

SPEAKING IN FAVOR

None

PUBLIC MEETING

Mr. LeClair closed the public hearing and moved into the public meeting. He said this is pretty straightforward. They have seen this developer in the area several times. The results of these developments have been a positive impact and in alignment with the Master Plan, especially for the Amherst St corridor.

MOTION by Mr. Varley to approve New Business - Subdivision Plan A22-0002. It conforms to §190-138(G) with the following stipulations or waivers:

1. The request for a waiver of § 190-282(B)(9), which requires physical features on site and within 1,000 feet be shown, is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation.
2. Prior to the issuance of a building permit, the applicant shall update documents establishing a homeowners association which will be responsible for maintaining all property in common ownership. The homeowner's association documents shall be submitted to the Planning Department and Corporation Counsel for review and approval.
3. Prior to the issuance of a building permit, all easements shall be updated and submitted to the Planning Department and Corporation Counsel for review and approval and recorded with the plan at the applicant's expense.

SECONDED by Mr. Bollinger

MOTION CARRIED 9-0

Mr. Hudson said the most recent date of engineering comments is February 25th, not March 8th.

MOTION by Mr. Varley to approve New Business - Site Plan A22-0003. It conforms to §190-146(D) with the following stipulations or waivers:

1. The request for a waiver of § 190- 279 (EE), which requires an existing conditions plan, 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, minor drafting corrections will be made.
3. Prior to the Chair signing the plan, all comments in an e-mail from Joe Mendola, Street Construction Engineer, and dated February 25, 2022 shall be addressed to the satisfaction of the Engineering Department.
4. Prior to the Chair signing the plan, a contribution of \$4,600 shall be paid to the Amherst Street Corridor account per Wayne Husband e-mail dated February 24, 2022.
5. Prior to any work, a pre-construction meeting shall be held and a financial guarantee shall be approved.
6. Prior to the issuance of a building permit, stormwater documents will be submitted to City staff for review and recorded at the applicant's expense.
7. Prior to the issuance of a building permit, the applicant shall provide documents establishing a homeowners or condominium association, which will be responsible for maintaining all property in common ownership. The documents shall be submitted to the Planning Department and Corporation Counsel for review.
8. Prior to the issuance of a building permit, all lots will be merged.
9. Road and driveway construction shall be to base course, with 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 driveways were designed and installed 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.
10. Prior to the issuance of the first Certificate of Occupancy, "No Parking" signs shall be posted as per the Fire Marshals.
11. Prior to issuance of the final certificate of occupancy for the development, an as-built plan locating all driveways, units, other buildings, utilities and site landscaping shall be completed by a professional engineer 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.

SECONDED by Mr. Bollinger

MOTION CARRIED 9-0

NEW BUSINESS - SUBDIVISION PLANS (continued)

A22-0020 Max Properties, LLC (Owner) - Application and acceptance of proposed two lot subdivision. Property is located at 18 Granite Street. Sheet 44 - Lot 134. Zoned "RC" Urban Residence. Ward 3.

MOTION by Mr. Bollinger that the application is complete and the Planning Board is ready to take jurisdiction

SECONDED by Mr. Pedersen

MOTION CARRIED 9-0

Tom Zajac, Civil Engineer, Hayner Swanson Inc, 3 Congress St, Nashua NH

Mr. Zajac introduced himself to the Board as the representative for the owner. With him is Michael Lefavor and Atty. Jeff Zall.

Mr. Zajac provided an overview of the proposal. He described the lot and surrounded uses, which include single family and multifamily properties. This is an old lot, with a reference plan dating back to 1832. The lot currently contains a 3-family to the north, as well as three detached properties. There are two existing curb cuts and large portions of the existing lot are paved, with about 24% open space total. This section of Granite Street is one-way, with on-street parking. He described topography, soils and existing utilities.

Mr. Zajac said they are proposing a two lot subdivision. The northern lot will contain the existing 3-family dwelling, and the new southern lot will contain a single family home. Both lots conform with the minimum dimensional requirements. They will be demolishing the detached garages and restructuring the pavement to provide a 12-ft driveway and five new parking spaces to the rear of the three-unit. An easement will be provided to the new lot for the driveway. The current design for the new single family home proposes a one-car garage and new driveway off of Granite Street, with sidewalk improvements and new utility connections.

Mr. Zajac said in the interest of full disclosure, the applicant does have an agreement with Habitat for Humanity to purchase the new lot and construct the new single family dwelling. The purpose of the grading and utility plan is to show the location of the single family home and demonstrate that the lot can support such a use. The developer reserves the right to make changes to the exact structural size, type, location, elevation, garage configuration, and utility location as needed. Typically these details are finalized at the time of foundation permit.

Mr. Zajac provided an overview of the stormwater management. Due to the high amount of impervious surfaces onsite, they have an opportunity to improve the drainage by reducing impervious area and infrastructure for stormwater recharge, where none currently exists. Given that this is a redevelopment, they are required to reduce the impervious area by 20% and meet minimum open space. They believe the proposal conforms to this criteria.

Mr. Zajac addressed parking. The staff report notes that the applicant applied to the Zoning Board for a density variance to construct a duplex instead of a single family home, and was denied September 28, 2021. There was some testimony by neighbors that felt a single family home was more appropriate, and some testimony related to neighborhood parking. It's a dense urban area with tight streets. Many of the adjacent properties don't contain sufficient onsite parking, and the previous owner rented parking to those properties. That will not continue going forward, and their intent is that parking is to be used for tenants of the site.

Mr. Zajac said there are two waivers associated with this proposal, as detailed in the staff report. They believe that the application is complete and conforms with the subdivision requirements, and that the site is being developed in a responsible manner. The conditions in the staff report are acceptable, and have no issue addressing engineering comments.

Mr. LeClair asked why they are proposing easements for the driveway, instead of aligning the property line with it.

Mr. Zajac said this is a tight urban site, so they had setbacks to consider for the proposed building and the existing one. The minimum lot area requirements for the proposed lot and density requirements for the three-family makes it tight. There wasn't a ton of wiggle room to set that line.

Ms. Harper asked if there will be no parking for the new home.

Mr. Zajac said there will be. They will have one driveway space off of Granite Street and one garage space. The three-family will have five surface parking spaces. They were trying to group the parking spaces together to create more contiguous green space.

Ald. Cathey asked if the existing three-family will remain as is.

Mr. Zajac said correct.

Ald. Cathey asked how the tenants have reacted to the proposal.

Mr. Zajac said he doesn't know. If doesn't believe they attended the Zoning Board hearing.

SPEAKING IN FAVOR

Deb Chisholm, 17 Jamaica Ln, Nashua NH

Ms. Chisholm said she is in support of the proposal. She is the president of the board of directors for Habitat for Humanity in Nashua. They currently have an agreement with the current owner that they will build an owner-occupied single family residence. This is badly needed within the city. They plan to find a partner family who will put in their sweat-equity, as is common with their build sites, and they will put in a single family home early 2024.

SPEAKING IN OPPOSITION OR CONCERN

Frank Iovieno, 37 Orange St

Mr. Ioveino said he loves Habitat for Humanity and thinks they do great work. However, Granite Street is so dense. To now have a three-family with only five parking spots will be very difficult. People can't even get in and out of their places because there is no parking. When you put that much density in that small of an area, they are not helping the neighborhood. He thinks they should find a place that is not so dense.

Ald. Patricia Klee, Ward 3

Ald. Klee said while they need as much housing as possible, the parking is an issue throughout the entire French Hill area. Granite Street residents don't qualify for overnight parking, yet there is overnight parking on Granite Street for other people. That makes it difficult for people to parking in general. Very rarely do they see a one or two bedroom apartment with only 1.5 cars. You have at least two parking spaces. She appreciates the green space, but she

would rather see parking. She has nothing against Habitat for Humanity, but parking is the biggest complaint she gets. One of the things she thinks the parking study will tell us is that street parking needs to be removed, because the Fire Department has a very hard time getting down the street. She doesn't believe that five parking spaces will be enough. The fact that the nearby residents are losing this parking is luck of the draw; this is private property and there is no easement. All of those people now have displaced parking.

Mr. LeClair asked if her concern is more that the applicant is taking away leased parking from the neighbors.

Ald. Klee said no. This is private property, she can't ask the owners to keep doing what they are doing. They have the right to build. The neighbors have to find new parking. If for any reason the onsite residents need more parking than what is provided for by ordinance, they are adding to the parking nightmare. She appreciates that they will improve the sidewalk, but it is a hard hit area. There is no real green space in the area. When these homes were built there was one car per family. Nowadays, everyone has a car, and there needs to be a place to put them.

APPLICANT REBUTTAL

Tom Zajac, Civil Engineer

Mr. Zajac said they are sensitive to the fact that this is an infill development. You try to put forth a design that balances regulations and neighborhood concerns. Given the size and location and steepness of Granite Street, he doesn't feel they can provide more parking for the single family home.

Mr. Zajac said they are providing 5 spaces for the 3-family, which is directly in-between the minimum and maximum parking requirements in the regulations. They didn't want to ask for waivers. If they were to add parking they will be exceeding the minimum open space requirements, but they will still be vastly improving on the current situation. If it's the will of the Board, they can construct two parking spaces. That will require a waiver request for parking and stormwater.

Mr. Zajac said they are being more efficient with the very wide curb cut, and there could potentially be a few more on-street parking spaces striped. There is a lot more room along that curb-line with the proposed driveway.

Mr. Pedersen asked if they are taking a three-family home with twelve spaces and turning it into a three-family with five spaces and a single family home with two.

Mr. Zajac said correct. Not all of those garage spaces are currently able to be parked in, as there is a lot of storage. The five spaces is exactly between the minimum and maximum required.

Ald. Cathey asked how much parking is being utilized by the current tenants.

Mr. Zajac said he asked the owner and was told that the five spaces would be sufficient for the tenants.

PUBLIC MEETING

Mr. LeClair closed the public hearing and moved into the public meeting. He summarized the discussion. He said they have a balancing act between the city Master Plan desires, open space and parking. They have five spaces for three ordinance, and the city ordinance doesn't allow six spaces without a waiver. That is the way the Land Use Code is written. The two spaces for the single family home is reasonable and fairly common.

Mr. Hirsch said realistically, what will stop the residents from parking on the green space? At the end of the day, are they kidding themselves? When he visited the site people were parking everywhere. His guess is that the green space would not be respected.

Mr. LeClair said the owner has the opportunity to increase parking if they want to, which would affect the rental. Practically speaking, this is a subdivision plan. He asked if additional parking spaces would cause a change to the plan.

Mr. McPhie said technically they have five approved spaces. If they added spaces, the applicant would need a waiver from the Board. It's better to add them now than later.

Mr. LeClair asked if the Board can stipulate a waiver that allows the construction of spaces, if they want to later. Is a preemptive waiver appropriate? They aren't approving a site plan.

Ms. McGhee said they would still have to abide by the open space requirements. But in reality if they added more parking it's not coming back to the Board for any changes.

Mr. LeClair asked if preemptive approval is even functionally allowed by the Board.

Ms. McGhee said if they wanted to add a waiver to exceed extra parking, possibly. If they want to go below their open space requirements, they would need a variance from the Zoning Board.

Mr. Bollinger said he has a certain level of discomfort from redesigning the site layout on the fly. He would feel comfortable taking action on the plan that is proposed. If at some point in the future the applicant wants to reassess, that's a whole different story.

Mr. Meehan agreed. He runs by this property regularly, and the idea that there are 12 parking spaces isn't really accurate, because they are used as storage spaces. That curb cut creates street parking, so the net loss might be not much at all.

Mr. Hirsch said the practical matter is people will park there. It's hard to control a multifamily property like that and they may be better off getting some control over how it's all done on site rather than willy nilly. He suggested they table the application to allow the applicant to redesign the plan to include the two parking spaces.

Mr. Pedersen said he heard the applicant say the garages didn't house 12 parking spaces.

Ald. Cathey said parking is one of the higher end issues he has to deal with as an alderman. Green space is competing with parking. He doesn't feel it would be helpful to require the applicant to come back for a waiver.

Mr. LeClair said he is finding it difficult to understand how they could disapprove a plan because it meets their requirements. The city land use codes that are being applied here are not in the best interest of the city. That's an aldermanic issue. If the 1.5 spaces is a problem, it's a land use code issue that needs amendment, because 1.9 spaces per unit is the max. They would be declining a plan for meeting the requirements. The Planning Board is not a policy body, it's an implementation body. There is a policy process for this, but circumventing that process to get what they want is problematic.

Mr. McPhie said he is correct. It may be something to look into with the Land use Code rewrite.

Mr. LeClair said he is concerned with being preemptive.

Ald. Cathey asked if there is any process by which the applicant can increase parking if it becomes an issue.

Mr. LeClair said when you rent you are told what the parking capacity of the site is. There isn't any way this board can regulate how many cars someone buys.

Ald. Cathey said he was talking about the owner. Is there any way to address it later on?

Mr. Varley said he doesn't think there is anything in the nature of a triggering requirement. There may be some elements of Code Enforcement depending on what happens onsite.

Mr. Hudson agrees with Mr. Bollinger that they should review the plan in front of them, and not try to redesign it. If it meets the regulations, he doesn't see how they can vote against it.

Mr. LeClair asked if he would concur that the redesign of the curb cut will increase on-street parking.

Mr. Hudson said yes, he can foresee a couple of spaces.

Mr. LeClair asked if that would be feasible.

Mr. Hudson yes, it appears two extra cars would be accommodated.

Mr. Varley said there are several issues. One is whether there is enough parking onsite for the three-family, which is a policy issue. Asking the applicant for any more parking would exceed the ordinance. Also, there is a parking issue in this area generally. Even if they were to add spots, that does facilitate the parking situation more broadly, unless they are offering spaces to neighbors. It doesn't necessarily improve the broader parking shortage problem. They need to look at the plan in front of them. It seems to do the best it can under the circumstances, and meets the ordinance in doing so.

Mr. LeClair said the Master Plan has several key components, one of which is housing and another is green space. Parking is in there, but increasing cars is not consistent with the Master Plan. There is a large part of the city saying that they want less cars in the city.

Mr. Meehan said another part of that Master Plan was affordable housing. Habitat for Humanity is creating housing for a family that is affordable, which is a big win.

Mr. LeClair said it's not uncommon for a plan to have both pros and cons. It is the Board's job to weigh those and decide whether pros outweigh cons.

Mr. Pedersen said it would be helpful to know how many cars park there overnight already. Maybe there is only five.

Ald. Cathey said the applicant was advised by his client that the parking was sufficient. That says to him that he thinks there are five cars parked there currently.

MOTION by Mr. Bollinger to approve New Business - Site Plan A22-0020. It conforms to §190-146(D) with the following stipulations or waivers:

1. The request for a waiver of § 190-282(B)(9), which requires physical features on site and within 1,000 feet be shown, is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation.
2. The request for a waiver of § 190-221(A), which requires utilities on site to be underground, is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation.
3. Prior to the Chair signing the plan, all minor drafting corrections will be made.
4. Prior to recording of 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.
5. Prior to the issuance of the first building permit, all easements will be submitted to City for review and approval and recorded at the Registry of Deeds at the applicant's expense.
6. Prior to the issuance of a building permit, all comments in the e-mails from Joe Mendola, Street Construction Engineer dated March 18, 2022 shall be addressed to the satisfaction of the Public Works Department.
7. Prior to the issuance of a building permit, 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 certificate of occupancy, all on-site and off-site improvements will be completed or a financial guarantee will be posted.
9. 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 stamped and certified by a professional engineer and submitted to the Planning Department. The as-built plan shall include a statement that all construction was completed in accordance with the approved site plan and applicable local regulations.
10. No patios and/or decks shall be constructed in drainage areas.
11. Prior to any work, a pre-construction meeting shall be held and a financial guarantee shall be approved.

SECONDED by Mr. Meehan

MOTION CARRIED 9-0

A22-0015 New Meadow Holdings, LLC (Owner) - Application and acceptance of proposed site plan amendment to add 1,080 sf to the structure previously approved at the April 8, 2021 planning board meeting. Property is located at 4 & 6 Mt. Laurels Drive. Sheet B - Lot 2422 & 2423. Zoned "R40" Rural Residence & "PRD" Planned Residential Development. Ward 9.

MOTION by Mr. Meehan that the application is complete and the Planning Board is ready to take jurisdiction

SECONDED by Mr. Bollinger

MOTION CARRIED 9-0

Paul Chisholm, Civil Engineer, Keach Nordstrom Associates

Mr. Chisholm introduced himself as representative for the owner.

Mr. Chisholm said the plan before the Board is an amendment to the previously approved cart barn at the Country Club. They are expanding the cart barn by an additional 24-ft, with associated site tweaks to driveways, grading, and stormwater management. He showed the Board the proposed architectural changes to the building. They have reviewed the staff report, and have no issues with the one proposed condition of approval.

SPEAKING IN FAVOR

None

SPEAKING IN OPPOSITION OR CONCERN

None

PUBLIC MEETING

Mr. LeClair closed the public hearing and moved into the public meeting. He summarized the discussion, and said he had no issues.

Mr. Bollinger asked if this could have been reviewed administratively.

Ms. McGhee said the proposed changes rose above the threshold for administrative review.

Mr. LeClair asked if it was the area change.

Mr. McPhie said it was a 20% change, 10% is the threshold.

MOTION by Mr. Bollinger to approve New Business - Site Plan A22-0020. It conforms to §190-146(D) with the following stipulation:

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. Pedersen

MOTION CARRIED 9-0

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. Bollinger

MOTION CARRIED 8-0-1 (Cathey abstained)

2. Referral from the Board of Aldermen on proposed 0-22-010 amending the Land Use Code by adding Provisions regarding Synthetic Nicotine and Electronic Smoking Device Sales and Lounges.

Ald. Patricia Klee, Ward 3

Ald. Klee said she was approached by a number of constituents regarding an approved smoke shop that was put in place next to a child center. All parties tried to do everything they could to mitigate that smoke going into the child areas. Because of the way that the buildings are situated, that was not possible. It brought up the question of changing the Land Use Code to stop this from happening in the future.

Ald. Klee said this ordinance prevents a smoke shop from being allowed within 1,000-ft of a child care facility. This can be waived, provided that the applicant demonstrate there are no negative impacts on the direct abutters, neighborhood, and city. This ordinance explicitly states that the Planning Board may not waive the 1,000-ft requirement if the facility directly abuts a school or youth serving organization. The Planning Board only requires applicants to notify direct abutters. There may be schools or child daycare centers already in the area that don't abut and don't get notified. This ordinance allows the Board to waive the requirements for properties nearby but not abutting.

Mr. LeClair asked staff if this ordinance is attempting to mitigate the situation where there is a smoke shop right next to a school or youth organization, but if there is a gap between, the Board has the opportunity to waive the requirement.

Matt Sullivan, Community Development Director

Mr. Sullivan said there is an additional provision in the proposed zoning in that it's a 1,000-ft proximity measurement between like-classified uses. The objective is to limit the concentration of this use in one area. This does not exist today, but the objective is to limit them being in close proximity to each other. The primary objective is to address abutting uses of child oriented uses and nicotine sales.

Mr. LeClair asked if the description of synthetic nicotine and electronic smoking devices addresses standard tobacco.

Mr. Sullivan said he believes it does.

Ald. Cathey said it is already addressed in the ordinance in the matrix under C3.

Mr. Sullivan said it does directly address that. It's an additive provision recognizing that there are more products today than when the ordinance was originally drafted.

Mr. Hudson asked for clarification on the proximity language in the proposal.

Mr. Sullivan said there is a 1,000-ft proximity measurement between like-uses. There is also a 1,000-ft measurement away from schools or youth-serving organizations.

Mr. Hudson asked about facilities that directly abut schools.

Mr. Sullivan said the Planning Board has the ability to waive the 1,000-ft proximity measurement both for like-uses and youth organizations. However, the Board cannot grant that waiver when the facility directly abuts a youth serving organization.

Mr. Varley asked if they can provide a waiver to allow this within 500-ft of a school.

Mr. Sullivan said correct.

Mr. Hudson asked what classifies as abutting.

Mr. Sullivan said that would be physically abutting or across the street.

Mr. LeClair said there is also a density number in here that you can't have two of them next to each other regardless of what else is nearby. It's like the gas station ordinance, where you can't have two within 750-ft of each other.

Mr. Sullivan said it is exactly comparable.

Ald. Cathey asked if the 1,000-ft requirement would be in place no matter what.

Mr. Sullivan said no. The 1,000-ft distance from schools can be waived if they aren't abutters and provided that they meet the waiver criteria.

Ald. Cathey asked if it would be prudent to make the school proximity unable to be waived. Was the intent to get these types of facilities away from schools, or to have them not clustered in the same area?

Mr. Sullivan said he can't speak for the ordinance drafter, but that was the initial contemplation of the ordinance. During further discussions with stakeholders they identified the use proximity as a secondary objective to the school objective.

Ald. Cathey asked why they wouldn't keep that one immovable.

Mr. Sullivan said flexibility was key, especially in more urban areas. They also need to respect different context and factors. They are treating this "as the crow flies" proximity. They were uncomfortable having a hard and fast 1,000-ft because they recognize that there may be unique context on whether a site can be reached. Lack of connecting streets or pedestrian ways, something that makes access more challenging.

Ald. Klee said if the stakeholders in this ordinance proposal had their way, there wouldn't be any of this shop for children to walk by. But they didn't want to tie the Board's hands because they don't know all. They wanted to give the Board flexibility in unique circumstances. They want the Board to be able to have that waiver and that discussion if it's within 1,000-ft.

Mr. Bollinger asked if youth-serving organizations is clearly defined. Does that mean a school? Is McDonald's a youth serving organization?

Mr. Sullivan said like any good ordinance we consider both extreme specificity and extreme flexibility and landed in the middle. They chose not to define this strictly, and instead provided examples in the recommended language. He would not consider McDonald's a youth-serving organization, that is a restaurant. Staff will need to identify whether something is a youth-serving organization and whether the primary use of an entity is nicotine sales. Staff does that on an every-day basis. It is a subjective judgement, but tends to be relatively clear in most situations.

Mr. Bollinger asked if this is going to be on applications moving forward, and is not retroactive.

Mr. Sullivan said correct.

Ms. Harper asked if now would be the time to add in language for marijuana sales, should that become legal, or later?

Mr. Sullivan said they don't aim to be reactive, but they don't know what regulations might be appropriate for recreational sales. He recommends against doing that at this time. That is something they will look to the state for model ordinances to base their regulations on, and didn't feel comfortable taking that first step right now. It will be appropriate at some point in time.

Mr. Hudson asked if all the uses listed are considered to be "like" uses and the use of "and/or" in the language.

Mr. Sullivan provided clarification on how the like-uses proximity works. It's a matter of what the product is that is being used.

Mr. Meehan said he recalled this discussion on a specific case. This seems very reactive to a case they already adjudicated. Now they are creating another layer of regulation they're going to have to monitor for however long they have it.

Mr. Sullivan said it is proactive and reactive. They have not had to deal with the situation where there are these two uses in proximity to each other on prior applications. They witnessed the public conversation about it. This is certainly being reactive in the amendment, but it's very possible that a comparable application could be coming to this Board in the near future. These uses are more pervasive throughout the community, and certainly childcare uses are more prevalent. The likelihood of this situation coming to the Board again is very high.

Ald. Klee said everything is reactive to some point. The Board had no reason to say no to previous cases. She is a state representative, and one of the things she learned is that there are unintended consequences. When something doesn't go right they have to fix it or undo it. She has no negative things to say about the previous case Mr. Meehan is referring to and all parties worked hard to mitigate any impacts, but it did bring up that conversation. The Board is reacting to something that happened, but is proactive so it doesn't happen again.

Mr. Hirsch asked how a primary use would work. If a convenience store has 75% of their area for snacks and soda and 25 % of their store for tobacco, how do they define it?

Mr. Sullivan said many ordinances across the state and country are very definite about what is the primary use. Nashua doesn't do that. It relies on the principle of not being too specific and more flexible. It's very subjective in Nashua. In the words of a Supreme Court case, at some point they sort of know it when they see it what the primary use is. Staff has a conversation with the owner or operator about the goods they are selling, the layout, and gather what the predominant use is. One thing that has come up is convenience stores and grocery stores, and he would say that is not the primary use. They are a larger retail vendor. It's differentiated when you go into what's clearly a smoke shop where the predominant good is a synthetic or tobacco product. That is how they currently treat primary uses within the land use code.

Mr. Hirsch asked if a convenience store with 50% tobacco would be subjective, no qualitative standard.

Mr. Sullivan said it would be a judgement call. That may in fact be a primary use. They will err on the side of being conservative with the application of the land use code. If they have a question of judgement, staff will lean in the direction that provides the maximum public notification and may result in the maximum process for the applicant. If staff is unsure, it will come before the Board as a Conditional Use Permit.

Mr. Hudson asked what other types of uses have a proximity restriction.

Mr. Sullivan said they have the 750-ft limit between gas stations.

Mr. LeClair said it seems odd that General Industrial zone is not grouped with this. Is retail just not allowed in GI?

Mr. Sullivan said correct. He has had conversations with Deputy Zoning Manager Carter Falk about this and potentially broadening it to the Local Business district, and what they found was that it would not be appropriate to extend the use based on the broader purpose of the zoning districts. General Industrial is predominantly an industrial zone, and they don't encourage retail uses within that zone.

Mr. LeClair asked if that would be a topic of discussion for the land use code rewrite.

Mr. Sullivan said yes.

Mr. LeClair said the intent of this is a consideration by the Planning Board, and their role is to provide a favorable recommendation of the proposed amendment, or unfavorable, or favorable with recommended comments.

MOTION by Mr. Pedersen to favorably recommend-22-010 to the Board of Aldermen, as written

SECONDED by Ald. Cathey

Ald. Cathey said he had a lot of conversations with Mr. Sullivan about this because he tends to be laissez-faire with regulation. But as a parent who has seen vaping get very popular in schools he feels they need to protect the community. This is where the Planning Board gets to be a little more subjective and helpful to the community. That is why he is in favor of this, because they are creating the best good of this situation. He is okay with being reactive because they didn't foresee this. He supports this.

Mr. Meehan said there is a really positive intention here. He appreciates all the work Ald. Klee does. However, he struggles with the accretion of these miniscule stipulations over time, and it's hard for him to see how this will have an impact.

MOTION CARRIED 8-1 (Meehan opposed)

DISCUSSION ITEMS

None

MOTION to adjourn by Mr. Meehan at 9:46 PM

MOTION CARRIED 9-0

APPROVED:

Mr. LeClair, Chair, Nashua Planning Board

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Prepared by: Kate Poirier

Taped Meeting