

EXPANDED DRAFT MEETING SUMMARY
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NASHUA CITY PLANNING BOARD
May 4, 2023

The regularly scheduled meeting of the Nashua City Planning Board was held on May 4, 2023 at 7:00PM in the 3rd floor auditorium in City Hall AND via Zoom virtual meeting.

Members Present: Adam Varley, Acting Chair
Maggie Harper, Secretary
Dan Hudson, City Engineer
Ald. Patricia Klee
Bob Bollinger
Larry Hirsch

Also Present: Sam Durfee, Planning Manager
Scott McPhie, Planner I
Christine Webber, Dept. Coordinator

APPROVAL OF MINUTES

April 6, 2023

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

SECONDED by Ms. Harper

MOTION CARRIED 4-0-2 (Klee, Bollinger abstained)

COMMUNICATIONS

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

- **A21-0299, A21-0300, A21-0301, & A21-0302 - 145-149 Temple St**
 - Email from Atty. Prolman, requesting a continuance to the June 15, 2023 meeting
- **A23-0020, 976 West Hollis St**
 - Updated engineering comments
- **A23-0039, 9 Northeastern Blvd**
 - Updated engineering comments
 - NHDES Alteration of Terrain permit approval
 - Applicant response to engineering comments
 - Amended plan

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REPORT OF CHAIR, COMMITTEE, & LIAISON

None

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. Be courteous to those who are speaking.

OLD BUSINESS - CONDITIONAL USE PERMITS

None

OLD BUSINESS - SUBDIVISION PLANS

A21-0299 145 Temple Street, LLC (Owner) - Greenridge LLC (Applicant) - Proposed three lot subdivision. Property is located at 145-149 Temple Street. Sheet 38 - Lot 93. Zoned "GI" General Industrial/"TOD" Transit Oriented Development. Ward 7. **[TABLED TO THE MAY 18, 2023 MEETING]**

OLD BUSINESS - SITE PLANS

A21-0300 145 Temple Street, LLC (Owner) - Greenridge LLC (Applicant) - Proposed site plan to show a 4-bay garage, office and storage. Property is located at 145-149 Temple Street. Sheet 38 - Lot 93. Zoned "GI" General Industrial/"TOD" Transit Oriented Development. Ward 7. **[TABLED TO THE MAY 18, 2023 MEETING]**

A21-0301 145 Temple Street, LLC (Owner) - Greenridge LLC (Applicant) - Proposed site plan to add asphalt manufacturing. Property is located at 145-149 Temple Street. Sheet 38 - Lot 93. Zoned "GI" General Industrial/"TOD"-Transit Oriented Development. Ward 7. **[TABLED TO THE MAY 18, 2023 MEETING]**

A21-0302 145 Temple Street, LLC (Owner) - Greenridge LLC (Applicant) - Proposed site plan to add proposed office use. Property is located at 145-149 Temple Street. Sheet 38 - Lot 93. Zoned "GI" General Industrial/"TOD" Transit Oriented Development. Ward 7. **[WITHDRAWN BY APPLICANT]**

Mr. Varley said they have received some additional materials from the applicant that went beyond the established deadline of May 1, 2023. In connection with the submission materials, the applicant has requested a further tabling of this application until the June 15, 2023 meeting. The applicant has also requested to establish similar deadlines to when this was tabled last time, in terms of when the applicant had to submit materials and the public had to respond to those materials. The applicant has proposed that they be required to submit additional materials by May 26, 2023, three weeks before the meeting, and that the public would have until June 9, 2023, a week before the meeting, to submit a response to the materials the applicant has provided.

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Mr. Varley said the question before them is whether to further table the meeting. Ordinarily they would wait until May 18th to determine whether they would table it, but in speaking with staff, it would be more efficient and give people additional notice if they took the matter up this evening.

Ald. Klee asked Mr. Varley to repeat the dates.

Mr. Varley repeated the proposed dates.

MOTION by Ald. Klee to table A21-0299, A21-0300, A21-0301, and A21-0302 to the June 15, 2023 meeting, with the understanding that all materials of the applicant will be submitted by May 26, 2023, and that any responses from members of the public or other parties will be made by June 9, 2023.

SECONDED by Mr. Hudson

Mr. Bollinger asked if they should specify the time of day. Should it be close of business? If possible, he would suggest amending the motion to include a time certain on the submission dates, to be at 4PM.

Mr. Durfee agreed that they should use 4PM.

AMENDED MOTION by Ald. Klee to table A21-0299, A21-0300, A21-0301, and A21-0302 to the June 15, 2023 meeting, with the understanding that all materials of the applicant will be submitted by 4PM on May 26, 2023, and that any responses from members of the public or other parties will be made by 4PM on June 9, 2023.

SECONDED by Mr. Hudson

MOTION CARRIED 6-0

NEW BUSINESS - CONDITIONAL USE PERMITS

A23-0037 AFP 105 Corp. (Owner) ARBI Farms, LLC (Applicant) - Application and acceptance of proposed extension of Conditional Use Permit approval to convert 13,000 sf of function and ballroom space to be used for charitable gaming. Property is located at 11 Tara Boulevard. Sheet A - Lot 333. Zoned "PI" Park Industrial. Ward 8.

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Mr. Varley said he will be recusing himself from this case. Ms. Harper will serve as Acting Chair for the duration of this case.

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

SECONDED by Ald. Klee

MOTION CARRIED 5-0

Atty. John Weaver, McLane Middleton PA, 900 Elm St, Manchester NH

Atty. Weaver introduced himself as representative for the applicant. The applicant received a conditional use permit previously, and has since been purchased by Delaware North, an events and gaming company, and during the transition period of ownership there's been some working out of construction issues and logistics, and as a result they are here to request a one year extension.

Mr. Bollinger asked if the project still intends to move forward.

Atty. Weaver said yes. His impression is that there's the usual hiccups and logistics that happen when one company acquires another.

Mr. Bollinger asked if the overall plan approved is unchanged.

Atty. Weaver said correct.

SPEAKING IN FAVOR

None

SPEAKING IN OPPOSITION OR CONCERN

Katherine Sheehan, 17 Indian Fern Drive, Nashua NH

Ms. Sheehan said she is opposed to the proposed casino. She described in great length her concerns regarding traffic on Spit Brook Road. She said the city already have three casinos, we don't need any more. She is concerned about gambling addiction. She asked the Board to do everything they could to stop this.

Alice Gibson, 20 Shady Lane

Ms. Gibson expressed her concerns about gambling addiction. She said she read somewhere that living within ten miles of a casino affect property values, so she will be asking for a reduction in taxes.

APPLICANT REBUTTAL

Atty. John Weaver, McLane Middleton PA

Atty. Weaver said he would like to clarify a few points. This isn't a new use, it is relocating an existing use from Northeastern Blvd. In the six years that charitable gaming has been there they have not experienced traffic issues, so they are not anticipating traffic issues now. The current location has an intersection without a light, this intersection has one, so that will add safety and security. He said one of the previous conditions of approval is that cameras will be added to the traffic lights to help the city study the traffic there and improve it. They think it will be a net benefit to traffic in the area.

PUBLIC MEETING

Ms. Harper closed the public hearing and opened the public meeting.

Mr. Bollinger said the Board already approved this, and there was traffic testimony from a licensed professional engineer on behalf of the applicant. He would have no issues granting the one year extension based on the evidence heard by the Board previously.

Ald. Klee agreed with Mr. Bollinger. There are no changes to what was approved previously.

Mr. Hudson agreed. He appreciates the residents coming out to voice their concerns, that is an important part of this process. In this case they have heard testimony previously and at this point he is ready to grant an extension of the approval.

MOTION by Mr. Bollinger to approve New Business - Conditional Use Permit A23-0037. It conforms to §190-133(F) with no stipulations or waivers

SECONDED by Ald. Klee

MOTION CARRIED 5-0

Mr. Varley resumed the role of Chair.

NEW BUSINESS - SUBDIVISION PLANS

None

NEW BUSINESS - SITE PLANS

A23-0039 Nashua Motor Sports Realty, LLC (Owner) - Application and acceptance of proposed site plan to construct auto dealership. Property is located at 9 Northeastern Boulevard. Sheet B - Lot 237A. Zoned "HB" Highway Business. Ward 6.

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

SECONDED by Ald. Klee

MOTION CARRIED 6-0

Jim Petropulos, Civil Engineer, Hayner Swanson Inc, 3 Congress St, Nashua NH

Mr. Petropulos introduced himself as the representative for the owner. With him tonight are Gary Thomas and Doug Turchi from Northpoint Construction, Al Heath from Porsche Nashua, and project architect Nichole Webb from Praxis3.

Mr. Petropulos said they are seeking site plan approval for an automobile dealership. He described the current conditions onsite and surrounding properties. This site was previously a Holiday Inn hotel, and was demolished late 2022. The Porsche dealership has grown in its current location to the point where it is bursting at the seams, and would like to relocate to this site. He described site access, topography, and utilities.

Mr. Petropulos said they are proposing a partial 2-story building, to include sales and display area, offices, vehicle servicing bays, wash facilities, and a photo booth. They anticipate that this site will see about 25 service vehicles and 5-7 new customers daily. The site receives shipments of cars 3-5 times per month. The facility will have approximately 50

employees, and operating hours of Monday-Thursday 7AM-7PM, Friday-Saturday 7AM-5PM, and Sunday occasionally for special events.

Mr. Petropulos said they proposed to reduce the three curb cuts on Northeastern Blvd to two, with one access off of Holiday Circle. Parking is unique, as they use it for customer parking, employee parking, service parking, vehicle display, vehicle storage, and ten EV spaces, which are for Porsche customers for this dealership. He described landscaping, lighting, and stormwater.

Mr. Petropulos said a professional traffic engineer performed an assessment on the proposal and compared it to the trips the hotel used. What they found was that the anticipated trips were less than the current hotel, and further study was not warranted.

Mr. Petropulos showed architectural elevations of the building, and described it briefly. They are asking for four waivers with this application, as detailed in the staff report. The hope is to start construction in summer 2023, and it would take 12 months to complete. They believe this application conforms to the Land Use Code. The conditions of approval outlined in the staff report are acceptable, and they respectfully seek approval.

Mr. Varley asked if there are some odd 300 spots currently associated with Holiday Inn.

Mr. Petropulos said it was 350 spaces.

Mr. Varley said this would be a net reduction in parking spaces.

Mr. Petropulos said correct.

Mr. Varley said it looks like three of the four oversized islands have plantings, and one doesn't. Is there a reason for it?

Mr. Petropulos said they have some underground stormwater infrastructure underneath the island, so it's not conducive to plant a tree.

Ald. Klee said they are expecting 292 spaces. What is your expectation for customers and employees?

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Mr. Petropulos said he provided a breakdown. Customer parking is 16 spaces, employees are about 50 spaces. There's car parking for the service area, and around 70 spaces for display, with storage in the back.

Ald. Klee said about 50% would be more moving vehicles, and the remainder would be display.

Mr. Petropulos said that's about right.

Ms. Harper asked how deliveries will come to the site. Where will they come in onsite?

Mr. Petropulos said they provided a turning movement plan. The anticipated route would be a hauler coming down Holiday Circle around behind the back. They would offload there, and come back to Northeastern. They anticipate 3-5 deliveries a month.

Mr. Hirsch asked if a future building shown on the plan is incorporated.

Mr. Petropulos said they are showing a site of future building to the north. The Nashua Motorsports Realty is toying with the idea of indoor storage. Many Porsche drivers like to winterize their cars indoors, so there may be an opportunity for indoor storage through the winter. Any new future buildings would have to come back before this Board for approval.

Mr. Bollinger said there was some discussion regarding the impact fee computation with Engineering. Was that resolved?

Mr. Petropulos said he believes it has. They agreed upon \$10,000.00.

Mr. Hudson agreed. They appreciate the applicant being willing to make that contribution. He said the other comments in the letter are nothing of major concern. The applicant has made a resubmittal, and he believes they will be able to address everything.

SPEAKING IN OPPOSITION OR CONCERN OR WITH QUESTIONS

Jenny Santiago, 12 Northeastern Blvd, Nashua NH

Ms. Santiago said she lives directly across from this site. She said the end of Holiday Circle, to the right, is a daycare. With

big trucks coming down the street, she would like barriers so that the daycare is protected in case a hauler slides. She also does not want any waste dumped near the daycare, she doesn't want the kids to be affected by gas or fumes. She doesn't want chemicals in the area.

Ms. Santiago said with Northpoint was tearing down the hotel there was a lot of shaking in her house. She has a lot of cracks she didn't have before. She called Northpoint Construction several times, and it has not been addressed.

Paul Morey, 164 Hayden Rd, Hollis, NH

Mr. Morey said he had a question about batteries. EV vehicles batteries may pose different problems than lead acid batteries. He asked the Board to consider requirements on that part.

SPEAKING IN FAVOR

None

APPLICANT REBUTTAL

Jim Petropulos, Civil Engineer, Hayner Swanson Inc.

Mr. Petropulos said in regards to the hauler truck, there's plenty of room at the cul-de-sac and along Holiday Circle. It's a fairly flat section of road, not a steep gradient for those vehicles. They will bring the vehicles onsite, and offload them there. With regards to waste disposal, the enclosed dumpsters are located on the opposite side of the property. There is no real waste disposal on this side, tire disposal is within the building. They have a small little outbuilding for used batteries, which will be fully sprinklered.

Mr. Petropulos said with regards to vibrations, it's no easy task taking down a fifty year old four story hotel. He's sure that as Northpoint beings their construction they can reach out to the neighbors. Generally they would want to do that if they are blasting, which isn't the case. There could be some rollers to compact the earth, but that would be over fairly shortly. He has a feeling that there will be less impact.

Mr. Varley asked if there is nothing going forward, in terms of construction going forward, that he would anticipate exacerbating those issues.

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Mr. Petropulos said those would be his responses.

Mr. Varley asked if there is a standardized process for the handling of waste fluids.

Mr. Petropulos said yes.

Ald. Klee asked about the battery shed, and how often will they be picked up.

[Unknown in audience]: said within 24 hours.

Mr. Petropulos said a day or two. That's an enclosed building, and sprinklered.

Ald. Klee expressed her approval.

Mr. Varley asked if the storage would hold standard car batteries, or EV batteries.

Mr. Petropulos said there are standard rules the dealership has to follow, whether it's traditional car batteries or lithium.

Mr. Varley asked if there are guidelines.

Mr. Petropulos said everything has to be done in accordance with those values.

PUBLIC MEETING

Mr. Varley closed the public hearing and opened the public meeting. He said it seems like a relatively straightforward application. In terms of the fit for the site, they have testimony that the traffic will be less than the prior use. The applicant has agreed to the traffic impact fee, and generally seems like an improvement to the site. It seems like a positive improvement, and the applicant has addressed the concerns raised.

Mr. Bollinger agreed. The hotel had some better days. By eliminating a curb cut on Northeastern Blvd, it is a net positive. He sees this as an overall improvement to what was there. He would be comfortable moving forward.

Mr. Hudson provided clarification on the recommended stipulations of approval.

MOTION by Mr. Bollinger to approve New Business - Site Plan A23-0039. It conforms to §190-146(D) with the following stipulations or waivers:

1. The request for a waiver of § 190-279 EE, which requires showing existing conditions on site and adjacent lots, 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 NRO § 190-184 (D) 1 which requires parking isles not contain more then 10-spaces without a planted median or island 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 NRO § 190-172 to meet specific architectural standards is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation.
4. The request for a waiver of NRO § 190-198 which requires a maximum number of parking spaces is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation.
5. Prior to the Chair signing the plan, all comments in a letter from Mark Saunders, Deputy City Engineer, dated 4/27/2023 will be resolved to the satisfaction of the Division of Public Works.
6. Prior to the Chair signing the plan, a payment of \$10,000.00 will be made to the nearest corridor fund as listed under item 17 of Mark Saunders's above letter, on behalf of Wayne Husband, Senior Traffic Engineer.
7. Prior to the Chair signing the plan, all conditions on the Planning Board approval letter will be added to the cover page of the final Mylar and paper copies submitted to the City.
8. Prior to the Chair signing the plan, all minor drafting corrections will be made.
9. Prior to the Chair Signing the plan, all easements and stormwater documents will be submitted to City staff for review and recorded at the applicant's expense.
10. Prior to the commencement of any work, a pre-construction meeting will be held and a financial guarantee will be in place.

11. Prior to the issuance of the Certificate of Occupancy, an as-built plan locating all driveways, utilities, and landscaping shall be completed by a professional New Hampshire licensed engineer or surveyor and submitted to Planning and Engineering Departments. The as-built plan shall include a certification by a NH licensed professional engineer that all construction was generally completed in accordance with the approved site plan and applicable regulations.
12. Prior to the issuance of a certificate of occupancy, all off-site and on-site improvements will be completed.

SECONDED by Ms. Harper

MOTION CARRIED 6-0

A23-0020 G Hurd & Son Construction, LLC (Owner) - Application and acceptance of proposed site plan to construct 4 single family condominium units. Property is located at 976 West Hollis Street. Sheet D - Lot 509. Zoned "R9" Suburban Residence. Ward 5.

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

SECONDED by Mr. Hirsch

MOTION CARRIED 6-0

Atty. Colin Jean, 64 McKean St, Nashua NH

Atty. Jean introduced himself as representative for the owner. With him is Michael Grainger from MJ Grainger Engineering, George Hurd from G Hurd & Son Construction, and Robert Clegg from Tumpney Hurd & Clegg LLC.

Atty. Jean said they are seeking permission to construct four single family residences on the subject lot. He described the surrounding uses. They believe this fairly modest request meets all of the current zoning, and will meet all setbacks. They are requesting three waivers, as detailed in the staff report. He described utility services and access. He said the Board should have received a rendering of the proposed architectural plans.

Mr. Varley said they received a comment from an abutter, Ms. McClellan, who asked if the developer would be willing to

consider fencing at the rear of the property. What are their thoughts?

Atty. Jean said the owner has not yet considered that. The property line abutting Ms. McClellan is going to be well bounded with markers. There is no change in the existing bounds. Over the past years the abutter's property was well wooded, and is now cleared. He can see where fencing would be advantageous, but anyone can put it up. While the owner is not opposed to fencing, it's something he could discuss with the neighbor. Given the nature of the property as condominiums it is possible.

Mr. Bollinger said he did a quick scale off the city GIS, and it would be a 375-ft fence. He understands why the applicant would want to discuss that, it's not a small quarter acre partition.

Ald. Klee asked whether they would be using private sewer leach fields or public sewer.

Atty. Jean said it will be public water, and private sewer.

Mr. Varley said there is a discrepancy in the staff report, it incorrectly referred to city sewer. It's private.

Atty. Jean said they received the Engineering comments Tuesday morning, so they haven't been incorporated into the plan but they will be. All are acceptable.

Mr. Varley asked if there was a consideration for a traffic impact fee.

Mr. Hudson said he doubts it, as it's only four units. Given that scale of development there shouldn't be.

Atty. Jean said there was no amount listed.

Mr. Varley said there is a condition, #11, that refers to a blank contribution.

Mr. Hudson said that can be struck. Five or fewer units usually doesn't trigger a contribution.

c said with regards to the fence, the cleared land does not abut the new development. The part where the new development is, is all forested. Her property is shaped like a piece of pie, with a common end where this will be an abutting backlot. She can just

imagine someone thinking it's theirs. She wanted to ask for a fence so people could be sure that it wasn't their property and putting sheds in.

Ms. McClellan said she is concerned about the land, as it is pretty wet. There is standing water in a ditch, and would like to know what time the septic design is approved. She is wondering how the septic systems will be designed to keep everyone safe.

Paul Morey, 164 Hayden Rd, Hollis, NH

Mr. Morey said he owns an abutting property. Boundaries are important, and currently the boundary he abuts on the street and the two bounds on the corners are marked with driven pipe. He would like to request that they be marked with a permanent granite pipe that can't be moved permanently. He would like to get this defined so people don't encroach.

Mr. Varley asked if these markers are on his property.

Mr. Moray said they are the boundaries between the lots. He would like them found, and to mark the boundary.

Mr. Moray said the second issue he would like to bring up is runoff. Lyle Reed Brook is downhill from the property, this property is not far above the elevation of the brook. He doesn't know what the state requirements are for runoff, but that would be a concern of his.

Mr. Varley asked if he is concerned about runoff onto his property.

Mr. Moray said no, runoff into the brook. He is slightly uphill. Their property will naturally run downstream, especially if there are any houses on the west side.

Sandra Lopez, 980 West Hollis St, Nashua NH

Ms. Lopez said they just bought this property last year, not knowing that this was going on. They have access for a driveway from this site. She asked if they would still be able to use this driveway to access their own property without any issues. Also, since the houses are going to be facing theirs, is any fence proposed? They would like their privacy.

SPEAKING IN FAVOR

None

APPLICANT REBUTTAL

Atty. Colin Jean

Atty. Jean said when this property was subdivided in the 1980s, they gave the owner of 980 West Hollis St an exclusive easement for the use of the way into their property, because their lot was landlocked. After endeavoring for 18-24 months over the course of time with 3-4 owners, it was decided that the owner of the property really wanted to keep the exclusive way. They had to get a variance, which was granted, for the use of a driveway at the separate end. To answer the question, that abutter has an exclusive use of that easement, and no one else can use it without their permission.

Atty. Jean said with regards to fencing, they haven't made any determination regarding fences. The houses being built will be set back quite a long way from 980 West Hollis St.

Atty. Jean said with respect to the septic and runoff, he would like to defer that to their engineer.

Michael Grainger, MJ Grainger Engineering Inc, 220 Derry Rd, Hudson NH

Mr. Grainger said the water table out there is 2.5-ft seasonal high, so they will be raising those up another 3-4 feet to finished grade. That will be approved by the city Health Dept. and state DES. In regards to drainage, they have a stamped approved drainage report from the city Engineering Dept. They will be stopping all drainage and building a retention wall to hold it. They are not doing any construction between the private drive and Lyle Reed Brook besides the drainage basin, as per discussion with the Nashua Conservation Commission. They are staying as far away from Lyle Brook as they can.

Mr. Varley asked how the leach fields are constructed, in relation to the water table.

Mr. Grainger said the water table was 2.5-3 feet in the ground already. The requirement from the state is 4-ft separation between the bottom of the leach field and the water table. They

will raise the grade to meet that, 3-ft higher. He indicated the grade as shown on the plan.

Mr. Varley asked if there was a survey done for this property.

Mr. Grainger said yes. In 2018, 2019, and 2020 he was out there.

Mr. Varley asked if new markers were placed.

Mr. Grainger said yes, almost all of them. The only ones not replaced was up front, near unit 1. During construction or afterward they will put those in.

SPEAKING IN OPPOSITION OR CONCERN - REBUTTAL

Paul Morey, 164 Hayden Rd, Hollis, NH

Mr. Morey said his residence has a similar issue with the septic, where the leach area didn't meet the minimum requirement. He asked if they will be using a clay barrier on the downhill side so there is no horizontal runoff. That's a stipulation the state put in when he had his done 40-years ago. Otherwise the water doesn't leach downwards, it goes down the side of the hill into the brook.

Mr. Varley said the applicant testified that the leach field would be consistent with any applicable regulatory standards.

APPLICANT REBUTTAL - REBUTTAL

Michael Grainger, MJ Grainger Engineering Inc.

Mr. Grainger said back in the 1970s and 1980s the state required a clay barrier for septic systems so that the effluent would drain down through the soil. They have discovered since then that this isn't the right way to do it. They got rid of the clay barrier in the mid 80s or 90s. Now it's a 3-ft sand barrier that lets the water trickle down at a 45-degree angle. The finished contours are at a 3-1 slope from the leach field, so the water can be filtered.

Ms. Harper asked if in the front yard of each unit there will be a raised hill for the septic systems of each unit.

Mr. Grainger said yes. He described the slope.

Further audience members expressed they have questions.

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Mr. Varley said they typically don't allow further back and forth between the abutters and the applicant. He will make an exception because there are so few of them, but he wants to keep it confined to just what the applicant has spoken to now. They have covered the septic issue and stormwater management.

SPEAKING IN OPPOSITION OR CONCERN - REBUTTAL II

Marie McClellan, 974 West Hollis St, Nashua NH

Ms. McClellan asked if the condo association will be taking care of the septic pumping.

Mr. Varley said he believes that was testified to by the applicant, he will confirm.

APPLICANT REBUTTAL - REBUTTAL II

Atty. Colin Jean

Mr. Jean said he can't say definitively that it's been decided, but it may be that the final condo declaration will dedicate exclusive space to the residences. In this case, each resident would be responsible for their own exclusive space. The condo association would be responsible for all of the common area. If the entire parcel is common area, the association would be responsible for the maintenance.

Mr. Varley asked if it would either be the individual residents responsible for their own systems, or the condo association responsible for all of them.

Atty. Jean said correct.

Mr. Hirsch asked if they are raising the entire lot, or just the septic leaching system.

Michael Grainger, MJ Grainger Engineering Inc.

Mr. Grainger said the road will be roughly 4-ft higher than it is now. That will match the front doors and the leach field.

Mr. Hirsch asked if the whole lot will be raised.

Mr. Grainger said correct.

Ald. Klee said she wants to be clear that whether it is individuals or association responsible for the septic systems, they will be checked on a regular basis.

Atty. Jean said it will be clearly delineated in the articles who is responsible for what. That's the only way these things work out in the long run.

PUBLIC MEETING

Mr. Varley closed the public hearing and opened the public meeting. He summarized the discussion, and said it was a fairly straightforward plan. In regards to fencing, given that they're not talking about a relatively modest sized lot, at least several hundred feet, it's reasonable to leave it to the applicant and abutters to have discussions on what is appropriate. The applicant indicated that they would be putting addition boundary markers. They can remove stipulation #11.

Ald. Klee said in regards to fencing, there are all types. There was some forestry now removed. She suggested planted arborvitae as a screen.

MOTION by Mr. Bollinger to approve New Business - Site Plan A23-0020. It conforms to §190-146(D) with the following stipulations or waivers:

1. The request for a waiver of NRO § 190-279 (EE) & (B), which requires existing conditions to be shown on adjacent parcels, 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 NRO § 190-279 (N), which requires a lighting plan, 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 \$5,100.00 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 conditions from the Planning Board approval letter will be added to the cover page of the final Mylar and five paper copies submitted to the City.

5. Prior to the Chair signing the Plan, stormwater documents will be submitted to the Planning Department for review and will be recorded at the Registry of Deeds at the applicant's expense.
6. Prior to the Chair signing the plan all addresses shall be shown on the approved site plan.
7. Prior to the Chair signing the plan, minor drafting corrections will be made and any missing general ordinance language will be added to the plan where applicable.
8. Prior to the Chair signing the plan, deeds, and plans shall be submitted to the Planning Department and other applicable City Departments for review and to be put on file at the local Registry of deeds.
9. Prior to the Chair signing the plan, all comments found in a letter from Mark Saunders, Deputy City Engineer, dated May 1, 2023 will be resolved to the satisfaction of the Engineering Department.
10. Prior to the issuance of a building permit all comments in an e-mail from Mark Rapaglia, Nashua Fire Inspector/Investigator dated April 5, 2023 shall be addressed to the satisfaction of the Fire Marshal's Office.
11. Prior to the issuance of a certificate of occupancy all temporarily disturbed wetland buffers will be restored and wetland markers installed to delineate the buffer area as required under Section 190-116(B).
12. Prior to the issuance of the Certificate of Occupancy, an as-built plan locating all structures, driveways, utilities, and landscaping shall be completed by a professional New Hampshire licensed engineer or surveyor and submitted to Planning and Engineering Departments.
13. Prior to the issuance of a certificate of occupancy, all on-site and off-site improvements shall be completed or bonded to the satisfaction of the Division of Public Works, Nashua Fire and the Planning Department.
14. All Zoning Board of Adjustment (ZBA) conditions of approval are incorporated herein.
15. Prior to any work and a pre-construction meeting and financial guarantee shall be approved for any work in the public Right of Way.

SECONDED by Mr. Hirsch

MOTION CARRIED 6-0

OTHER BUSINESS

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

None

2. Referral from the Board of Aldermen on proposed amended Ordinance O-23-051, Amending the Land Use Code Regarding the Application of the Sign Article to Governmental Signage and the Approval of Sign Permits Through the Site Plan Review Process.

Matt Sullivan, Community Development Director

Mr. Sullivan said this is relative to how the treatment of government signage is done within the city. New Hampshire RSA 674:54 by default exempts governmental use from being applied to by the municipalities. Provided that something is a governmental use, the zoning ordinance and land use regulations do not apply. Many municipalities, in an effort to demonstrate the principals they have codified in their ordinances, adopt their local ordinances and try to follow them to the maximum extent practical. Nashua has been one of those communities.

Mr. Sullivan said there are a few exemptions in the ordinance, and one of them is for sign code. It says that governmental signage is exempt from permitting, but it doesn't say that governmental signage is exempt from the sign ordinance generally. This means that signage is fully subject to the municipality's ordinances, which means that several signs that could not comply for one reason or another that were displaying public information had to go to the Zoning Board and seek variances. There are five criteria that must be found in favor to grant a variance. One of those criteria is hardship, and what we have found is that sign presented to the Zoning Board that are intended to convey a public message have a difficult time meeting that criterion under NH state law. There isn't a hardship of the property or a unique situation, but there isn't recognized public benefit to the signage proposed. It may not be injurious to the intent of the ordinance and it may be respectful of the character of the neighborhood, but that hardship criterion becomes challenging to meet.

Mr. Sullivan said the Zoning Board has applied a lens of reasonableness when considering governmental requests, and all but a few of them have been granted. There are many signs across the community that sought variances and were granted. Through further conversation with staff and departments across the city, the variance process has been challenging and the needs of the city are dynamic. That's not to say we would construct giant billboards or any signage not generally compliant with standards, but sometimes we need to move quickly and in a way that is not fully compliant with the zoning ordinance. Or, perhaps the ordinance does not fully contemplate what the municipality is trying to do at any point in time.

Mr. Sullivan said he believes that municipalities should be treated differently under the sign ordinance, but that they should not be fully exempt. He worked with Ald. Dowd on a modification to the ordinance that provides a slight level of exemption. The exemption would still maintain a Zoning Board process and a public hearing, and would still involve the need for the Zoning Board to grant an approval. However, rather than using the variance criteria and hardship, he proposes to use the Special Exception criteria. It respects the fact that the sign needs to be within character of the neighborhood and respect the integrity of the ordinance. It cannot be injurious to the public health, safety and wellbeing of the residents, and all of those findings need to be made in order to have an approval granted.

Mr. Sullivan said before them is a request to amend the ordinance for signage that cannot comply with the land use code, to put it through a special exception process rather than a variance.

Mr. Sullivan said there is also an amendment to the process as well. We currently have a weakness in the ordinance, that if a sign is shown on a site plan approved by the Planning Board, whether or not it complies with the ordinance, if the Board approves a plan showing the sign that sign is deemed approved, whether or not it complies with the ordinance. They could potentially exempt a sign that does not respect the character of the zoning ordinance through the site plan review process. He proposes to strike that language. This Board would lose the ability to grant nonconforming signage, but he would argue that was never the intent of the ordinance or the role of the Board to grant that kind of relief.

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Mr. Varley asked for an example of a type of signage that currently has to go through the variance process.

Mr. Sullivan said there have been some open conversations about the intent of this proposal. There are currently some signs proposed that are electronic messaging signs. That is something the city has sought to adopt in more locations, such as the middle school or Public Works facility. However, historically it has been signs with changing letters that are manually changed. There have also been minor signage allowances for height, area, number, particularly associated with the school district, granted over the years. He wouldn't call them trends, but the emergent thing is electronic messaging or dynamic signage.

Ald. Klee said in the past at DPW they have had temporary signs. Those did not need variances, right?

Mr. Sullivan said correct. The important to distinguish signage within the right of way and signage on private property. The zoning ordinance does not apply within the right of way, that is the purview of the Board of Public Works through an encumbrance permitting process.

Ald. Klee said she has concerns about signs changing too fast. Will these municipal signs conform to some kind of timing limit?

Mr. Sullivan said absolutely. The worst thing to happen in the city for electronic messaging signs was the mortgage specialist sign along Amherst St. It's put them several decades behind when it comes to approving what can be reasonable types of signage. You can control the frequency, the lumens, and you can turn them off. The one thing he can offer is that folks who are exploring electronic messaging signage are going to work closely with the Zoning Board to put reasonable accommodations and rules that are respectful of the context of the sign. Municipal signage should not be distracting or create an unsafe condition.

Mr. Sullivan said to be clear, private signage is not being impacted by this proposed amendment. It's only applying to governmental uses within the city.

Ald. Klee asked if this type of signage is for the public, for the city to be able to get information out.

Mr. Sullivan said the answer is that if the sign is being erected in relation to a government use, that is what puts it

through this alternative process of special exception. In the event that something is shown that is not strictly public informational in nature, he's not sure that would strictly violate the ordinance. The municipality is highly unlikely to do advertising, but it's possible that something may be posted relative to an event in the community, or sponsorship by a nonprofit. That's a content based regulation.

Mr. Bollinger said Nashua Police Dept. will often put up signs about recruiting or exams taking place.

Mr. Sullivan said that might be in the right of way.

Mr. Bollinger said when they use the term government use, is that all governments? We have the United States Postal Office, State of NH facilities.

Mr. Sullivan said it does. This is not just Nashua signage, it's everything provided the exemption under RSA 674:54. We're talking about a variety of different governments. It also applies to the college and university system.

Mr. Varley asked if the provision being removed from the ordinance is not limited to government uses, it would be any site plan.

Mr. Sullivan said the special exception amendment of the code does not impact private signage. The removal of the provision that allows signs to be approved by the Planning Board does.

Mr. Varley said both of these changes seem perfectly reasonable.

Ald. Klee said she can see a variety of different things happening with the provision being removed, especially in the Historic District. This could end up becoming an issue, so she is glad it is being struck.

MOTION by Mr. Bollinger to favorably recommend Other Business #2 amended ordinance O-23-051 to the Board of Aldermen, as proposed

SECONDED by Ald. Klee

MOTION CARRIED 6-0

DISCUSSION ITEMS

None

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MOTION to adjourn by Mr. Bollinger at 8:59 PM

MOTION CARRIED 6-0

APPROVED:

Mr. LeClair, Chair, Nashua Planning Board

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Prepared by: Kate Poirier

Taped Meeting