

NASHUA CITY PLANNING BOARD
May 9, 2019

The annual training session of the Nashua City Planning Board was held on Thursday, May 9, 2019 at 7:00 PM in Room 208 in Nashua City Hall.

Members Present: Scott LeClair, Chair
Adam Varley, Vice Chair
Mike Pedersen, Mayor's Rep.
Ed Weber, Secretary
Gerry Reppucci
Stephen Dookran, City Engineer
Maggie Harper
Ald. Mary Ann Melizzi-Golja (Arrived at 8:30PM)

Also Present: Sarah Marchant, Com. Dev. Div. Director
Roger Houston, Planning Director
Linda McGhee, Deputy Planning Manager
Scott McPhie, Planner I

Scott LeClair, Chair of the Planning Board took attendance and then proceeded to the list of topics.

Topic 1: Construction Control Affidavits

Mr. LeClair presented an email containing draft language for the proposed affidavit. The intent is to create model wording for a stipulation on site plans with engineered components to be reviewed and inspected before certificate of occupancy.

Mr. Houston presented a draft based on the current Building Department affidavit. He explained some of the past history with engineering review.

Mr. Dookran said that the Engineering Department will start inspecting simple infiltration systems as part of the federal MS4 permitting requirements. For more complicated stormwater systems, the applicant would need a third party review.

Mr. LeClair said this should focus on site elements that aren't already being reviewed by an engineer. He said that anything constructed as part of the building plans is already reviewed by the Building Department, so those are already covered by architects and construction control.

The Board discussed what site aspects are already inspected, and by who.

The Board discussed how private and public utilities were inspected. Mr. Dookran explained what utility connections the Street Department inspects, chiefly within the street. Ms. Marchant explained the limits of what Building Department inspectors would inspect for utility connections.

Mr. LeClair said that residential work is really where inspections break down. Contractors do their own work, and sometimes there's not necessarily an engineer involved subsequent to the model plans.

Mr. Dookran agreed. He said that they are seeing more plans with individual pump stations for sewage. The Department doesn't have the expertise for pump stations, so they need some kind of review.

Ms. Marchant said a third party inspector in those instances make sense.

The Board discussed the circumstances where review currently isn't happening. These include residential and commercial changes too small to go to Planning Board.

Mr. LeClair and Mr. Dookran gave examples of how a construction affidavit would help.

Mr. Weber asked Mr. Dookran to compile a list of underground infrastructure that would need to be inspected. He suggested that the list of things that need to be inspected be included in the application packet, so that applicants know what to expect.

Ms. Marchant said it's a good point to have some basic parameters and outlines, but the applicants at the Planning Board stage likely aren't going to be the ones who do the construction, pull the building permit, or look for a certificate of occupancy. They need to get information to people at the appropriate time.

Mr. Weber said that if they put a stipulation on the plan, when the new owners buy the lot they should see that stipulation.

Mr. LeClair said he doesn't know that a list would be comprehensive. What he wants to get across is when someone submits an application, if that application includes significant slopes and non-standard drainage design, the applicant should know at that point that they might need a construction control affidavit.

The Board briefly discussed the cost of a third party inspection. Mr. LeClair suggested an industry standard is an additional 25% on top of the construction costs for a construction affidavit.

Ms. Marchant said that on a site plan they would have slopes and drainage, and something to hold somebody to. She thinks they might want to focus on residential projects without site plans.

Mr. Reppucci asked what the scope of the problem is, and how significant it is.

Mr. LeClair said he doesn't think the problem is that significant unless there are significantly engineered subdivision plans that have a high potential for impact.

Ms. Marchant said they have the authority to hold people to what is promised on the site plan and the building permits. The problem area with drainage and slope is when they have more basic subdivisions with steep slopes and very little site plan items. Then the city doesn't really have the authority to hold them to something else until a disaster occurs. The point of the construction affidavit is an authority issue.

Mr. LeClair said he doesn't think it should be the Planning Board's making sure that engineers do their work right.

Mr. Dookran said typically the design is good, but nobody is watching to make sure that the design is put in place.

The Board discussed the difference between an affidavit and a certification.

Mr. Reppucci agreed with Ms. Marchant. He said that if they are going to stipulate something at a Planning Board level, it's going to be because the Engineering Department determined that this is required as part of the plan.

Ms. Marchant said if it's on the plan, they have the authority to make it happen. How the applicant chooses to make it happen is not necessarily part of the Planning Board's purview. In that circumstance they do not need an affidavit.

Mr. Varley said then it comes back to the issue of subdivision plans.

Ms. Marchant said that's where you would want to have a construction affidavit.

Mr. Weber led a discussion about road inspection and current requirements on plans.

Ms. Marchant said that when something is on private property and not on a site plan, they have less authority and a construction affidavit might make more sense.

Mr. Dookran explained what resources the Engineering Department has for reviewing and inspecting projects.

Mr. LeClair suggested that they limit this to subdivisions that have some sort of drainage situation that the Board feels needs to be done correctly, so that it won't impact abutters or city streets.

Mr. Reppucci said it should be an engineering based reason. The Board agreed.

Mr. Weber led a discussion regarding soil stabilization on steep slopes. Mr. LeClair said that when Planning Department reviews plans they should be able to see what kind of applications might need an affidavit, such as steep slopes, more complicated drainage, and plans that don't show driveway locations. Mr. Weber agreed, and said they need to have those kinds of things targeted by the Planning Department before plans come to the Board. Those could be cited, and Planning Department could tell the applicant that these elements are necessary to be inspected by a third party.

The Board discussed whether a third party is necessary. Ms. Marchant said it shouldn't be the property owner or the city; it should be a neutral third party. Mr. Dookran said that if it's the same engineer who designed the plan, they'll make sure everything is right. Mr. LeClair said it's also their liability.

Mr. Reppucci suggested the process they could follow. When a subdivision plan is submitted, Engineering Department will review the submission. They will make a determination as to what, if anything, on the plan needs to be covered by an affidavit. The applicant will know whether they need an affidavit before they come to the meeting. Then at the meeting they can tell the applicant that Engineering Department recommends an affidavit, but they don't require it.

Mr. Weber said that the Engineering Department may be too busy to do that. He suggested that the Planning Department should take care of it before it reaches the Board.

Ms. Marchant said there may be instances where the information isn't on the plan and the Board feels this is something they need more clarity on. It would be rare, but that may be an instance where the Board could determine an affidavit is important.

Mr. Houston said that in a simple residential subdivision, the engineer uses zoning setback lines to create a building envelope. They don't really take any regard to the slope. When someone later buys the property, they discover all the problems.

Mr. LeClair summarized the discussion. The intention of the Board is to request that Planning Department look at applications, and if they do have situations where there are steep slopes and drainage issues that could impact abutters or city streets, or subdivisions that aren't clear, that the Planning Department make a recommendation to the applicant that there might be a construction control affidavit required. The Board will evaluate it in the meeting, and make a decision. The affidavit will not be needed for site plans.

The Board expressed agreement.

Mr. LeClair referred to the draft wording of the stipulation, and recommended in the sentence that contains "to the best of my information, knowledge and belief the as-constructed conditions are in conformance with the approved plan documents required for this project" the phrase "have been satisfactorily completed" be removed. He recommended that "I have been present at intervals appropriate" be changed to "I or my duly appointed representative have been present."

Mr. Weber said that if roads on a site plan don't have a note saying they need to be inspected, the Planning Board needs to put that in.

Ms. Marchant said it doesn't have to be on the plan because it's required by state law. Roadways have to be inspected and constructed to city standards.

Mr. LeClair said they have to be specific when they grant waivers from street standard requirements.

A discussion of private road standards and inspection ensued.

Ms. McGhee asked the board if they intend for Planning Department or Engineering Department to make the determination whether or not an affidavit is required.

Mr. Houston said that the two departments can discuss it by case at their internal technical review meetings.

Ms. McGhee asked if it would carry more weight with applicants if the decision came from Engineering Department.

Mr. LeClair said he was fine with it either way.

Mr. Reppucci said that in the situation where Planning or Engineering Departments recommend an affidavit and the applicant rejects it, the Planning Board can make the final determination. If there isn't an engineer present at the meeting, they table the case until they can make the decision.

The Board expressed agreement with Mr. Reppucci.

2. Sidewalks

Mr. LeClair said that there are places in the city where the Board would say there is no point in building a sidewalk on a portion of the subdivision that doesn't touch the street. So why are we requesting a sidewalk contribution when the Board doesn't want one there anyway?

Mr. Varley said it was a basis for the sidewalk waiver.

Mr. Reppucci said that needing a sidewalk somewhere on the plan is not part of the requirement for the waiver. The subdivision could be somewhere in the city does not want a sidewalk. They're still required to pay the fee. How would that be different than just a portion of the lot?

Mr. LeClair said that the application is much easier if they just say all frontages on the subdivision are counted. But then the applicant's complaint would be that the city doesn't want a sidewalk there anyways.

Ms. Marchant said that's the whole point of why it's there.

Mr. Varley read the provisions of § 190-212(D) and § 190-212(E), and said that they establish two different standards. One is an

objective "250-ft away from the nearest sidewalk" and the other is a subjective determination whether there needs to be a sidewalk. Is section E in addition to D, or an alternative?

Ms. Marchant said she thinks you could only use section E if you qualified under D. She said you can ask for a waiver if you meet those criteria. Asking for a waiver only allows you to ask for a contribution. And if you qualify for that you can go to section E, and applicants come to the Board asking for a waiver from subsection E.

Mr. Varley said they are asking for a waiver of the threshold requirement to construct sidewalks in section D. Section E seems to apply to something completely different, namely cul-de-sacs. He thinks the ordinance as written lends itself to ambiguity.

Mr. LeClair said it sounds like there are two questions. One is whether or not this is applicable for sidewalk contribution. If yes, the second question is whether or not they can get a waiver from building a sidewalk or the contribution. The question they're struggling with is whether the construction of a sidewalk or the contribution calculation is applicable.

Mr. Reppucci said they have two options. Tell the applicant they need a sidewalk and make them put it in. Or, if the sidewalk won't be installed because it's not needed in that location, the applicant has to contribute.

Mr. LeClair said what they need to come to terms with is whether or not every single subdivision and site plan has to have a sidewalk or contribution. If they say yes to that question it's pretty simple.

Mr. Varley said he thinks the first part of it is pretty simple, at least the way the ordinance is written.

Mr. LeClair said that the ordinance already made that decision for them.

Mr. Varley said he thinks so. The second part of it what part of the frontage they should be counting.

Mr. Reppucci said and whether there should be a contribution where the sidewalk isn't required.

Mr. LeClair said agreed with Mr. Varley's interpretation of the ordinance in that every lot requires sidewalks, but the Board

gets to choose whether the applicant has to build it or get the option to contribute in lieu of construction. There is no decision about whether or not one requires it.

Mr. Reppucci said the ordinance empowers the Planning Board completely to determine if there is a fee, and what that fee is.

Ms. Marchant asked if they are trying to make a recommendation for the code to read that everything requires a sidewalk and if the applicant doesn't want to build it the Board can give a waiver for building it, or that everything requires a sidewalk and if they don't the applicant has to either pay the city or request a waiver from paying the city, or that the Board determines where the sidewalk is required.

Mr. Varley said he would look at it as a policy decision as opposed to a land use action. He would like more clarity in the ordinance as to the policy choice.

Ms. Marchant said they would have to send that to the Planning and Economic Development Committee (PEDC) and the Board of Aldermen for clarification.

The Board discussed the spirit and intent of the ordinance. Mr. Reppucci led a discussion about impact fees, and how they might relate to the sidewalk ordinance.

Ms. Marchant said they can send this to the PEDC for a deliberation.

Mr. Houston explained the history behind the current ordinance.

Ms. Marchant said if the rule is that everyone needs a sidewalk, the outcome is easy. But if the policy decision is that there is discretion on where sidewalks are needed, that's when the Board runs into ambiguity.

Mr. LeClair said the issue he has is that he doesn't understand the policy intent for lots.

Mr. Houston said that the ordinance applies to all lots involved in the subdivision. Where they changed last time was in subtracting out driveways.

Ms. Marchant said this ordinance has caused the Board a lot of heartburn, and they've done a really nice job trying to find a

happy median of fairness. If it's still causing them trouble, they can ask the PEDC to revisit the policies.

Mr. LeClair said that his question would be is the intent of the ordinance of the policy to apply either the construction of the sidewalk or payment in lieu to every portion of every lot that comes before the Board.

Mr. Varley added the question of is there a desire to exempt certain lots from the sidewalk requirement entirely.

Mr. Weber asked if language could be added to the ordinance that the payment has to be made before the plan can be recorded with the registry.

Ms. Marchant said that if the PEDC decides to update the ordinance, that's something the Board can ask for.

Mr. Reppucci asked if the public has a chance to present their opinions to the PEDC.

Ms. Marchant said there would be a public hearing and be referred back to the Board afterwards.

The Board agreed that until the PEDC makes a decision they would continue to put forward the fee on the entire frontage of the entire subdivision, minus the driveways, and minus sidewalks across the street.

The Board expressed the desire for more workshop sessions to address issues. Ms. Marchant suggested a schedule of quarterly work sessions, and the Board expressed approval.

The Board discussed future topics for work sessions, which they will send to Mr. Houston. They agreed on the next meeting to be scheduled for August.

3. Master Plan

The Board of Aldermen will be holding a public meeting to discuss the budget, and the Board wants to forward their support for funding a new city Master Plan. The meeting will be held at the same time as a Planning Board meeting on May 16th.

The Board expressed unanimous approval to send a letter of support to Ald. Dowd.

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There was a motion by Ed Weber to adjourn the meeting at 9:04 PM, then unanimous vote by the Planning Board to adjourn.

APPROVED:

Scott LeClair, Chair, Nashua Planning Board

Prepared by: Kate Poirier

Taped Meeting

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