

NASHUA CITY PLANNING BOARD
October 3, 2019

The regularly scheduled meeting of the Nashua City Planning Board was held on October 3, 2019 at 7:00 PM in the 3rd floor auditorium in City Hall.

Members Present: Scott LeClair, Chair
 Adam Varley, Vice Chair
 Mike Pedersen, Mayor's Rep.
 Edward Weber, Secretary
 Ald. David Tencza
 Bob Bollinger

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

Approval of Minutes

September 12, 2019

MOTION by Mr. Bollinger to approve the minutes of the September 12, 2019 meeting.

SECONDED by Mr. Pedersen

MOTION CARRIED 4-0-2 (Varley, Tencza abstained)

COMMUNICATIONS

Ms. McGhee went over the following items that were received after the case packets were mailed:

- Email from Corporation Counsel re: Case #1
- Updated Engineer Dept. comments and waiver re: Case #3
- Abutter correspondence re: Case #3
- Updated Engineer Dept. comments re: Case #4
- Multiple communications re: Case #5
- Updated Technical Review sheet
- Capital Improvements Committee report re: Other Business #2
- Heritage Rail Trail East meeting flyer

REPORT OF CHAIR, COMMITTEE & LIAISON

Mr. Weber said the Historic District Commission held a meeting for three cases:

- 5-9 Main St: sign change
- 28 Concord St: site improvements
- 452 Amherst St: Country Tavern, favorable recommendation to release façade easement

PROCEDURES OF THE MEETING

Mr. LeClair went into the procedure of the meeting as follows: After the legal notice of each conditional, special use permit, site plan or subdivision plan is read by the Chair, the Board will determine if the application is complete and ready for the Board to take jurisdiction. The public hearing will begin at which time the applicant or representative will be given time to present an overview and description of their project. The applicant shall speak to whether or not they agree with recommended staff stipulations. The Board will then have an opportunity to ask questions of the applicant or staff.

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

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

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

Above all, the Board wants to be fair to everyone and make the best possible decision based on the testimony presented and all

applicable approval criteria established in the Nashua Revised Ordinances for conditional, special use permits, site plans and subdivisions. Thank you for your interest and courteous attention. Please turn off your cell phones and pagers at this time.

OLD BUSINESS - CONDITIONAL/SPECIAL USE PERMITS

None

OLD BUSINESS - SUBDIVISION PLANS

1. Gerald A. Reppucci (Owner) - Application and acceptance of proposed two lot subdivision. Property is located at 7 Gaffney Street. Sheet 122 - Lot 433. Zoned "RA" Urban Residence. Ward 6.

MOTION by Mr. Varley to table the case to the October 17, 2019 meeting.

SECONDED by Mr. Bollinger

MOTION CARRIED 6-0

OLD BUSINESS - SITE PLANS

None

NEW BUSINESS - CONDITIONAL/SPECIAL USE PERMITS

2. 16 Commercial Street Realty, LLC (Owner) Eric L. Parent (Applicant) - Application and acceptance of proposed conditional use permit to allow a vehicle repair shop. Property is located at 16 Commercial Street. Sheet 38 - Lot 90. Zoned "GI" General Industrial. Ward 7.

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

SECONDED by Mr. Bollinger

MOTION CARRIED 6-0

Eric Parent, 120 Ridge Rd, Nashua NH

Mr. Parent introduced himself to the Board as the owner. He gave an overview of the proposal and history of the site. A

landscaping supply business is currently onsite, and they maintain their own vehicles. Since he has 20 trucks and equipment registered for the road, he needs a state inspection station license. To have an inspection station there, he needs to be approved for a vehicle repair shop, which is a Conditional Use Permit in that zone.

Mr. Parent said he would also like to repair other trucks. He estimated 1-2 trucks per week. They are not adding any buildings.

Mr. Weber asked if there had been any major spills previously from working on vehicles.

Mr. Parent said a diesel tank associated with the previous use has been removed, and described the remediation efforts. He said other than that it's a clean site.

Mr. Weber asked if there was an oil spill, do they have a way to make sure it doesn't get into the soil?

Mr. Parent described their current spill management practices.

Mr. Bollinger asked if there was any possibility that this could turn into a commercial endeavor.

Mr. Parent said yes. The idea is to be able to do his own inspections on his own vehicles to save money, and also offset costs.

SPEAKING IN OPPOSITION OR CONCERN

Peter Schaefer, 15 E St, Nashua NH

Mr. Schaefer asked if there would be noise impact or pollution that would impact the future Heritage Rail Trail expansion.

SPEAKING IN FAVOR

None

SPEAKING IN FAVOR - REBUTTAL

Mr. Parent said the Heritage Rail Trail has to be about 200-ft away from the garage. There would be no noticeable noise besides an impact gun. He said there is no pollution besides cars driving in and out. He doesn't foresee any problems.

Mr. Weber asked what their hours of operation would be.

Mr. Parent said 8AM-5PM. They also operate during snow emergencies for snow removal.

Mr. Bollinger asked if the city intends to acquire the abutting parcel for the Heritage Rail Trail.

Ms. McGhee said it has already been acquired.

Mr. Bollinger asked if this needed to be noted on the plan. He also asked if the applicant is amenable to a fence or landscaping to help mitigate noise.

Mr. Parent said there is a concern because there is no fence right now. Right now he has cement blocks for his border. He would hope that the city would install a fence.

Mr. Bollinger asked Staff if it would be incumbent on the city to construct the fence.

Ms. McGhee said she will bring that up at the public meeting on Wednesday.

Mr. Houston said there is a slope issue along that side of the property. He is sure the city will want to look into some sort of barrier there.

Mr. Bollinger asked if the ownership notation needs to be corrected on the plan.

Ms. McGhee said it should be changed. They can amend it administratively.

Mr. Weber asked what was stored right next to the rail trail.

Mr. Parent said that is where he has his topsoil pile, fill pile, and large cement blocks.

Mr. Weber asked if no contaminants would run off into the trail.

Mr. Parent said no. There's nothing there that would contaminate the trail. He is at a lower grade than the trail.

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

Ald. Tencza said he thinks that if the rail trail is going to run from downtown to this area, it's part of the city's responsibility to build a fence. He doesn't think they should require anything of the applicant at this time.

Mr. LeClair agreed, and said it was the prerogative of the applicant if they want to put their own up.

MOTION by Mr. Weber to approve New Business - Conditional Use Permit #2. It conforms to § 190-133(F) with no stipulations or waivers.

SECONDED by Mr. Bollinger

MOTION CARRIED 6-0

NEW BUSINESS - SUBDIVISIONS

3. JJN Realty Trust (Owner) - Application and acceptance of proposed two lot subdivision. Property is located at 301 Pine Street. Sheet 102 - Lot 151. Zoned "RB" Urban Residence. Ward 6.

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

SECONDED by Mr. Weber

MOTION CARRIED 6-0

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

Mr. Maynard introduced himself to the Board as representative for the owner.

Mr. Maynard gave an overview of the current site conditions. The proposal is to subdivide it into two lots- one 9,000-sqft lot containing the pre-existing house, and a new 6,000-sqft lot for a future single family home. Stormwater runoff will be handled by a leaching catch basin to be installed on the new building lot. The property will be served by city water, and sewer.

Mr. Maynard said there are a few remaining engineering issues, which are primarily part of the building permit process and will be taken care when the house size, arrangement, and location are known. They are requesting three waivers as part of this

application. The first waiver is from NRO § 190-282(B)(9), which requires physical features on site and within 1,000 feet. The second waiver is from NRO § 190-221(C), which requires underground utilities for new subdivisions. The third waiver is from § 190-212(A)(1), which requires that a sidewalk be located on at least one side of the street. They propose to make a contribution in lieu of sidewalk construction.

Mr. LeClair asked Mr. Maynard to give an overview of the contribution.

Mr. Maynard outlined the calculation, and said the applicant has agreed to make a contribution of \$10,700.

Mr. LeClair asked if he has seen the updated comments from Engineer Dept.

Mr. Maynard said yes, and said they relate to the driveway and sewer service. Those are typically done at the time of building permit.

Mr. LeClair asked if he had any issues with the comments.

Mr. Maynard said no.

Mr. Pedersen asked the Board if the sidewalk calculation applies to the frontage of the old and new lot.

Mr. LeClair said it applies to the total frontage, minus two driveways.

Mr. Varley referenced the abutter correspondence, and asked him to address any plans for screening between the lots.

Mr. Maynard said there is no screening required between single family homes. They plan to plant a few trees.

Mr. Weber said in some cases with corner lots they have only requested contribution for one side.

Mr. Maynard said it's in the Board's discretion to decide that. It is quite a bit of frontage, and a large contribution for a single family home.

Ald. Tencza asked if the applicant be willing to consider some sort of privacy screening in exchange of a reduction in sidewalk contribution.

Mr. Maynard said that is an inappropriate question.

Mr. LeClair said they can talk about a fence in the public meeting, but it would have to be separate from the sidewalk contribution.

SPEAKING IN OPPOSITION OR CONCERN

Peter Schaefer, 15 E St, Nashua NH

Mr. Schaefer asked if they would normally have sidewalks in this area. This is a high density area.

Mr. LeClair said they typically don't put isolated pieces of sidewalks in areas that don't have them.

Mr. Varley said a condition of the waiver is no sidewalks within 250-ft of the property.

SPEAKING IN FAVOR

None

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

Mr. LeClair summarized the meeting discussion and waiver requests. He said he thinks that using both lot frontages in the sidewalk calculation is the appropriate way.

Mr. Varley said that's how they have consistently looked at it.

Mr. LeClair said this is not the first time the question of screening has been raised.

Mr. Varley agreed. He said they often see subdivisions where it's been an empty wooded lot for years, and while he appreciates that it's unfortunate for the neighbor to lose that, the reality is that they never had control over it. Even if this lot wasn't being subdivided the owner could cut the trees down. This is a dense neighborhood of single family homes on relatively small lots. He's not sure that there is a legitimate basis for requiring a buffer.

Mr. LeClair addressed the first and second waivers, and said those are pretty typical for these types of request.

MOTION by Mr. Varley to approve New Business - Subdivision #3. 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. The request for a waiver of § 190-221(C), which requires underground utilities for new subdivisions, 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 \$10,700 in lieu of sidewalk construction pursuant to §190-212(D) (2), payment to be made prior to recording the plan.
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 recording of the plan, address of 49 Hunt Street shall be shown on the plan as assigned by the Fire Marshal.
6. Stormwater documents will be submitted to Planning staff for review and recorded with the plan at the applicant's expense.
7. Prior to the issuance of a building permit, all comments in an e-mail from Joe Mendola, Street Construction Engineer dated September 27, 2019 shall be addressed to the satisfaction of the Engineering Department.
8. Prior to the issuance of a building permit a pre-construction meeting shall be held.
9. Prior to the issuance of a building permit, an electronic copy of the plan shall be submitted to the City of Nashua.
10. Prior to the Chair signing the plan, minor drafting corrections will be made.
11. Any work within the right-of-way shall require a financial guarantee.

SECONDED by Mr. Pedersen

MOTION CARRIED 6-0

2. Bruce Kinville (Owner) - Application and acceptance of proposed two lot subdivision. Property is located at 21 1/2 Fairmount Street. Sheet 62. Lot 190. Zoned "RB" Urban Residence. Ward 4.

Ald. Tencza recused himself from this case.

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

SECONDED by Mr. Varley

MOTION CARRIED 5-0

Steve Auger, Project Engineer, Hayner & Swanson Inc, 3 Congress St, Nashua NH

Mr. Auger introduced himself to the Board as representative for the owner, Bruce Kinville. He also introduced legal counsel Atty. Jay Leonard.

Mr. Auger gave an overview of the current site conditions. He described the minimum zone requirements, and said the property gained dimensional variances from the ZBA on April 9, 2019. The new lot will be served by water, sewer, and gas. The electrical connection will be underground. Because the location of the existing house's septic system is on the new lot, they will be tying that into the sewer system.

Mr. LeClair asked if that would be on Paxton Terrace.

Mr. Auger said yes. They are proposing a duplex on the new lot, and said that fourteen of the existing houses on Paxton Terrace are duplexes. It will be within character of the neighborhood. He described their method for working with the changes in topography and stormwater management practices.

Mr. Auger said they received all engineering comments, and have responded to them. He said that if they are approved, the final plans will incorporate all the necessary revisions. He believes they have met their conditions.

Mr. Auger said that they are requesting two waivers as part of this application. The first is from NRO §190-212(A)(1), which requires that a sidewalk be located on at least one side of the street. They are offering a payment of \$3,744 in lieu of sidewalk construction. The second is from NRO § 281 (D)(10) &

(D)(14), which requires an existing conditions plan showing physical features within 1,000 feet of the site. The recommended stipulations in the staff report are acceptable, and they respectfully seek the Board's approval.

Mr. LeClair asked him to explain the proposed retaining walls.

Mr. Auger indicated the location on the plan. He said that they are trying to keep the area between where the driveway ends and the left side of the house flatter.

Mr. LeClair asked the height of the wall.

Mr. Auger said he believes it's 4-ft.

Mr. LeClair asked him to explain the design of the stormwater basin. Is there an outlet?

Mr. Auger said no, it's designed to infiltrate like a bowl. They graded the site so that stormwater will funnel off from either side of the driveway into the detention area.

Mr. LeClair asked how deep the stormwater basin is.

Mr. Auger said only a few feet deep. It will be grass.

Mr. LeClair asked if there were any changes to the utilities on the existing house other than the sewer line.

Mr. Auger said no.

Mr. LeClair asked where they come from.

Mr. Auger described the source of each utility.

Mr. LeClair asked if there is any thought to underground utilities.

Mr. Auger said that because they are doing a fair amount of digging in a small area, they want to try not to jam everything in there. The house functions fine with overhead electric, and the water comes in from Fairmount St.

Mr. Weber asked if the retaining wall would require a building permit, and if it would be inspected.

Mr. Auger said he's not sure how the building permit process works. That will be for the land developer or contractor to deal with. Whatever permits they need they'll get.

Mr. Weber asked if he knew who would be inspecting all of his civil engineered site aspects.

Mr. LeClair said there is a stipulation in the staff report about an engineering affidavit. He asked if the applicant had reviewed that stipulation.

Mr. Auger said yes. If they are hired by the developer to inspect it, they would be able to comply with it. They have no issues with the stipulation.

SPEAKING IN OPPOSITION OR CONCERN

None

SPEAKING IN FAVOR

None

Ms. McGhee said that all retaining walls over 4-ft in height would require a building permit.

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

MOTION by Mr. Varley to approve New Business - Subdivision #3. It conforms to § 190-138(G) with the following stipulations or waivers:

1. 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 \$3,744 in lieu of sidewalk construction pursuant to §190-212(D)(2), payment to be made prior to recording the plan.
2. The request for a waiver of § 281 (D)(10) & (D)(14), which requires one to show all existing conditions within 1,000 feet and show buildings and structures and driveways on abutting parcels located across a nondivided street for new subdivisions, 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, minor drafting corrections will be made.
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 paper copies submitted to the City.
5. Prior to recording of the plan, address of 10A & 10B Paxton Street shall be shown on the plan as assigned by the Fire Marshal.
6. Prior to the issuance of a building permit a pre-construction meeting shall be held.
7. Prior to the issuance of a building permit, all comments in an e-mail from Joe Mendola, Street Construction Engineer dated September 30, 2019 shall be addressed to the satisfaction of the Engineering Department.
8. Applicant shall enlist the services of a registered professional engineer or land surveyor to review the as-constructed condition of engineered site plan aspects, including but not limited to, site grading, soil retainment systems, and drainage systems (as applicable). Applicant shall submit, prior to issuance of Certificate of Occupancy, an affidavit stating as-constructed conditions are in conformance with the approved plan.

SECONDED by Mr. Bollinger

MOTION CARRIED 5-0

Ald. Tencza resumed his position on the Board.

NEW BUSINESS - SITE PLANS

5. Michael and Julieann Atkins (Owners) Crimson Properties, LLC (Applicant) - Application and acceptance of proposed site plan to construct 7 residential units and associated site improvements. Property is located at 1086 West Hollis Street. Sheet D - Lot 500. Zoned "R30" Suburban Residence. Ward 5.

Mr. Varley said there is a significant amount of information put before them before the meeting. So they will hear the case with the understanding that if they feel they do not have enough information to make a decision, they will table it.

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

SECONDED by Mr. Weber

MOTION CARRIED 6-0

Tom Zajac, Project Engineer, Hayner/Swanson Inc., 3 Congress St,
Nashua NH

Mr. Zajac introduced himself to the Board as representative for the applicant. He also introduced Randy Turmel from Crimson Properties LLC., and Atty. Westgate from Winer & Bennett LLP.

Mr. Zajac gave an overview of the proposal. He described the history of the site and current features. They are proposing a 7-unit detached residential condo development, to be known as Applewood Estates. It is being developed in accordance with the city's conservation subdivision regulations, NRO § 190-40. Access to the site will be via a new private road, Braeburn Drive. He described the proposed units. Associated site improvements will include curbing, landscaping, lighting, utility infrastructure, and stormwater management. The units will be serviced by municipal water, and have private onsite septic.

Mr. Zajac outlined Atty. Westgate's memo regarding the subdivision history and paper streets onsite. He said that stipulation #4 of the staff report is written vaguely, and he hopes that their testimony will help strike that condition. He presented an overview of the conservation subdivision regulations, and their adherence to the ordinance criteria. He described their stormwater management infrastructure.

Mr. Zajac said that they are requesting a waiver from NRO § 190-212(A)(1), which requires that a sidewalk be located on at least one side of the street. They are willing to make a contribution of \$11,700 in lieu of sidewalk construction.

Mr. Zajac said received engineering comments, and in reviewing them he doesn't think there is anything significant that will cause them to alter their design or require waivers. They have submitted revised plans to Staff, and he is confident they can address any lingering issues. The conditions outlined in the staff report are acceptable to them, with the exception of stipulation #4.

Atty. Brad Westgate, Winer & Bennett LLP., 111 Concord St,
Nashua NH

Atty. Westgate introduced himself to the Board as representative for the applicant.

Atty. Westgate presented a plan showing the three paper streets found onsite. He said the proposed Braeburn Drive is essentially in the same locus as the discontinued street of Woolworth St. He has submitted a memo explaining the paper streets. He said there were concerns that this plan would land-lock parcel D-223; that is not the case. This property has a private right of access over the old location of Woolen Dr as a paper street, because of the nature in which paper streets are dealt with in the law that controls them.

Atty. Westgate outlined the memo he submitted to the Board. He explained the right of access and platting of streets. He concluded that with respect to Woolworth St and Colonial Ave, there is no practical functionality for the paper streets nor need by any of the lots shown. Woolen Ave is needed to access parcel D-223, and they recognize this private right of access in the existing conditions plan under Note #7. He clarified the deeds and plans in regards to the ownership of parcel D-223. He said any other issues that may spring out of this are civil matters between two property owners.

Atty. Westgate requested that stipulation #4 be stricken from the conditions of approval, should the plan be approved. He explained the reasons behind his request. They are doing nothing more in this plan set than acknowledging what private rights of access the abutter has, and also making clear to the Board that these paper streets are no longer burdened by public servitude and there is no municipal interest in them.

Mr. Varley asked him if the proposed development doesn't alter the current state of affairs.

Atty. Westgate said correct. Whatever private access rights exist as a result of the paper streets don't go away.

Mr. Varley asked if they exist today.

Atty. Westgate said yes. The one that has practical effect is Woolen Ave, and the access to parcel D-223.

Mr. Varley said it appears to him that private access would run across both the site and two adjacent parcels, D-224 & D-230.

Atty. Westgate said correct. The boundary between those two lots is the centerline of Woolen Ave. In 2005 the city aldermen formally discontinued that portion in between the lots, and the city quit claimed any right, title, and interest it had in Woolen Ave to the property owners. Irrespective of that, the private rights of access don't go away.

Mr. Varley asked what the resolution would be if to provide access to parcel D-223, it would need all three property owners.

Atty. Westgate said the resolution in the context of this application is noting on the plan that they recognize that the private rights of access exist. They are putting nothing on the record that could be argued by the abutter that the Board approved a plan that did violence to his private rights of access.

Mr. Varley asked if they could not reach a resolution through the mechanism of this plan because there are other private property owners that would need to be involved.

Atty. Westgate said yes. If the owner of D-223 wanted to build a driveway from West Hollis St, through the two parcels and this site to his property, he would have to go through whatever approval processes were necessary. That is outside of the scope of anything before the Board tonight. They are just not precluding that possibility.

Mr. LeClair asked the practicality of building a driveway through lots D-224 & D-230. Are they essentially creating a lot in the back that isn't accessible anymore?

Atty. Westgate said they would not be approving a plan that changes the state of affairs with lot D-223.

Tom Zajac, Project Engineer, Hayner/Swanson Inc.

Mr. Zajac said it would be challenging to get an access there, but there is an easement for access. With this plan they are respecting the abutter's right to make that connection if they choose.

Mr. LeClair summarized that the construction of the two lots on West Hollis Street impacted the options available to parcel D-223. They can't ignore that there is an opportunity here to produce a plan that could provide access to lot D-223 in the

future. His concern is that for all practical purposes they would end up with an unusable lot in the middle.

Mr. Varley said that exists today.

Mr. LeClair said there are options today. They are diminishing those options, and he is concerned about that.

Me. Weber asked if they had considered negotiating with the abutter to make that lot bigger. The abutter could then develop that and then there would be a real reason to build that road, and he could probably fit three houses in there.

Atty. Brad Westgate, Winer & Bennett LLP.

Atty. Westgate said his client had a number of conversations with the abutter about the possibility of integrating the lot into this development. The two of them were not able to reach an agreement that was economically viable. He said the idea that the applicant has to explore other alternatives of development because of the nature of a neighbor's property, just becomes a roadblock to anything happening on the property the applicant has rights to.

Ald. Tencza asked if there was never any access to Woolworth St.

Atty. Westgate said yes. There were lots between lot D-223 and Woolworth St on the old plans.

Ald. Tencza asked if they only access they would have had to West Hollis St is Woolen Ave.

Atty. Westgate said correct. He said Woolen Ave originally extended to Gilson Rd.

Ald. Tencza asked when the houses on lots D-224 & D-230 were built.

Atty. Westgate said possibly the 80s.

Mr. LeClair asked when the finger of land attached to the site was added.

Atty. Westgate explained the history of the site and abutting lots.

Mr. Pedersen asked what kind of topographical obstacles there are between West Hollis St and lot D-223.

Tom Zajac, Project Engineer, Hayner/Swanson Inc.

Mr. Zajac described the grade change in the area.

Mr. Pedersen asked if each individual unit would have its own septic system, or are they shared?

Mr. Zajac said each unit will have its own tank, but six of the units would share the system.

Mr. Pedersen asked if the 28-ft wide road will allow for on-street parking?

Mr. Zajac said correct. If a private street narrows to 24-ft, the Fire Dept. doesn't allow on-street parking.

Mr. Varley asked if it is the same width as a public street.

Mr. Zajac said correct.

Mr. Bollinger asked the speed limit on West Hollis St point.

Mr. Zajac said he thinks 30-mph.

Mr. Pedersen said 45-mph.

Mr. Bollinger asked if they need applicable site distance criteria.

Mr. Zajac said yes. Steve Pernaw was the traffic engineer, and he submitted a memo to the Traffic Dept. They meet all of the criteria for that roadway.

Mr. LeClair asked if this would be a homeowner association.

Atty. Brad Westgate, Winer & Bennett LLP.

Atty. Westgate said it would be a condominium association.

Mr. LeClair asked if maintenance would all be private.

Atty. Westgate said yes.

Mr. LeClair asked how trash would be handled.

Atty. Westgate said private curb pickup at each house.

Mr. Varley asked if the houses will have individual mailboxes, or a cluster mailbox on West Hollis St.

Tom Zajac, Project Engineer, Hayner/Swanson Inc.

Mr. Zajac said the idea would be individual mailboxes, but typically the post office makes the final call on that. They haven't had that conversation with them yet.

SPEAKING IN OPPOSITION OR CONCERN

Joe Carvahlo, 9 Tammy Circle, Nashua NH

Mr. Carvahlo said the speed limit is 50-mph until Overlook Dr, and then it's down to 40-mph just after the city landfill.

Mr. Carvahlo said it seems that Atty. Westgate is acknowledging this right without any authority to do so. He said that Woolen Ave doesn't go down to Gilson Rd anymore because there are private homes there. He asked how someone can say they have a right access across other people's privately owned properties. In all practicality that is a landlocked piece of property by other privately owned properties.

Mr. LeClair explained that the paper street has been on the plans for a long time, even when those lots were constructed.

Mr. Carvahlo said that's all well and good, but it's still private property.

Mr. Varley said it's effectively an easement. You can have an easement that exists over other private property.

Mr. Carvahlo asked if the abutting property owners didn't want a driveway, is there any right that supersedes over their property rights? He asked for further clarification.

Mr. Varley said it's an issue of the title with respect to each of the properties. The title can pass rights of other people onto a property. They would have a continuing right.

Mr. Carvahlo said right of access an empty term, and you can't override someone's private property rights, especially since the owner didn't know it was there when they bought the property. He said as far as he's concerned it's a landlocked inaccessible piece of property.

Earl Knipfer, 1110 West Hollis St, Nashua NH

Mr. Knipfer asked if the developer plans on clear cutting the "finger" area adjacent to his property.

Don Thibault, 10 Caitlyn Circle, Nashua NH

Mr. Thibault asked if a developer can clear cut right to the property line, or if there are stipulations preventing it. He said they added some landscaping near one abutter, but none of the other property lines. Is there supposed to be a buffer?

Peter Schaefer, 15 E St, Nashua NH

Mr. Schaefer said this project is within walking distance of the golf course and the Nashua River Rail Trail. He asked them to consider installing a sidewalk on West Hollis Street. There are no sidewalks nearby, and the shoulders are not in good condition. It would make the area more walkable and attractive to residents.

SPEAKING IN FAVOR

Siddharth Dubey, 1093 West Hollis St, Nashua NH

Mr. Dubey said they owner has spoken with him in detail about the project, and he doesn't have any objection to it. It would be good to have a few more neighbors.

Peter Maccini, 1080 West Hollis St, Nashua NH

Mr. Maccini said this site came before the Board previously, requesting a daycare, and the surrounding community was vehemently against it. This plan is very agreeable to him and his wife, and they support it. Furthermore, they support the notion that there not be any sidewalks. There is a lot of traffic, and the sidewalks on West Hollis St are on the north westerly side. This site is on the east side. If sidewalks could be deferred he would appreciate that. They would enjoy having more neighbors.

Joe Carvahlo, 9 Tammy Circle, Nashua NH

Mr. Carvahlo said he isn't necessarily opposed to this plan. He is concerned with the access to parcel D-223.

Letters of support from: 15 Colonial Ave, 1096 West Hollis St,
1093 West Hollis St, 1100 West Hollis St.

SPEAKING IN FAVOR - REBUTTAL

Atty. Brad Westgate, Winer & Bennett LLP.

Atty. Westgate further explained the rights of access and easement. He explained the history and legal implications of paper streets.

Mr. Pedersen said the landlocked parcel has rights of access through D-224, D-230, & D-500. Would they be required to allow the landlocked property to come through theirs to get to their property.

Atty. Westgate said they would have access to it in the location of the paper street. They don't have to allow them rights over the land outside of the paper street, but only to the extent that's in the paper street.

Tom Zajac, Project Engineer, Hayner/Swanson Inc.

Mr. Zajac said this is an existing condition, they are not creating anything. With their plan they are recognizing the facts of the situation.

Mr. Zajac said that within the first 20 to 30-ft of the "finger" they are adjusting the topography. The rest will remain untouched in its current condition.

Mr. Zajac said he's not aware of any formal buffers required by the regulations for single family homes. He indicated the tree buffer from Caitlyn Circle, and said they are maintaining a 5-10 ft. buffer elsewhere. His client is committed to plan some select materials throughout in appropriate locations, even though he is not required to do so.

Mr. Zajac said the sidewalk contribution is divided up into geographical quadrants of the city, so their contribution will be spent as the city deems necessary in this area. They think it's better than constructing a sidewalk in this very short stretch.

Ald. Tencza referred to a note in the letter of support from 15 Colonial Ave, that the applicant agreed to plant evergreens and flowering plants abutting lot D-497. Is that a note from the homeowner? Did they put that in there?

Mr. Zajac said yes, they wanted it in writing. Mr. Turmel is committing to that. He has tried to speak with or has spoken to everyone abutting his lot.

SPEAKING IN OPPOSITION OR CONCERN - REBUTTAL

None

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

Mr. LeClair summarized the discussion of the public hearing. He said it's a complicated scenario with the existing paper street. There is obviously recognition of that street from the applicant, so they are noting that at some point there may be some sort of access required through their lot to lot D-223.

Ald. Tencza said the other two properties affected by the paper street have submitted letters of support for the project. Presumably they know about the potential issue going forward.

Mr. LeClair said that's an important point, as the two abutters most affected by the paper street.

Mr. Varley said the applicant isn't changing the state of affairs here. They are acknowledging the right of access, and are not even developing that section of the lot which the right of access passes. It's an unusual situation, but it's a function of the existing lots.

Mr. LeClair said he is not in favor of stipulation #4.

Mr. Varley said he would be in favor of removing it. He doesn't think that there is anything they could force in terms of a resolution. It's beyond the purview of what the Board is reviewing in connection with this site plan.

Mr. Bollinger and Mr. Weber expressed agreement.

Mr. LeClair said the sidewalks stop over by the city landfill. Getting the contribution could move things further in the right direction. He would be in favor of that.

Mr. Varley recommended an amendment to stipulation #8, with regards to submitting condominium documents.

Mr. McPhie recommended they amend stipulation #1 so that payment be made prior to the board chair signing the plan.

Mr. Bollinger referred to stipulation #9 and asked if there were any entanglements in regards to the paper street.

Mr. McPhie said that stormwater documents could technically fit in that category.

MOTION by Mr. Varley to approve New Business - Site Plan #5. It conforms to § 190-146(D) with the following stipulations or waivers:

1. 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 \$11,700 in lieu of sidewalk construction pursuant to §190-212(D)(2), payment to be made prior to chair signing the plan.
2. Prior to the Chair signing the plan minor drafting corrections will be made.
3. Prior to the chair signing the plan, all conditions from the Planning Board approval letter will be added to the cover page of the final Mylar and paper copies submitted to the City.
4. Prior to issuance of a building permit, the applicant will address any remaining zoning concerns to the satisfaction of the Zoning department.
5. Prior to issuance of a building permit, all comments in an e-mail from Joe Mendola, PE dated September 20, 2019 shall be addressed to the satisfaction of the Engineering Department.
6. Prior to issuance of a building permit, all comments in an e-mail from Mark Rapaglia, Nashua Fire Department dated September 3, 2019 shall be addressed to the satisfaction of the Fire Department
7. Prior to the issuance of a building permit, the applicant shall provide condominium 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.

8. Prior to the issuance of a building permit, all easements shall be submitted to the Planning Department and Corporation Counsel for review and approval and recorded.
9. 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" all construction was generally completed in accordance with the approved site plan and applicable local regulations". Sidewalk construction shall be to base course, with final course pavement remaining bonded until completion.
10. Any work within the right-of-way shall require a financial guarantee.

SECONDED by Ald. Tencza

MOTION CARRIED 6-0

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

OTHER BUSINESS

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

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

SECONDED by Ald. Tencza

MOTION CARRIED 6-0

2. Amendment to the FY 2020 Capital Improvement Program, adding 4 new items.

Roger Houston, Planning Director

Mr. Houston gave a detailed and precise overview of each proposal. He said they can either make changes to the proposal and forward that, or they can agree with the Committee's findings and forward that favorable recommendation onto the Board of Aldermen.

MOTION by Ald. Tencza to make a favorable recommendation for Other Business - #3 to the Board of Aldermen, as written.

SECONDED by Mr. Varley

MOTION CARRIED 6-0

DISCUSSION ITEMS

None

MOTION to adjourn by Mr. Varley at 9:35 PM.

MOTION CARRIED 6-0

APPROVED:

Mr. LeClair, Chair, Nashua Planning Board

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Prepared by: Kate Poirier

Taped Meeting