

NASHUA CITY PLANNING BOARD
October 19, 2023

The regularly scheduled meeting of the Nashua City Planning Board was held on October 19, 2023 at 7:00PM in the 3rd floor auditorium in City Hall AND via Zoom virtual meeting.

Members Present: Mike Pedersen, Mayor's Rep.
Adam Varley, Acting Chair
Maggie Harper, Clerk
Dan Hudson, City Engineer
Bob Bollinger
Larry Hirsch

Also Present: Sam Durfee, Planning Manager (Zoom)
Linda McGhee, Deputy Planning Manager
Scott McPhie, Planner I

APPROVAL OF MINUTES

September 21, 2023

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

SECONDED by Mr. Bollinger

MOTION CARRIED 6-0

COMMUNICATIONS

None

REPORT OF CHAIR, COMMITTEE, & LIAISON

None

PROCEDURES OF THE MEETING

Mr. Varley said there were no cases on this agenda, only referrals, but he would accept public comment on those items.

OLD BUSINESS - SUBDIVISION PLANS

A23-0066 City of Nashua (Owner) - Blaylock Holdings, LLC (Applicant) - Proposed subdivision of a portion of the Veterans Memorial Parkway as part of the Mohawk Tannery Redevelopment project. Zoned "RC" Urban Residence, RB-Urban Residence, and VMPR-Veterans Memorial Parkway Redevelopment Overlay District. Ward 4. **[TABLED TO THE DECEMBER 7, 2023 MEETING]**

A23-0067 J.K.S. Realty, LLC (Owner). Blaylock Holdings, LLC (Applicant) - Proposed two lot subdivision. Property is located at "L" Fairmount Street. Sheet 62 - Lot 100. Zoned "RC" Urban Residence, "RB" Urban Residence, and "VMPR" Veterans Memorial Parkway Redevelopment Overly District. Ward 4. **[TABLED TO THE DECEMBER 7, 2023 MEETING]**

A23-0068 City of Nashua, Fimbel Door Corporation, Chester Realty Trust, J.K.S. Realty, LLC and L.J.J. Realty LLC (Owners). Blaylock Holdings, LLC (Applicant) - Proposed consolidation of seven existing lots and subdivide into nine proposed lots along with a proposed public road. Property is located at "L" Fox Street, 66 Fairmount Street, 11 Warsaw Avenue, "L" Intervale Street, "L" Hughey Street and "L" Fairmount Street. Sheets/Lots 71-7, 70-14, 134-16, 70-13, 134-40, 134-41, 62-100 (portion of newly created lot 100-1). Zoned "RC" Urban Residence, "RB" Urban Residence, and "VMPR" Veterans Memorial Parkway Redevelopment Overly District. Ward 4. **[TABLED TO THE DECEMBER 7, 2023 MEETING]**

OLD BUSINESS - SITE PLANS

A23-0069 City of Nashua, Fimbel Door Corporation, Chester Realty Trust, J.K.S. Realty, LLC and L.J.J. Realty LLC (Owners) Blaylock Holdings, LLC (Applicant) - Proposed Mohawk Tannery Redevelopment project involves the remediation and subsequent redevelopment of the former Fimbel Door/Mohawk Tannery sites and portions of adjacent properties into a total of 546 multi-family residential units along with associated site improvements. Property is located at "L" Fox Street, 66 Fairmount Street, 11 Warsaw Avenue, "L" Intervale Street, "L" Hughey Street and "L" Fairmount Street. Sheets/Lots 71-7, 70-14, 134-16, 70-13, 134-40, 134-41, 62-100 (portion of newly created lot 100-1). Zoned "RC" Urban Residence, "RB" Urban Residence, and "VMPR" Veterans Memorial Parkway Redevelopment Overly District. Ward 4. **[TABLED TO THE DECEMBER 7, 2023 MEETING]**

OTHER BUSINESS

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

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

SECONDED by Mr. Hirsch

MOTION CARRIED 6-0

2. Referral of R-23-0163 Authorizing City to Grant an Easement to Public Service of New Hampshire d/b/a Eversource Energy for Tax Map 43, Lot 105 and Lot 106.

Donald Stokes, Eversource Energy, 276 Amherst St, NH

Mr. Stokes said they cannot easily access the poles over near the walkway, and their plan is to put them in the ground for safety and emergency response.

Mr. Hirsch asked where this is.

Mr. Stokes said this is over by Margarita's, Canal Street.

Mr. Varley said this seems pretty straightforward. We are encouraging underground utilities in any case.

Mr. Hudson said this is related to the Riverfront project, and a triangular piece of property the city owns. It's been a while in the works but is finally negotiated and Legal is satisfied with the language. It is appropriate to move forward.

MOTION by Mr. Bollinger to favorably recommend R-23-163 to the Board of Aldermen

SECONDED by Mr. Hirsch

MOTION CARRIED 6-0

3. Referral O-23-062 Amending the Land Use Code regarding the wetlands buffer for vernal pools.

Sherry Dutzy 18 Swart Terrace, Nashua NH

Ms. Dutzy introduced herself on behalf of the Conservation Commission, of which she is chair. They requested that Ald. Jette and Ald. Dowd put this change forward. Currently the buffer for vernal pools is 20-ft, and they are asking for a 100-ft buffer.

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The Army Corp of Engineers goes up to a 400-ft buffer to protect species that take advantage of vernal pools.

Ms. Dutzy said she is not an expert, but a friend of the Conservation Commission can speak to the species in the vernal pool and why an increase in the buffer is important.

Mr. Varley said the prime buffer is 75-ft, and they are asking for 100-ft.

Mr. Hirsch asked how much land would be taken out of use by this. Has anyone done a calculation of the land that that would no longer be developable? It's a major increase and he is confused why there is such a large change. He is also concerned about the economic impact to landowners.

Ms. Dutzy said she doesn't believe anyone has.

Mr. Hirsch said then we don't really know what the implications are at the end of the day. These are vernal pools, which are seasonal, as opposed to prime wetlands.

Ms. Dutzy said most of the vernal pools they have identified have been on conservation land or they have been on city land, such as the new McCarthy middle school. She doesn't think they have had anything come forward where there is a vernal pool on a piece of private property.

Mr. Hirsch asked if anyone has counted them.

Ms. Dutzy said no.

Mr. Hirsch said then we don't really know the economic implications of what they're recommending. That's a large change. The prime wetland buffer is only 75-ft.

Ms. Dutzy said there may be an economic impact. The real issue and what the Conservation Commission is concerned about is the protection of the species that are part of the vernal pool. Fairy shrimp, spotted salamander, and various frogs will breed in a vernal pool and then move to upland areas after the breeding season. You need more areas of protection so they can raise their young and be part of the ecosystem. There could be an economic impact, but do you want development within 20-ft of a vernal pool? The reason that you have critical wetland buffers and prime wetland buffers is because we know that those are habitats that need to be

protected. You could say the same thing about prime wetlands, why not just develop right up to the water's edge?

Mr. Hirsch said the issue here is the vernal pools. It concerns him that no one has really evaluated what is involved and what the overall implications are. And, the distance between 20-ft or 100-ft. It seems not totally thought through. He's not hearing any analysis or basic information.

Ms. Dutzy said this is not a new concept. The Army Corp of Engineers recommends a 400-ft buffer.

Mary Lou Soczek, 15 Rocky Hill Dr, Nashua NH

Ms. Soczek introduced herself as a conservation biologist, and said she has helped the Commission with various walks and talks. She can speak to the economic impact. Vernal pools are typically very small, not even a third of an acre. A 20-ft buffer around the edge of a fairly small pool doesn't provide a lot of protection for the frogs and salamanders going in and out. Expanding that to 100-ft, which is in line with the Army Corp. and other conservation organizations, gives them more breathing room from disturbance. She doesn't know of any studies that have calculated the additional square footage. She doesn't think it would be that large, as vernal pools themselves are not that large.

Mr. Varley asked staff if the wetland buffer restriction is within the discretion of the Planning Board to modify. Could they allow this on a case by case basis?

Mr. McPhie said that they would still be following the special exception, as they would for prime wetlands and others. In his experience, 125-ft is not an unusual buffer because of upland species.

Mr. Varley asked if a special exception before the Zoning Board would be the remedy.

Mr. McPhie said correct.

Mr. Pedersen said he received an email today from a Nashua resident regarding this ordinance, and in it was a pdf file titled "Vernal Pool Best Management Practices" from the Army Corp of Engineers. Their recommendation is 100-ft, up to 700-ft.

Ms. Soczek said that was the document she was referring to.

Mr. Hirsch said he didn't realize the Army Corp of Engineers dealt with wetlands, just navigable waterways.

Mr. Pedersen said this is a minimum. Sometimes the salamanders need to travel.

Ms. Harper asked what constitutes a vernal pool versus a large puddle. What's the difference?

Ms. Soczek said a vernal pool has certain characteristics. It's shallow enough that fish can't live there year round, and some will completely dry up. The lack of fish who are predators to animals prevents predation and allows salamanders and wood frogs to reproduce. There can be puddles that form in the spring that don't support these species, and dry up. The definition of a vernal pool is a seasonal wetland that has these indicator species. There can be similar areas that look a lot like it but for some reason those species don't go there. It's the repeated use of this little depression in the soil by these species. There's great site fidelity, the young will come back to the same pool, and that's why protection is so important. There have been attempts to create vernal pools by making these depressions in the soil, and that has not succeeded. That's why it's important to protect the ones we know we have, because you can't create them. It's particular characteristics of the forest that make this retention of water.

Ms. Harper asked they have already been identified.

Ms. Soczek said many of them have. There was a survey done of some of the conservation land and city property.

Ms. Harper said as far as mandating this, if someone comes to them in September they would not be able to tell.

Ms. Soczek said correct, in September you would not be able to tell if something is a vernal pool except certain species of clams that live there. If you can see those shells along a dried up pool, you can confirm it. It's generally difficult when there is no water and it's not springtime.

Ms. Dutzy said the normal process is that they recognize there are wetlands on the property, and the developer has a wetland scientist go out and evaluate the areas. If the scientist suspects a vernal pool, they will have to come back during springtime to identify viable vernal pools. Then the developer designs around those areas.

Normally there is enough property where this wouldn't be an issue. She doesn't know of a recognized vernal pool on a piece of private property, because unless they want to develop it they can't identify it. The reason vernal pools are so special is because there are no fish, they're home to only certain species, and they have no inlets or outlets. That's how they're identified. He doesn't think it will affect a lot in Nashua, but the ones we have we should protect.

Mr. Pedersen asked if turtles and birds utilize these.

Ms. Soczek said very rarely. It's not a typical habitat. Turtles need flowing water and a much larger amount of water.

Mr. Hirsch asked how vernal pools differ from other classifications of wetlands. Are these species also in other wetlands?

Ms. Soczek said no, these species are only found in vernal pools. If they were in other wetlands they would be predated. These are species that rely on protected, secluded areas.

Mr. Hirsch asked for the rationale for wider buffers for vernal pools than prime wetlands. It would seem that prime wetlands would be a bigger concern.

Ms. Dutzy said in a prime wetland, like along Salmon Brook, there are different species. The species that are in a vernal pool breed and then move upland. Species along Salmon Brook stay, that's their habitat. Species in a vernal pool move, that's why you want to have that protected area, so that as the young come out they have an area to go.

Mr. Hudson said in the Army Corp document it shows a diagram of the buffer. A 100-ft circle is .7 acres, so if the pool was 0-ft in size you would have a .7-acre area protected. A vernal pool a third of an acre in size, would result in a pretty big area.

Mr. Hirsch said that is his concern.

Mr. Hudson said his concern is less for the large subdivisions and more for the individual homeowners.

Mr. Varley said the reality is that if they're talking about a smaller lot, even a 20-ft buffer would be impactful. The homeowner would have the opportunity to seek a remedy before the Zoning Board with a special exception. He doesn't see any developers here who

are expressing concern about this. Given that there is ultimately a remedy and that this is a recommendation by people who are experts in the field, he would be inclined to not second guess their judgment.

Mr. Hirsch said he feels this would take a huge amount of land out of use. To have that kind of a broad mandate is an awful lot of land. Without understanding the impacts. We don't know if there are a hundred or a thousand in the city. He doesn't think they should give it a carte blanche.

Mr. Varley said they're not creating a standard, just increasing it. He thinks it would be good to make a motion.

Ms. Dutzy said Nashua just updated its Natural Resource Inventory with the NRPC, and all of the maps out there to identify the wetland areas. Those have been identified through the inventory. We didn't go into people's backyards, but the chances of there being one in someone's backyard is unfathomable. Most of what they come across are homes built in the wetland buffer, sometimes half in the wetland. That's pretty common. They have been working on the maps to make them more granular, none of them are perfect because things change due to erosion and river movement. But as far as the majority of the wetlands in Nashua, they have been mapped out. She's been on the Commission almost 10-years and has never heard of a vernal pool in someone's backyard.

Mr. Pedersen said the change to the ordinance requires a wetland scientist to identify it; it would be a case by case basis.

Mr. Varley said it is 100-ft, but that scientist would determine where it would begin and end.

MOTION by Mr. Bollinger to favorable recommend 0-23-062 to the Board of Aldermen

SECONDED by Mr. Pedersen

Mr. Bollinger said a lot of the larger undeveloped parcels are either city owned or already aware of them, maybe a handful of others. The largest impact would be to those larger parcels. He agrees that a smaller parcel would already be impacted by a 20-ft buffer. If you supplement that with the fact that there is a path to remediation via zoning relief, he doesn't see this as particularly burdensome. If you were trying to pass this in a more rural community, that would limit development to a far greater

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degree. Given what's already built out here, he feels it's not unduly restrictive.

Mr. Hirsch said he respectfully disagrees. He feels this is putting in place something where they can't predict the impacts. We don't know what's out there, no one's categorized them, they could be anywhere. It's fine to do on city owned land or conservation land, but to subject private landowners to that is unreasonable.

MOTION CARRIED 5-1 (Hirsch opposed)

3. Review of the 2024 NCPB Meeting and Deadline Dates

Mr. Varley asked the Board members to review the dates and see if they have any issues.

DISCUSSION ITEMS

Revision of the sidewalk payment-in-lieu fee: Postponed

Revision of NCPB Bylaws: Postponed

MOTION to adjourn by Mr. Bollinger at 7:42 PM

MOTION CARRIED 6-0

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KP - Taped Hearing