

NASHUA CITY PLANNING BOARD  
November 16, 2023

The regularly scheduled meeting of the Nashua City Planning Board was held on November 16, 2023 at 7:00PM in the 3<sup>rd</sup> floor auditorium in City Hall AND via Zoom virtual meeting.

Members Present: Scott LeClair, Chair  
Adam Varley, Vice Chair  
Ald. Patricia Klee  
Dan Hudson, City Engineer  
Bob Bollinger  
Larry Hirsch  
Cameron Green

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

**APPROVAL OF MINUTES**

November 2, 2023

**MOTION** by Mr. Varley to approve the minutes, as written

**SECONDED** by Mr. Hirsch

**MOTION CARRIED 7-0**

**COMMUNICATIONS**

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

- **A23-0066, A23-0067, A23-0068, A23-0069, Mohawk Tannery**
  - o Request to postpone to the February 15, 2024 meeting
- **A23-0185, 282 Daniel Webster Hwy**
  - o Updated engineering comments

**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.

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 - 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 Overly 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]**

**MOTION** by Ald. Klee to table A23-0066, A23-0067, A23-0068 and A23-0069 to the February 15, 2024 meeting

**SECONDED** by Mr. Bollinger

**MOTION CARRIED 7-0**

*Mr. LeClair said he would take A23-0176 and A23-0175 together.*

**OLD BUSINESS - SUBDIVISION PLANS**

**A23-0176** Law Realty Co., Inc. (Owner). The Law Family Companies, Inc. (Applicant). Proposed lot line relocation/consolidation/subdivision and boundary plan. Property is located at 338, 340, 350 & 352 Amherst Street and 16, 17, 18 & 30 Airport Road. Sheet G. Lots 34, 51, 97, 98, 479, 480, 481 & 482. Zoned PI/MU-Park Industrial/ Mixed Use. Ward 1.

**OLD BUSINESS - SITE PLANS**

**A23-0175** Law Realty Co., Inc. (Owner). The Law Family Companies, Inc. (Applicant). Proposed one story 15,100 sf retail building along with associated site improvements. Property is located at 350 Amherst Street. Sheet G. Lot 479. Zoned GB-General Business. Ward 1.

*Mr. Hirsch said he would have to recuse from this application.*

**MOTION** by Mr. Bollinger that A23-0176 is complete and the Planning Board is ready to take jurisdiction.

**SECONDED** by Mr. Varley

**MOTION CARRIED 6-0**

**MOTION** by Mr. Bollinger that A23-0175 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 on behalf of the applicant. With him are owners Brian and Laurie Law, and project coordinator Dick Kane.

Mr. Petropulos presented an aerial to the Board showing what parcels are owned by Law Realty, totaling 13 from Airport Road to Charron Road. Most of these properties are occupied by actively leased tenants, but over the next several years the owner has visions of redevelopment of a number of these parcels.

These two applications are the first step in this process. They are making some modifications to some of the property lines, and consolidating two lots in order to prepare a single parcel for the site plan application tonight.

Mr. Petropulos described the zoning of the subject lot and surrounding parcels. He briefly noted topography, soil type, and onsite utilities. Coleraine Brook is located in the northeast corner, and flows south toward the Nashua River.

Mr. Petropulos said this land plan includes a request for consolidation, lot line relocation, and subdivision, for seven of the parcels located along Airport Road. This plan has been prepared in compliance with the regulations. They are requesting one waiver for this plan, as detailed in the staff report.

Mr. Petropulos said the land plan will result in a new lot, which is the subject of the site plan. This is currently the location of the old Habitat for Humanity building, the Grand Buffet, and a small dry cleaner. This plan proposes to demolish these three buildings and construct a single multitenant building, with restaurant and retail as the proposed uses.

Mr. Petropulos said access to the site will be from Airport Rd and Amherst St, which will result in a significant improvement in traffic management. They are also proposing to reconstruct the sidewalk along Amherst St. They are proposing to make a connection behind the Leda Lanes building to allow those patrons to work their way to Airport Road, if they choose to travel west on Amherst St.

Mr. Petropulos outlined onsite parking, open space, onsite utilities, signage, landscaping, lighting, and stormwater management. They have performed a traffic impact study, which they find to be similar to what the previously there.

Mr. Petropulos presented the architectural plan to the Board. They have requested two waivers, as detailed in the staff report. Construction is expected to start in winter 2024, with hopes to open in summer 2024. They believe this application conforms to the requirements. The conditions of approval in the staff report are acceptable, and they are seeking the Board's approval.

Mr. LeClair asked if the proposed restaurants will have no drive-thrus.

Mr. Petropulos said correct.

Mr. LeClair said the Master Plan contemplated a boulevard design along Amherst St. It looks like the way the parking and building is set up, it might impact that first row of parking. Is there enough parking across the rest of the site to accommodate that?

Mr. Petropulos said this was their second submitted plan. The first had the building set back further and two rows of parking in the front. At that point it was called to their attention about the vision in the Master Plan. They wouldn't build this project if they had to build right up at the street. The feel and nature of Amherst Street make is so that people want to see a parking space in front of the building. Their client did agree to eliminate a parking bay and move the building up 60-ft, which was well received by staff. They feel they made a compromise.

Mr. Varley said understanding that the vision of the master plan is longer term and is incremental, do they feel that this design is ultimately consistent with where they would be trending?

Ms. McGhee said they met with the applicant and highly suggested that they push it forward, which they did. She thinks they will see incremental changes over time to move the buildings forward. Right now we don't have an ordinance that requires it, but it is in the master plan and is what they are going to be looking to and suggesting to applicants as they come forward.

Mr. Green asked for clarification on vegetative buffers.

Ms. McGhee said the applicant is providing new landscaping along the front and reconstructing the sidewalk.

Mr. Green said he is referring to the vegetative strip between the two islands.

Mr. Petropulos referred to the 10-space rule for interior islands and interior parking spaces. Their exterior is touching a green belt. He believes this complies with the regulation. Right now you have a sea of asphalt, so we consider this to be a much improved front door. It's a balancing act, because if you tree the frontage too much, people can't see the businesses.

Mr. Varley said that issue does come up sometimes. If the applicant didn't comply, he would need to seek a waiver.

**SPEAKING IN OPPOSITION OR CONCERN**

None

**SPEAKING IN FAVOR**

None

Ms. McGhee requested that the Board add a condition of approval to the site plan, that the applicant has agreed to work with city staff to enhance the landscaping at the rear of the site.

**PUBLIC MEETING**

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

Ald. Klee said this area has been an eyesore for quite a long time, both have been vacant for years. She hopes this will be more successful. She is glad to see something new coming in, and it will be nice to see something decent in there.

**MOTION** by Mr. Varley to approve New Business - Subdivision Plan A23-0176. It conforms to §190-138(G) with the following stipulations or waivers:

1. The request for a waiver of § 190-282(B)(9), which requires physical features on site and within 1,000 feet be shown, is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation.
2. Prior to the Chair signing the plan, any drafting corrections will be made.
3. Prior to recording the plan, a portion of the building located on Lot 480 will be removed to conform to the setbacks.
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 the plan, site plan NR1549 shall be amended to show the new lot lines.

**SECONDED** by Mr. Bollinger

**MOTION CARRIED 6-0**

**MOTION** by Mr. Varley to approve New Business - Subdivision Plan A23-0175. 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 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 from NRO §190-172, which specifies standards for building design, including roofing, exterior materials, colors and entryways, 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 shall be made.
4. Prior to the Chair signing the plan, all comments in a letter from Joe Mendola, Senior Staff Engineer, dated October 26, 2023 shall be addressed to the satisfaction of the Division of Public Works.
5. 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.
6. Prior to the issuance of a Building Permit, the Lot Line Relocation/Consolidation/Subdivision & Boundary Plan shall be recorded.
7. Prior to any work on site, a pre-construction meeting shall be held and a financial guarantee shall be approved.
8. Prior to the issuance of the Certificate of Occupancy, an as-built plan shall be completed by a professional New Hampshire licensed engineer or surveyor and submitted to Planning and Engineering Departments.
9. Prior to the issuance of a certificate of occupancy, all site improvements shall be completed.



10. The applicant shall work with staff to enhance the landscaping in the rear of the site.

**SECONDED** by Mr. Bollinger

**MOTION CARRIED 6-0**

*Mr. Hirsch resumed his position on the Board.*

**NEW BUSINESS - CONDITIONAL/SPECIAL USE PERMITS**

**A23-0185** TUF Realty LLC (Owner) Proposed Conditional Use Permit to allow a smoke shop within 1,000 feet from like-classified uses. Property is located at 282 Daniel Webster Highway. Sheet A. Lot 151. Zoned HB-Highway Business. Ward 7.

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

**SECONDED** by Mr. Varley

**MOTION CARRIED 7-0**

Atty. Israel Piedra, Welts White & Fontaine, 29 Factory St, Nashua NH

Atty. Piedra introduced himself on behalf of the applicant.

Atty. Piedra said last year the ordinance was amended to allow smoke shops as a conditional use permit only, and the ordinance also imposed a 1,000-ft buffer from other smoke shops or youth serving organizations. The ordinance allows the applicant to request a waiver from this when certain conditions are met. They are asking for a waiver from other smoke shops, as there are no educational institutions in the vicinity.

Atty. Piedra described the subject lot and surrounding properties. His clients own and operate a smoke shop on Spit Brook Road, which would continue to operate if this location is approved. The business will sell primarily cigarettes, with some cigars and vapes, but this is not a vape focused business. The vape related sales account for only 10% of the revenue for the current location. The new location is intended to focus more on cigars. Vapes will not be the focus of this facility.

Atty. Piedra said when his clients opened their first location, smoke shops were permitted in this zone by right. They purchased this property after the ordinance went into effect. He said they were unaware of the change, as this was previously a permitted by right use. He said they have invested substantial time and money into this enterprise. This is a family owned, local business. They are small business owners and will be working onsite, and have a clean record with the state authorities.

Atty. Piedra said there are two items. The first is the Conditional Use Permit criteria, and then the waiver request. The CUP criteria are as detailed in the letter he submitted with the application, and he believes they are easily satisfied.

Mr. LeClair asked to hear more about the 1,000-ft buffer waiver.

Atty. Piedra said the first criteria of the waiver is that strict conformity would present an unnecessary hardship to the applicant. With hardship analysis, they should start with the principal that a landowner has a constitutional right to reasonable use of their property. Unjustified or unsubstantiated restrictions of that right is a hardship. The question is whether enforcing the 1,000-ft buffer serves the goal of the buffer requirement, which he believes is not the case.

Atty. Piedra said this ordinance came into effect just last year after the approval of a vape shop at 3030 Main Street, previously Poor Pierre's. This site was within distance of two schools, and backed directly onto the playground of the Adult Learning Center. That caused some consternation, and as a result this ordinance came into effect. The drafters were also concerned about a situation where there were too many smoke shops in a particular location.

Atty. Piedra said the focus of the opposition and concern was vape shop specific, not smoke shops in general. Vaping is in vogue, and appeals to young children, and they can have an unflattering appearance from the street. The main intent of that amendment was the school issue. He would submit that the overconcentration of smoke shops was a secondary goal. A very small percentage of this business's sales are vapes, and the owner intends to focus on cigars, which are likely to attract an older clientele. There are no schools nearby, so that primary reason that the ordinance came into effect is not there.

Atty. Piedra said this proposal will not result in an overconcentration of this use. Although there are smoke shops in the vicinity, the overall density in this area is low. It's the most dense commercial area in the city, there's literally hundreds of businesses within shouting distance of this site. The other smoke shops within 1,000-ft are not visible, tucked into strip malls and shopping centers. They believe it would be unnecessary to enforce this buffer restriction.

Atty. Piedra said the second criteria is that the waiver would not be contrary to the spirit and intent of the regulation. In this situation, the spirit and intent are served because it does not endanger the goals that the buffer was intended to protect. This is the least objectionable place a smoke shop could be. It's surrounded by parking lots, strip malls, and big box stores. They believe the waiver can be granted without violating the intent of the ordinance.

Atty. Piedra showed an image of the site from 2019, which was a tile wholesale business. He said his client has already cleaned up the site, removed the supplies and machinery outside. This will be an attractive retail location that is an improvement from the prior establishment.

Atty. Piedra said the conditions in the staff report are acceptable, and that they meet the conditions for the waiver.

Mr. LeClair asked if they know the exact distances to other smoke shops.

Atty. Piedra said he doesn't. There are 3-4 other shops, probably 500-ft in between. They're usually across the street and down the hill and in a strip mall somewhere. There's no real sight lines just because of how the corridor is configured. The number of businesses in between them makes the requirement misleading.

Mr. LeClair asked if there is any intent for modification of the outside.

Atty. Piedra said not currently. They installed some extra lighting to make things safer. When it opens, the footprint will not be changing. Eventually his clients have discussed building a new building, but that's not going to happen anytime soon.

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Ald. Klee asked if the applicant was unaware of the ordinance change.

Atty. Piedra said yes. They had opened the smoke shop 2-3 years prior without needing any permits. That's not an excuse or reason why they should get this waiver, but his clients proceeded in good faith.

Ald. Klee said when she looks at a map she sees quite a cluster of smoke shops in that area. The ordinance wasn't just put through because of vaping, there was as much concern about tobacco and cigar smoke as well.

Ald. Klee said in the past they approved this waiver for an applicant who was in the midst of development when the ordinance was changed. This is not the case.

Atty. Piedra said he is aware of that case. He agrees that it was a different situation and legitimate legal argument that the city made a mistake. He felt it was important for the Board to consider the context for this case. He disagrees that it's anything close to a high concentration of smoke shops in this area, based on the density of commercial businesses. He doesn't think it's realistic to say that anyone driving through here will notice a concentration of smoke shops. He doesn't believe that would be a valid goal of this ordinance.

Mr. Varley asked if there was no circumstance here where the applicant sought a building permit or other processes with the city and were relying on an approval.

Atty. Piedra said correct, there is nothing that would entitle his client to a permit. He thinks it is understandable that his client established their first business and wouldn't need anything three years later for the second location.

Mr. Varley asked if there would be an onsite smoke lounge, or just sales.

Atty. Piedra said just sales.

Mr. Varley asked if among the other retail establishments within the buffer, is there an existing retail location?

Atty. Peidra said no.

**SPEAKING IN OPPOSITION OR CONCERN**

None

**SPEAKING IN FAVOR**

Wayne Keller, Dunstable MA

Mr. Keller said he runs a power washing company and is currently working for the applicant. He said this would be a severe financial hardship if this request is not approved. He was in favor of this business and their proposal.

**PUBLIC MEETING**

Mr. LeClair closed the public hearing and moved into the public meeting. He summarized the discussion. Previous cases with the smoke shop waiver had issues with building permits and people getting partway into construction and then finding about the ordinance, within a few weeks of the ordinance. This is the first case beyond that timeframe.

Ald. Klee said yes, she understands the hardship of the previous case. In this case, she understands the hardship, but we do have ordinances. Things change, and we can't grandfather someone in because they received an approval elsewhere a few years ago and weren't aware of the change. She cannot support this request. She feels this goes against the intent of the ordinance. The intent was not just for vaping. They put the ordinance through, she was there every step of the way; she knows the intent of this ordinance. She sympathizes with the applicant, but cannot vote in favor of this application.

Mr. Varley said he appreciates Ald. Klee's position. The ordinance explicitly vests the Board with the ability to waive and provide exceptions in acceptable circumstances. He thinks the Board has discretion to assess, independent of the applicant being aware of the ordinance change the Board has the discretion to look at the circumstances and decide whether this warrants an exception.

Mr. Varley said this case is a close call, but he thinks that the applicant has raised some valid points. In regards to the location of this property relative to the intent of the ordinance and clustering, this is a purely retail sector of the city. This is not a situation where you have retail interspersed

with residential or other uses. In this case, it is highly concentrated retail uses. You could have dozens of businesses within 1,000-ft. Based on some imprecise measuring he did on an aerial, there is one smoke shop about 500-ft away, and the rest are 700-ft to 800-ft away. It seems that it's a pretty close call. He would lean towards granting the waiver, with the understanding that maybe the city needs to think about better communicating this requirement to applicants. He would be less inclined to grant a waiver the further they get from the ordinance's enactment.

Ald. Klee said that would be a burden on the city, to ask the city to know when someone is buying a property what their intent is. If they came in with an application that's another thing. When they worked on this ordinance, they did give this Board that leeway because they didn't want to tie the Board's hands. If the Board wants to grant a waiver on this, they can, but they cannot grant a variance on the 1,000-ft distance to a school.

Ald. Klee said even if they cannot see the other smoke shops and they are not visible from the street, she holds to that distance.

Mr. Varley said he didn't mean to suggest that the city should intervene when someone is buying a property. It doesn't seem that this ordinance is as common knowledge as it should be. If there's an opportunity to better publicize this limitation, it should be taken.

Mr. Varley said in regards to clustering this business, if they want to tolerate a concentration of smoke shops anywhere in the city, this is the best section of the city for it because it's so heavily retail populated.

Mr. LeClair said he's not swayed either way yet. But one of the things that tend to come into play with proximity requests is the abutters. They don't have any abutters here talking about this. They've had several smoke shop requests now, and those have had a lot of abutters. There is no one here commenting about this from the public, which is the first time he's seen that. It doesn't appear there is a strong abutter concern.

Mr. LeClair said this is a little bit of an odd condition, where there is a move in to an existing building with no site plan and no building permit. Both of those processes would flag an issue. People tend to do site plan work before they buy the property.

He is torn, but swayed by the fact that he doesn't have a room of people saying they don't want this.

Ald. Klee said the abutter of concern are usually residents, and there are none here. Her concern is that they have this ordinance, and this is the first true application. The biggest hardship put forward is that they have put their life savings into this. Due diligence wasn't done. The other comment is that while this may be a cluster it's not a visible cluster, but they are still there. She feels compelled to uphold this ordinance. She believes the applicant should have done more work and not assumed that nothing had changed in the years since.

Mr. Hirsch asked if until the building permit was applied for this didn't come up as an issue.

Ald. Klee said they didn't apply for one.

Mr. LeClair said there wasn't work being done at this point that required it.

Mr. Hirsch said the contractor indicated there was internal work.

Mr. Varley said he asked that, and they had not reached the stage where the work being done necessitated a permit.

Mr. Hudson said he feels for the applicant, but buyer beware. You have to do your due diligence. But when he goes through the nine criteria and the responses for the CUP, the only one he can find for a basis for denial is that it would not materially endanger public health. But there are other uses of this type around, so he doesn't not find it compelling. The ordinance does not speak to clustering, it speaks to distance, so perhaps clarification is needed. If they do not approve this here, he doesn't know where they would approve it. If not here, where? There are no residential abutters, it's all commercial uses on a commercial corridor. He is generally not in favor of the use, but he is inclined to support this.

Mr. Bollinger said he agreed with Mr. Hudson. Based on the CUP process, there is no hardship criteria like there would be for a variance. He has lived in Nashua a very long time, and had no idea that those other uses were there. They are hidden away from the road, innocuous, and offset from the road. He has driven through a number of other retail areas in the state and seen

smoke shops literally shotgunned next to each other in major retail corridors. If they were not to grant the CUP here, he's not sure where else they would. His opinion has nothing to do with whether he likes the use, it is whether this use meets the CUP criteria.

Mr. Varley said the 1,000-ft limitation is applied on top of the CUP criteria, with the authority of the Board to waive the proximity requirement. He has always found that to be a lesser hurdle than the variance hardship standards. He believes that the distance of the other businesses combined with the most dense retail area in the city is the most strict reading of it, and he feels under the particular circumstances the applicant has made a reasonable case that it is unnecessary hardship.

Ald. Klee asked if someone purchased a property and then comes to them with a hardship and said that it was granted elsewhere, do they have to factor that into their decision?

Ms. McGhee said they have to take each case individually. In this case, they opened another smoke shop three years ago and didn't know the rules had changed, you can understand that. The situation on Canal Street is also unique. We haven't had any calls from abutters, we haven't had the concerns that were over on Canal Street. We have to look at the unique circumstances of why they are here.

Ald. Klee said she agreed. But her concern is that ignorance could be used as a future argument.

Mr. Bollinger said if they aldermen want to pass an ordinance that there shall not be less than 1,000-ft between smoke shops, they can. That's not what we're talking about here. As long as it is written this way, we have to take these individually. We can't preclude people from making a CUP application. As written, it will be left up to interpretation by this Board.

Mr. LeClair said whenever they get into these close calls, he tries to think back to whether this use of a piece of land is consistent with the surroundings and whether it is a good or bad use of the land. This is a retail shop that sells a product, is this piece of land an appropriate site for a retail shop? Try to push the politics aside. The board of Alderman can think about that. This Board shouldn't make judgments on the political side, look closely at whether this retail use, with the amount of



volume and traffic, is that appropriate for this site? That's generally what the CUP criteria gets into.

Mr. Hudson said if the applicant here were only making an argument for hardship based on finances, he would not support the case. That's not the only argument they're making. He doesn't think this is a precedent setting case either.

Ms. McGhee said if the Board decides to approve this, they received a letter from Engineering today that all comments have been addressed.

Mr. Hudson said he welcomes an application for site plan, should the applicant decide to redo the site. The sidewalk is narrow and not the best configuration. Should they come forward in the future, they would like to work with them to improve it.

Mr. Bollinger asked if today's letter supersedes the condition.

Ms. McGhee said yes.

**MOTION** by Mr. Bollinger to approve New Business - Conditional Use Permit A23-0185. It conforms to §190-133(F) with the following stipulations or waivers:

1. The request for a waiver of § 190-15(D)(6), which requires facilities with a primary use designated with the superscript "3" shall be a minimum of 1,000 feet from like-classified uses and 1,000 feet from schools or youth serving organizations, is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation.
2. If the septic system is deemed in failure, the applicant will need to connect to the City Sewer.

**SECONDED** by Mr. Varley

**MOTION CARRIED 6-1 (Klee opposed)**

*The Board held a five minute recess.*

**NEW BUSINESS - SITE PLANS**

**A23-0186** 115 Lock Street, LLC (Owner). Proposed site plan to construct a 7-unit multi-family residential building along with associated site improvements. Property is

located at 115 Lock Street. Sheet 41. Lot 21. Zoned GI-General Industrial. Ward 3.

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

**SECONDED** by Mr. Hirsch

**MOTION CARRIED 7-0**

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

Mr. Zajac introduced himself on behalf of the applicant. With him is Atty. Andy Prolman from Prunier & Prolman.

Mr. Zajac described the site and surrounding properties. Although this is within the GI zone, the neighborhood has become almost entirely residential over the years. The site contains a single family residence, and the property line extends only to top-of-bank of the river. He briefly outlined topography, vegetation, and stormwater flow.

Mr. Zajac said this property is within the Shoreland Urbanized Exemption Zone. What would normally be a 75-ft prime wetland buffer technically doesn't exist, therefore a special exception from the Zoning Board is not required. They still go to the Conservation Commission for their recommendation, but those proceed directly to the Planning Board

Mr. Zajac said they propose to demolish the current structure and construct a 7-unit multifamily building with associated site improvements. These will be 3-story townhouse style units, with a one-car garage and entryway. These units are similar to two adjacent projects at 93 Lock Street and 111 Lock Street. These are proposed to be 2-bedroom units. These will be under condominium style ownership.

Mr. Zajac said access to the site will be from a private driveway. There is an emergency vehicle turnaround at the rear of the site, as well as overflow parking spaces. They are proposing 11 total spaces.

Mr. Zajac provided an overview of landscaping, site lighting, and utilities. There are a number of mature trees in the area, and they are trying to preserve as many as possible. They

received a use variance from the Zoning Board in April 2023 to allow for the use of multifamily. They met with the Conservation Commission several times, and received their conditional recommendation in October 2023. Both conditions are acceptable. The project's traffic engineer prepared a memo and worksheet, and found that the project results in minimal impact.

Mr. Zajac said there is currently no treatment of stormwater onsite. They propose to capture onsite runoff with curbing and catch basins and direct it to leaching basins and a subsurface stormwater management system. There is no discharge point for this site given Lock Street's combined sewer and the highly erodible riverbank, so they overdesigned the stormwater infrastructure to capture everything. They expect a large improvement in stormwater management as a result of this project.

Mr. Zajac said they are requesting one waiver, as detailed in the staff report. They feel that the application is complete and conforms to the subdivision regulations. Conditions outlined in the staff report are acceptable, and there are no issues addressing engineering and fire comments.

Mr. Hudson asked if water to each unit will be individually metered.

Mr. Zajac said yes.

Ald. Klee asked if there would be city trash pickup or private.

Mr. Zajac said it will be curbside by a private contractor. Everyone will have their own bin.

**SPEAKING IN OPPOSITION OR CONCERN**

None

**SPEAKING IN FAVOR**

None

**PUBLIC MEETING**

Mr. LeClair closed the public hearing and moved into the public meeting. He summarized the discussion. This is similar to what was previously approved next door, seems straightforward.

Ald. Klee said she is all for housing, and this is much nicer than what was there. That's an area that needs housing. She appreciates this project and has no issues with this.

**MOTION** by Mr. Varley to approve New Business - Site Plan A23-0186. 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 adjacent parcels, is granted, finding that the waiver will not be contrary to the spirit and intent of the regulation.
2. Prior to the Chair signing the plan, all comments in a letter from Joseph Mendola, Senior Staff Engineer, dated November 9, 2023 shall be addressed to the satisfaction of the Division of Public Works.
3. Prior to the Chair signing the plan, all comments in an e-mail from Michael DuVarney, Fire Inspector/Investigator dated November 13, 2023 shall be addressed to the satisfaction of the Fire Marshals Office.
4. Prior to the Chair signing the plan, minor drafting corrections will be made.
5. Prior to any work on site, a pre-construction meeting shall be held and a financial guarantee shall be approved.
6. Prior to the issuance of a building permit, the applicant shall provide 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.
7. Prior to issuance of the final certificate of occupancy for the development, an as-built plan locating all driveways, units, other buildings, utilities and site landscaping shall be completed by a professional engineer and submitted to the Planning Department. The as-built plan shall include a statement that all construction was generally completed in accordance with the approved site plan and applicable local regulations. Sidewalk construction shall be to base course, with final course pavement remaining bonded until completion.

8. All Conservation Commission stipulations from the letter dated October 11, 2023 are incorporated herein as part of this approval.
9. Prior to the issuance of the last Certificate of Occupancy, all site improvements will be completed.

**SECONDED** by Mr. Bollinger

Ald. Klee said she appreciates the applicant's efforts to preserve the trees.

**MOTION CARRIED 7-0**

**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 Ald. Klee

**MOTION CARRIED 7-0**

**DISCUSSION ITEMS**

None

**MOTION** to adjourn by Ald. Klee at 8:50 PM

**MOTION CARRIED 7-0**

DIGITAL RECORDING OF THIS MEETING IS AVAILABLE FOR LISTENING DURING REGULAR OFFICE HOURS. DIGITAL COPY OF AUDIO OF THE MEETING MAY BE MADE AVAILABLE UPON 48 HOURS ADVANCED NOTICE AND PAYMENT OF THE FEE.

KP - Taped Hearing