

NASHUA CITY PLANNING BOARD
February 17, 2022

The regularly scheduled meeting of the Nashua City Planning Board was held on February 17, 2022 at 7:00PM in the 3rd floor auditorium in City Hall AND via Zoom virtual meeting.

Members Present: Scott LeClair, Chair
 Adam Varley, Vice Chair
 Maggie Harper, Secretary (via Zoom)
 Dan Hudson, City Engineer
 Ald. John Cathey
 Bob Bollinger
 Larry Hirsch
 Mark Meehan

Also Present: Matthew Sullivan, Planning Manager
 Linda McGhee, Deputy Planning Manager

ALL VOTES ARE TAKEN BY ROLL CALL

APPROVAL OF MINUTES

January 20, 2022

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

SECONDED by Mr. Bollinger

MOTION CARRIED 8-0

February 3, 2022 - Training Workshop

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

SECONDED by Mr. Meehan

MOTION CARRIED 7-0-1 (Hirsch abstained)

COMMUNICATIONS

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

- o Email from Matthew Sullivan, Planning Manager

REPORT OF CHAIR, COMMITTEE, & LIAISON

None

PROCEDURES OF THE MEETING

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

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

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

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

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

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

OLD BUSINESS - CONDITIONAL USE PERMITS

A21-0290 Elizabeth Lu (Owner) Matthew Plante (Applicant) - Application and acceptance of proposed Special Use Permit to allow the construction of a single family home with access from a paper street. Property is located at "L" Roby Street. Sheet 126 - Lot 103. Zoned "RA" Urban Residence. Ward 6. **[POSTPONED FROM THE JANUARY 20, 2022 MEETING]**

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

SECONDED by Mr. Meehan

MOTION CARRIED 8-0

Steve Auger, Civil Engineer, Hayner Swanson Inc., 3 Congress St, Nashua NH

Mr. Auger introduced himself as representative for the owner. With him is owners Matthew Plante and Elizabeth Lu, and Atty. Brad Westgate as legal counsel.

Mr. Auger said this request is for approval of a special permit to construct a single family home at 19 Roby St. The owners live next door at 17 Roby St, and their intent is to move into this home as a retirement place.

Mr. Auger said they are here because 190-8 of the Land Use Code, which requires a special use permit for lots with access from a paper street. He described the subject lot and surrounding properties. This property is surrounded in 3 sides by city land leading to Salmon Brook wetlands. They have been before the Conservation Commission on January 7, 2022 in order to impact the wetland buffer. They first went to the Zoning Board on October 13, 2020 for buffer impacts and two variances for lot frontage and width on a paved street. On October 12, 2021 they returned to the ZBA to request a special exception for driveway construction within the 75-ft prime wetland buffer. There are no wetland alterations proposed.

Mr. Auger outlined utility connections and topographical features. The paved portion of Roby St roughly bisects 17 Roby St. This would extend a driveway roughly from the end of the maintained section of Roby St to 19 Roby St. He said the proposed stormwater management will meet the 2, 10, and 50-year storms, with a negligible increase to the 100-year storm.

Mr. Auger said as part of the special permit, there are six points that must be met. He provided an explanation of each point, as included in the application. They are requesting one waiver, as outlined in the staff report. They believe the site is being developed in a responsible manner and in accordance with the Nashua Land Use Code. The recommended conditions of approval are acceptable, and they respectfully seek approval.

Mr. LeClair asked if the utilities will be underground.

Mr. Auger said yes. There is an existing pole across the street, and the owners have already talked to Eversource. The consensus is that underground electrical would be better due to topography.

SPEAKING IN OPPOSITION OR CONCERN

None

SPEAKING IN FAVOR

None

Mr. Bollinger asked for clarification of the recommended stipulations.

Ms. McGhee said there are still outstanding engineering comments, and asked the Board to stipulate that prior to the Chair signing the plan that all comments be addressed.

Mr. Bollinger asked if stipulation #2 could be reworded to include.

Ms. McGhee said they should add an additional stipulation.

Mr. Hudson said it was presented that trash pickup would be the same as the current residence. They have had applicants in the past assume that the city would be performing trash pickup. This lot doesn't have frontage on a public street, so he is not sure if

it would be possible. He asked if they need to stipulate approval contingent upon the Board of Aldermen approval.

Mr. Sullivan said they do not need to. That is a required referral, so there is no specific need for a condition.

Ald. Cathey asked if there is any way to ensure that trash pickup happens at this address.

Mr. LeClair said that would be a Public Works decision.

Mr. Sullivan said correct. The Planning Board cannot overrule the Public Works policy for trash pickup.

Ald. Cathey asked if Roby St will be extended.

Mr. Sullivan said Roby St itself will not be extended. This is a driveway connection within the right of way.

PUBLIC MEETING

Mr. LeClair closed the public hearing and moved into the public meeting. He said this seems straightforward and he doesn't have any particular concerns.

Mr. Meehan said he drove by, and the same thing happened at Burnett Street.

Mr. Bollinger said he appreciates the applicant proactively contacting Eversource.

MOTION by Mr. Bollinger to approve Old Business - Special Use Permit A21-0290. It conforms to §190-8 with the following stipulations or waivers:

1. The request for a waiver of § 190-282(B)(9), which requires showing existing conditions on site and within 1,000 feet, 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 minor drafting corrections will be made to the plan.
3. Prior to any work and a pre-construction meeting, a financial guarantee shall be approved.

4. All conditions in Zoning Board of Adjustment approval letter dated October 13, 2021 are incorporated herein.
5. Prior to the Chair signing the plan, all comments in a letter dated January 20, 2022 from Joe Mendola, Street Construction Engineer shall be addressed to the satisfaction of the Division of Public Works.

SECONDED by Mr. Varley

MOTION CARRIED 8-0

OLD BUSINESS - SUBDIVISION PLANS

A21-0177 Jigna & Sachin Patel (Owners). Proposed subdivision amendment to move an existing utility easement. Property is located at 69 Cherrywood Drive. Sheet C. Lot 2755. Zoned R-40-Rural Residence (FUOD overlay). Ward 9.
[TABLED TO THE MARCH 10, 2022 MEETING]

OLD BUSINESS - SITE PLANS

None

NEW BUSINESS - CONDITIONAL USE PERMIT

None

NEW BUSINESS - SUBDIVISION PLANS

None

NEW BUSINESS - SITE PLANS

None

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. Meehan

MOTION CARRIED 8-0

2. Referral from the Board of Alderman on proposed petition for authorization for issuance of Building Permits for a building on a Private Road - 19 Roby Street.

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

Atty. Westgate introduced himself as legal representative for the owner. With him is civil engineer Steve Auger and the owners.

Atty. Westgate provided a background to this case. They have filed a petition with the Board of Aldermen to apply for building permits for a lot on what is deemed a private road. This is required by statute RSA 674:41-I(d), which outlines the process for properties with no frontage on a public street. This typically involves a class VI road or a paper street.

Atty. Westgate said Nashua has streets that have small ends that were never accepted or built out. This statute was designed for rural towns with longer stretches of class VI, paper roads, or dirt roads that were never fully developed. Roby Street extends beyond the publicly maintained portion.

Atty. Westgate said subdivision plans are recorded with the Registry of Deeds with depicted roads, dedications to public servitude, and the city can accept the road as it chooses. Most of the time the roads are constructed by the developer and the city accepts the streets. This neighborhood was first subdivided in 1916. The law at the time was that if 20-years had passed and the city never accepted the road, the public servitude vanished and no longer was this section of road subject to the city having the right to accept it. The law has since changed. After the 20-years of dedication from subdivision plan recording, without it being built out, the ability for this section of Roby Street to be a city-accepted street went away. All that's left is private rights of access, effectively implied easements enabling lot owners to have a right to traverse over the private street.

Atty. Westgate the statute was established so that property owners could go to the local governing body to authorize building permits. This led to the need for the petition. The statute sets forth criteria for the Board of Aldermen to grant approval for building permits. The city is not responsible to maintain the section of paper street, nor is the city liable for damages resulting from the use of it. He asks that what was presented in the special permit be incorporated as testimony in this referral.

Land use Code 190-8 deals with this same concept and is derivative of the statute. The special use criteria have been satisfied, and he thinks the case on the merits have been satisfied for the appropriateness of issuing a building permit.

Mr. Meehan asked about the process.

Mr. Sullivan provided guidance on the process. He would concur with the petitioner's testimony and recommends that they incorporate the prior special permit testimony. He would also recommend that in accordance with the RSA 641:41 relief granted in 2020, that they make any recommendations conditional upon final signoff from Engineering and Fire Depts. The applicant has made a fair case based on the circumstances and proposed access.

Ms. Harper asked if an easement is required over 17 Roby St.

Atty. Westgate said they will have to establish one for the portion of driveway on 17 Roby St and for the utility services.

Mr. LeClair said that since this is a referral, there is no public testimony.

Mr. Varley said ordinarily they would still take testimony if presented.

Mr. LeClair confirmed that none of the audience members wished to provide testimony.

Atty. Westgate requested a favorable recommendation.

Mr. LeClair said this appears to be a reasonable request.

Mr. Varley said they made a substantive determination with the special permit approval.

Mr. Bollinger asked if there is a reference number to a Board of Alderman action.

Mr. Sullivan said it's not necessary.

MOTION by Mr. Bollinger to favorably recommend Other Business #2 to the Board of Aldermen, with testimony incorporated herein

SECONDED by Mr. Hirsch

MOTION CARRIED 8-0

3. Referral Petition to Re-Zone Gateway Hills from Park Industrial District to C-Urban Residence RC District.

Mr. Bollinger requested clarification from Mr. Sullivan regarding his February 16th letter. He wants to understand staff's position.

Mr. Sullivan said his intent was to avoid verbal comment on this petition as much as possible. The city has been working collaboratively with the John Flatley Company for decades on the development of these properties within the Tara Heights/Gateway Hills area. The Flatley Company has done tremendous work providing critical housing and industrial space amongst other uses onsite. That said, they do have concerns regarding the proposed rezoning, related to the compounding impacts of different projects proposed and subsequently approved by the Planning Board. There is a large number of property tracts that would be potentially developed in the future, and his intent with this letter was to express concern and caution about how those long-term impacts are contemplated by the Planning Board and Board of Aldermen.

Mr. Sullivan said the Planning Department has no objections to the proposed rezoning. Housing is a critical need for the City of Nashua. They also acknowledge that industrial spaces are limited and more so by the day, but they respect the interest in proposed housing. They do not object to that. What they do want to ensure is that any such housing proposal is accompanied by appropriate onsite and offsite mitigation to ensure that this development and future developments are appropriately planned for.

Mr. Sullivan said within the letter there are specific recommendations relative to rezoning and larger concepts such as a development agreement and master development plan. Those are not necessarily subject to the Planning Board's review this evening, as they are Board of Aldermen matters, but he wanted to write a joint statement for all boards' consumption. He is not objecting to the rezoning, this letter is intended only to signal concerns they have about potential future developments.

Mr. Bollinger asked if the Planning Board was to favorably recommend this, would they need to stipulate any conditions in the letter be addressed?

Mr. Sullivan said that is too heavy for the Board to stipulate. They are within their purview to make recommendations based on

the zoning and appropriate mitigation. They will ultimately review any project that comes forward as a result of this rezoning. He asked the Board to be as jurisdictionally correct as possible.

Mr. LeClair said they are reviewing this in terms of making comment.

Mr. Sullivan said yes, and they are reviewing it in terms of the Master Plan. That is their role. While the Plan did not provide specific recommendations for this site, clearly there are larger concepts spoken to such as housing and industrial spaces. Your role is to look in the broader context.

Mr. LeClair asked for detail on what the difference between Park Industrial and RC zoned uses.

Mr. Sullivan said functionally it is a change from a commercial and industrial use to a residential zoning district. The petitioner's intent is to construct a multifamily development, and an RC rezoning is critical to doing that.

Mr. Meehan referred to the second page of the letter, where a plan was submitted but not reviewed by the Board.

Mr. Sullivan said a plan was submitted but not formally decided upon by the Planning Board. He's not aware of any specific commentary, and does not mean to imply negative review or reaction to that application.

Atty. Gerald Prunier, Prunier & Prolman PA, 20 Trafalgar Sq, Nashua NH

Atty. Prunier introduced himself as representative for the property owner. He said Mr. Sullivan did a good job, as most of the stuff regarding the Flatley company occurred before his time.

Atty. Prunier said they have been trying to build roughly 300 apartments. In Mr. Sullivan's letter there was no objection, only to bring things to the Board's attention. Most of the conditions within the letter are within the Planning Board's purview, and they would need to come here again for review. They will have to consider the number of units and the manner in which they are proposed. They will provide traffic studies as needed. An ordinance recently passed requiring affordable housing, which will need to be reviewed. He would like the Board to make a clean

recommendation to favorably recommend this rezoning, without conditions, because they would be putting conditions on the site plan when it comes before them.

Mr. Varley said he agrees that any specific conditions would be part of the site plan review process. However, it's alluded to in the letter that there have obviously been a series of projects developed on these parcels. Over the years they have discussed that it hasn't been a specific project that tipped the balance for more substantial offsite improvements, but a cumulative effect. They want to make sure that when the project comes, the Flatley Company will be well prepared to address those issues in a level of detail relative to prior discussions.

Atty. Prunier said Mr. Sullivan's letter is a good diagram to follow the answer the questions when they return to the Board.

Mr. Meehan said he appreciates many of the projects the Flatley Company has completed in Nashua and he understands the vision for the city. He appreciates the specific notations in the letter regarding a master development agreement, as it is such an important piece of property. Is that something they are willing to do?

Atty. Prunier said they have been in the process for over a year working with the city for a development agreement. They haven't been able to get there yet, but they're getting closer. That's why they cut this piece out from the whole site. They originally tried to ask for a use variance for multifamily residential, but the Zoning Board thought it was too big. He agrees, it should go to the Board of Aldermen for rezoning. That is the process they are trying to go through.

Mr. Meehan asked if an approval with the stipulation that they bring it to a full master development agreement would not be a problem.

Atty. Prunier said in his opinion it would hinder the development of the project. They want to keep the zoning clean for when they have to finance. They still have 400 acres and want to take care of it. However, those are zoned Park Industrial. Until the city decides otherwise, that's how it will stay. The Board could request a development agreement when they come for development that will have conditions.

NCPB

February 17, 2022

Page 12

Mr. LeClair said if they are not putting conditions or stipulations on anything, they are providing a referral. They are not the authority for approval. They are providing comment on whether the zoning change proposed is consistent with what is appropriate for land use and the Master Plan. They should think about what they want to pass along to the Board of Aldermen.

Mr. Meehan said that Mr. Sullivan's letter was very clear on a master development agreement as a concern from city staff. Should their recommendation to the Board of Aldermen include that statement?

Mr. LeClair said they can comment anything, and the Board of Aldermen could take it or leave it.

Mr. Sullivan said that is the fine line. Although they are recommended in this letter to the Board of Aldermen, he believes this is beyond the Board's scope of review right now. A comment that the rezoning is acceptable subject to appropriate offsite mitigation that reflects a long term agreement that would be acceptable. But he would caution the Board against making a recommendation to execute a master development agreement. That comment is intended for the Planning and Economic Development Committee and the Board of Aldermen, who are best positioned to weigh in, in that fashion.

Ald. Cathey said housing and infrastructure rank high on the radar. Once this comes to the Board he expects it will be fully vetted because of the housing issue they have. It would be appropriate to provide a straight recommendation or non-recommendation, and then the BOA work out the details.

Mr. LeClair said ultimately the applicant will come back for site plans and they can evaluate from there. Master development agreements have inputs, but they don't dictate what they are currently looking at.

Mr. Sullivan said the one exception is that the applicant did supply a confirmation letter relative to Spit Brook Road improvements that has a rational connection to the rezoning proposed here. It would be appropriate to recommend to the BOA that if they are approving the rezoning, that any Spit Brook Road improvements be provided in accordance with Planning Board approval. The critical issue is that the applicant is willing to provide those improvements as part of the development contemplated here.

NCPB

February 17, 2022

Page 13

Mr. Varley asked that the applicant speak to the owner's views on how this will be consistent with the goals of the master plan, specifically with respect to industrial zoning and housing.

Atty. Prunier said his understanding of the master plan is that there is a need for housing, but wouldn't necessarily make recommendations for how many units. The problem they have in Nashua is that there isn't much land left. There may be some recommendations that have more density that would have to go the Zoning Board unless he can convince the powers that be to increase the density from 12.5 units per acre to a higher number based on the need in the city.

Mr. LeClair said he looks at this and the construction of the housing units in this location as a positive thing. It's been successful so far. It's consistent with the development around it. He's been on the Board a long time and seen the build of the site. With regards to offsite improvements and mitigation measures, the residential uses have less impact on the corridor than significant commercial uses. He is in favor of a positive recommendation. He thinks this is consistent with the Master Plan, and it's a good place in terms of the land use and surrounding infrastructure.

Mr. Varley said their primary function is from a land use perspective. There are different interests in the Master Plan they need to balance, and this plan does take a chunk of land from Park Industrial. There are some competing interests. With that said, this land has been available for Park Industrial for a long time and hasn't been used for that purpose, whereas they know there is a significant need for housing. He agrees that this seems to be the overriding Master Plan goal, and would be well served with the rezoning. He thinks the impact needs to be addressed with some fairly expansive offsite improvements, but it is probably a less intense use need than significant commercial development. He inclined towards a favorable recommendation.

Mr. Bollinger asked about the February 17th letter received from the petitioner.

Mr. Sullivan said he would be happy to pass it along.

Mr. Bollinger said the last time they referred something to the BOA they referenced Fire and Engineering comments. He wouldn't have any issue with a favorable referral, but some consideration should be given to the staff letter and the petitioner's response.

Mr. Meehan agrees with Mr. Bollinger. He said there have been a number of instances where they receive material and he spends his time reading and making sure he understands it, and then he goes to the meeting and is told it's irrelevant or outside of their purview. He said when he receives his packet in the mail, he assumes that all the material is going to be relevant to the discussion. If it's not relevant, he asked staff to please make a note of it so he can understand the context.

Mr. Sullivan said understood. He agrees that because of the nature of the letter being directed towards the Mayor, the Board of Aldermen, the Planning and Economic Development Committee, and the Planning Board, they could have been more clear about where the statements were directed. They will be more clear moving forward. Because of the nature and comments made in the letter, he understands how they may appear to be relevant to the Board's action tonight.

Mr. Varley said the point made before is that they received it as part of the broader context of the discussion. They can recommend with whatever commentary they want. As a practical matter, this letter has been directed toward the Board of Aldermen. It's within the record that they will be reviewing. It would be appropriate to note whether they are echoing the comments made in the letter.

Mr. Sullivan said even though the comments may not be relevant within this evening based on this evening's jurisdiction, it's important to put these comments on the record over development agreement matters and the site plan being considered. Part of the tactic with providing this letter was to lay the groundwork for when an application does come before the Planning Board. They want to identify these concerns clearly and publicly at this point in time.

Mr. LeClair said having been on the Board for a long time, referrals are always somewhat complicated. There's a lot of things written into statute that requires the Planning Board to provide an opinion. Generally speaking they have looking at something written for the Board of Aldermen, who has a different jurisdiction than the Planning Board has. The action may have nothing to do with the Planning Board, but they are still required to review it and provide comment on whether it fits in with the Master Plan. They are looking at something not really written to them, and they have to pick out the land use part of it.

Mr. Hudson said as another signer of the letter, he wants to go on record as saying that he doesn't have objection to the proposal. He apologizes if the letter caused some confusion. He feels it was important to summarize where they have been, where they are at, and some of the considerations. The rezoning brings different factors, and the devil is in the details. He wanted to make sure those were raised for the Board's consideration.

Mr. LeClair said part of the point of having aldermen serve on the Planning Board is to carry this discussion directly to the Board of Aldermen meeting. There is a built in mechanism to move their conversations there.

Mr. Bollinger said he would like to commend city staff for penning the letter. For anyone who knows this site, this is not an ordinary referral. This has been going on prior to Mr. Sullivan and Mr. Hudson's time. The city has been asking for a cohesive development plan for a long time. He finds it refreshing and appropriate that this letter was written. It's not their purview tonight to get into site plan details, but he strongly hopes that when the BOA considers this matter, that similar discussions are had. This has been a long time coming, and if they have received some feedback from the petitioner that they are committed, that is something that should be considered. This is not a simple referral, and he appreciates the input of all Planning Board members and staff.

Ald. Cathey said he will abstain from voting, as they will be seeing this referral when it comes to the Board of Aldermen.

MOTION by Mr. Bollinger to favorably recommend Other Business #3 to the Board of Aldermen, with consideration given to staff letter dated February 16, 2022 and petitioner's letter dated February 17, 2022

SECONDED by Mr. Meehan

MOTION CARRIED 7-0-1 (Cathey abstained)

Atty. Prunier thanked the Board for their time.

DISCUSSION ITEMS

None

MOTION to adjourn by Mr. Varley at 8:22 PM

NCPB

February 17, 2022

Page 16

MOTION CARRIED 8-0

APPROVED:

Mr. LeClair, Chair, Nashua Planning Board

DIGITAL RECORDING OF THIS MEETING IS AVAILABLE FOR LISTENING DURING REGULAR OFFICE HOURS OR CAN BE ACCESSED ON THE CITY'S WEBSITE. DIGITAL COPY OF AUDIO OF THE MEETING MAY BE MADE AVAILABLE UPON 48 HOURS ADVANCED NOTICE AND PAYMENT OF THE FEE.

Prepared by: Kate Poirier

Taped Meeting