

NASHUA CITY PLANNING BOARD
April 7, 2022

The regularly scheduled meeting of the Nashua City Planning Board was held on April 7, 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
 Mike Pedersen, Mayor's Rep.
 Maggie Harper, Secretary
 Dan Hudson, City Engineer
 Ald. John Cathey
 Bob Bollinger
 Larry Hirsch
 Mark Meehan

Also Present: Matt Sullivan, Community Development Director
 Scott McPhie, Planner I

APPROVAL OF MINUTES

March 24, 2022

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

SECONDED by Mr. Hirsch

MOTION CARRIED 9-0

COMMUNICATIONS

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

- A22-0016, 100 Northeastern Blvd
 - Letter from Dave Fredette, Walden Woods
 - Updated stormwater report
 - Memorandum from Matt Sullivan, Comm. Dev. Dir.

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

None

OLD BUSINESS - SUBDIVISION PLANS

None

OLD BUSINESS - SITE PLANS

None

NEW BUSINESS - CONDITIONAL USE PERMITS

A22-0016 1987 Tamposi Limited Partnership & Ballinger Property & BT Realty (Owner) Beato Auto Sales (Applicant) - Application and acceptance of proposed Conditional Use Permit to allow for change of use to automotive storage, sales, and office space. Property is located at 100 & L Northeastern Boulevard. Sheet 140- 38 & 41. Zoned PI-Park Industrial. Ward 9.

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

SECONDED by Ms. Harper

MOTION CARRIED 9-0

Paul Chisholm, Civil Engineer, Keach Nordstrom Associates

Mr. Chisholm introduced himself as representative for the applicant and owner.

Mr. Chisholm said the existing site consists of two parcels in the Park Industrial zone. He described the surrounding industrial, commercial, and residential uses. The site has had a history of various industrial uses until 2005, after which it has been mostly used for indoor car storage by the owner. The applicant operates an automotive dealership in Londonderry and is looking to expand to Nashua. They intend to occupy about 25% of the building with commercial space, with the remainder of the space to be vehicle storage. They will not be occupying the full area of the building; the owner will use the rest for his own car storage. There will be new display areas along the frontage and rear in the parking lot outside. The only site improvements proposed are signage and striping.

Mr. Chisholm said commercial vehicle storage is considered an industrial use and permitted by Conditional Use Permit. They have submitted a letter detailing how this proposal meets the nine requirements of a Conditional Use Permit. They are also asking for one waiver, as outlined in the staff report. They have also

met one of the abutters from Walden Woods, who has submitted a letter in favor of the proposal. They have received Engineering comments and have submitted a letter responding to each of the points. They have also submitted a notarized declaration from the applicant stating that they are aware of the requirements to have no more than 25% of commercial space. They have reviewed the staff report and take no exception to the recommended stipulations.

Mr. Chisholm said the applicant is eager to be in Nashua and bring life back to this property. They have already painted the building and look forward to bringing a landscaper to improve the site.

SPEAKING IN OPPOSITION OR CONCERN

None

SPEAKING IN FAVOR

Ald. John Sullivan, Ward 9, 30 Holbrook Drive, Nashua NH

Ald. Sullivan said he is in support of this proposal.

Mr. Bollinger asked for clarification on the dates contained in the staff report.

Mr. Chisholm said they will address all forthcoming comments from the Fire Marshall.

Mr. Sullivan said there was initial coordination with the Fire Marshall about the use and indoor storage. They didn't have any clear objections to the proposal, but they will follow up.

PUBLIC MEETING

Mr. LeClair closed the public hearing and moved into the public meeting. He summarized the discussion, and said this seems very straightforward.

Mr. Bollinger said he is familiar with the area, and it is a hodgepodge of uses. He is comforted by the fact that the residential neighbors are comfortable with this. It is consistent with the variety of uses in the area.

Mr. Meehan said it's nice to see the developers working with their abutters.

Mr. Hirsch said it's a good use for a site that has remained vacant for 15 years.

MOTION by Mr. Bollinger to approve New Business - Subdivision Plan A22-0016. It conforms to §190-133(F) with the following stipulations or waivers:

1. The request for a waiver of § 190-279(EE), which requires all existing conditions be shown on the plan within 1000- feet of all property lines etc., 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 Joe Mendola, Street Construction Engineer, and dated, March 30, 2022 shall be addressed to the satisfaction of the Engineering Department.
3. Prior to the Chair signing the plan, all comments in an e-mail from Mark Rapaglia, Nashua Fire Marshalls Office forthcoming shall be addressed to the satisfaction of the Nashua Fire Department.
4. Prior to the Chair signing the plan, the applicant shall make a \$14,400 contribution to the Northeastern Boulevard/Main Dunstable Road Traffic corridor account as indicated in an e-mail dated March 31, 2022 from Wayne Husband, City Traffic Engineer.
5. Prior to the issuance of a building permit, the electronic copy of the plan will be submitted to the City of Nashua.
6. Prior to any work a pre-construction meeting will be held and, if needed, a financial guarantee shall be approved.

SECONDED by Ms. Harper

MOTION CARRIED 9-0

The Board held a 2-minute recess

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 Mr. Bollinger

MOTION CARRIED 9-0

Mr. LeClair said he would hear Other Business #2 & #3 together.

2. Referral from the Board of Aldermen on proposed Petition by Etchstone Properties, Inc. for full Waiver of Impact Fees (for public school facilities) as Authorized Under Section 190-85 of the Land Use Code (Thompson's Preserve Condominium)
3. Referral from the Board of Aldermen on proposed Petition by Etchstone Properties, Inc. for full Waiver of Impact Fees (for public school facilities) as Authorized Under Section 190-85 of the Land Use Code (The Alcove at Walden Woods Condominium)

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

Atty. Westgate introduced himself as representative for the petitioner. With him is Dave Petropulos from Etchstone Properties.

Atty. Westgate provided a background of Etchstone Properties and the two developments. Any applicant can petition the Board of Aldermen for a waiver of public capital education facilities when the proposed development contains low-income housing or elderly housing, which can reasonably be expected not to require additional educational facilities. Both of these developments are 55+ communities, which under state and federal law requires that 80% of the units have to have at least one person who is aged 55 or older living in them. By nature, these communities tend not to have school-aged children, and have a community area that facilitates programs and activities targeted towards this age group.

Atty. Westgate said they submitted a study by Fougere Planning and Development, who took a survey of various age-restricted communities in New Hampshire. His study revealed that of the 1,036 total units, there were only 5 school aged children. Neither of the two developments here have school aged children. The Alcove at Walden Woods also mandates that all units must have at least one 55+ aged resident. Given the age requirement in a 55+ community and the nature in which they are typically designed, it tends to not generate school-aged children. He thinks they meet the requirements of the waiver in full.

Atty. Westgate said impact fees are to be rationally related to what impact a project has on offsite facilities and infrastructure. These particular developments don't impact the school system or generate a need for capital improvements. Etchstone has already paid the fees upfront, and this is a waiver request for a refund. They request a favorable recommendation to the Board of Aldermen.

Mr. Varley asked if they were to give a favorable recommendation and the Board of Aldermen to grant the waiver, if in the future the development changed materially over time to include school aged children, is there an opportunity for the city to revisit the issue?

Atty. Westgate said once it is granted, that is it.

Mr. Meehan asked what their role in this process is.

Mr. LeClair said they are to provide a recommendation to the Board of Aldermen.

Mr. Meehan asked what the revenue loss is if this is approved.

Mr. LeClair said about \$50,000.00 total.

Mr. Meehan it would seem that the waiver benefits the developer, rather than the residents of the units.

Atty. Westgate said that is correct.

Mr. Meehan said they are granting a waiver to a developer to increase their profit margin on a development where most of the residents have benefitted or currently benefit from public education. He questions why they are waiving the fees when they are currently building a new middle school and renovating two other schools. There is not a plethora of money flowing through that system. By granting this waiver, they would be taking \$50,000.00 out of the budget of the public school system to benefit the developer.

Atty. Westgate said he understands that the money was paid at the time of certificate of occupancy for each of the units, and theoretically goes into a capital improvements fund, not the operating budget. He said the notion that the residents have benefitted from public education in the past is most likely

correct. But the regulation that they are seeking a waiver from is not based on the benefit that the residents may have received in the past; it's whether this development impacts the school system in the context of needing capital improvements. It's no different than any other offsite impact analysis. The project has to have a rational connection to the infrastructure that it is impacting in order to be assessed for an impact fee. The notion of rational connection is what is stated in 190-85 of the Land Use Code. He believes they meet the standard.

Mr. Bollinger referred to 190-77, which has an impact fee breakdown by use. Age restricted housing 55+ does not have a category. What other properties would this affect, and would it be better for the Board of Aldermen to issue a blanket resolution?

Mr. Sullivan said that the table is directly tied to the form, which dictates how many school aged children are theoretically being contributed to the education system. The form is the basis for the computation of the impact fee. That is why you don't see elderly housing in the table, but it could be added.

Mr. Sullivan said what he thinks Mr. Bollinger is getting at is a revision of the Land Use Code to exempt elderly housing from any payment of impact fee. It's worth exploring and contemplated by the waiver provision 190-85, but the current process gives the Planning Board discretion to submit written findings to the Board of Aldermen. Perhaps that subjective analysis should be removed, but that's not what the current ordinance provides for.

Mr. LeClair said the purpose of the Planning Board is related to evaluating what is in front of them in relation to the Land Use Code and Master Plan. They aren't here to make policies that the Aldermanic Chamber would make, or even judge on them. That's not the function of the Planning Board. Their role is to review the petition or referral in how it relates to Land Use and the Land Use guidelines.

Mr. Sullivan agreed. He would add that impact fees is a unique referral in that the Planning Board does have a more active role in whether a waiver is provided. Any elderly housing development could seek a waiver through the Planning Board, and perhaps should be clearly exempt rather than relying on the applicant to approach the Board for a waiver. A year ago they reviewed the impact fee ordinance, and the current fees are being used to pay down the bonds for the north and south high school construction.

Mr. Hudson said it is helpful to provide feedback to city staff, as they are the ones that make recommendations for future changes. If the Board members want to recommend something to staff, they can. He asked if the Planning Board cannot waive impact fees at the time of application.

Mr. Sullivan said correct. It would be retroactively.

Ald. Cathey said between the two developments, it is \$409.00 per unit. How many years have those developments been paying those fees?

Ald. Westgate said both projects are fairly recent, completed within the last 5 years.

David Petropulos, Etchstone Properties

Mr. Petropulos said Thompson's Preserve had its last closing in May 2021, and Walden Woods was November 2021. They are recently completed.

Ald. Cathey asked how many children would have to be in the developments where they would not seek a waiver.

Atty. Westgate said he is not sure if there is a waiver. As with any development, does the number of children have an impact on the school district in which they would be going, such that it would cause the need for capital improvements? The question is where you hit the tipping point. The Planning Board often analyzes whether a commercial project will impact traffic or utilities and comes to judgements whether improvements are necessary.

Atty. Westgate said in this case, there is a unique element of the Land Use Code that automatically imposes the fee and also creates the waiver capability. The developer has the choice to either seek a waiver or live with it. It's been clear that the 55+ communities have typically applied for and received the waiver because of the few children that live in these communities. If it wasn't codified so specifically, there may have been a tipping point analysis.

Mr. Pedersen asked if the developer would be getting the waiver, or the residents.

Mr. Sullivan said the discount would be applied to Etchstone, as they were the original payer of the fees. The reimbursement would not be applied to the residents.

Mr. Pedersen asked if the residents would still be paying what they have been.

Mr. Sullivan said correct. Etchstone took on the burden of the initial impact fee and would receive the benefit of the reimbursement.

Mr. LeClair asked if it is a one-time fee or annual.

Mr. Sullivan said a one-time fee.

Mr. Hirsch asked if historically these waiver have been granted for other developments.

Mr. Sullivan said there is certainly history to support these waivers. He can't speak to elderly housing waivers.

Mr. LeClair said their role here is a motion on the referral.

Ald. Cathey said there are some members of the Board of Aldermen who put a lot of emphasis on the recommendations made by the Planning Board because they trust the members to do the legwork. If they feel there should be a notation, he strongly recommends that it be included in the motion so they have some context.

Mr. Varley said he thinks the applicant has established a valid basis for the waiver. Atty. Westgate did a good job establishing the purpose of the fees as well as why it is reasonable that they should be waived. It's not a question of whether the development benefits from the school existing. He thinks they have established a rational basis. In regards to a blanket waiver, if the Board of Aldermen was considering one, it should be with a metric or standard.

Mr. Bollinger said he would suggest that 190-77 be revisited by the Board of Aldermen, to define what types of units and exceptions they think are appropriate. Right now he doesn't see anything explicit.

Mr. Pedersen said they aren't talking about benefitting the members of the community, they are talking about benefitting the developers. Etchstone and other entities benefit from having a well-educated populace. To be taking money away from the school system doesn't help the overall society. Therefore, he thinks having a well-funded school system is better for all. He is not in favor of giving a tax break to Etchstone Properties.

Mr. Meehan said the motion he was going to make is a favorable recommendation. While he agrees with Mr. Pedersen's comments, the Land Use Code is such that this is approved. He appreciates Mr. Bollinger's point about revisiting this, but hearing Mr. LeClair's clarification about having to apply the set codes, it seems very clear that it should be approved.

Mr. Varley said they are not talking about a property tax issue and would not change how the units are taxed. The impact fee is specifically tailored to whether the development is placing a burden on a public service. It's not a question of whether the residents are benefitting from the public school systems, it is whether they are impacting the school system in a way that would justify the fee. That is the basis on which the applicant is arguing for a waiver. In his view, it justifies the waiver.

Mr. Pedersen referred to 190-77, and asked if it was not specific to elderly housing.

Mr. Bollinger said it lays would the foundation for the computation of the funds. He provided further clarification of his statements.

Mr. Hudson said in regards to revisiting the table, it is appropriate to potentially exclude elderly housing from the computation and also review the computation overall. The city is engaged in significant school projects and bonds. It's potentially appropriate to modify them.

MOTION by Mr. Meehan to favorably recommend Other Business #2 and Other Business #3 to the Board of Aldermen, with the recommendation that the Board of Aldermen revisit §190-77, Table 77-1 for Impact Fees.

SECONDED by Mr. Hirsch

Mr. Hudson said he is not a resident, but he doesn't believe that elderly housing is excluded from paying the property taxes. Although this fee is getting waived, it should be recognized that these residents support the school system through continued payment from taxes.

Mr. Pedersen asked if they are setting a precedent that any business that doesn't have anything to do with the school systems can ask for waivers on their impact fees.

Mr. LeClair said no. Land Use Code 190-85 only allows certain uses to have access to the waiver. If that development is consistent with the allowances of the ordinance, they can ask. That is not an open blanket, it's a specific list of uses.

Mr. Sullivan said correct. This ordinance has been on the books for over twenty years, and there have been several instances of requests in the past. There has not been a proliferation of requests made, and some have been granted. There is already a precedent for granting the fee in accordance with that section of the code.

Ald. Cathey cited 190-85, and said it is very narrow. The Planning Board can also approve a waiver, and the Board of Aldermen can still deny it.

Ms. Harper asked if 55 years old is considered elderly.

Mr. Bollinger said there is a distinction between age restricted and elderly. Age restricted dictates that there has to be at least one person aged 55 or older.

Mr. Sullivan said the elderly housing ordinance was recodified several years ago to reflect it as housing for older persons. Unfortunately, other references in the code were not adjusted to reflect that. This should refer to Housing for Older Persons, which reflects age 55 and older.

MOTION CARRIED 9-0

4. Referral of the FY2023 Capital Improvements Program from the Capital Improvements Committee to the Nashua City Planning Board.

Matt Sullivan, Community Development Director

****Audio faint****

Mr. Sullivan provided an overview of the purpose of the Committee. He clarified that this is for 2023, not 2022. This particular year was challenging. They transitioned to a digital review process, and had changes to department and division heads. The primary intent of the plan is to inform the Capital Budgeting process. The Planning Board's recommendations will be forwarded to the Mayor's Office and Board of Aldermen. These are projects

greater than \$50,000.00, which rises to the level of capital projects. He provided an overview of the ranking for projects and the capital process. The CIP also considers wastewater and solid waste projects, which are funded by user fees. **Audio faint**

Mr. LeClair said departments will submit their top three projects and the Committee ranks them. There's a lot of projects that show up year after year. He described the members of the Committee. The process has some important need for getting grants outside of the budget as many grants require multiple stakeholders.

Mr. Sullivan said it's also critical for bonding to have a rating.

Mr. LeClair said the rating is an input to the decision making by the Board of Aldermen and the Mayor. It does not limit or require decision makers to follow the plan, and it's not uncommon for lower rated projects to be funded.

Ald. Cathey asked what determines A1 vs A2 ratings.

Mr. Sullivan said there are two critical inputs. One is the ranking that the Dept. Head puts the project at in their top priority project. That is weighted heavily. The Committee does also look at the projects and determine what they feel is essential. They rely on input, but weigh projects against each other with an interest in providing as many departments as possible with a highly ranked project.

Ald. Cathey asked if they are still seeking a grant for the library.

****Audio cutting in and out****

Mr. Sullivan said they are still seeking funding for it. They have not been able to secure it. There are several phases.

Ald. Cathey asked if the number they are seeing is what the cost would be if there is no funding.

Mr. Sullivan said correct.

Ald. Cathey asked if DPW asked for storage for trucks.

Mr. Sullivan said he is not sure if it was considered.

Mr. Hudson said he doesn't know if it was included. If it was, it would probably be listed in a future year. They tried to break things out over the six-year plan.

Ald. Cathey asked if in the committee's opinion, there is one project above all others.

Mr. Sullivan said he can't speak for the committee, but that is not an analysis they perform.

Mr. LeClair said the ranking is reasonably simple. He described the process for committee review and ranking.

Ald. Cathey asked if there is any general consensus.

Mr. LeClair said A1 is the highest rank.

Mr. Sullivan said there was close clustering on some of the projects. There are multiple A1's, some of which have substantial matching funds. It's hard to place one over the other. Some require a larger city match than others.

Mr. LeClair said the committee doesn't base the decision on cost, only need.

Mr. Sullivan said there is no debate about the merit of the project. There is an assumption that what the department heads are bringing forward is accurate, and then the ranking happens subsequently. Cost is not discussed beyond what has more match and what has more city contribution.

Ald. Cathey asked if he will see Mr. Sullivan as part of the budget review.

Mr. Sullivan said he will see Capital Projects come forward.

Ald. Cathey asked if he foresaw what projects might be more difficult to get through.

Mr. Sullivan said there was that general sense on many of the projects. Some projects have been rated as A1 for several years. Every project has a variable sense of confidence in what is the likelihood to get approved. There are also projects that might be approved due to availability of funds. A lot of the Parks and Recreation projects are softer infrastructure, and tend to fall

to lower ratings because they are viewed as amenities. That is not accurate, but they don't tend to compete well with hard infrastructure projects.

Mr. LeClair referred to page 4 of the report, priority categories. He described the definitions for the categories.

Ald. Cathey asked if there was ever a scenario where the committee would say no to a project.

Mr. Varley said it's hard for the Planning Board to second guess those priorities because of the process and standards in place. Unless there was something really unusual or a divisive project, the Planning Board looks at the materials and listens to the Board representative. He is not going to tell the committee that they were wrong about their decisions.

Mr. LeClair said there is pretty general consensus. There is a lot of year to year, probably 70% of the plan. Generally speaking the Planning Board isn't trying to recreate the plan in this process.

Mr. Meehan said he was somewhat overwhelmed by the layers at first, but it's kind of amazing how many factors balance out. Funding, short-term, long-term, different departments, it's an amazing process and has served them well.

Mr. LeClair said the general feedback is that it does well for the city and is pretty well received by those who make the actual funding decisions.

Mr. Hudson thanked the Capital Improvements Committee, Director Sullivan, and all the city departments for their hard work.

MOTION by Mr. Varley to approve the FY2023 Capital Improvements Plan, and provide a favorable referral to the Mayor and Board of Alderman

SECONDED by Mr. Meehan

MOTION CARRIED 8-0-1 (Cathey abstained)

Mr. LeClair asked staff if they expect there to be amendments.

Mr. Sullivan said he does expect that there will be amendments to this plan.

DISCUSSION ITEMS

None

MOTION to adjourn by Ms. Harper at 8:28 PM

MOTION CARRIED 9-0

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