

EXPANDED DRAFT MEETING SUMMARY
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NASHUA CITY PLANNING BOARD
November 15, 2007

The regularly meeting of the Nashua City Planning Board was held on Thursday, November 15, 2007 at 7:00PM in the auditorium at City Hall.

Members Present: Ken Dufour, Chair
 William Slivinski
 Alderman Richard LaRose
 Bob Canaway, Secretary
 Steve Dookran, City Engineer
 Hugh Moran
 Mike Lowe
 George Torosian
 Cynthia Overby (Alt)

Also Present: Kathy Hersh, Director Community Development
 Mike Yeomans, Deputy Planning Manager

Approval of Minutes

November 1, 2007

MOTION by Mr. Slivinski to approve the minutes of November 1, 2007, waive the reading and place on file with the correction on Page 7 the Vote should read 6 to 2.

SECONDED by Mr. Lowe

MOTION CARRIED UNANIMOUSLY

Mr. Yeomans went over the following items that were received after the mailing went out.

- Correspondence from Diane Lavoie dated November 13, 2007 regarding Mary Ann Picard (Owner), 189 Kinsley Street Development.

REPORT OF CHAIR, COMMITTEE & LAISON

None.

Chairman Dufour went into the procedure of the meeting as follows:

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After the legal notice of each site plan or subdivision is read by the Chair, the Board will decide that the application is complete and ready for the Board to take jurisdiction of the application. If so, 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 and 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. Come forward to the microphone, state their name and address for the record as well as write your name and address on the sign in sheet provided. This would be the time to ask questions they may have regarding the plan.

Next testimony will come from anyone wishing to speak in favor of the plan. This will also be the time for the applicant to address any issues or concerns raised by prior testimony.

The Board will then ask any relevant follow-up questions of the applicant if need be.

The Board asks that both sides keep their remarks to the subject at hand and try not to repeat what has already been said and to be courteous at all times.

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 site plans or subdivisions. Chairman Dufour noted that the Planning Board does not make zoning decisions.

Zoning determinations are made by the Administrative Officer prior to the Board's legal public notice being sent to abutters.

After the public testimony is given the Board will discuss the issue and render their decision.

Chairman Dufour thanked everyone for their interest and, courteous attention and asked that everyone turn off his or her cell phones and pages.

OLD BUSINESS - CONDITIONAL/SPECIAL USE PERMITS

None

OLD BUSINESS - SUBDIVISION PLAN

None

OLD BUSINESS - SITE PLAN

None

NEW BUSINESS - CONDITIONAL/SPECIAL USE PERMITS

1. Woody & Michael Realty Investment, 96M Alosa (Owners) - Application acceptance and proposed condition use permit for a change of use from school bus parking, repair and service facility to RV sales, repair and service facility (NR263). 233 Main Dunstable Road, Sheet E - Lot 111A, Zoned "PI" - Park Industrial. (Postponed until the December 13, 2007 Meeting)

together with

NEW BUSINESS - SITE PLANS

3. Woody & Michael Realty Investments, 96M Alosa (Owners) - Application acceptance and proposed amendment to NR263 for a change of use from school bus parking, repair and service facility to RV sales, repair and service facility. 233 Main Dunstable Road, Sheet E - Lot 111A, Zoned "PI" - Park Industrial. (Postponed until the December 13, 2007 Meeting)

MOTION by Mr. Lowe to postpone both cases until December 13, 2007

SECONDED by Alderman LaRose

NEW BUSINESS - SUBDIVISION PLANS

2. Estate of Vinnie Berube and Donald Berube (Owners) - Application acceptance and proposed lot line relocation, subdivision and right-of-way dedication. 3 & 9 Fifth Street, Sheet 87 - Lot 309 and 310, Zoned "RB" - Urban Residence.

MOTION by Mr. Lowe that the application is complete and the Planning Board takes jurisdiction of the application.

SECONDED by Mr. Torosian

MOTION CARRIED UNANIMOUSLY

Richard Maynard, Maynard & Paquette

Mr. Maynard is representing the applicants, Vinnie Berube and Donald Berube. The property is located at Fifth and Ledge Street. The proposal is to move the lot line and subdivide Lot 309. The plan also includes a donation of a right-of-way dedication and reconstruction of the sidewalk. The property is level. Drainage will be handled by a leeching system connected to the roof leader system of the house.

SPEAKING IN OPPOSITION OR WITH CONCERNS

None

SPEAKING IN FAVOR OF THE PLAN

None

MOTION by Mr. Lowe to approve New Business Subdivision Plan #2, two lots subdivision and a lot line relocation. It conforms to NRO 16-440(g) with the following stipulations and waivers:

1. By approving this subdivision plan the Planning Board accepts on behalf of the City of Nashua an easement for curb rounding.
2. Prior to the plan being recorded bonding for work in the public right-of-way shall be approved by the Division of Public Works and Corporation Counsel, if required.
3. Prior to the plan being recorded the stormwater operation and maintenance plan shall be reviewed and recorded with the plan.
4. Prior to the plan being recorded the residence at #3 Fifth Street shall be converted to a single-family dwelling, and is subject to inspection to confirm that all necessary work has been completed.
5. Prior to the plan being recorded the easement for curb rounding shall be reviewed by the Division of Public Works and Corporation Counsel and recorded with the plan.
6. Prior to the issuance of the certificate of occupancy all work within the public right-of-way shall be completed to the satisfaction of the Division of Public Works.

SECONDED by Mr. Torosian

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SITE PLANS

4. **MacMulkin Chevrolet, Mac Thompson Realty, Inc. (Owner) - Application acceptance and proposed amendment to NR1504 to maintain an enclosed 3rd floor addition to the existing car dealership building, with any associated site plan revisions, by order of State of New Hampshire Hillsborough County Superior Court dated September 9, 2007. 3 Marmon Drive, Sheet A - Lot 349, Zoned "HB" - Highway Business and "RA" - Urban Residence.**

MOTION by Mr. Lowe that the application is complete and the Planning Board takes jurisdiction of the application.

SECONDED by Alderman LaRose

MOTION CARRIED UNANIMOUSLY

Chairman Dufour explained that this case was remanded back from the Superior Court and he read the order into the record.

Gerald Prunier, Esq.

Atty. Prunier is representing the applicant along with Jeff Rider and Bob Cormier, the engineers. They are here tonight for the third floor. The third floor meets all zoning requirements. Staff requested more planting on one side and the applicants will do that. The handicap parking will be moved closer to the door. They will regrade one area in the front and they will put a sidewalk around the building. They will do more landscaping and there is a landscape plan in everyone's packet.

Mr. Torosian asked about the lighting as it shines on Marmon Drive.

Atty. Prunier explained that when they received initial approval under the old code, they didn't have the lighting and now you have the new code so they are trying to take care of all the old issues. They were approved under the old plan.

Chairman Dufour said he has some lighting concerns. The side that faces Superior Drive, the three spotlights appear to bleed into the neighborhood and are too bright. The same lighting fixture is on the other side of the building, but with a different, softer bulb. He also asked if the third floor will

also have more lighting because there will be a lot more light coming out.

Atty. Prunier said it will not be lit all night and they would put a shading onto the glass.

Mr. Moran asked what hours the lights will be on.

Atty. Prunier said that most lights go off around 9:00 p.m.

Mr. Lowe read from the previous minutes regarding the design plan and the expansion and wanted to know if this meets all the requirements of open space and parking.

Atty. Prunier explained that they are not adding anything or taking away from open space. They meet all the zoning requirements.

Mr. Dookran asked why they are here tonight.

Atty. Prunier said they are here because of the third floor. They went to Court and the Judge asked them to come back to the Planning Board and get approval.

SPEAKING IN OPPOSITION OR WITH CONCERNS

Alderman Dick Flynn, 12 Charlton Circle

Some of the things mentioned tonight, trees being taken down were not part of the initial discussion in 2003. At this point many of the neighbors are disgruntled and felt they weren't listened to and the stipulations weren't properly adhered to. In 2003 there is no mention in any of the minutes or testimony about any parking on the third floor or in the approval. Alderman Flynn read from the previous minutes. The Planning Board should look at what stipulations can be put into effect. The trees shouldn't have been cut down. The applicant didn't fulfill the original stipulations. There was a lot of misrepresentation back in 2003 and Alderman Flynn asked that the Planning Board scrutinize this very closely. One of the stipulations back in November 2003 was concerning drainage and he is concerned if there is adequate drainage.

Joseph Waweru, 8 Superior Drive

Mr. Waweru agrees with Alderman Flynn. Mr. Waweru said the neighbors are very frustrated and its an infringement and

devaluates their property. The lights are very glaring in his house.

Gail Collins, 3 Beausite Drive

She has huge concerns that the people who live there's interest has been sacrificed for commercial interests and is worried that it could happen in other neighborhoods. Ms. Collins stated the applicant has bought some of the houses near the site and is concerned will they be expanding more. Nashua needs the commercial business, but their needs to be a balance and this plan didn't work. She hopes that steps will be taken so this doesn't happen again.

Pete Frye, corner of South Main Street and Superior Drive

From his backyard the MacMulkin building doesn't look beautiful. Its seems like there is a lot of questions and the Planning Board doesn't approve this proposal until you are 100% sure all the stipulations will be followed.

Melanie Chaput, 10 Clairmoor Drive

She is concerned about the size of the building and the City's Planning Board directives were not followed. If this Board is speaking for the people of Nashua, they need to ensure that they make the applicant stick to the plans. The lights are extremely bright. The Planning Board needs to have control.

SPEAKING IN FAVOR OF THE PLAN

Attorney Prunier

The third floor was built with a Building Permit. The stipulations on the site plan have to be followed. There was never any intent of enclosing the third floor. It was only after the May 5th meeting of the Board that the City gave them the permit. They are here tonight just to consider the third floor.

Mr. Lowe stated that by doing what the applicant did it circumvented the Planning Board and the Planning Board's job of protecting the citizens of Nashua, not just the business community.

Mr. Dookran asked Atty Prunier about one of the neighbor's concerns about infringing on their rights.

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Atty. Prunier said the applicant is complying with the zoning ordinances.

Mr. Dookran asked about devaluation of property. Through your recent MacMulkin purchase have you recognized any changes in value.

Atty. Prunier had no idea. This center has been there for a long time.

Mr. Dookran asked about the waivers and what code is being applied to this and understands it is the current code and that's why four waivers are being requested. You are asking a waiver for stormwater report. Why?

Atty. Prunier said it's the same. They are not adding any more impervious area, in fact they are removing impervious area. The drainage calculations for the first plan, was approved by the Planning Board. The final site plan has not been made. Once the final inspection is done they have to do it to receive the final Certificate of Occupancy. Once the Stop Work Order has been removed they will finish up and it will be inspected.

Mr. Dookran asked about the spillover on the street side for the lighting. There appears to be excessive lighting on the neighbor's side.

Atty. Prunier said this is the first time this has been brought up and are a problem. They will make them comply.

Mr. Dookran said that this concern has been around for a while and no attempt has been made to correct it. He is hearing promises tonight to correct this.

Chairman Dufour said there is no light infringement at the moment as a result of the third floor, which is why they are here tonight. When Chairman Dufour asked if the third floor was going to be finished like the second floor, the answer was yes. Which means there is going to be a lot more lighting than there is currently and he is concerned. There is minimal lighting now on the third floor.

Mr. Dookran asked about the waiver on the building requirement. Is that an architect review? Why?

Atty. Prunier stated the building was approved in 2003 under the old ordinance. Now the new ordinance is in effect. Staff said it

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would be easier if they asked for a waiver so they can have a clean approval. They want to build the third floors like the other two floors.

Mr. Dookran asked how the third floor does not meet the current code for architectural requirements.

Atty. Prunier said the material. Waivers have been given for the use of the material but didn't know if the material is under the code.

Staff replied that there are some questions but the material is mostly consistent with the current code but probably some waiver requests.

Mr. Dookran said this is an approval board and we have to have criteria by which we go by. The applicant needs to address the code.

Chairman Dufour referred to a letter into the record signed by Jeffrey Rider of Cuoco & Cormier dated October 17th and this letter explains why they are requesting the waiver.

Mr. Dookran asked how will the applicant be putting screen material on the south side of the building.

Atty. Prunier said they have provided Staff with a landscaping plan, which they approved to meet the standards. They have added more trees to add to a buffer.

Mr. Torosian asked what the intentions are for the use of the third floor.

Atty. Prunier said it would be used as a showroom, maybe offices. The showrooms will be on the first and second floor more then likely. The third floor is mostly storage for automobiles.

Chairman Dufour explained that under Zoning, MacMulkin and any other business in that Zone is allowed up to 5 stories if they meet the criteria. The residential side is just that. Although the applicant may or may not have purchased some homes in the residential area it doesn't mean they are going to turn that area into a parts department because it is zoned residential. The Judge has asked the applicant and deal with the third story and the Planning Board to try and correct what some people think is a wrong. The Judge has said if either one of the parties (the

applicant or people who sued) wants to go back to the Court they can do that. If the Court reverses the Planning Board, they approve it as it was originally approved, not with their stipulations.

Mr. Canaway suggested adequate screening to reduce the encroachment on the adjoining neighborhood. Mr. Canaway said even though it is three stories but it is pretty close to the maximum height.

Mr. Lowe said he didn't vote for this last time because he didn't believe some of the things he was being told and has an ethical problem with this. When he asks someone a question and he answers it at a public meeting that they be true to their word and he wasn't finding it.

Chairman Dufour explained they are here to rule on the third floor.

Mr. Dookran said that one way to set controls on the lighting would be to not waive the lighting plan.

Mr. Torosian said that this does comply and that they have an obligation to adhere to the law as long as the residents are protected.

MOTION by Alderman LaRose to approve New Business #4 Site Plan Amendment, Mac Thompson Realty, Inc. (Owner) 3 Marmon Drive, Zoned "HB" - Highway Business. It conforms to NRO 16-450(d) with the following stipulations and waivers:

1. All stipulations of the November 20, 2003 approval remain in full force and effect except as may be otherwise modified by the Planning Board.
2. The waiver request for lighting design factors, Sec. 16-236 is granted.
3. The waiver request for building design, non-residential buildings, Sec. 16-450 and 542 is granted.
4. The waiver request for landscaping plan, Sec. 16-1100 B34(p) is not granted.
5. The waiver request for stormwater report, Sec. 16-1100 B34(cc) is granted.

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6. The applicant will provide a lighting plan that will prevent light encroachment on the neighborhood including three spots lights and third floor interior lights.

SECONDED by Mr. Moran

MOTION CARRIED 7 TO 1 (MR. LOWE VOTED NO)

MOTION by Mr. Dookran to add stipulation #7 that the applicant to provide the certified drainage inspection report within 30 days.

SECONDED by Mr. Moran

MOTION CARRIED (5 TO 3)

NEW BUSINESS - SITE PLANS

5. Mary Ann Picard (Owner) - Proposed site plan for a 14 space accessory parking lot for a 3 unit multifamily dwelling and pizza restaurant, with associated site and access improvements. 189 Kinsley Street Sheet 122- Lot 15, Zoned "RA" - Urban Residence.

MOTION by Mr. Lowe that the application is complete and the Planning Board takes jurisdiction of the application.

SECONDED by Mr. Torosian

MOTION CARRIED UNANIMOUSLY

Gerald Prunier, Esq.

Atty. Prunier is representing the applicant, Mary Ann Picard. This is a plan for a parking lot adjacent to property on Kinsley and Liberty Street. They are adding parking for the pizza shop on the corner. There are 14 parking spaces and putting in sidewalks along Kinsley Street. They will be connecting the sidewalk to the sidewalk on Liberty Street. The drainage will be taken care of. It will be treated and go back into a large underground container to hold the water. One of the abutters has requested a fence and they will put up a stockade fence along the property line. The parking lot will mainly be used for the three residential apartments.

Chairman Dufour asked how many parking units are required for the three units.

Atty. Prunier said 1- $\frac{3}{4}$ spaces per units.

Mr. Slivinski asked if there was enough room for cars to park and come back out.

Atty. Prunier replied yes.

Chairman Dufour said he was also concerned with the property line to the west. It's a residence and cars will be pulling in and there is no screening and lights shining on that home.

Staff added that they have a landscape plan for this property and it shows a dense planting along the west property line.

Mr. Slivinski suggested putting up a fence in lieu of the bushes for the property to the west.

John Picard, 189 Kinsley Street explained it was more expensive for the planting than the fence and but will put up a fence if requested. The bushes will shield the house better.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one.

SPEAKING IN FAVOR OF THE PLAN

No one.

MOTION by Mr. Lowe to approve New Business - Site Plans, parking improvements, Mary Ann Picard (Owner), proposal construction of 14 spaces accessory parking lot, 189 Kinsley Street, "RA" - Urban Residence. It conforms to NRO 16-450(d) with the following waiver:

1. Prior to any work being started, the applicant and their contractors shall hold a pre-construction conference with Planning staff.
2. Prior to any work being started documents pertaining to the stormwater operation and maintenance plan shall be recorded.
3. The waiver request for lighting plan, Sec. 16-1100 B34(n) is granted.

SECONDED by Mr. Torosian

MOTION CARRIED UNANIMOUSLY

OTHER BUSINESS

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

None

MOTION by Mr. Slivinski that there are no issues of regional impact.

SECONDED by Mr. Moran

MOTION CARRIED UNANIMOUSLY

2. **Referral from the Board of Alderman on proposed O-07-122, amending the "Land Use Code" sign regulations. (Tabled from the July 26, 2007 Meeting)**

MOTION to remove from table.

None

3. **Referral from the Board of Alderman on proposed O-07-129, amending the "Land Use Code" by amending the provisions permitting games of chance as defined in RSA 287-D in certain zoning districts. (Tabled from the September 13, 2007 Meeting)**

MOTION to remove from table.

None

Discussion Items

Gerald Prunier, Esq.

Deerwood Drive has been existing forever. The property was subdivided and also got 4 lots in Hollis. South Deerwood Drive was to be connected with Indian Rock as part of the plan. The lots in Hollis were to be accessed on these roads. The property was bought by Mr. and Mrs. Kreick and they want to build one house, taking up three lots. The original plan was that they put up a bond, the plan was recorded and they were going to leave the plan alone. The City of Nashua wanted South Deerwood Drive completed. Mr. Kreick didn't want to do this because he wanted his privacy. He will take care of the drainage and bring it up to grade with gravel and put a gate that says for

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emergency vehicles only. That was not acceptable to the fire department. They want asphalt. They are left with no other way of doing this, either the Planning Board would say that's okay with gravel or to revoke the plan and that's why they are here.

Chairman Dufour said the revocation process will be in for the December 13th Planning Board Meeting.

MOTION TO ADJOURN by Mr. Lowe at 9:50 p.m.

APPROVED: _____

Ken Dufour, Chair, Nashua Planning Board

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