

NASHUA CITY PLANNING BOARD  
May 1, 2008

The regularly scheduled meeting of the Nashua City Planning Board was held on Thursday, May 1, 2008 at 7:00 PM in the auditorium at City Hall.

Members Present: William Slivinski, Vice Chair  
Bob Canaway, Secretary  
Richard LaRose, Alderman  
Steve Dookran, City Engineer  
Daniel Latham  
Cynthia Overby (Alt)  
Peggy Trivilino (Alt)

With the absence of regular members Chairman Dufour and George Torosian, Cynthia Overby and Peggy Trivilino will be voting.

Mr. Slivinski welcomed Daniel Latham to his first meeting.

Also Present: Roger Houston, Planning Director  
Mike Yeomans, Deputy Planning Manager

**Approval of Minutes**

April 10, 2008

**MOTION** by Mr. Canaway to approve the minutes as corrected by Staff in the communications with the clarification on Page 10, Stipulation 8, and add after the word to "the City" shall be added; waive the reading and place on file.

**SECONDED** by Mrs. Trivilino

**MOTION CARRIED 4-0 (Alderman LaRose, Mr. Latham, and Mrs. Overby abstained)**

**COMMUNICATIONS**

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

- Preliminary Agenda
- Letter from Airport Authority regarding case #1 on the agenda tonight
- Technical Review

**REPORT OF CHAIR, COMMITTEE & LIASON**

Vice Chairman Slivinski went into the procedure of the meeting as follows:

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. 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. Vice Chairman Slivinski 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.

Vice Chairman Slivinski 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 PLANS**

None

**OLD BUSINESS - SITE PLANS**

None

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

None

**NEW BUSINESS - SUBDIVISION PLAN**

1. **Susan Brueckner (Owner) - Application acceptance and proposed subdivision of one lot into 2. 75 ½ Pine Hill Road, Sheet E - Lot 1351, Zoned "R9" - Suburban Residence.**

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

**SECONDED** by Mr. Trivilino

**MOTION CARRIED UNANIMOUSLY**

Richard Maynard, Maynard & Paquette

The existing lot is located at the intersection of Pine Hill Road and Charron Avenue. The lot has frontage on Charron Avenue as well as Pine Hill Road. On February 12<sup>th</sup> the ZBA granted a lot width variance with 2 stipulations. One stipulation was for a fence on the common lot line with the neighbor to the right and the driveway for the new building lot be as far away from the intersection as reasonably possible with a t-turnaround. Back in 1994 there was a report of a piece of asbestos on the site on the surface. There doesn't seem to be any now, but that is still a concern and there is a recommended stipulation to handle that during construction. The lot fronting on Pine Hill Road will be 12,623 square feet and the lot on Charron Avenue will be 14,062 square feet. Both exceed the minimum amounts. The drainage system will be leaching cisterns attached to the roof drains. The applicant is also asking for a sidewalk waiver in lieu of a contribution of \$3,750 for the 75 feet of lot

frontage on Charron Avenue. Stipulation 9 talks about putting a note on the plan that there is a noisy abutter, the airport.

Mr. Slivinski asked what kind of asbestos it was.

Mr. Maynard said it was non-fryable (??) scattered through out. They don't know if it was thrown there or if it blew there. There doesn't appear to be any asbestos there today but it could be intermingled with the soil.

Mrs. Overby said it is listed by the NH DES as an asbestos disposal site.

Mr. Maynard said they are all called that.

Mrs. Overby asked how they would remove the asbestos.

Mr. Maynard said there are strict rules that would have to be followed.

Mrs. Trivilino said the driveway is quite big and is close to the corner. Where does the snow removal go?

Mr. Maynard said relatively speaking the driveway is not that big. It is a large lot. There is plenty of room for snow. The stipulation is to keep the driveway as far away from the intersection as possible.

Mr. Canaway asked if Mr. Maynard read the letter from the Airport Authority.

Mr. Canaway read part of the letter from the Airport Authority.

Mr. Maynard said this property is not in the airport zone and said he wasn't sure if it is legal to have them put a stipulation on the plan. There are no airport restrictions on this lot; it is out of the zone.

Mr. Slivinski said there is disagreement between Staff and the applicant over the sidewalk contribution and the amount of the contribution.

Mr. Maynard said they want to donate to the sidewalk construction in front of the building lot. Staff wants to include frontage on the existing lot, which more than doubles the amount of the contribution and isn't fair.

Mr. Dookran asked if Mr. Maynard knew a commercial site just north of the new parcel has asbestos. Mr. Dookran said the applicant should be aware that there may be more on the site than you think.

Mr. Maynard said whenever you have asbestos you have to go through state mandated procedures. He is aware of these. This is not the first lot he has dealt with that has asbestos.

Mrs. Overby said there is large piece of land to the back of the lot. Are there any plans to develop it?

Mr. Maynard said no. Under current zoning laws that can't.

**SPEAKING IN OPPOSITION OR WITH CONCERNS**

No one.

**SPEAKING IN FAVOR OF THE PLAN**

No one.

Mr. Canaway asked if Staff had spoke to the Airport Authority about the easement.

Mr. Yeomans said if the airport manager wants to pursue an easement, he will have to pursue the easement with the applicant. He didn't think it was a land use issue. He did request to put a note on the plan that everyone is aware that this is in close proximity to the airport.

Mr. Slivinski said it has been his experience on the Board that when they split lots they take into account all of the frontages. Unless there is a hardship, they normally request a sidewalk contribution on both Pine Hill and Charron Avenue.

**MOTION** by Mr. Canaway to approve New Business #1 - 2 lot subdivision, Susan Brueckner (applicant), subdivision of one lot into two, 75 ½ Pine Hill Road, "R9" - Suburban Residence. It conforms to NRO 16-440(g) with the following stipulations and waivers:

1. Prior to recording the subdivision plan bonding for work in the public right-of-way shall be approved by the Division of Public Works and Corporation Counsel, if required.

2. Prior to recording the subdivision plan the stormwater operation and maintenance plan shall be submitted and recorded with the plan.
3. Prior to recording the subdivision plan the applicant shall provide to the Division of Public Works approval of water service from Pennichuck Water Works.
4. Prior to recording the subdivision plan the applicant shall provide to the Division of Public Works a copy of the street discontinuance plan and petition for Evelyn Street.
5. Prior to recording the subdivision plan the applicant shall revise the drainage plans to show infiltration for the existing lot.
6. The request for waiver of sidewalk construction and acceptance of a contribution is granted. The contribution shall be in the amount of \$9,541 shall be paid to the planning department prior to the issuance of a building permit.
7. Prior to the issuance of the certificate of occupancy for Lot 2222 all work within the public right-of-way shall be completed to the satisfaction of the Division of Public Works.
8. All permits and site work required for the removal and disposal of asbestos shall be obtained and activities conducted pursuant to applicable federal, state and local laws and regulations.
9. A note shall be added to the plan indicating this lot is within close proximity to the Nashua Airport and is subject to aircraft noise and flight operations 24 hours a day, 7 days a week.

**SECONDED** by Alderman LaRose

**MOTION CARRIED UNANIMOUSLY**

**NEW BUSINESS - SUBDIVISION PLAN**

2. **Etchstone Properties, Inc., Harold & Mitchell Weisman, First Kliorin Family Revocable Trust and Raymond & Marylou Ferland (Owners) - Application acceptance and proposed lot line relocation and subdivision to create 2 new lots. 75 & 89 Hills Ferry Road and 5 & 9 Smithfield Terrace, Sheet 56 - Lots 14, 19, 20 & 127, Zoned "RA" - Urban Residence.**

**MOTION** by Alderman LaRose that the application is complete and the Planning Board takes jurisdiction of the application.

**SECONDED** by Mr. Trivilino

**MOTION CARRIED UNANIMOUSLY**

Richard Maynard, Maynard & Paquette

The project is located on Hills Ferry Road in the RA Zone. Back in 2001 the Planning Board approved a subdivision of 21 building lots in this area. They are now creating 2 new building lots and relocating several lot lines. Drainage for this subdivision was handled in several ways. Drainage associated with the street was part of an infiltration system. All of the individual houses have their own leaching cisterns attached to their roof drain. On site drainage for existing homes has already been taken care of. The two new houses will have two leaching cisterns per house connected to the roof drains to handle the drainage. On Ferry Road there is already a sidewalk across the street and so there is no need for a sidewalk on this side. Sidewalks for Smithfield Terrace were not required; they were waived in lieu of some work done on Concord Street and an overlay of a section of Hills Ferry Road. The sidewalk issues were taken care of in 2001.

Mr. Dookran asked about the previous approvals on the sidewalks.

Mr. Maynard said on Hills Ferry Road the sidewalk was not required because there was already one on the other side of street. On Smithfield Terrace, they requested that sidewalks not be required in lieu of building a sidewalk on Concord Street and that was approved as the contribution.

Mr. Dookran asked if there was a public right-of-way easement.

Mr. Maynard said yes and a sanitary easement as well and a public walkway easement.

Mr. Slivinski said he was on the Board back when this was approved. All of the streets around there do not have sidewalks, except the one side of Hills Ferry Road. He remembers the ordinance back then as if you didn't have to put in a sidewalk if one side of the street already had one, but that did not negate the point of making a contribution. The Board had decided that it would be better if they had the applicant put a sidewalk on Smithfield Terrace and add on the contribution on Hills Ferry

Road. The Board asked them to do what they did on Concord Street and it was a fair trade in value of dollars.

Mr. Maynard said they also overlaid Hills Ferry Road as part of that contribution.

Mr. Slivinski said this is a new subdivision and they need to consider what they should do with the sidewalk contribution at this time.

Mrs. Overby asked if the large mature trees would stay.

Mr. Maynard said if they are on the side of the lots they should be able to stay.

#### **SPEAKING IN OPPOSITION OR WITH CONCERNS**

No one.

#### **SPEAKING IN FAVOR OF THE PLAN**

Kevin Slattery, Etchstone Properties

Back in 2001 the Board's policy was the same as today. There was a fair amount of interaction on the sidewalks back in 2001. This case is unique because the five-foot sidewalk that is on the north side of Hills Ferry Road is part of the continuation that goes over to Pennichuck School. They also improved the northwesterly corner where the sidewalk was cut off. They tied it in and put in a handicapped ramp and the other improvements Mr. Maynard mentioned. He hopes the Board considers that just the passage of time is all they are dealing with in regards to the sidewalk issue. In regards to the vegetation Mrs. Overby referred to they are going to work hard to keep what's there but because of the over dig for the foundation that they can save the trees closest to the street but some of the ones on the back side may have to go.

Mr. Slivinski asked why they did not develop the southerly lot at the time they were doing the project.

Mr. Slattery said it didn't have sufficient lot depth until Mr. Doyle, who did own the existing lot, sold the lot to Mr. Slattery. They gained depth and width for the other lot so it worked out and completes the subdivision.

Alderman LaRose said in his mind the developer has fulfilled his obligation for sidewalks via a contribution and construction and reconstruction on sidewalks on Concord Street and an overlay on Hills Ferry. He would vote the waiver for sidewalk contribution.

Mr. Dookran said all the properties but Mr. Doyle were considered for the subdivision, and the frontage should be considered tonight for that one property for sidewalk contribution.

Mr. Slivinski said he felt the applicant should have to make a sidewalk contribution in lieu of building a sidewalk.

Mr. Canaway said in NRO 16 617, which deals with sidewalks and pedestrian right of ways, Section (a) (1) deals with location and said the sidewalk will be on one side of the street. It says Planning Board may require sidewalks on both sides of the streets on high volume, collector, or arterial streets. Is this a high volume, collector, or arterial street? That's something he will consider. His opinion is he agrees with Alderman LaRose and his view it doesn't meet the rest of the requirements.

Mr. Slivinski asked about stipulation number 3 and if the Staff could please explain it.

Mr. Yeomans said it was predicated on comments received by Engineering. By Mr. Maynard's clarification that the existing homes are connected to a cistern, that wasn't apparent on the second plan. Mr. Maynard provided the information that all homes are currently providing the infiltration which would have met the stipulation and the new ones will be provided as well.

Mr. Slivinski said he would disregard the lot and frontage on Smithfield Terrace. That was part of what they did when they made the compromise. But there is a lot on Hills Ferry Road (the Doyle lot) that was not part of this plan. It has frontage on a lot that is being subdivided and the frontage on that lot the Board should consider if a sidewalk contribution must be made on that lot.

Alderman LaRose said the Doyle lot is not being subdivided, the lot line is being relocated and the Board does not ask for a sidewalk contribution on lot line relocation.

Mr. Maynard read ordinance 16-617 to the Board.

Mr. Canaway asked if Hills Ferry Road is a high volume, collector, or arterial street.

Mr. Slivinski said it is a high volume street.

Mr. Dookran said it is a collector.

**MOTION** by Mr. Canaway to approve New Business #2 Subdivision Plan, (Applicant) Etchstone Properties, Inc., First Kliorin Family Revocable Trust and Raymond & Marylou Ferland and Harold & Mitchell Weisman (Owners) lot line relocation and subdivision to create 2 new lots at 79 & 85 Hills Ferry Road and 5 & 9 Smithfield Terrace, Zoned "RA" - Urban Residence. It conforms to NRO 16-440 (g) with the following stipulations and waivers:

1. Prior to recording the subdivision plan bonding for work in the public right-of-way shall be approved by the Division of Public Works and Corporation Counsel, if required.
2. Prior to recording the subdivision plan the stormwater operation and maintenance plan shall be submitted and recorded with the plan.
3. Stipulation 3 is removed.
4. The request for waiver of sidewalk construction and contribution is granted.
5. Prior to the issuance of the certificate of occupancy for Lot 143 and Lot 144 all work within the public right-of-way shall be completed to the satisfaction of the Division of Public Works.
6. A driveway turnaround shall be provided on Lot 144, #83 Hills Ferry Road.

**SECONDED** by Mr. Latham

**MOTION** by Mrs. Trivilino to amend Mr. Canaway's motion to approve by taking stipulation 4 and stating is not granted.

**SECONDED** by Mr. Dookran

Mrs. Trivilino withdrew her amendment and Mr. Dookran withdrew his second.

**MOTION** by Mrs. Trivilino to amend Mr. Canaway's motion to include a sidewalk contribution for the original frontage on the Doyle property on Hills Ferry Road, which is approximately 120 feet.

**SECONDED** by Mr. Dookran

**AMENDMENT IS DEFEATED 4 to 3**

The Board then voted on the original motion by Mr. Canaway

**ORIGINAL MOTION CARRIED 4 to 3.**

**NEW BUSINESS - SITE PLANS**

3. Pheasant Lane Mall, Simon Property Group, Inc. (Owners) - Application acceptance and proposed 1 year extension concerning amendment of NR1729 to show the demolition of the former Macy's Department Store and the construction of a 99,655 square foot lifestyle center addition with associated access, parking and site improvements. 310 Daniel Webster Highway, Sheet A - Lot 737, Zoned "GB" - General Business. Approved on May 17, 2007.

**MOTION** by Alderman LaRose that the application is complete and the Planning Board takes jurisdiction of the application.

**SECONDED** by Mrs. Trivilino

**MOTION CARRIED UNANIMOUSLY**

Gerald Prunier, Esq.

They are seeking a one-year extension of their site plan approval. The economy has had an effect on the applicant and they need another year to make the proposal go through. They have discussed with Staff a different type of architect, so they will be coming back to the Board.

**SPEAKING IN OPPOSITION OR WITH CONCERNS**

No one

**SPEAKING IN FAVOR OF THE PLAN**

No one.

**MOTION** by Alderman LaRose to grant the one-year extension on New Business - Site Plans #3, Pheasant Lane Mall, Simon Property Group, Inc. (Owners). Extend site plan one year to construct new retail business with site improvements. 310 Daniel Webster Highway, Zoned "GB" - General Business. It conforms to NRO Section 16-450 (g) with the following stipulations and waivers:

1. With approval of this site plan all prior conditions of approval including waivers are incorporated herein and made a part of this plan, unless otherwise determined by the Planning Board.

**SECONDED** by Mr. Canaway.

**MOTION CARRIED UNANIMOUSLY**

**OTHER BUSINESS**

Review of tentative agenda to determine proposals of regional impact.

None

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

**SECONDED** by Alderman LaRose

**MOTION CARRIED UNANIMOUSLY**

**DISCUSSION ITEMS**

Mrs. Overby said she and Mr. Dufour attended the spring conference and she told the Board about it and brought some materials.

Mr. Slivinski said the Dunkin Donuts on West Hollis is finally getting done.

**MOTION TO ADJOURN** by Alderman LaRose at 8:25 p.m.

**APPROVED:**

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Ken Dufour, Chair, Nashua Planning Board

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Taped Meeting