

City of Rochester Planning Board
Tuesday January 31, 2023
Retreat
Department of Public Works Conference Room
209 Chestnut Hill Road, Rochester, NH 03867
(These minutes were approved on February 27, 2023)

Planning Board Members Present

Mark Collopy, *Chair*
Robert May, *Vice Chair*
Peter Bruckner
Keith Fitts
Donald Hamann
James Hayden
Matthew Richardson
Dave Walker

Zoning Board Members Present

Larry Spector, *Chair*
Michael King
James Connor
Lance Powers

Members Absent

Mathew Winders
Laura Zimmerman

Members Absent

Mark Sullivan

Alternate Members Present

Alexander de Geofroy
Rick Healey
Michael McQuade

Staff: Shanna B. Saunders, *Director of Planning & Development*
Ryan O'Connor, *Senior Planner*
Crystal Galloway, *Planner I*

(These are the legal minutes of the meeting and are in the format of an overview of the meeting)

I. The meeting was called to order at 7:00pm.

II. Roll call was silently conducted

III. Presentation from NH Municipal Association

A. Zoning Board Legal Mechanics

Steve Buckley of New Hampshire Municipal Association gave an overview the Zoning Board decision making process. Mr. Buckley explained the types of applications that are before the Board, including Administrative Appeals, Variances, Special Exceptions, Equitable Waivers of dimensional requirements, Special Waivers, building on Class VI/private roads, and often serves as building code board of appeal.

Mr. Buckley explained applicants are only allowed "one bite of the apple" sighting a court case Fisher v. Dover. He said second applications must be materially different in nature and degree from the original application.

Under RSA 674:33, VIII the Zoning Board shall begin formal consideration and shall approve or disapprove applications within 90 days of the date of receipt. The applicant may waive this requirement and consent to a mutually agreeable extension.

Mr. Buckley explained what the Board does during a hearing. He said they collect evidence and determine the facts, apply legal tests such as the variance criteria, and develop a record for court review.

For the decision there must be three members that concur. The decision must be in writing and state the reasons for approval or disapproval and it must be issued within five business days. Mr. Buckley went on to discuss the importance of stating the findings of fact as related to Zoning Board Decisions, the acceptance of expert testimony, and when relief or appeals could be considered.

The difference between Special Exceptions and a Variance was explained by Mr. Buckley. He reviewed the criteria for each application in detail as well as timelines and when a rehearing could be requested. The Zoning Board of Adjustment Handbook, created by the New Hampshire Department of Business and Economic affairs was referenced as a resource which outlines Zoning Board responsibilities and procedures.

Alexander De Geofroy asked, in relation to a Zoning Board application, who had the standing to be aggrieved. Mr. Buckley responded saying there needed to be a palpable injury. Mr. De Geofroy also asked for clarification on if a Special Exception or Variance approval ran with the land or only with the applicant. Mr. Buckley confirmed that those approvals stayed with the property. He also reiterated that applicants only get “one bite at the apple”, meaning if an application was denied, the Zoning Board would not consider a future application for the same relief unless the information presented or the proposal was substantially different.

Mr. Buckley completed his presentation on Zoning Board Legal Mechanics and the group took a 5-minute break.

B. Planning Board Legal Mechanics

Mr. Buckley began his overview of Planning Board roles and responsibilities, beginning with subdivision and site plan approvals. He reviewed the responsibilities of the Board, in regards to an application and what mechanisms the City must have in place to enforce various State Statutes. He also explained the different options a city could adopt for accepting Planning Board related applications.

The Workforce Housing Statute, RSA 674:58-61 was discussed as well as Innovative Land Use Controls. Both tools can be used to support Master Planning and affordability in housing development.

Mr. Buckley went on to review Conditional Use Permits. He explained they were essentially the same as a Special Exception and required certain criteria, defined by City Ordinance, for which a particular use may be allowed. The general criteria which all Conditional Use Permits must follow was also reviewed.

The presentation described Planning Board responsibilities in relation to public streets. Mr. Buckley explained the review process and expectations of the Board when an application proposes a new City street. Performance bonding and the allowance for off-site exactions was also discussed.

The Planning Board has the option to except both preliminary and conceptual review applications, Mr. Buckley explained. He reviewed the difference between the two applications as well as a formal submittal. He went on to define a complete application and timelines as defined by State Statute, RSA 674:4, I. Mr. Buckley discussed when an approved application is considered vested and how a Planning Board should review an application for a Developments of Regional Impact, RSA 36:54-58.

Mr. Buckley reviewed the House Bills to watch this year in relation to Planning Boards, to include written findings of fact with approvals, application timelines, and denials without prejudice. The procedures for public hearings were discussed as well as how Planning Boards should weigh and deliberate on evidence. Mr. Buckley reviewed Planning Board decisions, Conditional Approval, “Grand Fathered” rights, and various

methods of appeals of a decision. The Planning Board Handbook, created by the New Hampshire Department of Business and Economic affairs was referenced as a resource which outlines Planning Board responsibilities and procedure.

Mark Collopy asked about the criteria for a complete application and when a Planning Board needs to accept an application as complete. Mr. Buckley said if the application meets requirements set out in City regulations, the submittal should be seen as complete. Mr. Collopy followed-up with asking if the Board could deny an application for its inconsistency with the Master Plan. Mr. Buckley stated that the Master Plan should be used to influence regulations. The Board cannot deny an application on the basis of variation from the Master Plan but should amend regulations to ensure the Plan can be enforced.

Robert May asked about extension request for meeting precedent conditions and if it was reasonable to base an extension on the economics of the project not being feasible. Mr. Buckley said it was not a reasonable request to ask for an extension based on a property sale or general feasibility.

IV. Planning Board Elections

Mrs. Saunders gave an overview of the process for nominations.

Dave Walker nominated Mark Collopy for the Planning Board Chair.

A motion was made by Mr. Walker and seconded by Mr. Bruckner to cease nominations. The vote carried unanimously in favor of Mr. Collopy as Planning Board Chairman.

Dave Walker nominated Robert May for Planning Board Vice Chair.

A motion was made by Mr. Walker and seconded by Mr. Bruckner to cease nominations. The vote carried unanimously in favor of Mr. May as Planning Board Vice Chairman.

V. Planning Board Strategic Planning

Mrs. Saunders reviewed how our regulations can better fit into what was reviewed by Mr. Buckley. She explained how our regulations need to align with strategic planning efforts to ensure we have the structures to guide development. She asked the Board to review our regulations and said we would further discuss possible changes at Planning Board meetings in the near future.

X. Adjournment

A motion was made by Mr. Walker and seconded by Mr. Bruckner to adjourn at 9:04 p.m. The motion carried unanimously.

Respectfully submitted,

Crystal Galloway,
Planning Secretary

and

Ryan O'Connor,
Senior Planner