

CITY OF ROCHESTER
Planning Board
Monday, September 21, 2009 at 7:00 p.m. (workshop)
City Council Chambers
31 Wakefield Street, Rochester, NH 03867
(These minutes were approved October 5, 2009)

Members Present

Tim Fontneau, *Vice Chair*
Nel Sylvain, *Secretary*
Tom Abbott
Rick Healey
Eugene McCarthy
Derek Peters

Members Absent

A. Terese Desjardins, *Chair* (Excused)
Richard Groat (Excused)
John David Meader (Excused)

Alternates Present

Gloria Larochelle
Stephen Martineau
Ray Varney

Staff: Michael Behrendt, Chief Planner
Madeleine Carter, Secretary

(These minutes are the legal record of the meeting and are in the format of an overview of the meeting. It is neither represented nor intended to be a true transcription of the meeting. A recording of the meeting will be on file in the City Clerk's office for reference purposes. It may be copied for a fee).

Mr. Fontneau called the meeting to order at 7:00 p.m. The secretary conducted roll call.

Mr. Fontneau appointed Mr. Martineau as voting member for Mr. Meader, and Ms. Larochelle as voting member for Ms. Desjardins.

Communications from the Chair

No communication from the Chair

Opening Discussion/Comments (up to 30 minutes)

Public Comment

Discussion of general planning issues

No comments or discussions.

Approval of minutes for September 14, 2009

A motion was made by Mr. Healey and seconded by Mr. Peters to approve the minutes of September 14, 2009. Motion carried unanimously.

Continued/Modified Applications:

A. Dennis Sr. & Dennis Jr. Freeman, dba Just Oil, Route 125 & Jonathan Avenue
(by Eric C. Mitchell & Associates, Inc.). Site plan for retail oil business and commercial office. Case # 267-8-1, 8-2-A/B2-09 (PH-closed)

Jiri Hajek, Senior Project Manager stated everyone has agreed on items to adjust and modify. He stated they are still waiting for the NH-DOT permit. He stated they have complied with the request from the City Engineer to do additional test pit at the proposed infiltration facility. He discussed the illumination plan, and stated the landscaping plan was fine. He stated there is a list of items to provide the Planning Department and the City.

Board members asked when the architectural building changes would available.

Mr. Behrendt replied he has just a large set, which could not be reduced to pass out. He stated the applicant has changed the number of windows to 6, spaced them and put trim around them. He stated the applicant has agreed to add 5 awnings to the front. He stated Staff has recommended eliminating item #3 and to add a note on the plans to add an awning over each of the 5 windows in the front. He briefly discussed item #2 and stated he does not expect any problems concerning the Fire and Public Works Departments. He stated Staff has recommended approval as stated.

A motion was made Mr. Healey and seconded by Mr. Abbott to approve this application as stated. Motion carried unanimously.

B. John Nelson & Joan Holt, 75 Four Rod Road (by Norway Plains Associates).
Preliminary (design review) 2-lot subdivision. Case # 219-19-A-09 (PH)

Art Nickless, Norway Plains Associates, stated he has provided information concerning the width of the road. He stated Mr. Behrendt has gone to the site and has confirmed the width and condition of the road. He stated there is at least 20 feet of width and is not in bad shape. He stated there are already 5 homes on that road. He stated they would like to get the Boards recommendation for the next meeting of the City Council meeting, and asked what kind of information they would need for that meeting.

Board members discussed the drainage ditch. Mr. Nickless replied there are some shallow swales on the road but there are no drainage issues.

Mr. Behrendt stated the road looks good and it looks like it has been regarded fairly recently.

Board members asked about the applicant adding some gravel to the site. Mr. Nickless replied when construction on the house they may be doing some of that themselves.

Mr. Behrendt stated Staff has recommended a formal vote from the Board to issue a building permit along this private road, from the juncture of Four Rod Road to the far edge of the new shaped lot being created. He stated Staff does not believe there should be any changes to the road itself. He stated he could coordinate with Mr. Nickless and the applicant what their next steps would be.

Board members discussed identifying and clarifying the lot line better instead of saying to the far edge.

Mr. Nickless stated he would be meeting with Mr. Nelson tomorrow to discuss exactly where his daughters lot is going to be. He stated his daughter would rather be farther up the road, like beginning at the second 150 feet. He discussed having some flexibility, starting where the road starts at 20 feet wide, and other items.

Board members, Mr. Behrendt and Mr. Nickless discussed where on the length of road the lot would start, discussed were 300 feet, 450 feet, 500 feet, and the beginning of the road.

Board members and Mr. Nickless discussed the Zoning Board of Adjustment variance.

Mr. Varney asked if the new lot would have access to Four Rod Road seeing that it is L shaped. Mr. Nickless replied that is what they are working on and stated one of those lots has to have 150 feet for frontage. Mr. Nickless stated they would have to have 150 feet on the private road and have a strip, which is 85 feet that could be accessed on Four Rod Road.

A motion was made Mr. McCarthy and seconded by Ms. Larochelle to recommend approval to the City Council with modification for a building permit, 300 feet beyond the existing lot. Motion carried unanimously.

Mr. Fontneau opened the public hearing. No one came forward.

This application was continued to October 19 workshop.

Request from Thomas and Tammy Munroe of 127 Flagg Road (Lot 259-32) for clarification about installation of a fence screening their property from the Trinity Conservation cluster subdivision. The subdivision was approved for 57-lots with 114 total duplex units on June 19, 2006. Case # 259-36 & 38-A-05.

Tammy Munroe, abutter, discussed a meeting of October 2005 in which she spoke about safety issues on Flagg Road, and the privacy that they would be loosing. She stated she spoke with Mr. Nickless on the screening issue. She stated the next meeting was in February 2006 in which they were lead to believe by Mr. Nickless they would be getting a living fence. She stated she now wants other residents to know how they were tricked and to be careful because they could also be tricked. She stated a stockade fence was put up on their land without their permission and that was something they did not agree to.

Mr. Fontneau stated he does not believe he would use the word "tricked".

Ms. Munroe stated obviously lead down the rose path.

Mr. Fontneau stated from the Boards perspective he believes nothing was done intentionally. Sometimes when a project changes hands, the new owner does not honor things that you believe were promised.

Ms. Munroe stated they had not been aware of a new owner. She stated they were not aware until they went to the City to be hooked up to city water and sewer. She stated her husband called the new owner (Mr. Goldstein) and told him they were suppose to have a living fence at which time Mr. Goldstein stated it is not that big of a difference. She stated in 2008 they went to a meeting and they said a living fence would cost you (Monroe's) she stated she said OK just let them know. She stated they approached Mr. Nickless and asked if there was any way he could help them. She stated he said he couldn't and perhaps they (Munroe's) could talk to Mr. Goldstein to see if he would give them the cost of the stockade fence. She stated she would like her pine trees back. She stated within three days a stockade fence was put in. She stated she called Attorney Malcolm McNeil, was told not to worry about it they would work it out and to let them put the fence in. She stated Mr. Goldstein said he did know what they are complaining about the fence is not on their land. She stated she went to get a pool permit and found out the fence is on her land. Trick is the only other word to describe this.

Mr. Fontneau stated no one has a right to put a fence or cut down trees on your property without your permission. He stated if they did you certainly have the right to put in a claim. He stated this Board does not have authority to take action on anyone for that type of thing unless a condition has been violated of an approval that the Board has given. It appears that going through our documentation that it was never solidified that it would be a living fence. The project ended up being approved with a "fence".

Ms. Munroe asked when does the fence become officially theirs.

Mr. Fontneau stated is someone put a fence on his property, the minute they walked off he would think it was probably his fence. He stated perhaps there is some kind of boundary dispute or someone just did not know exactly where the boundary was when it was put the fence in. He stated in his opinion if the fence is on the Munroe's property the fence belongs to them. He stated he believes the Munroe's can do pretty much what they want to with the fence as long as keep with the Zoning Regulations.

Mr. Behrendt briefly discussed the drawing of the property line and stated one of the lessons that he sees for this is to be more precise on the approvals. He stated next time there should be a written approval from the abutter. He stated it looks like ownership of the fence could be ambiguous. He stated because this is a future City Street the City would not maintain it. It was erected with the assumption that the fence belongs to the Munroe's because of the structure of the fence.

Mr. Fontneau stated the fence is on the condition of approval and it would have to stay there until the City accepts the street. He stated it would have to stay there unless the Board waived it.

Mr. Varney stated if the precedent conditions have been met then it is done. He stated he believes they have been met.

Mr. Varney stated he recommends the Munroe's document the objections or concerns they have, give that list to Mr. Behrendt, which would then be on file for a later date when the Council is reviewing this project which may be several years down the road if there are issues to be considered by the Council that document would be useful at that time.

Ms. Munroe stated she documents everything and has been in contact with Mr. Behrendt and Mr. Goldstein as well. She stated she would not have come here if she didn't think she had a point.

Board members discussed having some sort of documentation or signature from the abutter agreeing to specific items.

Mr. Varney stated if there is a dispute as to where the fence is located the Board should not be having this conversation because the subdivision is suppose to be inspected. He stated if the pins are in the ground and the fence is in the wrong side of the pins it is the City's responsibility to ferret that out when the fence is put up it is part of the inspection of the project. If it has not been done it needs to be done.

Proposed amendment of site plan and subdivision regulations to conform with new RSA on waivers

Mr. Behrendt stated Staff has recommended the Board move forward with amending the site plan and subdivision regulations consistent with the new provisions regarding waivers. He stated this could be on the October 19 agenda for a public hearing and prospective adoption of the changes. He gave a quick review of the waivers to site and subdivision regulations.

Mr. Varney asked Mr. Behrendt to develop for some kind of form with enough details that could be included that form in the minutes of the meeting because it requires that which it didn't before. If there is a form that states the reasons why something is being granted it could be approved and included in the minutes instead of sitting here and working out some kind of paragraph

This was continued to the October 19, 2009 workshop.

Other Business

No other business was discussed.

Adjournment

A motion was made Mr. McCarthy and seconded by Mr. Sylvain to adjourn at 8:55 p.m. Motion carried unanimously.

Respectfully submitted,

Madeleine Carter, Secretary

(These minutes were transcribed from notes)

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