

CITY OF ROCHESTER
Planning Board
Monday, October 4, 2010 at 7:00 p.m.
City Council Chambers
31 Wakefield Street, Rochester, NH 03867
(Approved on 10/18/2010)

Members Present

Tim Fontneau, *Chair*
Nel Sylvain, *Vice Chair*
Derek Peters, *Secretary*
Tom Abbott
Rick Healey
Gloria Larochelle
John David Meader
Ray Varney, *Councilor*

Alternate Members Present

James Gray
Steven Martineau
Dave Walker, *Councilor*

Members Absent

Richard Groat

Staff: Michael Behrendt, Chief Planner
Marcia J. Gasses, Planning 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 Clerks'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 planning secretary conducted the roll call.

Stephen Martineau to vote for Richard Groat

Communications from the Chair

Mr. Sylvain informed the board that Richard Groat has submitted his resignation and will be stepping down due to illness.

Approval of the minutes for September 13, 2010
Approval of the minutes for September 20, 2010

A motion was made by Mr. Peters and seconded by Ms. Larochelle to approve both the September 13, 2010 and September 20, 2010 minutes as written. The motion carried unanimously.

Mr. Sylvain opened the public hearing on the proposed Cultural Resources Master Plan.

No one spoke.

A motion was made by Mr. Martineau and seconded by Mr. Peters to close the public hearing and adopt the Cultural Resources Master Plan. The motion carried unanimously.

Continued Applications

- A. D.S. & B.R. Winson Trust, 7 Stewart Court & Chasse Street** (by Norway Plains Associates). Lot line revision. Case # 122-2 & 122-10-R1-10 (PH closed)

This item was postponed to October 18, 2010.

- B. Audrey J. Demichele Living Trust & Susan Beals Living Trust, 2 Dartmouth Land** (by Norway Plains Associates). 2 lot subdivision. Case # 126-42-R1-10

Richard Lundborn representing the applicant explained the application was to create 2 lots from a .72 acre parcel. The lot containing the current home would be .40 acres, and the new lot would contain .32 acres. Mr. Lundborn stated that the current zoning allows for this size lot.

Mr. Behrendt recommends approval as stated in the staff recommendations. He has evaluated the application thoroughly and has found it meets the zoning requirements. Given the wooded coverage of the lot, in his opinion a home could be reasonably constructed.

Mr. Sylvain wanted to know if the out building was moveable.

Mr. Lundborn explained it is not on a foundation.

Mr. Varney did not see anything in the covenants that precluded subdivision.

Nino D. Leccacorvi of 6 Dartmouth Lane explained he had lived in the neighborhood for 28 years and the neighborhood had existed for over 40 years. The current owners are selling and will not be living there after. He fears the value of his property may be affected.

Mr. Gray wanted to know what covenant was being violated.

Arnold Bennett of 5 Sunset Drive has lived in the neighborhood since 1999 and plans on staying. Mr. Bennett is concerned about the split lot bringing down the value of his property.

Tony Corraine of 5 Edgewood owns two parcels in the neighborhood, one is a vacant lot. In the 1970's Mr. Corraine was on a board to rewrite the zoning ordinance. People rely on the zoning ordinance. The members of the Planning Board and Zoning Board are not caring about the property owners. The purpose of allowing the subdivision would be to allow the owner to recoup some value when they sell. He would like the board to reconsider the impact.

Mr. Fontneau asked for questions.

Don Carignan 13 Sunset Drive explained the board is attempting to approve a subdivision in a neighborhood that was set up 70 years ago. It is going to alter the neighborhood. The board needs to give consideration to the intent of the neighborhood design.

Clayton Harrington told the board he could subdivide into multiple lots but feels it would ruin the neighborhood.

Robert Garland 9 Sunset Drive owns a double lot. He could divide his lot into three lots; it would be a shame if we start chopping up the neighborhood.

Mr. Carignan would like the board to research the continuation of the neighborhood.

Mr. Peters does not want the lot odd shaped. We are looking at the potential for five or six other lots.

Mr. Varney does not think it is appropriate to subdivide. Gerrymandering the lot and subdivision fails to preserve the value of the neighborhood.

Mr. Sylvain wants to see the lot squared up. He is not supporting this application.

Mr. Healey spoke to the fact that a lot has changed in 70 years, some lots are larger and some are smaller. Presently there are five lots that are about 100' x 200'. He would vote to approve if it did not have the meandering lot line. If the lot were 100' x 200' the same size house could be built. He won't support this because of the meandering line.

Mr. Martineau stated we need a legal precedent for not approving.

Mr. Behrendt discussed what the response needs to be to private covenants. It is wise to advise the applicants to look at any covenants but the planning board needs to follow the zoning ordinance.

Mr. Behrendt posed the question, is it legitimate to deny when it meets the zoning ordinance.

Mr. Martineau asked, is there a point to us evaluating if it meets the zoning ordinance.

Mr. Fontneau said that if the board were to deny will they have set a precedent. If the board does deny there has to be legitimate reasons.

Mr. Sylvain in 1940 an agreement was made for the neighborhood.

Mr Healey believes they would be pretty hard pressed to prove the neighborhood would be degraded. He does not see a problem except for the meandering line.

Mr. Peters told the board that they have to clearly state why we deny in case it goes to court.

Mr. Abbott wanted to know if there was anything that requires the lot not to be meandering.

Mr. Lundborn explained that the applicant would be agreeable to tear down the out building and square off the lot. By no means is the building envelope small.

Linda Leccacorvi agreed with ½ acre minimum lot size. Some of the smaller lots are located on Hillcrest. The idea of putting another house on land the size of her backyard scares her. It is still a little piece of property.

Mr. Gray wanted to know which covenant was not being met in the deed.

Mr. Corrain questioned whether if the application has met the zoning requirements, you have to approve it.

Mr. Behrendt explained in order for the board to deny something as simple as this the reasons will have to be listed. All of this is turning out to be based on character issues of this lot. If it meets the zoning regulations and is only mildly different, then they need to approve. If the board is moving toward denial they need to be aware that if something violates a number of covenants and is egregious it could be part of the decision.

Mr. Coraine stated that Mr. Behrendt was trying to steer the board and that it was pretty clear they had considered smaller lots and they are on Hillcrest.

Mr. Behrendt expressed that he sees the concerns of the neighbors but he has no dog in this fight.

Mr. Fontneau stated that if this were a new proposal we probably wouldn't accept the smaller lot.

Mr. Lundborn explained a 2300 square foot home would fit well within the setbacks of this lot. The applicant could put additional covenants on the lot they are proposing. The

applicant has already conceded moving the outbuilding and straightening the lot lines out.

Robert Garland agrees they could put a small house on the lot. Does it set a precedent that we could divide our lots?

Mr. Fontneau answered Mr. Garland's question. If you came in today, you could meet today's zoning also.

Mr. Peters had two questions. What is the size of the two lots and had they asked the applicant to move the current outbuilding.

Mr. Gray the board needs reasons to not approve the application and does not see the reason in the covenants. What is the reason that would stand up? Would like to see this postponed for two weeks, it would give all parties a chance to look at it again.

Mr. Varney told the board, we have a responsibility to protect the values of the neighborhood.

A motion was made by Mr. Varney and seconded by Mr. Peters to deny the application because it fails to meet the purpose of the zoning ordinance, adversely impacts the character of the neighborhood and fails to conserve the value of the neighborhood.

Mr. Fontneau suggested the parties get together and that they table the application for two weeks.

Mr. Sylvain called for a roll call vote.

Mr. Healey	NO
Mr. Sylvain	YES
Ms. Larochele	YES
Mr. Peters	YES
Mr. Martineau	YES
Mr. Abbott	NO
Mr. Meader	NO
Mr. Varney	YES
Mr. Fontneau	NO

The motion carried 5-4.

VIII. Amendment of the Planning Board bylaws to allow participation of alternates in meetings

A motion was made by Mr. Healey and seconded by Mr. Peters to amend the bylaws to allow the participation of alternates in meetings. The motion carried unanimously.

Mr. Behrendt explained that that this amendment was needed to clarify in the bylaws that alternates were allowed to participate in meetings, this was triggered by recent legislation.

IX. Appointment of Planning Board member to the Historic District Commission

A motion was made by Mr. Varney and seconded by Mr. Peters to appoint Mr. Sylvain as representative from the Planning Board to the Historic District Commission. The motion carried unanimously.

Councilor Walker will now vote for Councilor Varney.

Councilor Varney left the meeting.

X. Review of Draft Comprehensive Rezoning Ordinance
A. Article XXVII – Miscellaneous Provisions

Ms. Larochelle asked what the difference was between an impact fee and an exaction fee.

Mr Behrendt explained an impact fee is not physically close to the development, they cover new fire stations, schools, and the expansion of City Hall. An exaction fee is more directly related to a project, such as the expansion of a sewer line.

Mr. Sylvain asked if we have impact fees.

Mr. Fontneau explained that we have an impact fee ordinance but impact fees are not in place.

Mr. Behrendt explained that the sewer capacity fee could be considered an impact fee.

E.

1. Change to read, “All bodies of water as defined under the N.H. Comprehensive Shoreland Protection Act, RSA Chapter 483-B.
2. Add, “the Cochecho & Salmon Falls Rivers

A motion was made by Mr. Peters and seconded by Mr. Walker to approve Miscellaneous Provisions as amended. The motion carried unanimously.

B. Performance Standards

D.

1.

Mr. Abbott is concerned that the wording in “a” will make all one and two family homes non compliant.

Mr. Martineau is concerned that if we take out the wording in “a” it will continue to allow PSNH lighting in the yards of single family and duplex homes that exist today to continue to shine on surrounding properties.

Mr. Abbott expressed concern that that these changes would make many of the items existing today nonconforming. Currently the ordinance is very specific. He is concerned that this could be misapplied.

Discussion ensued.

Mr. Healey explained that the intent was for new structures or those being modified after the date of adoption.

Mr. Abbott does not believe that there are a lot of fixtures available for residential uses which are shaded. He is worried this would be opening a Pandora’s Box with the way it is worded.

Mr. Gray asked if illumines or wattage could be considered.

Mr. Abbott suggested that we split out the residential from how we are going to deal with a new pharmacy or Kohl’s.

Mr. Peters wanted residential out of “a”.

Discussion ensued.

1. a to read, “ All new lighting installations, for every use (including single family dwellings), shall be shielded in order to avoid sky glow or undue glare onto any road or adjoining property”.

11. b add “Does not apply during active construction”.

14. Remove, “or toxic”

*A motion was made by Mr. Peters and seconded by Mr. Healey to approve “**B**” as amended. The motion carried 7-2.*

C. *A motion was made by Mr. Martineau and seconded by Mr. Healey to postpone the discussion on “signage” until October 18, 2010. The motion carried 7-1.*

Other Business

Mr. Peters told the board that he had met with Chris Bowlen to discuss the Recreation Master Plan. Mr. Bowlen expects to have it in his hands, on or before the Columbus Day Weekend and will be talking with Mr. Behrendt to place it on the Planning Board agenda.

Mr. Peters explained that the ZBA now has multiple cases on their October 6th agenda and he will be working to reschedule a retreat date. In addition he will be working on scheduling another retreat, separate from the ZBA.

A motion was made by Mr. Peters and seconded by Mr. Sylvain to adjourn at 9:37p.m.

Respectfully Submitted,

Marcia J. Gasses
Planning Secretary

(These minutes were transcribed from notes)