

**City of Rochester Planning Board**  
Monday September 18, 2017  
City Council Chambers  
31 Wakefield Street, Rochester, NH 03867  
(These minutes were approved on October 2, 2017)

Members Present

Nel Sylvain, *Chair*  
Dave Walker, *Vice Chair*  
Matthew Kozinski, *Secretary*  
Tim Fontneau  
Robert May - arrived at 7:02pm  
Mark Sullivan  
Tom Willis

Members Absent

Jeremy Hutchinson, excused

Alternate Members Present

Terry Dwyer  
James Gray  
Kyle Starkweather

Staff: Michelle Mears, *Staff Planner*  
Crystal Galloway, *Planning Secretary*

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

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Mr. Sylvain called the meeting to order at 7:00p.m.

The Planning Secretary conducted the roll call.

**III. Seating of Alternates**

Mr. Starkweather voted in place of vacant position one and Ms. Dwyer voted in place of vacant position two.

**IV. Communications from the Chair**

There were no communications from the Chair.

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## **V. Opening Discussion/Comments**

### **A. Public Comment**

Paul Martin of 35 Brenda Lane said he had a few random questions. He asked if there was a particular reason full plan sets were not available for review online. He asked why a copy of draft meeting minutes were not available for review online as he said the law states they are to be made available within five days after a meeting.

Mr. Martin said he was told Planning Staff has no independent means to verify the accuracy of open space calculations and density calculations. He said mistakes can be made on the area of wetlands; he asked why is there no way of verifying the calculations. Ms. Mears responded this has been explained to Mr. Martin several times and said the City goes by the professionals whose stamp is on the plan. Mr. Martin said that's the point; there is no way to verify if the professionals have made a mistake.

Mr. Martin went on to say he doesn't know much about soil delineations or wetlands but he finds is peculiar that the size and shape of a wetland is the same for the soils. He asked if that's how it typically shows up on the different projects. Ms. Mears said she's not sure what he's referring to and believes he is speaking to a specific application. Mr. Gray explained if you have some soil that is mostly clay, water isn't going to drain out of that soil the way it does if it's sand. He added that it is not unusual for them to be the same kind of shape.

Mr. Willis went on to explain how to identify a wetlands; soil conditions, type of plants, and whether there is water present. Mr. Martin asked if the City has access to the data that goes into delineating the wetlands. Mr. Willis said not necessarily, it's done in the field and there's no obligation for receipt of the Soil or Wetland Scientist's notes. Mr. Martin said Staff is relying on the professionals and again asked if there was access to the data. Mr. Willis typically the Board doesn't ask for it; he said they go on professional judgment and expertise.

Mr. Martin asked if test pits for water table has to be done in any particular way. Mr. Willis said it depends on the context.

Ms. Dwyer asked for clarification from the Chair. She said she thought it was an open discussion to take in any questions someone may have and then get back to the person with a response. She went on to say the Board has professional engineers that put their stamp on the plans and it is essentially their license. Mr. Sylvain said the Board tries to answer questions at the meetings and if they are unable to Mr. Campbell will get back to the individual once he gets an answer.

Mr. Martin went on to ask what the frontage for duplex and multiplex lots would be in a conservation subdivision. Mr. Sylvain warned Mr. Martin that he was within the grey area because he knew what project he was speaking about.

### **B. Discussion of general planning issues**

None of the Board members had any issues to discuss.

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## **VI. Approval of minutes**

*A motion was made by Mr. Walker and seconded by Mr. Starkweather to approve the September 11, 2017 meeting minutes. The motion carried unanimously.*

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## **VII. Continued Applications**

### **A. RIGZ Enterprises, LLC – 17 Signal Street**

Rick Lundborn of CLD Consulting Engineers said as discussed at the last meeting they are proposing a 1,000SF addition to the rear of the existing building. He said the outstanding items from the last meeting were a phase I environmental study be provided; which he said has been done, and the second was the need for a variance; which will be submitted for the October ZBA meeting. Mr. Lundborn said the only other outstanding item was the City Engineer requested that stormwater flow into catch basins along the street be considered so that when water from the site is added in the system would continue to work and not bubble out of the grates.

Mr. Sylvain opened the public hearing. No one from the public was present to speak.

Ms. Mears said the applicant was granted the first two of the three waivers requested and staff now recommends granting the third waiver for Chapter 50, stormwater.

*A motion was made by Mr. Fontneau and seconded by Mr. Walker to approve the waiver for Chapter 50 and Site Plan Regulation Article III, Section 13. The motion carried unanimously.*

Mr. Gray said it doesn't appear to be a place for snow storage. Mr. Lundborn said there are a few places on the site but there will be a note added to the plan that snow will be trucked off site.

*A motion was made by Mr. Walker and seconded by Ms. Dwyer to approve the application. The motion carried unanimously.*

## **B. Fidae Azouri & Suzie Fakhoury – 172 Milton Road**

Christopher Berry of Berry Surveying & Engineering said the applicant is looking to subdivide the lot so the single family home is on its own lot. He said the applicant has made progress in meeting some of the conditions that will be in the notice of decision including removal of all the vehicles from the backyard.

Mr. Sylvain opened the public hearing. No one from the public was present to speak.

Ms. Mears said the easement language needs to be updated to allow public access. She went on to say based upon the information to date staff would recommend approval.

Mr. Fontneau said he had driven by the site within the last week and notice several vehicles for sale in front of what would be the single family lot. Mr. Berry said one of the conditions of approval is the single family lot wouldn't have any site plan approval. Mr. Fontneau asked if the easement would just grant access to the property or would it grant commercial uses. Mr. Berry said it would allow access and to maintain drainage for the existing commercial activities

Mr. Fontneau asked what had changed from the last meeting that staff now supports the application. Ms. Mears explained they had met with Mr. Berry and the developer to work out the major issues.

Mr. Sullivan said he thought one of the larger issues was frontage, that it was creating a lot that didn't have frontage. Mr. Berry said the lot has frontage, it's just isn't that usable.

Mr. Sylvain asked if the applicant is aware he can't sell vehicles from the single family lot. Mr. Berry said he sent Mr. Azouri a copy of the notice of decision.

Mr. Gray asked about the shed that's on the lot line. Ms. Mears said it's written in the notice of decision that it will either need to be taken down or moved.

Mr. Willis asked who owns the land behind the applicants' property. Mr. Berry explained Mr. Azouri is paying taxes on the land but doesn't have a deed.

*A motion was made by Mr. Walker and seconded by Mr. Sullivan to approve the application. The motion carried. Mr. Willis opposed.*

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## **VIII. New Applications**

### **A. Amaral Revite – 361&381 North Main Street – Site plan**

Ms. Mear said there are a number of outstanding issues with the applications. She said the applicant was asked to resubmit material or withdraw the application but they didn't want to do either. Mr. Mears said staff recommends finding the application incomplete.

*A motion was made by Mr. Fontneau and seconded by Mr. Walker to find the application incomplete. The motion carried unanimously.*

### **B. Amaral Revite – 361&381 North Main Street – Subdivision**

*A motion was made by Mr. Fontneau and seconded by Ms. Dwyer to find the application incomplete. The motion carried unanimously.*

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## **IX. Discussion of withdrawn applications**

Ms. Mears informed the Board there have been three older applications that were withdrawn.

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## **X. Discussion of Zoning Amendments**

City Attorney Terence O'Rourke said there is one recommended change not just from his office but also from Building, Zoning, Licensing Services to amend Chapter 42.4 to change the way variances are voted on. Mr. O'Rourke said this bill passed in Concord with large bipartisan support. He said what each of the five criteria for a variance that the Zoning Board has to vote on each of the five individually. Mr. O'Rourke said the Governor did veto the bill because he wanted to leave control to the local communities to decide for themselves. He said it's their recommendation to make the change as it will go a long way in professionalizing the ZBA and in turn making the notices of decision fuller and more defensible.

Mr. Walker asked if the bill passed but got vetoed can we still make a change to a state regulation that isn't law. Mr. O'Rourke said we don't need the State to tell us we can do this; he said we've always been able to. Mr. Gray said the bill was before his committee at the State and said the problem is that there are many communities that are doing it differently and the State isn't taking issue with any community saying they're doing it improperly.

Mr. O'Rourke said the way the law is right now the burden is on the applicant to prove all five of the criteria. He said right now the City's Ordinance is silent and we don't really know if all five of the criteria were met. Ms. Dwyer said the way she understands it is it will make the ZBA a little more transparent to any applicant that comes forward and it will be documented very clearly in the meeting minutes.

*A motion was made by Ms. Dwyer and seconded by Mr. Kozinski to accept the amendment to Chapter 42.4. The motion carried unanimously.*

There was some discussion of the proposed zoning amendments from the REDC. Ms. Mears said there isn't a representative present to speak to the changes.

Mr. Walker said he doesn't think multifamily housing belongs at the Ridge.

Mr. Sylvain said a discussion was started at a previous meeting with Karen Pollard and it was put on hold to get more information and there hasn't been a representative present since.

Ms. Dwyer suggested sending a memo to the City Council requesting they not take action on this until the Planning Board has time to review the changes.

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## **XI. Review of August 2017 Surety and Inspections**

Ms. Mears said we're waiting on updated bonds from Highfield Commons. Mr. Sylvain asked why surety for Dunkin Donuts is still on the sheet. Mr. Sullivan explained it should be taken off the sheet but the City has to hold it for an additional three years before the State will take it.

Mr. Willis asked what is going on out on England Road. Ms. Mears explained there are drainage issues from the subdivision going onto a private residence.

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## **XII. Other Business**

### **A. Discussion on Water Efficiency Regulations**

Ms. Mears said Strafford Regional Planning Commission reached out to Planning staff to come up with some water efficiency regulations. She said there are two ways to go with the regulations; the first would be to prohibit lawn watering during a drought which would be a change to Chapter 42 or update the Subdivision and Site Plan Regulations; which is what Staff would like to do.

Mr. Fontneau asked how it would apply to existing places if it's regulated through the Subdivision and Site Plan Regulations. Ms. Mears said it would only apply to new applications. Mr. Walker and Mr. Fontneau said that won't work because the City is so built out.

Mr. Walker said this should be Ordinance and go through the City Council and Codes and Ordinances Committee.

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## **XIII. Adjournment**

*A motion was made by Mr. Walker and seconded by Mr. Fontneau to adjourn at 8:18 p.m. The motion carried unanimously.*

Respectfully submitted,

Crystal Galloway,  
*Planning Secretary*