

City of Rochester Planning Board
Monday July 10, 2017
City Council Chambers
31 Wakefield Street, Rochester, NH 03867
(These minutes were approved on August 7, 2017)

Members Present

Nel Sylvain, *Chair*
Dave Walker, *Vice Chair*
Matthew Kozinski, *Secretary*
Tim Fontneau
Rick Healey
Robert Jaffin
Robert May
Mark Sullivan
Tom Willis

Members Absent

Kyle Starkweather, absent

Alternate Members Present

Terry Dwyer
James Gray
Jeremy Hutchinson

Staff: James B. Campbell, *Director of Planning & Development*
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.)

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

The Planning Secretary conducted the roll call.

III. Seating of Alternates

No alternates were needed.

IV. Communications from the Chair

Mr. Sylvain welcomed Terry Dwyer to the Board as an alternate.

Mr. Sylvain announced agenda items VII D & E will be continued to the August 7, 2017 meeting at the applicants' request.

V. Approval of Minutes

A motion was made by Mr. Walker and seconded by Mr. Jaffin to approve the June 19, 2017 workshop meeting minutes. The motion carried unanimously.

Mr. Fontneau recused himself. Mr. Sylvain asked that Mr. Hutchinson vote in Mr. Fontneau place.

VI. Extension/New Applications:

A. Timothy & Sally Fontneau, 1062 Salmon Falls Road

Timothy Fontneau said he is requesting an extension for his subdivision. He said he will come up with a solution for the existing barn.

Mr. Campbell said the applicant has requested a one-year extension. He informed the Board the original application was approved April 4, 2011 and this would be the seventh extension for this application. Mr. Campbell said staff suggests granting one final extension and if a solution to the problem has not been found by that date, the subdivision approval will expire.

A motion was made by Mr. Walker and seconded by Mr. Healey to approve the extension to July 4, 2018 as requested. The motion carried unanimously.

B. Robert & Judith Gustafson, 140 Ten Rod Road

Joel Runnals of Norway Plains Associates presented the subdivision plans. He explained that a conventional subdivision would ruin the land and after speaking with Planning Staff the applicant has decided to do a porkchop subdivision.

Mr. Runnals said they have done test pits, topography and wetland delineations and they have received approval from DES.

Mr. Sylvain opened the public hearing. No one was present to speak so he brought the discussion back to the Board.

Mr. Campbell said staff supports the Conditional Use Permit because all of the porkchop subdivision provisions have been met, and staff recommends the application be accepted as complete.

A motion was made by Mr. Walker and seconded by Mr. Fontneau to accept the application as complete. The motion carried unanimously.

Mr. Campbell said the applicant is requesting a waiver from Subdivision Regulation 4.3 to only show partial topography. He said staff supports the waiver because the plans include sufficient topography to prove that the proposal adheres to local Subdivision/Zoning Ordinance regulations.

Mr. Fontneau asked about the driveway for the new lots. Mr. Runnals said there would be an easement for the driveway.

A motion was made by Mr. Walker and seconded by Mr. Jaffin to approve the waiver request. The motion carried unanimously.

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

C. Jaeger USA, Inc. / Textile Tapes Corp., 104 Pickering Road

Scott Lawler of Norway Plains Associates presented the site plan for a 16,500 sq ft addition to the existing industrial manufacturing facility. He said there is on site water and sewer and there are 21 parking spaces which they are not proposing to increase as the number of employees will not be increasing.

Mr. Lawler said they have a waiver requests from Site Plan Regulations Article III Section 15(D)(3) which requires utilities to be placed underground; and Site Plan Regulations Article III Section 10(A) for parking requirements.

Mr. Lawler said the Conditional Use Permit has been requested to reduce the 50' wetland buffer to a 25' buffer.

Mr. Sylvain opened the public hearing. No one was present to speak so he brought the discussion back to the Board.

Mr. Campbell said the Conservation Commission reviewed the proposal in June and said the plans have been revised to show the comments. He said staff supports the Conditional Use Permit. Mr. Campbell said staff does not support the waiver request for to allow overhead utilities and disagree that the small wetland crossing or small change in topography prohibits the placement of these lines underground.

Mr. Campbell went on to say staff recommends accepting the application as complete and based on the information would recommend approval of the application.

A motion was made by Mr. Fontneau and seconded by Mr. Walker to accept the application as complete and it not be considered a Development of Regional Impact. The motion carried unanimously.

Ms. Dwyer said there have been a number of changes on the property since 2011; in speaking about parking she asked what if in the future they hire more employees, where would they put additional parking. Mr. Lawler explained on the plan where they would be able to put additional parking. Mr. Fontneau asked that it be shown on the plan where the additional parking could be.

A motion was made by Mr. Fontneau and seconded by Mr. Walker to approve the Conditional Use Permit. The motion carried unanimously.

A motion was made by Mr. Fontneau and seconded by Mr. Walker to approve both waiver requests. The motion carried unanimously.

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

VII. Continued Applications:

A. Real Estate Advisors, Inc., 24 Jeremiah Lane

Christopher Berry of Berry Surveying & Engineering said they were presenting an update for the Board and to take any additional questions. He said they have worked internally to address all the TRG comments and they are revising the final drainage analysis which incorporates more infiltration on the project site which was discussed with Public Works as well as the rest of the TRG.

Mr. Berry said they have had conversations with Mr. Campbell about a third party review for the traffic study and believe they will be sending it out shortly.

He went on to say they are finalizing the applications for State permitting; saying they will be filing with NHDES for wetlands reviews as well as alteration of terrain and a sewer discharge permit for the project site.

Mr. Sylvain opened the public hearing.

Al Benton of 585 Portland Street talked about the discussion from the last meeting regarding sidewalks. He said they had attempted to ask questions and were denied. He said the TRG report indicated that staff didn't want the waiver approved, they wanted the sidewalk. Mr. Benton said without a sidewalk within the development people will be able to park on the side of the street.

He went on to talk about the Home Owners Association documents, saying all the large area beyond the stream that the Conservation Commission didn't want because of the culvert; he said that area won't be developed now. He said the field behind his house has always been hayed and if it's not mowed more than once a year it will start growing up into trees which means the children won't have a field to play on.

Mr. Benton went on to talk about the wetland report. He said common sense says if you have a second review you shouldn't ask the first reviewer to supply materials for the second person and said if you start with a bad report you're going to end up with a bad report.

Next Mr. Benton spoke about his family's right-of-way. He said there is an area on the plan that they are proposing 2 four-plex units and said an area goes to the ROW then disappears. He went on to say the ROW is going thru five lots and abuts two lots. He said Lots 15 & 16 are four-plexes which means the ROW is out back and the burden shouldn't be put on heirs of the ROW if there is a problem. Mr. Benton said the ROW also crosses sixteen individual lots plus the HOA lot.

Mr. Benton said he has a copy of the HOA documents and asked how there's a set of by-laws when there isn't an entity yet. He said it states it doesn't go into effect until three quarters of the lots are sold or seven years and asked who you would go to with any complaints before the by-laws are in effect.

He said there was a tree that had fallen into the ROW that took two months before the tree was removed. Mr. Benton said he was told it was an act of nature and he was responsible for removing the tree. He said he doesn't own the tree or the land but has a deeded ROW and it's not to be obstructed.

Paul Martin of 35 Brenda Lane said he made the case at the April meeting that the wetland delineations had not been done professionally and requested that they be re-delineated and thought the Board had voted on it. He said instead what was done was a review of the original delineation.

Mr. Martin said about the time DES did its review there was soggy ground between the Dillow & Erikson properties that was well out of the bounds of the delineations. He said it was also the case of the cemetery east of the vernal pool; saying you would have had to walk 25-50 feet away from the flags before hitting dry ground.

He said there are many proposed lots that will be up against those wetlands and predicts the homes will be damp/wet and some will flood and more problems will develop.

Next Mr. Martin spoke about the three waiver requests at the last meeting that would have required the construction of sidewalks within the development. He said the discussion lasted more than a half hour and most of the discussion was amongst the Board members. He said the conversation was mostly around the fact that it would cost the developer a lot of money to put in sidewalks and it would also cost more money for the City to maintain them. Mr. Martin said no one said a word about the real estate taxes that would be collected once the 70 units are built. He said he found the discussion inappropriate and disturbing.

Mr. Martin added that these waiver requests seemed to fall out of the sky and the public was not able to speak. He said there is widespread support for sidewalks and urged the Board to reconsider its decision, put the waiver discussion back on a future agenda and give the public a chance to speak.

James Schulte, Attorney from Dover said he represents some of the abutters and wants to make sure their long term rights are protected; he said that will happen through the by-laws and protective covenants. He said the HOA documents states it is only for the Stewart Acres open spaces listed and there is nothing in the documents that speak to the maintenance of roads, raingardens, or drainage areas except for when they are accepted by the City.

Mr. Schulte said the by-laws are wrong in both directions saying there is no provision saying the developer has any right to vote to elect officers or directors; the only persons that have that right are owners of housing units. Mr. Schulte said as Mr. Benton mentioned the developer has demonstrated a less amount of concern for his neighbors than one would have hoped for when a tree fell down across the ROW and it took more than two months to have it removed. He said when you look at the protective covenants it says the HOA will be responsible for maintaining the trails that the developer builds, including cleaning up brush and debris to make

sure they are usable. Mr. Schulte went on to say on the other hand when you look at the provisions for the ROW they have added a sentence into the boilerplate language that says that the association is not responsible for acts of nature for the ROW. He said the neighbors have no right to remove any trees from the ROW under timber trespass statute. Mr. Schulte said the Board needs to send a message to the developer that says there needs to be specific provisions that protect the rights of the easement holder and also for who will be responsible for maintenance of roads, drainage, raingardens, and repair of the ROW until such time when the City takes them over.

There was no one further from the public present to speak; Mr. Sylvain brought the discussion back to the Board.

Mr. Campbell said staff is continuing to work with the applicant to get everything back from them, including responses to staffs comments. He said the third party review for wetlands was completed however staff asked that all material be submitted as one package as soon as everything has been completed.

Mr. Campbell said the Board had discussed whether or not to have sidewalks on Franklin Street from the development down to Anderson Lane at the last meeting and that would be at the expense of the developer. Mr. Campbell said staff will be taking another look at the HOA documents because the original version needed a lot of work. He said at this time staff would recommend continuing the application to the August 7th meeting.

Mr. Sylvain asked what company the applicant used to have the wetlands re-delineated. Mr. Berry said it was Stony Ridge Environmental. Mr. Campbell said they are a reputable firm and went on to explain the process of how a third party review is conducted; adding that Engineers don't put their stamp on plans wily nilly, they make sure they are doing the right thing.

The Board went on to discuss HOA documents and what they will be responsible for. Mr. Fontneau suggested that Attorney Schulte put together a list of concerns to go along with the HOA documents for the City Attorney to review.

Mr. Fontneau went on to talk about the widen lanes on the road instead of having a sidewalk and suggested putting no parking signs. Mr. Berry said there are no parking signs in the project because it's a fire lane also. Mr. Fontneau said one of the other issues is fields, and maintaining the fields is important because if they are not maintained they will not remain fields.

Mr. Fontneau asked if there was a maintenance plan for the multiple raingardens because nine of them will be in people's yards. Mr. Campbell said it will be the HOA that is responsible.

Mr. Gray his question was about the easement and the Board asking for anything on the easement in non common areas. He said the protection of the person who has the easement is the wording in the deed and would imagine that the wording for the individual lots that has the easement will have the same wording.

Ms. Dwyer asked if is reasonable to rush this to be rushed to the August 7th meeting. Mr. Walker agreed and asked if all the analysis and a report completed for the August 7th meeting. Mr. Campbell said he spoke with the Engineer and was told it would take a maximum of two weeks.

Mr. Hutchinson asked who will enforce the no parking on the road within the shoulder. The Board went into a discussion regarding sidewalks within the development.

Mr. Sylvain asked what it would take for the Board to reconsider the waiver on sidewalks in the development. Mr. Walker said a member of the prevailing side would need to make a motion to reconsider. Mr. Hutchinson said it's his opinion the item be reviewed again.

Mr. Sylvain asked what the vote was for the motion to approve the sidewalk waiver. Mr. Campbell said he didn't have it in front of him.

Mr. Sylvain called a recess at 8:33pm to allow staff to get a copy of the motion. Mr. Sylvain called the meeting back to order at 8:42pm.

Mr. Campbell read the motion the June 5th meeting and said Mr. Fontneau, Mr. Hutchinson, and Mr. Starkweather opposed.

A motion was made by Mr. Fontneau and seconded by Mr. Walker to continue the application to the August 7, 2017 meeting. The motion carried unanimously.

Mr. Sylvain said if there is a problem getting the reports to have the applicant postpone to the August workshop meeting.

B. Harold & Dorothy Caler & Real Estate Advisors, Inc., 151 Franklin Street & 24 Jeremiah Lane

The application was continued to the August 7, 2017 meeting.

C. Lois Erickson & Real Estate Advisors, Inc., 603 Portland Street & 24 Jeremiah Lane

The application was continued to the August 7, 2017 meeting.

VIII. Other Business

A. Release of surety for Healey Auto Repair

Mr. Campbell said the applicant has submitted the as-built drawings and has completed the landscaping. He said all departments have signed off and the applicant has requested the surety be released.

A motion was made by Mr. Healey and seconded by Mr. Fontneau to release the surety in the amount of \$4,000.00 plus any interest. The motion carried unanimously.

IX. Adjournment

A motion was made by Mr. Walker and seconded by Mr. Healey to adjourn at 8:47 p.m. The motion carried unanimously.

Respectfully submitted,

Crystal Galloway,
Planning Secretary