

SANFORD PLANNING BOARD MINUTES
MEETING May 6, 2009 – 7:30 P.M.
Town Hall Annex Third Floor Chambers

MEMBERS PRESENT: Robert Hardison, Chair
Margaret Kleinrock, Secretary
David Mongeau
Gary Morse

MEMBERS ABSENT: Kelly Tarbox, Vice Chair (w/notice)
Joseph Herlihy (w/notice)
Gregory Vermette (w/notice)

STAFF PRESENT: James Q. Gulnac, AICP, Planning & Development Director
Charles Andreson, P.E., AICP, Town Engineer
Michael Casserly, P.E., Assistant Engineer

STAFF ABSENT: Barbara Bucklin, Administrative Assistant (w/notice)

I. CALL TO ORDER

Chair Hardison called the meeting to order at 7:30 P.M.

II. PUBLIC HEARINGS

1. **File #01-09-R: Church of the Prince of Peace, c/o Rev. John Clifton, PO Box 914, Sanford, Maine.**

Chair Hardison explained the reason this application was on the agenda – because it was a church and therefore classified as a major sit plan, and major site plan applications go to the Planning Board for approval. Mr. Hardison then called for a representative to present the application.

Rev. John Clifton gave a brief description of his application.

Chair Hardison asked if anyone present wished to speak in favor of the application; there was no one. Chair Hardison asked if anyone present wished to speak against the application. Again, there was no one.

Chair Hardison asked if staff or Board members had any questions. No one did.

Chair Hardison closed the public hearing.

Chair Hardison called for a motion.

Board member Morse made a motion that he Planning Board confirm the Finding of Facts (see attached) and find that application file #01-09-R, Church of the Prince of Peace for a final major site plan is approved with the following conditions:

- a. The applicant will pay all outstanding application review fees; and
- b. Subject to any and all code and construction permit requirements.

Board member Mongeau seconded the motion.

A vote was taken, and the motion passed 4-0.

2. **File #02-09-R: Counseling Services, Inc., c/o David Joy**, Joy & Hamilton Architects, Inc., 820 Main Street, Sanford, Maine.

Chair Hardison called for a representative to present the application.

David Joy, the applicant's representative, gave a brief overview of the request.

Chair Hardison asked if anyone present wished to speak in favor of the application; there was no one. Chair Hardison asked if anyone present wished to speak against the application. Again, there was no one.

Chair Hardison asked if staff had any comments. Michael Casserly, assistant engineer, stated that the application was in order. James Gulnac, Director of Planning & Community Development, stated the application was ready to go.

Chair Hardison asked if Board members had any questions or comments; no one did.

Chair Hardison called for a motion.

Board member Morse made a motion that the Planning Board confirm the Finding of Facts (see attached) and find that application file #02-09-R, Counseling Services, Inc. for revisions to the existing site plan is approved with the following conditions:

- a. The applicant will pay all outstanding application review fees; and
- b. Subject to any and all code and construction permit requirements.

Board member Kleinrock seconded the motion.

A vote was taken, and the motion passed 4-0.

III. NEW BUSINESS

1. **File #04-08-S: Shawn Young, c/o Dana Libby**, PLS, Corner Post Land Surveying, Inc., 2 Mill Street, Springvale, Maine.

Chair Hardison called for a representative to present the application.

John Hutchins, representing the applicant, stated that other than a few conditions that needed to be added to the plan everything should be all set.

Chair Hardison asked if staff members had any comments.

Mr. Gulnac, Planning Director, stated that there are certain documents (easement documents, property deeds, etc.) that still need to be done, but the applicant's attorney said they can not finalize these documents until the approved plan is filed. Mr. Gulnac is recommending approval and signing of the mylar and before the first building permit is issued, these outstanding documents must be turned in to and approved by staff.

Chair Hardison asked if staff member Casserly had anything to add. Mr. Casserly informed the Board that the DEP permit is no longer an issue. He went on to discuss the previous issues (performance guarantee, well setback, etc.). Mr. Casserly went on to give examples of some of the outstanding issues.

Chair Hardison confirmed that this application, without waivers and without some consideration from the Board, was not ready for final approval. Chair Hardison asked about the timeline of the performance guarantee filing. Mr. Anderson explained what has been

allowed in the past, but he wanted the Board to be aware of what could potentially happen if the application is approved before the filing of the performance guarantee. Discussion took place on the performance guarantee submittal. Mr. Andreson also wanted to make clear this concern is not reflective of this applicant, but is brought up because of an issue that occurred with another project.

The applicant wanted to confirm when the performance guarantee was due, which is before a lot is sold. More discussion took place, and it was determined that the applicant cannot complete the sale of a lot until a performance guarantee is filed with the town. Also, if the development rights are sold to another developer, the conditions are then transferred with the sale, and the new developer will be responsible for filing the performance guarantee at the preconstruction meeting or sale of first lot.

Staff member Andreson wanted to add that the intent is not to restrict the advertising or promoting the sale of the lots, just the final stage of the sale.

Chair Hardison asked if other Board members were ok with this wording. They were.

Staff and Board members went over what the conditions/suggestions of approval were that were decided on tonight.

Board member Kleinrock stated the Board has never run into the issue with the lawyers not being able to complete the necessary agreements for final approval before, so she wanted more explanation.

Mr. Hutchins has the documents describing the way the final lots were going to be laid out once all the land swaps and road layout was completed and exactly how these changes came about finalized and signed by all parties, but since this approval was changing a previously approved subdivision the land swaps can't take place until the amended plan is approved.

Chair Hardison said the Board has agreed to this one-time waiver because of the uniqueness of the situation, but asked if the indemnification of the well from the neighbor had been formally documented or reviewed by town legal counsel. Staff member Gulnac stated he made the decision not to send the indemnification to the town's attorney for review, but will if the Board directs him to do so. Discussion took place on whether or not the indemnification was in order.

The Board took the stand that the indemnification needs to be made a legal document. Discussion took place and it was decided to have the town's legal counsel review the document to make sure it has been adequately prepared.

Chair Hardison went over the engineering punch list from May 3, 2009. Mr. Hardison asked if the DEP permit was still outstanding, and Mr. Casserly stated it wasn't. Mr. Hardison then asked about the underdrain/soil filter issue. Mr. Casserly read a statement from the Liston's, who are the owners of the property the retention pond would be located on. Discussion took place.

Chair Hardison came up with a list of three outstanding items that will be conditions of approval: the well indemnification, the underdrain/soil filter issue, and the performance guarantee issue.

Chair Hardison also said the Board was going to put a time limit on receiving these items. Chair Hardison went over what the new motion was going to be.

Chair Hardison called for a motion.

Staff member Gulnac read the revised motion: The Planning Board accept the finding of facts (see attached) and find that application file #04-08-S, Amendment to Brook Hill Subdivision has been prepared in accordance with the Subdivision Ordinance, Article VI Chapter 275 of the Town of Sanford Code and with Title 30-A M.R.S.A. Section 4401 et seq. and grant final approval with the following conditions:

- a. The approval includes the following waivers as described in the finding of facts:
 - a. A waiver from the requirement to limit a dead end road to 1,500 feet in length.
 - b. A waiver from requirement that a well may not be located within 100 feet of a right-of-way, subject to an indemnification being notarized and approved by town legal counsel prior to the signing of the mylar.
- b. The applicant will pay all outstanding application review fees.
- c. The applicant has 90 days from this approval to file the signed mylar with the York County Registry of Deeds.
- d. The applicant will provide the Planning Department a copy of the signed mylar with proof of filing at the Registry of Deeds and six (6) paper copies of the same.
- e. The applicant will schedule a pre-construction meeting with the town engineer at which time the required performance guarantee and engineering inspection fees will be paid. This meeting is to take place prior to the closing of any lot in the subdivision.
- f. No building or construction permits will be issued until the conditions of this approval have been satisfied.

Board member Morse attested the motion as read by staff member Gulnac.

Board member Kleinrock seconded the motion.

Chair Hardison asked if there were any discussion or comments to the motion. There were none.

A vote was taken, and the motion passed 4-0.

2. **File #04-09-W: Lincoln House, LLC, c/o John Hutchins**, Corner Post Land Surveying, Inc., 2 Mill Street, Springvale.

Chair Hardison called for a representative to present the application.

Joe Sevigny, along with Sam Sevigny, gave a brief overview of the project.

Staff member Gulnac explained the background for the application and what action is being requested from the Board at this meeting.

Chair Hardison asked if Board members were clear with tonight's request. He then asked if staff members had any questions or concerns.

Michael Casserly, Assistant Engineer, felt that any technical issues could be dealt with through the review process.

Chair Hardison asked if there were any questions or concerns.

Board member Morse commented that this is a welcome change to the neighborhood, and also complimented the applicants for their work on past projects.

Chair Hardison called for a motion.

Board member Morse made a motion that the Planning Board reviewed the information included in the Planning Director's request for consistency review with the Town of Sanford's Comprehensive Plan as presented on behalf of Joseph & Sam Sevigny, d/b/a Lincoln House, LLC and identified as File #04-09-W, and find that it is not inconsistent with the Amended 2002 Update of the Sanford Comprehensive Plan. The applicant may proceed with an application under Section 10.4 Contract Zoning of the Town of Sanford's Zoning Ordinance.

Board member Mongeau seconded the motion.

A vote was taken, and the motion passed 4-0.

IV. OLD BUSINESS – None

V. PLANNING DIRECTOR'S REPORT

Chair Hardison asked for a presentation of the Wal-Mart/Lowes driveway realignment request.

Staff member Gulnac introduced the request. Planning Director Gulnac then called for Jan Wiegman, representing KGI, to explain the request.

Chair Hardison stated that the Board felt that this particular change should come back to the Planning Board because of all the concerns and discussions on this driveway entrance during the original application process.

Mr. Wiegman went over the original background history of the access point and updated the Board on how this request came about.

Chair Hardison asked Mr. Wiegman which plan was being proposed tonight (different scenario handouts were presented to the Board). Discussion took place on which version would be the best to implement.

Chair Hardison asked Fire Marshal Cutrer if the plan dated 4/16/09 was acceptable to the fire department because this would be the last change to the site plan for this project. Fire Marshal confirmed that the changes were acceptable.

Consensus of the Planning Board was that the changes requested seemed appropriate. It was also determined that the Planning Board would not need to formally approve the change, and the details could be worked out among staff as a field change.

VI. ADJOURN

The meeting adjourned at 8:35 PM.

Attachment to May 6, 2009 Minutes

Finding of Facts for Public Hearing Item #1 File #01-09-R: Church of the Prince of Peace

- The application for a church is classified by definition, Section 280-97A(4)(q) as a major development.
- The applicant has requested and, for the purposes of placing the application into the formal review process, has been granted a waiver of the requirements for a major site plan.
- The applicant has provided an e-mail from the Fire Marshal indicating approval to move forward with the application. For this application we need to have a maximum capacity number from the

Fire Marshal. This figure is used to measure the parking demand. The applicant has explained that it is their opinion that there will be sufficient parking available in the Mid-town Mall parking lot as well as along Saint Ignatius Street. We still need to have the capacity number to establish the parking demand.

- The applicant has indicated that no sight work is proposed and has requested a waiver from providing all the formal requirements for a major site plan. The Planning Director granted the applicant's request for a waiver so that the application could be scheduled for review by the SPRC as required by ordinance.
- The SPRC reviewed the information presented by the applicant at their March 3, 2009 meeting.
- The SPRC reviewed the applicant's request for a waiver of providing a full site plan and recommends granting the waiver.
- The SPRC referred the application to the Planning Board at their next available work session meeting.
- The Planning Board reviewed the project in work session and had no issues.

*Finding of Facts for Public Hearing Item #2
File #02-09-R: Counseling Services, Inc.*

- The original application was classified as a major.
- The Planning Director has granted waivers of submittal requirements for a major development and accepted a revised site plan.
- The Planning Director referred the request to the Planning Board as the traffic movement onsite had been a major issue in the original review and determination.
- The change requested has the support of the other businesses which utilize the parking area and had originally requested that the driveway be blocked.
- Staff have reviewed the revised site plan and made recommendations for some additional signage.
- Other than the removal of the planters and the erection of the signs no additional site work is proposed.
- The Planning Board reviewed the project in work session and had no issues.

*Finding of Facts for New Business Item #1
File #04-08-S: Brook Hill Amendment Final*

- At the March 18, 2009 meeting Gary Morse moved and Joseph Herlihy seconded a motion to accept the finding of facts itemized above and find that the request to amend application file #04-08-S, Amendment to Brook Hill Subdivision has been prepared in accordance with the Subdivision Ordinance, Article VI Chapter 275 of the Town of Sanford Code and with Title 30-A M.R.S.A. Section 4401 et seq. and grants preliminary approval with the following conditions:
 1. The approval includes the following waivers as described in the findings of fact:
 - a. A waiver from the requirement to limit a dead end road to 1,500 feet in length.
 - b. A waiver from requirement that a well may not be located within 100 feet of a right-of-way.
 2. The applicant would provide verification of a revised DEP permit.
 3. The applicant will provide, to the satisfaction of the Town Engineer, a performance guarantee along with a construction time schedule; and
 4. The applicant will provide the various right, title, and interest documents in sufficient time for them to be reviewed by town council, these would include those needed for the stormwater maintenance system, the private well and the land transfers for the proposed public right of way.
- The engineers have reviewed the application and their report is attached.

**Town of Sanford, Maine
Engineering Department
917 Main Street, Sanford, Maine**

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Memo To: James Q. Gulnac, Planning

From: Michael J. Casserly
Assistant Town Engineer



Date: May 3, 2009

RE: File 04-08-S
Brook Hill Subdivision Amendment
Consideration for Final Approval

The Applicant is requesting Final Approval. During the vote for Preliminary Approval, it was discussed that several issues needed to be resolved for Final Approval:

PERFORMANCE GUARANTEE: The Board stated that a Performance Guarantee would need to be filed with the application for Final Approval per the Ordinance. A printed statement by Shawn Young dated 3/30/09 says that "we will prepare legal documents with the deed that say no building permits will be issued until the road is bonded or secured by an escrow account." Staff obviously have not been able to review any such documents to date. Charlie has described very well the issue of "exposure to the Town" when lots are sold and the road is not constructed. We have received a cost estimate of \$392,715 for the project, but have no construction schedule. The schedule is mandated by Chapter 275-61, which also dictates that the guarantee take into account the time span of the construction schedule and the inflation rate for construction costs. We have not received this information.

WELL SETBACK WAIVER AND INDEMNIFICATION: We had received a document signed by the Liston's (but not notarized or dated) stating that they (the Liston's) indemnified the Town. In any event, the Board has said an indemnification document would need review by Town legal counsel before it would agree to the waiver.

UNDERDRAINED SOIL FILTER ON LISTON'S PROPERTY: Shawn submitted a 2-line document dated 3/13/09 and signed by the Liston's (but not notarized) which simply states: "We grant permission to have retention area constructed as well as maintained on our property". Usually we would look for specifics such as identification of what property (map and lot or?) and who is constructing and who is maintaining. A document Corner Post submitted has what I think is a good description of the pond's function, details of its maintenance, and what the individual rights and responsibilities are. I'd suggest that Shawn try this one again, and have the document that the Liston's sign make a clear reference to that document. The best thing would be to submit a copy of the Corner Post document ATTACHED, and the Liston's' statement should say that they have read and understood the attachment. Also, it's my opinion that this document should be

signed in the presence of a notary, with all attachments present. In my mind that would answer the question "how do we really know the Liston's wish to allow this pond and the people who will maintain it on their property?"

DEP STORMWATER PERMIT MINOR MODIFICATION:

This should have been resolved by now. We have the application form but not the signed modification. This will likely take a phone call to obtain the signed modification. The Permit Modification was done to move 2 underdrained soil filter ponds out of the right of way.

The Board should consider the prior need for resolution of these issues in its consideration of the project's receiving Final Approval.