

SANFORD PLANNING BOARD MINUTES
MEETING March 18, 2009 – 7:30 P.M.
Town Hall Annex Third Floor Chambers

MEMBERS PRESENT: Kelly Tarbox, Vice Chair
Joseph Herlihy
David Mongeau
Gary Morse

MEMBERS ABSENT: Robert Hardison, Chair (w/notice)
Margaret Kleinrock, Secretary (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
Barbara Bucklin, Administrative Assistant

STAFF ABSENT: None

I. CALL TO ORDER

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

II. PUBLIC HEARINGS

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

John Hutchins, Corner Post Land Surveying, Inc., representing the applicant gave a brief overview of the application.

Vice Chair Tarbox asked if staff had any comments.

Staff member Gulnac reminded the Board that they indicated they would be granting a waiver on the length of the cul-de-sac.

Staff member Andreson stated all the previous comments from Mr. Casserly have been addressed and are incorporated onto the plan, but there are other issues. The first issue is that the amended DEP permit has not been received. The second issue is the performance guarantee. Mr. Andreson stated that Mr. Young would like to present a cash guarantee to the Town, but the timing of when Mr. Young does this is the issue. Usually the Board has allowed applicants to post the guarantee at the pre-construction meeting, which is held after the project is approved. Mr. Andreson explained what the ordinance states and the reason he would like to follow the ordinance as written. Mr. Andreson did state that he is willing to work with Mr. Young to come up with a solution.

Vice Chair Tarbox asked if this is something that could be worked out between preliminary and final approvals. Mr. Andreson stated that it could be.

Mr. Andreson also stated that Mr. Young has proposed a solution to the well issue. Mr. Andreson felt that the indemnification form should be approved by the town's legal counsel.

Mr. Gulnac explained the right, title, and interest issue. Mr. Gulnac also wanted the Board to know that the outstanding issues that have been brought up tonight have been addressed by the applicant but the town is getting confirmation that what has been provided is all that is needed and sufficient enough to protect the town.

Mr. Gulnac also wanted the Board and the applicant to know that the reason for wanting confirmation that what is being supplied is sufficient and the proposed changes in procedure regarding performance guarantees were not reflective of the applicant, the changes were being proposed to protect the town.

Discussion took place on scheduling the final once the information has been provided to the town and if there were any other issues other than those discussed that should be conditions of preliminary approval.

Mr. Andreson explained that the posting of the performance guarantee is two steps: in the first step the applicant provides an engineering estimate of the work being done, and in the second step the applicant is to provide a schedule of the work to be accomplished. Mr. Andreson explained the process to the Board and discussion took place.

Vice Chair Tarbox asked if Board members had any other questions; no one did.

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

Vice Chair Tarbox closed the public hearing.

Staff member Gulnac recommended a revision to his suggested motion. He wanted to eliminate item 1a. – the comment regarding preliminary approval; confirm the Board is granting a waiver for the length of a dead end road (item 1b.); confirm the Board is granting a waiver for the well not being 100 feet (item 1c.); add additional statements: all engineering issues to be resolved; the applicant will provide a verification of the revised DEP permit; a satisfactory arrangement regarding performance guarantee has been worked out; and the town will confirm the indemnifications of the well and transfer of property has been done properly.

Vice Chair Tarbox called for a motion.

Board member Morse made a motion that the Planning Board confirm the Findings of Fact (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 preliminary approval with the following conditions:

- 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.
- c) All engineering issues will be resolved.
- d) A satisfactory arrangement will be reached regarding the performance guarantee.
- e) A revised DEP permit will be obtained.
- f) Indemnification from the town is subject to legal review.

Board member Herlihy seconded the motion.

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

III. NEW BUSINESS

1. **File #24-05-W: Approval of request** from Emi Gwin, WPIIDC, Inc. representing Wal-Mart, for the building color scheme and signage.

Vice Chair Tarbox asked staff member Gulnac if he wanted to present the application.

Staff member Gulnac asked if there were any questions from the work session meeting; there were none.

Vice Chair Tarbox asked if the Board would be able to vote because there were only four members present tonight and one of the four was going to likely abstain.

Discussion took place, and it was decided that a vote could be taken.

Vice Chair Tarbox called for a motion.

Board member Morse made a motion that the Planning Board accept the findings of fact (see attached) and find that the changes requested by Emi Gwin representing Wal-Mart Inc. and identified on the plans and drawings shown to the Board at the March 4, 2009 work session meeting are a minor change to the existing approved site plan and are approved with the understanding that there will be no more changes.

Board member Mongeau seconded the motion.

A vote was taken, and the motion passed 3-0 (Board member Herlihy abstained).

After the approval of the minutes and the Planning Director's report it was discovered that a vote could not be taken with only three members voting in the affirmative.

Board member Herlihy retracted his abstention, stating that his concerns were marginal and he didn't have an issue approving the request. The rest of the Board members were okay with this action.

Vice Chair Tarbox reopened the case and called for a motion.

Board member Morse made a motion that the Planning Board accept the findings of fact (see attached) and find that the changes requested by Emi Gwin representing Wal-Mart Inc. and identified on the plans and drawings shown to the Board at the March 4, 2009 work session meeting are a minor change to the existing approved site plan and are approved with the understanding that there will be no more changes.

Board member Mongeau seconded the motion.

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

IV. APPROVAL OF MINUTES – December 17, 2008; January 7, 2009; and February 18, 2009

Vice Chair Tarbox called for approval of the minutes.

December 17, 2008

Board member Morse made a motion to approve the minutes of December 17th as written.

Board member Herlihy seconded the motion.

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

January 7, 2009

Board member Morse made a motion to approve the minutes of January 7th as written.

Board member Mongeau seconded the motion.

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

February 18, 2009

Board member Morse made a motion to approve the minutes of February 18th as written.

Board member Mongeau seconded the motion.

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

V. PLANNING DIRECTOR'S REPORT

Planning Director Gulnac explained the process of noticing for the proposed shoreland ordinance change.

Mr. Gulnac also informed the Board that there was a change to the foresting law regarding liquidated harvesting, so there will now be language in the project summary reports to address this change.

VI. ADJOURN

The meeting adjourned at 8:10 PM.

Attachment to March 18, 2009 Minutes

*Finding of Facts for Public Hearing Item #1
File #04-08-S: Brook Hill*

- Because the original subdivision included a private way which is now being revised to a proposed public road, it is necessary to revise the previously approved plan (File #06-07-S). This will maintain a clear "paper trail" for title purposes.
- According to the deed included with the application Shawn Young sold for consideration paid the subject property to Linda Rouillard, Gerard Doiron & Wayne Young on August 18, 2008. The applicant has now provided an agent authorization from all the property owners. Mr. Young has established that he has permission and therefore has standing to submit the application.
- The application proposes to amend the width of the road right of way from the private way originally approved to a town road as shown on the plans. In addition to the authorization from the property owners to Mr. Young to present the application, they have submitted a document which recognizes that there will be a revision to the right-of-way boundary and references an exhibit "A". When the information was first submitted there was no exhibit "A".
- Mr. Young has supplied the Planning Director a copy of a document which is further identified as exhibit "A". This document is a metes and bounds description prepared by Corner Post Land Surveying, Inc. of the property to be exchanged as described above. The engineering staff has not seen this document as of the preparation of this report.
- The plan has been reviewed by the SPRC and based on the results of that review the application was forwarded to the Planning Board subject to the applicant making the recommended alterations and adjustments to the plan.

- The Planning Board has reviewed the length of the proposed cul-de-sac during the Article 4 review and by consensus agreed to a waiver.
- The applicant indicated that individual fire suppression systems would be used. The Fire Marshal indicated that as a result he was satisfied that adequate fire protection was being provided.
- It was agreed that the Homeowners Association would be responsible for the management of the stormwater maintenance system. However a question concerning an easement document for the facilities needed for the stormwater system remains.
- Because of a possible change in ownership of lot R1/23 there may be an additional need for property ownership permission for the revised right-of-way.
- The revisions to the plan have resulted in changes to the stormwater permit from the MDEP. The applicant has indicated that they have received a verbal agreement in principal but have not yet received a copy of an official approval of the revisions to the previously issued permit.
- The applicant has provided a document which indicates that the owner of the well located within 100 feet of the road right-of-way will indemnify the Town of Sanford should the well become contaminated because of its closeness to the road. If the Board is satisfied with this, a waiver would be needed.
- It is also important that the record show that the Planning Board did review the application under the timber harvest program and it was determined that the property could be subdivided. The timber harvest permit was issued on 6/21/2004 to a previous owner. Compliance by the CEO had been confirmed under application File #06-07-S.
- The applicant has requested that the Planning Board grant both Preliminary and Final approval. Based upon Planning Board policy no applications will be granted final approval unless all the requirements have been satisfied. There are, at the time of this report, three issues which have not been resolved:
 - a. The applicant has not provided an approved MDEP permit for the project being approved;
 - b. The applicant has not provided all the various documents needed to establish clear right title and/or interest in all the lands needed; and
 - c. The applicant has not yet clearly explained the details of their performance guarantee as required by ordinance.

*Finding of Facts for New Business Item #1
File #24-05-W: Gateway Center/Wal-Mart Amendment*

- The original project was granted preliminary site plan approval in April of 2007 by the Planning Board and was subsequently granted approval as a contract zone by the Town Council and final site plan approval by the Planning Board.
- The color of the brick wall was shown on the architectural plans in a shade and identified on the plans by number. The shade of the brick when actually constructed did not match the shade shown on the plans but was consistent with the numerical identification on the site plans.
- The reasons given by Ms. Gwin were that the product of the provider of final product chosen was in a shade different from that shown but was accurate to the numbering.
- Ms. Gwin brought sample pieces of the two different shades. In addition to the shade difference the product chosen was supplied by a local vendor which is always preferred when possible. Board members were satisfied that the difference in shade was not a major issue and that the explanation was acceptable.
- Ms. Gwin also brought color samples of the trim and façade of the building which were not identical to those shown on the drawings presented at review time. Also included was a revision in the color of the store logo. Apparently Wal-Mart had discovered that the original blue was not very visible and changed it to white. Board members were satisfied that the difference in shade was not a major issue and that the explanation was acceptable.
- Board members were satisfied with the information presented and agreed to the changes and directed that the item be placed on the next available agenda. Furthermore no public hearing

was required and as a minor change to the site plan the basic conditions in the original contract zone agreement were not altered.