

**SANFORD PLANNING BOARD MINUTES
MEETING – July 15, 2015 – 7:00 P.M.
City Hall Annex Third Floor Chambers**

MEMBERS PRESENT: John McAdam, Chair
Lenny Horr, Vice Chair
Kelly Tarbox, Secretary
Richard Bergeron
Lucas Lanigan
Dianne Connolly
Dana Peterson

MEMBERS ABSENT: None

STAFF PRESENT: James Q. Gulnac, AICP, Planning & Development Director
Michael Casserly, Asst. City Engineer

STAFF ABSENT: None

I. CALL TO ORDER

Chair McAdam called the meeting to order at 7:00 PM. Chair McAdam called for a moment of silence in memory of Bill Noon who passed away earlier today. Bill was a former Planning Board member for over 20 years, and served as chairman for 8 of those years.

A new secretary of the Board was voted in as Lela Harrison had resigned. Board member Tarbox was named secretary for the remainder of the year.

II. PUBLIC HEARING

1. **File #19-14-RU: Matt Pepin, R. Pepin & Sons, P.O. Box 729, Sanford, Maine.**

James Gulnac, Planning Director informed the Board this item will not be heard tonight. The applicant was not present at the Site Plan Review Committee meeting earlier in the day so the committee was not able to forward their recommendations to the Planning Board tonight.

2. **File #06-15-R: Garry Robertson, c/o John Hutchins, 106 Hooper Road, Shapleigh, Maine.**

Chair McAdam called for a representative to present the project.

Staff member Gulnac asked to give a brief update before the applicant spoke. He stated the SPRC reviewed the site plan and recommended the application with an approved site plan as long as the Planning Board concurs with some waiver requests along with the issue raised by the code enforcement officer, which is the existing use on site is pre-existing nonconforming use whereas the proposed use is a conditionally permitted use.

John Hutchins, representing the applicant stated Mr. Robertson was looking to build a new building in the back portion of the lot to be used as boat inventory and not used for retail sale. Mr. Hutchins explained what each building would be specifically

used for. He also told the Board the applicant is requesting a waiver to reduce the number of parking spaces from eighteen (18) down to ten (10). Mr. Hutchins said he is also asking for a waiver from fire safety regulations other than what the Fire Marshal specifically wants as well and explained why.

Chair McAdam asked Mr. Hutchins about the waiver request concerning the Fire Marshal. Mr. Hutchins explained to the Board that there were no fire regulations for this type of project – no sprinkler systems, etc. – and asked that no other regulations be added other than the suggestions from the Fire Marshal, such as adding a Knox Box. Chair McAdam stated since there were no regulations, the Board did not need to grant a waiver.

Chair McAdam asked if there were any questions from the Board; there were none.

Chair McAdam asked if anyone from the public wanted to speak for the application; there was no one.

Chair McAdam asked if anyone from the public wanted to speak against the application; again, there was no one.

Chair McAdam closed the public hearing.

Board member Tarbox asked if assistant city engineer Mike Casserly had any concerns.

Staff member Casserly said he is waiting to receive a revised plan showing requested changes discussed at the Site Plan Review Committee meeting earlier in the day. Board member Tarbox asked if he thought the issues could be worked out if the Board granted the applicant conditional approval. Mr. Casserly felt it could be. Discussion followed.

Staff member Gulnac reminded the Board of the changes in creating a finding of facts due to the court case and the granting of waivers. Discussion followed.

Chair McAdam called for a motion.

Staff member Gulnac read the proposed motion: The Planning Board has accepted the recommendations of staff as to the waiver of checklist items and proceeds with approval for File #06-15-R granting a conditional use permit and site plan approval, granting furthermore a waiver of parking spaces from 18 to 10 and with the condition that the applicant pay all outstanding fees and provide the map in the manner described in our ordinance, and noting that on the plan it is clearly noted that this structure is strictly for use by the owner for storage of marine related materials and there are designated display areas onsite; no public to be allowed in the building.

Board member Tarbox made a motion to accept the motion as read by the Planning Director.

Board member Connolly seconded the motion.

A vote was taken and the motion passed 7-0.

3. File #07-15-U: Christopher Smith and Bryce Legere, d/b/a G-Force Farms, LLC, 31 Birchwood Lane, Springvale, Maine.

Chair McAdam called for a representative to present the project. Chair McAdam further said that the use being requested is a permitted activity with Planning Board approval. Any comments made should be in reference to the use only. He then asked the applicants to go into great detail when describing their proposal as there is a lot of misinformation regarding this activity.

Bryce Legere said he and Chris Smith are caregivers and there would only be he and Chris in the building, with the possibility of two others. No patients or public would be allowed in the facility. Both Chris and Bryce are certified by the state and their patients are state-certified as well. The marijuana will be grown in the facility and delivered to their patients. They are addressing the odor issue as well since they are aware of odor control issues at other locations within the city.

Chair McAdam asked how many patients they will have. Chris replied they each have five (5) patients for a total of 10 and explained how patients are obtained. Chair McAdam asked how many plants per patient were allowed. Chris described the various plant stages they are able to have per patient.

The next topic discussed was the security of the building.

Board member Tarbox asked how the marijuana was delivered to the patients. Bryce responded that they deliver the product to the patients. Board member Tarbox then asked how they dispose of any product not sold. Bryce replied it is burned at an offsite location.

Board member Peterson asked the applicants to talk a bit about the security at the location and when the product is delivered. Chris replied that he and Bryce were speaking to security companies to install a security system, video surveillance system, etc. for the building, and there is no security measure in place during deliveries.

Board member Lanigan asked the applicants if they were working with a dispensary facility. The applicants responded that it was their goal to work with one. Board member Lanigan then asked about the process the applicants intended to use to dispose of unused products because it was his understanding that if the marijuana wasn't brought to a dispensary it needed to be brought to the local police department to be disposed of properly. Bryce stated they were not going to be bringing it to the police department for disposal at this time but bring it to a dispensary so other patients who need it can use it. Discussion followed.

Board member Tarbox asked the applicants if they were currently operating a business elsewhere. Chris and Bryce both said they do have another location but they will be moving the operation to this building once renovated.

Board member Tarbox stated she was concerned about the disposal of excess product. She felt the process left opportunities for things to go wrong. Chris said there is not usually a lot of excess and explained why. Board member Tarbox then asked if either of them felt a personal risk with people knowing they have product and cash on them from the sale of the product. Both Bryce and Chris responded they did not.

Board member Connolly stated she has concerns with the charcoal filters. The applicants described the filters they were going to use and the quantity of filters the new facility would have and stated that the filters would be changed every month.

Board member Tarbox asked if the city had any odor statutes or parameters in place. Staff member Gulnac stated this is so new that there isn't any in place at this time. He went on to say that the odors that are regulated in the city at this time are in the industrial park area and that is regulated by the EPA due to the potential hazardous conditions. He also pointed out state regulations also make no mention of odor control to his knowledge.

Staff member Gulnac suggested the Board may want to strongly address the disposal of unused product. This was the main concern for Board members. Discussion followed.

Staff member Gulnac went over the options the Board has to issue a conditional use permit:

- Permit is good for as long as in operation with no changes
- Permit is renewable annually
- Have applicants provide an operations manual
- Have applicants provide quarterly or annual reports

Discussion followed on the best way to better regulate how the applicants dispose of the excess product and regulating security.

Board member Tarbox asked the applicants if they would be willing to come back before the Board in one year and provide records of their disposal history if the Board should grant them a one-year conditional use permit. Chris responded they would be willing to provide the information the Board requested in a year.

Chair McAdam asked Board members if there were any other questions at this time; there were none.

Chair McAdam asked if anyone present would like to speak for the application; there was no one.

Chair McAdam asked if anyone present would like to speak against the application.

Fred Smith, resident of Springvale and the owner of a commercial property that is adjacent to a medical marijuana facility in the center of Sanford, said there have been multiple complaints from up to a quarter of a mile away regarding the odor. He stated he has issues leasing space in his building also due to the smell from the facility. Mr. Smith stated there have been no security issues with the building and he has no problem with crime or people hanging around the building – the only concern is the odor.

Mr. Smith told the Board he would have no issue with the facility being approved if the applicants can address odor control. He felt the proposed facility is in a secure location.

Board member Tarbox asked Mr. Smith if the building containing the facility has scrubbers like the applicants are proposing. Mr. Smith responded he does not know what the facility uses; just that at times the smell is potent. Discussion followed.

Chair McAdam asked if anyone else in the public wished to speak.

Rick Southwick, resident of Sanford, asked if the scrubbers are approved to get rid of the smell. Chris replied saying that the scrubbers they will be using are for greenhouses and medical marijuana facilities. Board member Tarbox asked the applicants if they are using the same scrubbers at their current facility, and if so, have they had any complaints regarding odor. Both Chris and Bryce responded that they are using the same scrubbers in their current facility and have had no complaints about odor. Staff member Gulnac added that since this is new to Sanford, and the Board is reviewing the issue of odor due to complaints from another location in the city, we have to take the applicants word on how well the scrubbers work and readdress the issue if complaints arise at this location as well.

Dave Hussey, an abutter says he has concerns about safety due to the close proximity of the proposal to his property and how property values will be affected with a grow facility nearby.

Chair McAdam asked the applicants how they intended to grow their product (i.e. hydro pods, injecting fertilizer and water into the plants) and if there would be any runoff because of the process. The applicants responded there would be no runoff.

Dan Hussey, a resident of Lakewood Drive and whose parents own the abutting property, thanked the Board for taking the security and odor concerns seriously. He still feels there are gray areas that need to be addressed – such as security once the applicants leave their secured site with product and the disposal of excess product. If the Board was going to grant the applicants a conditional use permit, he would like to see the conditions clearly written out and then regulated and enforced.

Board member Tarbox responded that she felt the Board was trying to address these issues by discussing the possibility of granting a 1-year conditional approval and having the applicants providing a narrative report on how the excess has been disposed of.

Board member Connolly asked about site lighting. Both Chair McAdam and staff member Gulnac stated there is already existing exterior lighting for the site that has been previously approved.

Discussion took place on the security fencing among Board members, staff, the applicants, property owner, and the abutter. The abutter stated he had no issues with the security of the property. It was decided that a chain link fence around the entire property would be better than a screened fence so any suspicious activity could easily be seen.

Chair McAdam asked if there was anyone else from the public that wished to speak on the proposal; there was no one.

Chair McAdam closed the public hearing.

Chair McAdam asked if the Board felt they needed to go into work session for this proposal. The Board felt they discussed all the issues; they just needed to make sure all the conditions were added to any approval.

Chair McAdam asked if there were any more questions.

Board member Lanigan asked if the property owners had a mortgage on the building because he was concerned the Planning Board may be permitting something that is federally not allowed. The owner replied he believed he did have a mortgage, and staff member Gulnac stated the proposal is legally allowed in the State of Maine.

Board member Connolly asked the applicants if they personally had any safety concerns for themselves. They both replied they did not and explained why.

Board member Connolly asked if the exhaust fans were going to be run 24 hours a day. Bryce replied they would be and Chris explained the direction the fans would be facing so the abutters should not be affected by the noise. Staff member Gulnac informed the applicants that the city does have a noise ordinance and the ordinance is enforced. Discussion followed.

Chair McAdam asked Mike Casserly, Asst. Engineer if he had any additional comments. Staff member Casserly stated he checked the fencing and the lighting and felt it was secure.

Board member Tarbox asked staff member Gulnac about his suggestion of getting feedback from the police department. Staff member Gulnac said he was referring to the applicants getting their disposal method approved by the police department then asked Board members if that would ease their comfort level for this issue. Discussion followed.

Chair McAdam called for a motion.

Board member Tarbox made a motion that the Planning Board grant Chris Smith a waiver of preparing a site plan and grant a conditional use permit to open and operate a medical marijuana manufacturing operation in building #4 at 27 Hancock Lane, Sanford, Maine subject to the following conditions:

1. That any and all review fees have been paid.
2. That the understanding the Planning Board is approving the Finding of Facts.
3. This is a conditional use for one year, at which point in time the Board will expect the applicants to return to the Board for review of any issues that might have arisen and for a fairly documented and detailed report on how any excess materials have been disposed of.

Staff member Gulnac asked Board member Tarbox if she could include the application's file number 07-15-R* after Chris Smith's name and to add that they agree to compliance with the noise ordinance to the conditions of approval.

Board member Tarbox amended her motion to include staff member Gulnac's recommendations.

Board member Lanigan asked if the Board should also keep track of the changing of the filters. Board member Tarbox asked the applicants if they would be willing to include that in their report; the applicants responded they would be willing to include this information in their report.

Board member Lanigan seconded the motion.

A vote was taken and the motion passed 4-3. Chair McAdam asked the Board members who voted against the project to state what their reasoning was for the record.

Board member Bergeron said his reasoning is because he wants to know if this is the direction the city wants to take. He feels the city could be vibrant and with the types of businesses located in the downtown (the relocation of Off Track Betting to the Mid-Town Mall, and DHHS offices located in the Mid-Town Mall as well) he felt it would hurt the image and draw away from the types of businesses Sanford was looking to attract.

Chair McAdam reminded Board member Bergeron the applicants' request is a permitted activity and if he would like changes to be made he would need to address the city council.

After explanation and discussion on how a Board member should cast a vote for any project, the vote changed to 3-1-3 (3 in favor, 1 against, 3 abstentions) causing the motion to fail. Chair McAdam polled the members who did not vote for the project for their reasoning for the record:

- Board member Peterson voted to abstain because he did not feel he had enough information to make a decision (newly appointed member)
- Board member Connolly voted to abstain due to personal conflict
- Board member Bergeron voted to abstain under duress
- Vice Chair Horr voted against the motion because he was not completely satisfied with security, particularly with the transfer of product away from the facility and the fact that it was said there is a hole in the security fence around the property.

Board member Lanigan commented that he is satisfied with his yes vote. He said that even though he is not excited about this type of business coming into town, the applicants' proposal is a permitted use and he felt the applicants met the conditions of the ordinance in order to operate a medical marijuana facility based on the information discussed tonight.

Board member Tarbox agreed with Mr. Lanigan. She also felt that the Board would be in violation of their oath and failing in their duties as Planning Board members if they use their personal opinions and look for excuses not to approve an application when all the conditions have been met.

Staff member Gulnac recapped the vote after discussion. The vote was 3 positive votes, 3 abstentions, and 1 no vote, with one of the abstentions under duress. He went on to say that as a conditional use application an approval requires a positive vote of 4 which means this motion would fail.

Board member Tarbox asked what happens next. Mr. Gulnac stated the application has failed so the applicants have forty-five (45) days to challenge the decision. If neither the applicants nor anyone else challenges the vote, the vote stands.

Staff member Gulnac went on to say that if any of the Board members that either abstained from or voted against the motion want to reintroduce something tonight, other actions could be done.

Board member Peterson asked if the project could be tabled. Staff member Gulnac replied to do so at this time, the discussion would need to be reopened. He then told Board member Peterson that if he felt he may change his vote once he had a chance to review the information submitted, he could reintroduce a motion to table the vote.

Board member Peterson made a motion to table the application to allow more time to review the information submitted.

Board member Lanigan seconded the motion.

A vote was taken and the motion passed 4-3, with Board members Horr, Connolly, and Bergeron voting against.

The application is tabled until the August 5, 2015 meeting to allow more time for the new Board member to review the information submitted. There will not be another public hearing for this project.

III. NEW BUSINESS

1. **File #05-15-R: Gaye Letendre, c/o Paul Gadbois, P.E., PLS, P.O. Box 327, Saco, Maine.**

Chair McAdam called for a representative to present the application.

Staff member Gulnac stated this application was discussed at the Site Plan Review Committee meeting held earlier in the day. Mr. Gulnac said possible courses of action were discussed due to the number of open issues. The best action was to have the Planning Board do a site visit to see what the limitations of the property were to accommodate the proposed business. Discussion followed.

The application was tabled pending a site visit scheduled for Monday July 20, 2015 at 6:00 PM. The application will be scheduled for the next meeting, Wednesday August 5, 2015.

IV. OLD BUSINESS

1. **File #18-12-R: R. Pepin & Sons, Inc., c/o Matthew Pepin, P.O. Box 729, Sanford, Maine.**

Chair McAdam called for a representative to present the project.

Staff member Gulnac informed abutters of a different Pepin project that the application they were here to listen to will not be heard tonight because it had been tabled at the SPRC meeting earlier in the day and they would be notified when the next meeting will take place.

Matt Pepin, R. Pepin & Sons, Inc. briefly updated the Board on the changes that took place to the operations manual for the Agway Pit project:

- Decided not to extend time limits on crushing activities
- Will need more time to reclaim portion of site close to Twombly Road
- Asking for permission to use Twombly Road heading towards North Berwick
- Clarification for language on road use

Board member Kelly thought it was up to the city engineer regarding the use of roads depending on the conditions of the road during specific times of the year. It was explained that Pepin was restricted from using certain roads in the operations manual; this would remove the restriction specific to Pepin and they would now fall under city regulations like other business' heavy equipment use.

Staff member Casserly asked Matt about the use of Twombly Road going in the other direction. Mr. Pepin explained they would prefer not to use this portion of Twombly Road and explained why. Discussion followed. It was decided that a paragraph would be added to the operations manual that there would be no right turn out of the pit onto Twombly Road except for local deliveries in that area.

Board member Tarbox asked how many trips are made from this pit. Mr. Pepin said he had 3-4 trucks that take 2-3 loads a day, which could mean up to 12 trips a day. Discussion followed on the number of trips per day, the routes the trucks take, and the times of day the trips take place.

Staff member Casserly stated there is still more work that needs to be done before the operations manual is completed. He said there has been a lot of work that has already been done to the document. Staff member Casserly told the Board that the applicant was here to get ratification on the updated operations manual, but with more work still needing to be done to the manual didn't know if the Board would still want to ratify it tonight.

Staff member Gulnac confirmed with Mr. Pepin what was being asked for changes tonight. Discussion followed. It was determined that adjustments needed to be made in the language of the operations manual to reflect changes made by the city after the Pepin's original approval (the posting of select roads within the city during certain months of the year) and changes to the actual operation taking place in the pit (truck traffic direction, hours of operation, etc.)

Mr. Pepin also said one of the major changes he is requesting is the extension of approval in reclaiming a portion of the pit. Board member Peterson asked Mr. Pepin if he would consider changing his proposal from October 1 to September 1 because grass can root and take place better during the month of September. Mr. Pepin replied he could accommodate the request. Staff member Gulnac impressed the importance of contacting the Planning Director if this timeframe cannot be met before the deadline in order to make the necessary changes to the approval to Mr. Pepin.

Board member Lanigan asked about the usage of Twombly Road. Chair McAdam responded by saying that the Planning Board had put restrictions of road usage on this business but other similar businesses were allowed to use roads as many times a day and as often as they wanted. Now that the city is posting its roads during this spring, the Pepin's no longer have this restriction and it is now fair across the board to all similar businesses or other businesses that drive heavy equipment.

Staff member Gulnac spoke about a resident on Chancery Lane that has called multiple times complaining about the noise the crusher makes. Even though this piece of property is over 2,000 feet away, the elevation of the property puts it in a direct sight line that removes the effectiveness of any natural buffers that is between the two pieces of property. Due to the numerous complaints made by this property owner, the city is purchasing a noise meter to measure the decibels the crusher makes. Mr. Gulnac then asked Mr. Pepin if he would consider locating the crusher to another section of the property. Chair McAdam stated it would be best to measure the noise before asking the applicant to move the equipment.

Matt replied he has been out there with a decibel reader himself. He also said the area the crusher is currently located in now is the same area they are going to start reclaiming and anticipates moving the crusher within a few weeks. Discussion took place on the crushing operation and hours for crushing and it was decided the applicant was going to ask for crushing to be done between the hours of 9:00AM-4:30PM.

Chair McAdam called for a motion.

Board member Tarbox made a motion that Mike Casserly, Assistant City Engineer and Matt Pepin continue working on the revisions to the operations manual and bring the operations manual back before the Planning Board for their review and approval within the next thirty (30) days.

Vice Chair Horr seconded the motion.

A vote was taken and the motion 7-0.

V. APPROVAL OF MINUTES – June 3, 2015 and June 17, 2015

June 3, 2015

Board member Tarbox stated she reviewed the minutes and they were ok, and made a motion to approve the minutes as written.

A Board member (unknown) seconded the motion.

A vote was taken and the motion passed 5-0. (Board member Peterson was not a Board member at that time and Board member Lanigan was absent from the meeting.)

June 17, 2015

These minutes were not ready for approval.

VI. PLANNING DIRECTOR'S REPORT

James Gulnac, Planning Director updated the Board on the following:

- August & September – major items coming are Cumberland Farms & St. Ignatius Redevelopment
- Rob Reinken hoping to present proposal on his vacant property on School Street

Mr. Gulnac reminded the Board of the MMA Planning Board training coming in October. He also told the Board viable applicants are being interviewed for his replacement.

VII. ADJOURN

The meeting adjourned at 9:21 P.M.

*File number is actually 17-15-U.