

SANFORD PLANNING BOARD MINUTES
MEETING August 6, 2014 – 7:00 P.M.
City Hall Annex Third Floor Chambers

MEMBERS PRESENT: John McAdam, Chair
Kelly Tarbox, Vice Chair
Lela Harrison, Secretary
Robert Hardison
Richard Bergeron
Lenny Horr

MEMBERS ABSENT: None

STAFF PRESENT: James Q. Gulnac, AICP, Planning & Development Director
Michael Casserly, P.E., Assistant City Engineer
Shirley Sheesley, Codes Enforcement Officer

STAFF ABSENT: None

I. CALL TO ORDER

Chair McAdam called the meeting to order at 7:00 P.M. Chair McAdam noted there would be an agenda change; File #11-14-Z would be heard first.

II. PUBLIC HEARINGS

Old Business item #2 was heard before the public hearing items.

1. Environmental Peer Review: Presentation by Stantec Engineers on File #10-14-W, Mariner Tower telecommunications tower.

Chair McAdam called for a representative from Stantec to present the review findings.

Elizabeth Annand, Stantec Consulting briefed the Board on her experience, as well as that of her co-worker Karol Worden, to perform this review. She stated they prepared two reports: one is a review of a site visit and the other is a review of the site. They also prepared a peer review of the city's review of the application for contract zoning as well as the applicant's submittal to the Federal Communications Commission (FCC) for NEPA (National Environmental Policy Act) compliance.

Ms. Annand identified a document she and Karol reviewed, described the size and location of the property, background of AT&T's FCC license and what that license means. Ms. Annand informed the Board that the applicant is in the process of addressing additional screening requirements as part of the NEPA, ESA (Endangered Species Act) and NRPA (Natural Resource Protection Act) review. She said in spring 2014, the applicant conducted environmental studies to address environmental reviews with the NEPA, ESA, NRPA and FCC approval. Mariner Tower provided all reported environmental studies to the city and to Stantec. Stantec then reviewed these materials for compliance with federal, local and state regulations. Ms. Annand and Ms. Worden looked at the issues of historic properties, wetland delineation, vernal pool determination, visual impact, and rare species. They conducted a site visit to verify wetland delineation, vernal pool determination, and

overall habitat conditions. Ms. Annand described the review and explained their findings. Their results were:

- Accept the project will not impact wetland resources
- Agree with findings in natural resources report
- Maine Historic Preservation Commission concurred that the tower will not impact the historic area
- The tower will not be severely degrading visual view sheds in the village of Springvale
- The city has followed the contract zoning ordinance review process.

Stantec's conclusion is:

- The applicant has conducted the appropriate reviews to ensure compliance with federal, state, and local laws.
- Mariner Tower has reviewed the potential for impacts to wetland and vernal pool resources pursuant to the Clean Water Act and the Natural Resources Protection Act. The applicant is avoiding impacts to wetlands; the project will not require a Clean Water Act Permit for wetland impacts.
- For endangered species, as a requirement of the FCC rules and NEPA, Mariner Tower has reviewed potential impacts to listed species pursuant to the Endangered Species Act. The applicant's contracted botanist surveyed the site and found no plants afforded protection under the Endangered Species Act.
- For the National Historic Preservation Act, as a requirement of FCC rules and NEPA, Mariner has reviewed potential impacts to cultural resources pursuant to the National Historic Preservation Act. The applicant's contracted architectural historian determined no adverse effects to historic resources and the Maine Historic Preservation Commission concurred. Stantec concludes that Section 106 review was reasonable and adequate to find that the proposed project would not adversely affect historic resources.
- The proposed facility would be consistent with the existing and permitted uses with the current Rural Residential zone, which allows for some commercial uses under special circumstances, including compliance with all applicable federal and state rules and regulations.
- Access to the site will use an existing curb cut on Oak Street and an existing tote road with some modification.
- The tower will be self-supporting, requiring no guy wires, and less than 200 feet high, requiring no Federal Aviation Administration (FAA) lighting. The USFWS (2013) currently recommends that new communications towers be less than 200 feet tall and self-supporting to minimize impacts to nighttime migrating birds; the applicant has done this.
- The site has already experienced timber clearing. Vegetation removal for the tower will be confined to what is needed.
- The site is not located on Hanson's Ridge and will not affect the vista or character of the ridgeline.
- The proposed tower and facility will be located approximately 1,400 feet west of Oak Street in a wooded area away from the concentration of homes. The applicant will maintain the existing vegetation on the subject property.
- The steel tower structure will be finished with a galvanizing process that will weather to a dull gray finish to reduce the tower's visibility.

Ms. Annand said, based on complying with federal, state, and local laws and ordinances and implementing avoidance and minimization measures, Stantec found that Mariner Tower had reviewed the process comprehensively and Stantec

interpreted the review as they do not find the project is inconsistent with the city's comprehensive plan.

Chair McAdam had a question about endangered species. He asked if the circles on the map meant the outside agencies found endangered species living there or if it meant it is a habitat those species could possibly be in.

Ms. Annand replied they did not know what they are but believed the city could get the specific information if requested. Discussion followed.

Chair McAdam asked if there were any other questions; there were not.

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

Staff member Gulnac asked if the Board would accept the report.

Vice Chair Tarbox made a motion that the Planning Board accept the report from Stantec as the peer review of the Mariner Tower application.

Board member Hardison seconded the motion.

A vote was taken, and the motion passed 6-0.

2. File #10-13-W: VC Properties, LLC, d/b/a Mariner Tower, Christopher Ciolfi, P.O. Box 2600, Kennebunkport, Maine.

Chair McAdam called for a representative to present the project.

Christopher Ciolfi, Mariner Tower said there were two conditions on their preliminary approval. He said with Stantec's report and the submission of their full NEPA study, he believed they have addressed the two main issues.

Chair McAdam asked staff member Casserly, Assistant City Engineer for his comments.

Staff member Casserly agreed with Mr. Ciolfi. He continued, saying the plans did change slightly, asked Mr. Ciolfi a couple of questions, found a couple of typos – Mr. Ciolfi assured Mr. Casserly these would be taken care of. Mr. Casserly indicated in his memo how the site would be approached from one side or the other, provide traffic control, and a removal bond has been agreed to.

Chair McAdam asked if there were any questions from the Planning Board.

Vice Chair Tarbox asked Mr. Casserly if any of his memo items should be included in the motion. Mr. Casserly responded with an anticipated amount for an inspection fee escrow – the applicant agreed with the amount.

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

Chair McAdam closed the public hearing.

Chair McAdam called for a motion.

Vice Chair Tarbox made a motion that the Planning Board confirm the Finding of Facts (see attached) and find that the final site plan File #10-13-W, Transmitter

Tower requesting approval for contract zoning and a site plan to locate a telecommunications facility on tax map R5 lot 32 within a 160' radii Tower Overlay Zone has been prepared in a manner consistent with the Code of the City of Sanford and the State of Maine rules and regulations. The Planning Board also has reviewed the site plan component of the contract zoning application and grants final approval subject to the following conditions:

1. The applicant provides verification that the signed contract and approved site plan have been filed with the York County Registry of Deeds.
2. The applicant coordinates the construction of the entry road with the City Engineer.
3. The final construction plans for the tower be reviewed and approved by the CEO.
4. The applicant has paid any and all outstanding review fees.

Board member Hardison seconded a motion.

A vote was taken, and the motion passed 6-0.

III. NEW BUSINESS

There were no new business items.

IV. OLD BUSINESS

Item #2 was heard before public hearing items.

1. **File #10-13-W: VC Properties, LLC, d/b/a Mariner Tower, Christopher Ciolfi, P.O. Box 2600 Kennebunkport, Maine.**

All discussion and vote was done under their public hearing.

2. **File #11-14-Z: Mark & Ellarene Breton, 256 Lincoln Street, Saco, Maine.**

Marc & Ellie Breton said they appreciated working with the staff and they were very helpful in assisting them through the process. Mr. Breton briefly updated the Board of the changes they were proposing, which are:

- Constructing a raised ranch further than 75' from the water
- House, deck, chairs, driveway and walkways meet all setback requirements, height restrictions and impervious restrictions
- Replace current septic system
- Remove the mobile home, both sheds, temporary garage, and well house
- Replace all vegetation lost during the project with native plantings, and the current mobile home location will be replaced with vegetation

Chair McAdam asked if there were any questions.

Vice Chair Tarbox had a question about the planning director's suggested motion. She said under the finding of facts, it states to reconstruct the nonconforming structure but in the current proposal the new structure is no longer nonconforming.

Shirley Sheesley, Codes Enforcement Officer, said the application is before the board because, in this case, 75' is the minimum setback and there are other restrictions in the shoreland ordinance that require Planning Board review for relocation or replacement of a non-conforming structure – one of them is the septic design and explained what the applicant was proposing and the location on property. After the

explanation, Ms. Sheesley said she was ready to sign off on the septic design because she believes it is being placed in the best location on the property and is also less non-conforming than the existing septic system.

Ms. Sheesley said the applicants also submitted a re-vegetation plan and this also requires Planning Board approval.

Chair McAdam asked if there were any questions.

Staff member Gulnac recommended the Board add these two approvals to the Finding of Facts and explained why.

Board member Tarbox made a motion that the Planning Board add to the Finding of Facts that the Planning Board, after hearing the presentation of the applicant and recommendations from staff, confirm that the removal of the existing nonconforming structure – the mobile home and the rebuilding of the other nonconforming structure, which would be the septic system are consistent with the rules and regulations of the shoreland zone and make a motion to approve the request for shoreland permit. This approval also includes the re-vegetation of the area where the existing mobile home was that will be removed. Adding those to the Finding of Facts, Board member Tarbox made a motion that the Planning Board confirm the Finding of Facts (see attached) and the reconstruction is consistent with the rules and regulations of the shoreland zone and grant approval for shoreland permit to reconstruct a nonconforming structure (the septic system) and a new building outside of the 75' setback and approve File #11-14-Z tax map R16A, lot 19, 5 Longwood Lane, Sanford subject to the following conditions:

1. That any and all outstanding review fees for this file are paid.
2. That the applicant has or will address the issues raised by the CEO.
3. That the applicant complies with any and all local and state building and fire safety codes.

Board member Hardison seconded the motion.

A vote was taken, and the motion passed 6-0.

V. APPROVAL OF MINUTES – May 21, 2014 and June 18, 2014

It was decided to vote on the minutes separately since not all members were at both meetings.

May 21, 2014

Chair McAdam called for discussion.

Board member Harrison said she reviewed the minutes and they were all set.

Vice Chair Tarbox made a motion to accept the minutes of May 21.

Chair McAdam seconded the motion.

A vote was taken, and the motion passed 5-0-1 as Board member Harrison was not at the meeting.

June 18, 2014

Chair McAdam called for a motion.

Vice Chair Tarbox made a motion to accept the minutes.

Board member Harrison seconded the motion.

A vote was taken, and the motion passed 6-0.

VI. PLANNING DIRECTOR'S REPORT

Staff member Gulnac asked for the report to be tabled. He passed out a listing of the applications coming up for review. He reminded the Board that come January 2015 the Board will be down two members.

VII. ADJOURN

The meeting adjourned at 7:33 P.M.

*The new Public Works Director and City Engineer, Matt Hill, was introduced to the Planning Board by Mike Casserly, Asst. City Engineer.

Attachment to August 6, 2014 Minutes

Finding of Facts for Public Hearing Item #1

File #10-13-W: Environmental Peer Review by Stantec Engineers for Mariner Tower

There were no Finding of Facts for this item.

Finding of Facts for Public Hearing Item #2

File #10-13-W: Mariner Tower

1. The following is the **Finding of Facts** from the preliminary record of action taken:
 - Any review of the site plan application by the Site Plan Review Committee is subject to the Planning Board's finding that the request for a contract zone is not inconsistent with the Comprehensive Plan. The applicant is aware of this condition and accepts responsibility for any and all review fees associated with the contract zone application and the site plan application.
 - The applicant has provided documentation of permission from the property owner to submit the application.
 - The applicant has provided a detailed report which has been presented to satisfy both applications [Contract Zone Consistency and Site Plan].
 - The City Engineer's report should be considered by the Planning Board, especially as it pertains to the management of stormwater and the impacts of the proposed access road and tower site on the identified wetlands.
 - The applicant indicates that the proposed development will have no detrimental impact on the environment. A site plan application for this property does require a statement from the DEP that there are no threatened or endangered species or fauna in the area, supporting the applicants claim that none will be negatively impacted. The applicant indicated they are under federal review authority and have filed a permit application with them which includes threatened and endangered species as well as historical and environmental impact review.
 - The plan [Sheet C-101A] indicates that the parcel described providing the access & utility easement is 50,836 SF and the proposed tower base area is 10,000 SF for a total disturbed area of 60,836 SF. The applicant has provided calculations that a DEP stormwater permit is not required.

- The Site Plan Review Committee has reviewed the application and forwarded the site plan to the Planning Board for their review and approval.
- The Planning Board considered the applicant's request for consistency with the Comprehensive Plan and found that the request to create a Tower Overlay Zone on Tax map R5 lot 32 is not inconsistent with the Comprehensive Plan and has notified the City Manager of that fact.
- The Planner has edited the applicant's proposed contract and forwarded that to the City Manager for further review by the City Attorney.
- The City Engineer confirmed that he and the applicant were in agreement as to the outstanding engineering issues detailed in the engineer's report dated December 13, 2013.

2. The following is the motion from the preliminary approval:

Board member Tarbox made a motion that the Planning Board confirm that application File #10-13-W, Transmitter Tower a request for consideration of consistency for contract zoning and a site plan to locate a telecommunications facility on tax map R5 lot 32 within a 160' radii Tower Overlay Zone has been determined to be not inconsistent with the comprehensive plan and may be submitted as a contract zone. The Planning Board also has reviewed the site plan component of the contract zoning application and recommends preliminary approval subject to the following conditions:

1. That the City Council accepts the Planning Board's recommendation for a contract zone and has reviewed and approved the contract.
2. That the City Council approves the creation of the Tower Overlay Zone as described in the application.
3. That the final construction plans for the tower be reviewed and approved by the CEO.
4. The applicant has paid any and all outstanding review fees.
5. Grant a waiver of inventory of 24" or larger trees.
6. Federal approvals, such as NEPA approval, to be obtained and submitted as soon as possible.
7. Vernal pools if any to be identified at the appropriate time in the spring and noted on the site plan.
8. Any remaining drainage-type issues be resolved to the satisfaction of the city engineer.

Vice Chair McAdam seconded the motion.

A vote was taken and the motion passed unanimously.

3. Suggested additional Finding of Facts:

- The City Council approved the contract and zone change conditioned upon the Planning Board complete their environmental review and granting final site plan approval.
- In order to complete their environmental review, the Planning Board employed Stantec Engineering to conduct a peer review of the environmental impact submissions including a review of the determination by the Planning Board that there were no inconsistencies in the comprehensive plan that prohibited the application from being considered under contract zoning.
- The Planning Board has heard and accepted the report from Stantec.
- Based upon the conclusions reached by the environmental peer review, the Planning Board finds that all appropriate measures have been taken by the applicant to minimize the environmental impact of the proposed telecommunications tower and associated site improvements.
- The City Engineer is satisfied that any and all drainage issues have been resolved.

- An additional public hearing was held providing those interested with the most up-to-date information.

Finding of Facts for Old Business Item #2
File #11-14-Z: Longwood Lane Shoreland Permit

- The applicant is the owner and has standing to submit the application.
- The subject property is within the shoreland zone and the existing structure is within the 75' setback from the shoreland.
- Per Section 270-11C.(3)(a) reconstruction or replacement is permitted subject to the review by the Planning Board who must confirm the structure location meets the setback requirement *to the greatest practical extent.*
- In making this determination, the Board shall consider the physical condition of foundation present, if any. The existing mobile home has no foundation and is to be replaced by a new single family residence.
- It is my opinion there is sufficient room on the property for the new home to be located completely out of the 75' setback by placing it in the area where a shed is shown.
- The Planning Board does not have the authority to permit a deviance from a dimensional (setback) requirement.
- Per Section 270-11C(2)(c) Where a structure is removed and/or vegetation is removed within the water setback area, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation.
- In my opinion the CEO's report of May 29, 2014 itemizes a number of issues which need to be resolved before the Planning Board can take action.
- The applicant also needs to provide information so the Planning Board can confirm the new location meets the following:
 - a. Maintains a safe and healthy condition;
 - b. Will not result in water pollution, erosion or sedimentation;
 - c. Provides for disposal of all wastewater;
 - d. Will not affect wildlife habitat;
 - e. Will conserve shore cover;
 - f. Will protect archaeological and historic resource;
 - g. Will not adversely affect commercial fishing activities;
 - h. Will avoid problems with floodplain;
 - i. And is in conformance with Section 270-13 Land use standards
- The access to the proposed house is via a driveway off of Longwood Lane over the adjacent lot (R16A, lot 18A); per Mr. Horne's email this lot is in separate ownership. The applicant has provided an easement document for permission to use the driveway.
- After hearing the presentation by the applicant and from the CEO, the Board decided to table the application to allow for the applicant to revise their proposal to move the proposed footprint beyond the 75' setback and satisfy the outstanding issues with the CEO.
- The revised plans show the proposed new construction to be completely outside of the 75' setback.
- After hearing the presentation of the applicant and recommendations from staff, the Board confirms the removal of the existing nonconforming structure – the mobile home and the rebuilding of the other nonconforming structure, which would be the septic system – are consistent with the rules and regulations of the shoreland zone and approves the request for a shoreland permit.
- The Board approves the re-vegetation plan of the area where the existing mobile home was to be removed.