

**SANFORD PLANNING BOARD MINUTES
MEETING October 19, 2011 – 7:30 P.M.
Town Hall Annex Third Floor Chambers**

MEMBERS PRESENT: Kelly Tarbox, Chair
Robert Hardison, Vice Chair
David Mongeau, Secretary
Lela Harrison
Matthew Perkins

MEMBERS ABSENT: Stephen Catalano, Jr. (w/notice)
Joseph Herlihy (w/out notice)

STAFF PRESENT: James Q. Gulnac, AICP, Planning & Development Director
Charles Andreson, P.E., AICP, Town Engineer
Shirley Sheesley, CEO

STAFF ABSENT: Michael Casserly, P.E., Assistant Engineer (w/notice)
Barbara Bucklin, Administrative Assistant (w/notice)

I. CALL TO ORDER

Chair Tarbox called the meeting to order at 7:30 P.M. Chair Tarbox asked Board members if they were ok with moving File #04-11-W ahead in the agenda; they were.

II. PUBLIC HEARINGS

1. File #14-11-T: Gabriel Nohr, 9 Gertrude Ave, Springvale, Maine.

Chair Tarbox called for a representative to present the project.

Gabriel Nohr, applicant, pointed out where his house, deck (existing when he bought the house), and unattached porch (that he built, and the porch never had a roof) were located on his property. He told the Board that he thought the language in the ordinance refers to porches that had an existing roof, which his never did. Mr. Nohr wasn't sure if his request fell under the ordinance requirement of Chapter 280-78-E.

James Gulnac, Planning Director, said Mr. Nohr's request came as a result of a violation notice from the Codes Enforcement Office; Ms. Sheesley will update the Board on the events leading up to this request. Staff member Gulnac explained to Mr. Nohr that initially he brought the review of the violation notice to the planning department but then requested to expand the discussion to include a review of the ordinance verbiage.

Mr. Nohr gave the Board a brief rundown of how his request came about. He said he purchased the house about three years ago, wanted to remove the existing porch and rebuild a farmer's porch that would end about five feet before the end of the house. In Mr. Nohr's first contact with the codes office he was told he had a fifteen foot setback. Upon hearing this he went home took the existing porch off and waited to receive his permit to build the new structure. Upon further review of Mr. Nohr's application by the codes office it was determined that a forty foot setback is required and the permit was denied. After discussing possible solutions with the code officer, Mr. Nohr decided to leave it the way it was. He is coming before the Board now in order to keep the unattached porch in front of his house.

Chair Tarbox asked Mr. Gulnac if the Board should hear Ms. Sheesley's perspective now or in a work session. Staff member Gulnac said he wanted Mr. Nohr to present everything that he was requesting to the Board and then have the Board ask any questions of Mr. Nohr they may have. Once this is done, Ms. Sheesley can present the information that is in the property file regarding this situation.

Board member Mongeau asked Mr. Nohr about a previous statement made by Mr. Nohr about his neighbors being upset. Board member Mongeau wanted clarification on what the neighbors were upset with – Mr. Nohr building the porch or with the process Mr. Nohr has had to go through about the porch. Mr. Nohr said the neighbors were upset in general about the process and maybe having to remove the porch and explained why.

Chair Tarbox asked Mr. Nohr what it was exactly he was asking from the Board. Mr. Nohr replied he wants to keep his porch and he feels he should be able to; he was just exhausting all the options he had. Chair Tarbox asked him if it was specific to his situation only, not town-wide, in changing the current setbacks within the ordinance. Discussion took place.

Chair Tarbox said her main concern was the fact that Mr. Nohr was told that he would not be allowed to build his porch as requested, but he built it anyway knowing it was an illegal structure and is now asking for the Board's permission to keep the porch instead of looking at ways to construct something legal before building a structure.

Vice Chair Hardison restated that the code officer made a determination that the porch could not be done, and the appeals process for her decision is going in front of the Zoning Board of Appeals (ZBA). Vice Chair Hardison asked Mr. Nohr if he went before the ZBA. Mr. Nohr said he did go before the ZBA. Vice Chair Hardison asked what their ruling was and Mr. Nohr said the ZBA upheld Ms. Sheesley's decision in denying his permit. Vice Chair Hardison then told Mr. Nohr his only other option is to change the ordinance relating to non-conforming structures and setbacks, which in turn would encompass the entire town.

Vice Chair Hardison went on to say that there are a lot of factors for the Board to consider when reviewing an ordinance change request, and the Board's job tonight is to decide whether they want to consider and debate this change and bring it through the ordinance change process for approval. Discussion followed on what the ZBA is allowed to make changes on, and scenarios of types of non-conformities.

Board member Mongeau made three comments:

1. He doesn't think in going from structure A to structure B passes the common-sense test.
2. He thinks that Mr. Nohr could make specific language change in the ordinance that could be brought before the town council.
3. He does not think this change would be a wise choice and would create future problems in other situations.

Staff member Gulnac said a few years ago a discussion was held regarding expansion of a pre-existing, non-conforming setback situation. At that time, the Board supported the interpretation made by the code officer that in the ordinance any expansion of an existing condition was considered an expansion of that condition and not allowed – someone could repair or replace, but not expand. Mr. Gulnac explained the reason Mr. Nohr brought his situation to the Board.

Staff member Gulnac told the Board that he thought this application would be a good opportunity for the Board to begin a discussion about pre-existing, non-conforming structures in a broader sense if the Board thought this ordinance needed a review, or keep the application narrowed down to Mr. Nohr's specific case.

Chair Tarbox said that she thought Mr. Nohr's application was asking the Board to review his application in a broader sense rather than in his specific case.

Vice Chair Hardison commented that he didn't feel Mr. Nohr's case could be debated by the Board because the ZBA already made a ruling on his case. He felt the Board's only option would be to consider a zoning change.

Chair Tarbox asked Shirley Sheesley, Codes Enforcement Officer, to give a background on Mr. Nohr's case.

Shirley Sheesley, CEO said that she looks at two things: the existing violation – a deck built without a permit, and a possible zoning ordinance change. She said she has been consistent in her interpretation of the ordinance – a non-conforming structure can be expanded as long as the expansion is outside of the setback area. Ms. Sheesley said that a non-conforming structure can't be expanded unless it falls under the expansion of a porch rule in Section 280-78. Ms. Sheesley said she did create proposed language if the Board wanted to consider an ordinance change town-wide for expansion of non-conforming structures.

Chair Tarbox asked Ms. Sheesley if the applicant would have been ok if he built the deck going in the other direction. Ms. Sheesley said it would be if the deck would be outside the setback area, but the house is close to Gertrude Ave and explained the issue with the setback. Chair Tarbox asked Ms. Sheesley if Gertrude Ave was a town-accepted road; Ms. Sheesley replied it was.

Board member Mongeau confirmed with Ms. Sheesley that the porch is not making the house any closer to Gertrude Ave because most of the house is already within that setback so anything built would be in the setback. Ms. Sheesley replied that both the house and deck is within the setback, but the new deck is larger than the original deck. Discussion took place.

Chair Tarbox summarized what staff member Gulnac had said, the Planning Board has reviewed this section of the ordinance before and the Board was comfortable with the wording then. Chair Tarbox doesn't think it would be inappropriate to review the wording again, but thought that the review would need to be in the context of town-wide to make sure that if any change is considered it would be in the best interest of the town.

Vice Chair Hardison agreed with Chair Tarbox. Discussion took place.

Chair Tarbox asked staff member Gulnac to add the review of non-conforming structures to a future agenda.

Staff member Gulnac asked the Board if they recommended that Mr. Nohr's situation be put on hold until the Board had a chance to review the ordinance. Discussion took place on whether or not the Board wanted to do this due to the time it would take to do a thorough review of the ordinance and the fact that there were no guarantees that the review would allow Mr. Nohr to keep the deck once the review was completed.

Chair Tarbox asked if there were any more comments from Board members; there was not.

Chair Tarbox asked if anyone present would like to speak in favor of the application; there was no one.

Chair Tarbox asked if anyone present would like to speak against this application; again, there was no one.

Chair Tarbox closed the public hearing.

The Planning Board took no action on Mr. Nohr's request.

2. **File #999-11-T(4):** A request from the Planning Director to revise the Land Use table for 'Material Reuse Facility' to be permitted in the IR zone.

Chair Tarbox called for a representative to present the proposal.

Staff member Gulnac said that this ordinance was created specifically for some smaller activities in town and possible locations were considered. At that time, only the industrial area of town permitted the use as a conditional use activity, but now there is a need to look into allowing this activity in the IR (Industrial Reuse) zone as well.

Chair Tarbox asked if there was any reason the IR zone was omitted from conditionally allowing this use at that time; Mr. Gulnac could not remember.

Chair Tarbox asked if anyone present wished to speak in favor of this proposal; there was no one.

Chair Tarbox asked if anyone present wished to speak against the proposal; again, there was no one.

Chair Tarbox asked Board members if they would like to act on this proposal tonight.

Vice Chair Hardison confirmed with staff member Gulnac that it would be a conditional use in the IR zone. Staff member Gulnac said all the Board would be doing is changing the use in the Table of Land Uses from not allowed to conditional use.

Vice Chair Hardison said the IR zone is a small zone and is primarily located in the mill area of the downtown. He also said this is an area that the town is promoting for redevelopment. Vice Chair Hardison said that any conditions placed on the activities currently going on in this area will be with the thought of future plans for this area.

Both Chair Tarbox and staff member Gulnac agreed with Vice Chair Hardison's comment.

Chair Tarbox called for a motion.

Vice Chair Hardison made a motion that the Planning Board recommend adding conditional use for materials reuse under the IR zone in the table of land uses with the understanding that the conditions of approval may in fact be more stringent or different than they might be in the industrial zone.

Board member Mongeau seconded the motion.

A vote was taken, and the motion passed 5-0 to recommend the ordinance change to the town council.

Chair Tarbox closed the public hearing.

III. NEW BUSINESS

There were no new business items.

IV. OLD BUSINESS

- 1. File #04-11-W: Ronald K. DeCola, d/b/a Brady Sullivan Properties, 670 North Commercial Street, Manchester, New Hampshire.**

Chair Tarbox called for a representative to present the application.

James Gulnac, Town Planner, said all the outstanding issues with the contract zone have been brought before the Town Council and the Council has authorized the signing of the contract zone agreement with the condition of final site plan approval by the Planning Board. Mr. Gulnac said both the Maine DEP permit and the statement and covenant of the brownfield VRAP program have been received; the applicant has met their obligation for the necessary paperwork.

Chair Tarbox asked Charles Andreson, Town Engineer, if he had any outstanding issues that should be a condition of approval. Mr. Andreson said he doesn't have any conditions to recommend; the applicant has made the requested modifications from his last review memo: the landscaping plan has been incorporated into the plan set, including details, and has not changed from the plan presented to the Board at a previous meeting. The proposal also includes improvements to be made in the public right-of-way, which were acknowledged in the contract zone. Once the Board approves the project, Mr. Andreson will then use the plan and contract zone to allow the applicant to perform the work to be done. His final issue to be addressed is the ADA parking, which is a reduction in the amount that is required. This was addressed in the contract zone and the applicant is allowed the eight spaces requested instead of the fourteen spaces that are required.

Chair Tarbox asked Shirley Sheesley, Codes Enforcement Officer if she was ok with this change and Ms. Sheesley stated she was.

Chair Tarbox called for a motion.

Board member Mongeau made a motion that the Planning Board confirm the Finding of Facts (see attached) and find File #04-11-W: Ronald K. DeCola, d/b/a Brady Sullivan Properties, 670 North Commercial Street, Manchester, New Hampshire a final major development plan application under Section 280-38 A – Contract Zoning to redevelop the mill located at the southwest corner of Emery Street into mixed use residential and commercial uses has been prepared in conformance with the Town of Sanford land use code and grant final major development site plan and minor subdivision approval along with a Shoreland Permit and recommend the zone change under contract zoning subject to the following conditions:

- The Town Council approved the zone change.
- The Town Council approved the contract for the application.
- The applicant has agreed to any and all changes recommended by the Planning Board.
- The approval does not authorize any construction on the site.
- The approval is subject to any conditions or requirements of the Sanford Land Use Code.
- The applicant will pay the traffic impact fee agreed upon prior to the issuance of any construction permits.

Board member Perkins seconded the motion.

A vote was taken, and the motion passed 5-0.

Chair Tarbox apologized to the applicant for the mix-up at the last meeting regarding a lack of quorum.

Chair Tarbox asked Vice Chair Hardison if he had questions.

Vice Chair Hardison asked staff member Andreson if he had asked the Board to confirm some of the items in his report. Mr. Andreson clarified what he meant – he would take the approval of the application as confirmation of those items. Discussion took place on the best way to clarify confirmation of Mr. Andreson’s three (3) items of concern: landscape plan, improvements within the public right-of-way, and the handicap spaces.

Board member Mongeau amended condition of approval item (c) to read ‘the applicant has agreed to any and all changes recommended by the Planning Board: work on the right-of-way, confirmation of the ADA handicap spaces, and the landscaping plan is added to the whole set.’

Vice Chair Hardison seconded the amended motion.

A vote was taken on the amended motion, and the motion passed 5-0.

V. APPROVAL OF MINUTES – April 20, 2011 as originally written; July 20, 2011; August 17, 2011; September 7, 2011; September 21, 2011; and October 5, 2011

Staff member Gulnac told the Board that they could make a motion approving all the minutes at once if they chose to, but asked that the Board amend the October 5, 2011 to show that Board member Mongeau was absent with notice.

Chair Tarbox commented that not all Board members were present at the meetings so they would not be able to make a group motion. Discussion took place.

Board member Harrison made a motion to accept the minutes of April 20, 2011; July 20, 2011; August 17, 2011; September 7, 2011; September 21, 2011; and October 5, 2011 with the change that was requested.

Board member Mongeau seconded the motion.

A vote was taken, and the motion passed 5-0.

VI. PLANNING DIRECTOR’S REPORT

There was no Planning Director’s report.

VII. ADJOURN

The meeting adjourned at 8:22 P.M. and a work session followed.

Attachment to October 19, 2011 Minutes

*Finding of Facts for Public Hearing Item #1
File #14-11-T: Gabriel Nohr Ordinance Change Request*

No Planning Board action was taken on this item.

*Finding of Facts for Public Hearing Item #2
File #999-11-T(4): Ordinance Change for Material Reuse Facility*

- The Board has the authority to consider the request.

- The request from the Planning Director corrects an oversight concerning the inclusion of the IR zone as a permitted CU for Material Reuse.
- The Board recommends approval as a CU which would require individual review of each request by the Planning Board.

There are no New Business Items

*Finding of Facts for Old Business Item #1
File #04-11-W: Stone Mill Redevelopment*

- The project is classified as a major development by definition and is to be reviewed under the Contract Zone provisions of the Zoning Ordinance. The project is also classified as a subdivision by definition because of the number of residential units; however, the site plan application will be considered and reviewed as a final major site plan. The application also includes the approval of the possible realignment of property lines as a minor subdivision and a shoreland permit.
- A public hearing for the major site plan and the proposed zone change was held on Wednesday July 20, 2011. A work session followed the hearing. At the work session the Planning Board determined that action on the application for a positive vote to recommend the zone change and to confirm a preliminary major site plan approval subject to conditions agreed to by the applicant and approval by the Town Council for the zone change and the contract portion of the application was in order.
- The applicant has provided proof of ownership or the right of ownership through a purchase and sales agreement.
- The Planning Board considered the contract zone request and found that it was not inconsistent with the goals and objectives of the comprehensive plan.
- MDEP permits are required and applications have been submitted. I have received notification from the DEP that both the stormwater permit and the VRAP have been approved. A MDOT permit is not required.
- The public hearing was held at the Planning Board for a contract zone application and a major development, shoreland permit, and minor subdivision to realign property boundaries.
- The property is located in the mill historic district and Brownfields project area.
- The review of a contract zone application by the Planning Board is made with the assumption that the differences between the requirements of the existing zone and the proposed project will become considered in the contract.
- The Town Council has reviewed and approved the contract and the zone change subject to the final approval of the site plan by the Planning Board.
- The applicant has provided verification of the MDEP stormwater permit and the Brownfields VRAP.