

SANFORD PLANNING BOARD MINUTES
MEETING November 3, 2010 – 7:30 P.M.
Town Hall Annex Third Floor Chambers

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

MEMBERS ABSENT: John McAdam
Gregory Vermette

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

II. PUBLIC HEARINGS

There were no public hearing items.

III. NEW BUSINESS

There were no new business items.

IV. OLD BUSINESS

1. **File #13-10-W: Arista Development, c/o Curt Neufeld, Sitelines P.A.** 8 Cumberland Street, Brunswick, Maine. [This is a continuation of the October 6, 2010 and October 20, 2010 meetings. The Planning Board may take action on this application.]

Curt Neufeld, Sitelines P.A., representing the applicant, summarized the highlights of how the applicant's development team finds their proposal consistent with the comprehensive plan. Mr. Neufeld read an excerpt from the comprehensive plan that describes the trend of Sanford losing middle-class residents, with a low-income population on the rise, and how to reverse the trend. Mr. Neufeld explained how the applicant's proposal meets this:

- Seven million dollar investment in downtown area
- Modernize existing credit union and enable it to maintain its presence in the downtown area for many years
- Introduce neighborhood pharmacy and retail store in a transitional section of town
- Residents opportunity to walk or ride to the new pharmacy and its retail services
- Bring new business into the Sanford area, including dozens of new jobs
- Help town's bottom line by increasing tax base without increasing the demand on services or expanding the public safety network

Chair Tarbox asked if there were any audience members that would like to speak.

Maura Herlihy, president of the Sanford Downtown Legacy (SDL), said Sanford is a Main Street Maine community. Ms. Herlihy went on to say that this project goes against everything that the Main Street Maine program stands for. She explained that the comprehensive plan bases the revitalization of downtown based on the Main Street Maine model. This program does not encourage box stores and it frowns on the destruction of neighborhoods near the downtown. Ms. Herlihy feels that the proposed design goes against a walk-able downtown community and downtown design. Ms. Herlihy also doesn't believe that contract zoning was put together in an attempt to put something where it doesn't belong, or to use economic development as a reason for putting it there. She briefly spoke of previous development in the downtown area that was constructed to advance with the changes of the time, provided her opinion of what a downtown area should be comprised of, and gave examples of her view of appropriate uses of contract zoning in Sanford.

Ms. Herlihy concluded her statement by saying she does not feel the project should move forward, she does not agree that the project meets the comprehensive plan goals, and she does not feel the project is a good use of the contract zoning process. She encouraged questions about the Main Street Maine program. She asked that the Board table the application tonight so they could learn about the Main Street Maine program and how successful it has been.

Chair Tarbox asked if any other audience members would like to speak.

Lee Burnett, member of the SDL, emphasized what Ms. Herlihy said and also stated the group thought it would be great to get a pharmacy in the downtown area, but one that fits. Mr. Burnett then went on to briefly explain a bit about the Main Street Maine program. Mr. Burnett also told the Board that if they deemed the application consistent with the comprehensive plan, then he would have some questions for the Board members. Some questions would be:

- How the Board would encourage walking in the downtown if they just allowed a new drive-thru?
- How the Board would encourage homeowners on Acorn Street to invest in their properties if the residents now have a brick wall to look at?
- How the Board would encourage someone to invest in historic property if they just allowed a historic building to be demolished?
- How the Board would maintain the viability of a downtown church if they take away agreed-to parking in the current credit union parking lot for an existing church if the parking lot will now be used for a pharmacy/retail store lot used 7days a week?

Mr. Burnett concluded his statement by telling the Board he believes this project would hurt the process of what the SDL is trying to do if the project is approved.

Paul Levesque, Director of Business Development for the Economic Growth Council (EGC), said the EGC has a mission to facilitate economic growth, and he was here to discuss the economic consequences of the project. Mr. Levesque has reviewed the application and felt that the applicant has done a good job in preparing it. He then listed some facts of the proposal:

- 34 jobs
- \$700,000 a year in annual payroll
- All credit union jobs will be preserved
- Optimized location will contribute to business success

Overall, Mr. Levesque said the project is in a transition zone, the developer is improving the location, and the proposal is an economic improvement to the town.

Ron Vincent, member of the SDL and member of the design committee, said the committee has reviewed the project from the view of the town's design review guidelines and the Main Street Maine program, and the way the proposal is currently designed does not fit within them.

Chair Tarbox told Mr. Vincent that, although she may agree with some of his comments regarding the design, tonight's meeting is confined to land use issues; the design of the project is something that would be discussed during the review portion of the application if the project is deemed consistent with the comprehensive plan.

Maura Herlihy said that Mr. Vincent's comments were reflective of the four tests a proposal must pass in order to use the contract zone process and the SDL felt the proposal did not pass three out of the four tests.

Chair Tarbox asked if there were any other comments from the audience. There were none, so the Board went into discussion.

James Gulnac, Director of Planning & Community Development, read the part of the comprehensive plan referenced by the SDL and then identified the three tests the SDL felt the proposal failed.

Chair Tarbox asked the applicant if they wanted to respond to the comments made.

Mr. Neufeld said their interpretation of the four-point test does differ from the SDL's and presented the applicant's view.

Board member Mongeau clarified to the applicant that his email that was previously sent to Scott Weymouth, Arista Development and staff member Gulnac was from him alone and not the Planning Board as a whole. Member Mongeau then expressed his feelings of the project. He felt that the applicant's stand on improving economic development in town was not a valid point – he feels that this type of store would come to town anyway because of the population and the mobility of the area. Secondly, member Mongeau felt the applicant was disrespectful in their proposal to the Town of Sanford. Mr. Mongeau had researched other Walgreen locations in other towns/states and, based on his research, felt the applicant could have assembled a proposal to present to the Town of Sanford that was more consistent with the town's comprehensive plan.

Chair Tarbox asked all Board members to weigh in on the proposal.

Board member Herlihy agreed with board member Mongeau's view of the proposal being disrespectful to the town and Mr. Herlihy has felt this way since he first reviewed the submittal.

Vice Chair Hardison said the Board has a responsibility to make an assessment on the goals outlined in the comprehensive plan. There are two sections in the basic goal section that are applicable – economic development and downtown. Vice Chair Hardison said the Board is only talking about the comprehensive plan – anything to do with the site plan is not relevant to tonight's discussion. Mr. Hardison read the goals under the economic development and overall goals outlined in the comprehensive plan:

- maintain and enhance Sanford/Springvale's role as a regional retail & service center
- revitalize downtown Sanford and enhance its role as a retail service & employment center
- improve the image of Sanford as a desirable place to do business
- increase the employment opportunity and wage levels in the community

- increase the industrial/commercial development opportunities in the community and diversify the economic base
- refocus economic development activities on transforming the town into 21st century economy
- improve aesthetic values in existing and proposed commercial and industrial developments
- enhance quality of the labor force

Vice Chair Hardison then read the goals of the downtown section of the comprehensive plan: revitalize downtown Sanford and enhance its role as a retail, service and employment center; to maintain the physical character of Main Street while improving access through the downtown area; to improve the economic vitality of the downtown area; to improve the visual appeal of the downtown areas; and to improve public safety in the downtown areas.

Vice Chair Hardison then addressed the question asked to the Board regarding historical properties. Mr. Hardison said the references made to the historical ordinance were only guidelines; they were never formally adopted as ordinances and cannot be enforced.

Vice Chair Hardison then spoke about the comprehensive plan's reference to the economic role of the downtown area. He said these items are the ones the applicant is referring to in their proposal.

Vice Chair Hardison encouraged the Board to recognize that if the owners choose to tear down historical buildings, there is nothing the Board can do to stop them. He said that the applicant has submitted purchase and sale agreements for all buildings involved, including the ones with historical value. He went on to say that the Board can't tell property owners not to sell to the applicant for this proposal. He also stated that many properties in the downtown area will require contract zone approval as the downtown area revitalizes, and the Board will need to work through each individual project to determine if it conforms to the comprehensive plan.

Vice Chair Hardison wanted to make it clear that the Board has not reviewed the proposal for site plan or design criteria; they have only reviewed the proposal to make a determination on the proposal being consistent with the goals and objectives of the comprehensive plan.

Board member Morse said he does not support the proposal as presented, but said the Board is looking at the issue of allowing retail use in the General Residential zone on lots 75, 76, and 77 and whether or not that is consistent with the comprehensive plan. Mr. Morse said this is the only issue before the Planning Board tonight.

Chair Tarbox asked if Board member Morse had any feeling on this issue. He said he would make a motion if that is what was needed. Chair Tarbox said the Board was not ready for that at this point.

Board member Mongeau said he understood the Board was not looking at the design review, but in reading what the applicant submitted in response to the previous comments made, he felt that the rebuttals speak to a building that is not pedestrian-friendly and felt that it doesn't conform to the comprehensive plan.

Board member Morse said that if the project is found to be consistent with the comprehensive plan, the Board could then reject the proposal and make the applicant submit a design that the Board could agree on.

Chair Tarbox said she has struggled with the issue of whether or not to rezone the three parcels from residential to commercial. She went on to say that arguments could be made on both sides and compromise is an important part of the process for a project this size. She tried to keep her thinking to whether or not the project is consistent with the comprehensive plan. Ms. Tarbox said that she recalls that at the meeting where the area residents spoke, all comments were positive, and no one spoke negatively about the project. She thought this was important for the Board to keep in mind – that overall the support from the people that were going to be most impacted by the project were in favor of the proposal.

Chair Tarbox went on to say that she felt it was incumbent upon the Board to look at the project as a whole, weigh the benefits versus the costs and make a decision as to whether or not the proposal is beneficial for the town; she felt it was. Ms. Tarbox said that the consistency review is the barest step in the process and that all items that were previously discussed and are concerns to some Board members are open for discussion and negotiated if the project continues in the process.

Discussion took place on the contract zone process among Board members. During the discussion, Vice Chair Hardison used the Wal-Mart/Lowe's project as an example of how different groups worked with the developer to enhance the project and make it something that would work for the town and the developer, and if an agreement can't be reached the project would not move forward.

Board member Mongeau said his concern over the Wal-Mart/Lowe's project is he isn't sure if all things are completed per the contract zone, and the developer made the building a different color than they originally said.

Discussion took place on whether or not the contract zone process is defined enough to make the process work for the town.

Chair Tarbox asked staff member Gulnac for guidance on the best way to proceed for voting process. Mr. Gulnac said that the process used to separate out the comprehensive plan is not clearly outlined in the ordinance and explained why. Mr. Gulnac said in the past, the Board has taken an action on the question, and then proceeded to give his interpretation on how to proceed. Mr. Gulnac then went on to say that the question Chair Tarbox posed tonight is procedural, and Mr. Gulnac feels that if the Board is uncomfortable with the procedure, the Board should table the request and get counsel's advice. Mr. Gulnac then expressed that this holds true if the applicant feels uncomfortable, also.

Chair Tarbox said her question was more specific – since the Board normally has seven members present (only five are present tonight), does the vote need to be four in the affirmative or does the vote need a majority of the quorum? Staff member Gulnac said the charter outlines super majority, which means four votes. Discussion took place.

It was determined that four votes, either in the affirmative or negative, are needed. If a vote is taken tonight and resulted in a 3-2 vote either way, the motion would fail.

Based on the discussion, Chair Tarbox wanted to give the applicant the opportunity to table the vote to a meeting that had a full member presence.

The applicant responded they would like to table the vote.

Chair Tarbox asked staff member Gulnac if the applicant's request to table would be enough to table or should the Board make a motion to table. It was decided that a motion to table would be the best way to proceed, and there would be no formal noticing to the abutters for the next meeting.

Staff member Charles Andreson addressed Board member Mongeau's concern regarding the enforcement of a contract zone. Mr. Andreson said that if there is any relaxation of the terms of the approval, the project needs to be brought back to either the Town Council or Planning Board to be reviewed. Mr. Andreson wanted to assure the Board that when the Board approves any project under a contract zone, the project will be built as approved from an enforcement perspective.

Staff member Gulnac confirmed with Chair Tarbox that discussion on the application will be tabled for two weeks with no formal notification.

Board member Morse made a motion to table the application for two weeks.

Board member Mongeau seconded the motion.

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

V. APPROVAL OF MINUTES

There were no minutes ready for approval.

VI. PLANNING DIRECTOR'S REPORT

There was no Planning Director's report tonight.

VII. ADJOURN

The meeting adjourned at 8:25 PM.