



OLD ORCHARD BEACH  
PLANNING BOARD  
December 2017 MEMO

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## *Regular Business*

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**ITEM 1 & 6**

**Proposal:** Food Business Amendments to Chapter 78 (Zoning): 78-1 (Definitions); 78-717 (Downtown District 1, Permitted Uses, Primary Uses); 78-747 (Downtown District 2, Permitted Uses); 78-748 (Downtown District 2, Prohibited Uses); 78-1083 (Amusement Overlay District, Complimentary Uses); 78-1223 (Campground Overlay District, Accessory Uses); 78-1382 (Buildings and Structures, Temporary Structures, Exemption)

**Action:** Public Hearing; Discussion; Council Recommendation

**Applicant:** Town of Old Orchard Beach

<u>Mobile Food Ord Amendment</u>	<u>Project Status</u>
<i>Discussion</i>	September/October
<i>Review Draft 1</i>	October
<i>Review Draft 2</i>	November
<i>Public Hearing</i>	December
<i>Recommendation to Council</i>	December

A public hearing and council recommendation is scheduled for the PB’s December meeting. There are no changes to the proposed ordinance amendment language. There’s been some public interest in this- primarily people who want to see the language.

**RECOMMENDATIONS**

Below are a few options for a proposed motion.

- Motion the Council approves the proposed ordinance amendments as written and presented at the 14 December 2017 Planning Board meeting.
- Motion the Council approve with the following changes to the ordinance amendments...(list amendments).
- Motion the Council not approve the following amendments as written and presented at the 14 Dec. 2017 Planning Board meeting. The Board recommends the following...(state what the Board recommends).

**BACKGROUND**

On 2 August 2017, the Council enacted a moratorium on mobile food businesses. The moratorium was enacted in response to concerns associated with food trucks and how mobile food businesses are regulated. As part of the moratorium, the Council determined the Town’s existing ordinances do not adequately regulate food trucks or other mobile food businesses to prevent serious public harm from commercial development and expressed the intent to limit licensing of food trucks and other mobile food businesses. The Council requested the PB study the appropriate amending of land use ordinances regarding the regulation of mobile food businesses and develop land use regulations concerning food trucks and other mobile food businesses.

In response to the moratorium, staff drafted ordinance amendments for PB’s consideration. Staff’s initial approach was to create more comprehensive changes but we were reminded our scope has limits due to the moratorium language (e.g., limit licensing). So, the proposed ordinance amendments follow the guidance provided in the moratorium.

The first draft, presented at the October PB meeting, included the following amendments: Food Stands are now defined as Mobile Food Businesses (MFB); MFB’s are no longer permissible in the DD1; MFB’s are now permissible in the Campground Overlay; MFB’s are only permissible in the Amusement and Campground Overlay Districts; and, MFB’s are permissible anywhere as long as they’re associated with events sponsored or authorized by the Town Council.

After review of the first draft, the PB recommended changes to the MFB definition- a breakdown of the specific types of mobile food businesses. Staff reconsidered draft 1 language and developed draft 2 which includes a breakdown of the MFB definition and a few other adjustment including a new term, take-out food business, to address businesses that provide take-out service with no on-site seating (e.g., Lisa’s Pizza, Bill’s, D&D). Below is a summary of the changes in draft 2:

- MFB is no longer defined. Mobile food businesses are now defined more specifically (food cart, food truck, food stand) and replace the MFB definition.
- Food cart, food trucks and food stands are permissible in the same locations as the formerly proposed MFB's were allowed (Amusement Overlay, Campground Overlay, Council approved/sponsored events).
- Food cart, truck, stand definitions include language to ensure it's clear the uses are not permanent.
- We currently define and regulate food stands. Draft 2 changes the definition (primarily by adding "non-permanent structures") and where they are and are not allowed.
- Take-out food business is defined and a new land use. After removing the current food stand definition and use and the proposed MFB definitions, we found businesses that primarily serve take-out from permanent structures without on-site seating (e.g., Lisa's Pizza, Bill's, D&D) lacked a definition and land use classification. It appears they are currently classified as food stands. Because the current food stand definition is proposed to change so that it regulates non-permanent structures and that these structures are proposed to be prohibited in the districts where Lisa's, etc. exist, it seemed appropriate that we develop a new land use. This new land use is identified as take-out food business.
- Take-out food businesses are proposed to be allowed uses in the DD1 and DD2 districts.

A few thoughts/comments:

- Is the PB ok with the revised definitions?
- Does the PB agree the "take-out food business" approach is an acceptable way to deal with businesses such as Lisa's, Bill's, D&D, etc.?
- If the amendments are approved, I expect the food carts and stands located by the Pier will be considered nonconforming uses no longer permissible in the DD1 and will be regulated as such. They have continued to operate over the years. I'm not aware of other food carts, trucks or stands that have continuously operated.
- Difficult to find the proper place in the ordinance to ensure MFB's can operate anywhere as long as they're associated with events sponsored or authorized by the Council. The seventh amendment attempts to do this. I found this was difficult because Ch. 78 regulates zoning and does not have a place that can conveniently fit standards that deal with Council approval of events.

Below are comments concerning moratorium key points, current language, current language interpretation, and discussion points.

## **MORATORIUM KEY POINTS**

The moratorium (attached with this memo) includes the following key points and PB responsibilities:

- The moratorium originally took effect on 2 August. It was renewed on 1 Oct and we expect will be renewed on 21 Nov. The Council can extend, repeal or modify the expiration date.
- The Council have "acted to limit the licensing of food trucks and mobile food businesses and further expressed the intent to limit licensing of food trucks and other mobile food businesses."
- The "Town's existing ordinances do not adequately regulate food trucks or other mobile food businesses to prevent serious public harm from commercial development."
- A mobile food business is "any business not qualifying as a restaurant or convenience store and offering for sale foodstuffs to be consumed by the public off premises, as the term Food Stand is defined in Chapter 78 of the Code of Ordinances of the Town of Old Orchard Beach, and including, in addition to food stands, food trucks and food carts."
- The PB is responsible for "studying the appropriate amending of land use ordinances regarding the regulation of mobile food businesses" and "developing land use regulations concerning food trucks and other mobile food businesses."
- The PB's scope has limits due to the moratorium language. Interpretation of this language shows the Council determined our current ordinances do not adequately regulate food trucks or other mobile food businesses and task us with developing standards that limit licensing of food trucks and other mobile food businesses to prevent harm to commercial development.

- Mobile Food Business as defined in the moratorium is not currently defined in our ordinances. It includes language in the currently defined term “Food Stand” and adds “and including, in addition to food stands, food trucks and food carts.”
- Ordinance changes will include amendments to Ch. 78; therefore, the PB will hold a public hearing and provide a recommendation to Council.
- Although the Council can extend the moratorium expiration date the PB should consider this a priority so we may complete our work as soon as possible. Due to the meeting dates and actions required by ordinance (public hearings, etc.) I expect we’ll need at least one 60 day extension.

**CURRENT LANGUAGE**

Below is the current ordinance language that is most closely related to food trucks and mobile food businesses.

Food Stand Definition

Food stand means any business not qualifying as a restaurant or a convenience store as defined in this section, and offering for sale foodstuffs to be consumed by the public off premises.

Food Stand Permissible Locations, Setbacks, Sales

Sec. 78-717. Permitted uses in the downtown district 1 (DD-1) shall be classified as follows:

(1) Primary uses. Primary uses are as follows:

- g. Food stands (located between First Street/Milliken Street and the beach) with a minimum ten-foot setback from the front property line.

Sec. 78-1083. Permitted uses in the amusement overlay district (AO) shall be classified as follows:

(2) Complementary uses. Complementary uses are as follows:

- d. Food stands with a minimum of a ten-foot setback from the front property line.

Sec. 50-246 (Streets, Sidewalks, and Other Public Places Ordinance). Outside Solicitation of Sales (Note: this may apply-see comments in Current Language Interpretation, below)

No person shall engage in the solicitation, sale or rental of any goods, wares or merchandise outside the enclosed portion of a building.

**CURRENT LANGUAGE INTERPRETATION**

In an attempt to determine whether a food truck or mobile food businesses are a permitted use in the DD1 and AO Zoning Districts and because there is no definition for food truck or mobile food business in the town’s ordinances, it appears the use classification that is the best fit is “Food Stand.” Chapter 78 ordinance defines a Food Stand as:

Any business not qualifying as a restaurant or convenience store as defined in this section, and offering for sale foodstuffs to be consumed by the public off premises.

The DD1 allows Food Stands in a specific area- between First Street and Milliken Street and the beach with a minimum 10 foot front property line setback (see attached map). The AO District allows Food Stands within the entirety of the district provided there is a 10 foot front property line setback (see attached map). Because the definition includes the language “any business not qualifying as a restaurant or convenience store” it has be interpreted by some that a food truck or mobile food business is permissible as a Food Stand as long as it’s within the DD1 specific areas and AO, meets the 10’ setback, and does not allow food to be consumed on premises which means food may be purchased on-site but it must be consumed off-site (per the definition of Food Stand).

Regarding Sec. 50-246, Outside Solicitation of Sales states: “No person shall engage in the solicitation, sale or rental of any goods, wares or merchandise outside the enclosed portion of a building.” Food trucks and mobile food businesses are

not buildings so sales will take place outside the enclosed portion of a building because a building does not exist. Also, a food truck and mobile food business engages in sales. The problem lies in is food considered “goods, wares or merchandise.” I believe the closest fit is “goods” but unfortunately, goods are not defined in the ordinance. When a term is not defined in an ordinance it is common to use a dictionary. I used two dictionaries, Webster’s New World and Black’s Law, to find a definition for goods:

(Webster’s New World) goods: 1. personal property 2. wares 3. Fabric

(Black’s Law) goods: 1. Tangible or movable personal property other than money; esp., articles of trade or items of merchandise <goods and services>. \*The sale of goods is governed by Article 2 of the UCC. 2. Things that have value whether tangible or not <the importance of social goods varies from society to society>.

Considering the above-mentioned definitions, I find the only way food may be defined as goods is in Black’s Law definition: “Things that have value whether tangible or not.” This standard may not apply but it has some relationship to our discussion.

## DISCUSSION POINTS

As discussed above, the PB is tasked with developing ordinance language that limits licensing of food trucks and other mobile food businesses. Current ordinance language regulates food stands which have been interpreted by some to include food trucks and all mobile food businesses. In order to change this language and develop standards that follow the Council’s direction we offer a few discussion points:

- What should we do with the current Food Stand definition? Current standards?
- New definitions- Mobile Food Business, Food Truck, Food Stand, Food Vendor?, anything else?
- What are other names of food prep and servicing businesses that are temporary and not mobile?
- How will we be sure that regulations do not impact businesses like Lisa’s Pizza and Bills that have no seating, are similar to a food stand, yet are in permanent structures?
- Should there be separate land use classifications for each mobile food business?
- Where should they be permitted? Not permitted? We can allow a use but not in the entire district (similar to food stands in DD1).
- Who should be responsible for reviewing and approving? Should it be a conditional use?
- Should there be specific performance standards, setbacks, etc. requirements for each use?
- If in design districts should DRC review?
- Food consumed off premises? What is off premises? This is something that could be included in a performance standard.

Planning staff requested input on this from town departments. We asked the following questions (MFB- mobile food business):

- Will MFB’s impact your departments operations? If so, how?
- What are your experiences with MFB’s?
- If MFB’s are allowed, what regulations should apply?
- Should MFB’s have separate use categories (e.g., food trucks and food stands have different regs)?
- Where should MFB’s be allowed to operate? Private property only? The public ROW?
- Should they be allowed but with limited numbers and operation days?
- Should there be design guidelines? Operation guidelines?
- How about use of power, sewer, water, etc?
- Exemptions from the ordinance such as those that operate as part of a special event permit, cater a private event, operate in a restricted access area for use of that areas customers only (e.g. campground)?
- How should MFB’s be licensed and/or permitted?

**ITEM 2 & 7**

**Proposal:** Private Way Application  
**Action:** Public Hearing; Discussion; Ruling  
**Owner:** Casey Gray  
**Location:** 54 Portland Ave., MBL: 205-1-37

<b><u>PRIVATE WAY</u></b>	<b><u>Project Status</u></b>
	September Meeting: Tabled
<i>Application Complete</i>	Voted at November Meeting
<i>Site Walk</i>	Held in December
<i>Public Hearing</i>	Held in December
<i>Final Ruling</i>	Recommended for December

There are a few new items pertaining to this proposal in your packets for December:

1. A letter from the Abutters Attorney – David Lourie
2. A cover letter and plan-set depicting the 50 foot ROW
3. A letter from the Abutter, Allen Hess that was read during Good & Welfare in November
4. A Warranty Deed with easement language
5. A draft Declaration of Maintenance of a Private Way document
6. An updated 11x17 plan-set
7. A letter from the Applicant Casey Gray in response to the Abutters comments read during Good & Welfare in November
8. A letter from Allen Hess dated 12/06/17

The purpose of the December meeting is to hold a site walk, a public hearing and make a final ruling on the proposal.

**Items Received and Discussed for the December meeting:**

Planning Staff received a letter from the Abutters Attorney (David Lourie) which is included in your packet. This letter was forwarded to our Town Attorney for follow-up. Our Attorney pointed out that the PB should be able to see very distinctly that the proposed private way falls within the 50 foot ROW that the Applicant has right, title and interest to. On Page 2, #1 of the Attorney’s letter, it says “*Note the areas where the proposed private way departs from the 50’ Right of Way depicted on the subdivision plan. The discrepancies should be explained at or prior to the public hearing...*” Our Attorney recommended that we verify this on the plan and Planning Staff asked if the Applicant could revise the plan to highlight the Private Way and show that it is only in that 50 foot ROW or on the Applicants property. This revised plan has been included in your packets along with a cover letter explaining the changes.

The Abutter read a letter during Good and Welfare at the Planning Board in November. A copy of that letter has been included in your packets.

The Design Standards Section (78-1414) in the Towns Private Way ordinance discusses the number of dwelling units served by a Private Way and what the roadway width needs to be, etc. In this section, it states that 3 or more dwelling units served requires subdivision review. Because of this, Planning Staff recommends to the PB that a Condition of Approval be placed on the project that says “The Private ROW is intended to provide access to a maximum of 2 dwelling units.” Staff also recommended that this note be placed on the plan and that has been done.

An easement has been proposed for Lot 37 to access the Applicants property for a portion of the Private Way and the hammerhead turnaround. Planning Staff requested to see easement language for the proposed easement. The language has been included in your packets.

Section (78-1413) of the Private Way ordinance discusses a Maintenance Agreement for 2 or more lots. It says: “*If the private way provides access to two or more lots, a maintenance agreement shall be prepared. The agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private way. This agreement shall be approved by the planning board and shall be recorded in the county registry of deeds within 60 days of approval by the planning board.*” A draft agreement was submitted back in September that said the Abutter was

jointly responsible for one half of the cost of maintaining, repairing and plowing the Private Way. The way this proposal has been presented to the Planning Board, it has stated that Lot 36 will not be responsible for any maintenance in the Private Way. As such, Planning Staff recommended that this be updated in the Maintenance Agreement and a new one be submitted. The updated version of the agreement has been included in your packet for December.

The Abutter indicated in the letter read during Good & Welfare that the proposed Private Way hammerhead turnaround cuts off access to his lot. The ordinance (*Sec. 78-1411*) says that the PB may approve the use of a Private Way to **provide access to lots, existing** or proposed. Planning Staff recommended to the Applicant that they provide information on how access to lot #36 will be achieved since it is intended to be included as part of the Private Way. This has been shown on the new 11x17 plan that you received in your packets for December.

A letter from the Applicant in response to the Abutters concerns discussed during Good and Welfare has also been included in your packets.

At the November Planning Board meeting, we discussed the requirement from Assessing that the Private Way should be named for E911 purposes. This has been coordinated with Assessing.

#### **Ordinance Discussion:**

In order to be sure the Private Way proposal meets the ordinance requirements, a summary of the required items is listed below:

**Sec. 78-1411 – (APPROVAL REQUIREMENTS)** *“The Planning Board may approve the use of private ways to provide access to lots, existing or proposed, provided that the conditions of this division are met.”*

- The Plan that has been provided appears to meet the conditions of the Private Way Ordinance and shows access for both the existing and proposed lot.

**Sec. 78-1412 – (PLAN SUBMISSION)** *“A plan showing the private way for one lot shall be prepared by a registered land surveyor licensed to practice in the state. A plan showing the private way for two or more lots shall be prepared by a registered land surveyor and professional engineer licensed to practice in the state. The plan shall be drawn in permanent ink on permanent transparency material and shall be sealed by the surveyor and/or engineer preparing the plan. The plan shall be labeled "Plan of a Private Way" and shall provide an approval block for the signatures of the planning board, the date of approval, and the words, "Private Way, Approved by the town Planning Board." The plan shall show information sufficient to establish on the ground the exact location, direction, width, and length of the private way. In addition, a street plan, profile and cross section shall be submitted for each private way serving two or more lots. The plan shall also contain a note which shall read, "The Town of Old Orchard Beach shall not be responsible for maintenance, repair, plowing, or similar services for the private way shown on this plan." The original plan shall be recorded in the county registry of deeds within 60 days of approval by the planning board. If the plan is not recorded within this period, the approval of the planning board shall be void.”*

- Because the plan shows the private way for two lots, it has been stamped by both a Land Surveyor and a Professional Engineer. The plan has been titled “Plan of a Private Way” and has an approval block for signatures with “Private Way, Approved by the Town Planning Board” listed on the bottom. Information on the location, direction, width and length of the private way has been shown on the plan and a street plan, profile and cross section have been included with the proposal. The note about the Town not being responsible for maintenance and other services has also been written on the plan (#9).

**Sec. 78-1413 – (MAINTENANCE AGREEMENT)** *“If the private way provides access to two or more lots, a maintenance agreement shall be prepared. This agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private way. This agreement shall be approved by the planning board and shall be recorded in the county registry of deeds within 60 days of approval by the planning board.”*

- An agreement meeting these specifications has been included in your packets for December and discussed above.



**Sec. 78-1414 – (DESIGN STANDARDS)**

(a) *Width of right-of-way.* The right-of-way of private ways created after September 19, 1989 shall have a minimum width of 50 feet. The right-of-way of a private way described in a deed or plan recorded in the county registry of deeds prior to September 19, 1989 shall have the width described in such deed or plan, but not less than the minimum roadway width required by subsection (b) of this section.

- The ROW as shown on the plan is 50 Feet, the darker line at the end of the hammerhead is the extent of the ROW on the Applicants property.

(b) *Construction standards.* The construction of private ways shall meet the following minimum standards:

	Number of Dwelling Units Served		
	1	2	3 or more
Nonresidential use: minimum roadway width	16 feet	16 feet	
Residential use: minimum roadway width	12 feet	16 feet	Must comply with requirements of the town subdivision review standards in <a href="#">chapter 74</a>
Minimum subbase (heavy road gravel)	12 inches	15 inches	
Wearing surface (fine gravel)	2 inches	2 inches	
Maximum length of dead end	None	None	
Maximum grade	10%	8%	
Minimum grade	0.5%	0.5%	
Turnaround at dead end	Hammer head, T or cul-de-sac	Hammer head, T or cul-de-sac	

Stormwater drainage	Approval of director of public works	
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- The standards for a Private Way serving 2 units have been met and are shown on the plan.

(c) *Compliance with construction standards.* The applicant for a building permit for a lot to be served by a private way shall be responsible for bringing the entire private way, from the nearest public way up to and including that portion of the private way which abuts the applicant's lot, into compliance with the standards of subsection (b) of this section, notwithstanding that other lots served by the private way may already have been built upon.

(d) *Inspection and certification.* Private ways serving two or more lots shall be inspected under the direction of a registered professional engineer. Prior to the issuance of building permits for lots served by a private way, the engineer shall certify to the code enforcement officer that the private way has been constructed in accordance with this section.

- These two items will be handled at the Building Permit phase of the project.

**Sec. 78-1415. - Fees.**

A review fee which shall be determined by the town council shall be paid by the applicant at the time of filing the application and plan for a private way.

- This fee was paid when the application materials were submitted

There is one condition that was recommended by our Town Attorney at the October meeting to address the on-going discussion about the ownership/legal right to use the access way that Planning Staff recommends be added to the plan. Another condition that Planning Staff recommends be added to the proposal addresses the maximum of two dwellings. These have been listed below:

- Certain property owners in the vicinity of the applicant’s project have asserted that the applicant does not have ownership or legal right to use the access way where the project would be located. The Planning Board does not have jurisdiction to determine the rights of the parties to deeds or private contractual agreements, nor can this approval create or affect any such rights. This approval does not constitute a resolution in favor of the applicant of any issues regarding ownership or other title issues. Should it be determined by a final, non-appealable court judgment that the applicant does not have the legal right to use the land as proposed in the application, this approval shall no longer have any force or effect.
- The Private ROW is intended to provide access to a maximum of 2 dwelling units

**RECOMMENDATIONS (DECEMBER):**

As stated above, the purpose of the December meetings are to hold a Site Walk, Public Hearing and make a ruling on the proposal. Pending concerns that may be discussed during the Public Hearing, Planning Staff feels that all items that are required to be submitted per our Private Way Ordinance have been submitted.

Recommended Motion: *I will make a motion to approve the Private Way owned by Casey Gray and located at 54 Portland Ave, MBL: 205-1-37 with the following two conditions:*

1. *Certain property owners in the vicinity of the applicant’s project have asserted that the applicant does not have ownership or legal right to use the access way where the project would be located. The Planning Board does not have jurisdiction to determine the rights of the parties to deeds or private contractual agreements, nor can this approval create or affect any such rights. This approval does not constitute a resolution in favor of the applicant of any issues regarding ownership or other title issues. Should it be determined by a final, non-appealable court judgment that the applicant does not have the legal right to use the land as proposed in the application, this approval shall no longer have any force or effect.*
2. *The Private ROW is intended to provide access to a maximum of 2 dwelling units*

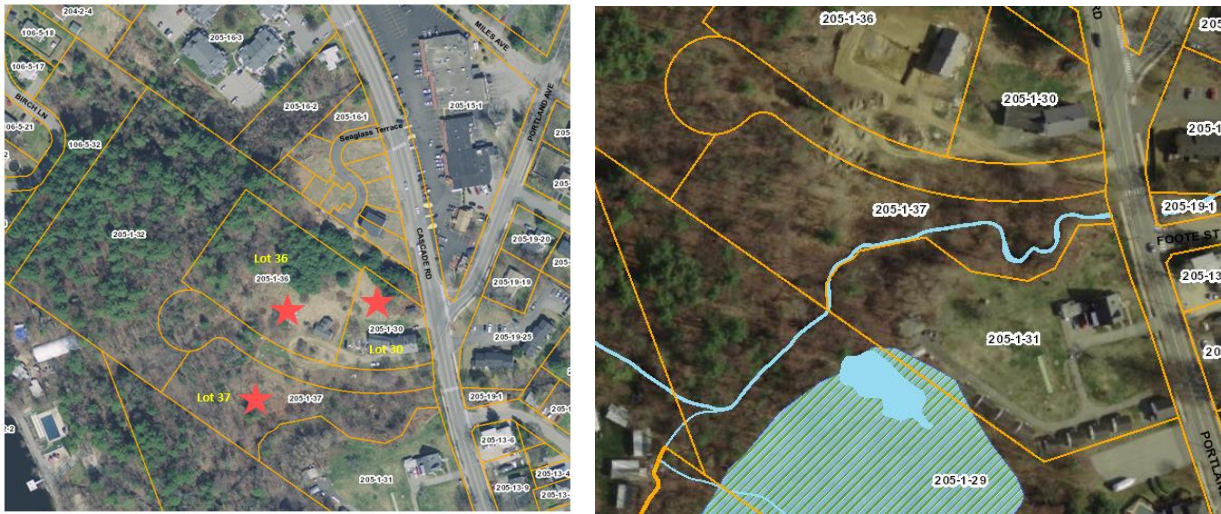
## BACKGROUND (NOVEMBER)

### Introduction –

This proposal was brought before the Planning Board in September but was tabled while the Applicant made a few revisions to the plan. It is for the establishment of a Private Way to serve one lot across from the intersection of Portland Avenue and Cascade Road.

A little background information, a 7 lot division plan was prepared in 2001 for this area. It included a private way to provide legal frontage for the proposed lots. However, the subdivision was never approved by the PB and has since been used to divide the lots without construction of the private way. The lots were divided through family transfers or in a matter that did not trigger subdivision review. The old 7-lot plan has been included in your packets as part of the plan set that was submitted. Two of the lots were dissolved into Paradise Park (205-1-32).

The reason this proposal is before the PB is because the Applicant needs to obtain frontage for lot 37 in order to be able to construct a single-family home and sell the lot.



The proposal was originally presented in September and included a number of land conveyances between the Applicant and the Abutter to realign the Private Way around the wetlands and streams located to the south of the property. In the November submission, the proposed layout has been revised to maintain the existing cul-de-sac shaped parcel which is owned by both the Applicant and the Abutter as “tenancy-in-common.” The Applicant claims that the parcel was mislabeled as a ROW and instead should be looked at as an “access parcel” which is co-owned by the Applicant and the Abutter. A letter from the Applicants Attorney, Eaton Peabody has been included in your packets. What this letter indicates is that the Applicant is a co-owner of the cul-de-sac shaped parcel, therefore, she does not need permission from the Abutter to use or improve that parcel of land.

### Road Design & Department Head Comments–

The proposed Private Way is a 270 linear foot gravel road that will be constructed to the private road standards to provide access to lot 37 and the lot next door #36 that belongs to the Abutter. There is a 2-family home located on Portland Ave that will maintain its existing driveway. These two curb cuts (one belonging to the home on Portland Ave (lot 30) and the other belonging to the Abutter (lot 36) have existed for several years and the Applicant claims that the only additional traffic in this area would be associated with the new single family home proposed for lot 37. Public Works has provided comments which are included in your packet. The DPW Director has stated that he has no problem allowing the curb cuts to stay where they are. If there is any additional development beyond the single family home on lot 37, he would require the curb cut at 58 Portland Ave (lot 30) be eliminated and access for that lot come off of the Private Way.

The gravel road also includes the construction of a hammerhead turnaround which has been configured based on dimensions that were provided by Public Works.

The proposed road will encroach onto lot 30 to avoid the wetlands. The Applicant owns lot 30 and intends to provide an easement to the future owners of lot 37 to use and maintain the road. Maintenance responsibility will not fall onto the Abutter (lot 36). It is intended that all maintenance responsibility will be that of the Applicant until the lot is sold and the responsibility is conveyed to the new homeowner.

The road will include underground electric, cable and telephone conduits from an existing pole on Portland Ave. The original design presented in September showed lot 37 connecting into the existing sewer line. However, the line was looked at with a camera and it appears that it is only a 4" main and is not adequate size to accept the sewer flow from lot 37. Therefore, the applicant will install an onsite septic to treat waste at the site.

Some concerns were discussed about the potential for Paradise Park to access this Private Way. However, according to the Attorney, Paradise Park is not allowed to use this for access purposes or any other purpose, they have access over their own adjacent land.

The Assessing Department also provided comments and asked that the Private Way be named for E911 purposes prior to a ruling by the PB.

A NRPA PBR has been approved by the DEP for the project.

While this is not a requirement for the Private Way proposal, the Applicant provided Net Development Density Calculations for lot 37 and it is a developable lot in the R-1 district, Staff had some concerns that this might not be a developable lot because of the wetlands. The lot requirements in the R-1 district are 20,000 sf/NDD. However, this lot is split between the R-1 and GB-1 districts, the lot requirements in GB-1 are 10,000sf/NDD which are much more lenient but for the Applicant to take advantage of the GB-1 lot requirements, that would require PB review so staff recommended that they address this item now. The response from the applicant is below:

*My original assumption and the reason I didn't calculate it before was, since the lot was an existing lot of record and as long as the building and driveway didn't impact wetlands and were outside the floodplain, that it was developable.*

*The Net Development Density for Lot 37 is:*

*Total Lot Area = 67,537 sf*

*Deduct Wetlands = 44,106 sf*

*Deduct Driveway = 1,044 sf (based on Estimated House layout on Post Dev. Stormwater Map)*

*Deduct Steep Slopes = 0 sf*

*Net Development Density = 22,387 sf > 20,000 sf (R-1 District)*

The Applicant meets the required 20,000sf/NDD for the R-1 District.

#### **Wright Pierce Comments –**

Wright Pierce provided comments for the September meeting. These comments have been included in your packet. All of them have been addressed in the November submission materials.

#### **Miscellaneous Items –**

One thing to point out is that the PBs responsibility is only to rule on the Private Way. However, there is another item that should be considered as it will be outstanding prior to the issuance of Building Permits so staff wanted to bring it to your attention.

- The proposed lot #37 is surrounded by a stream and wetlands. DEP has regulations for siting a septic system within close proximity to a stream. Prior to the issuance of Building Permits, the Applicant will have to have soil analyses completed for the site as well as find a place to site the septic system. While the PB does not have to require soil analyses for the private way, the results may impact the ability to put a septic system on the lot.

#### **RECOMMENDATIONS (NOVEMBER):**

The Planning Board should review the letter provided by the Attorney regarding the use of the parcel designated for the private way as well as the other materials submitted and determine whether or not the application is complete. One item to point out is that the Assessing Department did require that the street be named prior to Planning Board approval. The other miscellaneous item discussed is not the responsibility of the Planning Board in terms of ruling on this application

but is an item you may wish to consider under the purview that the purpose of this application is to create frontage for a single family home.

If the PB decides to determine the application complete, a Site Walk should be scheduled for December 7<sup>th</sup> and a Public Hearing should be scheduled for December 14<sup>th</sup>.

If the PB decides that the application is not complete, a site walk can still be scheduled for December 7<sup>th</sup>, however, the public hearing would have to wait until the January 11<sup>th</sup> meeting. Note: A decision could still be made at the January meeting.

*Recommended Motion: I will make a motion to determine the application complete to convert a business into a ground floor residential unit located at 22 Washington Ave.*

*Recommended Motion: I will make a motion to schedule a site walk for December 7<sup>th</sup> time **TBD** and to schedule a public hearing for December 14<sup>th</sup> at 7:00PM.*

### **BACKGROUND (SEPTEMBER):**

This proposal is for the establishment of a Private Way to serve two lots located across from the intersection of Portland Avenue and Cascade Road. In your packet for September are the following items:

- Private Way Application and Supporting Materials
- Stormwater Management Report
- Draft Declaration of Maintenance of Private Way
- Comments from Wright Pierce

This property was originally part of a 7-lot division plan that was prepared in 2001 which included a private way to provide legal street frontage for the proposed lots. This subdivision was never approved by the Planning Board and has since been used to divide lots without construction of the private way. These lots were divided through family transfers or in a matter that did not trigger subdivision review.



This proposal is before the PB because the Applicant needs to obtain frontage for lot 37 in order to be able to construct a single-family home and sell the lot. The proposed private way is a 265 linear foot gravel road, 16 feet wide, which will follow the existing gravel driveway constructed by the owner of lot 36. A hammerhead turnaround is provided at the end, the dimensions for this were provided by the DPW Director. There will not be a new curb-cut on Cascade Road.

The private way will have underground electric, cable, and telephone conduits from the existing utility pole on Portland Ave. For sewer, the project will connect to the private line that the owner of lot 36 has installed. The Applicant is proposing a potable well instead of making a new connection to the public water main on Portland Ave.

During the design of the road the Applicant ran into some issues with wetland delineation and a stream. Due to the proximity of the wetlands and the floodplain, the private way was slightly redesigned. A stormwater management plan has

been submitted for the new roadway. The private way also requires a PBR from the DEP, this application has been submitted.

A draft copy of the Declaration of Maintenance of Private Way has been included. Planning Staff recommended that the applicant coordinate with the owner of lot 36, Alan Hess and the PB should receive information on this proposal from Alan.

Wright Pierce provided comments on the submission materials. Some of the items that it is recommended the Applicant address include:

- Confirmation of adequate sight distance from the Private Way on Portland Ave. *Planning Staff recommends that the applicant provide this information for the October meeting.*
- Review of setbacks for adjacent driveways and centerline of offset intersecting streets. The proposed private way is approximately 130-feet from the offset intersecting Portland Avenue and is located 20-feet from the existing paved driveway serving the abutting lot 30. *Staff will confirm this information prior to the October meeting.*
- Confirmation of the sewer connection to the proposed Lot 7 including design and construction of the existing private sewer line by Hess. Information on the size of the line and service connections have not been noted on the plan with the exception of a “likely location of a stub.” *Planning Staff recommends that the Applicant provide this information for the October meeting.*

**RECOMMENDATIONS:**

There are a couple of items that were discussed in the Wright Pierce memo that the PB may want to have submitted for the October meeting including sight distance information, review of setbacks for driveways and intersecting streets, and confirmation of the sewer connection.

In addition, communications with the Abutter, Alan Hess have not been included in the submission materials, this is something that the PB may want to see for the October meeting.

These items can be included as a condition for the October submission as part of the Determination of Completeness. If the PB decides to determine the application complete, a site walk should be scheduled for October 5<sup>th</sup> and a public hearing for October 12<sup>th</sup>.

If the PB decides that the application is not complete, a site walk can still be scheduled for October 5<sup>th</sup>, however, the public hearing would have to wait until the November 9<sup>th</sup> meeting. Note: A decision could still be made at the November meeting.



**ITEMS 3 & 8**

**Proposal:** Conditional Use (Shoreland Zoning): Reconstruction and Expansion of a nonconforming structure  
**Action:** Public Hearing; Discussion; Ruling  
**Owner:** Deborah A. McGonagle  
**Location:** 15 Tioga Ave, MBL: 321-23-3

<b>15 TIOGA</b>	<b>Project Status</b>
<i>Application Complete</i>	Completed in November
<i>Site Walk</i>	Scheduled for December
<i>Public Hearing</i>	Scheduled for December
<i>Final Ruling</i>	Recommended for December

There are no new materials for this item in your December packet. At the November meeting, the PB determined the application as complete and scheduled a Site Walk for December 7<sup>th</sup> and a Public Hearing for December 14<sup>th</sup>. The purpose of the December meeting is to hold a site walk and listen to comments from the public. Prior to making a ruling on the proposal, the PB has to go over the responses to the 12 Conditional Use Standards (78-1240) as well as the 8 Standard Conditions in the Shoreland Zone (78-34(e)). These responses have been listed below. There was one comment received from staff about this project and that was that the new structure to be constructed should be built to Town standards with no more than a 20’ wide entrance. This has been included in the recommended motions below as a potential condition should the PB decide to go that route.

**12 Conditional Use Responses (78-1240):**

Before authorizing any conditional use, the planning board shall make written findings certifying that the proposed use is in compliance with the specific requirements governing individual conditional use and demonstrating that the proposed use meets the following standards. The proposed use will...

- 1. Not result in significant hazards to pedestrians or vehicular traffic, on-site or off-site.*

The current structure is a single family residential dwelling. The proposed structure is also a single family residential dwelling representing the same hazards to pedestrians and vehicular traffic on and off site as the existing use.

- 2. Not create or increase any fire hazard.*

The proposed structure will not create or increase any fire hazard beyond those associated with normal residential dwellings. Given the current blighted state of the current property, the proposed structure will reduce the risk of fire on the property.

- 3. Provide adequate off-street parking and loading areas.*

The proposed home will have a garage to provide on-site, off-street parking.

- 4. Not cause water pollution, sedimentation, erosion or contamination of any water supply.*

The proposed structure will reduce soil erosion through the implementation of an appropriate yard. During construction silt fences will be employed to avoid sedimentation and contamination of the water supply. The proposed home will not result in water pollution.

- 5. Not create unhealthful conditions because of smoke, dust or other airborne contaminants.*

The dwelling once completed, will create neither smoke, nor dust, no other airborne contaminants.

- 6. Not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard, or unreasonably restrict access of light and air to neighboring properties.*

The proposed structure will not create odors, fumes, glares, vibrations, or excessive noise. As a home, it will not have “hours of operations.” The final structure will have a reduced likelihood of fire as compared to the current, blighted

dwelling. The home will neither restrict access to the light and/or air to neighboring properties. It will be of similar size and height as existing homes in the immediate surrounding area.

7. *Will provide adequate waste disposal systems for all solid and liquid wastes generated by the use.*

The proposed use will generate solid and liquid waste which will be connected to discharge into the town sewer system.

8. *Will not adversely affect the value of adjacent properties.*

The proposed use will not adversely affect the value of adjacent properties but rather increase the value of homes in the neighboring area by removing dilapidated and lowly valued property and replacing it with a new construction, much more valued home.

9. *Be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.*

The proposed use of the property will be compatible with the surrounding area. The surrounding area is residential neighborhood and the proposed structure is a residential home.

10. *The Applicant's proposal must include any screening or buffering necessary to visually obstruct the subject property from abutting uses or to assure the continued enjoyment of abutting uses.*

No special screening or buffering will be necessary to allow for the continued enjoyment of abutting properties will be increased by the presence of a new construction and well maintained home.

11. *The Applicant's proposal must adequately provide for drainage through and for preservation of existing topography within its location, particularly in minimizing any cut, fill or paving intended.*

During construction, silt fence will be used to preserve the topography of the land. Upon completion of the home, a lawn will be installed to ensure the continued stability of the land. There is no expected need for fill. The current driveway will provide access from the road to the garage. There are no sidewalks on this side of the road. Proper landscaping will capture and contain runoff.

12. *The Applicant must be found to have adequate financial and technical capacity to satisfy the foregoing criteria and to develop and thereafter maintain the proposed project or use in accordance with all applicable requirements.*

Skykam construction has been in business for 4 years with over 18 years of experience and has worked in the State of Maine. With dozens of homes built and sold, the applicant is happy to provide references upon request, as to his financial and technical capacity to complete the improvement to this property.

**Shoreland Zone Responses (78-34(e)) – Standard Conditions in any Shoreland Zone. No permit shall be issued for any structure or activity within any shoreland zone unless all of the following standard conditions are met:**

1. *Will maintain safe and healthful conditions;*

The tearing down and rebuilding will be completed in a safe and healthful manner.

2. *Will not result in water pollution, erosion, or sedimentation to surface waters;*

With the use of silt fences there will be no pollution, erosion or sedimentation to surface waters.

3. *Will adequately provide for the disposal of all wastewater;*

During the tear down and construction there will be a port-o-potty on site for the removal of wastes.

4. *Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;*



Every effort will be made to prevent an adverse impact on spawning grounds, fish, aquatic life, bird, or other wildlife.

5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

Not applicable to this project.

6. Will protect archaeological and historic resources as designated in the comprehensive plan;

There are no issues with archaeological or historic resources impacted by this project.

7. Will avoid problems associated with floodplain development and use; and

This project will follow all floodplain development as dictated.

8. Is in conformance with the provisions of all applicable shoreland zoning standards in division 17 of this chapter.

The project will fall within the exact footprint of the existing foundation.

**RECOMMENDATIONS (DECEMBER):**

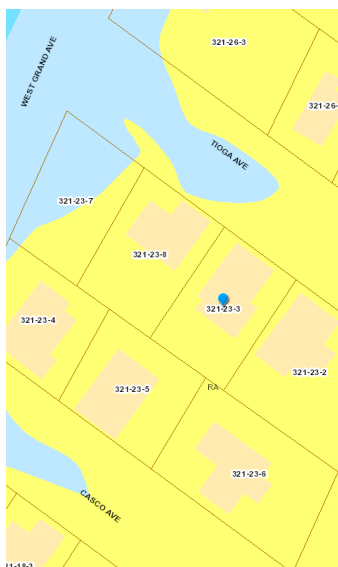
Planning Staff feels all items required have been submitted. The Planning Board should go over the responses to the 12 CU Standards and the 8 Standard Conditions in the Shoreland Zone and make a final ruling.

Recommended Motion (1) Including Condition: *I will make a motion to approve the conditional use, shoreland zoning application to reconstruct a nonconforming structure in the shoreland zone owned by Deborah A. McGonagle and located at 15 Tioga Ave, MBL: 321-23-3 with the following condition: The driveway for the new residential structure at 15 Tioga shall be built to Town standards with no more than a 20' wide entrance.*

Recommended Motion (2) not including the Condition: *I will make a motion to approve the conditional use, shoreland zoning application to reconstruct a nonconforming structure in the shoreland zone owned by Deborah A. McGonagle and located at 15 Tioga Ave, MBL: 321-23-3.*

**BACKGROUND (NOVEMBER):**

This is a proposal for the replacement and expansion of a single-family structure located within the Residential Activity Shoreland Zone. This proposal is similar to the one that was approved last month for 10 Tioga. Again, since the structure at 15 Tioga is within a Shoreland Zone (Residential Activity) and because the structure is nonconforming (it is within the 100' setback) of the Highest Annual Tide, expansion and/or relocation requires Planning Board (PB) review as a Conditional Use and Shoreland Nonconforming Structure Expansion/Relocation. The applicant is not proposing to expand the footprint of the dwelling, however, they are planning on adding a third floor to the structure, increasing the floor area and volume by 14.3%.



A NRPA permit has been submitted and approved by the DEP.

To rule on this proposal, the Planning Board has a few considerations:

- This proposal must demonstrate compliance with the 12 Conditional Use Standards (78-1240). Responses to each of these have been provided in the application materials submitted for November.
- This proposal must also demonstrate compliance with the 8 standard conditions in the Shoreland Zone (78-34(e)). Responses to each have been provided in the application materials submitted for November.
- Because the structure is nonconforming, the existing floor area and volume cannot increase by more than 30% (78-1181(c)(1)). Floor area is the square footage of all floors, porches and decks. Volume is the space within a roof and fixed exterior walls. Calculations for floor area and volume have been included in the application materials for November.
- Relocation of the structure away from the “water” (Highest Annual Tide) to the greatest extent possible (78-1181(c)(2)). Shoreland standards seek to make nonconforming structures as conforming as possible so one standard requires nonconforming structures to be moved as far away from the water as possible. The Applicant has indicated that their intent is to rebuild the structure in exactly the same location and footprint of the existing structure and utilize the existing block patio for outdoor living space. Since the property is nonconforming in all aspects in relation to the property setbacks and to the water setbacks, any movement of the existing footprint still makes it nonconforming to all setbacks.
- A Plot Plan is required for proposals in the Shoreland Zone. You’ll note in your packet there is an existing conditions survey and a proposed 3<sup>rd</sup> story survey. Planning Staff believes that this suffices as a Plot Plan because the footprint of the structure is not changing.
- An Erosion Control and Sedimentation Plan is required for all projects in the Shoreland Zone (78-1215). Since the footprint of the existing and proposed structure is not changing, this does not have to be particularly detailed but should list the type of BMPs to be used on the site. This has been included in your packets for November.



**Comments from Staff:**

*Town Manager:*

With respect to the application for a new residential structure at 15 Tioga the driveway should be built to Town standards with no more than a 20' wide entrance.

**RECOMMENDATIONS:** At the November meeting there are three primary items the PB has to focus on: Determining whether or not the application is complete, scheduling the site walk, and scheduling the public hearing. There was also a comment received from the Town Manager that the PB may want to require be shown on the materials for December. *Recommended Motion: I will make a motion to determine the application complete to reconstruct a nonconforming structure in the shoreland zone at 15 Tioga Ave.*

*Recommended Motion: I will make a motion to schedule a site walk for November 2<sup>nd</sup> time TBD and to schedule a public hearing for November 9<sup>th</sup> at 7:00PM.*

Before making a ruling on the application, the PB should also determine if the proposal conforms to the 12 Conditional Use standards and the 8 Standard Conditions in the Shoreland Zone. These have been included in the submission materials for November.

**ITEMS 4 & 9**

**Proposal:** Conditional Use: Accessory Dwelling Unit  
**Action:** Public Hearing; Discussion; Ruling  
**Owner:** Peter M. Gammo and Judith Balzano  
**Location:** 91 Union Ave, MBL: 314-15-3

<u>Accessory Dwelling Unit</u>	<u>Project Status</u>
<i>Application Complete</i>	Completed November
<i>Site Walk</i>	Scheduled December
<i>Public Hearing</i>	Scheduled December
<i>Ruling</i>	Scheduled December

For the PB’s December meeting this proposal is scheduled for a public hearing and final ruling. At the November meeting, the PB determined the application complete subject to:

1. Revised floor plan showing the ADU location, ADU floor area.
2. Revised Conditional Use Review Criteria responses by removing two-family and replacing with accessory dwelling unit.

The applicant submitted the requested documentation which is in the PB’s December packet. Staff feels this info helps establish conformance with applicable ADU standards and Conditional Use criteria; therefore, recommends the PB approve this proposal. Please remember to make a finding on the ADU standards and CU criteria (both in the Dec packet).

**RECOMMENDATIONS:**

Staff recommends the PB motion to approve Peter M. Gammo and Judith Balzano proposal to establish an Accessory Dwelling Unit at 91 Union Ave, MBL 314-15-3.

**BACKGROUND (NOVEMBER MEETING)**

This proposal is for the conversion of existing space into an Accessory Dwelling Unit. Accessory Dwelling Units are permissible as long as they meet the Conditional Use Accessory Dwelling standards and Conditional Use Review Criteria. The purpose of Accessory Dwelling Units is to provide a diversity of housing for residents while protecting the single-family character of residential neighborhoods.

Regarding this proposals conformance with the 5 Accessory Dwelling Unit (ADU) Standards:

1. ADU accessed via the living area of the primary structure and any proposed additions designed to be subordinate in scale and mass and compatible with style of main structure. The ADU will use existing space on the 1<sup>st</sup> floor. The applicant’s submission appears to show a shared main entrance. Based on the submitted plans, the design is compatible with the main structure.
2. ADU to have at least 500 sq. ft. but cannot exceed 50% of the floor area of the main dwelling unit. The applicant’s response states it will meet this standard; although, the floor plan does not indicate floor area. Assessing cards show 1,760 sq. ft. on the first floor and 1,760 sq. ft. on the second. It appears the ADU will have no problem exceeding the 500 sq. ft. standard but we need the ADU’s total floor area in order to determine the 50% standard. **NOTE: a new submission shows the ADU has 1,530 sq. ft. and does not exceed 50% of the main unit floor area.**
3. ADU and main dwelling unit to share single electrical service. The applicant’s submission indicates the dwelling unit is served by a single electrical service. We just need to ensure the main dwelling unit and ADU are served by the same single service.
4. One ADU per lot. No ADU exists and only one is proposed.
5. ADU not permitted for any nonconforming structure or use. The existing structure and use is conforming.

Regarding the proposals conformance with the 12 Conditional Use Review Criteria, the applicant does a good job responding to the criteria. One problem is the responses mention two-family, not accessory dwelling unit. As we know, a two-family and ADU are two different land use classifications. ADU's are typically proposed when a parcel does not meet the minimum lot area to allow for two-family because ADU's do not need to meet the minimum area requirements. ADU's are not a traditional two-family because ADU's must meet certain requirements (see above) that two-families do not have. If this proposal was a two-family it would not be permissible because the parcel does not meet the minimum area requirement. The applicants Conditional Use responses should be revised to replace two-family with ADU.

**RECOMMENDATIONS (NOV):**

Staff recommends the PB motion to determine the application as complete subject to staff receiving the following on or before 27 November:

1. Revised floor plan showing the ADU location, ADU floor area. **NOTE: no longer needed.**
2. Revised Conditional Use Review Criteria responses by removing two-family and replacing with accessory dwelling unit.

We also recommend scheduling a Site Walk (7 Dec) and Public Hearing (14 Dec).

**ITEMS 5 & 10**

**Proposal:** Conditional Use/Appeals from restrictions on nonconforming uses: Convert business into ground floor residential unit  
**Action:** Public Hearing; Discussion; Ruling  
**Owner:** James C. Timmins  
**Location:** 22 Washington Ave, MBL: 308-2-1

<b><u>CONDITIONAL USE</u></b>	<b><u>Project Status</u></b>
<i>Application Complete</i>	Completed in November
<i>Site Walk</i>	Scheduled for December
<i>Public Hearing</i>	Scheduled for December
<i>Final Ruling</i>	Recommended for December

There are no new materials for this item in your December packet. At the November meeting, the PB determined the application as complete and scheduled a Site Walk for December 7<sup>th</sup> and a Public Hearing for December 14<sup>th</sup>. The purpose of the December meeting is to hold a site walk and listen to comments from the public. Prior to making a ruling on the proposal, the PB has to go over the responses to the 12 Conditional Use Standards (78-1240) as well as the Nonconforming Use Standards (78-180). These responses have been listed below. This has been included in the recommended motions below.

**12 Conditional Use Responses (78-1240):**

Before authorizing any conditional use, the planning board shall make written findings certifying that the proposed use is in compliance with the specific requirements governing individual conditional use and demonstrating that the proposed use meets the following standards. The proposed use will...

1. *Not result in significant hazards to pedestrians or vehicular traffic, on-site or off-site.*

No. Because it is an interior space that is being remodeled from a commercial unit to a residential studio efficiency apartment. There is ample parking in the back of the building and the addition of one more resident will not negatively affect the neighborhood.

2. *Not create or increase any fire hazard.*

No. As a residential occupied space, it will comply with all fire codes, smoke/carbon dioxide detectors and will be less of a hazard than an empty, unused space.

3. *Provide adequate off-street parking and loading areas.*

Yes. There are 9 available parking spaces. The removal of the back building several years ago, increased the parking by 4 spaces.

4. *Not cause water pollution, sedimentation, erosion or contamination of any water supply.*

No. This is an interior remodel of an existing structure that is already hooked up to the town sewer, has running water, an existing bathroom, and existing plumbing for the kitchen.

5. *Not create unhealthful conditions because of smoke, dust or other airborne contaminants.*

No. The remodel is happening inside the existing space and will become a quiet single family efficiency residence.

6. *Not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard, or unreasonably restrict access of light and air to neighboring properties.*

No. The proposed remodel will take approx...2 weeks and will become a quiet single family efficiency residence.

7. *Will provide adequate waste disposal systems for all solid and liquid wastes generated by the use.*

Yes. The unit is already using the Town's sewer and plumbing systems. It has 2 bathrooms, and running water. It will have 1 bathroom and a small kitchen after the remodel.

8. *Will not adversely affect the value of adjacent properties.*

No. It will have a positive affect and increase the value of the neighborhood since we are replacing a vacant space and creating a useful, needed, clean well-maintained living space.

9. *Be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.*

Yes. All the other buildings except for one have converted their first floor commercial units into first floor residences spaces. They are all rented and thriving as the town needs cleaner, affordable housing. Our first floor apartment will fit right in.

10. *The Applicant's proposal must include any screening or buffering necessary to visually obstruct the subject property from abutting uses or to assure the continued enjoyment of abutting uses.*

Not Applicable. All changes we are proposing to make will take place in the interior of the building.

11. *The Applicant's proposal must adequately provide for drainage through and for preservation of existing topography within its location, particularly in minimizing any cut, fill or paving intended.*

No changes to existing drainage or existing topography as the space is already plumbed and hooked up to the Town's sewer and drainage systems. No new paving needed.

12. *The Applicant must be found to have adequate financial and technical capacity to satisfy the foregoing criteria and to develop and thereafter maintain the proposed project or use in accordance with all applicable requirements.*

Yes. The proposed remodel is expected to cost between \$15,000 and \$20,000 as estimated by Paul Provencher General Contractor, who will be doing the work. We have adequate funds for the project and a prospective tenant all lined up.

#### **Nonconforming Use Standards (78-180):**

Notwithstanding sections 78-177(1) through (3) and 78-179(b) through (d), a nonconforming use of land or a nonconforming use of a structure may be enlarged, increased, extended, moved to another portion of the lot or parcel, reconstructed, structurally altered, resumed after cessation for a period of more than two years, but less than ten years, or converted to another nonconforming use on the lot which it occupied on the effective date of the ordinance from which this chapter derives or amendment of this chapter, upon approval of the planning board as conditional use pursuant to article VII of this chapter. The planning board may not approve any such enlargement, increase, extension, movement, construction, alteration, resumption or conversion, unless it finds that the impact and effects of this enlargement, expansion, extension, resumption or conversion to another nonconforming use on existing uses in the neighborhood will not be substantially different from or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use.

#### **Applicants Response:**

The building located at 22 Washington Avenue has long been a central part of the community. It has housed many businesses including a travel agency and a hair salon, and been a stable residence over the years. The neighborhood has slowly transformed to a mostly residential area, largely because of the redirection of traffic to Saco Ave which is now the main thoroughfare to the heart of Town. Of the five buildings on the north side of Washington Ave from Central Park Ave towards Union Ave, only one has an occupied commercial tenant, a laundromat. Where once 7 thriving business were



situated on the first floors of the apartment buildings, only one business now remains and it is a self-service establishment. All of the other properties have residences on the first floor, and they have tenants living there.

The building has long been owned by the Timmins' family who have provided tenants with a clean, safe, and well-maintained property. The decrease in traffic has made it nearly impossible for the businesses that tried to make a go of it over the years to survive. The commercial space has been vacant for many years now, which does nothing to help the neighborhood or the value of its properties. Several years ago, Mr. Timmins had a building tore down that resided on the back of the apartment bldg. on Central Park Ave. and replaced it with additional paved parking to provide ample space for all the tenants should he be granted the ability to turn the commercial space into a residential. In that respect, the property, as a whole, always had 4 residential spaces and one commercial. The property will now still contain 4 residential spaces, but not a commercial space.

The façade of the property will have little change. The door to the residence opens to an alcove that is owned by the Timmins'. The rear door will have easy access to the parking area behind the building. The majority of the change will occur inside the 900 square foot living space creating a pleasant and clean year-round rental apartment on Washington Ave restoring the property to its original 4 residential units.

**RECOMMENDATION (DECEMBER):**

Planning Staff feels that all items required have been submitted. The PB should go over the responses listed above to the 12 CU Standards and the response to the Nonconforming Use Standard and make a final ruling.

Recommended Motion: *I will make a motion to approve the conditional use, appeals from restrictions on nonconforming uses to convert a business into a ground floor residential unit owned by James C. Timmins and located at 22 Washington Ave, MBL: 308-2-1.*

**BACKGROUND (NOVEMBER):**

This proposal is to convert a 900 square foot commercial space into a residential apartment at 22 Washington Avenue. Currently, the building is set up for three residential units and a commercial unit that was last used in 2008.

This proposal has a couple of different moving components. First, multifamily dwelling units are permissible in the Neighborhood Commercial-3 (NC-3) District, however, not on the sidewalk level. Having said this, it appears that a dwelling unit on the first floor was legally established in the same building adjacent to the area in question. It could be stated that the legal establishment of this dwelling unit on the first floor created a nonconforming use of the buildings first floor. Due to the nonconforming condition, it appears the owner has the ability to request approval for an increase of the nonconformity under *Sec. 78-180* of the ordinance.

Our thoughts on this are that since the first floor itself is already nonconforming, the Applicant has the ability to apply for a Conditional Use, Appeals from Restrictions on Nonconforming Uses through the Planning Board under *78-180*. Section *78-180* allows for appeals from the restrictions on nonconforming uses granted the use will not be substantially different from or greater than the impacts and effects of the nonconforming use before the proposed enlargement, expansion, resumption, or conversion to another nonconforming use.

***Sec. 78-180. - Appeals from restrictions on nonconforming uses.***

*Notwithstanding sections 78-177(1) through (3) and 78-179(b) through (d), a nonconforming use of land or a nonconforming use of a structure may be enlarged, **increased**, extended, moved to another portion of the lot or parcel, reconstructed, structurally altered, resumed after cessation for a period of more than two years, but less than ten years, or converted to another nonconforming use on the lot which it occupied on the effective date of the ordinance from which this chapter derives or amendment of this chapter, upon approval of the planning board as conditional use pursuant to article VII of this chapter. The planning board may not approve any such enlargement, increase, extension, movement, construction, alteration, resumption or conversion, unless it finds that the impact and effects of this enlargement, expansion, extension, resumption or conversion to another nonconforming use on existing uses in the neighborhood will not be substantially different from or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use.*



Planning Staff recommended that the Applicant submit the following materials for the Planning Board to review:

1. Conditional Use Application and Subsequent Materials. These have been included in your packet for November.
2. Responses to the 12 Conditional Use Standards (Sec. 78-1240). These have been included in your packet for November.
3. Responses to the Nonconforming Use Standard (Sec. 78-180). These have been included in your packet for November.
4. Current layout vs. proposed layout of the interior of the building which is included in your packet for November.

**RECOMMENDATIONS:**

At the November meeting, there are three primary items the PB has to focus on: Determining whether or not the application is complete, scheduling the site walk, and scheduling the public hearing.

*Recommended Motion: I will make a motion to determine the application complete to convert a business into a ground floor residential unit located at 22 Washington Ave.*

*Recommended Motion: I will make a motion to schedule a site walk for December 7<sup>th</sup> time **TBD** and to schedule a public hearing for December 14<sup>th</sup> at 7:00PM.*



**ITEM 11**

**Proposal:** Subdivision Amendment: Amend Sandy Meadows Plan: revise lot lines to lots 5-8, 18, 21, 22; revised building locations; revised parking  
**Action:** Discussion; Ruling  
**Owner:** Lacosta Development, LLC  
**Location:** Lacosta Dr., Sandy Meadows, MBL: 105A-1-A

<u>Sandy Meadows Amendment</u>	<u>Project Status</u>
<i>Sketch Plan</i>	Not Required
<i>Application Complete</i>	Not Required
<i>Preliminary Plan</i>	Not Required
<i>Site Walk</i>	Not Required
<i>Public Hearing</i>	Not Required
<i>Ruling</i>	Pending

This proposal is before the PB at our December meeting as for the purpose of following-up on PB requests made at the November meeting. Also, the owner is hoping to secure approval of the subdivision amendment. The PB requested:

- Clarify title on the plan to say either “amended plan”, “2<sup>nd</sup> amendment” or some kind of language that would make it easy to identify which plan this is.
- Address Note 13 on the Sandy Meadows amended subdivision plan. The PB recommended the owner or agent work with planning and public works to comply with Note 13. Compliance should include a relocated sidewalk that extends to Cascade Rd. Note 13 states: The applicant shall work with the Old Orchard Beach Public Works Department and Town Planner to relocate the 5’ wide bituminous walkway as required. The applicant shall work with the Maine DOT if necessary.
- Depending on the result of addressing the sidewalk issue in Note 13, creating a buffer along Ross Rd. from Cascade to Wild Dunes Way.

As of 6 December, staff has not received another plan or other documentation from the owner or their rep that addresses the PB’s requests. Because we have not received additional info, we cannot provide a recommendation at this time.

Although, we have a few follow-up comments:

- Regarding the Note 13 matter, the owner’s rep (BH2M) discussed this with planning and public works. Public works provided a pdf (in Dec packet) that shows a recommended sidewalk location. PW states this proposed sidewalk “requires that existing drainage is protected or improved. Also, curbing is installed where it is needed or makes sense.” BH2M asked if showing an easement reserving land for a sidewalk to be constructed at some future date would be acceptable. It was staff’s opinion this is not acceptable because simply showing an easement does not guarantee the owner will finance and construct the sidewalk- the HOA and/or town could be left with costs and construction. Also, this would not address PW’s comments- concerning protection or improvement of drainage and curbing installation. It’s staff’s opinion that to ensure compliance with Note 13 and the PB’s requests, plans should be amended to show the relocated sidewalk, this should include any engineering necessary to address PW’s comments, and all costs associated with construction, etc. of the relocated sidewalk should be secured in an escrow or letter of credit before the PB approves the amendment. An important note- staff spoke to Stephanie Hubbard (WP Engineer) about the proposed sidewalk extension to Ross Rd. and she made some interesting points that should be considered before the PB decides the sidewalk location should be changed. First, Should we extend a sidewalk that dead ends at one of the more dangerous intersection (Ross and Cascade) in town. There are no nearby or planned sidewalks in this area. Second, a portion of the new sidewalk location will likely interfere with drainage and access easements. So, should the sidewalk location be altered to extend to Ross Rd? One option is the sidewalk is constructed as shown on the current plan and an easement is laid out from a point of the sidewalk as shown to Ross Rd.
- Regarding the buffer, the PB should determine if a buffer in addition to the sidewalk is required. If the sole purpose is to prevent back door access to properties adjacent to Ross Rd, a sidewalk with curbing should accomplish this. If its purpose also includes beautification, the PB should provide recommendations. Maybe a split rail fence adjacent to the sidewalk.

## **RECOMMENDATIONS:**

Staff can't recommend approval or denial of the amendment at this time because we have nothing new to review. Moving forward, the PB should discuss:

- The sidewalk- Is public works plan acceptable? Can BH2M show only the sidewalk easement or do we need more information? Should an escrow or letter of credit be secured before the PB approves the amendment? Who should be responsible for costs and construction? Should a sidewalk even be built to Ross Rd?
- The buffer- If the sidewalk is constructed is a buffer necessary? If the PB feels a buffer is required what should it be?

## **BACKGROUND (NOVEMBER MEETING)**

This proposal was tabled at the October meeting, as requested by the project owner. The reason why it was tabled was because we did not receive previous approval vs. proposed amendment impervious surface calcs and the development owner did not secure authorization or permissions from the property owners in Sandy Meadows who would be affected by this proposal.

Regarding impervious surface calcs, BH2M emailed the following:

Wanted to touch base with the impervious calcs for Sandy Meadows. With the changes to parking, walk ways and exact building footprints the impervious number was reduced from the original approved plans. They look like this.

2012 approval – 98,902 s.f.

Amended plan – 86,262 s.f.

Regarding securing authorization/permission from affected property owners, the development owner is working on this. I spoke to the owner and he has secured some but not all. At the time of writing this memo we have not received info addressing this but expect we will on or before 9 Nov.

## **DEPARTMENT COMMENTS**

Town Manager

With respect to the requested amendments to the Sandy Meadows subdivision plan the applicant should be required to provide either curbing along Ross Road between Wild Dunes Way and Cascade Road, or provide a vegetative buffer along this section of Ross Road (perhaps arbor vitae). The units that are constructed in proximity to Ross Road have daylight basement entrances. There has been some resident parking occurring from Ross Road to these basement entrances. My preference is for the vegetative buffer. It would be effective in preventing vehicular access and would also provide screening between the road and the residences.

## **RECOMMENDATIONS (NOV):**

Staff is comfortable with existing vs. proposed impervious surface calcs as it has been reduced by 12,000 sq. ft. There is concern about residents accessing parking from Ross Rd., which is not permissible. We recommend a condition be attached so this access is prevented. If the development owner submits info concerning authorization/permission and the PB feels it's acceptable, staff recommends the PB motion to conditionally approve the Sandy Meadows Subdivision Amendment representing the following changes: lot boundary line revisions for lots 5 – 8, 18, 19, 21, 22; as built and revised building locations; as-built and revised parking space locations and assignments; addition of driveways for lots 6, 10 and 22. Condition: Install a vegetative buffer or curbing along Ross Rd between Wild Dunes Way and Cascade Rd in a sufficient manner that prevents access to the lots in Sandy Meadows.

## **BACKGROUND (OCT MEETING)**

This proposal includes: lot line revisions; as built and revised building locations; as-built and revised parking space locations and assignments; addition of driveways. Overall this plan is a step in the right direction as it offers us the ability to more accurately see where final construction exists and where proposed construction will be built.

According to the applicant, the proposed changes to lot lines are associated with lots 5-8, 18, 21, and 22. After review of the plan, lot 19 is changing too. I checked with the assessor and Lacosta does not own lots 21 and 22 so we must ask the question- can Lacosta Development LLC change these lot lines without the owner's permission?

The proposed amendment changes common area, too. Changes to lots 5, 7 and 8 lot lines cause changes to the common area. We assume each lot owner has some kind of ownership of the common area. Can Lacosta Development LLC change common area without authorization from all owners in Sandy Meadows?

Impervious surface. We expect the proposed revisions will change the total impervious surface area. Did the change require any modifications to stormwater? If so, what are the changes? If not, why? Did it require DEP approval?

At the time of writing this memo we do not have answers to the permission/authorization questions. This should be resolved before the PB approves the proposed amendment. Also, will changes to impervious surface area or location alter the stormwater plan and/or require DEP approval? This is another question that should be answered. Finally, the note in bold at the bottom of the plan, below Lot Areas ("This plan is...Page 44") should be removed or amended to reflect the new revision. Once the ownership and impervious surface matters are resolved to the PB's satisfaction, staff expects to recommend approval of the amendment.

**RECOMMENDATIONS (OCT):**

Our recommendation depends on the applicant's response and PB's satisfaction to the permission/authorization and impervious surface questions. At this time, staff feels these matters are not resolved recommend the PB motion to table pending resolution. It's possible the owner or applicant has knowledge and/or documentation that can resolve the outstanding matters to the PB's satisfaction. If this is the case staff recommends the PB motion to approve the Sandy Meadows Subdivision Amendment representing the following changes: lot boundary line revisions for lots 5 – 8, 18, 19, 21, 22; as built and revised building locations; as-built and revised parking space locations and assignments; addition of driveways for lots 6, 10 and 22.

## **ITEM 12**

**Proposal:** Site Plan Review: Additions and new construction including enclosed stairway, elevator, lobby, elevated deck/walkway  
**Action:** Determination of Completeness; Schedule Site Walk and Public Hearing  
**Owner:** Lafayette Old Orchard, LLC  
**Location:** 87 West Grand Ave, MBL: 313-5-1, 4, 5

Waves is proposing renovation and enclosure of an existing staircase (attached to building G); construction of a new building and renovation of an existing building that will house elevators, lobby, storage/mechanical rooms between buildings G and Horizon; 2 elevated walkways attaching buildings; concrete walkway attached to building E; remove existing pavement and replacing. The primary purpose of the project is safety and people access. Although this may seem like a lot of work it amounts to only about 2,800 new sq. ft. It's a pretty straight forward proposal, too, and already received quite a bit of review including DRC (10.2017) and Administrative Site Plan (11.2017) approvals as well as DEP ok. Admin Site Plan approved the enclosed stairway and elevator/lobby foundations. The reason we could not approve beyond the foundations is due to Admin review cut-off at 1,000 sq. ft.

Several waivers of the plan requirements (78-215 c) are requested. The PB has authority to grant plan waivers if the PB determines the item associated with the waiver will not yield any useful info given the nature and scope of the proposed activity or the existing character of the site. The waiver requests are discussed on the first page of the applicant's submission. A few comments on the waivers:

- 3.k: location of utilities, hydrants, waste receptacles, etc. The applicant states not all utilities are shown and they do not intend to change the services. As long as the plan shows utilities, hydrants, etc. impacted by the proposal or are new, we can support this waiver.
- 3. l: landscaping. Landscaping is not proposed and we believe is not necessary; therefore, we support this waiver.
- 3. m: Drainage facilities, drainage report. It appears all work will be over existing impervious surface and will not impact drainage systems. Surface locations (e.g. elevated walkways, roofs) and materials (e.g., bituminous vs asphalt shingles) are changing and although it may be minor, we'd like to know more regarding how drainage associated with these changes has been accounted for and designed. Staff needs more info before we can support this waiver. Something to note- DEP considered this a minor expansion under NRPA and does not need a permit.
- 3.n: Location, specs, photometric plan of exterior lighting. The applicant states there will be no change to exterior lighting but new existing lighting is proposed. The lighting is minor and we don't expect spillover to adjacent, non-Waves properties so we believe a specialized lighting plan is not necessary. Although, we would like lighting specs and the approx. area the lights glare will impact before we can support this waiver.
- 3.o: erosion control plan. We are comfortable with this waiver request as long as excavated areas are properly stabilized.

This proposal requires conformance with the Site Plan Criteria for Approval standards (78-216 d 1-9). The applicant provides responses to the criteria but we believe these responses should provide more detail. For example, criteria #2 is associated with a project securing applicable local, state and federal approvals. The applicant states the project will receive a DEP permit. The standard should be amended to indicate the proposal secured Admin Site Plan approval for construction of the enclosed stair and lobby/elevator foundations. DRC approval secured for exterior building design. DEP was contacted and stated no permit was required- the project can be complete under the NRPA minor expansion standard.

The submitted plan set shows all improvements but the site plan (C1.1) does not show all proposed construction. The elevated walkways between Buildings F and G are not shown. The site plan should accurately show all proposed construction- this is the primary plan folks will look to see what was approved.

### **RECOMMENDATIONS:**

Staff believes there are a few outstanding items that need to be addressed. The items should be easily resolved and are not major enough to warrant a delay in the PB's review. We recommend the PB motion to determine the application complete subject to receiving the following information as part of the applicants next submission:

1. Insure waiver request justifications are accurate and provide further information for 3.m. and 3.n.
2. Provide more detailed Site Plan Review Criteria responses.

3. Amend site plan to accurately show all construction associated with this proposal.

We request the PB schedule a site walk on 4 January and public hearing on 11 January.