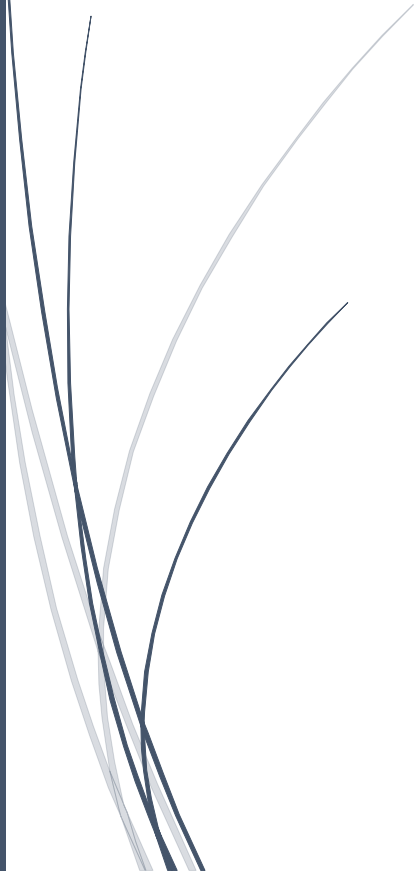


OLD ORCHARD BEACH
January 2019
PLANNING BOARD
MEMO



January 2019 Planning Board Memo: Table of Contents

Regular Business

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ITEM 1

Proposal: Minor Subdivision: 2 Duplex Dwellings with a Total of 4 Residential Units
Action: Determination of Completeness; Schedule Site Walk; Schedule Public Hearing
Owner: Donald Bouchard
Location: 189 Saco Avenue, MBL: 208-3-12

| Minor subdivision: 189 Saco | Project Status |
|-----------------------------|--|
| Sketch Plan | N/A |
| Preliminary Plan | Submitted in August 2018, January 2019 |
| Application Complete | Pending |
| Site Walk | Pending |
| Public Hearing | Pending |
| Preliminary Plan Vote | Pending |
| Final Review | Pending |

The Planning Board last saw this proposal back in August of 2018. It is for the construction of 2 duplexes on the corner of Macarthur Ave and Saco Ave. Below are the plans for the original vs. new proposal. The big difference is the addition of a t-turnaround for the duplex that egress onto Saco Avenue.

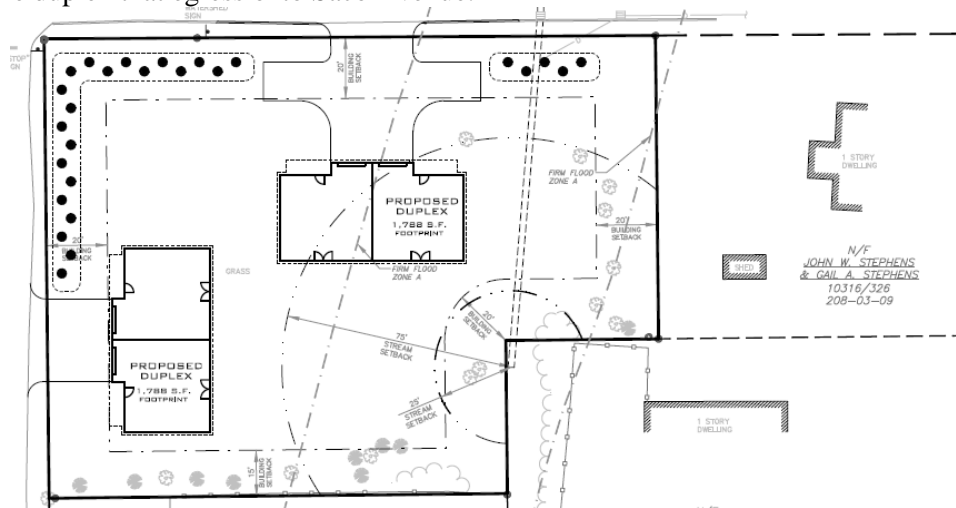


Figure 1: New Proposal (January 2019)

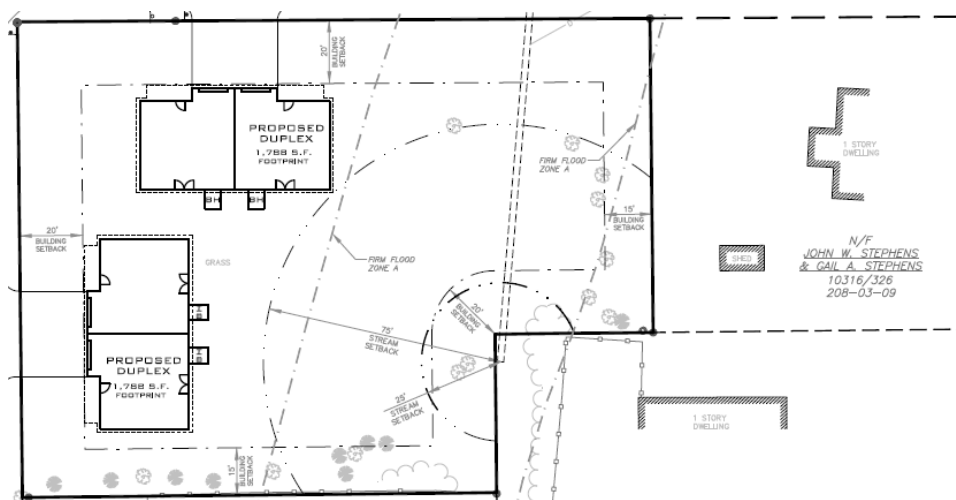


Figure 2: Original Proposal (August 2018)

Waivers

Important to note up front, there is one waiver request associated with this proposal:

- *78-1467: For single and two-family residences, widths of driveways at the street as measured 20 feet from the curb-line shall not be less than 12 feet in width, with a maximum right-of-way clearance of 15 feet to accommodate emergency vehicle access. Maximum driveway width at the curblines shall not exceed 20 feet. A 27' driveway entrance is proposed as it allows for a shared curb cut and eliminates the need for an additional access along both Saco Avenue and Macarthur Avenue. It also allows for a reduction in impervious surface on site via driveway width and building cover, placing the garage entrances closer together on the building design.*

Sec. 74-34 of the Ordinance gets into the circumstances in which the PB can grant waivers, Staff thought it would be important to point out for the board:

- (a) Where the planning board finds that extraordinary and unnecessary hardships may result from strict compliance with this chapter or where there are special circumstances of a particular plan, it may vary this chapter so that substantial justice may be done and the public interest secured, provided that such variations will not have the effect of nullifying the intent and purpose of the official map, the comprehensive plan, or the zoning ordinance in chapter 78, where such exist.
- (b) Where the planning board finds that, due to special circumstances of a particular plan, the provision of certain required improvements is not requisite in the interest of public health, safety, and general welfare or is inappropriate because of inadequate or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements, subject to appropriate conditions.
- (c) In granting variances and modifications, the planning board shall require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified.

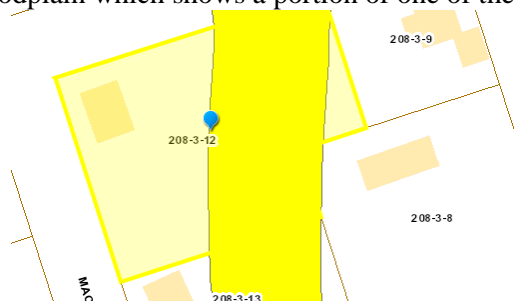
At the August meeting, there was a concern regarding parking. Sec. 78-806(a)(1) states no parking shall be permitted in the front setback yard. At the time both duplexes showed driveways in the front setback. In the 2019 update, it appears the Duplex fronting Saco Avenue have removed parking in the front setback, however, the duplex on Macarthur Avenue is still showing parking in that front setback. We are not aware of a driveway exemption or waiver. Planning Staff has recommended the Applicant apply for a Variance through the ZBA.

At the August meeting, Planning Staff requested additional clarification on the exterior lighting. The ordinance says it cannot exceed the height of the building or 14 feet and must be shielded to prevent point source glare. The Applicant has indicated in the 2019 materials that the lighting they propose will meet this standard.

There was a concern regarding the proposed buffer location and sight distance. In the 2019 submission, they have incorporated an alternating pattern of arborvitaes and pushed them off the property line by 8 feet to alleviate this concern.

A Permit by Rule (PBR) was approved by DEP for work adjacent to the stream and included the updated building and pond locations.

A point of discussion is the current floodplain which shows a portion of one of the duplexes in the A Floodzone.



Additional standards apply to the building, being located in the floodplain, however, it appears the standards will apply during construction. The Planning Board needs to be aware of one section in our ordinance (listed below):

Sec. 70-35. - Review of subdivision and development proposals.

The planning board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on five or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- (1) All such proposals are consistent with the need to minimize flood damage;
- (2) All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages;
- (3) Adequate drainage is provided so as to reduce exposure to flood hazards;
- (4) All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency;
- (5) Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a special flood hazard area, are to be constructed in accordance with section 70-32 of this article. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the planning board or local reviewing authority as part of the approval process.

Planning Staff has specifically highlighted #5 which pertains to a condition of plan approval. Planning Staff will draft a condition for the board that satisfies this standard before the next meeting. We recommend the Applicant provide a response to each of these five standards demonstrating how they comply.

Wright Pierce has provided updated comments for the 2019 meeting. There were some concerns brought up regarding the sewer layout and connections, runoff from Saco and Macarthur, existing easement over the 36-inch pipe and the driveway layout. Staff discussed these at the Development Review meeting, further coordination is recommended between the Developer and Public Works.

There is a culvert/drainage easement associated with the 36-inch culvert. No details were provided on the location and width of the easement. WP says the Town should consider a 20-foot to 30-foot easement to formalize for future repair and replacement. This culvert is slated for replacement in the next few years. In the Applicants response they say there is no mention of a defined width or other details to locate the easement other than the existing underground pipe. Sec. 74-311(g) of the ordinance says: Where open ditches, channels, streams, or natural drainage courses are used either to collect or discharge stormwater, adequately sized perpetual easements shall be provided, and appropriate erosion control measures taken. No stormwater will be permitted to drain across a street or across an intersection. Planning Staff recommends a 30 foot easement be formalized to upgrade the culvert.

Note 7 on the Boundary Survey says “Restrictions include limitations on the type and number of buildings for each lot.” The Applicant provided a response from their attorney stating that the restriction on the property should not be an issue in regards to this project. This is similar to another project the Planning Board saw where our Town Attorney determined that the Planning Board does not have the authority to interpret and enforce a private deed covenant. The Applicant has provided right, title and interest in the property.

RECOMMENDATIONS:

There are a few items for the Planning Board to consider this month:

1. There is 1 waiver request associated with the 27 foot driveway width (Ordinance only allows for 20 feet).
2. The Applicant will need to obtain a variance for parking in the front setback on Macarthur.
3. No lighting has been proposed, the ordinance requires that this meet a certain standard. Should it be shown on the plan?
4. Is the PB all set with the alternating arborvitaes 8 feet off of the property line?
5. The PB will need to add a condition for one of the duplexes located in the floodplain.
6. Responses from the Applicant on the five floodplain standards.
7. The Applicant will need to address the outstanding Wright Pierce comments.
8. Formalization of a 30 foot easement to upgrade the 36-inch culvert adjacent to the property.
9. Planning Staff recommends the Applicant provide updated responses to the 14 Subdivision Criteria.
10. Planning Staff recommends the Applicant show snow storage locations on the plan for the turnaround area.

If the Planning Board is okay with the proposal as presented, the board can make a determination of completeness and schedule a Site Walk/Public Hearing for February.

Recommended motion (If okay with granting the waiver): *I will make a motion to approve the waiver request from Sec. 78-1467 to allow for a 27' shared curbcut, driveway entrance on Macarthur Avenue and a 27' shared curbcut driveway entrance on Saco Avenue.*

Recommended motion (If okay with the materials as submitted): *I will make a motion to determine as complete for a minor subdivision to create two duplex units with a total of 4 residential units at 189 Saco Avenue. Also, to schedule a Site Walk on February 7th at 5:30PM and a Public Hearing on February 14th.*

BACKGROUND (AUGUST 2018):

This is a new proposal before the Planning Board for the creation of two 1,788 square foot duplexes on the corner of Macarthur and Saco Ave. Included in your packets for August are the application materials, plan-set and comments from Wright Pierce dated 7/31/18.

The PB should concentrate on ensuring the project complies with applicable standards in the subdivision ordinance (minor subdivision), GB1 zoning district requirements and applicable performance standards in Ch. 78, Article VIII.

Waivers

Important to note up front, there is one waiver request associated with the project:

- *78-1467: For single and two-family residences, widths of driveways at the street as measured 20 feet from the curb-line shall not be less than 12 feet in width, with a maximum right-of-way clearance of 15 feet to accommodate emergency vehicle access. Maximum driveway width at the curblines shall not exceed 20 feet. A 27' driveway entrance is proposed.*

The Applicant has also requested a second waiver to feature overhead electric service to the residential dwellings. Planning Staff took a look at the ordinance and it appears that *Sec. 74-275* is the section that would apply here and it says: *"The size, type and location of public utilities, such as...electricity...in a subdivision shall be approved by the Planning Board and installed in accordance with local practice...utilities shall be installed underground except as otherwise approved by the Planning Board..."* It does not appear as if a waiver would be required from that section, the PB is authorized to approve utility location.

Planning Staff recommends the Applicant submit a formal waiver request for the driveway width, citing the ordinance and the reason they are seeking a waiver. The reason has already been documented in the submission materials but this should be a standalone document that cites the specific ordinance standards from which a waiver is requested.

Sec. 74-34 of the Ordinance gets into the circumstances in which the PB can grant waivers, Staff thought it would be important to point out for the board:

- (d) Where the planning board finds that extraordinary and unnecessary hardships may result from strict compliance with this chapter or where there are special circumstances of a particular plan, it may vary this chapter so that substantial justice may be done and the public interest secured, provided that such variations will not have the effect of nullifying the intent and purpose of the official map, the comprehensive plan, or the zoning ordinance in chapter 78, where such exist.
- (e) Where the planning board finds that, due to special circumstances of a particular plan, the provision of certain required improvements is not requisite in the interest of public health, safety, and general welfare or is inappropriate because of inadequate or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements, subject to appropriate conditions.
- (f) In granting variances and modifications, the planning board shall require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified.

GB1 Zoning District

Regarding GB1 standards, two standards stick out- 78-805 Rear Setback and 78-806 (a) (1) Parking.

Regarding setbacks, the rear lot line for a corner lot is the line opposite the front lot line of least dimension. In this case, the front lot line of least dimension is the one abutting Macarthur Ave. So, the rear lot line is towards the eastern portion of the property, adjacent to the Stephens and Joncas properties. GB1 requires a 20' rear setback for residential lots. The plan shows a 15' setback abutting the Stephens property. Plans should be amended to show a 20' setback. Note: this does not impact building location.

Regarding parking, 78-806 (a) (1) states no parking shall be permitted in the front setback yard. Both duplex's show driveways in the front setback which makes it reasonable to assume parking will be in the front setback. Staff understands the need for this standard but it's a bit hard to digest regarding residential driveways. Nonetheless, we are not aware of a driveway exemption or waiver. This will require additional thought. Note: building relocation (e.g., further into the lot to allow for parking out of the setback) will be difficult due to the location of the 75' stream setback and floodplain.

One item to be discussed for additional clarity is exterior lighting. What is proposed for lighting? The ordinance says it cannot exceed the height of the building or 14 feet, whichever is less and it must be shielded to prevent point source glare (78-806(b)(2)(a)&(c)).

Performance Standards (Ch. 78, Art VIII)

Sec. 78-1466(c) of the ordinance requires 257 feet of sight distance on Macarthur and 308 feet on Saco Ave. Do the driveways meet these? Planning staff did not see sight distances listed on the plan. The ordinance also says a driveway cannot be within 50 feet of the curblin tangent of intersection local streets. The distance from the driveway coming off of Saco Ave and Macarthur should be measured in relation to their distance to the intersection. Does it meet or exceed 50 feet? One concern about site distance is the proposed buffer location. We'll need more info on this.

Secs 78-1821 – 1827 regulate screening and buffering. The plans show a proposed vegetative buffer along both street frontages. The southern and at least part of the eastern appear (based on aeriels) to have an existing buffer. The applicant should demonstrate how the proposal complies with 78-1821 – 1827.

Misc Comments

- Important to note our ordinances have different standards for 2 family and multifamily (3+). The PB is reviewing two, 2 family dwellings and not a multifamily (see definitions). Although there may be multiple dwelling units, there are two unconnected 2 family dwellings.
- An update on the status of the DEP Permit by Rule (PBR) should be provided to the Town.
- The existing fire hydrant is located 298+/- Ft. away on Macarthur Ave, Planning staff is waiting for a comment from the Fire Department on this.

- Public Works has requested that all utilities are served from Macarthur. It appears that a sewer line is proposed on Saco Ave. The applicant should coordinate further with DPW on the intent of this comment.
- HOA docs – I believe Cavanaugh Road should be spelled Kavanaugh.
- HOA docs- Be sure to include maintenance of stormwater systems language.
- Currently a portion of the property is in a regulated floodplain. The buildings are not within the floodplain. The proposed floodplain maps show both buildings in the floodplain. These maps, according to FEMA, are scheduled to become official during 2019. We just want to be sure the applicant and owner are aware of this in case they build next year.
- A traffic report was submitted from Traffic Solutions was submitted for the project. This report lists how many trips are expected to be generated, however, does not make a determination as to whether or not the trip generation could cause problems on Saco Ave and/or Macarthur Ave. The PB should decide whether or not a more in depth traffic analysis should be required. It is staff's opinion the traffic generation numbers do not warrant further study.
- A letter was submitted from Maine Water that indicates they do have the ability to serve the two duplexes, however, they would like the size of the pipe to be upgraded "in advance of the project" or at least a plan in place to do so. Planning Staff checked in with Maine Water to see what their objective was with that comment.
- This is not subject to MS4 stormwater requirements.

Wright-Pierce Comment Summary

For drainage, you will see we have made some site specific recommendations and considerations based on our modeling of the drainage system. I would be more than happy to review and discuss these results with the applicant engineer, but hopefully are comments (which are a bit lengthy) help cover our concerns and recommendations.

- Update HOA docs to clarify long-term operation and maintenance of proposed stormwater pond.
- Do driveways meet minimum sight distance requirements for single and two-family residences Sec. 78-1466 – Saco Ave 30 MPH speed limit, Macarthur 25 MPH – 308 foot and 257 foot sight distance.
- Driveway for one of the proposed duplex units is access from Saco Ave, Saco ave is a major arterial...applicant may want to provide additional commentary on consideration for evaluation of access off Macarthur ave or additional maneuvering areas for duplex...comment from Joe?
- Boundary survey – Comment 6a references a culvert/drainage easement associated with 36-inch culvert but no details were provided on location/width of easement. If details aren't available Town should consider a 20-30ft. easement to formalize for future repair/replacement.
- Boundary survey – note 7 says "restrictions include limitations on type and number of buildings for each lot" this wasn't referenced in the app package. Recommendation that these restrictions be confirmed that they meet the requirements of the subdivision plan.
- Sheet 3 of 8 shows a CB located over the existing 36-in pipe, the invert in is lower than the invert out is that right?
- Sheet 4 of 8 shows a row of arborvitae along corner of MacArthur and Saco Ave – sight distance with this at the intersection and access to Saco Ave?
- Inconsistencies between pre-development watershed plan and hydrocad. Review and update.
- Would not recommend a direct connection from the proposed development to the 36-in culvert – drainage study considerations. Maybe applicant should meet with WP to discuss. Recommend use of LID b/c in Town delineation of Goosefare.
- Drainage easement for shallow swale proposed to direct runoff to unnamed stream is recommended to ensure the mitigation/drainage is maintained in perpetuity.
- Moratorium on road if repaved in 2018 or 2019. Flag to applicant on schedule coordination.
- New FEMA expands Zone A onto this property.

RECOMMENDATIONS:

The proposal is scheduled for a preliminary plan determination of completeness. The PB should determine if it is ready for this or if additional info is necessary. Staff feels there are a few primary issues that should be resolved before the application is determined complete:

1. Driveway width waiver request
2. Above or underground utilities
3. Parking in the front setback
4. Sight distance
5. Screening and buffering compliance
6. Public works request that all utilities be served from Macarthur Ave
7. Applicants response to ME Water comments
8. Address Wright-Pierce comments

Once the applicant addresses and responds to these primary issues (and other comments and questions mentioned above). Staff expects the preliminary plan can be determined complete.

ITEM 2

Proposal: Conditional Use: Accessory Dwelling Unit
Action: Ruling on Findings of Fact
Owner: David and Deborah Walker
Location: 5 Winona Avenue, MBL: 321-5-3

| <u>ADU: 5 Winona</u> | <u>Project Status</u> |
|---------------------------------|-----------------------|
| <i>Sketch Plan</i> | N/A |
| <i>Application Complete</i> | Complete in November |
| <i>Site Walk (Not Required)</i> | N/A |
| <i>Public Hearing</i> | Held in December |
| <i>Final Ruling</i> | Approved in December |

The Planning Board approved this project at the December, 2018, Planning Board meeting. However, the responses to the Accessory Dwelling Unit and Conditional Use Standards were not read into the record. Due to this oversight, Planning Staff recommends the Planning Board make a formal ruling on the Findings of Fact.

Responses to the Conditional Use Standards:

Sec. 78-1240. - Standards.

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:

- (1) The proposed use will not result in significant hazards to pedestrian or vehicular traffic, on-site or off-site.
There will be no additional traffic generated as this is an existing ADU with seasonal use mostly and private off-street parking.
- (2)The proposed use will not create or increase any fire hazard.
This property was built according to all applicable Town and State codes for fire safety. It was inspected for insurability and has a hard wired smoke and carbon monoxide detection system.
- (3)The proposed use will provide adequate off-street parking and loading areas.
There are four private parking spaces with the current driveway as well as two garage spaces when required. There are also four street spaces available but not needed for this ADU.
- (4)The proposed use will not cause water pollution, sedimentation, erosion, or contamination of any water supply.
The proposed ADU is in current use therefore will have no impact on the existing nor adjoining properties.
- (5)The proposed use will not create unhealthful conditions because of smoke, dust or other airborne contaminants.
This is an administrative request for an existing ADU. There will be no unhealthful conditions generated by this request.
- (6)The proposed use will 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.
This is an administrative request for an existing ADU. There will be no noise, fumes, vibrations, fire hazards nor restriction of air or light generated to neighboring properties by this request.
- (7)The proposed use will provide adequate waste disposal systems for all solid and liquid wastes generated by the use.
There is weekly public trash pick-up at this location as well as city sewerage previously approved for a five bedroom dwelling. The current dwelling consists of four bedrooms.
- (8)The proposed use will not adversely affect the value of adjacent properties.

This is a new year-round home constructed amongst older seasonal properties will only serve to enhance current property values.

(9)The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.

This ADU will only have limited use during peak seasons which is generally three to four months when family members come to visit.

(10)The applicant's proposal must include any special screening or buffering necessary to visually obstruct the subject property from abutting uses or to ensure the continued enjoyment of abutting uses.

Construction of this residential property was approved by the Planning Office in 2016 with existing buffering. No new buffering is required for this request. This ADU currently exists within the previously approved plans.

(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.

Plans for drainage, cut, fill and paving were previously approved with building plans submitted in 2015. There will be no new changes to topography generated by this request.

(12)The applicant must be found to have adequate financial and technical capacity to satisfy the criteria in this section and to develop and thereafter maintain the proposed project or use in accordance with all applicable requirements.

This is an administrative request with no new construction required. This ADU was built during the initial construction phase in 2016. There should be no financial impact as a result of this administrative request.

Responses to the Accessory Dwelling Unit Standards:

Sec. 78-1272. - Accessory dwelling unit.

The purpose of the sections concerning accessory dwelling units is to provide a diversity of housing for residents while protecting the single-family character of residential neighborhoods. Accessory dwelling units are allowed as conditional uses in all residential districts and shall comply with the following conditions:

(1) The accessory dwelling unit shall be accessed via the living area of the primary structure, and all other entrances to the accessory dwelling unit shall appear subordinate to the main entrance. Any proposed additions to the main structure or accessory structures shall be designed to be subordinate in scale and mass to that of the main structure and compatible with the architectural style and quality of the main structure.

This ADU is accessed through the existing front door of this property which is a common entrance.

(2) The accessory dwelling unit shall have at least 500 square feet of floor area but shall not exceed 50 percent of the floor area of the main dwelling unit. Floor area measurements shall not include unfinished attic, basement or cellar spaces nor public hallways or other common areas.

This existing ADU was built at 569 sq. ft. which includes one bedroom, one living room, one full bathroom and an eat-in kitchen. The entire residential property has 2816 square feet of living space with ADU comprising 20.2% of the main dwelling unit.

(3) The dwelling shall be served by a single electrical service.

There is only one service serving this home with one meter from Maine Central Power Company.

(4) Only one accessory apartment shall be permitted per lot. It shall be made part of the main residence.

This is the only ADU on this lot. It has existed since 2016 when the current occupancy permit was issued.

(5) Accessory apartments shall not be permitted for any nonconforming structure or use, where nonconformity is due to the use of the premises, as opposed to nonconforming dimensional requirements.

N/A

ITEM 3

Proposal: Conditional Use: Shoreland Zoning Nonconforming Structure 30% Expansion
Action: Determination of Completeness; Schedule Site Walk; Schedule Public Hearing
Owner: Cynthia Lyons
Location: 21 Winona Avenue, MBL: 321-6-3

| <u>Shoreland Zone: 21 Winona</u> | <u>Project Status</u> |
|----------------------------------|--------------------------------|
| <i>Sketch Plan</i> | N/A |
| <i>Application Complete</i> | Recommend at January meeting |
| <i>Site Walk (Not Required)</i> | 7 Feb if the PB wishes to hold |
| <i>Public Hearing</i> | Recommend 14 Feb |
| <i>Final Ruling</i> | Pending |

This proposal is for the reconstruction and 30% expansion of a single-family dwelling in the shoreland zone. Reconstruction and expansions of nonconforming structures in the shoreland zone must meet 5 primary ordinances:

1. Reconstructed structures must be relocated so they are set back from the water (in this case the HAT) to the greatest practical extent.
2. Structure expansion does not exceed 30% of the existing square footage or volume.
3. Structure expansion does not increase the nonconformity (e.g., building the structure closer to the water setback).
4. Proposal conforms to the 12 Conditional Use criteria.
5. Proposal conforms to the 8 standard conditions in the shoreland zone.

Regarding this proposal’s conformance with each of the above:

1. The structure cannot move anywhere else on the lot without it being nonconforming or even more nonconforming to other setbacks; therefore staff feels the structures proposed location is set back at the greatest extent possible. The site plan shows a building envelope that conforms to setback requirements. As you’ll see it is quite small and the structure can’t be shifted without encroaching into other setbacks. In addition to setbacks, floodplain is an important factor in the structures location. Floodplain will be discussed below.
2. The proposed expansion does not exceed the 30% of the existing square footage or volume. After several attempts, the applicant managed to design this project so it falls just under 30%. The applicant does an excellent job showing the calculations (see plans). Also, the cover letter provides a summary.
3. The proposed structure is not closer to the water setback than the existing structure. In fact, the proposed structure is slightly further away from the water at the southwest corner.
4. The applicant’s responses to the 12 Conditional Use criteria show the proposal conforms to these criteria.
5. The applicant’s responses to the 8 standard conditions in the shoreland zone as well as the submitted plans show the proposal meets these conditions.

A challenging piece of this proposal is the floodplain. As you’ll see on the site plans, there are 3 different flood zones on this property- A2, B, C. The A2 zone is the zone that is most restrictive. Development in this zone requires structures to meet applicable floodplain regulations. Even if a portion of a structure is located in this zone, the entire structure is treated as if it’s in the zone. Zones B and C are not regulatory zones so structures placed in these zones do not have regulatory requirements.

In order to comply with A2 zone floodplain requirements, the applicant decided to remove the portions of the structure that are in the zone. As you’ll see in the proposed site plan, the structure southwest corner has been altered so all portions physically attached to the ground are not in the A2 zone. A small portion of the cantilevered deck will hang over the zone with a finished floor elevation of 14.83’ which is 5.83’ above the A2 zone bas flood elevation of 9’. These alterations effectively removed the proposal from the A2 zone which removed the structure from required compliance with the floodplain regulatory requirements.

So, all the boxes appear to be checked to make this project one the PB can approve. There is one problem- a portion of the proposed stairs at the front of the structure (facing Winona) is being horizontally expanded outside of the footprint of the original structure in the front setback. Although the setback distance is not decreasing, the structure and proposed staircase is nonconforming and nonconforming structure expansions having special rules that allow for expansions but still have limitations as to what and how a structure can expand. Town ordinances allow for this expansion because the stairs are part of an egress. Although, approval must be secured through the Zoning Board of Appeals through the nonconforming means of egress standards.

This is not necessarily a shoreland zoning matter because it does not impact the shoreland zoning water setback. In fact the PB would most likely not hear of this because it is a non-shoreland nonconformance matter and typically administered by the PB and Code Office. But, because stairs are part of the structure being reviewed by the PB, the PB must consider this during review of the proposal. We believe the need for ZBA should not hold this proposal up from moving forward in the PB process but it should be resolved before the PB's final ruling.

RECOMMENDATIONS:

Staff recommends the PB determine the application complete with the following condition: The applicant/owner shall secure ZBA approval for the front stairs before the PB issues a final ruling. Also, we recommend a public hearing is scheduled for 14 Feb and, if the PB feels there is a need, a site walk for 7 Feb.

Recommended motion: *I will make a motion to determine as complete the Conditional Use Shoreland Zoning nonconforming structure 30% expansion application for expansion of a single-family dwelling located at 21 Winona Ave with the following condition: The applicant or owner shall secure Zoning Board of Appeals approval for the front stairs before the PB issues a final ruling. Also, to schedule a Site Walk on 7 Feb at 5:15PM (if you choose to schedule) and a Public Hearing on 14Feb.*

OTHER BUSINESS: Accessory Dwelling Unit Discussion

At the January 10th meeting, the Planning Board will begin the discussion on the Accessory Dwelling Unit (ADU) definition and ordinance provisions. This discussion is in light of the recent influx of ADU proposals the Planning Board has reviewed and the concern brought about by Town Staff regarding the recent use of ADUs for short-term rentals.

We typically think of an ADU as an in-law apartment but it has appeared to morph into more than “just an in-law apartment,” so what would the Planning Board like to see as the sole purpose of an ADU?

Helpful Definitions

First, our Ordinance defines an Accessory Dwelling Unit as “*a separate dwelling unit which is contained entirely within the confines of a building which otherwise retains the design and appearance of a detached, single-family dwelling.*”

That brings us to our next question, how does the ordinance define a dwelling unit? A Dwelling Unit defined as “*a room or suite of rooms designed and equipped exclusively for use as living quarters for only one family, including provisions for sleeping, living, cooking and eating. The term includes a mobile home, but does not include trailers or recreational vehicles.*”

It is important to note that this definition does include provisions for sleeping, living, cooking and eating, therefore, using the current definition, an ADU cannot be set up as a “motel” type of use where the ADU occupants use the kitchen in the existing home rather than having their own in the ADU.

Where ADU are permissible in Town and where are they not (See Attached Map)

ADUs are permissible as a Conditional Uses (CU) in the following districts:

- Residential 1
- Residential 3
- Residential 5
- Neighborhood Commercial 1
- Neighborhood Commercial 2
- Neighborhood Commercial 3
- Neighborhood Commercial 4
- Rural District
- Beachfront Resort District
- Residential Beachfront District

ADUs are NOT permissible in the following districts:

- Residential 2
- Residential 4
- Industrial District
- Planning Mixed Use Development
- Downtown District 1
- Downtown District 2

Sec. 78-1272 of the Ordinance pertaining to Accessory Dwelling Units says:

The purpose of the sections concerning accessory dwelling units is to provide a diversity of housing for residents while protecting the single-family character of residential neighborhoods. Accessory dwelling units are allowed as conditional uses in all residential districts and shall comply with the following conditions:

- (1) The accessory dwelling unit shall be accessed via the living area of the primary structure, and all other entrances to the accessory dwelling unit shall appear subordinate to the main entrance. Any proposed additions to the main structure or accessory structures shall be designed to be subordinate in scale and mass to that of the main structure and compatible with the architectural style and quality of the main structure.
- (2) The accessory dwelling unit shall have at least 500 square feet of floor area but shall not exceed 50 percent of the floor area of the main dwelling unit. Floor area measurements shall not include unfinished attic, basement or cellar spaces nor public hallways or other common areas.

- (3) The dwelling shall be served by a single electrical service.
- (4) Only one accessory apartment shall be permitted per lot. It shall be made part of the main residence.
- (5) Accessory apartments shall not be permitted for any nonconforming structure or use, where nonconformity is due to the use of the premises, as opposed to nonconforming dimensional requirements.

It is interesting that it says they are allowed in **ALL** residential districts when it appears they are not allowed in Residential 2, Residential 4 or PMUD (not listed as a CU in the ordinance).

Discussion Questions for the Planning Board:

1. Why do we feel ADU-related ordinance standards need to change?
2. What are the positives and negatives of ADU's?
3. If ADU's are not allowed, would this create problems? Any potential unintended consequences? For example, will this reduce affordable housing options and aging in place alternatives?
4. Are there trends and issues driving the need for ADU's? How do we address these? Are we considering these during our discussion?
5. Should ADU's be allowed but regulated in a different manner (e.g., use for relatives and friends only)?
6. Does the ordinance capture the intent of an "Accessory Dwelling Unit" that the PB would like to see?
7. If not, what information needs to be added into the ordinance to capture that intent?
 - a. Would the PB like to see more information in there regarding them for the purpose of an "in-law" apartment?
8. Should there be information added into the ordinance regarding the use of ADUs for short-term rentals? Is this something the PB wants to prohibit in all ADUs no matter what district they are in?
9. Should the Zoning Districts themselves be amended to allow ADUs in all residential districts as defined in Sec. 78-1272?
10. What changes need to be made to the five ADU conditions?
 - a. Should "*all other entrances shall appear subordinate*" to the ADU be better defined so it is easier to rule on?
 - b. What about the requirement that they have at least 500 square feet of floor area but that they cannot exceed 50% of the floor area of the main dwelling unit. Should this be amended?