

TO: Old Orchard Beach Planning Board
FROM: Planning Staff
SUBJECT: July Planning Board Meeting Summary
DATE: 13 July 2017

Below is a summary of pertinent issues related to the July Planning Board Agenda items:

Applicant Note: July meeting submission date is 24 July 2017.

ITEM 1 & 2

Proposal: Ordinance Amendment: Amendment to Chapter 78 – Zoning, Article III – Conformance and Nonconformance, Division 2 – Nonconformities, Section 78-180- Appeals from restrictions on nonconforming uses.

Action: Public Hearing; Recommendation to Council

At the PB Workshops this spring, the Board considered a few options/discussion points (see below) regarding how the ordinance amendment should move forward to the formal review process. A majority of members felt the first option, which included deleting 78-180, was the best. First option:

Should we just let the standards in 78- 177 & 179 limit the continuance of nonconforming use of land and structures at 2 years and not offer an appeal through the PB? The way I interpret this is it would cap nonconforming use and structure enlargement, increase, extension, movement, reconstruction, alteration, or resumption at two years, period. If this is what we decide than 78-180 could be entirely deleted because 78-177 & 179 appears to cover it.

This option will delete 78-180 and let 78-176 – 179 control nonconformities. Deleting 78-180 will remove a property owner’s ability to enlarge, increase, extend, move to another portion of the lot or parcel, reconstruct, structurally alter, convert to another nonconforming use, or resume a nonconforming use of land or nonconforming use of structure after cessation for a period of more than two years, but less than ten years. 78-176 – 179 allows a property owner to do the above but limits the time frame to a max of two years.

Options/Discussion Points

1. Should we just let the standards in 78- 177 & 179 limit the continuance of nonconforming use of land and structures at 2 years and not offer an appeal through the PB? The way I interpret this is it would cap nonconforming use and structure enlargement, increase, extension, movement, reconstruction, alteration, or resumption at two years, period. If this is what we decide than 78-180 could be entirely deleted because 78- 177 & 179 appears to cover it.
2. Should we do as suggested in #1 but permit some flexibility by allowing people to improve their nonconforming use of land and structures beyond 2 years? If so, how much flexibility and what do we consider an improvement?
3. Should we keep 78-180 and still offer the appeal through the PB but shorten the 10 year time frame? If we decide to keep this standard I suggest something like: “...for a period of more than two years, but less than five years”.
4. Should we keep the same time frame and general language in 78-180 but change the authority to rule on the Appeals from Restrictions on Nonconforming Uses to the ZBA and leave PB with authority to rule on conditional use? If we do this the amendments could become a bit more complicated because the ZBA has specific statutory authority- we would just need to check on this. Also, the ZBA should be included in our discussions.

78-180 Current Language

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.

Appeals from Restrictions on Nonconforming Uses (Examples)

- *May 11, 2017, SRA Varieties Inc., D.B.A. Paul's II (Red Rocket)* – Change use of 7 units from seasonal to year-round Hotel (currently 5 year-round use for a total of 12).
- *January 8, 2015, 183 Temple Ave* – Allow an Accessory Dwelling Unit.
- *November 8, 2012, 141 Saco Ave (Red Rocket)* – Reopening of 12 seasonal cottages, replacement of existing cottages with new cottages.
- *April 21, 2011, 47 East Grand* – Increase the number of rental rooms from 6 to 9 within the existing structure.
- *March 10, 2011, 180 Saco Ave (Summer Winds)* – Demolish 53 overnight cabins and replace with 53 seasonal dwelling units.
- *May 13, 2010, 44 Union Ave* – Re-establish 3 dwelling units.

Example of how this standard could be applied

A convenience store is next to your home (or in your neighborhood) and the owner decides to close the store. A convenience store is not a permissible or conditional use in your zoning district; therefore, is considered a nonconforming use. Under 78-180, the owner or another owner could resume, expand, etc. that use or even establish another nonconforming use such as an adult business, salvage facility, manufacturing up to 10 years from the date the store was discontinued. The resumption, expansion, conversion of the use will require PB review as a Conditional Use, but with this standard, it allows the use to be established.

ITEM 3

Proposal: Site Plan Review: Expansion of existing nonresidential (retail) building
Action: Discussion; Schedule Final Ruling
Owner: Harold H. Harrisburg, Phylis I Harrisburg and Harrisburg Group Gen Partnership
Location: 9 East Grand Ave., MBL: 306-2-6

The primary purpose of the July meeting is to bring forward remaining questions and comments so to allow the applicant prepare to address for final plan review/ruling which can be scheduled for August. Questions include building construction, loading/unloading, warehousing/storage, overhang and platform encroachment, lighting, DEP permitting, and waivers. Attorney Jim Katsiaficas will help advise the PB. Included in this month's packet is a memo from Attorney Katsiaficas which comments on the proposed expansion, proposed stockroom use, and loading/unloading of merchandise.

Overhang and platform encroachment. One concern discussed at previous meetings was the proposed 2nd floor platform appears to extend beyond Harrisburg's property lines and hang over public property. After review of

the July 2017 Plot Plan we believe this is true. We're not aware of an OOB ordinance standard that would allow the PB to authorize this; therefore, we recommend the building plans change to show the overhang and platform do not extend beyond the Harrisburg property line.

Building construction. Abutter and PB members questioned how the building will be constructed without use of adjacent properties for staging, etc. The applicant states this can be done without use of "Richard's Apartments" property but they will most likely need to place temporary staging on public property. Temporary use of public property for staging, etc. for construction projects may be ok but we recommend the applicant discuss with public works, fire, police, and codes just to be sure. Also, is the PB comfortable with the applicants statement that they can construct with use of "Richard's Apartments" property?

Loading and unloading (See Katsiaficas memo #3). 78-1592 states "all loading/unloading activities shall be conducted off public streets and private ways...in urbanized sections of town, where off-street loading facilities are impracticable, loading activities shall occur only in loading zones designated by the police chief." There are other non-zoning standards that may have some relation to loading/unloading including: shall not drive within any sidewalk except at a permanent or temporary driveway (54-109) and no person shall stop, stand or park a vehicle on a sidewalk except to avoid traffic conflicts or in compliance with directions from a police officer, other authorized person, or traffic control device (54-186). The applicant states trucks will be unloaded on Harrisburg St. (where unloading/loading zones exist) and product will be delivered by forklift. It appears the primary loading area will be off Kinney Ave. To assist the applicant with a loading/unloading plan, we recommended development of a plan that considers the following:

- What is the primary delivery truck (e.g., box truck, pickup, larger truck)?
- When will the primary delivery truck arrive at the initial delivery point and when will product from delivery truck be transported to 9 E. Grand (e.g., morning, afternoon, evening, time frame)? I recommend you be as specific as possible (between 6 AM and 7 AM) and try to keep deliveries at times when there is minimal pedestrian and vehicular traffic.
- How often will deliveries take place- how many times per day, week or month (e.g., once each week)?
- How long will it take to unload the primary delivery truck (e.g., 20 minutes)?
- How much time will it take to deliver the product from the initial delivery point to 9 E. Grand (e.g., 20 minutes)?
- Once the product arrives at 9 E. Grand, how long will it take to unload into the building (e.g., 20 minutes)?
- Where will initial delivery take place (e.g., Harrisburg St.)?
- How will product be transported (e.g., hand carry, fork truck) from initial delivery point to 9 E. Grand?
- Where will product be delivered into the 9 E. Grand building?
- How will product be delivered into the 9 E. Grand building?
- What safety measures will be in place to reduce conflicts, damage or harm to pedestrians and vehicles?
- Once product arrives at 9 E. Grand will it be unloaded directly into the building? Will it temporarily sit on the sidewalk or somewhere else nearby unloaded into the building?

Warehousing (See Katsiaficas memo #1 & 2). A question that consistently comes up- will this proposal conduct warehousing or storage operations. OOB Ordinances do not define Warehousing but do define Warehouse Storage as "a use engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment, but excluding bulk storage of materials that are inflammable or explosive or that create hazardous or commonly recognized offensive conditions." The term Storage does not have its own definition and is not identified as a land use. Warehousing is an identified land use allowed in some districts (not the DD1). Warehouse Storage is not identified as a land use. There is no performance standards specifically related to warehousing, warehousing storage or storage.

The applicant's response to the Warehousing use question: "This is not a warehousing use, as no deliveries and shipments occur on a regular basis, there are no warehouse employees, there are no fedex or UPS or US mail trucks making deliveries from this site, or anything else similar to a warehousing operation. The majority of the items delivered will be used for this business, in this site. This is a stock area and retail area, the same as all other second floor and basement stock areas in every other business in town."

As you can see, the applicant intends to store product with a majority of the products to be used for the proposed site. The Note the Warehouse Storage definition states "a use engaged in storage, wholesale, and distribution." So, to be considered a Warehouse Storage or possibly a Warehouse use must the use engage in all three- storage, wholesale and distribution? Or will engaging in one of the three qualify a use as Warehouse Storage? Or is this an "Oxford Comma" case? Without definitions or performance standards for Storage and Warehousing the only ordinance related term we have is Warehouse Storage. One possible approach to help us rule on this is to ask the applicant to provide evidence that the proposed use does not meet the Warehouse Storage definition. The PB could apply a condition associated with this if approved. Also, this could be tied to occupancy permits if it remains a question.

Lighting. There are questions concerning the brightness and glare of lights onto adjacent properties. This was discussed as part of DRC's review (7 Nov 16 Minutes): "Lighting fixtures are going to be located on the outside. 5 fixtures on the right side and 7 fixtures on the front with LED lighting. They will not be adding more neon signs however they will keep the neon signs on the first floor that are already existing." Also, the Certificate of Appropriateness has the following lighting-related condition: "No neon signs on the upper story. No excessive lights neon or otherwise on the second floor either internal or external."

DEP Permitting. This proposal requires DEP permitting because it's in the rear coastal dune. The applicant is in the process of and may have secured applicable DEP permits. If the applicant has not secured DEP approval, should the PB wait until it's approved or attach a condition that requires the applicant to secure DEP approvals before construction begins.

Waiver request and July 2017 Plot Plan review. Below is a review of the July 2017 Harrisburg Property Plot Plan and Site Plan Application Requirements (78-215) for waiver request purposes (staff comments in **bold**). At previous meetings, staff requested that the applicant provide follow-up to the waiver requests including justifications for those items they intend to continue to seek waivers. Updated waiver request have not been received. Remember, in order to grant a waiver the PB must determine "The required application submission will not yield any useful information given the nature and scope of the proposed activity or the existing character of the site."

78-215 (Site Plan Ordinance)

(c) *Plenary site plan review application requirements.* The applicant shall file all designated application fees, as determined by the town council, and provide 13 copies of the following submission items:

(1) A fully executed and signed plenary site plan review application.

No Waiver Necessary, though we may need a bit more info on the application. We can take care of this in my office.

(2) Copy of property deed, option to purchase, or other documentation to demonstrate the applicant's right, title or interest in the property.

Done

(3) Proposed site plan, drawn at a scale not to exceed one inch equals 40 feet or at a scale otherwise required by the town planner. Such plan shall be sealed by a professional engineer, landscape architect, or a surveyor licensed in the state and shall contain the following information: **See comments below**

a. Property boundary survey class 1, signed and sealed by a state-licensed land surveyor, showing bearings and distances of the subject property boundary, topographic elevations at a contour interval of no more than two feet, location and elevation of all existing and proposed structures, site features and site improvements.

***The July 2017 site plan is not a class 1 property boundary survey (see note 8 on the plan). The applicant can either get a class 1 survey prepared or seek a waiver of the class 1 survey requirement and argue the survey provided has been signed and sealed by a professional land surveyor.**

***Topo elevations are not on the plan. Assuming there is no site work I personally don't see the need for this. Nonetheless, it is part of the site plan requirements so a waiver should be requested.**

***Location of existing and proposed structures, etc. Does the plan show all existing and proposed structures, site features and site improvements? The only items I can think of it does not show the proposed overhangs and second floor platforms. These items should be shown on the plan because they are part of the proposed structure. A waiver can be requested but since these building elements are part of the proposal I expect they will be difficult to waive.**

b. Information block containing location, address, map-block-lot number of subject property as recorded in the town assessor's office, name and address of the applicant and owner if different.
Done

c. Approval block providing space for the signatures of planning board members.
Done

d. The existing zone in which the property is located. If the property is divided by a zone line, the line shall be delineated and labeled on the site plan.
Done

e. Map scale, north arrow (true north), and date the site plan was prepared including the date of any subsequent revisions made to the plan.
Done

f. Identification and location of all abutters to the applicant's property.
Done

g. The dimensions and layout of all building and zoning setback lines.
The site plan shows existing building setbacks but building plans show proposed overhangs and platforms that may change these setbacks. If the proposal continues with proposed overhangs or platforms that extend towards property boundaries (beyond the existing building walls) then this must be shown on the plan, including the proposed setbacks. A waiver can be requested but I believe this would be a hard one for the PB to waive.

h. Delineation of all existing and proposed public and private easements on or directly adjacent to the property.
The plan does not show existing public and private easements on or directly adjacent to the property. Perhaps because they do not exist. Did the surveyor consider this when preparing the plan?

i. Location, dimensions, and layout of all existing and proposed built elements, including buildings and structures, parking areas, driveways, town/state roads, sidewalks, fences, walls, steps, piers and docks, patios, swimming pools, and signage.

See “a” and “g” above. The primary question- does the plan accurately represent what’s proposed? If not, I highly recommend the plan show this. This will be difficult to waive.

j. Location of existing site features located on the property, including but not limited to existing streams, wetlands, drainage swales, tree lines, identification and location of specimen trees greater than eight inches caliper, location of existing rock outcrops, and boundary of 100-year flood zone as defined by the Federal Emergency Management Agency flood insurance rate map for the town.

I checked the aerial it appears none of these exist. You should be ok.

k. Location of existing and proposed utilities including overhead telephone poles and/or underground cables, public sewer and water lines, gate valves, fire hydrants, dumpsters or waste receptacles, private septic systems and water supply wells.

Done

l. Specification, layout, and quantity of proposed landscaping plant materials.

Landscaping not proposed- Done

m. Location, layout, and dimensions of all existing and proposed drainage facilities, accompanied by detailed drainage calculations signed and sealed by a professional engineer licensed in the state.

Aerial photo does not show drainage facilities existing. If not proposed or needed this is done

n. Location, specification, height and photometric data of existing and proposed exterior lighting. **Location and type of fixture included and approved as part of the Design Review proposal. Photometric data was not included but still approved by DRC. Applicant can ask the PB to accept lighting included with the DRC submission as part of the site plan record and request they waive the photometric data.**

o. Soil erosion control plan showing location, quantity, and specifications of erosion control devices and strategies to be implemented to minimize on- and off-site sedimentation.

If this proposal is not disturbing soil than no waiver is required.

(4) *Digital submission requirements.* All plan sheets must be submitted in digital format:

No waiver required

(5) Cost estimates for all proposed site improvements.

No waiver required

(6) Building plans of all proposed structures including interior layout, side and front elevations drawn to a scale of not less than one-fourth inch to one foot.

Building plans were submitted that include the above info. One problem is the overhangs and platform shown on the plans appear to extend beyond the property line. The plans that show this should be amended.

(7) Schematic elevation of proposed signs, drawn to a scale of not less than three-fourths inch to one foot, and illustrating sign layout, lettering, graphics and logos, materials, color, and proposed illumination.

Are new sign proposed? Based on the DRC submission it appears they are not.

(8) Additional submittals. In addition, the planning board may require any one or all of the additional impact studies and information to be submitted as part of the plenary site plan review application:

These are not “shall require” as the language states the PB “may require” so there is no need to request waivers for these unless the PB feels one or more are required.

- a. Fiscal impact assessment, analyzing the projected fiscal impacts to the municipal service delivery system.
- b. Traffic impact assessment, analyzing the potential trip generation created by the proposed project and its cumulative impact upon traffic capacity of servicing public streets and level of service performance at off-site intersections.
- c. Visual/cultural impact assessment, analyzing the impacts of the project upon prevailing visual quality, architectural fabric, and cultural character.
- d. Groundwater study, analyzing the individual and cumulative impacts of the proposed project upon existing groundwater quality.
- e. Adaptive reuse study, investigating the potential reuse of major facilities if the proposed use fails.
- f. Market study, prepared by a qualified market research firm and indicating the potential feasibility and projected success of a proposed use.

DEPARTMENT COMMENTS (JULY)

PD:

Jeffrey, regarding the loading zones on Kinney Avenue, I am aware that at one time there were two signs posted on Kinney Avenue. In May of 1998, a sign was authorized by me in front of the Bernard house, located at 1 Kinney Avenue, and in 2009, I authorized a loading zone sign in front of 5 Kinney Avenue. There is no parking on either side of Kinney Avenue and as a result, guests arriving at the Bernard house and Richards apartments, were parking illegally while they were checking in. The owners of these two properties, requested the signs so that their guests would not be subject to parking tickets while they were checking in. I am not aware that there were or have been any issues with either sign. A couple of years ago, I received complaints from property owners that delivery trucks were creating significant traffic congestion at the intersection of Kinney Avenue and East Grand Avenue. The trucks, on most occasions, were delivering to property owned by Harold Harrisburg. After discussing this issue with Mr. Harrisburg, he agreed that if I gave him a loading zone sign on Harrisburg Street, he would load and unload his goods from there, and transport them by forklift to his various properties. This arrangement seemed like a reasonable compromise by Mr. Harrisburg and seemed to be working. I am not sure of the date, but I believe it was last Fall, I noticed a loading zone sign on a telephone pole, about 85 feet in from the intersection of East Grand Avenue and Kinney Avenue. It was not in the location that it had originally been authorized for, and did not have a parking space lined out on the pavement. Because Mr. Harrisburg had agreed that he did not need to load and unload there, and because of the complaints regarding traffic congestion, I asked Public Works remove the sign.

FD:

I would like to know if Mr. Harrisburg had his Plan Review with the State Fire Marshal yet.

RECOMMENDATIONS: In order to prepare for final plan review, we recommend the following:

1. PB identify the outstanding items and request submission.
2. Applicant submit written response, amended plans and anything else needed to comply with PB's request.

BACKGROUND (DECEMBER 2016 & MARCH 2017 MEETINGS)

The PB tabled determination of completeness at the December 2016 meeting because the applicants December plenary site plan review submission did not include all relevant information necessary to allow the PB to make a reasonable and informed decision. The PB requested the following information:

1. A completed, signed and properly printed plenary site plan review application (application submitted 1 Dec- has not been reviewed)
2. Waiver requests
3. Responses to the 9 Site Plan Criteria for Approval (78-216 (d)).
4. Any items requested by the PB members and Department Heads.

In response, the applicants March submission includes the above. This first matter we should consider is the waiver requests. The applicant can request waivers (78-215 (d) see below) but they must prove to the PB and the PB must determine “that the required application submission will not yield any useful information given the nature and scope of the proposed activity or the existing character of the site.”

(d) *Waiver of submission requirements.* Specific submission requirements of subsections (b) and (c) of this section* may be waived by the reviewing authority if the authority rules that the required application submission will not yield any useful information given the nature and scope of the proposed activity or the existing character of the site. *Note: “this section” refers only to section 78-215 – Application.

A majority of the applicant’s waiver requests are associated with the site plan. The applicant submitted a boundary survey which includes the site plan information after submission of the waiver request so the original waiver request should change. Although the boundary survey plan is for another property (Chalom, Et. Al.), it includes much of the data associated with this proposal’s property. Below are the site plan requirements. **Highlighted** are the items not included in the Chalom Boundary Survey. Staff notes in *italics* provide comment concerning the particular requirement- in some cases the item is not included and may not be required, other cases we just seek some comment.

(3) Proposed site plan, drawn at a scale not to exceed one inch equals 40 feet or at a scale otherwise required by the town planner. Such plan shall be sealed by a professional engineer, landscape architect, or a surveyor licensed in the state and shall contain the following information:

a. **Property boundary survey class 1**, signed and sealed by a state-licensed land surveyor, showing bearings and distances of the subject property boundary, **topographic elevations at a contour interval of no more than two feet**, location and **elevation** of all existing and **proposed structures**, site features and site improvements.

b. **Information block containing location, address, map-block-lot number of subject property as recorded in the town assessor's office, name and address of the applicant and owner if different.**

c. **Approval block providing space for the signatures of planning board members.**

d. The existing zone in which the property is located. If the property is divided by a zone line, the line shall be delineated and labeled on the site plan. *Shown*

e. Map scale, north arrow (true north), and date the site plan was prepared including the date of any subsequent revisions made to the plan. *Shown*

- f. Identification and location of all abutters to the applicant's property. *Shown*
- g. The dimensions and layout of all building and **zoning setback lines**. *Note: the applicant indicates there will be no horizontal expansion of the building footprint. Also, nonresidential uses in the DDI have no setback requirement.*
- h. Delineation of all existing and proposed public and private easements on or directly adjacent to the property. *Note: review of the deed shows no public or private easements directly on property. We don't know if any exist directly adjacent to the property except the boundary survey shows the E. Grand and Kinney ROW. We recommend the applicant comment on this.*
- i. Location, dimensions, and layout of all existing and proposed built elements, including buildings and structures, parking areas, driveways, town/state roads, sidewalks, fences, walls, steps, piers and docks, patios, swimming pools, and signage. *Note: the boundary survey may show all existing and proposed build elements. We recommend the applicant comment on this.*
- j. Location of existing site features located on the property, including but not limited to existing streams, wetlands, drainage swales, tree lines, identification and location of specimen trees greater than eight inches caliper, location of existing rock outcrops, and boundary of 100-year flood zone as defined by the Federal Emergency Management Agency flood insurance rate map for the town. *Note: these items do not exist on this property*
- k. Location of existing and proposed utilities including overhead telephone poles and/or underground cables, public sewer and water lines, gate valves, fire hydrants, dumpsters or waste receptacles, private septic systems and water supply wells. *Note: the applicable items appear to be shown on the boundary survey.*
- l. Specification, layout, and quantity of proposed landscaping plant materials. *Note: landscaping is not included with this proposal.*
- m. Location, layout, and dimensions of all existing and proposed drainage facilities, accompanied by detailed drainage calculations signed and sealed by a professional engineer licensed in the state. *Note: new drainage is not associated with this proposal.*
- n. Location, specification, height and photometric data of existing and proposed exterior lighting. *Note: the building plans and DRC submission show location, specification and height of exterior lighting but photometric data is not included. Does the PB feel this is necessary?*
- o. Soil erosion control plan showing location, quantity, and specifications of erosion control devices and strategies to be implemented to minimize on- and off-site sedimentation. *Note: it would appear a soil erosion control plan is not necessary as the applicant has indicated site work is not included with this proposal.*

Again the applicant is requesting a waiver of the site plan requirements. With the submission of the Chalom Boundary Survey, a number of the site plan requirements can be met or may not be required due to the nature of the proposal. If this proposal involved construction of a new building (site work, foundation on up, etc.) it would be our opinion that a full site plan is required. Since this proposal's new construction is a second floor addition and within the buildings existing footprint, we believe a full site plan meeting all requirements is not necessary. In addition to the above-mentioned site plan waivers, the applicant is seeking waiver of requirements which you'll find in the March submission.

DEPARTMENT COMMENTS (MARCH)

The PB asked the applicant to address comments received from department heads. The applicant provides this in his March submission. Below are the department comments with the applicant's response in **bold**.

- Codes

I had a brief moment to look over the proposed addition to the Harrisburg building on East Grand.

I'm very pro building- especially in Commercial areas but there seems to be some unanswered issues with this proposal.

And there are a couple of points that need some further explanation.

- As you know Warehousing is not a use allowed for this zone- Is the intent to have storage on the second floor-Is the storage solely for this shop or will it be dispersed from structure to structure as needed?

I believe we should resolve this issue once and for all before any approvals are granted. Regardless, isn't this considered an expansion of a non-conforming use at least?

- There is a conveyor system proposed ,why? Does it extend to the basement and the new floor as well?

- The wall facing away from East Grand is a sheer Blank Wall, (back)how is this going to be built without accessing from the abutting property? Is there anything in place that indicated that it will be allowed or can they work from the property lines? Will they be required to fence in the property line?

- I was informed that they intend to load merchandise from a forklift and put it into the second floor at Kinney Ave near the intersection.

- There appears to be a balcony with sliders in the Kinney Street side that would overhang the sidewalk what is the status of Kinney in Width and who owns the sidewalk?

- We have an ongoing issue with trash and debris from the existing business, how much more will be loaded to the existing systems? Currently the dumpsters in place are often overflowing and exposed. Maybe it's time for the owner to step up and have a better system in place. There should not be any outside storage of pallets scrap metals cardboards, plastics etc..... The current system is not adequate.

- Will any off-site improvements be required?

As far as Codes, the storage will be primarily for this building but also supplement the adjacent businesses across Kinney Avenue. This is a conforming use in the DD-1 district and expansions of permitted uses *are permitted*. This is not a warehousing use, as no deliveries and shipments occur on a regular basis, there are no warehouse employees, there are no fedex or UPS or US mail trucks making deliveries from this site, or anything else similar to a warehousing operation. The majority of the items delivered will be used for this business, in this site. This is a stock area and retail area, the same as all other second floor and basement stock areas in every other business in town. The conveyor is as shown on the plans. The project can be built without accessing the neighbors' parking lot, if required, as the rear wall could easily be built off site in the enclosed parking lot across Kinney Avenue, owned by the Applicant, and craned into place. There are no current issues with the existing trash, and the Applicant owns and manages one of the very few enclosed trash areas in all of Old Orchard Beach. No trash, debris, pallets, or other items will be stored on the site.

- PD

Jeffrey, after reviewing Mr. Harrisburg's plans for adding additional retail space to his property located at, 9 East Grand Avenue, the only concern I have would be related to any loading or unloading of merchandise that might occur at that location. The drawings show a door and balcony on the Kinney Avenue side of the building and a conveyor belt leading to the second floor on the inside. It would appear, based on the drawings, that Mr. Harrisburg plans to load and unload his merchandise from that location. There is no loading zone on Kinney Avenue at that location, and I would not approve one because of the narrowness of the street and the congestion that occurs at that intersection during the summer months. Of course, the Town Council can overrule my decision and authorize one, but, I would not recommend it for the reasons I have mentioned. A couple of years ago, we had issues with Mr. Harrisburg unloading his merchandise from trucks and piling it on the sidewalks in front of his businesses. There were delivery trucks and other vehicles coming and going from Mr. Harrisburg's property on Kinney Avenue, that were creating traffic congestion issues at the intersection of Kinney Ave. and East Grand Avenue. After receiving many complaints from neighbors regarding this, I worked out an agreement with Mr. Harrisburg, where he would load and unload all of his merchandise on Harrisburg street, and deliver it to his

stores using a fork lift. He also agreed to discontinue having delivery trucks use Kinney Ave. This agreement was reached in an effort eliminate the piling of boxes on sidewalks and trucks loading and unloading on Kinney Ave. It seems that Mr. Harrisburg, for the most part, has abided by that agreement as I have not received any complaints. I have, on several occasions, observed Mr. Harrisburg's deliveries being made, and it appears that he is, for the most part, honoring the agreement. Understanding that he needs to be able to make deliveries to his businesses, I have no problem with his proposal as long as long as he makes deliveries using a fork lift and does not park delivery vehicles on Kinney Avenue. I would also want to be sure that he doesn't pile boxes in the street or on the public way.

As we discussed at our meeting yesterday, because he has indicated that the addition would be retail space, does that mean that he has to make the addition ADA compliant, elevator, escalator, etc? Also, if by chance he decides to use that space strictly for storage and not retail space, is that something that he can do in that zone? Thanks.

The Applicant responds to the comments by the PD, that the only deliveries, when they are needed, will be by fork lift coming from trucks parked on Harrisburg Street. There are no other police issues. The majority of foot and vehicular traffic is generated by the multi-unit apartments and condos located on Kinney Ave, and the rental condos on the ocean, on both sides of Kinney Avenue. A single fork lift making occasional deliveries within the first 30 feet of Kinney Avenue, along the proposed building will not add to the traffic issues during the very few summer weeks, in any manner whatsoever. Historically there has never been traffic congestion at Kinney Avenue near East Grand Avenue, but actually only near the ocean side of Kinney Avenue, where there are some 30 or more rental condos and apartments without adequate parking.

- FD

I see no second means of egress from the second floor and not sure if they're going to need a sprinkler system.

As far as FD is concerned, if they don't know if a sprinkler will be required, no one does. If required it will be installed. A second large opening double hung window or fire door can be added if required.

ITEM 4

Proposal: Major Subdivision: 20 lot cluster subdivision for single-family residential use (Eastern Trail Estates)
Action: Preliminary Plan Review/Determination of Completeness; Schedule Public Hearing; Schedule Final Ruling
Owner: Kevin Beaulieu & Steven Beaulieu
Location: Ross Rd, MBL: 107-1-4, 14 & 16

<u>ET ESTATES</u>	<u>Project Status</u>
Sketch Plan	Completed in January
Preliminary Plan	Submitted in May and June
Site Walk	Held in June
Application Complete	Recommended for July (if contingent upon receiving certain items)
Public Hearing	Recommended for August

This project was brought before the Planning Board in January as a sketch plan. In May, the Preliminary Plan was submitted and in June a site walk was held. The proposal is for the creation of 20 lots with one access to Ross Rd. The project will be served by public water, individual septic systems and natural gas from the Eastern Trail. There is a second phase of the project which will be located in Saco with approximately 13 additional lots that abut the Eastern Trail.

At the PB's last meeting, it was determined the preliminary plan was not complete. There were a couple of outstanding issues so the PB decided to table the preliminary plan decision. Below is a summary of these issues and where we stand:

- Cluster subdivisions have specific standards in the subdivision ordinance (74-278). We recommend the applicant demonstrate how the proposal conforms to each standard. If the applicant feels a particular standard is not applicable we ask them to provide a brief explanation. Since this proposal is a cluster subdivision, we feel that it is critical the applicant demonstrate conformance to 74-278. Also, the PB needs this to properly evaluate the proposal. *The applicant has provided responses to these in their July submission.*
- Although we received Wright-Pierce comments, none of these pertain to stormwater because we received the stormwater report late (3 May). Because stormwater is a significant part of Wright-Pierces' technical review, we feel this review must be completed before the proposal is determined complete. *Wright Pierce comments have been received for the July meeting.*
- The proposal includes more than 15 lots and only one access. 78-309 (1) requires subdivisions with 15 or more lots to have at least two street connections. The applicant can seek a waiver but must provide a formal request in accordance with 74-34. *A formal waiver request has been provided in their July submission.*

Two waiver requests have been submitted with this application:

- Waiver request of the requirement of having at least two street connections with existing public streets for subdivisions that contain 15 or more lots (74-309 (1)).
- Waiver request to allow individual subsurface disposal systems for the 20 lots. The applicant has provided a letter from a soil scientist discussing installing individual septic systems versus a common septic system to serve all of the lots.

Because both waiver requests are associated with subdivision ordinance standards the subdivision waivers requirements apply (74-34):

- (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

Regarding the subdivision access waiver, if the PB does not feel comfortable with this they can limit the number of lots developed that will use the single access to Ross Rd. to 14 lots until a second access is approved and constructed. Assuming lots 19 and 20 will have their own driveways to Ross Rd, I believe it is fair to exclude these from the 14 lots. So, the 14 lots will come from lots 1 – 18. If the PB decides not to grant the waiver but allow the proposal to move forward as described above, the applicant should identify the 14 lots by placing a note on the signed plan and the PB should add a condition. Something to note- the infrastructure, utilities, etc. abutting the excluded 4 lots must still be built.

The applicant has indicated that the roads are going to be constructed to be offered as public streets. Department heads and staff expressed some concerns about this at the May and January meetings (see Department Comments below). The primary concerns are the dead end streets for snow storage and plowing as well as the one means of egress. Mary's Way is a dead end until the Saco piece is built. Ordinances require some kind of turn-around.

The Planning Board wanted more information on how this project will work with access through OOB to get to the Saco portion. Are there elements of this proposal that need the Saco piece of the development to be constructed in order for the OOB piece to function properly? There was also a question about the infrastructure that will be used by the Saco portion that the OOB Planning Board approved- is this project designed to accommodate the future expansion? What if the Saco piece is not built? What is the timing of the Saco development?

The developer indicates the subdivision will have access to the Eastern Trail. Will this be public access? What if Mary's Way is a private road will public access still be permitted? How will this work before development of the Saco piece?

Lot driveways. Lots 19 and 20 driveway locations should be shown on the plan. What is the site distance for both lots? Ensure Lots 1 and 18 driveways are off Mary's Way- please place note on the plan.

Lots 1 and 18 are double frontage lots adjacent to an arterial road. Lots such as these typically require a 20' easement along the arterial frontage (Ross Rd) to be reserved as a planting screen and no driveway access. With the concerns about traffic on Ross, a planting screen may not be a good idea.

Sight distance. Ross Rd speed limit along this section is 35 mph. Ordinance site distance for 35 mph is 350' for passenger cars and 475' for single-unit trucks (includes two-axle, four-tire trucks and other single unit trucks). The traffic assessment prepared by Traffic Solutions states the site distance is 400 ft. plus and meets MDOT site distance requirements of 305 ft. Although it meets MDOT's site distance requirements it is not known if it meets town requirements for single-unit trucks because a specific measurement is not provided.

The Planning Board had concerns at the site walk that this development was previously a junkyard. It appears from the submission materials that no subsurface exploration was conducted that was specific to determining the extent of the junkyard and if it would impact the subdivision. The concern is the unknown this creates- what may seem ok now may not be once road, utility, home/lot development, and other forms of excavation begin. The purpose of subdivision review is to ensure the comfort, convenience, safety, health, and welfare of the people; protect the environment; and to promote an economically sound and stable community. Therefore, it's important to know if there are elements of the junkyard that remain and could be detrimental to the subdivisions' future residents and the environment.

For lot 4 to be developed the road needs to be improved along the entire frontage. Based on the plan it appears it will only be partially improved along the frontage.

Fire Department Chief Ed Dube requests a fire hydrant at the corner of Ross Rd and Mary's Way and another on Kylie Lane (see Department Comments July). Chief Dube stated it would be very helpful to place a hydrant on Ross Rd.

Wright-Pierce offers comments in a separately attached memo. We recommend the applicant address these comments and include any plan and application changes in the next submission.

There is a wetland complex in the area designated as lots 1-4. At the January meeting, BH2M mentioned filling these in and that DEP permits would be required. Staff has not received any updates on this process.

The Post Construction Stormwater Management Plan (PCSMP), O&M Plan has been submitted, however, it is missing the following elements:

- Site-specific project description with a list of State and Federal permits required by the project.
- List of site-specific BMPs with a designation on which ones could discharge to the MS4. An example table of this is included in the PCSMP Guidance Document.

DEPARTMENT COMMENTS (JULY):

FD:

In regard to Eastern Trail Estates off the Ross Road can we move the hydrant from Mary's way to the corner of Ross Road and Mary's Way and add another one on Kylie Lane.

RECOMMENDATIONS: Planning Staff recommends the following:

1. Vote on waiver request. The waiver request is critical to this proposal moving forward as proposed. If the PB decides to grant or not grant a waiver the reasons why should be stated. If a waiver is not granted in regards to the single street connection we recommend the PB consider the option discussed above.
2. Discuss the other issues identified in this memo and any others you may have. What can be resolved by explanation? What needs to be submitted to resolve?
3. Determination of completeness. If the PB feels they can determine the application complete it must be contingent upon receiving corrections, additions, etc. as identified by the Board.
4. Schedule a public hearing for the August meeting.

BACKGROUND (MAY MEETING):

This project was brought before the Planning Board in January as a sketch plan. At the time it was for the development of 20 lots off of Ross Road, adjacent to Easy Street. They are now proposing to develop 21 lots which will be served by public water and natural gas from the Eastern Trail. There is a second phase of this project to be located in Saco with approximately 13 additional lots that abut the Eastern Trail.

At the January meeting, BH2M stated that the roads will be constructed to be offered as public streets. The Planning Board had some questions/concerns at that meeting to be followed up on (*italics* list below are outstanding):

1. *With the project split between two Towns, does this change the definition of "cluster zoning"? The Planning Board wanted information on how this project will work with access through OOB to get to the Saco portion. There was also a question about the infrastructure that will be used by the Saco portion that the OOB Planning Board approves. What happens with a cluster subdivision that abuts another municipality?*
2. The Planning Board wanted to see a traffic study for a basic idea of what will happen in the Ross Road area. This has been submitted for the May meeting.
3. *The applicant is requesting a waiver to the centralized collection system standard. In the Town Ordinance Sec. 74-278(7): Planned Unit and Cluster Developments "all structures with required plumbing in a planned unit development or cluster development shall be connected to a public sanitary sewer system, if available, or to a central collection and treatment system in accordance with the sanitation sections of this chapter." The Planning Board discussed that if this is going to be waived for each proposal, why is it still part of our ordinance?*
4. *The project contains 21 lots with only one means of egress, which will be the proposed Mary's Way off of Ross Road. This is a major concern that has been discussed by Planning Staff and Department Heads.*

At the January meeting, the Planning Board discussed the use of Easy Street as a second means of egress with an emergency breakaway gate? How can the second means of egress be achieved with this development? With the Lands' End Subdivision that was approved in 2008, Easy Street was supposed to be brought up to subdivision standards, however, this project was never started.

5. *There is a wetland complex in the area designated as lots 1-4. At the January meeting, BH2M mentioned filling these in and that DEP permits would be required. Planning Staff has not received an update on this.*
6. *The application did not include a stormwater management report so this has not been reviewed by Wright Pierce.*

There were some other items discussed at the January meeting including:

- The notification procedure with Saco. Because this project is located within 500 feet of a municipal boundary, Saco will be notified through the Public Hearing process. The City Planner, Bob Hamblen received the sketch plan and has received a copy of the preliminary plans for the subdivision.
- The Planning Board also discussed the potential of trail networks in the open space portion of the site. Because the subdivision will eventually abut the Eastern Trail, there is the potential for trail networks to connect from the Eastern Trail through to Ross Road. A conversation has already started with the Eastern Trail Management District (ETMD) about potential trail connections as well.
- Because this project is located in the Goosefare watershed and is over one acre a Maintenance Agreement will have to be signed and a Post-Construction Stormwater Management Plan including a list of all BMPs with designation on the ones that discharge to the Towns MS4 (i.e. Ross Road) will have to be submitted and reviewed by the Planning Board.
- Wright Pierce comments were received for the May meeting and have been included in your packet. Stephanie does have some outstanding concerns listed in her memo.

Additional discussion items for the May meeting. There are three primary items staff feels need to be addressed before the PB determines the proposal complete.

1. Cluster subdivisions have specific standards in the subdivision ordinance (74-278). We recommend the applicant demonstrate how the proposal conforms to each standard. If the applicant feels a particular standard is not applicable we ask them to provide a brief explanation. Since this proposal is a cluster subdivision, we feel that it is critical the applicant demonstrate conformance to 74-278. Also, the PB needs this to properly evaluate the proposal.
2. Although we received Wright-Pierce comments, none of these pertain to stormwater because we received the stormwater report late (3 May). Because stormwater is a significant part of Wright-Pierces' technical review, we feel this review must be completed before the proposal is determined complete.
3. The proposal includes more than 15 lots and only one access. 78-309 (1) requires subdivisions with 15 or more lots to have at least two street connections. The applicant can seek a waiver but must provide a formal request in accordance with 74-34.

There are some concerns regarding Lot 21. We have been told this lot is currently under contract and may be sold before a final decision is made on the proposed subdivision. Town ordinances state "no person may convey, offer or agree to convey any land in a subdivision which has not been approved by the planning board and recorded in the registry of deeds. With the language above we wondered is the sale of a lot that is in a proposed subdivision that has not yet been approved a violation of subdivision law. We researched this and based upon what we found (town attorney legal opinion), it appears this is not a violation as long as the contract or offer to sell the lot is contingent upon subdivision approval. If three or more lots associated with the

subdivision were for sale before the subdivision was approved than this would be violation because three or more lots creates a subdivision. The Law Court ruled on a matter similar to this (Paldac v. Rockland)- because three or more lots must be created before a subdivision occurs, placing one housing unit did not create a subdivision since it was the “first lot”. The Court noted, until a property owner “actually creates a subdivision, the fact that it has filed an application for approval does not halt its freedom to pursue other legal uses of the land as well.” Having said the above we do feel this could be questioned and delay the subdivision from moving forward. We felt an easy remedy was to remove Lot 21 from the subdivision as it can be sold separately without triggering subdivision review by itself (the creation of 1 lot). We received revised plans (11 x 17) showing the removal of Lot 21 which are included in this month’s submission. Finally, the Town Manager, Public Works Director, PD Chief, and Fire Chief offer comments that need to be addressed by the applicant.

DEPARTMENT COMMENTS (MAY)

Public Works:

DECLARATION OF OWNERS ASSOCIATION WITH COVENANTS, RESTRICTIONS AND CONDITIONS.

From the Preliminary Application:

4. Purposes and Power ...” Open space areas and roadway areas shown on the Plan, including without limitation, maintenance and preservation of the same, and enforcement of all covenants and restrictions set forth herein.”

States:

- a) Removal of snow from the Common areas including, without limitation, sidewalks (if any), walkways, and driveways; and...
- f) Maintenance and repair of roads and sidewalks until the same are accepted by the Town; and
- g) Collection and removal of refuse and rubbish from the Subdivision

Comments: Reading this we can assume that

- 1. The association is responsible for snow removal on the sidewalks
- 2. They will maintain the roads (plowing?) until its accepted.
- 3. They are responsible for trash collection.

On the Plan:

Need a place for snow storage in the cul de sac and need a place at the Town Line.

Who is responsible for Street Lights? Should be association.

I feel that we should not have another development with dead end streets.

Town Manager:

I wasn't at yesterday's meeting so I am commenting without the benefit of seeing the latest proposal.

Nonetheless my thoughts at that the Town should be clear that we will not accept these streets unless they are built to allow for efficient winter maintenance. No dead end streets, no need to remove snow, adequate snow storage.

RECOMMENDATIONS (MAY): We feel there are still a number of outstanding items that need to be addressed before the Planning Board can rule on the preliminary plan. The Planning Board can schedule a site walk for 1 June but a public hearing should not be scheduled until the application is determined complete.

BACKGROUND (JANUARY MEETING):

Project Background:

This is a Sketch Plan proposal for a Major Subdivision – 20 lots – off of Ross Road adjacent to Easy Street and across from “Reclaim the Plains – Blueberry Plains.” The current use is an undeveloped wooded lot.

Comments from Planning Staff, Departments and Wright Pierce:

There is an area on the plan designated as “future development” – the development of up to 20 lots will occur in Saco at a later date after the Old Orchard Beach portion. There is the potential for access concerns with only having one entrance to the lots. This concern could be further exacerbated knowing the future development potential on the Saco side. A conversation has already begun with Saco’s Planner Bob Hamblen. Staff felt it was important to get them involved early on in the process and keep them involved as the project moves forward.

Per the Town’s Ordinance (74-231(f)): If a subdivision is located within 500 feet of a municipal boundary, a public hearing shall be held. The Planning Board shall notify the clerk and the Planning Board of the adjacent municipality involved at least 10 days prior to the hearing. Comments and recommendations made by the Planning Board of the adjacent municipality shall be given due consideration in the deliberations and decision-making process of the Planning Board.

This project is in the Rural District of Town. There could be opportunities for open space/trails as part of this development that the Planning Board could take into consideration.

This project is over an acre and located in the Goosefare watershed. There will be Chapter 71 (Post-Construction Stormwater Ordinance) implications. The Town will be looking for the Developer to enter into a Maintenance Agreement, submit a Post-Construction Stormwater Management Plan and provide the Town with a list of all BMPs proposed on site with a designation on those that have the potential to discharge to the Town’s MS4 (i.e. Ross Road).

In addition, this project is in the Goosefare Watershed and because of its close proximity to Saco, there is the potential for the Developer to pay into Saco’s Compensation Fee Utilization Plan (CFUP). This would allow the developer to allocate funds toward future projects in the Goosefare watershed in lieu of additional improvements on site. The Town of Old Orchard Beach does not have this Plan in place, it is something the Planning Board will look into this year, however, it is something to consider as part of this proposal.

DEPARTMENT COMMENTS (JANUARY)

PD:
Jeffrey, as we discussed Wednesday at our development meeting, I have concerns with adding another 20 homes and possibly an additional 10 or 12 future homes, to what is in my opinion, an already overloaded intersection at Ross and Cascade Rds. It seems that, individually, these projects in and around that intersection, do not, by themselves, warrant a traffic study. However, collectively, it seems like to me that they should. I understand that we currently do not require impact fees for any future road or intersection improvements. I don’t see how we can keep adding housing to this area, and not, at some point, have to consider the overall impact these projects will surely have on the intersection of Cascade and Ross rd. It is poorly designed, has poor sight distances, and is a high crash area. Unfortunately, it doesn’t meet the warrant required by MDOT for a signal. Anyone who has had to experience that intersection, especially during the summer, knows how difficult and dangerous it can be. We keep adding more and more housing, but do not address the long term traffic impacts. It seems to me, that developers should be paying for future costs associated with the impact on infrastructure and traffic related problems, created by developments they build. The intersection of Ross Road and Cascade Rd, should be addressed now, and I don’t think it is fair to put the burden of any immediate or future improvements (signals, road improvements, street lights and sidewalks) on the backs of tax payers. Other than for these reasons, I do not have any objections to these kinds of projects moving forward. They certainly contribute to the revenue stream through property taxes, but, I can’t help but wonder if the overall impact on our schools, costs for plowing and maintaining new roadways, police and fire services, and potential infrastructure improvements, outweighs any benefit derived from additional tax revenues. It may be that we have to change our ordinances to require impact fees on these types of projects, perhaps even a moratorium on future development until these issues can be addressed.

FD:
 In regards to Red Oak Subdivision Phase-2 and Ross Road Subdivision they must both meet the following.
 NFPA: 18.3 Fire Hydrants
 NFPA: 18.2.3 Fire Department Access Road
 NFPA: 18.2.3.4.4 Dead Ends
 NFPA: 18.2.3.4.3 Turning Radius -The Turning Radius must meet the dimensions of the department Aerial Truck.

Wright Pierce comments were received on December 22, 2016. A couple of things to point out specifically from Stephanie’s memo:

- A portion of the property to be developed (Lots 1-4) appears to be in what is designated as a wetland on the GIS, construction details will have to be provided for this area.
- According to the Town ordinance, any development with greater than 15 lots requires a second means of egress. There is the possibility of using Easy Street, however, this is a private dirt road and at this time it’s unclear whether or not the street could be brought up to subdivision standards and used as access for the subdivision.
- In 2011 the Town reviewed the Land’s End Subdivision which was proposed to be located in this area to the left of Easy Street. As part of the subdivision approval, Easy Street was to be upgraded and used as an access to the 8 proposed lots (*see attached plans & FOF*).
- The 20 lots are to be served by individual onsite subsurface disposal systems, there is the possibility of connecting each of the lots to one centralized collection system and given the fact that the project is in the Town’s priority watershed, this is something that should be looked into. In the Town Ordinance Sec. 74-278(7): Planned Unit and Cluster Developments “all structures with required plumbing in a planned unit development or cluster development shall be connected to a public sanitary sewer system, if available, or to a central collection and treatment system in accordance with the sanitation sections of this chapter.”

ITEM 5

Proposal: Site Plan Review: Expansion of existing corps and admin building, parking lot construction, relocation of Church Street, park construction, building demo, landscaping, site work

Action: Preliminary Plan Review/Determination of Completeness; Schedule Site Walk and Public Hearing; Schedule Final Ruling

Owner: The Salvation Army

Location: 6th St, Union Ave, Church St, Oakland Ave, 15th St; MBL: 311-6-1,12, 8; MBL: 311-4-1,2,3,4,5

<u>SALVATION ARMY</u>	<u>Project Status</u>
Sketch Plan	Submitted in
Preliminary Plan	Submitted in July
Application Complete	Recommended for July (if contingent upon receiving certain items)
Site Walk	Recommended for August
Public Hearing	Recommended for August (if application determined complete)

The Salvation Army is proposing the construction of a 12,000 +/- sq. ft. addition to the existing building, parking lots between Union and Church, loading/unloading area adjacent to the addition, sidewalks, landscaping, infrastructure, and other site work to support the proposed addition and parking lots. The proposal was introduced to the PB as a sketch plan at the April meeting (see background below). The proposal is now prepared for formal preliminary plan review and a determination of completeness. Also, scheduling a site walk and public hearing.

A lot of work has been done since the last time the PB considered this proposal. The applicant and staff were in regular contact while prepping for this preliminary plan submission. Some of the primary issues found during sketch plan, which included lot merger, setbacks, and overall site layout, have been or are in the process of being resolved.

As part of preliminary plan review the PB is tasked with a determination of completeness. A preliminary plan can be determined complete when the application contains all relevant info necessary to make a reasonable and informed decision. Often the PB finds an application is complete but requests more or improved information. In such instances the PB makes a determination of completeness contingent upon the applicant making corrections, additions, etc. identified by the Board. I believe this is the case with this proposal.

There are three primary issues that need resolution- waiver request, boundary survey and Wright-Pierce grading and drainage comments. There are other issues that need clarification, plan amendments, etc. See below for further info (Wright-Pierce memo is included in this month's packet).

Three Primary Issues:

- Waiver request. The applicant is requesting a waiver of 78-1491 (d) which limits the number of driveways along local streets to one per lot. The proposal includes 3 parking lots (2 new) each with their own driveway along Church St. One of the reasons this request is made is due to staff recommendation to merge lots. By merging lots it makes a cleaner layout and allows for easier navigation of zoning standards. If the lots were not merged, the proposal would most likely have 3 driveways (one/lot). So, access to Church would most likely be the same with or without the merger. But the merger allows for a better overall plan. The applicant's packet includes a traffic report (which considered the driveways) and concludes there will be a net positive impact on the surrounding roadway network. Also note that the existing Union Ave driveway will be removed with this plan and as noted in the traffic report, elimination will improve access management. There are no objections from department heads and planning staff.
- A full boundary survey is not included in this submission. The applicant notes this survey is being done and will be provided prior to issuance of building permits. The plans include approximate property boundaries identified via an "on-the-ground" survey in June 2017 and are sealed by a land surveyor and engineer. The applicant states that they believe the property line location is sufficient for planning purposes. One question- there are areas where the proposed building is right at the minimum property line setback (15 ft.) so is sufficient for planning purposes good enough. In my opinion, I believe it is as it will be the responsibility of code enforcement to verify the proposal meets applicable setbacks before permit issuance and during construction.
- Grading and drainage comments. Wright-Pierce notes in their 7/3/17 memo that downstream receiving facilities have noted the existing storm drainage facilities are taxed, and therefore the management or pre-development to post-development flows are critical in this project area. The memo includes several comments regarding this which we'll need the applicant to address.

Other Issues (no particular order of importance):

- Response, including any plan amendments/additions, to the comments is Wright-Pierce memo dated 7/3/17.
- A Post-Construction Stormwater Management Plan (PCSMP) has been submitted for the project for the Planning Board to review. We recommend a list of site-specific BMPs with designation on where they discharge to and if they have the potential to discharge to the Towns MS4.
- Existing public and private easements marked N/A- why N/A? Was this researched?
- No proposed signs?
- Add dumpster fence section in the details.
- No changes to buffer along new building area facing Oakland Ave. This should be ok for the properties owned by the Salvation Army because they will be merged. But there are 2-3 properties not owned by the Army which will be close to the proposed building. Should the buffer/screening in this area be increased or does it already meet the buffer requirements? Does the buffer/screening meet 78-1821 – 24? The area is now a parking lot which has different buffer/screening standards than a building.
- Parking lot buffer/screening is shown on the plan but it's difficult to determine how it meets 78-1544. Maybe just a brief explanation will do.

- Street trees (along Church and Union)- please explain how the conceptual planting plan meets 78-1771 – 1775 (Street Trees).
- Individual trees that are part of the planting plan should be added to the detail plan or as part a landscaping plan.
- Proposal exceeds the required # of parking spaces. Required- 46 (1/6 seats @ 275); Proposed- 75.
- Wheel stops and curbs (78-1542 f)- couldn't find on the plan or detail sheets.
- HVAC compressors/noise. Area associated with proposed development is in the R2 District which has a noise standard of (dBA) 55 day, 45 night. Although, 26-62 (13) specifically regulates noise associated with the Salvation Army Pavilion which reference the MBL that includes the land associated with the building expansion. This allows for 70 day, 60 night at certain time of the year. The applicant could argue the 70/60 standard applies to the area associated with the building addition but this would only benefit them on a seasonal basis- the noise standard goes back to 55/45 during the fall/winter months. So, the applicant needs to demonstrate how the proposal meets 55/45 dBA. I assume the HVAC compressors may be the biggest generator of noise.
- Status of DEP permitting?

DEPARTMENT COMMENTS (JULY)

Nothing received

RECOMMENDATIONS: Staff recommends the following:

1. Vote on the waiver request. Staff supports this request.
2. Discuss the full boundary survey. Will the survey data provided be sufficient enough to move forward? Staff believes it is as long as the updated boundary survey is provided to codes at the time of permitting.
3. Discuss the other issues identified in this memo and any others you may have. What can be resolved by explanation? What needs to be submitted to resolve?
4. Determination of completeness. If the PB feels they can determine the application complete it must be contingent upon receiving corrections, additions, etc. as identified by the Board.
5. Schedule site walk (3 August).
6. Schedule a public hearing (10 August) if the application is determined complete.

BACKGROUND (APRIL MEETING)

First, and most important, the comments below are focused on Option H. The reason for this is because Option N includes elements that assume Salvation Army's ownership of public and private property that it has not yet acquired and the PB does not have the authority to decide on such matters. It assumes ownership or development rights of some kind over Church St. and its ROW as well as a few private parcels. Regarding public property acquisition, this matter falls under the Council jurisdiction and possibly the public as a whole. The applicant should discuss with the town manager to learn more about this process. The PB can discuss, provide suggestions, and hold an informal public hearing but should refrain from any formal decision (including determination of completeness) until the property matter is resolved. At this time Option N should be approached as an item for feedback only.

Below are comments associated with Option H. These comments are primarily related to the sketch plan submission and applicable Ch. 78 Performance Standards (Art. VIII). The applicant should be prepared to address these as they move forward to formal submission.

- The side property setback is 15'. It appears some of the proposed building area is within the setback. If the applicant intends to move forward with building area within the setback they should apply for a variance before proceeding with PB review.

- Lots acquired by the Salvation Army, although owned by the Army, are considered separate parcels for zoning purposes. This means property lines still exist along with any setback, buffer, etc. requirements. The plans show parking lot area crossing the property line, too. The best way to avoid any potential limitations that may result from this is by combining the lots.
- 78-1491 – 1495 (access standards for nonresidential uses) includes driveway standards such as dimensions, sitting, dimensions, sight distances, etc. One particular note that will impact this proposal is one driveway is permitted for each street fronting a parcel.
- 78-1541 – 1544 (parking lot and site circulation) includes parking dimensions and layout, snow removal and landscaping. 1541- do the pedestrian sidewalks meet (f)? How about pedestrian sidewalks for new parking between Church and Union? 1542- Don't forget (f) wheel stops and curbs. 1543- need snow removal plan. 1544- remember screening and buffering plan is needed when adjacent to properties not acquired by the Army including those along Oakland and Church. Street trees in accordance with 78-1771 -1775 needed along Union, Church and 15th.
- 78-1566 – 1568 (required parking spaces) identifies church uses at 1 space per 6 seats in principle sanctuary or meeting. One question- if the space is used for non-church functions should another parking space standard be considered?
- 78-1591 – 1596 (off-street loading). It appears the area ID as Service Area is the proposed loading area. A few thoughts- is there enough room to turn around without backing on the street? May need more buffering along Church St. if the residential properties are not acquired. Need to show lighting.
- 78-1746 – 1827 (landscaping and buffering) includes landscaping and buffering standards primarily for the building. Some of these standards, such as street trees, are also applicable to parking lots.
- The proposal will most likely be required to meet applicable standards in our post-construction stormwater ordinance (Ch. 71).

RECOMMENDATIONS (APRIL): Sketch plan review provides an opportunity for the PB to offer recommendations- even if they're not specifically related to complying with an ordinance standard. As you know, this proposal includes two options. Staff believes the PB can provide feedback on both but should focus on Option H. We expect a fair amount of public interest so it may be a good idea to have two public hearing hearings or one general comment public meeting before determination of completeness and the formal public hearing after. There are no decisions required at this time.

ITEM 6

Proposal: Major Subdivision: 8 lot residential subdivision (Red Oak Phase III)
Action: Preliminary Plan Review/Determination of Completeness; Schedule Site Walk and Public Hearing; Schedule Final Ruling
Owner: Mark & Claire Bureau
Location: 141 Portland Ave, MBL: 104-2-2

<u>RED OAK</u>	<u>Project Status</u>
Sketch Plan	Completed in January
Preliminary Plan	Submitted in July
Application Complete	Recommended for July
Site Walk	Recommended for August
Public Hearing	Recommended for August

This project was brought before the Planning Board in January as a sketch plan. It is for the creation of 8 lots off of Red Oak Drive. Currently, there are four lots with homes on Red Oak Drive that were approved back in 2004-2005. The last lot was completed in the summer of 2016. There is a five foot sidewalk proposed as part of the new phase. This will be a continuation of the sidewalk from the first and second phases. The project will be

served by public water and septic systems. It is unclear what type of lighting will be provided in the development.

There were a couple of discussion points that came up during the January meeting:

- There were some issues associated with the pond that was constructed as part of Phase II of the Subdivision. The pond was constructed within 75 feet of the stream, however, the piping associated with the pond was within 25 feet of the stream. It appears from the plans that the existing riprap pond at the end of Red Oak Drive will be converted into an underdrained soil filter which will treat the existing roadway and a portion of the proposed roadway. They are also proposing a bioretention filter at the end of the development.
 - The applicant has indicated that the MDEP Permit by Rule was filed “after the fact” that included restoration of the stream bank (for disturbance within 25’ of the stream) and the site is now “legal” per the permit acceptance and restoration (trees have been planted). The NRPA PBR Application Packet has been included in your Red Oak materials.
- The applicant plans to submit a Letter of Map Amendment (LOMA) for the FEMA regulated area because the stream banks are well established and high. Planning Staff has asked for documentation on this.
 - The Applicant has indicated that it will likely take longer than this project approval for the FEMA adjustment so they are moving forward with the 100-year flood plan “as is” and have designed the lots so that if the line ever does get accepted as a remapped line, they’ll be able to amend the subdivision plan.

A Post-Construction Stormwater Management Plan (PCSMP) has been submitted for the project for the Planning Board to review. Planning Staff has a couple of comments on the plan:

- Under **Project Contact Information**, it says the responsible party for the maintenance of stormwater BMPs is the Developer Mark Bureau. Does this mean there isn’t going to be an HOA for the development and that the Developer will be responsible for all maintenance of the BMPs?
- Under **Project Narrative**, it does not indicate what federal permits are required for the project. For example, a PBR through the DEP is required but is not listed under this section.
- Under **MS4 Identification Plan**, it says this section is not applicable, however, we still need a list of BMPs proposed on the project, regardless if they discharge into the Town’s MS4. The PCSWP Guidance Document has an example table that shows how this can be listed.

It is unclear whether this project is intended to be private or public. In January, the applicant mentioned the project remaining private, however, in the application under solid and sewage waste disposal it indicates: “...until such time as the roadway is accepted by the Town of Old Orchard Beach...”

DEPARTMENT COMMENTS (JULY):

FD:

In regards to Red Oak Phase-3 here are some of the requirements they need to meet by NFPA.

- 1) All roads would be twenty feet wide under NFPA 18.2.3.
- 2) Under NFPA 18.2.3.4.4 Dead End, where a fire department access road exceeds 150 feet in length and is also a dead end an appropriate turnaround is required minimum length equals to the length of the longest fire apparatus which would be our tower truck at 48 feet.
- 3) Under NFPA 18.2.3.4.3 Turning Radius, the road turning radius must be able to accommodate the turning radius of our tower truck at 48 feet long. A handout is attached to this letter with the calculation showing the turning radius for our tower truck.
- 4) All privately owned hydrants would be maintained under NFPA 18.35 Water Supplies and Fire Hydrants.
- 5) Under NFPA 18.2.3.2.1 Access to Building, a fire department access road shall extend to within 50 feet of at least one exterior door that can be open from the outside which provides access to the interior of the building. If this not done an approved automatic sprinkler system shall be installed. Under NFPA 18.2.3.2.1.1 where a one or two family dwelling is protected with an approved automatic sprinkler system installed in accordance with NFPA 13D, the distance in 18.2.3.2.1 shall be permitted to be increased to 150 feet.
- 6) We need to check on the nearest hydrants locations.

RECOMMENDATIONS: Staff recommends that the PB schedule a site walk for August 3rd and a public hearing for August 10th.

BACKGROUND (JANUARY MEETING):

Project Background:

In 2004, the Red Oak development located at 143 Portland Ave was approved as a minor, 3-lot subdivision. In 2005, the applicant came back for an amendment to extend the main road and create one additional lot (Phase 2). The last lot was completed in the summer of 2016.

Construction Background:

In early February (2016), Codes staff noticed some severe erosion and sedimentation control issues at the last lot under construction on Red Oak Drive. As a result, the Town had Stephanie from Wright Pierce come out and complete inspections at the site. Inspections were completed in February, March, and May (reports attached). The Town also completed several inspections.

The DEP got involved at the end of July, early August due to the issues onsite, primarily associated with the stream. Audie Arbo at the DEP spoke with Marc Bureau (Owner/Developer) after she discovered that no current permits existed for the work being done on Red Oak Drive. The only permit found was a Permit by Rule for an outfall pipe on Red Oak Drive in 2006. The main issue was that a stream crossing was put in without a Section 10 Permit by Rule (PBR). Work was also done within 25 feet of the stream, which now required an after-the-fact Natural Resources Protection Act Individual permit for activity adjacent to a protected natural resource. In addition, the rip rap in the bed of the stream channel needed to be removed by hand to allow for the natural stream bed to be exposed. Audie also recommended having the engineer hired for the next phase of the project look into whether the road would trigger the need for a Stormwater permit.

In September, Audie met with Marc Bureau's agent and engineer on-site and together they were working on a restoration plan to move the stormwater feature outside of 25 feet from the stream and put in an after the fact permit application for the stream crossing.

January Update from Audie:

On January 3, 2017 Audie Arbo at DEP has not received a plan and the enforcement case is still open regarding the project. She has put in another phone call to the agent to ask where the plan and timeline for corrective action is and got an email from the agent stating she will have an after-the-fact Permit By Rule for the crossing and a restoration plan for moving the structures away from the stream very soon.

Comments were received from Stephanie on December 23rd, see attached memo.

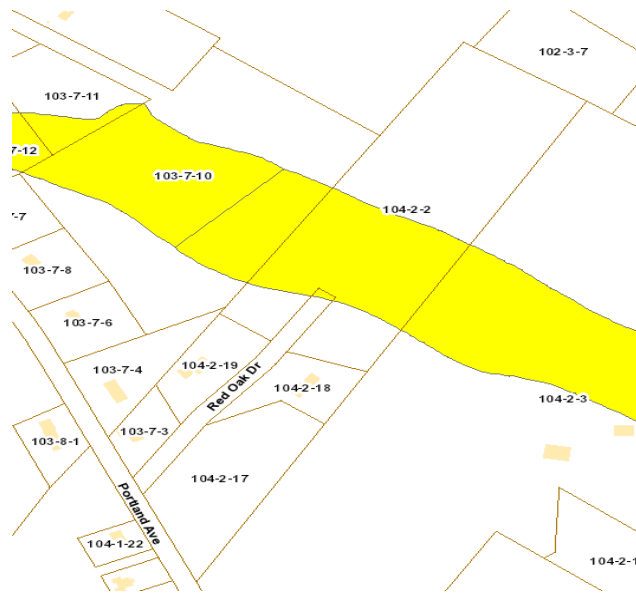
Additional Town Comments:

The house adjacent to Lot 9 on the other side of the stream was just completed this past summer. On the approved plans from 2005 it shows this lot as part of Phase II (*see attached plans*). In addition, the parcel number (104-2-2) on the Town's GIS shows that house as part of the same MBL as these 9 additional units. It is unclear on the sketch plan whether this lot is considered part of Phase II as shown on the 2005 approval.



It's unclear whether or not Lot 1 is a buildable lot. A detention pond was constructed this past summer in that area and it's unclear where the building envelope for this new lot is in relation to the pond. It's recommended that this pond be shown on the plan. The building envelope shown to the left of the stream is in the same area as the pond which was located within 25 feet of the stream (*see attached photos*).

FEMA implications – 3 or more of the proposed lots are in the designated FEMA flood zone “A.” This is also addressed in the Wright Pierce memo from Stephanie.



One of the building envelopes for Lot 9 is tucked in the corner of the lot, how could an access drive be put in to get to this building without impacting the stream?

As a heads up this project is over an acre and in the MS4 regulated area so the Town will be looking for the applicant to enter into a Maintenance Agreement and provide a Post-Construction Stormwater Management Plan for the development. They shall also provide the Town with a list of all BMPs proposed on site and designate any of them that could discharge to the Town's MS4 (i.e. Portland Ave).

DEPARTMENT COMMENTS (JANUARY)

FD:
In regards to Red Oak Subdivision Phase-2 and Ross Road Subdivision they must both meet the following.
NFPA: 18.3 Fire Hydrants
NFPA: 18.2.3 Fire Department Access Road
NFPA: 18.2.3.4.4 Dead Ends
NFPA: 18.2.3.4.3 Turning Radius -The Turning Radius must meet the dimensions of the department Aerial Truck.

Public Works:
- Red Oak Subdivision. – I don’t see anything for storm water.
o I would like to see the dimensions of the cul de sac for plowing.
o Would cul de sac be large enough to fit fire apparatus

ITEM 7

Proposal: Conditional Use (Home Occupation): Personal Services (Psychic Readings)
Action: Determination of Completeness; Schedule Site Walk and Public Hearing; Schedule Final Ruling
Owner: Mary & Greg Desjardins
Location: 94 Saco Ave, MBL: 206-5-10

<u>Psychic Readings</u>	<u>Project Status</u>
Sketch Plan	Not submitted or required
Preliminary Plan	Submitted in July
Application Complete	Recommended for July
Site Walk	Recommended for August
Public Hearing	Recommended for August

This proposal is for the establishment of a psychic reading service as a home occupation. The current use of the property is a two-family dwelling. The psychic readings will take place in the enclosed 6 x 12 front porch. The home occupation will operate 7 days/week by appointment. There are no product sales. Parking for the proposal will utilize the existing driveway/parking area.

Home occupations are a Conditional Use (CU). In addition to the 12 CU standards (78-1240), the proposal must comply with the home occupation definition and the standards specific home occupation (78-1267). The applicant’s submission includes responses to the CU and home occupation standards.

You may recall seeing a psychic recently operating at this same location. It was found this operation was in violation of the zoning ordinance because the personal service use as a stand-alone use is not permissible in the GB2 and due to minimum lot area/use requirements. To reestablish this business legally one option was to secure approval as a home occupation. Home occupations are a permissible use in the GB2 and they do not need to meet minimum lot area requirements. But, to qualify as a home occupation the proposal must comply with the home occupation definition, home occupation standards (1267) and CU standards (1240).

The applicants’ submission is solid and appears to conform to a majority of the applicable standards mentioned above.

- Home occupation or profession shall be carried on wholly within the principal single-family detached dwelling unit or owner-occupied two-family dwelling. The deed identifies the owner as Mary and

Gregory Desjardin. It appears the home occupation will be operated by Sam Miller. So, is the home occupation owner-occupied?

- Home occupations signage standard states: “A single sign identifying the name, address, and profession of a permitted home occupation or a lawfully existing nonconforming home occupation is permitted, provided such sign is nonilluminated and does not exceed two square feet.” The applicant is proposing a 12 sq. ft. sign. The applicant states: “there is an existing grandfathered, and legally permitted sign already on the property which is 2-sided and is approximately 12 sq. ft. each side, and which is less than the allowed signage in the GB2 district but more than a Home Occupation allows in a residential district.” A check of the permit file finds a 2-sided 12 sq. ft. sign was approved (2008) as a business sign for Weichert Realtors. Although it is true that a 12 sq. ft. sign was allowed for this property, Weichert Realtors was a permitted use (business, professional) and not a home occupation. So, the question- can grandfathering sign area apply when the use is changed? 78-1624 regulates nonconforming signs and, in part, states that lawfully existing square footage of signage may be rearranged and redistributed on the premises, but only in conformity with the applicable design standards in the individual zoning district. The proposed sign meets the design standards in the individual zoning district (GB2); although, the sign standard in question is part of the CU home occupation requirements- it’s separate from the GB2 district. So, what does the PB think- is the 12 sq. ft. grandfathered or is the sign limited to 2 square feet?
- Dumpster must be shielded on 3 sides.

DEPARTMENT COMMENTS

Nothing received

RECOMMENDATIONS: I believe the PB can determine the application as complete but the questions asked in the bullets above should be answered. If they are not satisfactorily addressed at the July meeting the PB can determine the application complete contingent upon the applicant satisfying PB requests to resolve the questions before final ruling. If the PB determines the application complete a public hearing can be scheduled for the August meeting. Also, a site walk may be scheduled for August if the PB chooses.

OTHER BUSINESS

1. Discussion: Planning Board approval expiration for Subdivision, Site Plan and Conditional Use

The proposed changes to subdivision, site plan and conditional use approval expiration have been discussed at several workshops. The PB offered comments and questions which include the following:

- The expiration clock begins when a project receives “final approval”. Do we consider final approval as the day the PB votes on the project or signs the mylar? Should final approval be defined?
- Administrative review of project commencement and substantial completion. Should staff have the ability to authorize project extensions? If so, should it be limited to those projects that are originally approved administratively or should it include PB approved projects? As proposed, subdivision does not allow admin review. Site plan and CU allows for admin only if it was originally approved as admin.
- Should we set a specific limit to the number of extension requests? It was suggested to we limit the number to 2 one year requests for project commencement and substantial completion.
- Should we define “intended purpose”? Intended purpose is used in the substantial completion definitions: “sufficiently completed to allow the subdivision to be used for its intended purpose.”
- Are expiration dates on subdivision projects legal? Staff checked with legal and yes, we can add expiration dates. This gets tricky when the subdivision includes lots and the lots are recorded. If a

subdivision expires it's quite possible the ability to develop the lots will expire too. So it could become a bit of a messy title and assessing matter to undue the lots. Also, what if the subdivision is half developed but not substantially complete and people are living in homes on these lots? We can assume the town will have a performance guarantee in place to finish the infrastructure but there's a possibility of something unforeseen. Maybe the expiration dates should be tied to infrastructure but what if the subdivision involves construction of a condo building where infrastructure may be minimal?

- Reach out and encourage developers to begin and complete projects. As we've found this can be tough because the reasons vary and are sometimes caused by unpredictable events. Examples, market conditions, death, divorce, etc. Staff can contact developers when project expiration dates approach but there's not much we can do beyond finding out the reasons for delay and trying to work with them to get projects started and completed. Maybe having an expiration date will in itself encourage developers to begin and complete projects.

In addition to the above, the PB asked staff to see how surrounding municipalities regulate expirations. Staff reviewed Biddeford, Saco, Scarborough, and Arundel Subdivision Site Plan and Conditional Use Ordinances and found the following (note- ordinance excerpts are in packets):

- Biddeford:
 - *Subdivision- Valid for 2 years, proposed infrastructure must be completed to serve 75% of approved lots
 - *Site Plan and CU- Did not find expirations
- Saco:
 - *Subdivision- Substantial construction within 2 year, substantial construction means completion of road base. Subdivisions without roads the completion and issuance of occupancy permit for 1 unit is considered substantial construction. One, 2-year extensions authorized by PB
 - *Site Plan- Substantial construction commenced within 12 months. Substantial construction means completion of foundation, addition or other evidence satisfactory to the Planning Department. Two, 12 month extension authorized by town planner.
 - *Conditional Use- Construction must commence within 12 months. One, 6 month extension authorized by PB.
- Scarborough:
 - *Subdivision- Could not find a specific expiration date. It appears to be tied to the Performance Guarantee.
 - *Site Plan- 1 year from the date of approval unless applicant has started substantial construction. One, 1 year extension authorized by town planner.
 - *Conditional Use- Could not find a CU Ordinance.
- Arundel:
 - *Subdivision- Substantial completion within 2 years of the date of approval. Substantial completion is no less than 30% of the costs of the proposed improvements in a subdivision. If consists of lots, buildings on those lots not included in 30%. Extensions are not identified.
 - *Site Plan- Substantial completion with 2 years of approval date. Staff may grant one, 1 year extension for admin reviews. PB one, 1 year extension on Site Plan approvals.
 - *Conditional Use- Construction must begin within 2 years of approval date.

Background

As you may know, we've found that our subdivision, site plan and conditional use ordinances project approval expiration standards may be lacking. For example, our CU standards do not have a project approval expiration date which basically means a CU project approved by the PB can pretty much run indefinitely before construction begins. Another example is subdivision which has project expiration standards but they're tied to plan recording (74-234 a) and a rather odd one that appears to be tied to phased development (74-234 b)

Common project expiration standards are one year to begin construction and two years to substantially complete construction. Our site plan ordinance includes standards similar to the above but the key language, project commencement and substantially completed, is not defined. "Substantial Start" is defined ("completion of 30 percent of a permitted structure or use measured as a percentage of estimated total cost") but that language is not used in subdivision, site plan or conditional use.

Coming up with proposed language wasn't as simple as originally thought. Meaning and intent of language, interpretation, twists of words, appropriate words, correct supporting language that flows within each ordinance, conflicting language, etc. all need to be considered- it's actually tricky. Also, subdivision, site plan and CU cover many different projects within each of the ordinances (e.g., a subdivision can include creation of lots with new roads as well as a division of units within a building with no new roads). So trying to come up with a definitions and supporting language that fits all potential scenarios is difficult. In addition to planning-related project commencement and substantial completion codes has standards related to their permitting. To avoid conflicts the definitions are included with the applicable ordinance (e.g., subdivision) or the applicable ordinance is specifically identified within the definition.

Note that these amendments will apply to projects approved after adoption of the language and those projects that have not yet received substantive review (review of a project to determine if it complies with criteria) when the ordinance is amended. Generally, an approved but undeveloped project will be grandfathered absent any language that includes an expiration clause.

CURRENT LANGUAGE

SUBDIVISION:

74-234:

(a) Any subdivision plan not so filed or recorded within 90 days of the date upon which such plan is approved and signed by the planning board as provided in this subsection shall become null and void, unless the particular circumstances of the applicant warrant the planning board to grant an extension which shall not exceed two additional periods of 90 days.

(b) At the time the planning board grants final plan approval, it may permit the plan to be divided into two or more sections subject to any conditions the planning board deems necessary in order to ensure the orderly development of the plan. The applicant may file a section of the approved plan with the tax assessor and the registry of deeds if such section constitutes at least ten percent of the total number of lots contained in the approved plan. In these circumstances, plan approval of the remaining sections of the plan shall remain in effect for three years or a period of time mutually agreed to by the municipal officers, the planning board and the subdivider.

Sec. 74-61. - Required. (Performance Gaurantee)

(a) At the time of the approval of the application for a subdivision, the applicant shall tender either a certified check payable to the town or a performance bond payable to the town issued by a surety company in an amount adequate to cover the total cost of all required improvements, taking into account the time span of the bond and the inflation rate for construction costs. The conditions and amount of such certified check or performance bond shall be determined by the planning board with the advice of various municipal departments, agencies, and legal counsel. Since all improvements shall be completed within two years, unless the subdivision is approved in phases or the planning board extends the date of completion, the bond shall be for no more than two years.

SITE PLAN:

78-219: Site plan approval and all the legal rights, privileges, and duties thereof shall expire if project construction has not commenced within one year of the approval date and if the project is not substantially completed within two years of the approval date. The town planner and code enforcement officer may grant up

to a one-year extension on administrative approvals, and similarly the planning board may grant a one-year extension on plenary site plan review approvals if compelling evidence is presented that additional time is required to meet federal, state, or local permit requirements or in reaction to market changes.

CONDITIONAL USE: Nothing

PROPOSED LANGUAGE

***SUBDIVISION**

Add definitions for Project Commencement and Substantial Completion in 74-1. Delete last sentence in 74-234 (b). Add new Section 74-235 Project Commencement and Substantial Completion. New language in **bold**, deleted is ~~struck~~

Sec. 74-1. Definitions.

Project commencement means the date on-site construction activity begins in accordance with an approved and recorded subdivision plan.

Substantial completion means the stage or part of an approved and recorded subdivision is sufficiently completed to allow the subdivision to be used for its intended purpose.

Sec. 74-61. - Required.

(a) At the time of the approval of the application for a subdivision, the applicant shall tender either a certified check payable to the town or a performance bond payable to the town issued by a surety company in an amount adequate to cover the total cost of all required improvements, taking into account the time span of the bond and the inflation rate for construction costs. The conditions and amount of such certified check or performance bond shall be determined by the planning board with the advice of various municipal departments, agencies, and legal counsel. Since all improvements shall be **substantially** completed within two years, unless the subdivision is approved in phases or the planning board extends the date of completion, the bond shall be for no more than two years.

Sec. 74-234. Final approval and filing.

(b) At the time the planning board grants final plan approval, it may permit the plan to be divided into two or more sections subject to any conditions the planning board deems necessary in order to ensure the orderly development of the plan. The applicant may file a section of the approved plan with the tax assessor and the registry of deeds if such section constitutes at least ten percent of the total number of lots contained in the approved plan. ~~In these circumstances, plan approval of the remaining sections of the plan shall remain in effect for three years or a period of time mutually agreed to by the municipal officers, the planning board and the subdivider.~~

Sec. 74-235. Project Commencement and Substantial Completion.

Subdivision final approval and all the legal rights, privileges, and duties thereof shall expire if project construction has not commenced within one year of the approval date and if the project is not substantially completed within two years of the approval date. The planning board may grant a one-year extension on project commencement and substantial completion if compelling evidence is presented that additional time is required to meet federal, state, or local permit requirements or in reaction to market changes.

*SITE PLAN

Add definitions for Project Commencement and Substantial Completion in 78-1. Add “Project Commencement and Substantial Completion” and “final”, delete “Duration of approval” in 78-219. New language in **bold**, deleted is struck

Sec. 78-1. Definitions.

Project commencement (site plan and conditional use) means the date on-site construction activity begins in accordance with a site plan or conditional use final approval.

Substantial completion (site plan and conditional use) means the stage or part of a project sufficiently completed to allow the project to be used for its intended purpose in accordance with site plan or conditional use final approval.

Sec. 78-219. ~~Duration of approval~~ **Project Commencement and Substantial Completion.**

Site plan **final** approval and all the legal rights, privileges, and duties thereof shall expire if project construction has not commenced within one year of the approval date and if the project is not substantially completed within two years of the approval date. The town planner and code enforcement officer may grant up to a one-year extension on administrative approvals, and similarly the planning board may grant a one-year extension on plenary site plan review **final** approvals if compelling evidence is presented that additional time is required to meet federal, state, or local permit requirements or in reaction to market changes.

*CONDITIONAL USE

Add definitions for Project Commencement and Substantial Completion in 78-1 (Note: same as site plan definition). Add new Section 78-1241 Project Commencement and Substantial Completion. New language in **bold**, deleted is struck

Sec. 78-1. Definitions.

Project commencement (site plan and conditional use) means the date on-site construction activity begins in accordance with a site plan or conditional use final approval.

Substantial completion (site plan and conditional use) means the stage or part of a project sufficiently completed to allow the project to be used for its intended purpose in accordance with site plan or conditional use final approval.

Sec. 78-1241. Project Commencement and Substantial Completion.

Excepting more restrictive standards stated within Article VII of this Ordinance, conditional use final approval and all the legal rights, privileges, and duties thereof shall expire if project construction has not commenced within one year of the approval date and if the project is not substantially completed within two years of the approval date. The town planner and code enforcement officer may grant up to a one-year extension on administrative approvals, and similarly the planning board may grant a one-year extension on conditional use final approvals if compelling evidence is presented that additional time is required to meet federal, state, or local permit requirements or in reaction to market changes.

2. Cherry Hills Pump Station Update

The PB asked for information regarding the Cherry Hills pump station. Below is a question and answer that I believe will help you to better understand the pump station.

A. My understanding is that the specifications of the pump station do not meet a standard that would permit the pump station to be accepted by the Town? Is that in fact the case?

As I understand, the pump station currently in use is a temporary pump station and can accept a limited number of units until it reaches its capacity and/or no longer properly functions. According to the 12 November 2009 Findings of Fact (attachment 1):

“A) The proposed pump station (PS 600) will remain private and maintained by the Home Owners Association. The Home Owners Association is responsible for all operation and maintenance, including provisions for emergency power during power outages. See Exhibit A - note 22 on sheet 1 on plan set.” See attachment 2: Sub 09022 BH2M Sub Layout

“B) If in the future, the Association wishes to have the pump station accepted by the Town, all required upgrades must be made to the system prior to requesting acceptance from the Town Council. Upgrades may include pump station components required by the Town Wastewater Department, adequate area for maintenance vehicles, appropriate generator, etc. See Exhibit B.” See attachment 3: Memo 11-11-09 Dunegrass Section B PS600

B. What specifications were approved for the pump station during subdivision review and approval?

According to BH2M, the installed, temporary pump station is a duplex station installed by the George Roberts Company. Each pump is a 2HP Myers MG200 pump with a capacity of 40-45 gpm for up to 60 feet TDH. As a general rule, each house requires 1 gpm capacity for peak flows (5.5 times average flow). Therefore, based upon the engineers’ opinion, the installed pump station is designed to function properly while serving up to 40 homes. See attachment 4: BH2M Letter 6.1.10

Regarding the permanent pump station, attached is a plan that was included with the 2009 approved plan set. I believe this is the permanent pump station. See attachment 5: pump station 09022 BH2M Basic Layout.

C. As approved by the Town, how many residential units may be served by the temporary pump station?

There is a lot of information concerning the pump station including numerous discussions, opinions, reports, and planning board decisions but I’m quite sure the number of units that can be served is 40. Although the pump station is designed to handle 40 units, it depends on acceptable flow rates and its regular operation. The most recent information I found, which is part of a 10 February 2011 Planning Board decision (see attachment 6: Notice of Decision- February 10, 2011 Planning Board Review), is:

“The Planning Board directs the applicant's engineer to verify operation of the existing temporary pump station, monitor flow to this pump station and coordinate with the Town's engineer to determine the timing of when new Pump Station 600 shall be installed and brought online. This could include conducting a drawdown test and installing a pump running meter. When both applicant's and town's engineers agree existing Pump Station 600 cannot handle any more flow, no more building permits will be issued until new Pump Station 600 is brought online.”

In order to show the pump station is properly functioning the town and town engineer received monthly reports from Mr. Cary Seaman and/or his engineer. Since 2015, the town decided to monitor the station so readings can be performed on a more frequent basis. Once the pump station cannot handle additional flow and/or properly function based on the information in these reports, no more building permits can be issued until the temporary pump station is replaced with a permanent pump station. The permanent pump station is sized to accommodate significantly more development. Note: approx. 3 years ago the pump station had some problems with the pump running too much and exceeding its gpm capacity. Mr. Seaman appears to have fixed this- I’ve not heard of problems since that time.

Currently, 32 units are connected to the pump station. This includes 24 units in Cherry Hills and 8 units along Wild Dunes Way. As stated above, the pump station can handle up to 40 units as long as the station continues to function as

designed. Its continued proper operation is, in part, determined based on flow rates which are monitored on a frequent basis. Finally, it's important to note the town's engineer has concerns about upgrades to the permanent pump station until full buildout due to the limited flows. So, it could actually be more damaging to upgrade to the permanent pump station before build out beyond 40 units.