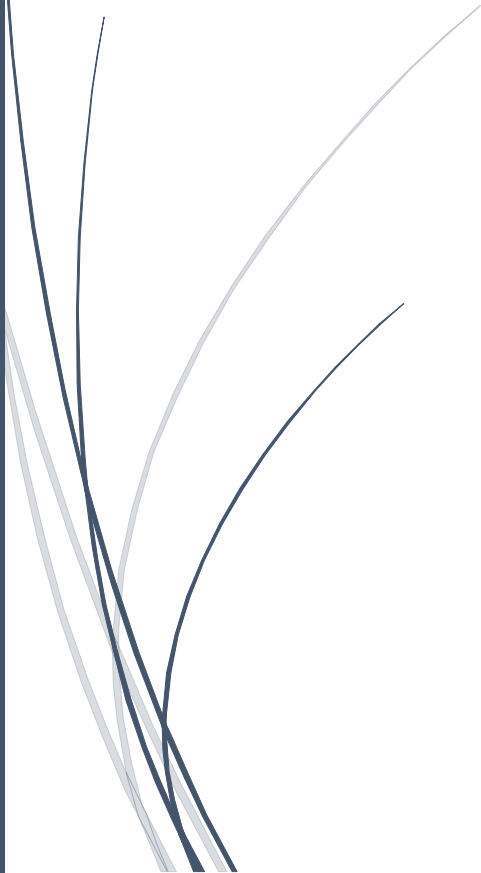


**OLD ORCHARD BEACH  
JULY 2018  
PLANNING BOARD  
MEMO**



# July 2018 Planning Board Memo: Table of Contents

## *Regular Business*

ITEM 3: <b>Major Subdivision:</b> Red Oak.....	<b>PAGE 2</b>
ITEM 4: <b>Ordinance Amendments:</b> Medical Marijuana Registered Dispensary.....	<b>PAGE 16</b>
ITEM 5: <b>Conditional Use (Shoreland Zoning):</b> 68 Colby Ave.....	<b>PAGE 19</b>
ITEM 6: <b>Site Plan Review:</b> Seacoast RV.....	<b>PAGE 23</b>

**ITEM 3**

**Proposal:** Major Subdivision: 10 Lot Residential Subdivision (Red Oak Phase III)  
**Action:** Discussion; Final Ruling  
**Owner:** Mark & Claire Bureau  
**Location:** End of Red Oak Dr.

<u>Red Oak</u>	<u>Project Status</u>
Sketch Plan	Completed in January
Preliminary Plan	Submitted in July, Revised in November, Revised in March
Application Complete	Completed in May
Site Walk	Held in May
Public Hearing	Scheduled for June
Preliminary Plan Vote	Completed in June
Final Review	Recommended for July

At the last meeting, the PB held a Public Hearing on this item and there were no comments from the public. The Planning Board approved the Preliminary Plan. There were a few items that Planning Staff recommended be buttoned up for a final plan vote. These items include:

- Responses to the Wright Pierce comments dated June 1, 2018. (*The Applicant has provided responses to the WP comments from June, the responses are in your July packet. Planning Staff provided these to Wright Pierce and is waiting for their final review/signoff*).
- Recommendation to adjust the building envelope associated with Lot #1 to account for the Letter of Map Amendment (LOMA) from FEMA. (*This is not a requirement, just a suggestion, but it does not appear this has been included in the most recent submission*).
- Condition regarding the deed associated with Lot #7. (*This condition has been added to the plan, Sheet C-100 COA*).
- Modest street lighting requested by Town for first responders as well as for security. (*A letter has been included from Larry in your packets regarding the desire for street lighting. The request is for street lighting suitable to a residential street with limited vehicular traffic. The lighting would be more pedestrian in scale, similar to Town/Country lighting that CMP offers, perhaps every other lot. It should be clear that the HOA would be responsible for any infrastructure not accepted by the Town Council. In the most recent iteration of the plan (Sheet C-100), the Applicant included a note that says: "should the Applicant petition the Town to accept the road, the Applicant shall provide as-built documentation of the existing 750 feet of roadway and the Town shall review for conformance with Town standards, including the provision for street lighting." The Planning Board should determine if the Applicant should be required to provide street lighting as requested or only if they petition the Town to accept the street as identified per this condition.*)

Planning Staff made a list of conditions to be added to the vote:

1. Should the plan be amended to include a 15<sup>th</sup> lot, an amended plan shall be provided to the Planning Board that includes a second means of egress.
2. The Developer and subsequently the homeowners association shall enter into a maintenance agreement in accordance with the Town of Old Orchard Beach Chapter 71 requirements.
3. This approval does not constitute a resolution in favor of the applicant of any issues regarding ownership or other title issues. Should it be determined by a final, non-appealable court judgement that the applicant does not have the legal right to use the land as proposed in the application, this approval shall no longer have any force or effect.
4. Should the applicant petition the Town to accept the road, the Applicant shall provide as-built documentation of the existing 750 feet of roadway and the Town shall review for conformance with Town standards."

**Planning Staff asked the Applicant to update the responses to the 14 Subdivision Criteria before the final plan vote as they are from July of 2017.**

Sec. 74-2. In approving subdivisions within the Town, the Planning Board shall consider the following criteria and before granting approval shall determine the following.

The proposed subdivision:

**(1) The proposed subdivision will not result in undue water or air pollution. In making this determination it shall at least consider the following:**

- a. The elevation of the land above sea level and its relation to the floodplains;*
- b. The nature of soils and subsoils and their ability to adequately support waste disposal;*
- c. The slope of the land and its effect on effluents; and*
- d. The applicable state and local health and water resources regulations;*

Response: The project will not create undue water or air pollution during or after construction.

**(2) The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;**

Response: The project will be served by public water and will readily have water available for the foreseeable future.

**(3) The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be utilized;**

Response: The project will be served by public water and will readily have water available for the foreseeable future.

**(4) The proposed subdivision will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;**

Response: The project will be constructed to meet the requirements of the Basic Standards of Chapter 500 of Maine Stormwater Law and will also be constructed in accordance with Chapter 71 of the Town of Old Orchard Beach Land Use Ordinances.

**(5) The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed;**

Response: The project will result no unreasonable impacts on the highways or public roadways. According to the ITE manual, 8 additional residential lots results in only 80 total daily trips and 8 peak hour trips, which does not trigger any State traffic permitting requirements. **\*\*This needs to be updated to reflect 9 lots\*\***

**(6) The proposed subdivision will provide for adequate solid and sewage waste disposal;**

Response: The project will be built to Town of Old Orchard Beach standards and it is anticipated that the Town of Old Orchard Beach curbside pick-up will be available by contract service until such time as the roadway is accepted by the Town of Old Orchard Beach. All solid waste accumulated during construction will disposed of in a safe and adequate manner by the contractors/owner. Sewage waste generated during construction will be handled by portable toilets. Household sewage will be handled by septic systems to be designed and installed to all local and State requirements.

**(7) The proposed subdivision will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized;**

Response: The project will not burden the ability of the municipality to dispose of solid waste due to its relatively small size and impact to solid waste generation. There will be no impacts to sewer disposal services as the project is served by private septic's.

**(8) The proposed subdivision will not place an unreasonable burden upon local, municipal or governmental services;**

Response: The project will not unreasonably burden municipal or governmental services due to its relatively small size.

**(9) The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas;**

Response: The project will not have any adverse effects on the scenic or natural beauty of the area, aesthetics, historic sites or any rare and irreplaceable natural areas. The proposed development will protect the existing Jones Creek by

preserving open space within the stream buffer area. The project will be an extension of the existing development which maintains large swaths of wooded areas on relatively secluded lots.

**(10) The proposed subdivision is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan, if any;**

Response: The proposed project has been designed in accordance of all local codes and ordinances.

**(11) The subdivider has adequate financial and technical capacity to meet the standards stated in subsections (1) through (10) of this section;**

Response: The applicant has successfully constructed a number of previous, successful projects and owns the property free and clear. The project engineer, surveyor and other design professionals have successfully designed and permitted many projects in York County and have over 100 years of combined experience in residential design and permitting.

**(12) Whenever situated, in whole or in part, within 250 feet of any pond, lake, river or tidal waters, the proposed subdivision will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water;**

Response: The project does not fall within 250 feet of any pond.

**(13) The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater; and**

Response: The project will be served by public water and will utilize stormwater BMPs which retain, filter and infiltrate stormwater run-off back into the ground. As such, no adverse effects on the quality or quantity of groundwater are anticipated.

**(14) The proposed subdivision will not unreasonably interfere with access to direct sunlight for solar energy systems.**

Response: The project will not interfere with any solar energy systems by affecting their access to direct sunlight.

**RECOMMENDATIONS (JULY):**

The Planning Board should read the responses to the 14 Subdivision Criteria into the record and make a final ruling on the proposal. There are 4 conditions that should be attached to that ruling as well as any others the PB may wish to include such as one to address the street lighting as suggested by Town Staff.

*Recommended Motion: I will make a motion to approve the Final Plan for the 10 Lot Residential Subdivision (Red Oak Phase III) located at the end of Red Oak Drive with the following 4 conditions:*

- 1. Should the plan be amended to include a 15<sup>th</sup> lot, an amended plan shall be provided to the Planning Board that includes a second means of egress.*
- 2. The Developer and subsequently the homeowners association shall enter into a maintenance agreement in accordance with the Town of Old Orchard Beach Chapter 71 requirements.*
- 3. This approval does not constitute a resolution in favor of the applicant of any issues regarding ownership or other title issues. Should it be determined by a final, non-appealable court judgement that the applicant does not have the legal right to use the land as proposed in the application, this approval shall no longer have any force or effect.*
- 4. Should the applicant petition the Town to accept the road, the Applicant shall provide as-built documentation of the existing 750 feet of roadway and the Town shall review for conformance with Town standards."*

**BACKGROUND (JUNE):**

**\*\*Note, this was mislabeled on the agenda, the PB still needs to vote on the Preliminary Plan before final review\*\***

In May, the Planning Board determined the application complete, held a Site Walk and scheduled a Public Hearing for June. In your packets this month, the Applicant provided a response to Staff comments and Wright Pierce comments. Wright Pierce provided a memo dated 06/01/18 in response to this submission which is also in your packets. There are a

few remaining comments pertaining to stormwater, the performance guarantee, clarification on which lots are in Phases I and II, FEMA, calculations on the culvert at Jones Brook and denoting wetland filling areas on the plan.

In addition, there were a couple of Conditions of Approval written on the plan that WP and Planning Staff recommend be updated:

- Condition of Approval (1) should be updated on the plan, currently it says “*the subdivision is limited to development on lot 10 without amended approval by the Town of Old Orchard Beach Town Staff of a secondary egress.*” Planning Staff recommends this be updated to say: “*Should the plan be amended to include a 15<sup>th</sup> lot, an amended plan shall be provided to the Planning Board that includes a second means of egress.*”
- Condition of Approval (2) should be updated on the plan to add the last sentence “*All stormwater ponds shall be the responsibility of the homeowners association in perpetuity. The Developer and subsequently the homeowners association shall enter into a Maintenance Agreement in accordance with the Town of Old Orchard Beach Chapter 71 requirements.*”

Planning Staff recommended that the Applicant include two plans pertaining to the floodplain. One that shows the building envelope for Lot #1 with the current floodplain and one that shows the building envelope after the LOMA. This ensures that they do not have to come back before the PB after the LOMA. The most recent plan shows the current floodplain and the floodplain after the LOMA but does not show the changes to the building envelope for Lot #1.

One of the main discussion items at the last meeting was the deed and land area associated with Lot #7. Planning Staff consulted with our Town Attorney who said that the Applicant has presented the PB with a boundary survey signed and stamped by a professional land surveyor, as well as a title opinion from their attorney both stating that the applicant owns the land in question. Our Attorney did recommend a condition of approval be added to the plan:

*This approval does not constitute a resolution in favor of the applicant of any issues regarding ownership or other title issues. Should it be determined by a final, non-appealable court judgment that the applicant does not have the legal right to use the land as proposed in the application, this approval shall no longer have any force or effect.*

This email from the Attorney has been included in your packets.

At the Development Review meeting held on June 4<sup>th</sup>, Town Staff had requested to see modest street lighting in the development. They indicated that individual lights at each home (which are proposed currently) aren’t always on at night. Staff would like street lighting so first responders can see easier and for security reasons.

**RECOMMENDATION (JUNE):** Pending comments at the Public Hearing, Planning Staff recommends the PB vote on the Preliminary Plan. The remaining outstanding items are minor and can be addressed in the next submission for final review.

*Recommended Motion: I will make a motion to approve the Preliminary Plan for the 10 Lot Residential Subdivision (Red Oak Phase III) located at the end of Red Oak Drive.*

**BACKGROUND (MAY):**

At the April meeting, the Planning Board decided to hold off on Determining the Application complete until clarification about the deed associated with Lot #7 was submitted. The Applicant submitted a letter from an Attorney which has been included in your May packets.

This situation seems similar to one that occurred with another project the Planning Board recently approved. That situation was a little different because there was a dispute between two parties over a deed. However, when we consulted our Town Attorney, his response was: “as you know an applicant must have sufficient ‘right, title or interest’ in the property that will give the person a ‘legally cognizable expectation’ of having the power to use the property in the ways that would be authorized by any approval. The Planning Board has **no authority**, however, to resolve title disputes or **to interpret** or enforce a **private deed covenant** as part of its decision on an application.” The Town Attorney recommended a condition be added to the plan and a part of that condition stood out to Staff as one that could potentially apply to this situation as well: “*Should it be determined by a final, non-*

appealable court judgment that the applicant does not have the legal right to use the land as proposed in the application, this approval shall no longer have any force or effect.” We could alter the language about a “final, non-appealable court judgement.”

A few items were discussed at the April Planning Board meeting including:

- Addition of a potential condition that the subdivision cannot go over 15 lots without triggering the requirement for a second means of egress. This would eliminate the possibility of future development associated with Lot #10.
- Include a note on the plan that the stormwater ponds shall be maintained by the HOA in perpetuity.
- Recommendation that a fence be placed around the pond due to a concern of standing water.
- Potential addition of street lighting on the opposite side of the street from the sidewalk. How will this work? Is there already existing street lighting in the first 2 phases of the development?

Planning Staff also held a meeting with the Applicant and Wright Pierce to go over some concerns with the plans. We discussed a few items and are waiting for a subsequent response from Wright Pierce on the materials.

- Recommendation that a Condition of Approval be added to the plan “*Should the Applicant petition the Town to accept the road, the Applicant shall provide as-built documentation of the existing 750 feet of roadway and the Town shall review for conformance with Town Standards.*”
- Planning Staff had concerns over the requirement for Codes Staff to review stormwater for individual lots. Staff recommended the Applicant show stormwater stubs on each of the lots as well as conceptual grading and drainage plans for each of the lots. Wright Pierce also recommended that calculations be provided noting the stormwater BMPs and drainage lines have been sized to accommodate runoff from individual lots.
- There were some FEMA implications that were discussed with the Applicant. The Applicant indicated that they expect to receive a LOMA back by June/July. In case it is not received prior to a Planning Board decision, the Applicant will submit a plan showing the building envelope for Lot #1 with the current floodplain and a separate plan showing the building envelope after the LOMA.
- We are still waiting for the Applicant to address WP concerns that included: changing the drainage structure table, details on silt sacks, sediment forebay details, and calculations on the culvert at Jones Brook.
- There were also a few minor items including updating test pits and the performance guarantee worksheet.

**RECOMMENDATIONS (MAY):** The Planning Board should determine if the above mentioned condition regarding the right to use the land as proposed in the application would suffice to address the boards concerns or if the board would like additional information from the Applicant. Planning Staff is also waiting for a number of items from the Applicant as discussed above. The Planning Board can decide to make a determination of completeness and schedule a public hearing for June or the board can wait to make that determination once the final outstanding items have been submitted as discussed above.

*Possible Recommended Motion: I will make a motion to determine the application complete for a 10 lot residential subdivision off of Red Oak Drive.*

*Possible Recommended Motion: I will make a motion to schedule a Public Hearing for June 14<sup>th</sup> at 7:00PM.*

**BACKGROUND (APRIL):**

At the last meeting, the PB decided to hold off until April to schedule the site walk/public hearing and make a determination of completeness on the application. The Applicant has made several revisions to the plan and submitted an updated cover letter that attempts to address Staff comments and Wright Pierce comments. Below is where we stand with those:

- Planning Staff recommended that the Applicant update the application and responses to the subdivision criteria to reflect the change in lot numbers since the sketch plan. *This has been included in the 3/21 submission.*
- Wright Pierce comments dated 3/6 have been responded to in the 3/21 submission. Many of the comments pertained to stormwater. WP is reviewing the 3/21 responses and we expect to have additional comments by the PB meeting.

- Planning Staff recommended that test pit locations be shown on the plan, locations have been included in the 3/21 submission, however, some of them are shown outside of the lot and building envelopes. We will need some clarification on the location of them and whether or not easements would be necessary.
- Planning Staff recommended that an updated deed be included for the Bureau lot. *The Applicant indicated that this has been included in the 3/21 submission.*
- Planning Staff recommended that a Performance Guarantee worksheet quantifying the amount for the Letter of Credit and Escrow be submitted. This has been included in the 3/21 submission, however, there are a number of revisions that will be necessary including updating it to remove “Dunegrass Section B” “Cherry Hills” “Prepared by Jessica Wagner” and old notes at the bottom.
- Planning Staff recommended that the Applicant provide an update on permitting for the project. *This has been included in the 3/21 submission.*
- Assessing Staff indicated that a portion of lot 7 appeared to be on Town property according to the in-house GIS and the project still remained in tree growth. The Applicant has indicated that the boundary survey they had shows the portion of lot 7 is not on Town property. They also indicated that all lots and easements will be removed from tree growth prior to project approval.
- Planning Staff questioned whether or not this project would be intended to be accepted by the Town and it is currently not proposed to be public but will be constructed in accordance with Town Standards. Because the initial 750 feet of roadway was constructed back in the 2004-2005 timeframe and the Town does not have documentation on how it was constructed, we recommend, and the Applicant agrees, that a condition be added to the plan that states “*should the Applicant petition the Town to accept the road, the Applicant shall provide as-built documentation of the existing 750 feet of roadway and the Town shall review for conformance with Town Standards.*”
- To address the Wright Pierce comment about how this project does not include individual lot development, the Applicant has proposed to add a condition that “*no building permit shall be issued until a residential site plan is submitted to the CEO that shows, at a minimum, septic location, lot development, grading, water and power utility service, and stormwater management design that complies with MDEP Chapter 500 standards.*” Planning Staff will need to have a conversation with the Applicant about this because Codes Staff does not typically review a stormwater management design. Roof driplines are also referenced in the plans which is contradictory if they are not including information on individual lot development.
- The Applicant appears to be achieving their Net Development Density (NDD) by utilizing the Bureau lot, however, this project has been presented as a “9 lot subdivision” and does not appear to include the bureau lot in the plans as “Lot #10.” Planning staff believes the plans and materials should be updated to include this lot as part of the subdivision if it is how they are achieving the density for the project.

#### **RECOMMENDATIONS (APRIL):**

The purpose of the April meeting is the schedule the Site Walk, Public Hearing and make a Determination of Completeness of the project. There are a few items that need to be submitted/addressed as discussed above including:

- WP review of the most recent submission materials and response to their comments.
- Clarification on the locations of test pits.
- Minor revisions needed to the Performance Guarantee worksheet.
- Discussion about the recommended condition concerning Codes Staff reviewing a residential site plan that includes stormwater management.

Aside from these items, the role of the PB for the April meeting is to make a Determination of Completeness, the PB does not have to vote on the Preliminary Plan. That can happen after those items are received/clarified.

Staff does feel that the application is complete, we have received the plan materials, updated Subdivision responses, etc. so we recommend you make that determination and schedule the Site Walk/Public Hearing for May.

*Recommended Motion: I will make a motion to determine the application complete for a 9 lot residential subdivision off of Red Oak Drive.*



*Recommended Motion: I will make a motion to schedule a Site Walk for May 3<sup>rd</sup> at 5:30PM and to schedule a Public Hearing for May 10<sup>th</sup> at 7PM.*

**BACKGROUND (MARCH):**

This project was brought before the Planning Board in January of 2017 as a Sketch Plan and was brought back before the Planning Board in July of 2017 as a Preliminary Plan and you last saw the plan in November of 2017 as a Preliminary Plan. It is now back before the Planning Board as an updated Preliminary Plan. It is for a 9-lot subdivision at the end of the existing Red Oak Drive off of Portland Ave with a proposed cul-de-sac at the end. Currently, there are four lots with homes on Red Oak Drive that were approved back in 2004-2005. The last lot was completed in summer of 2016.

There were a number of items discussed in July and November, many of them pertaining to Wright Pierce comments. A number of the Wright Pierce comments pertained to stormwater. The submission materials for March were provided to Wright Pierce for review and comment. The new submission attempts to address the comments.

In your packets for March are:

- Responses to the Wright Pierce/Staff comments from July and November
- An updated Plan Set
- HOA Documents
- Post-Construction Stormwater Management Plan (PCSWMP)

Because this project has gone through a number of iterations, some of the materials such as the responses to the 14 subdivision criteria need to be updated. Planning Staff also recommends that an updated Application be updated to reflect the change from 8 to 9 lots.

Responses to the 14 Subdivision Criteria that were submitted in July of 2017: *Sec. 74-2*. In approving subdivisions within the Town, the Planning Board shall consider the following criteria and before granting approval shall determine the following.

The proposed subdivision:

1. *Will not result in undue water or air pollution*

Response: The project will not create undue water or air pollution during or after construction.

2. *Has sufficient water available for the reasonably foreseeable needs of the subdivision.*

Response: The project will be served by public water and will readily have water available for the foreseeable future.

3. *Will not cause an unreasonable burden on an existing water supply, if one is to be utilized*

Response: The project will be served by public water and will readily have water available for the foreseeable future.

4. *Will not cause unreasonable soil erosion or reduction in the capacity of land to hold water so that a dangerous or unhealthy condition may result.*

Response: The project will be constructed to meet the requirements of the Basic Standards of Chapter 500 of Maine Stormwater Law and will also be constructed in accordance with Chapter 71 of the Town of Old Orchard Beach Land Use Ordinances.

5. *Will not cause unreasonable highway or public road congestion or unsafe condition with respect to use of the highways or public roads, existing or proposed.*

Response: The project will result no unreasonable impacts on the highways or public roadways. According to the ITE manual, 8 additional residential lots results in only 80 total daily trips and 8 peak hour trips, which does not trigger any State traffic permitting requirements. **\*\*This needs to be updated to reflect 9 lots\*\***

6. *Will provide for adequate solid and sewage waste disposal.*

Response: The project will be built to Town of Old Orchard Beach standards and it is anticipated that the Town of Old Orchard Beach curbside pick-up will be available by contract service until such time as the roadway is accepted by the Town of Old Orchard Beach. All solid waste accumulated during construction will disposed of in a safe and adequate

manner by the contractors/owner. Sewage waste generated during construction will be handled by portable toilets. Household sewage will be handled by septic systems to be designed and installed to all local and State requirements.

7. *Will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage of municipal services if they are to be utilized.*

Response: The project will not burden the ability of the municipality to dispose of solid waste due to its relatively small size and impact to solid waste generation. There will be no impacts to sewer disposal services as the project is served by private septic's.

8. *Will not place an unreasonable burden upon local, municipal or governmental services.*

Response: The project will not unreasonably burden municipal or governmental services due to its relatively small size.

9. *Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.*

Response: The project will not have any adverse effects on the scenic or natural beauty of the area, aesthetics, historic sites or any rare and irreplaceable natural areas. The proposed development will protect the existing Jones Creek by preserving open space within the stream buffer area. The project will be an extension of the existing development which maintains large swaths of wooded areas on relatively secluded lots.

10. *Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or any land use plan, if any*

Response: The proposed project has been designed in accordance of all local codes and ordinances.

11. *Owner has adequate financial and technical capacity to meet the standards stated in the ordinance.*

Response: The applicant has successfully constructed a number of previous, successful projects and owns the property free and clear. The project engineer, surveyor and other design professionals have successfully designed and permitted many projects in York County and have over 100 years of combined experience in residential design and permitting.

12. *Whenever situated, in whole or in part, within 250 feet of any pond, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.*

Response: The project does not fall within 250 feet of any pond.

13. *Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.*

Response: The project will be served by public water and will utilize stormwater BMPs which retain, filter and infiltrate stormwater run-off back into the ground. As such, no adverse effects on the quality or quantity of groundwater are anticipated.

14. *Will not unreasonably interfere with access to direct sunlight for solar energy systems.*

Response: The project will not interfere with any solar energy systems by affecting their access to direct sunlight.

There are a few other items that Planning Staff recommends be submitted prior to the board making a determination of completeness including:

- The original plan showed test pit locations on each of the lots, however, Planning Staff did not see these on the updated plan. Where the lot sizes and locations changed, Planning Staff recommends these be shown on the updated Preliminary Plan.
- It appears that a portion of the Bureau lot was split to allow for the full lot sizes and an additional lot, Planning Staff did not see an updated deed in the submission materials.
- Planning Staff received comments from Maine Water about extending water through this area back in November. Maine Water is continuing to review the proposal and will have comments back to the Applicant about the plan. Planning Staff is still waiting on an ability to serve letter from them.
- An updated Performance Guarantee worksheet is needed for the project.
- It is unclear what DEP permits have been secured for the project and if they required a FEMA Letter of Map Amendment (LOMA) for the floodplain area.

- Assessing Staff indicated that a portion of the proposed subdivision is still in a designated tree growth area. It also shows a portion of Lot 7 is on Town property on the Town's GIS. This will have to be clarified.
- One comment received from Wright Pierce in November was associated with stormwater management and that it is only for the roadway and not for future impervious areas associated with individual lots. One recommendation by the Applicant is that a Condition of Approval be added to the project that requires a lot development plan meeting Chapter 500 standards and still maintaining the integrity of design. This decision will be up to the Planning Board.
- There were comments received from Staff in November about whether or not this project is intended to become public or private, it is unclear if this was addressed.

**RECOMMENDATIONS (MARCH):**

This project is before the Planning Board for a Determination of Completeness and to schedule a Site Walk/Public Hearing. In order to determine the Application Complete, Planning Staff recommends that the application materials including responses to the subdivision criteria be updated to reflect the 9 lots. Planning Staff is still waiting on comments from Wright Pierce and anticipates them to be received prior to the meeting next week.

If the Planning Board decides to make a Determination of Completeness, it should be contingent on receiving updated application materials and the items listed above.

*Recommended Motion: I will make a motion to determine the application complete to construct a 9 lot residential subdivision located at 141 Portland Ave.*

*Recommended Motion: I will make a motion to schedule a site walk for April 5<sup>th</sup> at 5:00PM and to schedule a public hearing for April 12<sup>th</sup> at 7PM.*

**BACKGROUND (NOVEMBER):**

This project was brought before the Planning Board in January as a Sketch Plan and was back before the PB in July as a Preliminary Plan. Since July, the Applicant has made some changes to the materials after a review by DEP. Some of these changes include:

- Adding the adjacent parcel to the subdivision which added more land to the project area;
- Creation of a 9<sup>th</sup> lot;
- This project is no longer a cluster subdivision, the lots will conform to the space and bulk requirements of the Rural Zone;
- The turn-around has been converted from a hammerhead to a cul-de-sac;
- Some changes were made to the Stormwater Management Plan.

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 and 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.

Originally, the Applicant was applying for a cluster subdivision with eight lots, now they have changed the plans so that it is a subdivision that conforms to the space and bulk requirements of the rural zone and has 9 lots.

The existing riprap pond at the end of the existing Red Oak Drive will be converted into an Underdrained Soil Filter which will treat the existing roadway as well as a portion of the proposed roadway. The remainder of the roadway will be treated by an underdrained soil filter at the end of the proposed development.

**Comments on the Materials:**

The project is mislabeled as Phase IV and should be labeled as Phase III.

In July, there were several issues that were discussed from the Wright Pierce memo and some by Planning Staff. Some of them have been addressed, but still require further information and others have not been addressed. The last set of

comments received from WP were on 6/30/17. Several of these comments have not been addressed. A new set of WP comments are included in your packets with additional outstanding items including:

- Updating Sheet C-100 to reflect the changes from a Cluster Subdivision to a Subdivision that meets space and bulk requirements.
- Providing an ESC plan and details for long-term site protection other than wrapping the site with silt fence.
- Providing a detail section for the proposed gravel access road to the underdrained soil filter at the end of the cul-de-sac.00
- Reviewing the discharge point of the cul-de-sac as it appears to be directed towards the adjacent Seacoast RV property.
- Providing information on the proposed outlet of the underdrained soil filter in the pond construction details.
- Using consistent terminology for the liner in the both of the underdrained soil filters.
- Providing information on how the outlet control structures for both underdrained soil filters will not become buoyant.

A Post-Construction Stormwater Management Plan (PCSMP) was submitted for the project in July for the Planning Board to review but was lacking a few components and Planning Staff had a few 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.

Staff had questions about whether or not the project is intended to be public or private.

There were comments made by the Fire Chief in July and response comments from the Applicant were not included in the most recent submission materials.

The Town Manager provided a comment to staff: *I would prefer that the road remain a private road. However if it is to become a public road the initial portion of the access road to Portland Avenue needs to be demonstrated to have been built to Town standards.*

*The subdivision should include street lighting with energy efficient luminaires.*

**RECOMMENDATIONS:** Staff does not feel that the application is complete and does not recommend that the PB make a determination of completeness at this meeting or schedule a Site Walk. This meeting should be an opportunity for the board to discuss what items remain outstanding including those associated with the PCSMP, staff comments, and comments from Wright Pierce. Planning Staff recommends that the Applicant come back with the changes for the December meeting.

*No motion required.*

**BACKGROUND (JULY MEETING):**

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 3<sup>rd</sup> and a public hearing for August 10<sup>th</sup>.

#### **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 23<sup>rd</sup>, see attached memo.***

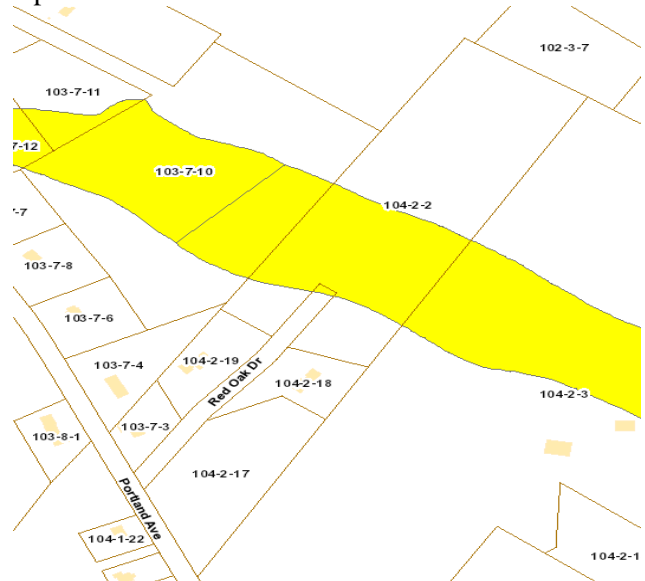
***Additional Town Comments:***

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:

- I don't see anything for storm water.
- I would like to see the dimensions of the cul de sac for plowing.
- Would cul de sac be large enough to fit fire apparatus



**ITEM 4**

**Proposal:** Ordinance Amendments: Amend 78-747(3) to allow Medical Marijuana Registered Dispensary as a Conditional Use in the Downtown District 2  
**Action:** Discussion; Recommendation to Town Council  
**Owner:** Thomas Mourmouras  
**Location:** Downtown District 2

<u>Medical Marijuana Registered Dispensary</u>	<u>Project Status</u>
<i>Introduction/Discussion</i>	June Meeting
<i>Public Hearing</i>	Held in June
<i>Recommendation to Council</i>	Recommended for July

At this month’s meeting the PB will hold a public hearing and if prepared, provide a recommendation to the Council. The town received no new submissions from the applicant for the July meeting. The only new item in your packet is the proposed language in its amendment format.

Remember, the only ordinance change is allowing Medical Marijuana Registered Dispensary (MMRD) as a Conditional Use in the DD2. If this amendment is approved by the Council it will allow one MMRD to exist in the DD2. The current Medical Marijuana ordinances, which includes ordinance standards such as no closer than 500 ft. to a property which occupies a day care, school, town park, town playground, church; security plan; outside appearance standards; odor regulations, are not changing. These ordinance standards would apply to a MMRD in the DD2. Also, the MMRD will be required, at a minimum, to secure applicable state approval, Conditional Use approval (as administered by the PB) and business license approval (as administered by the Council) before it can legally operate. If the Council does not approve the amendment one MMRD will continue to be allowed but only in the GB1 zoning district.

**RECOMMENDATIONS:**

Moving forward, the PB has several options.

1. Recommend the Council approve or deny the ordinance amendments as proposed.  
**Motion:** “Motion to recommend the Council approve/deny amendments to Chapter 78 - Zoning, Article VI – Districts, Division 7 – Downtown Business Districts, Section 78-747 – Permitted Uses, (3) – Conditional Uses”
2. Recommend the Council approve the ordinance amendments with changes to the language. These changes will need to be identified.  
**Motion:** “Motion to recommend the Council approve/deny amendments (INSERT NEW LANGUAGE) to Chapter 78 - Zoning, Article VI – Districts, Division 7 – Downtown Business Districts, Section 78-747 – Permitted Uses, (3) – Conditional Uses”
3. Postpone a vote and continue to work on amendment language.  
**Motion:** Motion is not necessary.

**BACKGROUND (JUNE):**

Mr. Thomas Mourmouras is proposing Chapter 78 (Zoning) ordinance amendments to allow Medical Marijuana Registered Dispensary (MMRD) in the DD2 zoning district. The only ordinance amendment is to Sec. 78-747 (3) which will add MMRD as a conditional use. Current ordinances allow MMRD’s as a conditional use only in the GB1 zoning district and regulate the use in Ch. 78 (Zoning) and Ch. 18 (Licensing). MMRD’s are defined as:

*Medical marijuana registered dispensary (land use) :* A not-for-profit entity registered pursuant to state law that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, paraphernalia or related supplies and educational materials to qualifying patients and the primary caregivers of those patients. Note that a dispensary may be either a single facility, or it may be divided into two separate but related facilities where growing is done at only one of the facilities. This shall be considered a commercial use.

Because MMRD is a Medical Marijuana related land use, the already adopted Medical Marijuana ordinance standards in Sec. 78-1277 as well as the Business License requirements in Sections 18-601 – 603 apply to MMRD proposals, both current and with this proposal. Also, state Medical Marijuana rules apply. A summary of the adopted ordinance standards:

A. Sec. 78-1277 (Zoning)

- MMRD's are only allowed in the GB1 district.
- Only 1MMRD is allowed in town.
- MMRD review process includes state authorization, PB review as a conditional use, business license. PB review process includes abutter notice, site walks and public hearings.
- MMRD applicants must secure state authorization before submission of conditional use application.
- MMRD proposals must meet applicable performance standards including: no closer than 500 ft. to a property which occupies a day care, school, town park, town playground, church; security plan; outside appearance standards; odor regulations.

B. Secs. 18-601 – 603 (Licensing)

- Staff and Council approval of a Medical Marijuana Business License before a Medical Marijuana Registered Dispensary or Medical Marijuana Production Facility can conduct business.
- State authorization before issuance or renewal of a License.
- Securing Planning Board approval before consideration of a License.
- Old Orchard Beach Police Department, Fire Department and Code Enforcement Office inspection of the premises at initial and subsequent licensing.

In addition to the above, MMRD's are subject to conditional use standards, zoning district standards (e.g., setbacks, height, performance standards specific to the district); town-wide performance standards (e.g., parking); general business licensing requirements (e.g., Council approval). So, there are quite a few standards a MMRD must meet and this will not change with Mr. Mourmouras proposed amendments. Mr. Mourmouras proposal is not removing or changing any of the requirements a MMRD is subject to.

Note:

- MMRD's are not the same as the medical marijuana storefront use recently discussed by the PB and is now before the Council. MMRD's already are permissible and are not part of the medical marijuana storefront moratorium.
- The town is not the applicant- this proposal is brought to you and will be represented by Mr. Mourmouras. We note this because the amendments are the applicant's proposal. The PB and staff can recommend language changes but the applicant is not required to accept these changes and make them part of the proposal- Mr. Mourmouras can move forward with the same language as currently proposed through the entire review process.

Questions for the PB:

- Is MMRD an appropriate use for the DD2?
- What kinds or types of impacts are anticipated from a MMRD? Do the current standards properly address these impacts?
- Should there be a limit to the number of MMRD's in the DD2? Current regulations allow only 1 throughout the entire town. If we think more than 1 should be allowed, the PB can recommend a change to 78-1277 (d) (1).
- Should additional standards be added or other ordinances changed to better accommodate a MMRD?
- Do the recent law or rule changes affect the way we currently regulate MMRD's? The recent changes appear to be primarily related to Adult Use Marijuana which is (as I understand) not the same as the medical use of marijuana. It does appear the Adult Use Marijuana Law makes some references to medical use of marijuana in that MMRD's can engage in (under certain conditions) cultivating plants for adult use; sell plants and seeds to cultivation facility licensee; manufacture adult use marijuana and marijuana products. Although, it appears MMRD's may not sell to consumers adult use marijuana and products in the same facility the MMRD licensee sells medical use marijuana. I assume this is to ensure there is a separation between a marijuana store authorized to sell adult use marijuana to non-medical consumers (e.g., you and me) and MMRD which is authorized to sell to qualified people (e.g., you and me if we had a medical marijuana card). Remember, adult use marijuana is not regulated the same as medical use marijuana. I expect Mr. Mourmouras can provide some insight on this.

**RECOMMENDATIONS (JUNE)**

Although the applicant is not the town, the proposal follows the same ordinance amendment PB review process-discussion, public hearing and Council recommendation. We recommend the PB discuss the proposal and, if necessary, provide any recommended language changes. Remember, the applicant is not required to make these changes and can move forward with the proposal as-is. If the PB recommends changes to the proposed amendments and the applicant is willing to accept, it's a good idea that these changes are made and discussed before a public hearing is scheduled. If there are no proposed changes or the applicant chooses to move forward with the proposal as-is, the PB can schedule a public hearing to be held on 12 July.

## ITEM 5

**Proposal:** Conditional Use (Shoreland Zoning): Nonconforming structure replacement and 30% expansion – demo and construction of 1200 sq. ft. 1-family dwelling  
**Action:** Public Hearing; Discussion; Final Ruling  
**Owner:** Todd and Kathy Whitney  
**Location:** 68 Colby Ave, MBL: 320-1-1

<u>68 Colby Ave</u>	<u>Project Status</u>
<i>Application Complete</i>	Completed in June
<i>Site Walk</i>	Held in July
<i>Public Hearing</i>	Held in July
<i>Final Ruling</i>	Recommended for July

This month's meeting includes a public hearing, follow-up discussion and final ruling. Most important is the follow-up discussion. At the June meeting, staff and the PB determined 7 items need to be addressed by the applicant before the PB made a final ruling. The 7 items are:

1. Amend the response to Conditional Use standard #12 to show the property owner has the ability to finance project.
2. Amend Shoreland Zoning standard #3 to include a statement regarding how the home will provide for adequate disposal of waste water.
3. Amend Shoreland Zoning standard response to #8 to explain how the project complies with the nonconforming structure 30% expansion standard (78-1181 (c) (1) ) and nonconforming structure reconstruction or replacement standard (78-1811 (c) (3) ).
4. Provide status of DEP permitting.
5. Provide response to current driveway.
6. Provide documentation that shows the ground floor area meets applicable floodplain standards and is only being elevated for floodplain purposes. This could include elevation certificates or something official that shows how this building is being designed to comply with floodplain standards.
7. Provide a plan that shows a definitive fixed location of the existing and proposed structure to ensure it does not become more nonconforming as it relates to the waterbody/HAT setback.

In response to the 7 items the applicant provided the following:

1. Ability to finance project. Letter from RBC Wealth Management submitted.
2. Statement explaining how project will provide adequate disposal of waste water. Applicant states sewer will be reconnected. **Staff recommendation: this is a good time to inspect the sewer line to determine its condition, especially if the home owners intend to occupy the home for longer periods of time.**
3. Explain how the project complies with nonconforming structure 30% expansion and reconstruction or replacement. The applicant provides a more detailed response.
4. Status of DEP permitting. The applicant secured DEP permit by rule approval (submitted).
5. Response to current driveway comments. The applicant met with the PW Director who saw no problem with the proposal. Also, the revised plan (submitted) provides more details.
6. Provide documentation showing that the ground floor is only being elevated for floodplain purposes. The applicant provides more details concerning floodplain in the revised responses to Shoreland Zoning Standards #7 and 8. **Staff recommendation: elevation certificate shall be completed and provided to the code and planning office upon completion of home construction.**
7. Provide plan that shows a definitive fixed location of the existing and proposed structure. A more detailed, larger, clear, scaled plan is submitted in this month's packet. The proposed building will be in the same footprint as the existing building (except for a few locations as noted on the plan) **Staff recommendations: stake the foundation corner before pouring concrete and contact the codes office to verify building location.**

## **RECOMMENDATIONS:**

Staff feels the follow-up submissions and responses adequately address the 7 items; therefore, we recommend condition approval. Note: please use the revised Conditional Use and Shoreland Zoning standard responses included in this month's submission

Motion: I motion to conditionally approve the nonconforming structure replacement and 30% expansion of the 1,200 sq. ft. 1-family dwelling located at 68 Colby Ave owned by Todd and Kathy Whitney. Conditions:

1. Elevation certificate shall be completed and provided to the code and planning office upon completion of home construction.
2. Applicant or their representative shall stake foundation corners before pouring concrete and contact the codes office to verify building location.

## **BACKGROUND (JUNE)**

This proposal is for the replacement and expansion of a single-family structure located with the Residential Activity Shoreland Zone. Because the structure at 68 Colby is within a Shoreland Zone (Residential Activity) and because the structure is nonconforming (it's within the 100' waterbody/HAT setback) replacement and expansion requires PB review as a Conditional Use and Shoreland Nonconforming Structure replacement and expansion. In regards to Shoreland Zoning in this area, the town took the State Shoreland Zoning rules a step further and applied their own rules to areas that fall within the Highest Annual Tide of 6.3 feet. This approach was part of the town's efforts to prepare for sea level rise.

Regarding permitting, the proposal falls within two ordinances, both associated with PB review of the proposal- Conditional Use (Ch. 78 Secs. 1236 – 1266), 8 standard conditions in the Shoreland Zone (78-34(e)), and Shoreland Nonconforming Structure replacement and expansion (Ch. 78 Sec. 78-1181). The principle standards the PB will use to rule on this proposal are below along with staff comment concerning compliance:

- 12 Conditional Use Standards. The proposal must demonstrate compliance with these 12 standards. The submission includes responses to these standards. A comment:
  - \*We recommend the applicant amend the response to #12 to show the property owner has the ability to finance project.
- 8 standard conditions in the Shoreland Zone (78-34(e)). The proposal must be in compliance with these 8 standards. The submission includes responses to these standards. A few comments:
  - \*We recommend the applicant amend #3 to include a statement regarding how the home will provide for adequate disposal of waste water.
  - \*We recommend the applicant amend the response to #8 to explain how the project complies with the nonconforming structure 30% expansion standard (78-1181 (c) (1) ) and nonconforming structure reconstruction or replacement standard (78-1811 (c) (3) ).
- 30% expansion of floor area or volume (78-1181 (c) 1). Because the structure is nonconforming in the Shoreland Zone, the existing floor area or volume cannot increase by more than 30%. Floor area is the square footage of all floors, porches and decks. Volume is the space within a roof and fixed exterior walls. A new or replacement basement is typically not included in the 30% calcs if it does not extend past the exterior dimensions of the structure and does not raise the structure by more than 3 feet. A few comments:
  - \*Proposal square footage and volume does not exceed 30%. Total existing sq ft is 1,025 which allows for an additional 307 sq ft with 30% expansion. So, total sq. ft allowed is 1,332. Total proposed sq. ft. is 1,200 which does not exceed 30%. Total existing volume is 9,047 cu. ft which allows for an additional 2,714 cu. ft. with 30% expansion. So, total cu. ft. allowed is 11,761. Total proposed cu. ft. is 11,723 which does not exceed 30%.
  - \*Basement is not included in 30% calcs because it does not raise structure by more than 30% .
  - \*The structure is being elevated to meet both current and proposed FEMA floodplain mapping. Floodplain standards require the structure to be elevated and this elevated area can only be used for parking, building access and storage- it cannot be finished or used for recreational or habitable purposes. Also no mechanical, electrical or plumbing equipment is to be installed below the base flood elevation. In order to ensure the elevated area is being elevated for floodplain purposes and the elevated area meets all applicable floodplain standards, a floodplain hazard development permit must be submitted before any construction begins.

- Nonconforming structures in the Shoreland Zone may be replaced as long as: 1. The proposed structure cannot increase the nonconformity (in this case setback to waterbody/HAT) of the existing structure; 2. Expansions of floor area and volume cannot exceed 30% of what exists before structure removal; 3. Permits obtained within 18 months of structure removal. Also, Shoreland standards seek to make nonconforming structures as conforming as possible. A few comments:
  - \*Shoreland standards require nonconforming structures to be moved as far away from the waterbody/HAT as practicable. Review of the lot and location of the existing structure shows it will be difficult to move further away from the waterbody/HAT without further encroachment of other setbacks.
  - \*To ensure the structure does not increase its nonconformity, the existing and proposed structure and distance to waterbody/HAT should be shown. Enclosed with the applicant's submission is a map staff prepared ("Shoreland Setback") to show the approx. distance of the existing structure to the waterbody/HAT, scaled by use of the town's GIS. The PB may want more precise information. Another option is to use the submitted survey as the fixed location of the existing structure and to receive a proposed plan showing the fixed location of the proposed structure. The survey does not show the waterbody/HAT setback but it does show the existing structures distance to property lines so it does provide a fixed location. The submitted proposed map appears to be a blowup of the survey and it appears to show the same distances to property lines. This PB may choose to use this survey but the information should: 1. Be clearer; 2. Distance shown from the structure to the north property line; 3. Proposed plan should show all the same info as the existing plan.
- Erosion Control and Sedimentation Plan (78-1215). As part of the submission the town may require an erosion and sedimentation plan.
  - \*A erosion control plan was not submitted; although, the applicant provides statements that silt fence will be installed to avoid sedimentation and contamination of the water supply. Projects similar to this have been approved with no erosion control plan. If the PB determines a plan is not necessary a condition could be added.

Two final comments. First, the current driveway is a crushed stone area with at least half of it located in the town right-of-way. Based on the submissions, a new driveway is proposed and it appears the current driveway area will be discontinued- is this correct? Second, I believe a permit from DEP will be required. Has the applicant been in touch with DEP?

**RECOMMENDATIONS (JUNE):**

The PB should decide if they can make a determination of completeness. There are a few items, discussed above, that need to be addressed and submitted. The PB should decide if these items should be submitted before a determination of completeness is made or if the PB can make a "conditional" determination of completeness meaning the PB determines the application is complete subject to receiving \_\_\_\_\_ by a specific date.

Staff believes the two primary outstanding items are: 1. Ensuring the ground floor area meets applicable floodplain standards and is only being elevated for floodplain purposes. This could include elevation certificates or something official that shows how this building is being designed to comply with floodplain standards. This is important because if this area is included as floor area and volume for 30% calculation purposes than the proposal will exceed 30%. 2. Obtaining a plan that shows a definitive fixed location of the existing and proposed structure to ensure it does not become more nonconforming as it relates to the waterbody/HAT setback.

We believe these items are important because they will help the PB determine if this proposal complies with the 30% nonconforming structure expansion and nonconforming structure replacement. The other items (i.e., amending condition use and shoreland standard responses, driveway clarification, DEP permitting) are relatively easy to resolve. Remember, a determination of completeness does not mean the PB feels submissions comply or do not comply with applicable standards. It means the record is complete enough to allow the PB to make an informed decision. Also, it's the applicants advantage that they have a solid submission when the PB makes this determination as it will increase their approval chance.

If the PB determines the application complete a public hearing can be scheduled. A site walk can be scheduled at any time during the application process.

Regarding the motion, it will depend upon whether the PB determines the application is complete. If the PB determines the application complete, it should be conditional with the following motion:

Motion to determine the application complete based on complying with the following conditions by 25 June:

8. Amend the response to Conditional Use standard #12 to show the property owner has the ability to finance project.
9. Amend Shoreland Zoning standard #3 to include a statement regarding how the home will provide for adequate disposal of waste water.
10. Amend Shoreland Zoning standard response to #8 to explain how the project complies with the nonconforming structure 30% expansion standard (78-1181 (c) (1) ) and nonconforming structure reconstruction or replacement standard (78-1811 (c) (3) ).
11. Provide status of DEP permitting.
12. Provide response to current driveway.
13. Provide documentation that shows the ground floor area meets applicable floodplain standards and is only being elevated for floodplain purposes. This could include elevation certificates or something official that shows how this building is being designed to comply with floodplain standards.
14. Provide a plan that shows a definitive fixed location of the existing and proposed structure to ensure it does not become more nonconforming as it relates to the waterbody/HAT setback.
15. Any other items the PB thinks should be included?

And to schedule a site walk on 5 July and public hearing on 12 July.

If the PB feels the application is not complete a vote is not necessary. Although, the PB should identify what's needed to make the application complete. The PB can schedule a site walk for 5 July.

**ITEM 6**

**Proposal:** Site Plan Review Sketch Plan: Campground Expansion – Add 7 RV sites with utilities and construct a 40’x60’ maintenance building behind existing site 22  
**Action:** Discussion and Recommendations  
**Owner:** Seacoast RV Resort LLC  
**Location:** 1 Seacoast Lane, MBL: 102-3-7

<u>Seacoast RV</u>	<u>Project Status</u>
Sketch Plan	Review at July Mtg.
Application Complete	Pending
Site Walk	Pending
Public Hearing	Pending
Final Ruling	Pending

This is a Site Plan proposal for the addition of 7 full utility R.V. Campsites at the Seacoast RV Resort Campground and a 40x60 maintenance building. The project right now is in the Sketch Plan review stage which gives the PB a chance to review before a formal submission is made. The Campground Overlay District allows campground expansions of up to five sites per year through an Administrative Site Plan review process. However, anything more than that requires Site Plan Review through the Planning Board.

Planning Staff began review of this proposal and noticed on the GIS and on the Zoning Maps that the Campground Overlay District does not appear to encompass the lot where the expansion is proposed (102-3-7). The green lines on the map below are the extent of the CG Overlay.



Campground Overlay (Online GIS)



Campground Overlay (Official Zoning Map)

What is interesting with this one is the approval timeline vs. when campgrounds were required to register. Our Town Ordinance says in Sec. 78-1221: “The requirements of the campground overlay district shall apply to all campgrounds in all zoning districts, except that campgrounds in operation as of November 5, 2003 shall be included in the campground overlay district only if they are designated as a ‘registered campground’ by the planning board no later than April 1, 2004. Existing campgrounds not so registered shall be governed by the regulations for the zoning district in which they are located and, to the extent they do not comply with such zoning district requirements or with the requirements of this campground overlay district, shall be deemed nonconforming uses, subject to the restrictions and limitations on nonconforming uses contained in article III of this chapter.” Seacoast RV was original approved by the Planning Board on April 8, 2004. The first amendment was approved on September 9, 2005 and the second amendment subsequently



approved on June 13, 2013. Because the requirement to register as a campground had a deadline of April 1, 2004, the original approval and subsequent amendments came in after that deadline which would explain why Planning Staff could not find a registration packet.

In addition, each proposal that was brought before the PB labeled this parcel as “Seacoast R.V. Resort, L.L.C.” However, in the notes section of each plan, the area for the proposal is labeled as 26.5+ acres. The size of the Seacoast RV Parcel (102-3-5) is 26.5 acres according to our GIS records. However, since the plan is labeled as 26.5± it could have been intended to include the 2 acre parcel (102-3-7) which is 2 acres. Planning staff recommends that the Applicant provide additional information on this parcel to show that it should be included as part of the Campground Overlay (CGO).

Another item that Planning Staff recommends be submitted with the formal application is a current update/list of how many sites exist in the campground today as well as how many State Licenses the campground holds. According to our licensing files, the property has a total of 89 sites. It is unclear how many state licenses the campground holds.

Regarding a formal submission, this will require Plenary Site Plan Review and will have to meet the Performance Standards under Sec. 78-1229 of the ordinance which applies to any campground expansion or campsite upgrades in the campground overlay district but do not affect existing conditions, buildings or sites. This is assuming that the 2 acre parcel is located in the CGO. The applicable standards pertaining to this expansion are listed below:

- **Buffering:** The perimeter of all campgrounds and areas that abut residential properties shall be visually screened from adjacent properties in accordance with the standards of Article VIII, Division 7 (landscaping and buffering) of the zoning ordinance. One item to point out is that this may trigger the requirement for a 100 foot buffer of any property line. Sec. 78-1229(1)(c) states that *“with the exception of the main entrance and associated registration building, no campsites, recreation areas, roadways, service areas or other improved areas shall be located within 100 feet of any property line, and the 100-foot buffer shall be kept in a natural vegetated state. The requirements of this subsection 78-1229(1)c. shall apply to all campgrounds established after January 1, 2000 and to extensions of existing campgrounds onto land which was not part of the registered campground approved by the planning board under section 78-1226, but shall not apply to campsite upgrades and campground expansions within a registered campground.”* The Planning Board will have to determine whether or not this requirement is necessary based on the materials to be submitted by the Applicant regarding the status of that parcel. On the plan, a buffer is shown, however, the size of it is not labeled.
- **Signage:** If there is signage proposed for the project, the ordinance standards say that there is no limit to informational signs within the campground. However, standards are spelled out for signage that may be viewed from a public way. This is likely not applicable in this case because the lots are proposed away from Ross Road, however, it is good to keep in mind.
- **Parking and Circulation:** For each RV Campsite, 1 off-road parking space needs to be provided. In addition, it looks like a new 20’ paved drive is proposed to access this section. The Performance Standards identify the internal roadways in a campground overlay district as driveways. Roads designated for one-way traffic need to be a minimum of 10 feet wide and roads designated for two-way traffic need to be a minimum of 15-feet wide. The proposed 20 foot drive appears to be the only means of egress and it exceeds the 15 foot requirement. However, the ordinance also says that in order to preserve the rustic character of the campground setting, driveway surface materials are permitted to remain as gravel or crushed stone, provided that the use of those materials is not determined by the PB to pose an erosion or sedimentation hazard. The proposed drive is paved. There is a stream crossing in the area so the PB may make that determination that using gravel or stone could post an erosion hazard.
- **Lighting:** No campground lighting of buildings or roads shall shed more than 0.1 foot-candles of illumination on any adjacent residential property. All external lighting shall consist of shielded luminaries or downlights so as not to produce point sources of glare and nuisances to adjacent properties and motorists on nearby streets. This should not be a problem in this section of the campground as it appears to be secluded from adjacent residential homes. There is one area adjacent to the home at 102-3-8 that they may have to worry about. The Applicant should submit foot-candle calculations for both the road serving the campsites and the proposed maintenance building.
- **Emergency Vehicular Access/Pedestrian Evacuation Egress:** The ordinance requires a 15-foot wide driveway connecting the internal campground road to a public or private street with a gravel or crushed stone surface, access gate fitted security lock system that is operable and accessible to municipal emergency services OR a pedestrian evacuation egress in those situations where the PB determines that an emergency vehicular access to a

street is infeasible. The area needs to be a 10-foot wide path that connects a major driveway/footpath within the campground to an off-site path, sidewalk, or open space and is of suitable gradient and dimension to accommodate the rapid evacuation of pedestrians from the campground in the event of an emergency. An area like this may already exist in the campground but the Applicant should show how this section will connect to that.

- **Space and Bulk Requirements** for the CGO that are most applicable to this proposal:
  - **Building Setbacks** in the CGO have to meet the requirement of the underlying district which is the Rural District.
    - **Front Yard (All Structures):** 50 ft.
    - **Side Yard (Principal Structures/Detached Garages and Accessory Structures):** 25 ft.
    - **Rear Yard (Principal Structures/Detached Garages and Accessory Structures):** 25 ft.

The setbacks for the building are not shown on the plan so these will have to be explained when the Applicant makes a formal submission to ensure it meets these.

- **Campsite Density:** 1 Site/2,500 s.f. NDD for RVs, and 1 site/5,000 s.f. NDD if the campsite itself is located in the Shoreland Zone, however, that is not the case here. Portions of Seacoast RV are located in the Shoreland Zone but not these sites.
- **Minimum Site Width:** 30 Ft. for an R.V.
- **Minimum Site Length:** 40 Ft. for an R.V.
- **Setback (RV and Seasonal Campsites):** 30Ft. from Public Road, Side yard/Rear property line/residential property line.

Permitted accessory uses in the CGO which are “*customarily subordinate and incidental to the permitted uses and provided that such accessory uses are reserved primarily for the use of registered occupants and visitors of the campground and not the general public*” include:

- “*Registration offices, administration and maintenance facilities*” so this facility is allowed as an accessory use in the CGO. However, because it is greater than 1,000 sq. ft it triggers the requirement for review as a Site Plan.

Planning Staff also recommends that the Applicant provide information on how stormwater will be handled from the 7 additional sites and the maintenance building. If the total disturbed area is greater than 1 acre, it will trigger the requirements for Chapter 71. Having said this, the existing Seacoast RV is already subject to Ch. 71 based on the 2013 expansion and already follows the requirements under Ch. 71. This may just be a simple amendment to the documents they already have in place for stormwater including the Post-Construction Stormwater Management Plan.

The Applicant will also have to apply for DEP permits for the stream crossing and we will want to have this reviewed by Wright Pierce.

#### **RECOMMENDATION (JULY):**

Where this proposal is in a Sketch Plan phase, it is a good opportunity for the PB to review and discuss with the Applicant without having to make any formal decisions.

- Planning Staff recommends when the Applicant submits their formal submission that they also submit additional information on this particular parcel (102-3-7) to show that it has historically been included as part of the CGO.
- The Applicant should also provide a current update/list on how many sites exist in the CG today and how many State Licenses the Campground holds.
- And we recommend they address the bulleted items above in terms of Space and Bulk Requirements/Performance Standards.