

TO: Old Orchard Beach Planning Board
FROM: Jeffrey Hinderliter, Town Planner
SUBJECT: March Planning Board Meeting Summary
DATE: 8 March 2012

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

ITEM 1 – Pyle (Final Review)

- At our February meeting, a public hearing was held and no issues were brought forward.
- An issue remaining from January and February meetings is parking. As you may recall, the PB determined the application was complete but conditioned upon receiving information concerning off-street parking. The applicant proposes to secure parking on an abutting lot. We have not received this information and we'll need this documented before any final decision is made.
- The PB should determine which conditions apply before a final vote. A copy of the Findings of Fact for Mr., Weinstein's 34 Washington Ave proposal was attached to my February memo as a reference. The project is similar to 34 Washington, but not all the conditions attached to that proposal will apply to Mr. Pyle's.

Background Info:

- This proposal includes a project to alter the interior of an existing 3 unit apartment building to add a single motel unit (Lodging).
- This proposal is very similar to a proposal we reviewed last summer. As you may recall, Mr. King Weinstein was conditionally approved to add a motel unit at his property located on 30 Washington Avenue.
- The NC3 Zone allows Lodging as a conditional use with NO DENSITY standards.
- One of the primary issues associated with this proposal (much like Mr. Weinstein's) is parking. This property currently has no off-street parking available. There are parking requirements: 1 space per room plus 50%. The lot currently is non-conforming with regard to the number of spaces due to the 3 existing units and no off-street parking available. Parking waivers can be requested by the applicant. The following zoning section is applicable:

Sec. 78-1568. Parking Waivers.

(a) The planning board may grant waivers from the standards of this division only in cases where the applicant can demonstrate that:

(1) With respect to the number of parking spaces, the actual parking demand for the applicant's proposal is less than required in section 78-1566 and a reduction in the number of parking spaces will not create unsafe conditions for vehicles or pedestrians; or

(2) With respect to standards other than the required number of parking spaces, the physical constraints of the site make compliance with the design standards of this division impractical or technically unfeasible, and modification of those standards will not create unsafe conditions for vehicles or pedestrians.

- If this proposal is to move forward, the applicant must make a formal written request for waiver of the parking standards. This request should include why the

proposal cannot offer parking, with reference to the Parking Waiver standards cited above.

- The PB applied specific conditions to Mr. Weinstein's proposal to ensure it remains a lodging unit (e.g., minimum 30 day stay; owner/operator shall register and pay applicable Maine lodging sales tax as applicable; A hotel/lodging ledger of occupants shall be maintained). The PB should considering doing the same for this proposal. Please advise the planner on these conditions at tonight's meeting
- **RECOMMENDATION?ACTION:** I recommend the PB table this proposal until we receive documentation from the applicant concerning parking.

ITEM 2 – Stevenson (Final Review)

- At our February meeting, a public hearing was held and we received written and oral comments. The comments were primarily associated with concerns over impacts to an abutting property resulting from development, floodwater, the proposed fill (type and location), and 30% expansion calculations.
- There were a few items that required further consideration:
 1. Need to review sewer and water connections before final vote. The applicant secured a letter showing water availability from the Biddeford/Saco Water Company. I believe the applicant secured the sewer department approval but I can't find records of this. If this has not been done, the applicant should do so before issuance of a building permit.
 2. DEP approval. This proposal required a Tier 1 permit from DEP. Based upon the applicants email discussion with DEP staff, it appears the permit has been approved and will be delivered on or near 12 March.
 3. Floodplain Management Ordinance Compliance. The applicant worked with the code officer and is in the process of completing the work and documentation required by the CEO. The applicant intends to secure applicable floodplain approvals when applying for building permits.
 4. The removal of more than 50% of the structures market value requires the PB to determine that the proposed reconstruction complies with the shoreland setback to the greatest practical extent. As part of a final PB approval, the Board must determine the structure complies with the shoreland setback to the greatest practical extent.
 5. 30% expansion calculations. The applicant worked with DEP and former Code Officer, Mike Nugent, to comply with the 30% expansion standards. The result of this work is included within the applicant's submitted documentation and plans.
- One final comment is the vegetation on the property, especially the mature trees, may need to be disturbed or removed. Does the applicant have a plan in place to replant if removal is necessary?

Background Info:

- This proposal is to convert an existing vacant building (formerly used as a plumbing shop) into a single family dwelling. The reason this is before the PB is because it is a 30% expansion within the shoreland zone. As a result of the 2011 shoreland zoning ordinance changes, proposal that involve 30% expansions now require PB Conditional Use review. Also, this requires PB approval because the project

involves removal of more than 50% of the structures market value and for the conversion to a single family home.

- There has been a fair amount of work and correspondence between the applicant's daughter, former Code Officer Mike Nugent and the Department of Environmental Protection.
- The applicant is working with the code office to comply with the Floodplain Management Ordinance.
- A few items to be aware of:
 1. The removal of more than 50% of the structures market value requires the PB to determine that the proposed reconstruction complies with the shoreland setback to the greatest practical extent.
 2. The structure cannot encroach on the wetland further than what the existing structures setback is; although, rip rap can typically be placed within this area as long that it receives applicable DEP approvals.
 3. The existing foundation, 1st and 2nd floors all count in calculating the volume and square footage for the 30% expansion (these calculations are included in the applicants packet).
 4. Trees that are removed as part of this project will need to be replaced with trees that are native to the area.
 5. The proposal will need to comply with the Floodplain Management Ordinance. I believe the applicant should discuss with the code officer how this needs to be done before the PB provides a final ruling.
 6. Public water and sewer connections exists, we should receive assurance they are in good working order.
- **RECOMMENDATION/ACTION:** If the Planning Board feels comfortable that: 1. The proposed reconstruction complies with the shoreland setback to the greatest practical extent; and 2. The proposal reconstruction complies with the 30% expansion calculations, I believe the PB can conditionally approve the proposal.

Conditions:

 1. Removed trees shall be replaced with trees native to the area no later than 6 months after building occupancy.
 2. Flood Hazard Development permitting must be secured in accordance with the Old Orchard Beach Floodplain Management Ordinance before the start of construction.

ITEM 3 – Beachmont Land Development, LLC (Continuation of Pre-Application Meeting)

- This month is a continuation of the pre-application discussion concerning the proposed Beachmont Land Development Subdivision. At this time the applicant is providing an update and seeking that the PB formally waive the requirement of a Central Sewage System, Section 74-278 (b) (7). Tonight, the matter before the PB is only the waiver request.
- The Subdivision Ordinance does have a waiver provision (Section 74-34) that allows the PB to waive almost any standard in the subdivision ordinance. To grant a waiver, section 74-34 has specific criteria the PB must apply when determining if waiver request can be granted.
- Please see my recommendation below for further comments on this particular waiver.

Background Info:

- This is a new Subdivision and Site Plan Review proposal for the development of a 53-lot single family cluster subdivision. Also, a portion of the property associated with this proposal is within the Stream Protection (SP) district which means Shoreland Zoning applies; although, the proposed development is not within the SP district.
- This subdivision is proposed as a cluster. This allows the applicant to design a subdivision that alters the layout, dimensional and area requirements that are typically called for in the ordinance without a waiver or variance.
- There are specific standards associated with cluster proposals and they are found in Subdivision Ordinance, Section 74-278. These standards include Basic Requirements (e.g., building design, common water supply, common sewer system), Open Space (e.g., allocation of common open space, covenants, maintenance responsibilities) and Siting and Buffering (e.g., overall site design, building design, internal and perimeter buffering).
- Cluster Subdivisions do not specifically allow alterations from other subdivision standards- only those that are called for in the cluster standards; although, the Subdivision Ordinance does have a waiver provision (Section 74-34) that allows the PB to waive almost any standard in the subdivision ordinance. To grant a waiver, section 74-34 has specific criteria the PB must apply when determining if a waiver request can be granted.

A few items to consider (PB and Applicant) as the proposal moves forward:

- The most important initial item is a decision on what the PB feels it can waive or modify. As stated above, the PB has the authority to waive or modify almost any Subdivision Ordinance standard. The applicant has requested specific waivers and the PB should concentrate on these as to whether they can or can't be granted. I highly recommend the PB carefully reviews the waiver standards (section 74-34) during consideration of the waiver requests. Also, it is always good to think out of the box when an ordinance allows the PB to waive a standard. An ordinance may call for something specific but there may be something that could work better. This is why waivers can be a very useful tool.
- When reviewing the plans, I recommend the PB look at it as if this is the actual subdivision layout and identify what may need to be addressed. This will help the applicant prepare plans and documents when the time comes for a formal submission.
- Public Works review for items such as road design, curb cuts and utilities.
- This proposal will have public water so the applicant will need to discuss this with Biddeford/Saco Water Company (and provide a written sign off).
- OOB Public Safety will need to review the proposal.
- You'll see proposed internal road is connecting with Date Street in the Homewood Park Development. Subdivision design typically encourage roads with in subdivisions to have a way to connect to abutting property when roads terminate at or near property lines. Nonetheless, we still must review previous files associated with Homewood Park Development and Date Street to see if this is legal and we'll need an analysis of traffic and Date Street road conditions to determine if Date Street can support the additional volume of vehicular traffic.

- Wright Pierce will need to provide a complete review of all site work, design and stormwater management systems.
- This proposal may need a Traffic Movement Permit through MDOT. I recommend the applicant provide the PB written analysis in regards to this. Is a permit required- then this permit must be secured before a final PB vote. A permit is not required- please provide an explanation.
- The proposal offers open space that has freshwater access. This could be something the town may want to explore and acquire.
- **RECOMMENDATION/ACTION:** The PB should carefully consider the waiver request. It is best if we have all supporting documentation that clearly shows granting a waiver will not jeopardize health, safety and the overall well being of the subdivisions residents, abutting properties and the town. Although, I understand that to secure some of this data, it can be at a considerable expense, so I can understand why the applicant wants some assurance from the PB before they move forward. I believe the PB could say something such as, “We will grant the waiver as long as the applicant provides/shows (insert what the PB feels necessary) and through this material represents individual septic systems are a better alternative than a Central Sewage System and...”. OR, if the PB decides to grant the waiver, I recommend that specific conditions be attached. These conditions could be:
 1. Each lot shall have a minimum of two test pits showing a primary and backup location for a subsurface wastewater disposal system. Both locations shall be entirely clear of any proposed permanent building construction.
 2. A nitrite/nitrogen analysis shall be done showing levels that are acceptable for Maine water quality standards and other applicable health and environmental standards.
 3. Some assurance that all lots will be connected to a public water supply.
 Please know that although I do understand the applicant’s position, I’m nervous about the PB formally granting a waiver without the material they need to evaluate as to whether a waiver can be granted. I think the Planning Board can offer the applicant some confidence that a waiver could be granted based up meeting certain criteria.

ITEM 4 – Hid’N Pines Campground (Amend 2010 Approval)

- This proposal is requesting that the PB allow the removal of some sections of a perimeter fence shown on an approved site plan (2010) as part of the Hid’N Pines Campground expansion.
- Note: the sections of the perimeter fence included with this proposal have not been installed; they only exist on the approved site plan.
- During early 2010, the PB granted approval to expand Hid’N Pines Campground. As part of this approval, a perimeter fence was shown in the buffer area (see plan excerpt). A portion of this fence is located adjacent to Fairview Farms Condo property.
- December 2011, representatives from Fairview Farms Condo Association approached me to discuss their opposition to the perimeter fence adjacent to the property boundary.
- I worked with Jason and Ryan Ahern, representatives of Hid’N Pines, and Gail Atkins, Property Manager of Fairview Farms, to find a solution that would address Fairview Farms concerns, assure Hid’N Pines interests are protected and ensure

applicable OOB ordinance standards are met. The result is the 27 January 2012 letter (in your packet) describing the details and terms of an agreement to remove portions of the fence.

- Fairview Farms Condo Association and property manager and Hid’N Pines representatives have reviewed and approved this letter.
- In addition to the proposed fence removal adjacent to Fairview Farms property, Hid’N Pines requested additional sections of the fence be removed (adjacent to LeVonne Harris property). I asked they discuss this with Ms. Harris and to receive her ok (notes of this conversation are in your packet) before I include this section of fence as part of the proposed removal.
- I have reviewed the applicable ordinance standards and I do not find standards where a fence is required. A buffer is required, and a fence could be part of the buffer, but a fence is not required to be part of the buffer (does that make sense?). Removal of the fence does not appear to contradict ordinance requirements.
- There is nothing in the 2010 Findings of Fact that mentions or requires the fence to be part of the buffer; although, the fence is shown on the approved and signed site plan.
- A property owner that is not part of this proposal has offered comments. These comments have been submitted to you this evening. Please note the sections of the fence proposed to be removed are not adjacent to her property.
- **RECOMMENDATION/ACTIONS:** The proposal is submitted to the PB this evening for your approval. If the PB feels comfortable approving it I will draft a decision notice to be attached to the 2010 Findings of Fact, which will include a signed copy of the 27 January 2012 letter- I can sign on behalf of the Planning Board (if you wish). If the PB would like to choose another direction, please let me know what items the PB needs to move forward.