

TO: Old Orchard Beach Planning Board
FROM: Planning Staff
SUBJECT: May Planning Board Meeting Summary
DATE: 11 May 2017

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

Applicant Note: May meeting submission date is 22 May 2017.

REGULAR BUSINESS

ITEM 1

Proposal: Conditional Use Amendment of Approved Plan/Appeals from Restrictions on Nonconforming Uses (Overnight Cabins): Change use of 7 units from seasonal to year-round Hotel (currently 5 year-round use for a total of 12)

Action: Final Ruling

Owner: SRA Varieties Inc., D.B.A. Paul's II

Location: 141 Saco Ave., MBL: 311-1-10

At the April meeting the PB took a poll of members and decided the Omni Inn proposal could be approved as long as it met certain conditions. Since the PB meeting, staff met with the owners to discuss the conditions, site management and monitoring, etc. After this discussion, the owners followed through with amended CU review criteria responses (in this month's packet) and agreed to additional conditions. Below are all conditions (including those suggested by the PB):

1. Curb stops shall be installed at the end of each parking space.
2. The Omni In parking area shall be paved on or before _____ (Staff recommends on or before 1 June 2018).
3. Building #3, as identified on 02/05/2017 Parking Layout Plan, shall not exceed 2 units.
4. Accumulated snow shall be hauled off-site within a time frame that avoids stockpiling snow.
5. Individual parking spaces shall be marked/identified on-site in accordance with the 02/05/2017 Parking Layout Plan. Temporary spaces shall be marked/identified on or before 1 June 2017. Permanent spaces shall be painted immediately after the completion of paving.
6. Individual parking spaces shall be marked with unit numbers.
7. Do Not Enter signs shall be placed at the access in front of building #5 on or before 1 June 2017.
8. A Do Not Enter sign shall be placed at the intersection of Omni Inn access and Union Ave on or before 1 June 2017.
9. Tenant or Omni Inn Parking Only signs shall be placed at the access to the Omni Inn from Paul's II parking area on or before 1 June 2017.
10. A Knox Box shall be installed on or before 1 June 2017.

A management and monitoring plan was discussed with the owners but after some thought, staff feels our contributions should be limited to those items we have jurisdiction over which is primarily zoning and land use ordinances and laws. We feel we can suggest ways to manage the property and encourage the owners to follow through, but requiring non-land use or zoning items in a management plan may infringe upon their rights.

RECOMMENDATIONS: Staff recommends the PB conditionally approve the change of use of 7 units from seasonal to year-round (currently 5 year-round use for a total of 12) all for the Hotel use.

April 2017

The Omni Inn is scheduled for a final ruling from the PB. At the heart of this ruling is allowing 7 units to be converted to year-round occupancy but there have been a number of other matters that have been considered as part of our review. Included in the update is a list of staff's final questions/comments; staff question/comments to owner; owners response; occupancy permit and license questions; codes response.

Staff final questions and comments:

- The applicant states they will be paving the parking area and then painting the spaces. When will this take place? The spaces should be easily identifiable on the property ASAP. Also, unit #'s should be identified on each space.
- The last concerns from PW Director was identifying the parking spaces behind the store and adding a Handicap space. This is shown on the most recent plan.
- Parking spaces behind the store are at 45 degrees which require a space length of 19'10". The plan shows 18'. I, personally don't think this is a major issue (as long as the spaces are clearly marked) and certainly an improvement from what exists.
- Hotels require 1 space/unit, plus 50% of required for associated uses, plus 1 space/2 employees. Retail requires 1/250 sq. ft. of net leasable area. The only use that may be associated with this is the store which has its own parking area and meets the retail space requirement. The owners state there are no employees onsite dedicated to the hotel. So, it would appear the proposal can meet the parking space # standard as long as the owners ensure the only 1 vehicle is permitted per unit.
- Unloading for the store takes place in the parking area associated with the store and potentially could interfere with access to the hotel (along with customer parking too). The owners will need to ensure the area used for ingress and egress to the hotel units remains clear at all times.
- Snow storage didn't work as shown on plans. The owners will need to rethink this to ensure parking and interior vehicle maneuverability remains clear during the winter months.
- Considering the comments in the bullets above, parking, unloading and snow storage will need to be monitored by the owner.
- There is concern about units 5 and 6 in building 3 becoming efficiency units. Perhaps a condition should be attached that states building 3 as shown on the 02/05/2017 Parking Layout Plan unit number shall not exceed two.
- Codes states unit layout reflects occupancy permit and all buildings have been inspected and approved.
- Codes states use is identified as a motel (assessing card).
- The proposals use originally was identified as overnight cabin, we have determined the new use fits the hotel definition. The proposal has, in part, been reviewed as if it is a hotel. Also, overnight cabins and hotels have some similarities as both are considered nonresidential uses.
- The owner followed-up with Chief Kelley and it appears the Chief does not have any particular issue with this proposal; he has overall concerns about the issues some winter rentals bring to town.
- The owner followed-up with Chief Dube and the owner states the FD suggested no concerns or recommendations.
- The PB discussed limiting the number of year-round units to 9. If the PB chooses to do this it will be important to establish how this number was arrived at. Why not 8? Why not 10? The location of the units or building?
- Please remember this proposal is reviewed as Appeals from Restrictions on Nonconforming Uses and Conditional Use. First, the PB must find the impact and effects of this use on the neighborhood will not be substantially different from or greater than the impact and effects of the use that existed before this proposal. This is a bit difficult because the prior use (overnight cabins) has not been in operation for some time so it may be difficult to remember how the prior use operated. Second, the proposal must be reviewed as a Conditional Use which includes the PB's evaluation of the owners submission and response to the CU review standards. Note the owner provided info concerning the Appeals from Nonconforming Uses and responses to the CU standards in the Dec. 2016 and Jan. 2017 submissions.

Staff questions and comments to owner:

1. Department Head Comments Update. You provided a response to Department Head comments received before the November 2016 meetings. As you may recall you received Department Head comments (attached as a reminder) after the November 2016 meetings. I recommended you contact the department heads who provided comments and discuss those comments and then to provide the feedback you received. I believe you informed me you met with PD Chief Dana Kelley and I know you occasionally speak to Codes but we have not yet received an update from you. You may choose to update the Board verbally at their meeting but it is much better if you provide in writing. This is important because the Board will ask for an update on where Department Heads stand on this project and if they have any objections.

2. Parking requirements. Parking requirements, especially number of spaces, are typically based on the property use. The last time the PB discussed this proposal it was felt the Omni use is most closely related to a Hotel and Paul's II is retail. Hotels require 1 space/unit, plus 50% of required for associated uses, plus 1 space/2 employees. Retail requires 1/250 sq. ft. of net leasable area. Since you have no employees on-site dedicated to the Omni and there are no associated uses I expect 12 spaces will be fine. You'll want to be sure the Omni use does not interfere with Paul's II use (in regards to the parking requirements). Please be sure you're prepared to discuss this.

3. Parking space size. Your plan shows individual space dimensions at 9 x 18. This size meets the 90 degree standard but the 45 degree spaces behind the store are supposed to be 9 x 19'10". Personally, I feel the space size is acceptable (as long as it's clearly marked on the ground) but I expect you be asked about this.

4. Parking spaces delineated on the ground. I expect the PB will require the parking spaces to be marked (e.g., painted) on the ground.

5. Access to Union Ave. I see that you've adjusted your plan so travel way behind the store is one-way which only allows traffic to come into the site from Union and not exit onto Union. This is fine and you may continue with this as proposed but I want to remind you the PB did allow this to be a right-turn only exit and I don't want to see you limit yourself.

6. The Board was concerned about some of these units (especially the common space between units 5 and 6) becoming efficiency units.

7. We'll have to amend the application to show the proposal is a hotel. This should not be too difficult and something we can take care of in my office.

8. The Board mentioned they may limit the total number of year-round units. I recall the number 9 mentioned.

Owners response:

Police-

I spoke with Chief Dana Kelley regarding the concerns he has with winter rentals and potential tenants. My understanding is that his concern is with all winter rentals in Old Orchard Beach, not particularly with my project. This is something that the town allows for many other motels/hotels/private homes, I am not understanding why my interest is any different. I discussed with him that I do not want problems or troubled tenants and that I would continue to screen to prevent that. Unfortunately, we can't see in to the future. Drugs and problems do not discriminate. As we all know, those problems exist within any financial and housing dynamics. I will continue to do my best in preventing problems that could potentially impact the community negatively. That's all I can do. I live in this community, I do not to willingly damage it.

Fire-

I spoke with the fire department this week. From my understanding, the original concern was the fire truck not being able to enter between cabins (buildings 2 and 4). I visited the department seeking any recommendations that could be made to move this along and they did not suggest any concerns or recommendations. Hopefully, there will never be a fire emergency in the future, but if there is one, I do not believe the trucks would park between the cabins to fight a fire. In reality, they could/would fight a fire from across the street or from the store parking entrance to avoid potential harm to themselves or trucks.

Department of Public Works-

I also visited the public works department this week. Again, I was looking for to address any problems and seek any recommendations they had to remediate any problems they might have. They informed me that their only concern was the sidewalk area that runs along Union Ave. I informed them that this has since been paved and they seemed to be unconcerned other than that.

Parking-

I did provide the planning board with an updated parking plan/map. This had suitable parking spaces for the units available. I understand that the town would like those spots painted. I have every intention on doing that once the entire area is paved.

I have spent a substantial amount of money and time on this project. I plan on paving once I start making a return on my investment. It is in my best interest to have this property looking and functioning at its best potential. So, I will be paving in the future.

The right turn only on to Union Ave. can be done if that is what the town wants me to do. It was originally told to me that the exit/entrance behind the store (Union Ave) could potentially cause traffic congestion at the light if someone was trying to turn left into the property from Union Ave. When speaking with all the departments that was not a concern that was ever mentioned again. Again, if the town wants it a right turn exit only, I have no problem with that. Someone just needs to let me know.

At this point, I am hoping to have all 12 units approved for winter rentals. I have tried to do everything that has been asked and I am hoping that this can finally be approved. This project has been extremely time consuming for me and the town. I have no idea why the town/board is suggesting to only allow 9 units vs 12. What is the difference or impact of allowing all 12? Are you suggesting that we take part in this entire process again next year for three units? I am sure your time, and I know my time, could be better utilized somewhere else.

Occupancy permit and license questions:

The PB is trying to determine if the most recently submitted plan (included in April PB packet) represents what exists and exactly what it is that exists in regards to unit layout in each building and what was granted occupancy permits and business licenses as well as what was approved (licenses or occupancy permits) as seasonal and year-round. The PB asked if codes could look into this. I attempted to simplify the questions right to the point to help with your research:

- Which units and buildings have an occupancy permit?
- Do the occupancy permits reflect the same unit layout in each building? If not, what layout was approved as part of the occupancy permit?
- Do the occupancy permits allow for seasonal or year-round use? If it includes both seasonal and year-round, please id which units are seasonal and year-round.
- Which units and building have licenses?
- Do the approved business licenses reflect the same unit layout in each building? If not, what is the approved unit layout?
- Which units are licensed for seasonal use?
- Which units are licensed for year-round?
- What use classification was applied to license and occupancy permits?

Codes response:

I have reviewed the files and gone through many of the documents, especially the business licensing file to refresh myself on this entire project. The Plan attached by you does show what I believe to be accurate summary of the 12 Units. We verified this today by a site visit.

- Which units and buildings have an occupancy permit?

All buildings were inspected and Approved for Occupancy over a very long length of time.

However, building # 5 still does not have a signed occupancy permit at this time. This is the building directly behind the Convenience Store/ Fuel Station. The Singh's never came in for it and they would have yet to pay for the 3 additional units to be included on their license. We worked piece-meal on everything there so when they had a building done and inspected we had them come in and pay for the license fees before it went to Council. They have been called but as of yet have not come in and taken care of this. Again, they are all inspected and approved. (12 Units) As a side note- all 12 units will be up for renewal (APRIL) and before they can operate all fees, and or conditions must be met.

- Do the occupancy permits reflect the same unit layout in each building? If not, what layout was approved as part of the occupancy permit?

The buildings themselves have the correct number of units as per their proposal. As we did not obtain engineered plans or drawings from the applicants at the time it was either approved by the Planning Board nor when we went to do permits, I have to go off the hand drawn sketches submitted by Pierre Bouthlier, as well as some cobbled together from previous projects at this location. They do match up. (For at least number of units per structure and location thereof.) We learned we need to be involved a bit earlier with these types of projects. There is not an exact cookie cutter plan of each individual unit however, each has subtle differences. I have reviewed each C/O to see if there is anything that stands out and there isn't. There is some confusion on a couple of units as they have the ability to open them up and make room for housing J-1 students. I have attached the letter dated April 05, 2016 which outlines what I believe to be a correct statement as to what we actually allowed there.

- Do the occupancy permits allow for seasonal or year-round use? If it includes both seasonal and year-round, please identify which units are seasonal and year-round.

Buildings 1 and 3 were the only two existing buildings that were existing at the beginning of the project and are allowed to be year round. (Total of 5 yr. round units.) The others were conditional as Seasonal (There are 7.) You and I agreed to this format if you recall. The understanding was buildings 1 and 3 were existing dwellings and the others were to be combined as the layout shows. Again remember all units are constructed to the same standard. When we discussed this project in concept stages the intent was to be able to visually identify which areas would be year-round so there would be little doubt which units were rented during the off months.

**** NOTE 1: The construction of all units was to 2009 Codes. Meaning they are as to the best possible extent meet the MUBEC Codes and Energy Codes as there isn't a "Seasonal" Construction type, so all are insulated and on permanent foundations. These are the same standard as a New Dwelling/or a Rehab would follow. Further, we used the method that if a structure requires greater than 50% of the structures(s) value (assessed less land) to complete the work all construction is to today's codes. Therefore, ALL Units must comply to IBC-IRC 2009 Codes.

****NOTE 2: As a sidebar to this we will be re-inspecting all 12 Units to determine if the interior has been altered and to take measurements of all units as well as to view the actual conditions. This action is a result of a previous complaint/concern and not as a result of the PB inquiry. However, we have not had any other complaints that I'm aware of in regards to Police or Fire at the Omni.

- In response to your question regard Type of Structure. The Assessors Card(s) have them as Motel Units

04-05-16

Gagon and Gee:

I am confident that the property at 141 Saco Ave was approved by the Planning Board on June 11th 2015 for 12 units. When we first discussed this project prior to the application for the Planning Board it was going to be buildings that existed were to be grandfathered and only those 5 units were year round. The balance were going to become seasonal. This is how we got the project started if you recall. Again with the Building numbers 1 and 3 being year round and the 3 other buildings being seasonal in use. I have re-read everything in our files and have reviewed the video recording of the meeting as well. At no time have I found that the use can be year-round without going back to the Planning Board. I have also discussed this project with Jeffery Hinderliter

whom is the Town of Old Orchard Beach Town Planner. He is in agreement with me in my conclusions. He has researched his files as well and we have the same concept of what was approved.

In order to have the three buildings (Numbers 2, 4, and 5) currently changed from seasonal to year-round use it is my opinion that only the Planning Board can grant the change in use. You would have to apply for a conditional use to have this issue brought forth in front of the Board again. Jeffrey has stated to me he was working with you on this but it was never brought forward by you as the owners.

In order to sign off on occupancy certificates the property must be in compliance with all IBC-IRC 2009 codes and be inspected. You have taken care of many of the items I listed for you previously with the exception of the landscaping which you must discuss with Jeffrey Hinderliter and have him approve the plan.

As far as the fees there is still the amount of \$7400. Outstanding. You have agreed to pay half when we are in agreement and the balance to come in the form of a check postdated 30 days from said agreement.

In the event you want to proceed I will ask the Town Manager to allow this to go forward with the above as conditions.

Background

At the December meeting the PB determined the application complete but felt more information was needed. This additional information includes a revised plan that has the following: 1. Drawn to scale (something that looks like a survey plan); 2. Location of dumpster; 3. Parking spaces with dimensions that meet ordinance standards; 4. Parking aisle and access way dimensions; 5. Unit #'s on cabins; 6. Cabin interior space layout. In response the applicants submitted a revised plan and attached description of each units use (seasonal or year-round). Also included in your January packet:

- Building plans. Note these plans were included with the 2015 submission and appear to offer the best available representation of the buildings, including interior layout. I asked the applicants if these are accurate to which they said they are.
- Applicant's response to PWD, PD, FD comments. These responses were provided by the applicant as their reply to Department Head comments received during the spring and summer of 2016. They do not specifically address the Department Head comments received as part of the application resubmission; although, you'll see that most of the department Head comments are the same or similar as those from last spring and summer. The applicants included these responses as part of their November 2016 resubmission application. See below for further discussion.
- 12 Conditional Use standard responses. These are the same CU standard responses submitted as part of the November 2016 resubmission application.

The PB asked about the 2016 license status including any condition(s) the Council may have attached to license approval. We checked the license files and Council minutes and found:

- 2.16.16: Council approved 5 year-round units in buildings 1 and 3.
- 3.17.16: License file notes show 3 seasonal units added in building 5. No documentation of Council approval for this.
- 4.19.16: Council approved 6 seasonal units in buildings 2 and 4. This brings the unit count licensed by the Council to 11. Remember, the 3 units added in building 5 were not approved by Council so they're not legally licensed.
- 11.1.16: License file notes show that common space in buildings 2 and 4 were approved as units (approved on 4.19.16). This would increase the licensed amount by 2 units and if the 3 units in building 5 are eventually approved the total unit count will be 14. This exceeds the PB approval of 12 units. License reduced by 2 total units and referred back to Council.

- 11.15.16: Council approved amendment to the license approved on 4.19.16. This amendment reduces the number of units in buildings 2 and 4 to 4 total units (two units in each) which supersedes the previous license for 6 total units (three in each). This brings the licensed unit count to 9. Building 5, which is still not licensed, has 3 units so if this is licensed the total units will equal 12 which is what the PB approved.
- We found no conditions from the Council attached to the approvals.

So, as of today, there are a total of 9 licensed units approved by the Council. 5 year-round units approved in buildings 1 and 3 and 4 seasonal units in buildings 2 and 4. Building 5 which includes 3 units does not have Council license approval. We checked building 5 status with Codes and it has not received an occupancy permit. The PB's decision should not be based on the whether the occupancy permit has or has not been secured (the PB approves projects all the time before occupancy permits are issued- think of new subdivisions with unbuilt homes); although, its issuance could be linked to a condition associated with other parts of the project (e.g., completion of parking areas as shown on the plan).

In regards to the revised site plan included with your January packet and how the units are licensed, things don't quite match up.

- Building 2 license includes 2 units with a center common space. The revised plan shows 3 units including one unit in the common space.
- Building 3 license includes 4 units. The revised plan shows 2 units and common space.
- Building 4 license includes 2 units and common space. The revised plan shows 3 units including one unit in the common space.
- Building 1 license reflects the plan.
- Building 5 is not licensed and does not have an occupancy permit but does reflect the unit count (3) intended for the building.

One concern is can the PB approve a proposal that is different than what the Council approved. Even though the units in buildings 2, 3 and 4 do not reflect what was licensed, the current occupancy of these units does match what the Council approved (e.g., 2 units in building 2 are licensed to be occupied and currently occupied while the 3rd unit is vacant). But, we are still left with a proposal and occupancy that does not match the Council's approval. This may be something Codes needs to sort out as their occupancy permits may not match this proposal, too. Also, Codes is responsible for licensing so it makes sense they review and offer a recommendation.

Seasonal vs. Year-Round Units (Reference: 11 Sept. 2015 In-Office Meeting Notes- Gee and Jeffrey H; 11 June 2015 PB Minutes). According to my (Jeffrey) information, the number of approved year-round units is 5. According to my 11 Sept. meeting notes, I outlined the next steps associated with the cabin project. Based on these notes and my memory, the owners approached me to see what they need to do to add additional year-round units. I informed them that 5 units were grandfathered and already approved for year-round occupancy. My notes indicate the owners wanted to add 4 more year-round units to bring the total to 9. I informed them that they need to go to the PB to amend their June 2015 approval. I outlined what they need to do for PB submissions. No further action taken by the owners regarding securing PB approval to add 4 more year-round units. The 11 June PB minutes state that 5 units were grandfathered by Code Enforcement- Unit 1 (an original building adjacent to Saco Ave) and Units 4,5,6,7 (an original building parallel to rear property line). In addition the above, the minutes state: "Mr. Bouthiller stated that part of the season these cabins will be used for the J-1 students and the rest of the year they will use them for tourist and longer stay winter rentals and also use some of the % for year round rentals." Although the quote mentions 'longer winter stay' and '% for year round rentals' the only specific statement concerning grandfathering was for Units 1,4,5,6,7. Based on my 11 Sept. meeting notes, I feel my comments continue to recognize that 5 of the 12 units are allowed for year-round use.

The revised site plan appears to show all items requested by the PB and staff. The plan is drawn to scale and used a surveyor's plan data (see plan notes). The parking stall dimensions meet the compact car 90 degree angle standard. The parking aisle and access width also is acceptable. Dumpster location is shown. Unit locations and numbers are shown on the plan and a description of their use (year-round or seasonal) is attached; although, this does not entirely reflect what has been licensed by the Council. The building plans show cabin space layout.

In addition to the above, Department Heads continue to have concerns about the proposal. The applicants feel they acceptably addressed these concerns in their November submission (see responses to PWD, PD, FD and the 12 Conditional Use standards). Below are comments received from Department Heads *after* the applicants provided their responses to PWD, PD and FD.

- Public Works

I just walked around that site and I don't see how the drainage is contained in any way. I think you are going to find silt washing onto the abutters property in the spring.

- PD

Jeffrey, regarding the Omni's proposal to license several more units as year round rentals, I am still adamantly opposed to allowing more of these types of housing units to become year round rental properties. They are not designed to accommodate the needs of a family and never were. They were designed as seasonal cottages and were never meant to house entire family's from September to June. The owners of the property suggest that because they have not had any issues yet, that that it is an indicator that their management skills will prevent any future issues. I strongly disagree with that premise and can tell you that in my many years of experience with this type of housing, that it attracts an element that this community does not want or need. We are not doing the children who end up in these properties for the winter, any favors, by allowing this kind of housing. We see entire family's move into these types of units for the winter, that typically have one bedroom. Sometimes it's just one room. Where do you think everyone sleeps in these kinds of properties when you have two or three children and a couple of adults? We respond to call after call to these kinds of properties for, domestic disputes, drug and alcohol issues, mental health issues, people with warrants for their arrest, and the list goes on. It is almost inevitable that people living in this kind of an environment will have issues. The Omni, regardless of how well they manage their property, will be subject to these kinds of issues, because of the element that they will attract. I do not mean to lump all winter rental properties and the people that rent them into this category, as it certainly doesn't apply to everyone, but, with the type of housing the Omni offers, It is almost a certainty that they will experience these kinds of issues. I hope the planning board will also consider what properties like this do to the owners of abutting property. It certainly impacts the quality of life for the abutters as well as their property values.

- Codes

I have had a meeting with the owners today 11-01-16 and they have agreed to remove the 2 oil trucks from the property responding to my request that they move them- We agreed they would be off site on 11-07-16. My issue is fire apparatus cannot enter the site and make the radius turns it would need . The corridor must be at least 20ft. wide and if there was a fire the oil trucks would be right in front of several units possibly adding to the already close conditions- remember the loading there is near 50 persons and then you have the gas station and the convenience store.

The issue and my response to how many units are there is 12- That is the number they were approved for by the PB. There seems to be some confusion on what they requested and what was approved. I have information that

documents the number 12 both from the PB ,myself and information you supplied earlier this year. They will alter their application to reflect 12 units. When the buildings were connected there was some thought to use bonus space and making them into suites to accommodate J-1 workers which they did.

They are not to be used as two additional units without coming back to the PB. We will monitor this during this year.

Kathy I and Megan met with Gagon and Gee this morning regarding Omni and the 12 v 14 units at this location. as from today on it is and will remain 12 units. They can petition for the 2 they claim Pierre said they could have These 2 will remain part of the units that open as a suite for j-1 students. They are not separate units to be rented individually.

We will monitor these units occasionally to ensure they don't reappear as #13, and 14.....(units.....)

Further, I instructed them to remove the two oil trucks as they are parked in the fire lane area of these structures and may impede fire apparatus from maneuvering around this site. They both agreed to have them out of this property by Monday November 7,2016

- FD: In regards to the Red Rocket on Saco Avenue, I refer to the notes from the previous chief (previous notes below).
 1. A project of this size and being a motel type property we would require a complete and monitored fire alarm system not just a hard wire residential system. This would include a fire alarm panel connected to a monitoring company and a panel showing each zone and each building. Clearly marked.
 2. A Knox box on the front of the "main building" usually located on the front of the building where the fire alarm panel is located.
 3. All doors need to be mastered so we only have to use one key to gain access to any door.
 4. I am concerned with the current gravel driveway as our trucks weigh up to 68,000 lbs. and I am afraid in the spring we will get stuck.
 5. All buildings need numbers that we can see plainly visible. Each unit would also need a number on or near the door.
 6. I have a concern entering or exiting on the Union Ave side as I believe we will not be able to make the swing.
 7. Concern over winter operations and where the snow will be piled and access for us during this time of year.
 8. Is there an onsite manager 24 hours a day?
 9. To my knowledge no Fire Inspection has been done.
 10. A walk through with each shift would be needed.
 11. Access to the rear of the buildings appear to be an issue.
 12. CO detectors in each unit.

The question of use has been asked and it is staff's opinion the current and proposed use is a Hotel. A Hotel is defined as "a building used for transient or permanent lodging of individuals, with or without meals, having ten or more guestrooms." Interestingly, a Hotel is a permitted use in the GB2 District (it falls within the Lodging Establishment definition). Its former use appeared to be Overnight Cabins which is not a permissible use in the GB2. So, establishment as a Hotel actually makes this proposal more conforming.

Finally, it is important to remember this proposal is to be reviewed in accordance with the Responses to the Appeals from Restrictions on Nonconforming Use standard (78-180). In order for the applicant to secure approval under this standard the PB must find "that the impact and effects of this enlargement, expansion, extension, resumption or conversion to another nonconforming use on existing uses in the neighborhood will not be substantially different form or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use." The proposal is to convert 7 seasonal units to year-round use. The applicant provided a response to 78-180 (December submission) but the PB should not use this response alone when ruling on this proposal. The plans, CU standard responses, management plan, and Department Head responses should all be considered when determining if or if not the applicant has met their burden of proof.

Previous Recommendations: The PB should consider:

- Has the applicant acceptably addressed Department Head comments? Note that some may require conditions or further work (e.g., Knox box, exit/right turn only sign and Union Ave).
- The revised plan is an improvement but what is the likelihood what is shown will exist? For example, some of the proposed parking will block an internal property vehicle access that leads to property entrances/exits. Will the proposed parking be ignored at some future time to allow for vehicle passage? The PB could make occupancy of building 5 contingent upon completion of site work, including parking and access layout according to plan.
- The licensed units are not entirely consistent with the revised plan. How should this be resolved? Maybe Codes should review and provide comment by our next meeting.
- Interested in the PB's thoughts concerning the unit management plan (in your December packet. One problem is the applicant states 7 units of the 12 are currently occupied when only 5 are permitted for year-round use. Note- seasonal use is 1 April – 31 October.
- Does the PB believe the proposed conversion of 7 units from seasonal to year-round use will not be substantially different from or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use?
- Ultimately a big question is how will this project perform and work over time. Staff does have concerns.

ITEM 2

Proposal: Conditional Use: Establish a Café (Bakery) within an existing building
Action: Determination of Completeness; Schedule Site Walk and Public Hearing
Owner: 4 Kidds LLC
Location: 64 Saco Ave., MBL: 206-10-7, GB2

This proposal is for the establishment of a café within an existing building. The proposed location was formerly occupied by the "Curl up and Die" business and is adjacent to the old post office. The café will provide walk in service as well as seating for 8. Coffee, pastries, sandwiches, and non-alcoholic drinks will be offered for customers. The Café will be open 7 days/week from 6 AM to 2 PM. Parking is available on-site for approx. 9 vehicles (note: parking is allowed on Saco Ave in front of the business- this has been confirmed by the PD Chief). There will be two deliveries each week. A dumpster, which will be emptied 1x/week, is provided at the rear of the property. The interior will be remodeled to accommodate the café use. A deck is proposed at the front of the building (see comments below concerning this). A fence exists at the rear (northwest) and one side (southwest) of the property. Former uses of the property include restaurant, hair salon and retail.

Overall this proposal is pretty straight-forward. A few comments:

- The proposed front deck does not meet the front setback requirements (15 ft). The applicant could seek a variance to allow the deck but the PB cannot approve the proposal if the deck is included. Staff recommends the applicant amend the plan by removing the proposed deck. This seems to be the easiest remedy so the project can move forward. If the applicant secures a variance at some future date the proposal could come back (possibly administrative review).
- Dumpsters are required to be screened on at least three sides (46-62). The proposed dumpster is at the rear of the property and appears to be hidden, for the most part, from public view. Also, the dumpster will be screened by an existing fence on two sides. One more section of fence may be needed to ensure compliance with Sec. 46-62.
- The proposal will have 2 truck deliveries each week. We do not expect this will cause negative impacts to on or off-site vehicle and pedestrian flow but it would be helpful if the applicant provide approx. time of day for deliveries and where the delivery vehicle will park when product is delivered.
- Review criteria #10 asks for screening and buffering. The existing fence provides a majority of the screening. The one area that is not screened is the line that separates the café from the former post office. Staff feels screening or buffering is not necessary because the café proposal will not cause a negative visual impact to the former post office property.
- The proposal will use a similar parking layout and entrance/exit used for prior uses. Interestingly, it is similar to what was approved by the PB when this property was proposed to become a restaurant. Parking standards

actually are minimal- town wide performance standards require 1 space per 4 seats but the GB2 District parking standards reduce this to 1 space because only 50% of what's required for off-street spaces if the town allows parallel parking on Saco Ave. in front of the business (which it does).

- During 2015 the town approved a zoning change to allow the café use (as a Conditional Use) in the GB2 District. This property is in the GB2 District and in fact, it was one of the former owners of the property who proposed the zoning change.

RECOMMENDATIONS: Staff recommends the applicant amend the plan by removing the proposed deck and (possibly) section of fence adjacent to dumpster; Amend CU Review Criteria response #10 to state existing fence will be used as screening; Applicant to provide explanation concerning deliveries. Also, Staff feels the CU Application can be determined complete subject to the applicant addressing the items stated above and we recommend scheduling a site walk (optional) and public hearing for the June meetings.

ITEM 3

Proposal: Major Subdivision: 21 lot cluster subdivision for single-family residential use (Eastern Trail Estates)

Action: Preliminary Plan Review; Schedule Site Walk and Public Hearing

Owner: Kevin Beaulieu & Steven Beaulieu

Location: Ross Rd., MBL: 107-1-4, 14 & 16, RD

May Update:

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

At the January meeting, BH2M stated that the roads will be constructed to be offered as public streets. The Planning Board had some questions/concerns at that meeting to be followed up on:

1. With the project split between two Towns, does this change the definition of "cluster zoning"? The Planning Board wanted information on how this project will work with access through OOB to get to the Saco portion. There was also a question about the infrastructure that will be used by the Saco portion that the OOB Planning Board approves. What happens with a cluster subdivision that abuts another municipality?
2. The Planning Board wanted to see a traffic study for a basic idea of what will happen in the Ross Road area. This has been submitted for the May meeting.
3. The applicant is requesting a waiver to the centralized collection system standard. In the Town Ordinance *Sec. 74-278(7): Planned Unit and Cluster Developments* "all structures with required plumbing in a planned unit development or cluster development shall be connected to a public sanitary sewer system, if available, or to a central collection and treatment system in accordance with the sanitation sections of this chapter." The Planning Board discussed that if this is going to be waived for each proposal, why is it still part of our ordinance?
4. The project contains 21 lots with only **one means of egress**, which will be the proposed Mary's Way off of Ross Road. This is a major concern that has been discussed by Planning Staff and Department Heads. At the January meeting, the Planning Board discussed the use of Easy Street as a second means of egress with an emergency breakaway gate? How can the second means of egress be achieved with this development? With the Lands' End Subdivision that was approved in 2008, Easy Street was supposed to be brought up to subdivision standards, however, this project was never started.
5. There is a wetland complex in the area designated as lots 1-4. At the January meeting, BH2M mentioned filling these in and that DEP permits would be required. Planning Staff has not received an update on this.
6. The application did not include a stormwater management report so this has not been reviewed by Wright Pierce.

The items in red on the numbered list above are items that remain outstanding. There were some other items discussed at the January meeting including:

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

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

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

There are some concerns regarding Lot 21. We have been told this lot is currently under contract and may be sold before a final decision is made on the proposed subdivision. Town ordinances state "no person may convey, offer or agree to convey any land in a subdivision which has not been approved by the planning board and recorded in the registry of deeds. With the language above we wondered is the sale of a lot that is in a proposed subdivision that has not yet been approved a violation of subdivision law. We researched this and based upon what we found (town attorney legal opinion), it appears this is not a violation as long as the contract or offer to sell the lot is contingent upon subdivision approval. If three or more lots associated with the subdivision were for sale before the subdivision was approved than this would be violation because three or more lots creates a subdivision. The Law Court ruled on a matter similar to this (Paldac v. Rockland)- because three or more lots must be created before a subdivision occurs, placing one housing unit did not create a subdivision since it was the "first lot". The Court noted, until a property owner "actually creates a subdivision, the fact that it has filed an application for approval does not halt its freedom to pursue other legal uses of the land as well." Having said the above we do feel this could be questioned and delay the subdivision from moving forward. We felt an easy remedy was to remove Lot 21 from the subdivision as it can be sold separately without triggering subdivision review by itself (the creation of 1 lot). We received revised plans (11 x 17) showing the removal of Lot 21 which are included in this month's submission.

Finally, the Town Manager, Public Works Director, PD Chief, and Fire Chief offer comments that need to be addressed by the applicant.

May Department Comments:

PUBLIC WORKS:

DECLARATION OF OWNERS ASSOCIATION WITH COVENANTS, RESTRICTIONS AND CONDITIONS.

From the Preliminary Application:

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

States:

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

Comments: Reading this we can assume that

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

On the Plan:

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

Who is responsible for Street Lights? Should be association.

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

TOWN MANAGER:

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

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

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

Background from January:

Project Background:

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

Comments from Planning Staff, Departments and Wright Pierce:

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

Per the Town’s Ordinance (74-231(f)): If a subdivision is located within 500 feet of a municipal boundary, a public hearing shall be held. The Planning Board shall notify the clerk and the Planning Board of the adjacent municipality

involved at least 10 days prior to the hearing. Comments and recommendations made by the Planning Board of the adjacent municipality shall be given due consideration in the deliberations and decision-making process of the Planning Board.

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

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

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

Departments:

PD Chief

Jeffrey, as we discussed Wednesday at our development meeting, I have concerns with adding another 20 homes and possibly an additional 10 or 12 future homes, to what is in my opinion, an already overloaded intersection at Ross and Cascade Rds. It seems that, individually, these projects in and around that intersection, do not, by themselves, warrant a traffic study. However, collectively, it seems like to me that they should. I understand that we currently do not require impact fees for any future road or intersection improvements. I don't see how we can keep adding housing to this area, and not, at some point, have to consider the overall impact these projects will surely have on the intersection of Cascade and Ross rd. It is poorly designed, has poor sight distances, and is a high crash area. Unfortunately, it doesn't meet the warrant required by MDOT for a signal. Anyone who has had to experience that intersection, especially during the summer, knows how difficult and dangerous it can be. We keep adding more and more housing, but do not address the long term traffic impacts. It seems to me, that developers should be paying for future costs associated with the impact on infrastructure and traffic related problems, created by developments they build. The intersection of Ross Road and Cascade Rd, should be addressed now, and I don't think it is fair to put the burden of any immediate or future improvements (signals, road improvements, street lights and sidewalks) on the backs of tax payers.

Other than for these reasons, I do not have any objections to these kinds of projects moving forward. They certainly contribute to the revenue stream through property taxes, but, I can't help but wonder if the overall impact on our schools, costs for plowing and maintaining new roadways, police and fire services, and potential infrastructure improvements, outweighs any benefit derived from additional tax revenues. It may be that we have to change our ordinances to require impact fees on these types of projects, perhaps even a moratorium on future development until these issues can be addressed.

FD Chief

In regards to Red Oak Subdivision Phase-2 and Ross Road Subdivision they must both meet the following.

NFPA: 18.3 Fire Hydrants

NFPA: 18.2.3 Fire Department Access Road

NFPA: 18.2.3.4.4 Dead Ends

NFPA: 18.2.3.4.3 Turning Radius -The Turning Radius must meet the dimensions of the department Aerial Truck.

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

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

ITEM 4

Proposal: Zoning Map Amendment: Change Zoning District from Industrial District to Rural District for lot identified as MBL 105-2-16

Action: Discuss Map Amendment; Schedule Public Hearing

Owner: David Deshaies

Location: 91 Ross Rd., MBL: 105-2-16, ID/RD

This purpose of this proposal is to amend the town zoning map by removing the Industrial District (ID) and replacing with the Rural District (RD) for the lot located at 91 Ross Rd., MBL: 105-2-16. Currently the lot includes both ID and RD (see submission). This proposal will remove the ID and create a lot that's entirely zoned RD. The reason behind this amendment is the owner would like to create two lots for residential building purposes and the ID standards would prevent this.

One of the primary tests associated with zoning district changes is its conformance with the comprehensive plan. Staff reviewed the Future Land Use Plans from both the currently adopted and draft comp plans and concludes that this proposal is in conformance with both plans. The current plan shows the subject area as RD. The draft plan shows the subject area as Residential 1 (R1) which will allow residential uses and be somewhat similar to the RD. It could be said the entire lot should have changed to RD years ago.

Because the proposal is a zoning change and part of Chapter 78, it requires a public hearing to be held by the PB as well as a PB recommendation to the Council. Once the PB's work is complete, the proposal will move to the Council for their consideration and decision.

Sec. 78-31. - Amendments to chapter.

(a) This chapter may be amended from time to time as the needs of the town require after public hearing on a proposed amendment held by the planning board and following posting and publishing of notice of the hearing.

(b) Such notice shall be posted in the town office at least 14 days before the public hearing and shall be published at least two times in a newspaper of general circulation in the town. The date of the first publication must be at least 14 days before the hearing, and the date of the second publication must be at least seven days before the hearing.

(c) Amendments to this chapter shall be adopted only after favorable vote of a majority of the members of the town council.

RECOMMENDATIONS: Staff recommends the PB schedule a public hearing for 8 June 2017.

ITEM 5

Proposal: Major Subdivision Amendment: Changes to lighting and landscaping and phasing of the project (Dirigo Woods Subdivision)

Action: Discussion; Ruling on Amendment

Owner: Andrew and James Parece

Location: Dirigo Drive, MBL: 105-2-9, PMUD

Andy and Jim Parece, owners of the Dirigo Woods Subdivision, are proposing to amend the August 9, 2007 Planning Board approval. In 2007, the Planning Board granted approval for a 42-unit single family subdivision at the property off of Dirigo Drive. The proposed 2017 amendment includes the following primary changes:

- Phasing the project (Phase 1: Lots 1-18, 39-42 and Phase 2: Lots 19-38).
- Landscaping changes: Reduction in the number of plants from 116 to 66.
- Lighting changes: Reduction in the number of street lights from 39 to 21.



Phasing Discussion:

The Developers are looking to phase construction of the project so that Lots 1-18 and 39-42 are constructed as part of the first phase and lots 19-38 are constructed in a second phase. Planning Staff has a couple of concerns associated with the project phasing.

First, our ordinance Sec. 74-62 does allow the Planning Board to approve major subdivisions in phases:

“The Planning Board may approve plans to develop a major subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision road which is covered by performance guarantees. When development is phased, road construction shall commence from the public way. Final approval of house lots in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to the first phase of development.”

The reason the Developers are coming back before the Planning Board to split the project into two phases is so that they can reduce the initial amount required for a Letter of Credit (LOC). Having said this however, *Sec. 74-309(1)* of our ordinance says that “*subdivisions containing 15 lots or more shall have at least two street connections with existing public streets or streets shown on the official map, as such exists, or streets on an approved subdivision plan for which a bond has been filed.*” The way that the project is proposed to be phased will allow for 22 lots on Mason Way with only one means of egress and a turnaround onto Pepsi Street.

A few concerns that arise with this:

- First we would like to point out that there are subdivisions in Town that have been approved by the Planning Board to be split into phases and these individual phases contain greater than 15 lots without a second means of egress and the project itself will have two means of egress once fully constructed.
- Second, staff discussed the possibility of splitting the property vertically across Pepsi Street and Mason Way to achieve the second means of egress that way similar to what was done for Church Street. However, that was not desirable by the Developer because it would undermine one of the purposes of the phasing, which is that homes can be built on the first phase without subdivision construction equipment coming and going along the road. The Developer said that option can be revisited if there is an egress issue specific to the phases.
- Third, staff has concerns about the timing of construction of the second phase. For example, when would Mason Way be constructed (e.g. how soon after Pepsi Street is completed?) What would the trigger be? After 15 lots have been developed in the first phase, 10 lots?

Planning Staff did speak with the Developers on this issue and they said that they are not anticipating any time delay in constructing phase two, they are mainly requesting two phases so that the LOC for the project in its entirety would not be required up front, it would be split based on the phases.

To address the issues associated with phasing, Planning Staff has a couple of conditions for discussion. One of the conditions is tied to infrastructure and timing of construction and another is tied to the number of lots constructed:

Condition #1: *Construction of the second phase (lots 19-38 on Pepsi Street and Trudy Circle) shall commence within one year of completion of infrastructure associated with phase 1 (lots 1-18, 39-42) and no more than three years from the commencement of construction.*

Condition #2: *Construction of the second phase (Pepsi Street and Trudy Circle) shall commence once building construction begins on the fifteenth lot in the first phase (Mason Way).*

Landscaping Discussion:

The Developers are looking to reduce the number of plants from 116 to 66. Planning Staff took a look at the ordinance to see if there was a requirement to have 116 trees and *Sec. 78-1027(i)* does reference landscaping in the PMUD district:

“Basic landscaping within the PMUD project shall conform to all applicable sections established in division 7 of article VIII of this chapter. The Planning Board may require additional landscaping and building setbacks from adjoining on-site or off-site properties in order to separate incompatible uses, minimize impacts of incompatible uses, abate noise and visual impacts, or maintain solar access.”

Sec. 78-1746 which is referenced under the PMUD landscaping section applies to “*all new construction of nonresidential and multifamily residential uses requiring plenary site plan review or a conditional use permit shall be subject to the performance standards in this division for landscaping and buffering.*” So it would not apply to this project.

The PMUD ordinance does say that the Planning Board may require additional landscaping from adjoining on-site or off-site properties in order to separate incompatible uses. Many of the abutting uses: High School, Atlantic Village, Birch Hill Condos and the Town-owned Sand and Salt shed are where designated open space is on the Dirigo Woods plan. These areas also contain a 25 ft. buffer from the subdivision.

Lighting Discussion:

The Developers are looking to reduce the number of street lights from 39 to 21. Planning Staff took a look at the ordinance for street lighting in the PMUD district:

Sec. 78-1027(2-4):

(2) All freestanding lighting shall consist of shielded downlights and shall not exceed the height of the principal building served by the lighting fixture.

(3) Streetlights along private ways should provide an average 1.0 footcandle of illumination on the road or sidewalk surface and should not exceed 15 feet in height.

(4) No site lighting shall be directed or installed to produce glare, visual discomfort, or nuisance to motorists or residential properties.

The third standard under *Sec. 78-1027* states that streetlights along private ways **SHOULD** provide an average 1.0 footcandle of illumination on the road or sidewalk surface and should not exceed 15 feet in height. We emphasize should because it does not say “shall” which is mandatory. The luminaire schedule for the project with the existing 39 lights is:

- Trudy Circle avg. 1.07 FC illuminance
- Pepsi Street avg. 1.11 FC illuminance
- Mason Circle avg. 1.16 FC illuminance

The Developers have been made aware that the Planning Board will likely look for updated footcandle calculations associated with the changes to the lighting plan and this is something that their engineering firm will have to work on with an outside consultant which could take a little bit of time.

One option that Planning Staff mentioned to the developers is that the Planning Board could attach a condition to the amendment decision that the footcandle calculations be submitted to Planning Staff for review. Another option is for the Planning Board to have the applicant bring the project back to the June meeting with the footcandle calculations if the board feels the calculations are necessary to make a decision.

RECOMMENDATIONS: No comments have been received by Department Heads on this project. The two concerns by Planning Staff are the timing of the phasing without a second means of egress and the footcandle calculations.

As a reminder, to address the issues associated with phasing, Staff recommended that the Planning Board discuss a couple of conditions:

Condition #1: *Construction of the second phase (lots 19-38 on Pepsi Street and Trudy Circle) shall commence within one year of completion of infrastructure associated with phase 1 (lots 1-18, 39-42) and no more than three years from the commencement of construction.*

Condition #2: *Construction of the second phase (Pepsi Street and Trudy Circle) shall commence once building construction begins on the fifteenth lot in the first phase (Mason Way).*

If the Board feels that these conditions are not adequate to address the issues associated with the phasing and the second means of egress, the Board can ask the Developers to phase the project in another way that achieves the second means of egress.

In addition, if the Planning Board would like to see updated footcandle calculations, this can be required as a condition of approval:

Condition #3: *The Applicant shall submit updated footcandle calculations to Planning Staff that reflect the changes in the number of street lights from 39 to 21.*

Another option for the Planning Board instead of this condition is to require the Developers to come back for the June meeting with updated footcandle calculations.

CERTIFICATE OF APPROPRIATENESS

ITEM 1

Proposal: Placement of A/C Unit and associated mechanicals (alteration of deck within view of public street)
Action: Certificate of Appropriateness Ruling
Owner: Sameer Hasan
Location: 39 West Grand Ave., MBL: 310-6-1 (Unit 36), DD1

This proposal is for the installation of an a/c unit on the exterior of the Brunswick to service a single condo unit. On 1 May the DRC recommended the PB approve a Certificate of Appropriateness with the following conditions:

1. All improvements will be implemented in accordance with application, plans and proposal received. Any additional changes must be approved by staff prior to completion.
2. A building permit is required to complete all improvements.
3. The A/C Unit shall be moved to the interior wall by June 30, 2017.

RECOMMENDATIONS: Staff recommends the PB approve the Certificate of Appropriateness with the above-mentioned conditions.

ITEM 2

Proposal: Replacement of siding on the Brunswick
Action: Certificate of Appropriateness Ruling
Owner: Tom Lacasse
Location: 39 West Grand Ave., MBL: 310-6-1, DD1

This proposal is for siding and window replacement on the auxiliary building facing West Grand Ave with sterling gray cedar impression siding, azek trim and Anderson 200 series double hung egress windows. On 1 May the DRC recommend the PB approve the Certificate of Appropriateness with the following conditions:

1. All improvements will be implemented in accordance with application, plans and proposal received. Any additional changes must be approved by staff prior to completion.
2. A building permit is required to complete all improvements.
3. The modifications are for the auxiliary building facing West Grand Avenue.

RECOMMENDATIONS: Staff recommends the PB approve the Certificate of Appropriateness with the above-mentioned conditions.

OTHER BUSINESS

1. Discussion: Appeals from Restrictions on Nonconforming Uses (78-180).

At the April Workshop the PB considered a few options/discussion points (see below) regarding how the ordinance amendment should move forward to the formal review process. A majority of PB members felt the first option was the best. First option:

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

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

If the PB feels comfortable moving forward with this option we can begin the formal ordinance amendment process at the June meeting.

Options/Discussion Points

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

78-180 Current Language

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

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

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

I have not had time to properly prepare for this item. I request further consideration be postponed until the June meeting