1 OLD ORCHARD BEACH PLANNING BOARD 2 **Public Hearing and Regular Meeting** 3 April 13, 2017 7:00 PM 4 **Town Council Chambers** 5 6 CALL TO ORDER (7:00 PM) 7 8 Roll Call: Robin Dube, Win Winch, Ryan Kelly, Mark Koenigs, Vice Chair Eber Weinstein, Chair Linda 9 Mailhot. Absent: Mike Fortunato. Staff: Town Planner Jeffrey Hinderliter and Town Assistant Planner, 10 Megan McLaughlin. 11 12 **Public Hearing:** 13 **Proposal:** Site plan Review: Expansion of existing nonresidential (retail) building 14 Owner: Harold H. Harrisburg, Phylis I Harrisburg and Harrisburg Group Gen Partnership 15 Location: 9 East Grand Ave., MBL: 306-2-6 16 17 Lisa Gribbin from 5 Kinney Avenue, the property behind the property in question. Lisa doesn't believe 18 that the property can be built without accessing her property. Average scaffold is 29 inches, and there is 19 not 29 inches there. It will have a negative impact and the parking of customers will go into her 20 residential parking. There should be more professional plans than there are currently, for residents to be 21 able to know what the property will look like. 22 23 Dan Feeney, Code Enforcement Officer for Old Orchard Beach. There to answer any questions and 24 believes that there is enough space for the plan in place. The biggest concern is access to the attic space 25 (will it be used for storage) and the roof run off. 26 27 George Kerr, 206 East Grand Avenue, owner of property that abuts Kinney Avenue. George comes in 28 support of a retail store on the second floor. Looking at the plans and comments from the chief of 29 police, who said that Mr. Harrisburg would park and unload on Harrisburg St. Code Enforcement said 30 warehousing is not a use allowed in this zone. The red flags he raises are that, in the statement stated by 31 the applicant, they say that: 32 "This is a conforming use of a DD1 district and expansion of permitted uses are permitted." -this is not 33 an expansion of an existing use. 34 "It is not a warehouse use and no deliveries and shipments occur on a regular basis." -the wording is a 35 red flag 36 "There are no warehouse employees, no UPS, no FedEx, no US Mail." –We have plenty of trucks that 37 make deliveries in and out. 38 "The majority of items delivered will be used for this business." -The wording is, again, a red flag. Whole 39 sale is different than storage. 40 41 Attorney Neil Weinstein for the applicant. Speaking for, as it was two stories and the buildings 42 surrounding it are three and four stories. There is no attic in the building, and the building will add to the 43 neighborhood as it is currently the only one story, flat roof building; we need improvements in that area.

There being no one speaking for or against the applicant, the public hearing closed at 7:24 p.m.

Regular Business

APPROVAL OF MINUTES: 3/2/17; 3/9/17

MOTION:

8 Win Winch made a motion to approve the 3/2/17 workshop meeting minutes, seconded by Ryan Kelly.

PASSES (5-0)

Chair Linda Mailhot stated that there was an item to be corrected on page 7, line 7 conveyor belt from basement to 1^{st} floor, not 2^{nd} floor.

MOTION:

Win Winch made a motion to approve the 3/9/2017 regular meeting minutes, seconded by Ryan Kelly with changes noted.

PASSES (5-0)

ITEM 2

Proposal: Site Plan: Dunkin Donuts- Construct 2080 sq. ft. building and associated parking
 Action: Ruling on commencement of construction 1 year extension (no plan changes)

22 Applicant: JFJ Holdings, LLC

23 Location: 14 Ocean Park Rd, MBL: 210-1-6

Introduction: This is a simple proposal before the board, of an extension of the commencement of construction timeframe. They are ready to begin construction, but the project expires on the 4th of April, making it just in time to get the commencement of construction extended. Nothing has changed in the proposal from the approvals last spring. They began removing cabins and have done asbestos abatement, meaning they have made progress but not substantial.

For protection of the board, there should be note that they did everything in a timely fashion.

They have taken out all of their building permits, but ran out of weather to continue the project. Code Enforcement has extended their permit. Negatively, every time they remove a cabin, the debris stays and it becomes an eye-sore. If they do not clean up in short fashion, there will be a court order.

Applicant Scott Braley: The weather was a factor, after the plan went through in April, they were not able to begin until the end of May. Once they had rights to the property, they had asbestos abatement. The binder pavement has to be down so they can finish the building and open over the winter, from a monetary stand point. The DOT's deadline for putting down surface pavement was going to be missed after the setbacks and weather. Plans have been set out for the last two months to begin construction. With regard to the cabins and debris, they know it needs to be handled. Another setback was the towns fore department wanting to use the cabins for fire training and someone wanted to buy them after that.

MOTION:

2 Win Winch made a motion to extend the approval of the one year construction date, seconded by

3 Ryan Kelly.

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5 VOTE:

Planner Hinderliter called for the vote: 6

7 8

- Robin Dube Yes
- 9 Win Winch – Yes
- 10 Ryan Kelly – Yes
- 11 Vice Chair Weinstein – Yes
- 12 Chair Mailhot - Yes

13 14

PASSES (5-0)

15 16

Chair Mailhot explained that Board Member Mike Fortunato was absent making Robin Dube a full voting member in his absence.

17 18

19 ITEM 3

20 Major subdivision and Site Plan Review Amendment: 9-unit residential development **Proposal:**

21 **Discussion; Ruling on Amendment** Action:

Owner: 22 **Tom Gillis**

23 1-3 Cascade Rd., MBL: 205-16-1 Location:

24 25

Introduction: Sea glass Terrace, there are a number of items that are lacking, provided to Tom. He has prepared some materials that addresses those issues.

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The fire hydrants are not changed and will not be placed in the plan due to water pressure. There are two fire hydrants close to the property. The fire chief did not have a recent concern with the fire

30 hydrants; the biggest concern he had was with sprinkling unit 3, due to the length of hose that is 31 needed. The fire hydrants weren't addressed because the applicant cannot do anything about it and the

32 fire chief didn't have any concerns. These plan changes can be moved along and changes can be made

33 by staff. The planning board approved a plan in 2007 that could be built today, but this makes that plan 34

much better with the same ordinance standards. A lot of the issues are cosmetic: how to ensure that the

35 sidewalks are constructed, just as we always do after a property is approved, we work with the applicant

36 to secure an escrow if that's necessary. Staff was going to review the Home Owners Association 37

documents to make sure we have all the right language. The only big item was the impervious

38 calculation, which we can handle as staff.

39 Tom: If we cannot prove the impervious calculations, then we don't have approval. We have to prove

40 them before the plan is assigned. I sized the new pond much greater than it needed to be, we increased

41 the impervious by 235 Sq. Ft. and increased the pond by 25%. We have an engineer reviewing it, if he

42 says it's a problem than all we have worked for doesn't matter. If you make it a condition that if the staff

43 is satisfied with the calculations provided by the engineer on the impervious than we are all set.

- 1 The big items are the fire hydrants, the impervious calculation and the sidewalk construction plus staff
- 2 review of the HOA documents.
- 3 For the fire truck turn around, one side is longer than the other. Is the fire chief okay with this? In terms
- 4 of the fire hydrant, Maine Water said that the four inch line wouldn't work; there is one 280 feet away
- 5 on the north side and one across the street on Portland Ave..
- 6 There are things that will need to sort out afterward, such as the sidewalks. In terms of the fire hydrants,
- 7 there are no comments from the fire chief other than the sprinkler which should be noted on the new
- 8 plan.
- 9 On note 8, it would be units 1 and 3, not 1 and 4.
- 10 The goal is to have everything cleaned up by Memorial Day.
- 11 MOTION:
- 12 Win Winch made a motion to approve the major subdivision amendment for Seaglass Terrace, MBL:
- 13 205-16-1 with a condition on the impervious surface calculations being verified by staff. Seconded by
- 14 Ryan Kelly.
- 15 **VOTE:**
- 16 Planner Hinderliter called for the vote:
- 17 Robin Dube Yes
- 18 Win Winch Yes
- 19 Ryan Kelly Yes
- 20 Vice Chair Weinstein Yes
- 21 Chair Mailhot Yes
- 22
- 23 **PASSES (5-0)**
- 24
- 25 <u>ITEM 4</u>
- 26 Proposal: Site Plan Review: Expansion of existing nonresidential (retail) building
- 27 Action: Discussion; Schedule Final Review/Ruling
- 28 Owner: Harold H. Harrisburg, Phylis I Harrisburg and Harrisburg Group Gen Partnership
- 29 Location: 9 East Grand Ave., MBL: 306-2-6
- 30
- 31 Introduction: The purpose of tonight's meeting is to get public comment so we can get down to the
- issues so the applicant can prepare for final plan review. In the memo there are staff comments, code,
- 33 fire and police comments and emails from abutter Lisa. There could be a number of issue but in the
- 34 memo the big issues are: The waivers, the new plot plan helps reduce the number of waiver requests,
- 35 but there are some relatively minor additions that will leave little left to eventually waive. We think that
- 36 the plan should meet the site plan review requirements. Doing a topo survey is not necessary, because
- 37 they are not building from the ground up.

Secondly, the building plans should be amended to show that pieces of the buildings won't encroach onto Kinney Avenue onto town property. It looks like there will be a 1-2 foot encroachment with a platform on the overhang of the building.

Does the applicant have the ability to construct this building on their own land. We brought this specific comment up during staff, the only feedback we received were from Dan Feeney. We did ask for comment from public works, fire and police, but we did not get comment back.

In terms of the warehousing question, the applicant states that the building will not be used for warehousing. In the memo we provide the ordinance definition for warehouse storage and we recommend that the applicant look at the definition and document that they do not meet that definition. The warehouse storage definition is the only definition in our ordinances that is related to the warehousing use, which is a specific use that is permissible in some of our districts but not a DD1 where this building is going. We included that definition with the hope that the applicant can demonstrate that this use does not fall under that definition and we are hoping for follow up for the final plan. The planning board may need to consider a condition such as: The building shall only be used for on-site retail sales and storage of product directly associates with retail sales for this building, any use change shall be brought before the planning board.

Loading and unloading is another concern, our police chief, abutter George Kerr and Lisa Gribbin all have concerns about this. The applicant provides a response in last month's mem, but just like the warehousing issue, the issue remains asked. A written loading/unloading plan will work, like we did with Dunkin Donuts.

Finally, the DEP permitting. We are wondering if we can be updated on the status. The planning board has two options with DEP permitting: We can wait and not make a decision before an applicant secures DEP permits or condition an approval based on the applicant receiving the DEP permits. This will require either a permit by rule or a permit by the National Resource Protection Act Permit.

In summation, we need a list of waivers, if any, in hopes that we will get a complete site plan that will help the proposal. The building plans that show the overhang and the platform that extend onto town property need to be amended to endure that all construction remains on the owner's property. The warehousing question, we ask that the applicant demonstrate that this is a retail use and that they do not fit the warehouse storage definition. The loading and unloading is a legitimate question, construction and finally the DEP permitting.

Neil Weinstein, attorney representing applicant: This is one of the most strictly scrutinized businesses in the entire town: from the point of view of the trash, where it is being held across the street and it's completely fenced in on all sides and impervious at street level as well as with the fencing that was put up that was blocked. The police chief himself has been there filming the applicant unloading trucks. In the past week, the police came to talk to the applicant about parking on the street although there is no one there. The architect has been contacted, and the plan is being amended so the block for the signatures and other items. There are no easements, topo and nothing is happening on the first floor.

Looking at the picture that Lisa Gribbin gave, you can see a pipe coming down and a box above it, which is a drainage system. There is also a stone drain directly in front of the building and a hydrant. The applicant has existing drainage which will not change by adding a second floor. They can easily build the back wall on top of the building and the existing building and can do so in his parking lot across the street and crane it into place. There is no warehousing in this type of building, other than storage of stock. There are no traffic issues here, other than enforcement. The traffic on the street has always been on the ocean front because there are 30-40 condos and rental units that are by the day, as Lisa's are, that have people driving in and out, which is where the parking/traffic issue comes from.

In the picture that George Kerr had shown, there are issues with Lisa and her parking lot. In the picture there is a grey car that is blocking the side walk. I (Neil) drove by the other day and the same thing was happening. The applicant won't be having any cars there, because there will be a forklift for loading and unloading. The overhang will be inside his boundaries, and doesn't have any overhangs planned to be over the sidewalk, the rest of the building is inside his property boundaries. There will be no attic and the applicant doesn't need a sprinkler system both because of the height and design of the building, and because it's hard wired into the fire department directly with an alarm.

This building will improve the neighborhood, as it looks much nicer and is consistent with the other buildings. It will bring increased taxes and more business into the commercial zone. I (Neil) have talked to DEP about the permit process, it is not permit by rule because of the height of the building but they have indicated that it was a simple process. The plans were done by an architect and a couple different zoning specialists, Dow and Codon did one of them and then BH2M did one of them. The upstairs will not have glass lighting windows.

The building that is there now was Marie Antoinette Restaurant and was three stories, then there was a fire. Then it became Irene's which had a second floor. The current owner did not build the structure. The client was required to get a forklift to load and unload. This makes him unique, but the town made him use the forklift. This does raise questions on whether he is a good neighbor. The storage will be lightweight items such as t-shirt and styrofoam surfboards, which won't ruin the integrity of the second floor structure.

 There are two pictures featuring a truck owned by the applicant that is in a no parking zone. The street has "loading zone this side only" further down the street, the question is: if the applicant has an agreement with the town to only use the lift, why does he have a truck in a loading zone. To answer, Neil asked, why the applicant shouldn't have a truck in a loading zone if there is a sign, whether he has an agreement with the town or not.

Clarification: There were some pictures that were submitted that showed a loading zone as part of the application back in December. The chief of police, Dana Kelly, said he rescinded the loading zone, so there are no loading zones on Kinney Avenue, there are only loading zones on Harrisburg.

Attorney Neil: There is a sign next to Richard's apartments, but there is no mark.

We need to make sure that this is clarified with the chief of police and the loading zone, there cannot be any grey areas.

Attorney Weinstein: There is an agreement, and the applicant will be using the forklift for loading and unloading. This truck is their own, not for commercial use and the picture in question is at least four years old.

The applicant brings a bunch of stuff on a fork lift, will they be setting it on the side walk or be bringing it in one at a time.

Attorney Neil Weinstein: There will be no pallets on the side walk, and will not block the street.

I would request that they have a loading and unloading plan as one of the conditions. There are things in the ordinance that says that the whenever possible driveways or access and unloading places should be physically separated from customer parking lots, and walkways. If there is something happening with a forklift over a public sidewalk, there should be a written plan for how that should be done safely.

Attorney Neil Weinstein: It is a licensed vehicle.

The board will make recommendations to the applicant about what they would like to see at the next meeting. We want to see a written loading/unloading plan, an updated building plan showing the amendment and the balcony being brought in with no overhang or balcony going over town property. We're looking for clarification on the loading zone regarding Kinney Avenue. More detail on the construction and we would want to know what the construction plan would be in writing. Any waiver requests in writing for the next meeting.

ITEM 5

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 total of 12)

31 Action: Final Ruling

32 Owner: SRA Varieties Inc., D.B.A. Paul's II
33 Location: 141 Saco Ave., MBL: 311-1-10

Introduction: The applicant has done as much as they can to comply and the planning board has gone out of their way to help the applicant go through the planning board process. What this all comes down to is site management and monitoring. From personal observations, the site is quiet and there is not trash around, but the biggest concern is how it will be managed over a long period of time. The parking and snow removal is an issue and will continue to be an issue unless it's monitored. Occasional issues are expected as long as they don't impact the safety of the residents and towns residents. When issues become consistent, the management plan should kick in. The plan for snow removal didn't work this year. There have not been any serious red flags that would hinder recommendations. The town has issue with year round and a drug issue, but this is a societal issue. I think this project can work with twelve year around units.

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2	One item that is key to the parking is to write into a lease "one vehicle per unit" and having vehicles
3	numbered on spots that are clearly marked out.
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5	Looking at the plan, there are no curb stops.
6	
7	We had problem with the town council allowing certain units to be actual legal structure and others not.
8	
9	There are conditions that would be necessary, one of those deals with that building three being limited
10	to two units. According to codes recent response, the licensing and occupancy matches up to what the
11	plan shows.
12	
13	The owners say that it is expensive to pave, and that painting won't last without pavement.
14	
15	The plan that currently stands, is safer than the plan codes made for them, the condition would be that,
16	if approved, this would be the plan that needs to be followed to completion.
17	
18	Unit three is fine as a common-space, but the original 14 unit plan was not accepted and only 12 units
19	are accepted.
20	
21	Back to the issue of the pavement, there is suggestion of a time limit. The owners have made comment
22	that they are waiting to make the money to pay for the pavement in a year or a year and a half. Jeffery
23	suggested that they pave it in the fall of this year.
24	
25	One of the comments that was made was "how many parking spaces are required for hotel use" which
26	this is currently licensed as, is there enough parking?
27	There is, and there should be a suggestion for overflow parking.
28	
29	After the snow from this year, and seeing the lack of snow storage on the site, what is the plan for that?
30	To truck it out from the site.
31	
32	According to codes research, it is being assessed as a hotel.
33	
34	One suggestion, if the planning board may lean towards approval, we can table final decision until our
35	May meeting so that we may get the conditions and conditional uses prepared.
36	
37	MOTION:
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39	Eber Weinstein made a motion to table this item, seconded by Win Winch.
40	
41	VOTE:
42	Planner Hinderliter called for the vote:
43	Robin Dube – Abstained
44	Win Winch – Yes

Ryan Kelly – Yes
 Mark Koenigs - Yes
 Vice Chair Weinstein – Yes
 Chair Mailhot – Yes
 PASSES (5-0)

ITEM 6

10 Proposal: Site Plan Review: Expansion of existing corps and admin building, parking lot

construction, relocation of Church Street, park construction, building demo,

landscaping, site work

13 Action: Sketch Plan Review
 14 Owner: The Salvation Army

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

1,2,3,4,5

Introduction: There are two proposals in question that the planning board has been able to look over. The point of tonight is to look over the plan sketches and decide on one and make possible recommendations. With sketch plans, you have the opportunity to ask for things that may not be ordinance related or to make recommendations. This is a good opportunity to think out of the box.

The Salvation Army has decided to pursue option H, and they will look at option N as a future possibility. The project has three major components:

Area one is already existing, area two is an already existing multi-purpose gym that the applicant would like to expand, and area three is the new construction.

What is purposed, is to maintain the building as there is a variance/setback. The applicant has also replied to the memo of the minutes that was sent to them. On page ten and eleven, there is a comprehensive view of the plan. Starting on ten, you'll note the relationship with the three parking spaces on the bottom of the drawing on the south part of Church Street and the core building located on the upper part. There have been some issues raised with the property ownership with the three parcels shown on the drawing, however The Salvation Army owns all that property but they're separate parcels; meaning that there are three parking lots in two parcels, and they have to solve the issue of one driveway, one parcels. Basically, on this plan, we have two parcels missing one driveway.

If you look back at the plans the applicant has submitted in the past, we have complied and kept the property up to code. The church is expanding and one thing that they would like to do is expand the gym (activity room) which is 40 x 50 feet and make it 70x50. We will also be expanding and installing a new kitchen for their feeding programs. When the project is complete, there will be between seven or eight Sunday school classes, a computer center and conference space. On page twelve and thirteen, you'll notice how the space will be used.

The goal is to begin in September, so that the process may move forward in better weather.

1 2 The "bump" on the map shown on page eleven would be made into an outdoor play area for children. 3 4 These are all year round structures that operate as a church, The Pavilion is seasonal. The tabernacle will 5 be taken down, as resources should be used to build the new building and only once the new building 6 has been built, will the tabernacle be taken down. The building is not historically designated but it is 7 important to many people. 8 9 ITEM 7 10 **Proposal:** Subdivision Amendment: Revise Pacer Avenue Subdivision to add 1 Estate Lot 11 Action: Discussion; Ruling on Amendment 12 Owner: Ronald A. Patoine 13 Trotter Lane, MBL: 105-4-34 Location: 14 15 Introduction: Adding one lot to an existing subdivision, the lot is considered an estate lot which are 16 created when lots have a difficult time meeting frontage requirements. Approval of recommendation. 17 18 19 **MOTION:** 20 21 Eber Weinstein made a motion to amend the Pacer Avenue Subdivision to add one estate lot as per the 22 plan submitted by BH2M, seconded by Win Winch. 23 24 VOTE: 25 Planner Hinderliter called for the vote: 26 Robin Dube - Yes 27 Win Winch - Yes 28 Ryan Kelly – Yes 29 Vice Chair Weinstein – Yes 30 Chair Mailhot - Yes 31 32 **PASSES (5-0)** 33 34 35 ITEM 8 Subdivision Final Plan Amendment: Amend Final Plan to reflect as-built conditions 36 **Proposal:** 37 (parking, landscaping) 38 Action: Discussion; Ruling on Amendment 39 Owner: **Summer Winds Homeowners Assoc.** 40 Location: 180 Saco Ave, MBL: 208-1-1 41

Introduction: In November, the planning board looked at Summer Winds Two, to add six additional lots, as part of that review the planning board put a condition that prior to final plan approval Summer Winds shall come back before the planning board to address changes that were made on the site that were not

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43

1 in accordance with the previously approved site plan. The applicant has submitted an updated as build 2 plan that addresses parking, and adjustments to the proposed landscaping. There are a number of 3 outstanding questions associated with this, there were some concerns with the dumpster instead of a 4 compacter, the location of the club house, there is a stockade fence bordering the wrong property. We 5 did receive comments from abutters that spoke to the changes that were made on site that were not on 6 the plan. Because Summer Winds Two is still before the planning board as a preliminary plan, it wouldn't 7 be any time lost if this ran with the Summer Winds Two proposal as well. If we approve the as built plan 8 tonight, we are saying that what is on this plan is what is on the site, or we can choose to wait. 9 10 Stephanie's comments are not there because the escrow funds were not received. 11 12 13 **MOTION:** 14 15 Win Winch made a motion to table this item, seconded by Ryan Kelly. 16 17 VOTE: 18 19 Planner Hinderliter called for the vote: 20 Robin Dube - Yes 21 Win Winch – Yes 22 Ryan Kelly – Yes 23 Vice Chair Weinstein – Yes 24 Chair Mailhot - Yes 25 26 **PASSES (5-0)** 27 28 **ITEM 9** 29 Conditional Use, Subdivision Amendment; Site Plan Amendment; 6 unit Condominium Proposal: 30 **Expansion (Summer Winds II)** 31 Action: Revised Preliminary Plan Review and Ruling; Schedule Final Review/Ruling 32 Owner: 180 Saco Avenue Development LLC 33 180 Saco Ave., MBL: 208-1-1 **Location:** 34 35 We had said in the past that we want to approve the as built before we talk about doing an expansion 36 known as Summer Winds Two. 37 38 **MOTION:** 39 Win Winch made a motion to table this item, seconded by Robin Dube. 40

41

42 43 VOTE:

Planner Hinderliter called for the vote:

11 | Page

Robin Dube - Yes Win Winch - Yes Ryan Kelly – Yes Vice Chair Weinstein – Yes Chair Mailhot – Yes **PASSES (5-0)** Other Business Good & Welfare Conservation commission is helping the town sponsor "stools day" on April 22nd. The event is to go to the beach and clean up, they are also working with the Goose Fare people and DEP to clean the Old Salt Tributary on May 5th before our next meeting. There are no updates from the developer of the brick house. The or else would be codes siting them, and the last time was for demolishing the buildings. We should look at that and put the or else in effect or put it on sale. You can see the drainage and there is a problem with the depth of the ditch. The town engineer and Meagan will check into that and we will reach out to them. LINDA MAILHOT, CHAIR MEETING ADJOURNED AT 9:57 pm I, Rebecca Joensen, secretary to the Planning Board of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of twelve (12) pages is a true copy of the original minutes of the Planning Board Meeting of April 13, 2017.