

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL WORKSHOP
Wednesday, August 15, 2018
TOWN HALL CHAMBERS**

A Town Council Workshop of the Old Orchard Beach Town Council was held on August 15, 2018. Chair Thornton opened the Workshop at 6:32 p.m.

The following were in attendance:

**Chair Joseph Thornton
Councilor Kenneth Blow
Councilor Jay Kelley
Councilor Michael Tousignant
Town Manager Larry Mead
Assistant Town Manager V. Louise Reid
Planner Jeffrey Hinderliter**

Absent: Vice Chair Shawn O'Neill

This is a second workshop on the consideration of the Portland Ave land use matter, particularly the section of Portland Avenue that is west of the intersection with Ross Road. Consideration and discussion centered around:

Ordinance Amendments (Contractor Storage Yard 1): Amendment to Chapter 78 - Zoning, Article VI - Districts, Division 12 – Rural District, Section 78-963 – Conditional Uses; Amendment to Chapter 78, Article VII – Conditional Uses, Division 2 - Conditions, Section 18-1278 – Contractor Storage Yard 1.

A large audience of approximately 22 people was in attendance for this Workshop. The Town Manager explained that this was a presentation to the Council for their understanding of the issues involved and a discussion of a Contractor Storage Yard 1 ordinance which will be presented to the Council. It was noted that the Planning Board voted three to two against the Ordinance Change. It was also noted that a Public Hearing would be held in September at which people would have the opportunity to speak and express their opinions or concerns. At this Workshop, however, no comments would be accepted but rather Council will be provided their update.

The Town Manager explained that over the years this section of Portland Avenue has had various types of business activity ongoing for many years. Currently there are several different businesses operating in this area including retail, excavation contracting, landscaping material sales and storage, and auto repair. Objections have been raised by resident, Walter Murphy, an abutting property owner, that certain business activities taking place at the MacDonald property at 169 Portland Avenue are not permitted uses in the Rural District Zone, specifically the contractor excavation business and septate storage. The Town was asked to take action to halt these business activities.

As reported previously, the Town Manager noted that after consulting with the Town's Legal Counsel, staff determined to take a deliberate approach in addressing this issue. The reasons for this deliberate approach included the fact that the excavation business had been operating in this location for many years; this area has had a variety of business activity over the years; and in addition that there were other businesses operating in the same neighborhood that may involve activities not permitted under the Zoning Ordinance. This issue was in front of the Planning Board earlier this year when the Board considered whether to recommend to the Town Council changes to the Rural District Zone related to contracting operations. The Planning Board voted 3-2 not to recommend changes to the Town Council.

The Planner presented the following suggested Ordinance:

CHAPTER 78 AMENDMENTS – CONTRACTOR STORAGE YARD 1

Ch. 78, Article VI, Districts and Article VII, Conditional Uses (10 May 2018, PB Vote Version) (Aug 2018 Council Workshop)

Amendment to Chapter 78, Article VI, Division 12 – Rural District, Section 78-963 – Conditional Uses (new language underlined):

(19) Contractor storage yard 1, only those parcels of land with road frontage along Portland Ave between the Ross Rd/Portland Ave Intersection and the Old Orchard Beach/Scarborough Town Boundary.

Amendment to Chapter 78, Article VII, Division 2 - Conditions, Section 18-1278 – Contractor Storage Yard 1 (new language underlined):

Sec. 78-1278 – Contractor storage yard 1

A contractor storage yard 1 may be permitted in the Rural District for parcels of land with road frontage on Portland Ave between the Ross Rd/Portland Ave Intersection and the Old Orchard Beach/Scarborough Town Line, provided the following conditions are met to the satisfaction of the planning board:

(A) Minimum Required Information

- (1) A scaled site plan that show the following information:
 - a. Storage areas for materials and equipment.
 - b. Parking and maintenance areas for business vehicles.
 - c. Location of buildings and structures on the site.
 - d. Vehicular circulation on the site, including points of access to the site from public roads, loading and unloading areas, employee and customer parking.
 - e. Landscaping and buffer areas.
 - f. Exterior lighting plan, including location, fixtures and specifications.

(2) Description of all vehicles, trailers and equipment stored, maintained or used by the business on the property.

(3) Description and quantity of all fuel and chemicals stored on the property.

(4) Description and quantity of all materials stored on the property.

(5) Description how business complies with the “Contractor Storage Yard 1” definition (see Chapter 78, Article I

(6) Any other information as might be reasonably required by the Planning Board to assist with making a thorough evaluation of the proposal.

(B) Minimum Development Requirements

(1) Driveway entrances from the street to parking and storage areas shall not be located within fifty (50) feet of any adjacent property boundary line. Driveways used exclusively for the residence shall be exempted from this standard.

(2) The outdoor storage and parking of vehicles and equipment shall be setback a minimum fifty (50) feet from the front property line and twenty-five (25) feet from the side and rear property lines. Vehicles used exclusively for residence parking shall be exempted from this standard.

(3) All parking and storage areas shall be visually blocked from both the street and abutting properties by a solid fence and either an earth barrier or vegetative plantings. Vehicles used exclusively for residence parking shall be exempted from this standard.

(4) The storage area and/or associated accessory structures must be located in the rear yard area of the residential unit.

(5) Each lot shall be a minimum of one (1) acre.

(6) An owner occupied residence must be maintained on the same lot as the contractor storage yard 1.

(7) Compliance with applicable Rural District Performance Standards, Sec. 78-965.

(8) Compliance with applicable sound standards in Chapter 26, Article II.

(9) Compliance with applicable Chapter 78, Article VII Performance Standards.

(C) Other Review Criteria

(1) Scale of operation. The Planning Board may limit the scale of proposed operations so as to prevent adverse impacts on adjacent property.

(2) Hours of operation. The Planning Board may limit and set hours of operation for on-site activities so as to prevent adverse impacts on adjacent property.

(3) Size and number of vehicles and equipment. The Planning Board may limit the size (gross weight, length, and wheelbase) and number of vehicles and equipment so as to prevent adverse impacts on adjacent property.

(4) Traffic on and off site. The Planning Board may limit the traffic generated by the contractor storage yard 1 so as to prevent adverse impacts on adjacent property.

(5) Materials stored on site. The Planning Board may limit the type and quantity of materials stored on site so as to prevent adverse impacts on adjacent property. All materials likely to produce odors or dust shall be contained so as to prevent adverse impacts on adjacent property.

Councilor Blow asked when this area became a Rural Zone. The Planner was to get back to him on this question.

A contractor storage yard 1 may be permitted in the Rural District for parcels of land with road frontage on Portland Ave between the Ross Rd/Portland Ave Intersection and the Old Orchard Beach/Scarborough Town Line, provided the following conditions are met to the satisfaction of the planning board:

It was recommended that there needed to be a respect for the intent of the Rural Zone. The Town ordinance is specific in defining rural zone:

- The **rural** district (RD) is established as a **zoning** district where the land is used for a wide variety of purposes at low density and where ample land area is an essential prerequisite for establishment and conduction of most **rural** land uses. Preservation of its **rural** character to the extent possible is also one of the most important purposes of the RD district.

(Ord. of 9-18-2001, § 9.1)

- **Sec. 78-962. - Permitted uses.**

[SHARE LINK TO SECTION PRINT SECTION DOWNLOAD \(DOCX\) OF SECTIONS EMAIL SECTION COMPARE VERSIONS](#)

The following categories of uses are permitted in the **rural** district (RD):

(1)
Single-family dwellings, detached.

(2)
Accessory buildings, structures or uses customarily incidental or subordinate to a conforming or legally nonconforming principal building or use.

(3)
Municipal uses, provided there is no overnight parking of vehicles or machinery in the open and that no structure shall be located within 50 feet of a residential lot line.

- Churches or parish houses. (4)
- Agriculture uses. (5)
- Forestry and timber harvesting. (6)
- Community living arrangements. (7)
- Temporary anemometer tower (8)
- (Ord. of 9-18-2001, § 9.1.1; Ord. of 12-15-2009(3))

- Sec. 78-963. - Conditional uses.

[SHARE LINK TO SECTION PRINT SECTION DOWNLOAD \(DOCX\) OF SECTIONS EMAIL SECTION COMPARE VERSIONS](#)

The planning board may authorize the following uses in the **rural** district (RD), provided that the conditions of article VII are met:

- Accessory dwelling units. (1)
- Nursing homes and congregate care facilities. (2)
- Public and private utility facilities. (3)
- Home occupations. (4)
- Child care facilities. (5)
- Private schools, exclusive of private business or trade schools. (6)
- Processing and retailing of farm products produced on the premises. (7)
- Veterinary hospital. (8)
- Animal husbandry for commercial purposes. (9)
- (10)

Boarding and riding stables.	(11)
Campgrounds.	(12)
Golf courses.	(13)
Mineral extraction operations.	(14)
Automobile service and repair facility.	(15)
Cemeteries, columbaria's, and memorial gardens.	(16)
Contractor storage yard 2.	(17)
Wireless telecommunication facilities: architectural siting only.	(18)
Limited motor freight business. (Ord. of 9-18-2001, § 9.1.2)	

- **Sec. 78-964. - Space and bulk regulations.**

[SHARE LINK TO SECTION PRINT SECTION DOWNLOAD \(DOCX\) OF SECTIONS EMAIL SECTION COMPARE VERSIONS](#)

Space and bulk regulations for the **rural** district (RD) are as follows:

Zoning District	All Uses
Minimum lot size	75,000 sq. ft./NDD*
Minimum lot size w/sewer or water	40,000 sq. ft.
Minimum lot frontage	200 ft.
*On a cul-de-sac	125 ft.
Minimum lot width	200 ft.

Net lot area:	
Without public sewer or water	40,000 sq. ft.
With public sewer or water	30,000 sq. ft.
Minimum estate lot size:	
Without public sewer or water	80,000 sq. ft. plus area of access strip
With public sewer or water	60,000 sq. ft. plus area of access strip
Net estate lot area:	
Without public sewer or water	60,000 sq. ft.
With public sewer or water	40,000 sq. ft.
Minimum estate lot frontage and access strip width	50 ft.
Maximum driveway length from street to house	700 ft.
Minimum separation between estate lot driveways	200 ft.
Maximum number of estate lot driveways on a standard 65-foot radius cul-de-sac	2
Maximum building coverage	20%
Maximum height: principal buildings	35 ft.
Maximum height: principal buildings for agricultural uses and decorative elements	50 ft.
Maximum height accessory buildings	35 ft.
Minimum front yard setback: all structures	50 ft.
Minimum side yard setback: principal structures and	25 ft.

detached garages	
Minimum side yard setback: accessory structures, excluding garages	25 ft.
Minimum rear yard setback: principal structures and detached garages	25 ft.
Minimum rear yard setback: accessory structures, excluding garages	25 ft.
Maximum height of temporary anemometer tower	125 feet

*NDD = Net development density

(Ord. of 9-18-2001, § 9.1.3; Ord. of 12-15-2009(3))

- Sec. 78-965. - Performance standards.

[SHARE LINK TO SECTION PRINT SECTION DOWNLOAD \(DOCX\) OF SECTIONS EMAIL SECTION COMPARE VERSIONS](#)

(a)

Applicability. In addition to the performance standards contained in article VIII of this chapter, the performance standards in this section shall apply to all uses in the rural district (RD).

(b)

Lighting. Notwithstanding the standards for parking lot lighting specified in division 4 of article VIII of this chapter, all freestanding site lighting shall:

(1)

Not exceed the height of the principal building or 14 feet, whichever is less.

(2)

From a nonresidential use, not shed more than 0.5 foot-candle onto surrounding residential or nonresidential properties.

(3)

Be shielded to prevent point source glare.

(c)

Parking. All parking must meet the requirements of division 4 of article VIII of this chapter.

(d)

Signage. Permitted uses advertising products or services offered on the premises in the rural district (RD) shall conform to the following standards:

(1)

Materials. All proposed signage in the RD district shall be constructed of wood, metal and or fabric.

(2)

Lighting. All proposed signs may be illuminated by one or more shielded external light fixtures affixed to the building, the sign, or up lights emanating from the ground. All sign lighting shall be white-colored illumination.

(3)

Area and dimensions. Area and dimensions shall be as follows:

a.

Maximum aggregate signage for any parcel shall not exceed 50 square feet, with no single sign to exceed 25 square feet in area.

b.

Freestanding signs shall not exceed 15 feet in height and shall not exceed the allowable square footage. Square footage of signage allocated for the freestanding sign shall be subtracted from the maximum allowable square footage.

c.

Permitted sign area is not transferable between sides of the building located on a corner lot.

(e)

Buffering. All buffering for the rural district shall conform to the landscaping and buffering of division 7 of article VIII of this chapter.

(Ord. of 9-18-2001, § 9.1.4)

Secs. 78-966—78-990. - Reserved.

It was discussed that the rural zone is a mixed use activity area. It conforms with the Comprehensive Plane and attempts to limit or avoid illegal spot zoning. Spot zoning is the application of zoning to a specific parcel or parcels of land within a larger zoned area when the rezoning is usually at odds with a city's master plan and current zoning restrictions. Spot zoning may be ruled invalid as an "arbitrary, capricious and unreasonable treatment" of a limited parcel of land by a local zoning ordinance.

The Planner attempted in discussion of the ordinance to address neighbor concerns, the intent of the rural district, comprehensive plan conformance and illegal spot zoning avoidance.

BELOW ARE COMMENTS FROM THE JULY WORKSHOP ON THIS SUBJECT WHICH I HAVE INCLUDED HERE FOR SUBSTANCE.

This overview was also included in the July Workshop Minutes where this subject was discussed between the Council. Below is information from the Planner, Jeffrey Hinderliter.

Overview

During the fall of 2017, Mr. Walt Murphy met with me to discuss his concerns about the business activities at the MacDonald's property on Portland Ave (169 – 173 Portland Ave, 3 lots). What began as a flower shop has been operating as an excavation, firewood processing and septic storage business. The operation of this business has impacted his quality of life. Mr. Murphy stated that for the past few years he's met with the code office and discussed his concerns. He was told violations exist; although, nothing was done.

After listening to Mr. Murphy, recalling past conversations with former Code Officer Dan Feeney, and researching permitting and license files, it became clear this matter has been ongoing for some time and would continue unless something was done. It was at this time I began considering what approach the town should take by looking at the situation, concerns, and options (solutions).

Situation

During 1999, Debbie MacDonald received conditional use approval to build and use a structure for a wholesale and retail business at 169 Portland Ave. This was for the operation of the flower and crafts shop. Ms. MacDonald continues to secure business license approval for this use since 1999. Permitting and licensing files show no other business operations approved by the town.

The town's earliest aerial photos (2001) show what appears to be some kind of business activity on the 171 and 173 properties. The next set of aerials dated 2006 show this activity expanding to 169 Portland Ave. The activity increases on all 3 properties as observed in the 2012, 2015 and 2017 aerials. Exactly what this activity is I can't tell but it is quite clear it involves more than what is required to operate a flower and craft shop and has gone on for some time. Today, there continues to be one permitted and licensed use associated with these properties- a wholesale and retail flower and craft shop located at 169 Portland Ave.

Code Officer Rick Haskell and I inspected the 3 MacDonald properties on 6 July, 10:00 – 11:00 AM. The purpose of this inspection was to get an updated view of business activities and on-site conditions. The following was observed:

- The septic storage tank is no longer on-site. Ms. MacDonald agreed to remove at the town's request.
- Wood packing and excavating business is spread over the 3 properties.
- The wood packaging business consists of pre-split wood delivered to the property, bundled on-site, and then delivered to campgrounds. No signs of log cutting and splitting on-site- it's all delivered pre-split. The bundle machine was turned on and created little noise.
- Regarding the excavating business, the most obvious contractor related items present was material, misc. equipment, and a grit cleaning truck. We know there are dump trucks and loaders.
- The excavation business includes a catch basin grit cleaning truck. There were several yards of catch basin grit de-watering. Silt fence was adjacent to the grit.

Ms. MacDonald stated the grit is brought to her property, de-watered, and then delivered to a facility in Scarborough. She indicated DEP has inspected the site.

- Materials on-site were associated with the excavating and wood splitting business as well as personal yard clean-up. These materials include concrete, crushed stone, mulch, clean fill, catch basin grit, split wood, misc. yard debris.
- No on-site retail sales except for those allowed (flower and craft shop).
- On-site fuel storage consists of two 250 gallon tanks.
- Various structures/buildings exist on all 3 properties- most are relatively old.
- Approx. 7 unregistered and uninspected vehicles exist on the 173 Portland Ave property.
- Misc. OOB365 vehicles and items on 169 front lawn.
- No noise, odors, vibrations was heard, observed or felt during our visit.

Overall, the site was rather quiet and orderly. I do realize the time of our inspection may not have been at the busy time of this business's operations. There is no question that unlicensed business activity is taking place and there must be some corrective actions- this is no real surprise because this is what we're trying to address. What was surprising was the activity occurring on the properties abutting the MacDonald's lots. 175 Portland Ave (Mr. Brian Robillard) and 165 Portland Ave (Mr. Bryan Murphy) were quite active with vehicle traffic and noise.

Concerns

There are a number of problems I found during consideration of this matter.

First, aerial photographs show some kind of business activity, beyond the flower shop, has been conducted on the MacDonald's properties for many years- at least since 2006. This business activity was not hidden. Aerial photos show some of this activity could be observed from Portland Ave.

Second is the existence of similar business activity adjacent to the MacDonald property and other properties in the Rural District. As part of my research I reviewed aerial photos and found a number of properties in the Rural District had business activities including a cluster by the MacDonald's property. This particular cluster showed more intensive business operations on the MacDonald's, Robillard and Bryan Murphy properties. To show this, attached to this memo are aerial photos from 2012 and 2017. One aerial set shows all properties. The other 3 sets show 2012 and 2017 views of the MacDonald's, Robillard and Bryan Murphy properties. As you'll see, the business activity and use is expanding. And these are not home occupations.

Third is the lack of permitting and licensing for business activities in this area.

- MacDonald's (169-173 Portland Ave). Currently, the only permitted and licensed business activity and use is the wholesale and retail flower and craft shop located at 169 Portland Ave. There are no permits or licensing for the excavating and wood packaging businesses.
- Robillard (175 Portland Ave). Currently the property is licensed for rentals of two residential dwellings. There are no permits or licenses that allow what appears to be a landscape contractor business to operate.
- Bryan Murphy (165 Portland Ave and a portion of an adjacent property). Mr. Murphy operates an auto mechanic shop and landscaping business on his property. Regarding the auto repair service, it is currently permitted as an

automobile service station (approved 1992 and amended approval 1994). Currently not licensed to operate auto service station- business license renewal on hold pending review of site. There are several concerns including operation of illegal junkyard/auto graveyard and noncompliance with 1992 and 1994 permit approvals. Regarding the landscaping business, there are no permits allowing the use to be established. License issued for retail use beginning in 2014 is currently on hold pending review of use and site. Several concerns include establishing the use without proper permit approval and incorrect use on license. Bryan Murphy was contacted on 5 July to schedule an inspection on his property to which he said he did not want us on because he knows his property is a mess.

Fourth, I assume many of these people use the business for their livelihood. I had to consider my actions could severely impact the continued existence of these businesses while respecting concerns of those who live in the area. This is tricky and is one of the primary reasons I created the proposed Contractor Storage Yard 1 ordinance amendments as one option.

Options

Originally the town focused on addressing the MacDonald's matter alone. As I found during my review, other properties have issues similar to the MacDonald's which lead me to pursue the ordinance amendment option. Below is a list of these options. These options could be used to address the MacDonald's, Robillard and Bryan Murphy properties.

1. Ordinance amendments. The town is proposing amendments to the ordinance which would allow contractor-related businesses to exist within a portion of the Rural District. These amendments establish the Contractor Storage Yard 1 (CSY1) as a conditional use and will allow this use in a certain area long Portland Ave as long as they met the newly created CSY1 conditional use standards and other applicable requirements. The Planning Board recently voted 3-2 that the Council not approve these amendments. The amendments are now up for Council consideration.
2. Consent agreement. As a resolution, this could allow the town and responsible property owner to enter into an agreement to avoid formal enforcement and court action. Also, this option could limit the exposure a zoning change may introduce to other properties. It's possible the town could apply conditions to an agreement that would limit the noise, odor, vibration, amount of equipment, hours of operation, etc. Because a consent agreement is essentially a contract between the property owner and the Town, the Council will most likely need to sign it.
3. Non-action letter. A non-action letter basically states that the town is aware a violation exists on a property but the town has no intention of prosecuting at this time.
4. Formal enforcement. Identify violations and begin formal enforcement actions. The first attempt would be voluntary compliance. If this is not achieved (and I expect it will not in some cases) court action begins.
5. Do nothing. As I understand the town has discretion as to whether it chooses to enforce its ordinances; therefore, the town could choose to do nothing.

It should be noted that during the presentation Councilor Michael Tousignant asked property owner, Bryan Murphy (165 Portland Avenue,) if he was planning to buy a portion of land owned by the Bailey family and asked if he had a contract to which he responded that he did.

At the conclusion of this presentation, the Town Manager again noted that there would be an opportunity in the future for those present to make comments during a Public Hearing.

Below are the maps depicting properties involved in the discussion this evening.

















Discussion this evening was limited to staff presentation. The next step would be a decision to hold or not hold a Public Hearing at another date.

The Town Council Workshop adjourned at 8:15 p.m.

Respectfully Submitted,

**V. Louise Reid
Town Council Secretary**

I, V. Louise Reid, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of twenty-two (22) pages is a copy of the original Minutes of the Town Council Workshop of August 15, 2018.

V. Louise Reid