

1
2
3 OLD ORCHARD BEACH PLANNING BOARD
4 Public Hearing and Regular Meeting
5 December 14, 2017 7:00 PM
6 Town Council Chambers
7

8 **CALL MEETING TO ORDER 7:00 PM**
9

10 **Present:** Robin Dube, Win Winch, Mike Fortunato, Vice Chair Eber Weinstein, Chair Linda Mailhot.
11 **Absent:** Mark Koenigs, Ryan Kelly. **Staff Present:** Planner Jeffrey Hinderliter, Assistant Planner Megan
12 McLaughlin.
13

14 Robin Dube who is the first alternate will be a full voting member at tonight’s meeting.
15

16 **PLEDGE OF ALLEGIANCE**
17

18 Public Hearings

19 ITEM 1

20 **Proposal:** Food Business Amendments to Chapter 78 (Zoning): 78-1 (Definitions); 78-717
21 (Downtown District 1, Permitted Uses, Primary Uses); 78-747 (Downtown District 2,
22 Permitted Uses); 78-748 (Downtown District 2, Prohibited Uses); 78-1083
23 (Amusement Overlay District, Complimentary Uses); 78-1223 (Campground
24 Overlay District, Accessory Uses); 78-1382 (Buildings and Structures, Temporary
25 Structures, Exemption)
26 **Applicant:** Town of Old Orchard Beach
27

28 Assistant Planner Megan McLaughlin read the changes being proposed. She listed a few changes that
29 staff is supposed to make to the current ordinance.
30

- 31 • MFB is no longer defined. Mobile food businesses are now defined more specifically (food cart,
32 food truck, food stand) and replace the MFB definition.
- 33 • Food cart, food trucks and food stands are permissible in the same locations as the formerly
34 proposed MFB’s were allowed (Amusement Overlay, Campground Overlay, and Council
35 approved/sponsored events).
- 36 • Food cart, truck, stand definitions include language to ensure it’s clear the uses are not
37 permanent.
- 38 • We currently define and regulate food stands. Draft 2 changes the definition (primarily by adding
39 “non-permanent structures”) and where they are and are not allowed.
- 40 • Take-out food business is defined and a new land use. After removing the current food stand
41 definition and use and the proposed MFB definitions, we found businesses that primarily serve
42 take-out from permanent structures without on-site seating (e.g., Lisa’s Pizza, Bill’s, D&D)
43 lacked a definition and land use classification. It appears they are currently classified as food
44 stands. Because the current food stand definition is proposed to change so that it regulates non-
45 permanent structures and that these structures are proposed to be prohibited in the districts where
46 Lisa’s, etc. exist, it seemed appropriate that we develop a new land use. This new land use is
47 identified as take-out food business.
- 48 • Take-out food businesses are proposed to be allowed uses in the DD1 and DD2 districts.
49

50 Public Hearing opened at 7:09 pm.

1 John Cloutier from 29 West Grand Avenue introduced himself. He owns land in the impacted area and he
2 watched the Council meeting when they initiated the moratorium. Some of the concerns raised by the
3 councilors are valid and are understandable. He think it is a good fit in Old Orchard Beach. In his opinion
4 the ordinance changes as proposed doesn't do a good job achieving the council's objective. He feels that
5 these changes create a monopoly on one side of town and eliminate food trucks on another side of town.
6 In general he believes that we are being too specific by defining some of these new things. More
7 complicated rules don't help the little guy get started with their business. Instead of being more restrictive
8 we could treat these temporary structures as buildings, or something similar to buildings.
9 The mobile operators don't have any commitment to the town or to their location, they don't pay taxes to
10 the town and they are not held to the same design review and planning standard.
11 We need to treat these like having a building. Require the landowner to show a general location on a plan
12 that is approved by the planning board and put some design standards in there as well. Then the town
13 Assessor could use this information for tax purposes.

14
15 There being no one else speaking for or against this item, the public hearing closed at 7:13 pm.

16
17 **ITEM 2**

18 **Proposal: Private Way Application**
19 **Owner: Casey Gray**
20 **Location: 54 Portland Ave., MBL: 205-1-37**

21
22 Public Hearing opened at 7:13 pm.

23
24 Melinda Hess from 56 Portland Avenue introduced herself to the Board. She is the abutting owner of lot
25 #36. She would like to address is that Ms. Gray's proposed private way does not currently propose to
26 provide her and her husband with complete access to their property which is lot #36. In the revised private
27 way application dated Oct. 23, 2017 on page 2 paragraph 3 it indicates that the road needs to encroach on
28 lot # 30, however, Ms. Gray expressly provides an easement only to owners on lot # 37. Then in referring
29 to the map, where the private way encroaches on Ms. Gray's lot #30, it indicates "Proposed easement to
30 be provided to future land owners to lot # 7". If this private way is intended for lots #36 and #37, her
31 question is why is this not reflected in the private way application and the map? Why would Ms. Gray
32 want to restrict their access over the width of the new roadway. She asked that the Board consider this in
33 their vote.

34
35 Allen Hess from 56 Portland Avenue introduced herself to the Board read a small statement that he had:

36
37 "The Hess's do not dispute Ms. Gray's right to improve the designated right of way for her benefit. We
38 never have. They have already improved portions of it, and neither Ms. Gray nor us have greater rights to
39 improve passage through that area. We already have had portions of the right of way installed and we
40 have done all the maintenance on it to include snow removal since 2013. 30 tenants and yard maintenance
41 crews have consistently used this right of way and have never had a problem. This maintenance has been
42 done with any cost sharing by Ms. Gray. Ms. Gray has never presented us with her proposed declaration
43 of maintenance for the proposed private way although she evidently expects us to sign it. Our copy was
44 obtained through the planning staff rather than through Ms. Gray or her attorney. I would respectfully ask
45 the board to table approval of this conditional use until such time that Ms. Gray communicates with us
46 and agrees to a reasonable maintenance agreement and confirms that we will have legal access over the
47 entire width of the new roadway. Thank you."

48
49
50 David Lori, Attorney from Cape Elizabeth here representing Allen and Melinda Hess. He doesn't feel that
51 they need to be here to oppose this because it is common sense that they would have either shared

1 maintenance responsibilities or the ability to maintain this road and to access the entire width of the road.
2 Talked about the ordinance approval requirements for approval and declaration of maintenance of a
3 private way. Section 78-1411 allows you to approve this as a conditional use, however section 78-1413
4 requires that a maintenance agreement be prepared where a private way provides access to 2 or more lots.
5 The proposed plan will be expressly used for access to lots # 36 and # 37.
6 About 4 years ago the Hess's improved the entrance to the lots which would be a shared entrance. This
7 was originally a sub division and each of the lots the parties own were sold with reference to that plan so
8 they automatically get easement rights. The documents which is submitted as a declaration
9 of maintenance of private way is not the maintenance agreement that is required by the ordinance. The
10 ordinance says the agreement shall specify the rights and responsibility of each lot owner with the respect
11 of maintenance repair and plowing the right of way. There is nothing in the agreement that gives lot #36
12 any recourse if they fail to plow after a snowstorm. You can't approve a private way without a sufficient
13 maintenance agreement. The Hess's would like a guaranteed access via this agreement. It makes
14 sense to move the relocation of the roadway however the Hess's are not being given any rights over that
15 portion of the roadway. There should be an easement.

16
17 There being no one else speaking for or against this item, the public hearing closed at 7:31 pm.

18
19 **ITEM 3**

20 **Proposal: Conditional Use (Shoreland Zoning): Reconstruction and Expansion of a**
21 **nonconforming structure**

22 **Owner: Deborah A. McGonagle**

23 **Location: 15 Tioga Ave, MBL: 321-23-3**

24
25 Opened the public hearing at 7:31 pm.

26 There being no one speaking for or against this item, the public hearing closed at 7:31 pm.

27
28 **ITEM 4**

29 **Proposal: Conditional Use: Accessory Dwelling Unit**

30 **Owner: Peter M. Gammo and Judith Balzano**

31 **Location: 91 Union Ave, MBL: 314-15-3**

32
33 Opened the public hearing at 7:32 pm.

34 There being no one speaking for or against this item, the public hearing closed at 7:32 pm.

35
36 **ITEM 5**

37 **Proposal: Conditional Use/Appeals from restrictions on nonconforming uses: Convert**
38 **business into ground floor residential unit**

39 **Owner: James C. Timmins**

40 **Location: 22 Washington Ave, MBL: 308-2-1**

41
42 Opened the public hearing at 7:33 pm.

43 There being no one speaking for or against this item, the public hearing closed at 7:32 pm.

44
45 **Approval of Minutes: 11/2/17, 11/9/17**

46
47 11/2/2017: Item #2 line #50 change illegal to legal.
48 Page #4 line #31 received "one" copy.

49
50 11/9/2017: Add that Ryan Kelly was absent.
51 Line #18 Add final design.

1 Item #10 Page #10 Line #29 only one “accessory dwelling” per property.
2

3 **MOTION:**

4 Win Winch made a motion to approve the 11/2/2017 and 11/9/2017 meeting minutes with the changes as
5 noted. Mike Fortunato seconded the motion.
6

7 **VOTE:**

8 **Jeffrey Hinderliter called for the vote:**

9 Robin Dube – Yes

10 Mike Fortunato – Yes

11 Win Winch – Yes

12 Vice Chair Eber Weinstein – Yes

13 Chair Linda Mailhot – Yes
14

15 **VOTE CARRIES**

16 **(5-0)**
17

18 **Regular Business**

19 **ITEM 6**

20 **Proposal: Food Business Amendments to Chapter 78 (Zoning): 78-1 (Definitions); 78-717**
21 **(Downtown District 1, Permitted Uses, Primary Uses); 78-747 (Downtown District 2,**
22 **Permitted Uses); 78-748 (Downtown District 2, Prohibited Uses); 78-1083**
23 **(Amusement Overlay District, Complimentary Uses); 78-1223 (Campground**
24 **Overlay District, Accessory Uses) ; 78-1382 (Buildings and Structures,**
25 **Temporary Structures, Exemption)**

26 **Action: Discussion; Council Recommendation**

27 **Applicant: Town of Old Orchard Beach**
28

29 Planner Hinderliter stated that no matter which way we try and turn this around the uses are still mobile.
30 It’s not a brick and mortar business. These would have different types of standards that would
31 apply. It would require its own separate set of design review regulations.

32 Mobile Food Businesses are more clearly defined. We are tightening up the rules. We have a limited time
33 to work with and we feel that these proposed amendments address what the moratorium requested. We
34 would like to move this forward to begin the council review process.
35

36 Vice Chair Weinstein and Win Winch both agreed that this is a good start and staff has put a lot of work
37 into this. With a limited time to work on this he thinks they should start with this and see what happens. If
38 there are problems later on we can attempt to adjust it.

39 Chair Mailhot also stated that staff did an excellent job on this and this is a great starting point.
40

41 **MOTION:**

42 Win Winch made a motion that the council approve the proposed ordinance amendments as written and
43 presented at the December 14, 2017 Planning Board meeting, seconded by Robin Dube.
44

45 **VOTE:**

46 **Jeffrey Hinderliter called for the vote:**

47 Robin Dube – Yes

48 Mike Fortunato – Yes

49 Win Winch – Yes

50 Vice Chair Eber Weinstein – Yes

51 Chair Linda Mailhot – Yes

1
2 **VOTE CARRIES**
3 **(5-0)**
4

5 **ITEM 7**

6 **Proposal: Private Way Application**
7 **Action: Discussion; Ruling**
8 **Owner: Casey Gray**
9 **Location: 54 Portland Ave., MBL: 205-1-37**
10

11 Assistant Planner Megan McLaughlin stated that there are a few new items pertaining to this proposal for
12 December:

- 13 1. A letter from the Abutters Attorney – David Lourie
- 14 2. A cover letter and plan-set depicting the 50 foot ROW
- 15 3. A letter from the abutter, Allen Hess that was read during Good & Welfare in November
- 16 4. A Warranty Deed with easement language
- 17 5. A draft Declaration of Maintenance of a Private Way document
- 18 6. An updated 11x17 plan-set
- 19 7. A letter from the Applicant Casey Gray in response to the Abutters comments read during Good
20 & Welfare in November
- 21 8. A letter from Allen Hess dated 12/06/17

22 The purpose of the December meeting is to hold a site walk, a public hearing and make a final ruling on
23 the proposal.
24
25

26 **Items Received and Discussed for the December meeting:**

27 Planning Staff received a letter from the Abutters Attorney (David Lourie) which is included in your
28 packet. This letter was forwarded to our Town Attorney for follow-up. Our Attorney pointed out that it is
29 reasonable to conclude based on Attorney Cunningham’s letter that the applicant has sufficient right title
30 and interest for purposes of standing. He also states that Attorney Lourie disagreed with the portions of
31 Attorney Cunningham’s conclusion in his letter to the extent that it implied that there is no right of way
32 easement in favor of all lots shown on the recorded subdivision plan. He said that to the extent that there
33 is any title dispute over the right of way, it is a matter for private civil litigation I the courts. He also
34 mentioned that if there is any ongoing legal dispute over the private use of land that the Planning Board
35 could add a condition of approval with some language regarding the right title and interest.
36

37 Staff tried to go through all of the requirements listed in the ordinance for private ways:

- 38 • **APPROVAL REQUIREMENTS**
- 39 • **PLAN SUBMISSION**
- 40 • **MAINTENANCE AGREEMENT**
- 41 • **DESIGN STANDARDS**
42

43 Staff also coordinated with the applicant to get some additional information from them to try and clarify
44 some of these.

45 Staff recommends to the Planning Board that a condition be placed on the project that says the private
46 way is intended to provide access to a maximum of 2 dwelling units. The applicant did add this as a note
47 on the plan for clarity purposes to make sure that it wouldn’t trigger sub division review.

48 The applicant provided an easement for lot #37 to access the applicant’s property for a portion of the
49 private way and the hammerhead turnaround. We have requested to see easement language for this and

1 they did provide this in a deed. They also submitted a draft declaration of maintenance which is a
2 requirement in the ordinance for a private way that serves 2 or more lots.

3
4 **Sec. 78-1413 – (MAINTENANCE AGREEMENT)** “If the private way provides access to two or more
5 lots, a maintenance agreement shall be prepared. This agreement shall specify the rights and
6 responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private
7 way.

8 They did submit a draft agreement in September and had some language in it that said that the abutter
9 of lot #36 would be jointly responsible for ½ of the cost of maintaining and repairing the private way,
10 and the way that it’s been presented, they wouldn’t have those responsibilities. We recommended to the
11 applicant to update that to reflect that there are no responsibilities of the abutter.

12 We cannot have a private way that cuts off access to lots even if they are existing. Recommended to
13 applicant if they can show on the plan how access to lot #36 will be achieved and that has been shown
14 on the new plan

15
16 Attorney Cunningham talked about the piece of land that Ms. Gray and the Hess’s both own and have
17 equal rights to it. There needs to be a common driveway to be shared by both lots. The current proposal is
18 that it would be shared by the Hess’s on one side and by an undeveloped lot owned by the applicant on
19 the other side. He suggested making a condition on the plan to say that no other residences can use that
20 road.

21
22 Chair Mailhot asked the applicant if there is accessibility for others to use this road that abuts this
23 property. Mr. Cunningham stated that when the applicant sold the parcel of land to Paradise Properties,
24 the deed stated that they do not have the right to use that road because they recognize that their access will
25 be through their adjacent land which comes in a different way, so the legal rights have been cut off.

26
27 Win Winch asked why the applicant doesn’t want the Hess’s paying their share.

28 Ms. Gray stated that she is doing this to save herself time and frustration. This is the 4th proposal that she
29 has created. The 3 prior proposals were rejected. She decided that to develop this lot she took it into her
30 own hands to make sure that she is building a proper road, proper house on the lot and take all of the
31 responsibility so she can avoid any inconveniences.

32 Ms. Gray agreed that something else could be worked out and that the original proposal was fine with her.

33
34 Mike Fortunato asked if the declaration of maintenance agreement needs to be signed off by all of the
35 parties. Attorney Cunningham stated that anyone who doesn’t have any obligations has nothing to agree
36 upon.

37
38 Vice Chair Eber Weinstein stated that he agrees that the applicant has met all of the requirements of the
39 town and if there is not an agreement between both parties they may have to go to court.

40
41 It is the Planning Boards duty to decide whether the application meets the requirements of the ordinance.
42 And one of those requirements is that there be a maintenance agreement and it takes 2 parties. The
43 question is why is the applicant trying to lessen the Hess’s use of this private way and limiting their ability
44 to use a portion of it. This declaration is not a maintenance agreement.

45
46 Robin Dube mentioned that in their warranty deed it states that they have a right of way.

47 Attorney Lourie stated that the applicant had 2 easements when they bought the property.

48 They are moving the road outside of the easement and they are saying that the Hess’s will have no right to
49 travel over those areas of the road.

50 The Hess’s only want shared responsibilities with remedies.

51

1 Assistant Planner stated that we could have our town attorney look at the declaration of maintenance if
2 the Planning Board wishes.

3
4 **MOTION:**

5 Win Winch made a motion to table this item and to have the town attorney review the item with respect
6 specifically to the maintenance agreement and how our ordinance is written and needs to be interpreted,
7 seconded by Robin Dube.

8
9 **VOTE:**

10 **Jeffrey Hinderliter called for the vote:**

11 Robin Dube – Yes

12 Mike Fortunato – Yes

13 Win Winch – Yes

14 Vice Chair Eber Weinstein – Yes

15 Chair Linda Mailhot – Yes

16
17 **VOTE CARRIES:**

18 **(5-0)**

19
20 **ITEM 8**

21 **Proposal: Conditional Use (Shoreland Zoning): Reconstruction and Expansion of a**
22 **nonconforming structure**

23 **Action: Discussion; Ruling**

24 **Owner: Deborah A. McGonagle**

25 **Location: 15 Tioga Ave, MBL: 321-23-3**

26
27 Assistant Planner McLaughlin stated that there is nothing new with this proposal. This property is within
28 100’ of the highest annual tide. Planning Board held a site walk last week. This is up for final ruling.
29 Discussed comment from staff about having no more than a 20’ wide entrance and also discussed that this
30 was actually beneficial that they have this additional parking. Prior to making a ruling on the proposal the
31 Planning Board should go through the 12 conditional use standards as well as the 8 standard conditions in
32 the Shoreland Zone.

33
34 **Chair Mailhot read the 12 Conditional Use Standards and 6 Shoreland Zone Criteria with responses**
35 **from the applicant:**

36
37 **12 Conditional Use Responses (78-1240):**

38 ***1. Not result in significant hazards to pedestrians or vehicular traffic, on-site or off-site.***

39 RESPONSE: The current structure is a single family residential dwelling. The proposed structure is also a
40 single family residential dwelling representing the same hazards to pedestrians and vehicular traffic on
41 and off site as the existing use.

42
43 ***2. Not create or increase any fire hazard.***

44 RESPONSE: The proposed structure will not create or increase any fire hazard beyond those associated
45 with normal residential dwellings. Given the current blighted state of the current property, the proposed
46 structure will reduce the risk of fire on the property.

47
48 ***3. Provide adequate off-street parking and loading areas.***

49 RESPONSE: The proposed home will have a garage to provide on-site, off-street parking.

1
2 **4. Not cause water pollution, sedimentation, erosion or contamination of any water supply.**

3 RESPONSE: The proposed structure will reduce soil erosion through the implementation of an
4 appropriate yard. During construction silt fences will be employed to avoid sedimentation and
5 contamination of the water supply. The proposed home will not result in water pollution.
6

7 **5. Not create unhealthful conditions because of smoke, dust or other airborne contaminants.**

8 RESPONSE: The dwelling once completed, will create neither smoke, nor dust, no other airborne
9 contaminants.
10

11 **6. Not create nuisances to neighboring properties because of odors, fumes, glare, hours of**
12 **operation, noise, vibration or fire hazard, or unreasonably restrict access of light and air to**
13 **neighboring properties.**

14 RESPONSE: The proposed structure will not create odors, fumes, glares, vibrations, or excessive noise.
15 As a home, it will not have “hours of operations.” The final structure will have a reduced likelihood of
16 fire as compared to the current, blighted dwelling. The home will neither restrict access to the light and/or
17 air to neighboring properties. It will be of similar size and height as existing homes in the immediate
18 surrounding area.
19

20 **7. Will provide adequate waste disposal systems for all solid and liquid wastes generated by the use.**

21 RESPONSE: The proposed use will generate solid and liquid waste which will be connected to discharge
22 into the town sewer system.
23

24 **8. Will not adversely affect the value of adjacent properties.**

25 RESPONSE: The proposed use will not adversely affect the value of adjacent properties but rather
26 increase the value of homes in the neighboring area by removing dilapidated and lowly valued property
27 and replacing it with a new construction, much more valued home.
28

29 **9. Be compatible with existing uses in the neighborhood, with respect to the generation of noise and**
30 **hours of operation.**

31 RESPONSE: The proposed use of the property will be compatible with the surrounding area. The
32 surrounding area is residential neighborhood and the proposed structure is a residential home.
33

34 **10. The Applicant’s proposal must include any screening or buffering necessary to visually obstruct**
35 **the subject property from abutting uses or to assure the continued enjoyment of abutting uses.**

36 RESPONSE: No special screening or buffering will be necessary to allow for the continued enjoyment of
37 abutting properties will be increased by the presence of a new construction and well maintained home.
38

39 **11. The Applicant’s proposal must adequately provide for drainage through and for preservation of**
40 **existing topography within its location, particularly in minimizing any cut, fill or paving intended.**

41 RESPONSE: During construction, silt fence will be used to preserve the topography of the land. Upon
42 completion of the home, a lawn will be installed to ensure the continued stability of the land. There is no
43 expected need for fill. The current driveway will provide access from the road to the garage. There are no
44 sidewalks on this side of the road. Proper landscaping will capture and contain runoff.
45

1 *12. The Applicant must be found to have adequate financial and technical capacity to satisfy the*
2 *foregoing criteria and to develop and thereafter maintain the proposed project or use in accordance*
3 *with all applicable requirements.*

4 RESPONSE: Skykam construction has been in business for 4 years with over 18 years of experience and
5 has worked in the State of Maine. With dozens of homes built and sold, the applicant is happy to provide
6 references upon request, as to his financial and technical capacity to complete the improvement to this
7 property.

8
9 **Shoreland Zone Responses (78-34(e)) – Standard Conditions in any Shoreland Zone. No permit**
10 **shall be issued for any structure or activity within any shoreland zone unless all of the following**
11 **standard conditions are met:**

12
13 *1. Will maintain safe and healthful conditions;*

14 RESPONSE: The tearing down and rebuilding will be completed in a safe and healthful manner.

15
16 *2. Will not result in water pollution, erosion, or sedimentation to surface waters;*

17 RESPONSE: With the use of silt fences there will be no pollution, erosion or sedimentation to surface
18 waters.

19
20 *3. Will adequately provide for the disposal of all wastewater;*

21 RESPONSE: During the tear down and construction there will be a port-o-potty on site for the removal of
22 wastes.

23
24 *4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife*
25 *habitat;*

26 RESPONSE: Every effort will be made to prevent an adverse impact on spawning grounds, fish, aquatic
27 life, bird, or other wildlife.

28
29 *5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal*
30 *waters;*

31 RESPONSE: Not applicable to this project.

32
33 *6. Will protect archaeological and historic resources as designated in the comprehensive plan;*

34 RESPONSE: There are no issues with archaeological or historic resources impacted by this project.

35
36 *7. Will avoid problems associated with floodplain development and use; and*

37 RESPONSE: This project will follow all floodplain development as dictated.

38
39 *8. Is in conformance with the provisions of all applicable shoreland zoning standards in division 17*
40 *of this chapter.*

41 RESPONSE: The project will fall within the exact footprint of the existing foundation.

42
43 **MOTION:**

44 Win Winch made a motion to approve the Conditional Use Shoreland Zoning Application to reconstruct a

1 non- conforming structure in the Shoreland Zone now owned by Debra A. McGonagle located at 15
2 Tioga Ave, MBL: 321-23-3 with the following condition: The driveway for the new residential structure
3 at 15 Tioga shall be built to Town standards with no more than a 20’ wide entrance, seconded by Mike
4 Fortunato.

5
6 **VOTE:**

7 **Jeffrey Hinderliter called for the vote:**

8 Robin Dube – Yes

9 Mike Fortunato – Yes

10 Win Winch – Yes

11 Vice Chair Eber Weinstein – Yes

12 Chair Linda Mailhot – Yes

13
14 **VOTE CARRIES:**

15 **(5-0)**

16
17 **ITEM 9**

18 **Proposal: Conditional Use: Accessory Dwelling Unit**

19 **Action: Discussion; Ruling**

20 **Owner: Peter M. Gammo and Judith Balzano**

21 **Location: 91 Union Ave, MBL: 314-15-3**

22
23 At the November meeting there were a couple of items that were requested by the Planning Board. We
24 received a revised floor plan showing the location of the accessory dwelling unit and a revised conditional
25 review criteria. This is a more detailed floor plan. There was a question on how the 50% would apply.
26 Planner Hinderliter feels like the standard is lacking something to give it clarity. He believes that it should
27 be capped at a square footage however the standard doesn’t allow this. He left it up to the Planning
28 Board to make that interpretation. He thinks it can move forward as proposed however he has a couple of
29 options for the Planning Board.

- 30
- He thinks it can move forward as proposed and then we need to clear up that language.
 - If the Planning Board feels that if it doesn’t meet that 50% threshold (if it’s over that) then there is a condition attached to at least have this move forward and maybe staff can come up with a floor plan with the applicants to meet the 50% standard.

34 Eber Weinstein stated that the way he interprets it is that the accessory dwelling unit is secondary and has
35 to be less than 50% of the entire building before any changes. Needs to change “main dwelling” unit to
36 “main dwelling unit before changes” and that would simplify the whole thing. This language needs to be
37 changed to provide clarity.

38
39 Planner Hinderliter stated that there is nothing that says that an accessory dwelling can’t be rented out at
40 some point in time. One way to preserve this is through the licensing. It could be rented out, but it would
41 be rented out as an accessory dwelling unit and licensed only as an accessory unit dwelling.

42 Chair Mailhot read the language which reads that it cannot exceed 50% of the floor area of the main
43 dwelling unit.

44
45 All Board members agreed that accessory dwelling unit definition should be looked into further because it
46 does permit having a 2 family unit.

47
48 Applicant Peter M. Gammo introduced himself to the Board Members. He explained that the front door
49 is the main entrance to the house.

1 **Chair Mailhot read the 12 Conditional Use Criteria and applicants responses:**

2
3

1. Not result in significant hazards to pedestrians or vehicular traffic, on-site or off-site.

4 RESPONSE: The addition of no more than two vehicles will not result in significant hazards to
5 pedestrians or vehicular traffic, on-site or off-site. All external accesses allow for safe pedestrian
6 and vehicular travel.

7 **2. Not create or increase any fire hazard.**

8 RESPONSE: The existing dwelling has been and will continue to be in accordance with
9 applicable codes which include fire safety and will not create or increase any fire hazard.

10 **3. Provide adequate off-street parking and loading areas.**

11 RESPONSE: Adequate off-street parking IS provided to allow for two (2) additional vehicles
12 associated with a single-family residence with an ADU.

13

14 **4. Not cause water pollution, sedimentation, erosion or contamination of any water supply.**

15 RESPONSE: The proposal involves no on-site disturbances; therefore, will not cause water
16 pollution, sedimentation, erosion, or contamination of any water supply.

17

18 **5. Not create unhealthful conditions because of smoke, dust or other airborne contaminants.**

19 RESPONSE: The proposal will not create unhealthful conditions because of smoke, dust, or
20 other
21 Airborne contaminants.

22

23 **6. Not create nuisances to neighboring properties because of odors, fumes, glare, hours of**
24 **operation, noise, vibration or fire hazard, or unreasonably restrict access of light and air to**
25 **neighboring properties.**

26

27 RESPONSE: This proposal will not create nuisances to neighboring properties because of odors,
28 fumes, glare, hours of operation, noise, vibration, or fire hazard, or unreasonably restrict access
29 of light and air to
30 neighboring properties.

31 **7. Will provide adequate waste disposal systems for all solid and liquid wastes generated by the use.**

32 RESPONSE: The proposed ADU will use weekly public trash pick-up. Public sewer will be
33 used for non-toxic liquid wastes so adequate waste disposal systems for all solid and liquid
34 wastes generated by the use will be provided.

35

36 **8. Will not adversely affect the value of adjacent properties.**

1 RESPONSE: Land uses adjacent to the subject property include (two-or multi)-family units so
2 the proposal will not adversely affect the value of adjacent properties.

3 *9. Be compatible with existing uses in the neighborhood, with respect to the generation of noise and*
4 *hours of operation.*

5 RESPONSE: The proposal is a low-impact residential use and is compatible with existing uses in
6 the neighborhood, with respect to noise generation and hours of operation.

7 *10. The Applicant's proposal must include any screening or buffering necessary to visually obstruct*
8 *the subject property from abutting uses or to assure the continued enjoyment of abutting uses.*

9 RESPONSE: Screening or buffering necessary to visually obstruct the subject property from
10 abutting uses or to assure the continued enjoyment of abutting uses is addressed by the existence
11 of fencing.

12 *11. The Applicant's proposal must adequately provide for drainage through and for preservation of*
13 *existing topography within its location, particularly in minimizing any cut, fill or paving intended.*

14 RESPONSE: There will be NO changes so this proposal does already adequately provide for
15 drainage through and for preservation of existing topography within its location.

16
17 *12. The Applicant must be found to have adequate financial and technical capacity to satisfy the*
18 *foregoing criteria and to develop and thereafter maintain the proposed project or use in accordance*
19 *with all applicable requirements.*

20 RESPONSE: There are NO planned changes so financial and technical capacity to satisfy the
21 foregoing criteria and to develop and thereafter maintain the proposed project or use in
22 accordance with all applicable requirements does not apply.

23

24 *Chair Mailhot read the 5 Accessory Dwelling Unit (ADU) Standards:*

25

26 **1. The accessory dwelling unit is accessed via the living area of the primary structure, and all**
27 **other entrances to the accessory dwelling unit are subordinate to the main entrance. There are no**
28 **proposed additions to the main structure.**

29 RESPONSE: The accessory dwelling unit is accessed via the living area of the primary structure, and all
30 other entrances to the accessory dwelling unit are subordinate to the main entrance. There are no
31 proposed additions to the main structure.

32

33 **2. The accessory dwelling unit has at least 500 square feet of floor area and does not exceed 50**
34 **percent of the floor area of the main dwelling unit. Floor area measurements do not include**
35 **unfinished attic, basement or cellar spaces nor public hallways or other common areas.**

36

37 RESPONSE: The accessory dwelling unit has at least 500 square feet of floor area and does not exceed 50
38 percent of the floor area of the main dwelling unit. Floor area measurements do not include unfinished
39 attic, basement or cellar spaces nor public hallways or other common areas.

40

41 **3. The dwelling unit is served by a single electrical service.**

42 RESPONSE: The dwelling unit is served by a single electrical service.

1
2 **4. Only one accessory apartment is being applied for and will be made part of the main**
3 **residence.**

4 RESPONSE: Only one accessory apartment is being applied for and will be part of the main residence.
5

6 **5. The accessory dwelling shall not be permitted for any non-conforming structure or use where**
7 **non conformity is due to the use of the premises as opposed to non-conforming dimensional**
8 **requirements.**

9 NO RESPONSE.

10
11 **MOTION:**

12 Robin Dube made a motion to approve this proposal, seconded by Win Winch.
13

14 **VOTE:**

15 *Jeffrey Hinderliter called for the vote:*

16 Robin Dube – Yes

17 Mike Fortunato – Yes

18 Win Winch – Yes

19 Vice Chair Eber Weinstein – Yes

20 Chair Linda Mailhot – No
21

22 **VOTE CARRIES:**

23 **(4-1)**
24

25 **ITEM 10**

26 **Proposal: Conditional Use/Appeals from restrictions on nonconforming uses: Convert**
27 **business into ground floor residential unit**

28 **Action: Discussion; Ruling**

29 **Owner: James C. Timmins**

30 **Location: 22 Washington Ave, MBL: 308-2-1**
31

32 Assistant Planner Megan McLaughlin stated that this proposal is to convert a 900 sf. commercial space
33 into a residential apartment. Currently this is set up for 3 residential units in a commercial unit.

34 This property is located in the NC-3 District (Neighborhood Commercial District) and multi family
35 dwelling units are Permissible in this district but not permissible on the sidewalk level. It looks like a
36 dwelling unit was illegally established on the first floor of this building adjacent to the area in question
37 Staff believes that this created a non-conforming use of the buildings first floor. So because of this, the
38 applicant has the ability to request an approval for an increase of the non-conformity.

39 The Planning Board held a site walk and didn't receive any comments from the public.

40 Staff recommends that the Planning Board go through the 12 responses to the Conditional Use Standards.

41 There is also a non-conforming use standard that also requires a response.

42 The Board members agreed that making this into Residential makes sense.
43

44 *Chair Linda Mailhot read the 12 Conditional Use Standards with responses:*
45

46 *1. Not result in significant hazards to pedestrians or vehicular traffic, on-site or off-site.*

47 RESPONSE: No. Because it is an interior space that is being remodeled from a commercial unit to a
48 residential studio efficiency apartment. There is ample parking in the back of the building and the
49 addition of one more resident will not negatively affect the neighborhood.
50

1 **2. Not create or increase any fire hazard.**

2 RESPONSE: No. As a residential occupied space, it will comply with all fire codes, smoke/carbon
3 dioxide detectors and will be less of a hazard than an empty, unused space.
4

5 **3. Provide adequate off-street parking and loading areas.**

6 RESPONSE: Yes. There are 9 available parking spaces. The removal of the back building several years
7 ago, increased the parking by 4 spaces.
8

9 **4. Not cause water pollution, sedimentation, erosion or contamination of any water supply.**

10 RESPONSE: No. This is an interior remodel of an existing structure that is already hooked up to the town
11 sewer, has running water, an existing bathroom, and existing plumbing for the kitchen.
12

13 **5. Not create unhealthful conditions because of smoke, dust or other airborne contaminants.**

14 RESPONSE: No. The remodel is happening inside the existing space and will become a quiet single
15 family efficiency residence.
16

17 **6. Not create nuisances to neighboring properties because of odors, fumes, glare, hours of
18 operation, noise,
19 vibration or fire hazard, or unreasonably restrict access of light and air to neighboring properties.**

20 RESPONSE: No. The proposed remodel will take approx...2 weeks and will become a quiet single
21 family efficiency residence.
22

23 **7. Will provide adequate waste disposal systems for all solid and liquid wastes generated by
24 the use.**

25 RESPONSE: Yes. The unit is already using the Town's sewer and plumbing systems. It has 2 bathrooms,
26 and running water. It will have 1 bathroom and a small kitchen after the remodel.
27

28 **8. Will not adversely affect the value of adjacent properties.**

29 RESPONSE: No. It will have a positive affect and increase the value of the neighborhood since we are
30 replacing a vacant space and creating a useful, needed, clean well-maintained living space.
31

32 **9. Be compatible with existing uses in the neighborhood, with respect to the generation of
33 noise and hours of operation.**

34 RESPONSE: Yes. All the other buildings except for one have converted their first floor commercial units
35 into first floor residences spaces. They are all rented and thriving as the town needs cleaner, affordable
36 housing. Our first floor apartment will fit right in.
37

38 **10. The Applicant's proposal must include any screening or buffering necessary to visually
39 obstruct the subject property from abutting uses or to assure the continued enjoyment of abutting uses.**

40 RESPONSE: Not Applicable. All changes we are proposing to make will take place in the interior of the
41 building.
42

43 **11. The Applicant's proposal must adequately provide for drainage through and for
44 preservation of existing topography within its location, particularly in minimizing any cut, fill or
45 paving intended.**

46 RESPONSE: No changes to existing drainage or existing topography as the space is already plumbed and
47 hooked up to the Town's sewer and drainage systems. No new paving needed.
48

1 ***12. The Applicant must be found to have adequate financial and technical capacity to satisfy***
2 ***the foregoing criteria and to develop and thereafter maintain the proposed project or use in accordance***
3 ***with all applicable requirements.***

4 RESPONSE: Yes. The proposed remodel is expected to cost between \$15,000 and \$20,000 as estimated
5 by Paul Provencher General Contractor, who will be doing the work. We have adequate funds for the
6 project and a prospective tenant all lined up.

7
8 ***Chair Mailhot also read the non-conforming use standards with responses:***

9
10 **Nonconforming Use Standards (78-180):**

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

23 **Applicants Response:**

24 The building located at 22 Washington Avenue has long been a central part of the community. It has
25 housed many businesses including a travel agency and a hair salon, and been a stable residence over the
26 years. The neighborhood has slowly transformed to a mostly residential area, largely because of the
27 redirection of traffic to Saco Ave which is now the main thoroughfare to the heart of Town. Of the five
28 buildings on the north side of Washington Ave from Central Park Ave towards Union Ave, only one has
29 an occupied commercial tenant, a laundromat. Where once 7 thriving business were situated on the first
30 floors of the apartment buildings, only one business now remains and it is a self-service establishment.
31 All of the other properties have residences on the first floor, and they have tenants living there.

32
33 The building has long been owned by the Timmins' family who have provided tenants with a clean, safe,
34 and well-maintained property. The decrease in traffic has made it nearly impossible for the businesses that
35 tried to make a go of it over the years to survive. The commercial space has been vacant for many years
36 now, which does nothing to help the neighborhood or the value of its properties. Several years ago, Mr.
37 Timmins had a building tore down that resided on the back of the apartment bldg. on Central Park Ave.
38 and replaced it with additional paved parking to provide ample space for all the tenants should he be
39 granted the ability to turn the commercial space into a residential. In that respect, the property, as a whole,
40 always had 4 residential spaces and one commercial. The property will now still contain 4 residential
41 spaces, but not a commercial space.

42
43 The façade of the property will have little change. The door to the residence opens to an alcove that is
44 owned by the Timmins'. The rear door will have easy access to the parking area behind the building. The
45 majority of the change will occur inside the 900 square foot living space creating a pleasant and clean
46 year-round rental apartment on Washington Ave restoring the property to its original 4 residential units.

47
48 **MOTION:**

49 Robin Dube made a motion to approve this proposal, seconded by Win Winch.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

VOTE:

Jeffrey Hinderliter called for the vote:

- Robin Dube – Yes
- Mike Fortunato – Yes
- Win Winch – Yes
- Vice Chair Eber Weinstein – Yes
- Chair Linda Mailhot – Yes

**VOTE CARRIES:
(5-0)**

ITEM 11

Proposal: Subdivision Amendment: Amend Sandy Meadows Plan: revise lot lines to lots 5-8, 18, 21, 22; revised building locations; revised parking
Action: Discussion; Ruling
Owner: Lacosta Development, LLC
Location: Lacosta Dr., Sandy Meadows, MBL: 105A-1-A

Planner Hinderliter explained that there were 2 primary issues:

- Insuring that the impervious surface calculations didn't change, and was confirmed that they were ok.
- Getting sign offs from property owners affected by this change which were revisions to the common area that they all share. We also received this information.

Staff noted some concerns that some of the residences were using access without using the proper ways of access. Staff proposed some buffering along that are 4a which included a note on the plan about the location of a sidewalk.

The Planning Board decided that the applicant needs a sign off from Public Works and Town Planning.

The Public Works Director came up with a proposed sidewalk location. The applicants engineer proposed an easement. The Planning Board needs a guarantee that the construction will take place and will not be the responsibility of the town or the homeowners association.

The Town would like a guarantee that the cost and construction will be the responsibility of whoever is part of this project.

Attorney Paul Weinstein, here representing the applicant stated that they are here tonight only looking for an approval of the amendment of the lot lines to the already approved plan, and discuss the sidewalks at a later date.

The applicant is open to discussions with the note on the plan as far as relocating the sidewalks. The town still has a bond for \$83,000 from the applicant for the completion of improvements to this project.

Win Winch expressed concern that the client did not follow the original plan.

Eber Weinstein asked about the cars accessing driveways from the back.

Attorney Weinstein stated that they have agreed to rip up the asphalt and loom it to prevent any cars from accessing the back.

Chair Linda Mailhot asked about Note #13 (The Applicant shall work with the Old Orchard Beach Public Works Director/Town Planner to relocate the proposed 5' wide bituminous walkway as required). Public Works has proposed this and Planning is recommending this. This will satisfy Note #13.

1
2 Attorney Weinstein stated that as far as the sidewalk goes, having a sidewalk going along Ross Road to
3 the corner of Cascade Road to connect into some non-existing sidewalk was never part of the approved
4 plans.

5
6 Applicant Bernie Saulnier stated that they had requests from buyers who wanted different styled homes so
7 they stayed within the lot but moved the foundation. BH2M did the engineering.
8 The town is holding \$83,000 and they have paving to complete in the spring.
9 Mr. Saulnier suggested they could guarantee with a separate escrow account for the sidewalks.

10
11 **MOTION:**

12 Mike Fortunato made a motion that they table this item and get the Applicant's Engineers plans for the
13 sidewalk and have them submitted to Stephanie Hubbard from Wright Pierce to get a cost estimate for the
14 sidewalks, seconded by
15 Robin Dube.

16
17 **VOTE:**

18 **Jeffrey Hinderliter called for the vote:**

19 Robin Dube – Yes

20 Mike Fortunato – Yes

21 Win Winch – Yes

22 Vice Chair Eber Weinstein – Abstained

23 Chair Linda Mailhot – Yes

24
25 **VOTE CARRIES:**

26 **(4-0-1)**

27
28
29 **ITEM 12**

30 **Proposal:** Site Plan Review: Additions and new construction including enclosed stairway,
31 elevator, lobby, elevated deck/walkway

32 **Action:** Determination of Completeness; Schedule Site Walk and Public Hearing

33 **Owner:** Lafayette Old Orchard, LLC

34 **Location:** 87 West Grand Ave, MBL: 313-5-1, 4, 5

35
36 Planner Hinderliter stated that a big part of this proposal is the connection between building G and the
37 Horizon building. They are adding 3 floors and will contain elevators to access the buildings and lobby
38 area.

39 This proposal has received considerable review. This proposal has secured DRC approval as well as
40 Administrative Site Plan approval.

41 There are a number of waivers requested.

- 42 • Location of utilities, hydrants, waste receptacles, etc. As long as the plans show utilities that are
43 associated or impacted, there is no need to show anything else.
- 44 • No landscaping proposed.
- 45 • Drainage facilities: All work will not impact the existing drainage systems. However we need a
46 little more information on this waiver.
- 47 • Photometric Plan: We need a little more detail on the lighting.
- 48 • Erosion Control: Staff is comfortable with this waiver request.

49
50 Planner Hinderliter recommended additional responses on the Site Plan Review Criteria responses.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

MOTION:

Win Winch made a motion to determine the application complete, seconded the motion.

VOTE:

Jeffrey Hinderliter called for the vote:

- Robin Dube – Yes
- Mike Fortunato – Yes
- Win Winch – Yes
- Vice Chair Eber Weinstein – Yes
- Chair Linda Mailhot – Yes

VOTE CARRIES:

(5-0)

Other Business

- 1. Settler’s Ridge update; Sign mylar

Good and Welfare

The Planning Board wished Vice Chair Eber Weinstein well wished and thank you as this will be his last Planning Board Meeting.

ADJOURNMENT AT 9:42 PM.

I, Valdine Camire, Administrative Assistant to the Planning Board of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of EIGHTEEN (18) pages is a true copy of the original minutes of the Planning Board Meeting of December 14, 2017.

