

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

OLD ORCHARD BEACH PLANNING BOARD
December 7, 2017 (Site Walks, On-Site)
December 7, 2017 6:00 PM (Workshop, Council Chambers)

SITE WALKS (12/7/17)

Those present for the sitewalk: Robin Dube, Win Winch, Mark Koenigs, Mike Fortunato, Chair Linda Mailhot, Vice Chair Eber Weinstein. **Absent:** Ryan Kelly. **Staff Present:** Planner Jeffrey Hinderliter, Assistant Planner Megan McLaughlin.

Site Walk (4:30 PM, on-site)

Proposal: Conditional Use: Private Way Application

Owner: Casey Gray

Location: 54 Portland Ave., MBL: 205-1-37

Site Walk (5:00 PM, on-site)

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

Owner: Deborah A. McGonagle

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

Site Walk (5:15 PM, on-site)

Proposal: Conditional Use: Accessory Dwelling Unit

Owner: Peter M. Gammo and Judith Balzano

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

Site Walk (5:30 PM, on-site)

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

Owner: James C. Timmins

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

CALL WORKSHOP TO ORDER at 6:00 pm.

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

ITEM 1

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

Applicant: Town of Old Orchard Beach

ITEM 2

Proposal: Conditional Use: Private Way Application

Owner: Casey Gray

Location: 54 Portland Ave., MBL: 205-1-37

ITEM 3

1 **Proposal:** Conditional Use (Shoreland Zoning): Reconstruction and Expansion of a
2 nonconforming structure
3 **Owner:** Deborah A. McGonagle
4 **Location:** 15 Tioga Ave, MBL: 321-23-3
5

6 **ITEM 4**

7 **Proposal:** Conditional Use: Accessory Dwelling Unit
8 **Owner:** Peter M. Gammo and Judith Balzano
9 **Location:** 91 Union Ave, MBL: 314-15-3
10

11 **ITEM 5**

12 **Proposal:** Conditional Use/Appeals from restrictions on nonconforming uses: Convert
13 business into ground floor residential unit
14 **Owner:** James C. Timmins
15 **Location:** 22 Washington Ave, MBL: 308-2-1
16

17 **Regular Business***

18 **ITEM 6**

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

28 There is nothing new with this proposal and is straightforward.

29 The moratorium was just renewed and the Planning Board's responsibility is making a recommendation
30 To the council.

31 The owner of the Kiosks in the area of the pier is most affected by this and Planner Hinderliter will be
32 discussing this with him.
33

34 This amendment is so that food businesses are no longer permissible in the DD-1 Zone, only in the
35 Campground Overlay and Amusement Overlay and also if it is associated with a council approved event.
36 Staff also made an adjustment to the take-out food business language and added that in the amendment.
37

38 **ITEM 7**

39 **Proposal:** Conditional Use: Private Way Application
40 **Action:** Discussion; Ruling
41 **Owner:** Casey Gray
42 **Location:** 54 Portland Ave., MBL: 205-1-37
43

44 Assistant Planner Megan McLaughlin told the Planning Board members that we have this listed on the
45 agenda as a conditional use, but it is just a private way.

46 The site walk was completed before the workshop meeting tonight and next week will have the public
47 hearing and make a ruling on the application at next week's Planning Board meeting.

48 Staff received a letter from the abutter's attorney and forwarded that letter to our town attorney. He
49 pointed out in that letter that the abutters' attorney agrees that the applicant has right title and interest to
50 file an application with the Planning Board and also pointed out that the Planning Board should be able to
51 see that the proposed private way falls within that 50' right of way. We asked the applicant to highlight

1 that on the plan.

2 In regards to design standards, for the private way ordinance, 3 or more dwelling units triggers sub-
3 division review.

4 Staff is recommending that there be a condition that says this private way is entitled to provide access to a
5 maximum of 2 dwelling units and also recommended that be placed on the plan as a note.

6
7 An easement has been proposed for Lot 37 to access the Applicants property for a portion of the Private
8 Way and the hammerhead turnaround. Planning staff had requested to see easement language for the
9 proposed easement. They have provided that along with a deed.

10
11 Section (78-1413) of the Private Way ordinance discusses a Maintenance Agreement for 2 or more lots. It
12 says: *“If the private way provides **access to two or more lots**, a maintenance agreement shall be
13 prepared. The agreement shall specify the **rights and responsibilities of each lot owner** with respect to
14 the maintenance, repair and plowing of the private way.
15 This agreement shall be approved by the planning board and shall be recorded in the county registry of
16 deeds within 60 days of approval by the planning board.”*

17
18 A draft agreement was submitted back in September that said the abutter was jointly responsible for one
19 half of the cost of maintaining, repairing and plowing the Private Way. The way this proposal has been
20 presented to the Planning Board, it has stated that Lot 36 will not be responsible for any maintenance in
21 the Private Way. As such, Planning Staff recommended that this be updated in the Maintenance
22 Agreement and a new one be submitted. The updated version of the agreement has been included in your
23 packet for December.

24
25 The abutter indicated in the letter read during Good & Welfare that the proposed Private Way
26 hammerhead turnaround cuts off access to his lot. The ordinance (*Sec. 78-1411*) says that the PB may
27 approve the use of a Private Way to **provide access to lots, existing** or proposed. Planning Staff
28 recommended to the Applicant that they provide information on how access to lot #36 will be achieved
29 since it is intended to be included as part of the Private Way. This has been shown on the new 11x17 plan
30 that Planning Board members received for December.

31
32 At the November Planning Board meeting, we discussed the requirement from Assessing that the Private
33 Way should be named for E911 purposes. This has been coordinated with Assessing.

34
35 There are 2 conditions staff is recommending:

36
37 1. *Certain property owners in the vicinity of the applicant’s project have asserted that the
38 applicant does not have ownership or legal right to use the access way where the project
39 would be located. The Planning Board does not have jurisdiction to determine the rights of
40 the parties to deeds or private contractual agreements, nor can this approval create or affect
41 any such rights. This approval does not constitute a resolution in favor of the applicant of
42 any issues regarding ownership or other title issues. Should it be determined by a final, non-
43 appealable court judgment that the applicant does not have the legal right to use the land as
44 proposed in the application, this approval shall no longer have any force or effect.*

45
46 2. *The Private ROW is intended to provide access to a maximum of 2 dwelling units*

47 Vice Chair Eber Weinstein requested to have a copy of the letter from our town’s attorney.

48
49

1 **ITEM 8**

2 **Proposal: Conditional Use (Shoreland Zoning): Reconstruction and Expansion of a**
3 **nonconforming structure**
4 **Action: Discussion; Ruling**
5 **Owner: Deborah A. McGonagle**
6 **Location: 15 Tioga Ave, MBL: 321-23-3**
7

8 There are no new materials for this item. At the November meeting, the PB determined the
9 application complete and scheduled a Site Walk for December 7th and a Public Hearing for December
10 14th. Prior to making a ruling on the proposal, the PB has to go over the responses to the 12 Conditional
11 Use Standards (78-1240) as well as the 8 Standard Conditions in the Shoreland Zone (78-34(e)).
12 There was one comment received from staff about this project and that was that the new structure to be
13 constructed should be built to town standards with no more than a 20' wide entrance. This has been
14 included in the recommended motions as a potential condition should the PB decide to go that route.
15

16 **ITEM 9**

17 **Proposal: Conditional Use: Accessory Dwelling Unit**
18 **Action: Discussion; Ruling**
19 **Owner: Peter M. Gammo and Judith Balzano**
20 **Location: 91 Union Ave, MBL: 314-15-3**
21

22 At the November meeting, the PB determined the application complete subject to:

- 23 1. Revise floor plan showing the ADU location, ADU floor area.
- 24 2. Revise Conditional Use Review Criteria responses by removing two-family and replacing
25 with accessory dwelling unit.

26 Straightforward proposal and Staff is recommending approval.

27 Regarding this proposals conformance with the 5 Accessory Dwelling Unit (ADU) Standards.
28

29 There was discussion on Accessory Dwelling Unit to have at least 500 sq. ft. but cannot exceed 50% of
30 the floor area of the main dwelling unit. Planner Jeffrey Hinderliter will look into this further.
31

32 **ITEM 10**

33 **Proposal: Conditional Use/Appeals from restrictions on nonconforming uses: Convert**
34 **business into ground floor residential unit**
35 **Action: Discussion; Ruling**
36 **Owner: James C. Timmins**
37 **Location: 22 Washington Ave, MBL: 308-2-1**
38

39 Assistant Planner Megan McLaughlin updated the Board Members on this item. There are no new
40 materials for this item. At the November meeting, the PB determined the application complete and
41 scheduled a Site Walk for December 7th and a Public Hearing for December 14th. Prior to making a ruling
42 on the proposal, the PB has to go over the responses to the 12 Conditional Use Standards (78-1240) as
43 well as the Nonconforming Use Standards (78-180).
44

45 **ITEM 11**

46 **Proposal: Subdivision Amendment: Amend Sandy Meadows Plan: revise lot lines to lots 5-8,**
47 **18, 21, 22; revised building locations; revised parking**
48 **Action: Discussion; Ruling**
49 **Owner: Lacosta Development, LLC**
50 **Location: Lacosta Dr., Sandy Meadows, MBL: 105A-1-A**
51

1 Staff provided an 11' x 17' colored plan that is recommended and comes from Public Works. The blue
2 line on the plan shows the potential for the sidewalk.

3 Staff can't recommend approval or denial of the amendment at this time because we have nothing new to
4 review. Moving forward, the PB should discuss:

- 5 • The sidewalk- Is public works plan acceptable? Can BH2M show only the sidewalk easement or
6 do we need more information? Should an escrow or letter of credit be secured before the PB
7 approves the amendment? Who should be responsible for costs and construction? Should a
8 sidewalk even be built to Ross Rd?
- 9 • The buffer- If the sidewalk is constructed is a buffer necessary? If the PB feels a buffer is
10 required what should it be?

11
12 We have a few follow-up comments:

- 13 • Regarding the Note 13 matter, the owner's rep (BH2M) discussed this with planning and public
14 works. Public works provided a pdf (in Dec packet) that shows a recommended sidewalk
15 location. PW states this proposed sidewalk "requires that existing drainage is protected or
16 improved. Also, curbing is installed where it is needed or makes sense." BH2M asked if
17 showing an easement reserving land for a sidewalk to be constructed at some future date would
18 be acceptable. It was staff's opinion this is not acceptable because simply showing an easement
19 does not guarantee the owner will finance and construct the sidewalk- the HOA and/or town
20 could be left with costs and construction. Also, this would not address PW's comments
21 concerning protection or improvement of drainage and curbing installation. It's staff's opinion
22 that to ensure compliance with Note 13 and the PB's requests, plans should be amended to show
23 the relocated sidewalk, this should include any engineering necessary to address PW's comments,
24 and all costs associated with construction, etc. of the relocated sidewalk should be secured in an
25 escrow or letter of credit before the PB approves the amendment. An important note- staff spoke
26 to Stephanie Hubbard (WP Engineer) about the proposed sidewalk extension to Ross Rd. and she
27 made some interesting points that should be considered before the PB decides the sidewalk
28 location should be changed. First, Should we extend a sidewalk that dead ends at one of the more
29 dangerous intersection (Ross and Cascade) in town. There are no nearby or planned sidewalks in
30 this area. Second, a portion of the new sidewalk location will likely interfere with drainage and
31 access easements. So, should the sidewalk location be altered to extend to Ross Rd? One option
32 is the sidewalk is constructed as shown on the current plan and an easement is laid out from a
33 point of the sidewalk as shown to Ross Rd.
- 34 • Regarding the buffer, the PB should determine if a buffer in addition to the sidewalk is required.
35 If the sole purpose is to prevent back door access to properties adjacent to Ross Rd, a sidewalk
36 with curbing should accomplish this. If its purpose also includes beautification, the PB should
37 provide recommendations. Maybe a split rail fence adjacent to the sidewalk.

38
39 **ITEM 12**

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

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

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

44 **Location:** 87 West Grand Ave, MBL: 313-5-1, 4, 5
45

46 The Planning Board approved the Design Review Certificate.

47 Waves is proposing renovation and enclosure of an existing staircase (attached to building G);
48 construction of a new building and renovation of an existing building that will house elevators, lobby,
49 storage/mechanical rooms between buildings G and Horizon; 2 elevated walkways attaching buildings;
50 concrete walkway attached to building E; remove existing pavement and replacing. The primary purpose

1 of the project is safety and people access. Although this may seem like a lot of work it amounts to only
2 about 2,800 new sq. ft. It's a pretty straight forward proposal, too, and already received quite a bit of
3 review including DRC (10.2017) and Administrative Site Plan (11.2017) approvals as well as DEP ok.
4 Admin Site Plan approved the enclosed stairway and elevator/lobby foundations. The reason we could
5 not approve beyond the foundations is due to Admin review cut-off at 1,000 sq. ft. This does not require
6 DEP approval. Recommending that the Planning Board determine it is complete however staff believes
7 there are a few outstanding items that need to be addressed. Recommending stronger responses to the
8 Conditional Use criteria and they are also requesting some waivers which seem to be very reasonable.
9 Also what the site plan does not show is the elevated walkway that attaches building F and G.

10
11 Other Business

12 **1. Settler's Ridge update; Sign mylar:**

13 In November of last year Planning Board approved Settler's Ridge (multi-unit complex off of
14 Ross Rd. Conditions for approval said, we want to approve it but before PB signs the mylar staff
15 needs to be comfortable with the proposal. Staff was not comfortable with the proposal because
16 they had a number of outstanding issues from our town engineer. This recently came back to us
17 and we are trying to work through all of those requirements.

18
19 **2. Sawgrass mylar:** Need signatures for this.

20
21 **3. Discussion: Retail Marijuana:**

22 Samantha Powers, our intern did some research on this and made a presentation to the board.
23 Last year the State decided to legalize marijuana and there were a lot of regulatory issues so the
24 put a moratorium on it and that moratorium expires February 1, 2018. Individuals have to be 21
25 or older to legally possess marijuana, you can grow it yourself and have up to 6 mature plants, 12
26 immature plants and an unlimited number of seedlings at any given time. The law allows an
27 individual to possess as much as 2.5 ounces of marijuana, you cannot grow where it is visible to
28 others and you have to prevent access to anyone under the age of 21. The plant also has to be
29 labeled and tagged. Until the state issues the licenses it is illegal to purchase, however people get
30 around this by gifting. It is still illegal to drive under the influence. Federally licensed firearm
31 dealers cannot sell guns to people who use marijuana and the referendum language is unclear
32 about workplace drug testing. Eventually the state will issue licenses for 5 types of
33 establishments: cultivating facility, testing facility, manufacturing facility, retail stores and social
34 clubs. There is a lack of regulation in the current law. Regulation is necessary because it is the
35 first step in dismantling black market sales. There is the issue of quality and safety control
36 without regulation there is no way of telling where the cannabis is coming from or what it could
37 be potentially laced with. Test for pesticides and mold. Dealers have been known to use harmful
38 products to produce very high yield. State and towns would benefit from tax revenue. One thing
39 worth mentioning is that there is a debate about whether a town should be allowed to receive the
40 tax revenue if they chose to opt out. It also allows police in courts to focus more on violent
41 crimes. S. Portland has already approved zoning, licenses and ordinances and they have set future
42 fees for future businesses. They just have to get the state to begin issuing licenses. With legal and
43 ordinance issues the moratorium will most likely be extended until July of 2018. There is another
44 bill before legislation, but that won't be looked at until they reconvene so it is recommended that
45 towns hold off on passing ordinances since the state will most likely amend this law that we have.
46 Right now there is the option to opt out of this law so basically it allows municipalities to enact
47 the prohibition for a moratorium. The bill that was vetoed had language that would have had
48 required towns to approve of adult use of cannabis operations. It could be an advantage or
49 disadvantage.

50 Options and recommendations:

- 51 • You can adopt a moratorium ordinance

- You can adopt prohibition ordinance
- Begin working with local attorney on zoning and land use amendments.

Samantha Powers also went over the miscellaneous facts and notes. It was suggested that our town might want to consider how other towns deal with this issue.

4. **Red brick house update:** The developers have contracted with an architect to come up with a plan to replace the house exactly how it looks now. They asked for an extension until December 15, 2017 to come up with the plan.

ADJOURNMENT at 7:09 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 Seven (7) pages is a true copy of the original minutes of the Planning Board Meeting of December 7, 2017.



*Note: Workshop Agenda Public Hearings and Regular Business items are for discussion purposes only. Formal decisions on these items are not made until the Regular Meeting.