

1 **OLD ORCHARD BEACH PLANNING BOARD**
2 **Public Hearing and Regular Meeting**
3 **February 11, 2021**
4

5
6 **Roll Call:**

7 **Present:**

8
9 **Chris Hitchcock**

10 **Robin Dube**

11 **Win Winch**

12 **Mark Koenig**

13 **Vice Chair David Walker**
14

15
16 **Absent: Chair Linda Mailhot and Marianne Huber. Chris Hitchcock would be voting**
17 **member in their absence.**
18

19 **Staff present: Planner; Jeffrey Hinderliter, Assistant Planner; Michael Foster**
20

21 **Motion to approve minutes by Chris, 2nd by Win Winch**
22

23 **Vote: 5/0**
24

25 **Public Hearings PH 1 Proposal: Contract Zoning Application: Establish a Contract Zone, named**
26 **Contract Zone-3, in accordance with Town of Old Orchard Beach Code of Ordinances Chapter**
27 **78, Article IX (Contract Zoning) for the property located at 211 East Grand Ave., MBL: 202-2-2.**
28 **The purpose of the Contract Zone is to allow the establishment of a 4-lot subdivision for single-**
29 **family dwelling use. Applicant: Estates at Bay View, LLC Location: 211 East Grand Ave.,**
30 **MBL: 202-2-2**
31

32 **George Kerr came forward. He lives across from the proposed development. He did a site walk**
33 **with Tim Swenson. With the development of a contract zone like the Grand Beach Inn, that**
34 **could have been a high rise. With proposal of 3 homes being built with the 4th staying instead of**
35 **a high rise, this is an asset. He owns 3-1/2 to 4 acres across from it. He was part of the planning**
36 **board and town council when the Grand Beach Inn was being developed. The Grand Beach**
37 **Association when first condos came in, they wanted to preserve the area. Back then, the zoning**
38 **allowed for 1 unit for every 1,000 square feet. A typically one-acre lot would allow 44 units.**
39 **Horace Allen and David Putnam, both now deceased had discussed the land. He was in favor of**
40 **the high rises and was in favor for tax reasons. Public beach access is an asset to community. The**
41 **railroad took away a lot of the public beach access. It forced access down Main St. If you go to**
42 **Scarborough line there is no access. This project will fit into the neighborhood and allow public**
43 **access to the town and the residents. He is asking to strongly consider approving this. The way**
44 **the project is proposed it is an asset. Asking to support the contract zone as opposed to a 50-foot**
45 **building with 12-14 units.**
46

1 Tim Swenson came forward next. He submitted additional materials. Added a 4-foot beach
2 access on right hand side of property and dedicated to the Town of Old Orchard Beach as part of
3 the project.

4
5 Ronald Labelle, 207 East Grand, C6. He is an attorney but is here as an abutter. He submitted
6 written testimony. Focus comments on contract being proposed. There seems to be an impression
7 created by the application that if it were approved the applicant would be limited in the
8 development of the unoccupied lots to a single -family residence. The recitals in the contract
9 suggests that. He invites us to look at the contract itself. He said as someone who has been
10 practicing Maine Use Law. The only provisions are in the recitals. The where-as clauses are not
11 binding. None of the conditions They imply intent. Intentions can change. The actual binding
12 provisions are the where forth clauses. If you look at terms and conditions, none of them restrict
13 the development any of the lots to single family residences. They could do something completely
14 different. The applicant is not bound to it. He does not know who wrote the contract, but
15 suggests it is very favorable to the developer and not the town. There is no remedy section in the
16 contract. If the applicant violates the contract, it does not that it is a contract violation. What
17 remedies would the town have? Could the town go to get an injunction? The contract does not
18 say this. Contract injunction is not implied. The court will not imply one. They apply the contract
19 as written. What if the town successfully went to court if the developer went against the
20 contract? Who would pay for that? American rule is everyone pays their own lawyer. It would
21 need to be in the contract who would pay the legal fees. The developer and not the town should
22 be responsible for legal fees. The contract also does not have reservation of rights law. No
23 provision that says the town reserves any rights and remedies. Only thing you can do to enforce
24 Land Use law is under this contract. He would urge and encourage legal input from towns' legal
25 counsel to go over the contract set forth. He listened to Mr. Kerr in regards to public access and
26 he is not opposed to it but he would point out that there is public access on Parcher Avenue.
27 Look at what properties would benefit from public access. Not too many would benefit. With no
28 on street parking and no public parking, they will park at private residences to be able to use
29 public beach access. It needs to be applied on a case by case basis. It needs to be able to solve
30 problems and not create problems.

31
32 Vice Chair Walker asked Asst. Planner Foster if it was customary for the language of a proposal
33 to go to the town attorney before being voted on and he agreed that it sometimes does.

34
35 Pauline Hodge owns 204 East Grand Ave and 5 Parcher Ave and she and her husband are both in
36 agreement with Tim Swenson's project and with the public access.

37
38 ***PH closed at 6:52. PH reopened to read letters submitted. These letters will be attached at the***
39 ***end of meeting minutes.***

40
41 **PH1 closed at 7:21**

42
43
44 PH 2 Proposal: Conditional Use/Shoreland Zoning: Nonconforming structure replacement &
45 30% expansion Owner: Carter Ocean Park Irrevocable Trust Location: 30 Randall Ave., (323-9-
46 6); Zoning: R3 & Shoreland RA

1 Nobody from public wanted to speak on behalf, but several letters were read and will be added at
2 the end of meeting minutes.

3
4 **PH 2 closed at 7:29**

5
6 Regular Business ITEM 1 Proposal: Contract Zoning Application: Establish a Contract Zone,
7 named Contract Zone-3, in accordance with Town of Old Orchard Beach Code of Ordinances
8 Chapter 78, Article IX (Contract Zoning) for the property located at 211 East Grand Ave., MBL:
9 202-2-2. The purpose of the Contract Zone is to allow the establishment of a 4-lot subdivision
10 for single-family dwelling use. Action: Council Recommendation Applicant: Estates at Bay
11 View, LLC Location: 211 East Grand Ave., MBL: 202-2-2

12
13 Planner Hinderliter addressed the group.

14
15 This item is proposing a contract zone to allow for the development of a 4- lot subdivision to be
16 used for single-family homes.

17 Contract zoning proposals require the Board to make a recommendation to the council- similar to
18 zoning amendments. The primary responsibility of the board is to rule on three factors when
19 making their recommendation:

20 (1) Is consistent with the comprehensive plan;

21 (2) Is consistent with, but not limited to, the existing uses and allowed uses within the original
22 zone; and

23 (3) is subject to conditions sufficient to achieve the purposes described in Sec. 78-2131* of the
24 Contract Zoning Ordinance

25
26 A favorable recommendation requires a favorable vote on all three factors. If the Board makes a
27 negative finding on any factor, the recommendation must not be in favor of the contract zone
28 Since our last meeting the only new item submitted in time to meet our legal posting and abutter
29 notice deadlines was an email concerning floodplain. This is in your packets.

30
31 Because we received nothing else, we reviewed the same contract zoning agreement and
32 supporting documentation submitted for the Jan meeting and at that time, we felt the proposal did
33 not meet factors 1 and 2.

34 As you've seen in the staff memo, we feel the proposed contract zone still does not meet factors
35 1 and 2; therefore, we cannot recommend the Board make a positive finding on all 3 factors.

36 Also, we've heard from abutters and they raise excellent points that I believe the PB should
37 require the applicant to address in writing along with any supporting documentation as part of
38 their next submission.

39 As discussed in the memo, we believe the Board has 3 options.

40 The first option is tabling a council recommendation to allow the applicant address public
41 comments, staff comments and any board comments

42 The second option is to make a negative finding on factors 1 and 3 and recommend the council
43 not approve the contract zone

44 The third option is to make a positive finding on factors 1, 2 and 3 and recommend the council
45 approve the contract zone

1 We believe the best option is tabling to allow the applicant an opportunity to address public
2 comment, staff comment and any board comments. He could not hear the public comments but
3 did have time to read some.

4
5 **PB Action:**

6
7 **Motion by Robin to Table Bay View Estates until the applicant provides additional**
8 **information to support compliance Old Orchard Beach Code of Ordinances Ch. 78, Sec.**
9 **78-2136 (1) and (3)**

10
11 **2nd by Chris**

12
13 **Vote:**

14
15 **Chris Hitchcock: Yes**

16 **Win Winch: Yes**

17 **Robin Dube: Yes**

18 **Vice Chair Walker: Yes**

19
20
21 **ITEM 2 Proposal: Conditional Use/Shoreland Zoning: Nonconforming structure replacement &**
22 **30% expansion Action: Final Ruling Owner: Carter Ocean Park Irrevocable Trust Location: 30**
23 **Randall Ave., (323-9-6); Zoning: R3 & Shoreland RA**

24
25
26 last month a conditional determination of completeness was made. The condition was that the applicant
27 will provide staff with calculations showing the expansion is no greater than 30% in volume or floor area
28 of the existing structure.

29
30 Planning staff review last month determined the existing structure floor area measurements provided on
31 plan sheet SZ dated 12/22/2020 appeared accurate based on review of the assessor property card and
32 planning staff is comfortable with this calculation for floor area. Plan sheets PB6 and PB7 were submitted
33 with updated volume calculations.

34 **To reduce the volume the following adjustments were made to the proposed structure:**

- 35 • Reduced the height of the whole structure by 10". We accomplished this by lowering the roof
36 system down and reducing interior headroom space.
- 37 • Reduced the width (when viewed from Randall Street) of the main body of the house by 12". For
38 example, previously the width of the space containing the kitchen and stairway was 26' across, it
39 is now 25' across.

40
41 The existing structure volume was updated to 18,397 ft³ which would allow for maximum total structure
42 volume of 23,916 ft³ with the 30%. The proposed structure with reduced height and width is shown at
43 23,913 ft³. The updated volume calculations show the proposed structure is no greater than 30% of the
44 existing structure.

45
46 **Fire department review**

47 Based on 2/3/2021 email from Fred LaMontagne the new structure will require sprinkling:

1 "The property will require a sprinkler system based on the current concept design. When
2 construction drawings are submitted we will make final determination. The additional square
3 footage the number of stories meets the criteria for installation of a sprinkler system."
4

5 This is located in the Flood Zone and although required as part of the building permit process, submittal
6 of a substantial improvement/new development flood hazard application should be made a condition of
7 approval.
8

9 **RECOMMENDATIONS:**

10 Staff recommends conditional final approval of this Nonconforming structure replacement & 30%
11 expansion. We recommend several conditions for items that the applicant can address after the approval.
12 We need the updated floor area calculations reflecting the reduction to the proposed structure width and
13 height. This proposal is located in the AE Flood zone and will require a New Development Flood Hazard
14 Application. Based on Fire Chief Fred LaMontagne's response email, this most likely will require the
15 installation of a sprinkler system, and construction drawings should be submitted to the Fire Department
16 for review.
17

18
19 Mike Richmond from Custom Concepts came forward. Excellent summary. Reminder that zoning board
20 process done and approved. Dep all set. In regards to the letters, parking is always a big issue. They are
21 raising property up to help with flooding and parking. They have come in on all 4sides with design, they
22 are not going closer to any homes, but moving further away. In terms of the water, the lot coverage is not
23 changing and impervious surfaces are not going to increase.
24

25 Question about driveway and the seven trees on the lot. Mike Richmond does not have a diagram but
26 agrees some of them need to go, the ones closer to Clover would remain.
27

28
29 Motion by Robin to conditionally approve the application for a Conditional Use Shoreland Zoning
30 nonconforming structure removal, replacement, and 30% expansion located at 30 Randall Avenue, MBL
31 323-9-6, located in the R3 zoning district & Shoreland RA zone with the following conditions:
32

33 Revise plan to show the updated floor area calculations resulting from proposed structure width and
34 height reduction.

35 Submit a substantial improvement/new development flood hazard application.

36 Submit construction drawings to Fire Department for review of sprinkling requirement.
37

38 2nd by Chris
39

40 **Vote:**

41
42 Chris Hitchcock: Yes

43 Win Winch: Yes

44 Robin Dube: Yes

45 Vice Chair Walker: Yes
46

47 Vice Chair Walker asked with the board's permission to waive reading the conditional use and shoreland
48 zoning standards – as written in packets.
49
50
51

1 ITEM 3

2 Proposal: Conditional Use/Shoreland Zoning: Nonconforming structure replacement & 30%
3 expansion
4 Action: Final Ruling
5 Owner: Michael & Cheryl Tikonoff
6 Location: 24 Winona Ave., (321-13-4); Zoning: R3 & Shoreland HAT/RA
7

8 *Vice Chair will recuse himself from the vote due to his personal friendship with the applicants.*
9

10 **Assistant Planner Michael Foster addressed the board**
11

12 This proposal for a Nonconforming structure replacement & 30% expansion was determined as
13 complete in November. The public hearing was held in December and the four public hearing
14 comments that were submitted were included in your February packets. At the November
15 meeting the applicant made the argument that the new structure wasn't subject to the 30%
16 expansion limit because there is no structure being expanded once it is removed. Staff thought
17 this was an interesting point and wanted to follow up with DEP for interpretation.
18 DEPs response was that Reconstruction or replacement would count as an expansion, and they
19 also added that the 30% expansion applies to unfinished space such as an attic for example. Staff
20 discussed this with the applicant and determined if the attic area was uninhabitable and required
21 for the proposed building to meet current building codes, this area shouldn't be counted in as the
22 expansion. This proposal has received the Permit by Rule from DEP regarding its location
23 adjacent to a protected natural resource, but their permitting is separate from the PB's decision in
24 regards to the 30% expansion.
25

26 The applicant met with planning staff at the beginning of January again to discuss this proposal.
27 Staff discussed the foundation relating to nonconforming expansion, and excluding the first three
28 feet above grade from the expansion calculations, as allowed for structure foundations not being
29 increased by more than three feet in height above the grade. planning staff agrees that it is
30 reasonable to interpret this as the first three feet could be excluded from the expansion of the
31 structure if the expansion section is followed [section 78-1181(c)(1)]. This would require the
32 volume and floor area above this first three feet to be included in the expansion calculations,
33 except for the uninhabitable attic area needed to meet current building code.
34

35 Jim Fisher with NCS wrote an email dated 1/29/21, and most recently 2/11/21, explaining the
36 most recent measurements and some of the remaining items. Although the response is detailed,
37 there are some calculations for this proposal that planning staff doesn't understand. The applicant
38 is prepared to explain this.

- 39 • Planning staff supports applicant's measurement that the existing structure before
40 previous expansion (2007) was 12,092 cubic feet.
- 41 • Planning staff supports that the maximum structure size allowed under the 30%
42 expansion would be 15,720 cubic feet.
43

44 The most recent calculations appear to show the proposed structure is over a 30% expansion with
45 volume at 16,051 cf.
46

1 The applicant's responses to Conditional use standards and Shoreland zoning standards are
2 included on page 17 of the Feb memo. Along with submittal of updated calculations there were
3 several other items that needed to be clarified and submitted for final approval and these are
4 highlighted below:

5
6 Need updated calculations meeting expansion requirements – updated calculations have been
7 submitted (there are still some remaining questions and the applicant is working with staff to
8 resolve)

9 Identify HAT on plan (1/29/21 email from Jim Fisher pointed out that the HAT is in the Notes
10 section of the site plans, "This parcel is wholly encompassed within 100 ft of the highest annual
11 tide.")

12 Confirm the structure is not being expanded towards the HAT or stream. (site walk was held to
13 see location) This is located within the HAT and is being expanded northwesterly, away from the
14 stream running through the parcel, and towards surrounding higher elevations that are outside of
15 the HAT based on review of Town GIS shoreland zoning map. Staff does not see this as being
16 expanded towards the HAT or stream since the setback from the stream is being increased based
17 on the plans. As mentioned above this has also received the Permit by Rule from DEP in regards
18 to its proximity to the resource

19 Revise architectural drawings showing height meeting shoreland zoning definition

20 Submit a substantial improvement/new development flood hazard application

21
22 These proposals are not easy. This proposal is located in the Flood zone and shoreland zone,
23 adding layers of difficulty. The applicant is proposing a structure that will at the least meet
24 today's flood development standards, and locate the structure further away from the stream on
25 the parcel. This appears to be an improvement from the current structure siting.

26 Jim Fisher's calculation explanation emails did a good job explaining how the proposed
27 expansion falls under 30%, but staff needs calculations that reflect this. Jim Bernard's 1/11/21
28 calculations don't match the email explanation so we can't recommend approval without
29 knowing that the expansion is not greater than 30%.

30 Different options have been mentioned to the applicant: to design a smaller structure than
31 currently proposed that is not greater than a 30% expansion; to build within the current footprint
32 within 30% expansion; or build the ground floor garage/basement area with no volume, or
33 reducing this volume, by not enclosing the ground area and building it like a carport with no
34 walls, essentially on stilts or columns.

35 the Cond Use review process requires that Within 60 days of the public hearing, the planning
36 board shall either approve, approve with conditions, or deny the application based on the
37 application's conformance with the applicable performance standards and regulations of this
38 chapter.

39 The applicant has the option to withdraw the application, or continue to move forward with the
40 board vote. If the board denies the application, the applicant would need to wait a year before
41 coming back with another proposal, or they would have the option to appeal the decision in
42 superior court. If they withdraw the application, they will have the opportunity to submit a new
43 proposal when they are ready.

44
45 Options:

46 If the applicant requests to withdraw the application the PB should grant this request.

1 If the applicant can provide satisfactory calculation explanations and show that this proposal is
2 no greater than a 30% expansion at the meeting, although staff won't have an opportunity to
3 review, the PB can choose to conditionally approve this Conditional Use application.

4
5 Planner Hinderliter wanted to add a few comments. He advised that we are at a point in the
6 proposal where we need to make a decision because of what our ordinance says. You have 3
7 choices; deny, approve or approve with conditions.

8 He feels the applicants are very close and if they withdraw they need to go through all of this
9 again. Nothing that says that the planning board could not approve with the conditions that the
10 calculations are completed to the satisfaction of the planning staff. This way it would not be a
11 denial and not be a withdrawal.

12
13 Vice Chair Walker asked if we approve with that condition, what if PB can't come to terms.
14 Planner Hinderliter said if can't come to terms then we basically say that the condition has not
15 been fulfilled so they would need to go back and stick with the numbers.

16
17 Robin asked what the biggest issue was and Mike Foster replied the volume. The garage floor
18 primarily.

19
20 Jim Fisher came forward. We did go before ZBA and had a site walk before the holidays. They
21 indicated they wanted to move house away from the swail and not closer to any neighboring
22 property. The DEP permit was in place as well. Public Hearing complete as well. He admits it is
23 a convoluted issue. Existing structure ground to peak, habitable portion of new house is smaller
24 than existing portion, reason it is expanded is due to flood issue. First habitable floor is
25 essentially 9 feet in the air. Robin indicated it said 6 feet, but it is raised above existing. It is
26 being raised due to FEMA flood zone change. If people are redoing properties, they want to get
27 above that flood plain or would need to have substantial insurance. If we have to raise a
28 structure, it could be like the North Carolina or Key West concept in which buildings need to be
29 on piles to get above the floor plain. He brought up the site walk since during that site walk the
30 drive way issue came up. 80% of the driveway is in the ROW. It looks like there is a lot more
31 yard than there is. So instead of putting cars in the ROW, put cars in the garage and since a
32 garage is not allowed, instead of 6 feet height, lets raise it 3 more feet. Since no mechanicals can
33 be put in. The Tikanoffs would live on the 2nd and 3rd floors. Everything works except for the
34 volume. Sketch shows volume, 2nd floor expands out slightly on the sides. The quandry is the
35 volume even though the living space is smaller than the original home. Ordinance calls for the
36 attic space to be included in the volume even though they would not be using it for living space.
37 When building a roof from a code perspective you need to have some variation for snow load. In
38 order to meet building codes, they need to be able to subtract uninhabitable space from the total.
39 If they were to put home on stilts – 9 feet above it would look very,very strange and not fit in
40 with the neighborhood. Overall, it works. Happy to work with staff on conditions.

41
42 Vice Chair Walker asked Jim if he was correct in saying that they are only 331 square feet apart
43 from what staff says. He also asked if they had looked at options such as ceiling height, etc to
44 reduce numbers.

45 He replied that yes, they had several redesigns in order to minimize living area.

1 Michael Foster said they would still need to look at calculations. If there was approval, it would
2 be with the conditions.

3 Chris asked again about the water issues. He read all the letters and said if a member of the
4 public asked a question, someone should answer in regards to how it would potential flooding
5 would affect neighbors.

6 Jim replied that in a flood situation, everything that is an obstruction, like a rock in a stream,if
7 water is going around it, flood plain water goes up. All the foundations that have flow through
8 vents actually reduces the flood hazards for neighbors.

9
10 Win advised bottom line it all comes down to cubic footage and staff satisfaction. As a planning
11 board we are bound to ordinance.

12
13
14 Motion by Robin; I will make a motion to conditionally approve the application for a
15 Conditional Use Shoreland Zoning nonconforming structure removal, replacement, and 30%
16 expansion located at 24 Winona Avenue, MBL 321-13-4, located in the R3 zoning district &
17 Shoreland RA zone with the following conditions:

- 18
19 1. Update calculations to show proposed structure is not greater than a 30% expansion as
20 outlined in Sec. 78-1181. - Nonconformance.
- 21 2. Submit updated architectural drawings that show the structure is not greater than 35' as
22 measured using shoreland zoning height.
- 23 3. Submit a substantial improvement/new development flood hazard application.
- 24 4. Update plans to reflect sprinkling requirement and submit construction drawings to Fire
25 Department for review.

26
27 2nd by Chris

28
29 **Vote:**

30
31 Chris Hitchcock: Yes

32 Win Winch: Yes

33 Robin Dube: Yes

34 Vice Chair Walker - recused

35
36
37 ITEM 4 Proposal: Conditional Use/Shoreland Zoning: Nonconforming structure replacement &
38 30% expansion Action: Final Ruling Owner: Robert & Debra Stack Location: 43 Randall Ave.,
39 (323-8-10); Zoning: R3 & Shoreland RA

40
41 This proposal for a Nonconforming structure replacement & 30% expansion was conditionally
42 determined as complete back in November. The condition of the determination was for the HAT to be
43 identified on the plan. The public hearing was held in December. One general question about
44 nonconformance was asked at the public hearing and staff answered the individuals question after the
45 meeting. Since this was last in front of the board, the applicant addressed several items from the previous
46 memo:

1 Basement/crawlspace area measurement discrepancy between assessor card and applicant
2 calculations.

3 THE CALCULATIONS PROVIDED WERE COMPLETED ON SITE WITH WHAT IS
4 EXISTING

5 Proposed structure front porch stairs appear to go into the front setback and outside of current
6 structure footprint. For the stairs that appeared to require a variance These STAIRS REMOVED
7 FROM PLAN

8 Requirement to prevent surface drainage from entering waterway. EXISTING VEGETATION
9 BETWEEN STRUCTURE AND MARSH TO REMAIN. DRIVEWAY TO BE LOCATED IN
10 SAME LOCATION.

11
12 The applicant met with planning staff at the beginning of January to discuss this proposal. We
13 reviewed expansion requirements with the applicant. Expansions, b. allows for replacement
14 foundations to not be included as expansions of the structure, if it meets the expansion
15 requirements, and if the foundation does not cause the structure to be elevated by more than three
16 additional feet. The Base Flood Elevation (BFE) requires this to be elevated by more than three
17 feet. It seems our current shoreland zoning ordinance doesn't take these increased BFEs into
18 account, by allowing only 3 feet of elevated foundation to not be counted into the expansion. The
19 height of the structure is still limited by the maximum height of 35'. For these reasons, and as
20 discussed with the applicant, staff is comfortable applying this to this proposal, by excluding the
21 volume and floor area from the first three feet above grade of the new structure foundation from
22 these calculations. There were also several other items that needed to be resolved before final
23 approval could be granted and these are highlighted below:

24
25 Need updated calculations meeting expansion requirements – updated calculations have been
26 submitted. For the proposed structure the basement and garage unfinished floor areas were
27 omitted, as mentioned above. For the proposed basement/garage volume only three feet of this
28 area was used in the submitted volume calculation. Based on our discussion with the applicant
29 and interpretation of the ordinance, only the first three feet could be excluded from the expansion
30 calculation. It looks like 5', (8' - 3' = 5'), instead of the 3' measure should have been used for
31 the basement/garage. Adding this 6,615 cu/ft to the total proposed volume added up to 23,823
32 cu/ft and is less than the 36,890 cu/ft total volume allowed. These calculations will need to be
33 updated to reflect this and submittal should be a condition of approval.

34
35 2. Identify HAT on plan – we received an updated site plan. Note number 2 identifies the HAT
36 line information for 43 Randall Ave “This parcel is wholly encompassed within 100 feet of the
37 highest annual tide.” This appears to satisfy the condition

38
39 3. Revise architectural drawings showing height meeting shoreland zoning definition
40 UPDATED DRAWING SHOWING 34' ridge height submitted after writing of memo to
41 satisfaction of planning staff.

42 Submit a substantial improvement/new development flood hazard application
43 Although required for building permit, should be included as condition of approval.

44
45
46

1
2 **RECOMMENDATIONS:**

3 Staff recommends this Nonconforming structure replacement & 30% expansion be conditionally
4 approved. Based on previous comments from Fire Chief Fred LaMontagne this proposal will require fire
5 sprinkling.
6
7

8 Mr. Binette with NCS on behalf of the Stacks came forward and advised Jim Bernard, the builder was
9 also present. Michael covered any conflicts. New structure pulling back from original setback and much
10 smaller than original footprint. Bringing the back in to meet the HAT requirement. Any storm water will
11 be addressed by this. Driveway and garage will remain the same. All parking standards addressed. We are
12 working with staff to stay within the 30% calculations and other conditions. The HAT line is
13 encompassed and a new site plan was submitted. Anything else that needs to be done will be taken care of
14 with the fire chief and permits. Raising new structure to defeat any flood hazard issues.
15

16 Chris corrected that it is not a smaller house, it is a smaller footprint.
17
18

19 **Motion by Chris** I will make a motion to conditionally approve the application for a Conditional
20 Use Shoreland Zoning nonconforming structure removal, replacement, and 30% expansion
21 located at 43 Randall Avenue, MBL 323-8-10, located in the R3 zoning district & Shoreland RA
22 zone with the following conditions:
23

24 Update calculations to show proposed structure is not greater than a 30% expansion as outlined
25 in Sec. 78-1181. - Nonconformance.

26 Submit a substantial improvement/new development flood hazard application.

27 Update plans to reflect sprinkling requirement and submit construction drawings to Fire
28 Department for review.
29

30 2nd by Win
31

32 **Vote:**
33

34 Chris Hitchcock: Yes

35 Win Winch: Yes

36 Robin Dube: Yes

37 Vice Chair Walker: Yes
38
39

40 **ITEM 5 Proposal: Conditional Use/Shoreland Zoning: Nonconforming structure 30% expansion**
41 **Action: Determination of Completeness; Schedule Public Hearing and Site Walk Owner: Irvin**
42 **and Cynthia Paradis Location: 7 Weymouth Ave., (324-11-4); Zoning: R3 & Shoreland RA**
43

44 Planner Hinderliter addressed the board. New shoreland zoning application. It is a little different
45 in that the proposal is to remove a portion of the structure and rebuild. They are also looking for
46 “less and not more”, going from a 2 family to a one family.
47

1 This proposal is for the removal, reconstruction and 30% expansion of a nonconforming
2 structure in the shoreland zone. The applicant proposed to remove a barn portion of the
3 structure, rebuild and add more living space. Current use is 2 family but will be converted to 1
4 family.

5 Overall this proposal looks good and it passes one of the biggest hurdles which is the 30% calcs.
6 The outstanding items are moving the structure away from the HAT to the greatest practical
7 extent and ensuring the proposed structure is not further encroaching into the HAT

8 To do this, the board needs to see a site plan showing the existing and proposed structures and
9 the distance they are from the HAT. There was an option to the applicant to wait, but the
10 applicant should have it all sorted out in time.

11 We recommend the Board determine complete with the condition that the applicant submit a site
12 plan showing existing and proposed structure location and existing and proposed structure
13 distance to the closest portion of the HAT area.

14 Also, schedule a public hearing for 11 March. A site walk is optional.

15
16 Irvin Paradis came forward with his wife and his contractor. The property on the survey is 75
17 feet across and 60 feet deep.

18 It consists of 2 units. The house and then a connector to a barn. The barn is 28 inches lower than
19 the main body of the house. He mentioned that he submitted a map with the application
20 electronically that shows the HAT extends quite a way down and almost all of it is within the
21 HAT. He believes that Jeffrey measured it on this computer and said they are 63 feet from the
22 HAT. Applicant constructed a diagram that's shows the entire property. We propose to remove
23 that portion built in 1890 and raise it 3 feet. The basement would need to be taken into
24 consideration with the volume. The topography of the land slopes, but at the lowest point 6.7 feet
25 above sea level. With the additional footage, the basement would have 7 feet. They want to make
26 the 2nd floor a full floor and not 1.5 stories. A porch was added at some point, but that would
27 become an extended area as well. DEP permit and permit by rule received.

28
29 Robin was curious as to where 7 Weymouth was located and the applicant explained and showed
30 her on the drawings.

31 Primary objective is to ultimately live on one floor. Said all bedrooms are in main house and on
32 the 2nd floor. As they re-do the "barn" they would use the first level as their master suite.

33
34 Motion by Win to determine application complete with the following condition- On or before
35 May 3rd 2021, the applicant shall submit a site plan showing existing and proposed structure
36 location and existing and proposed structure distance to the closest HAT area. Site Walk
37 scheduled for March 4th at 5:30 PM. Public Hearing will be scheduled for March 11th at 6:30
38 P.M.

39
40 2nd by Robin

41
42 Chris Hitchcock: Yes

43 Win Winch: Yes

44 Robin Dube: Yes

45 Vice Chair Walker: Yes

46

1 ITEM 6 Proposal: Ordinance Amendments: Amend Ch. 78 ordinances to allow “Artist Studio –
2 Boutique Tattoo” in the NC3 District Action: Review Draft Ordinance; Schedule Public Hearing
3 Applicant: Joseph Voccia
4

5 Assistant Planner Foster addressed the board. The applicant Joey Voccia came to planning staff
6 with what we saw as an interesting concept, an idea to create a new type of tattoo shop. Although
7 we helped with this proposed ordinance amendment, this is his proposal.
8

9 His idea is to create a specialty tattoo shop use that has an artist gallery and retail components.
10 This didn’t seem to fit in with our traditional Tattoo Parlor definition, needed to meet the
11 requirements of the NC-3 District, and needed to be added as a new use. After discussions with
12 the applicant and hearing his ideas we thought adding a new Conditional Use with specific “good
13 neighbor” performance standards would be a good approach for this. This new ordinance would:

- 14 1. Create a new land use for *Artist Studio – Boutique Tattoo*
- 15 2. Allow the *Artist Studio – Boutique Tattoo* use only in the NC-3 District
- 16 3. Outline specific performance standards related to this new conditional use
17

18 **Create a new land use for Artist Studio – Boutique Tattoo, proposed definition below:**

19 Artist studio – Boutique Tattoo means a business or commercial establishment which provides
20 no more than two working spaces, one of which will be occupied by the business
21 owner/operator, for artists to perform tattooing and body piercing, and shall include facilities for
22 artist gallery and retail sales.
23

24 The way this proposed conditional use is defined limits it in several ways making it different
25 than a traditional Tattoo Parlor:

26 It is limited to no more than two working spaces

27 One space must be occupied by the business owner/operator

28 It shall include facilities for artist gallery and retail sales, meaning that along with no more than
29 two working spaces for tattooing and body piercing, an artist gallery and retail sales are required
30 components. NOTE: (Artist gallery isn’t defined in our ordinance. Does the PB think this needs
31 to be defined for clarity?)

32 The Applicability statement limits this Artist Studio – Boutique Tattoo use by allowing only one
33 in the NC-3 district

34 Allow the Artist Studio – Boutique Tattoo use only in the NC-3 District

35 This will be added as a Conditional Use and only one Artist Studio – Boutique Tattoo would be
36 allowed in the district. This limits the amount of this type of use in the relatively small
37 neighborhood commercial district 3.

38 Other performance standards that would apply would be the nc-3 standards such as building
39 design and scale form. Changes to facade would apply. Parking standards would apply. Where
40 the town has established on-street parking on public streets within the neighborhood commercial
41 districts 1, 2, and 3, new development of nonresidential properties fronting such facilities are
42 exempt. Assistant planner explained where the NC-3 district was. The concern of the chair was
43 parking but Robin advised that on street parking was allowed, so they would not need parking.

44 The applicant came forward to let board know he lives right next door to proposed site and has
45 parking available as well.

1 The property is vacant and he wants to improve the look of the property to improve the
2 neighborhood look. Robin and Win discussed how this area used to be a very busy area for
3 businesses.

4 Robin asked applicant to explain more about what boutique is. He said it would be more custom
5 type of studio. He said it is hard to explain how it would be different; just that it would be more
6 of a quiet gallery setting. She went on to ask about the retail. He said t-shirts would be of artwork
7 on clothing.

8 Chair asked about public hearing. Michael said the part he had not had a chance to discuss yet
9 was about the specific performance standards related to the new amendment proposal.

10 It was also asked if this was too close to a spot that served alcohol and applicant said it is close,
11 but it is far enough away.

12 Robin asked if he really thought he would get enough foot traffic and the applicant said he
13 definitely does, he can see them walking by since he lives there.

14 Michael said if PB agrees with the proposed performance standards, one question is if “artist
15 studio” needs to be defined.

16 Asked if we can add a definition before the next meeting.

17 Robin asked the planner if just selling t-shirts if they would really need a separate business
18 license. The approach was to create a specialized category since a typically tattoo studio would
19 not work here. They want to see art work, t shirts, you can’t just be a tattoo parlor for this
20 particular use.

21 The board agrees they need a definition. According to chair; a tattoo studio is a tattoo studio and
22 he feels the neighbors will see it that way as well.

23 The applicant would have to be prepared to address this. The applicant said there are many
24 different kinds, many of which he has been to and worked for.

25 Chair said there are different types of restaurants, but they are all restaurants to which the
26 applicant replied he wanted to be the high-end restaurant.

27 Chair asked Jeffrey what he wants the board to do.

28 Assistant Planner Foster addressed that he had not yet had a chance to go over them, but the
29 options are:

30 1. Continue to discuss as presented and use this as an introduction
31 2. Move forward with the ordinance by scheduling the Public Hearing
32
33

34 The board definitely said to get your definition first.

35 Robin said definition is a tattoo studio is a tattoo studio. Chair liked the idea of a boutique in this area, but
36 feels this is still just a tattoo studio.

37

38 Joey’s stepdad came forward and said Joey is very passionate about this. He also said he was a former
39 board member and said it is a conditional use, doesn’t; the applicant need to apply? Their thought was if
40 they could get it to a public hearing, let the public weigh in. It is a vacant spot.

41

42 Chair confirmed they would get clarification on studio and gallery.

1 Michael clarified about studio and gallery. Both need to be defined.

2
3 For example, someone can't have this as a gallery and not have art. Michael said his understanding is the
4 space would have both as defined.

5
6 If "art" is the tattoo, then that needs to be defined. Most of board thought art would be displayed and sold
7 and a tattoo parlor as well combined together as a boutique.

8 Planner Hinderliter said their intent. He said maybe the performance standards need to be more defined.
9

10 Applicant said in high end tattoo shops you will see lots of art hanging on the walls that may depict
11 tattoos, but the money to be made is in the tattoos and not the art. It is for a boutique look. Board asked
12 why he did not think the art would sell.

13
14 Robin wanted to recommend going to public hearing. Other board members disagreed without having a
15 definition. They feel if they can't explain to the public what this would be, it is not ready for a public
16 hearing.

17
18 Assistant Planner asked at what point would you be able to schedule a public hearing. Board does not
19 want to hold it up, but need the definitions before moving forward.

20
21 Lots of discussion and said when the East Grand tattoo was before the board previously, it brought
22 everyone out.

23
24 Chair recommended that staff go back and define before the next step.
25

26 **Other Business**

27
28
29 Planner Hinderliter said he had one item. He advised he has been working hard on the marijuana
30 ordinance. He gave information on the next zoom meeting in case anyone wants to watch or participate
31 since it would be coming up.
32

33 **Good and Welfare:**

34
35 Thank you from chair for all the hard work tonight.
36 Win said the face shields make it very difficult to hear.
37

38 39 **ADJOURNMENT: 9:10 PM (approximately)**

40
41 *I, Jeffrey Hinderliter, Town Planner of the Town of Old Orchard Beach, do hereby certify that the*
42 *foregoing document consisting of Fifteen (15) pages is a true copy of the original minutes of the Planning*
43 *Board Meeting of February 11, 2021.*
44

45
46 X _____

47 Jeffrey Hinderliter
48
49
50

**PUBLIC HEARING
LETTERS**

PUBLIC HEARING 1 –

CONTRACT ZONE

BAY VIEW ESTATES

Donna Richard

From: Randall Mullin <randmullin@aol.com>
Sent: Wednesday, February 10, 2021 12:34 PM
To: Michael Foster
Subject: Proposed Zoning Changes to 211 East Grand Ave.

*****EXTERNAL*****

This e-mail originated from outside of the Town of Old Orchard Beach E-mail System. Do Not click links or open attachments unless you recognize the sender address and know the content is safe. If in doubt, please use an alternate method to the individual who claims to be sending the email.

We have received and reviewed the proposed zoning changes to 211 East Grand Avenue by Estates at Bay View, LLC (EBV).

In their proposal, EBV proposes to re-locate the existing historic structure. However, the footprint of the building used in the Conceptual Lot Division diagram does not reflect the existing structure thereby modifying the architectural characteristics of the historic building.

Further, EBV is requesting subdividing the property into 4 separate lots that do not allow for proper:

- a) lot size,
 - b) road frontage,
 - c) shore frontage, and
 - d) minimum width of right of way
- as required by the standards for the Residential Beachfront District (RBD).

We therefore request that the proposed Contract Zone Agreement be rejected as is. And, that the OOB Planning Board suggest that if EBV wants, they can re-submit a modified proposal that:

- a) preserves the existing historic structure;
- b) reflects the number of subdivisions that meet all of the required standards of the RBD;
- and
- c) include an environmental review which delineates the impact of the proposal on the beach.

Respectfully submitted from two full time residents of the town,

Florian J. Daniels & Randall S. Mullin
215 East Grand Avenue, units 408 & 608

Donna Richard

From: Dawn Piccolo <dmp081760@yahoo.com>
Sent: Thursday, February 11, 2021 11:40 AM
To: Michael Foster
Cc: Dawn Piccolo; Raymond Crepeau; Dave Middleton
Subject: Diplomat Condominium Association - Concerned About and Opposed to Contract Zone proposal for 211 East Grand Ave

*****EXTERNAL*****

This e-mail originated from outside of the Town of Old Orchard Beach E-mail System. **Do Not** click links or open attachments unless you recognize the sender address and know the content is safe. If in doubt, please use an alternate method to the individual who claims to be sending the email.

Dear Mr. Foster,

I am writing on behalf of the Diplomat Condominium Association located at 215 East Grand Ave, Old Orchard Beach. We are an Association of 55 owners and a 7 member Board of Directors.

We (Diplomat Condominium Association) are opposed the the Contract Zone proposal on the agenda this evening for the 211 East Grand Ave project.

We have been contacted by many of our 55 owners who have shared their individual concerns. Our Board has unanimously voted that we are in full agreement with the issues and challenges stated in letter submitted by Dennis Wheeler, on behalf of Margaret Johnson.

Please note that while there are many concerns about the project as proposed, the Diplomat Association is especially concerned about parking issues resulting from the supposed public access to the beach and are concerned that the public will be parking in the Diplomat's lot, or dropping off pedestrians on East Grand Ave., causing traffic and safety concerns in front of our property.

The Diplomat Condominium Association is not opposed to reasonable development of the 211 East Grand Ave parcel, but we ask that it be done in alignment with the town's comprehensive plan for this section of town.

Please share our email communication with the Planning Board and have it read this evening at the meeting. We will be participating virtually, but due to COVID issues are not comfortable attending in person.

Respectfully Submitted,
Dawn Piccolo, Board Secretary
Diplomat Condominium Association

CC:
Ray Crepeau, Board President
Dave Middleton, Property Manager

Donna Richard

From: Ron Lebel <ronlebel0813@outlook.com>
Sent: Wednesday, February 10, 2021 3:42 PM
To: Michael Foster
Cc: billjay13@hotmail.com; Joanne Lebel
Subject: FW: Estates at Bay View, LLC
Attachments: Estates at Bay View copies.pdf

*****EXTERNAL*****

This e-mail originated from outside of the Town of Old Orchard Beach E-mail System. **Do Not** click links or open attachments unless you recognize the sender address and know the content is safe. If in doubt, please use an alternate method to the individual who claims to be sending the email.

Dear Mr. Foster:

As you know, I am an owner of real estate at 207 East Grand Avenue, Unit C-6, which abuts 211 East Grand Avenue and I write to offer written testimony in opposition to the contract zoning application of Estates at Bay View, LLC. I ask that this testimony be made part of the record before the Planning Board at the February 11, 2021 public hearing. I attach documents filed with the Maine Secretary of State by the applicant. I have reviewed all of the documents and materials filed by the applicant in support of its application. I conclude that the applicant has FAILED to provide adequate evidence of its right, title and interest in the subject property and has also failed to file adequate evidence of Timothy Swenson's right and authority to act on behalf of the applicant.

My reasons are as follows:

1. The purchase agreement filed by the applicant records Timothy Swenson as the purchaser, not Estates at Bay View, LLC. The latter is the applicant. Although the purchase agreement gives Mr. Swenson the right to assign his rights under the contract, there is NO evidence he has done so. Therefore, there is NO evidence that the applicant, Estates at Bay View, LLC, has ANY right, title or interest in the subject premises, as required by the ordinance.
2. Further, there is no evidence that Mr. Swenson has the right or authority to act for or bind Estates at Bay View, LLC. The records of the Secretary of State demonstrate that Mr. Swenson is only one of two members (owners) of that LLC. There is no evidence that he is a controlling owner or manager. There is no evidence that he has been authorized by the other owner of the LLC to file this application. The Town has not been supplied with the operating Agreement of the LLC or any other evidence that Mr. Swenson is authorized to act on its behalf or bind it to any contract.
3. Third, the applicant has not produced any evidence that it has the technical or financial capacity to carry out and complete the project as proposed, in violation of the ordinance.

I also object to the application on the following grounds:

- a. The application will create substandard lots and private ways in violation of relevant provisions of the zoning ordinance.
- b. The proposal for public access from East Grand Avenue to the beach, in an area where on street parking is prohibited and no other public parking exists, will have an adverse impact on neighboring properties, which have private parking areas not open to the public but also not fenced from the public. This will inevitably invite trespass and require neighboring properties to erect fences, gates and other means to protect those properties from members of the public who park on those properties and use the newly created public beach access. Grand Atlantic and the Diplomat will be adversely affected by this proposal, which creates public beach access where public parking is prohibited.
- c. The applicant alleges that he will preserve the existing residence and thus protect an historical structure. But he has furnished no evidence that the existing dwelling is listed on any national, state or local

registry of historic structures. Historic buildings which have been identified as worthy of protection are registered.

- d. There is NO provision in the proposed contract that will limit or restrict the proposed dwellings to single family residential use. Under the contract as proposed, the existing dwelling can be converted to any use permitted by the ordinance and the other newly created lots can be developed for any use permitted in the zone. The Town will know it has permitted the creation of substandard lots. It will NOT know how those lots will be developed or to what use they will be put.

I appreciate very much the Town's consideration of my testimony and urge that the Board and Council reject the application.

Sincerely,
Ronald P. Lebel

Sent: Monday, February 8, 2021 2:37 PM

Subject: FW: Estates at Bay View, LLC

Sent from [Mail](#) for Windows 10

From: [Lavoie, Lisa J.](#)

Sent: Friday, February 5, 2021 8:58 AM

To: [Ron Lebel](#)

Subject: Estates at Bay View, LLC

Here you go.

As soon as I receive a receipt from SOS I will let you know but the cost will be \$6.00

LISA J. LAVOIE
LEGAL ASSISTANT TO AMY DIETERICH
SKELTON, TAINTOR & ABBOTT
ATTORNEYS AT LAW
95 MAIN STREET
AUBURN, ME 04210
P: 207.784-3200
F: 207.784.3345
Direct: 207.241-3027
www.sta-law.com

To address the COVID-19 situation, and to ensure the health and safety of our employees and the public, we have equipped all employees of Skelton Taintor & Abbott to work remotely to ensure that all of your legal needs are met. Our physical offices are now open to visitors and clients by appointment only. Please contact us with any questions as we have the technological resources in place to ensure that your case will remain on track and moving forward.



Attorneys at Law

DAVID J. JONES
F. BRUCE SLEEPER
LESLIE E. LOWRY III
MICHAEL J. QUINLAN
NATALIE L. BURNS
SALLY J. DAGGETT
ROY T. PIERCE
BRENDAN P. RIELLY
NICHOLAS J. MORRILL

MARK A. BOWER
CHARLES M. KATZ-LEAVY
ALYSSA C. TIBBETTS
JEFFREY B. HERBERT
ERICA M. JOHANSON
TUDOR N. GOLDSMITH
KATHERINE C. BAILEY
BENJAMIN T. MCCALL
SHARRA L. INGLIS

TEN FREE STREET
P.O. BOX 4510
PORTLAND, MAINE 04112-4510
(207) 775-7271 (Phone)
(207) 775-7935 (Fax)

www.jbgh.com

Of Counsel

JOSEPH G. CARLEYON, JR.
LAWRENCE C. CLOUGH
KENNETH M. COLE III
PATRICIA M. DUNN
FRANK H. FRYE
B. LEE IVY
DEBORAH M. MANN
NICHOLAS S. NADZO
RICHARD H. SPENCER, JR.

YORK COUNTY
OFFICE

11 MAIN STREET, SUITE 4
KENNEBUNK, MAINE 04043
(207) 985-4676 (Phone)
(207) 985-4933 (Fax)

February 10, 2021

VIA EMAIL [mfoster@oobmaine.com]

Town of Old Orchard Beach
Attn: Planner Michael Foster
1 Portland Avenue
Old Orchard Beach

Re: Proposed Contract Zoning Agreement – 211 East Grand Avenue

Dear Mr. Foster:

This office represents the Grand Atlantic Condominium Association (the "Association"). The Association consists of the owners of forty-five (45) units at the Grand Atlantic Condominium, which is located at 207 East Grand Avenue in Old Orchard Beach. The condominium's property is located adjacent to 211 East Grand Avenue, the subject of a proposed contract zoning agreement ("CZA") submitted by Estates at Bay View, LLC that the Old Orchard Beach Planning Board will be considering at its February 11, 2021 meeting.

The proposed redevelopment of 211 East Grand Avenue creates a number of risks to the Grand Atlantic property. For example, the creation of new impermeable surface, particularly given the reduced setbacks proposed by the CZA, could create significant stormwater management issues that if left untreated could degrade or destroy the condominium's grounds and buildings. The construction of additional buildings of up to thirty-five (35) feet in height could also materially detract from the views currently enjoyed by Association members if such buildings are sited improperly.

As such, the Association requests that the Planning Board's consideration of the proposed CZA, and any subsequent subdivision application submitted by the applicant, take into account the potential adverse impacts that this redevelopment could create. Specifically, the Association is requesting that the Board require the applicant to submit a stormwater drainage plan and a view shed analysis for the condominium's property, prior to final approval of the CZA or the resulting subdivision. Doing so will help to mitigate any negative impacts that the redevelopment may have on the Grand Atlantic property, and will greatly assuage the Association's concerns.

~ Over 60 Years of Service ~

Jensen Baird
Gardner Henry

Town of Old Orchard
February 11, 2021
Page 2

Thank you for your consideration of the Association's perspective in this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Benjamin T. McCall". The signature is fluid and cursive, with the first name "Benjamin" being the most prominent.

Benjamin T. McCall

BTM/gw

cc: Keith Kennedy, Grand Atlantic Condominium Association
Alan Baran, Dirigo Property Management

DENNIS C. KEELER

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

P 207.791.1331
F 207.791.1350
dkeeler@pierceatwood.com
pierceatwood.com

Admitted In: CO, MA, ME, NH

VIA EMAIL

February 17, 2021

Michael Foster, Assistant Town Planner
Town of Old Orchard Beach
1 Portland Ave.
Old Orchard Beach, ME 04064

Re: Contract Zoning Application: Establish a Contract Zone, named Contract Zone-3, in accordance with Town of Old Orchard Beach Code of Ordinances Chapter 78, Article IX (Contract Zoning) for the property located at 211 East Grand Ave., MBL: 202-2-2 (the "Property"). The purpose of the Contract Zone is to allow the establishment of a 4-lot subdivision for single-family dwelling use (the "Contract Zone").

Dear Mr. Foster:

This firm represents Margaret Johnson, an abutting property owner to the proposed Contract Zone who is opposed to the approval of this contract zone application for the reasons set forth herein. This letter addresses, on my client's behalf, the reasons why the Town Council must reject the Contract Zone and why the Planning Board must make a negative recommendation on this application. Please forward this letter to the Planning Board and read this letter into the record at the public hearing on the Contract Zone. My client is not against the reasonable development of the Property, but it must comply with the rules.

- A. A Contract Zone is an extraordinary exception to the Town's Zoning and it should only be granted when it strictly complies with the requirements of the Town's Ordinance and clearly advances the Town's Comprehensive Plan and bestows meaningful benefits for the Town that would not otherwise be available. The proposed Contract Zone should be denied as it does not satisfy the requirements of Section 78-2136 of the Town of Old Orchard Beach's Zoning Ordinance because (1) it is not consistent with Comprehensive Plan and (2) conditions are not sufficient to achieve the purposes described in Section 78-2131.**

1. The Applicant's bases for compliance with the Comprehensive Plan, and the supposed benefits to the Town, are (a) they will convey a 4' pedestrian ROW from E. Grand Avenue to the Beach; (b) the existing dwelling will be moved behind the dune line and sections of the dunes will be restored; and (c) they will preserve a historic dwelling. These points are not evidence of compliance with the Comprehensive Plan, nor are they meaningful benefits to the Town. In fact, they may create undesirable results and negative impact.

(a) Access: While the plan provides for a 4' pedestrian ROW from E. Grand Avenue to the Beach, there is no provision for public parking. There is no on-street parking permitted on E. Grand Avenue. Where is the public to park? Inevitably, they will end up parking on neighboring properties or in private parking areas creating other issues. Without a place to park, the ROW is an illusory benefit. It will be available only to people who are dropped off on the road (creating safety issues) and will invariably result in parking issues.

(b) Dune Restoration: While the plan calls for a small portion of the dunes to be restored, the Applicant does not need this Contract Zone to undertake that work. Based on the submitted plan, those areas could be restored under the current configuration. The Contract Zone does not provide this benefit.

(c) Preservation of Historic Dwelling: The applicant further asserts that retaining the existing structure is an important benefit pursuant to the policies set forth in the Town's Comprehensive Plan. Although Policies A.40 and A.41 concern the preservation of historic structures, the Comprehensive Plan is clear that the process begins with the identification of additional historical structures (aside from certain enumerated structures) to be preserved. The Contract Zone application provides nothing to indicate that the existing residential structure on the property is actually a structure that has been identified as deserving of preservation for historical reasons. Further, it is questionable whether relocating a structure and stripping it of decking and porches, as described by the applicant, constitutes preservation of that structure in any event. In addition, the structure is being turned and shoehorned into the corner so as to accommodate additional development. Moreover, the grand entrance to the home is being destroyed. Long established fire pine trees will be cut down. It is the long and graceful entranceway to the house, with its indigenous trees and landscaping and the full turn around that adds to the estate feel of the Property. All of that will be lost in this development. Accordingly, the purported preservation of the existing structure does not constitute a benefit accruing to the Town in accordance with the Comprehensive Plan. In fact, the proposed development destroys a landmark and elegant waterfront estate. They

may have the right to take these actions, but that does not make them a benefit to the Town.

(d) Extensive Deviation from Underlying Zone. The proposed Contract Zone does not further the goals of the Town's Comprehensive Plan, but instead provides for an extreme deviation from the underlying standards for the private right-of-way. The Applicant is requesting a 64% reduction in the width of the private right of way, a reduction of up to 30% of road frontage (even assuming that the 18' wide travelway even qualifies as a "road"); a reduction in the minimum 10,000 square feet of net developable area by roughly 15% (adeptly sidestepped by having the paved road count as "developable area" in violation for the Zoning Ordinance); and a reduction of minimum shore frontage by 50% in one case and 22% in another. On top of that, the Contract Zone would also allow the reduced frontage would be satisfied by a private right-of-way that is inadequate for the purported use of the Property as single family dwelling lots, much less the high intensity multifamily development that would be permitted by the Contract Zone.

2. The Conditions of the proposed Contract Zone are not sufficient to achieve purposes of Section 78-2131.

The Applicant raises the specter that if he does not get the Contract Zone, he could develop a more dense project of up to 15 dwelling units on the parcel and then offers to protect the Town from his potential high-density development by entering into this Contract Zone "because it will have a lower density". It is far from clear that he would be able to develop up to 15 dwelling units on the Property, but even if you accept that argument, the conditions in the proposed Contract Zone are not sufficient to protect the Town and the neighbors from a high density development he claims to be giving up.

There is nothing in the proposed Contract Zone that would restrict high density multifamily development. In fact, the economics of the purchase of the Property and the cost of relocating of the existing large residential structure suggest that a peaceful quiet residential neighborhood of four families on a dead end street will not be the ultimate outcome. Such a significant investment will require that the Property produce much more income than could be produced by the sale of single family residential lots. Each structure could be subjected to a condominium regime and provide for multiple dwelling units. The Contract Zone would do nothing to prevent high intensity short term rental use or single-night Airbnb type rentals or even scores of people from renting any of the improvements for lavish parties. In light of that deficiency, any statements regarding the hypothetical reduction in future density for this already-developed parcel is speculative and cannot be claimed as a benefit to the Town resulting from the Contract Zone.

Section 78-2131 also provides that a Contract Zone shall contain conditions to protect the surrounding property owners and the neighborhood. There is nothing in the proposed Contract Zone to address these goals.

B. In addition to the fact that the proposed Contract Zone does not satisfy the requirements for approval under Article IX of Chapter 78 of the Town Ordinances, the proposal suffers from additional deficiencies:

1. The Minimum Shore Frontage in the Contract Zone Violates the Mandatory Shoreland Zoning Act and needs to be approved by the Commissioner of the Maine DEP.

As noted in the Application, the Property is located in the Residential Beachfront District (“RBD”) with a portion of the Property within the Shoreland Residential Activity Subdistrict (“RA”). Pursuant to the Maine Mandatory Shoreland Zoning Act, the minimum shore frontage per dwelling unit that a municipality may adopt in a zoning ordinance is 150 feet.¹ Accordingly, 150 feet per dwelling unit is the minimum shore frontage provided by the Town’s shoreland zoning ordinance for the RA subdistrict.² Further, no ordinance or amendment concerning the shoreland zone is effective without the approval of the Commissioner of the Maine Department of Environmental Protection (the “DEP Commissioner”).³ No deviation below the minimum guidelines is permitted unless the municipality “determines that special local conditions within portions of the shoreland zone require a different set of standards from those in the minimum guidelines,” which determination the DEP Commissioner must also review and approve together with the proposed ordinance.⁴

The applicant’s proposal to reduce the minimum shore frontage to less than 150 feet per dwelling unit would violate the minimum shore frontage guideline in the shoreland zone. The applicant has offered no information suggesting that a deviation below the minimum is required by special local conditions and no information suggesting that the proposed Contract Zone is acceptable to or has been approved by the DEP Commissioner.

2. Even with the significant variances requested from the underlying zone, the Contract Zone would still not comply with other provisions of the Zoning Ordinance.

(a) **Road Requirements.** Under Chapter 74 of the Zoning Ordinance the private right of way is required to be 50’ wide. As noted above, the applicant has requested that the right of way be reduced to 18 feet, a 64% reduction! The Zoning Ordinance also requires the paved area to be 20’ wide. While not specifically requested,

¹ 38 M.R.S. § 438-A(1), (2); 06-096 C.M.R. ch. 1000, § 15(A)(1)(a)(i).

² Old Orchard Beach, Me., Code of Ordinances § 78-1185.

³ 38 M.R.S. §§ 361-A(1-E), 438-A(3).

⁴ 38 M.R.S. § 438-A(2)-(3).

{ }
12810077.3

presumably the applicant is requesting a waiver of this requirement as well. The Zoning Ordinance also requires 5' wide sidewalks and 3' wide shoulders. They are not depicted on the plan and presumably the Applicant is requesting a waiver of these requirements. Lastly, the Zoning Ordinance requires that dead end road have a cul-de-sac with a 50 foot edge of pavement and 65 feet to the property line. The proposed Contract Zone does not satisfy this requirement. All of these road requirements are imposed for bona fide safety reasons, such as allowing fire trucks and other emergency vehicles to get into the property, turn around and are designed to be wide enough to allow one truck to pass even if another truck is stuck or stalled, among others. None of these safety concerns are satisfied when the right of way is only 18 feet wide. Instead of the required 20' of pavement, 6' feet of shoulders and an additional 24' feet of ROW for emergency access, the Applicant proposes a total passageway of 18 feet. That is unsafe and unacceptable.

(b) Minimum Lot Frontage. The RBD requires a minimum Lot frontage of 100 feet. While the Lot frontage is not clearly marked on the plan, it appears that Lot 3 at least, does not satisfy that requirement.

(c) Front Setback. The Front Setback is "satisfied" only because the Applicant includes 9 feet under the private right of way as part of the set back. If you eliminate the area under the pavement, the lots would not satisfy the front set back requirement. This would be much less of an issue if the ROW was 50' wide, but with 18', this effectively eviscerates the front set back requirement.

(d) Lot 4 Setback: Given that the existing house is in excess of 35 feet in height, under the Zoning ordinance it requires a 20' front and side setback and a 25' rear setback. This does not appear to be satisfied, based on the submitted plan. While the height of the existing structure is grandfathered, the new lot is not. This Contract Zone and the subdivision approval to follow are creating new lots, which are not grandfathered. The new lots will need to satisfy the required setback standards of the ordinance. Lot 4 does not appear to satisfy those requirements.

C. The Contract Zone Constitutes Illegal Spot Zoning

The Contract Zone singles out this parcel for rezoning that would allow a four lot subdivision that would otherwise be impossible due to reasonable road design and frontage requirements in the underlying RBD and RA districts. The rezoned Property would permit intense high density residential development and would depend on an access way that would be severely deficient and unsafe and creates a heavy burden on the Property, on abutting property owners, the neighborhood and the Town. In return, the applicant offers no real benefits to the

Michael Foster, Assistant Town Planner
February 17, 2021
Page 6

Town, nor any meaningful conditions on the use and development of the Property in accordance with the Comprehensive Plan or the enumerated purposes of the Contract Zoning ordinance. Accordingly, the approval of the Contract Zone would constitute illegal spot zoning that is being proposed to benefit a single parcel and land and a single developer, with no meaningful benefit to the Town.

As noted above, my client is not against responsible development of the Property, but the developer should be required to comply with provisions of the Town's ordinances that are in place for the safety and benefit of all residents of the Town. The rules of the game should not be changed to accommodate for a single developer trying to develop a single parcel of land. For all of the above reasons, the Planning Board should make a negative recommendation with respect to the Contract Zone application, and the Council should accordingly reject the adoption of the Contract Zone.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis C. Keeler", with a long horizontal flourish extending to the right.

Dennis C. Keeler

cc: William Johnson