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2  
3 OLD ORCHARD BEACH PLANNING BOARD  
4 Public Hearing & Regular Meeting MINUTES  
5 June 10, 2021 6:30 PM  
6 Town Hall Council Chambers  
7

8 *MINUTES MAY NOT BE TRANSCRIBED VERBTIM. SECTIONS MAY BE PARAPHRASED FOR CLARITY. A*  
9 *COMPLETE RECORDING MAY BE OBTAINED BY CONTACTING THE TOWN CLERK AT 207-934-4042 OR*  
10 [kmclaughlin@oobmaine.com](mailto:kmclaughlin@oobmaine.com)  
11

12  
13 CALL MEETING TO ORDER

14  
15 PLEDGE TO THE FLAG

16  
17 ROLL CALL

18 Marianne Hubert

19 Chris Hitchcock

20 Robin Dube

21 Vice Chair Walker

22 Chair Mailhot  
23

24  
25 Public Hearings

26 PH 1

27 Proposal: Minor Subdivision and Site Plan: 4-lot subdivision for single-family use

28 Applicant: Estates at Bay View, LLC

29 Location: 211 East Grand Ave., MBL: 202-2-2; Zoning: Proposed Contract Zone and Shoreland RA  
30

31 Comments:

- 32
- 33 • George Kerr 206 East Grand Avenue. George wanted to thank the Planning Board, Council, and  
34 Staff for their work. He did read the letter from Pierce Atwood. George stated that these 4  
35 homes will have very minimal effect in his neighborhood where he has lived since 1980, he has  
36 lived in that area for over 60 years, and that this proposal will have the least impact on the area.  
37 He further stated that the letter from Pierce Atwood mentions that the proposal violates a Town  
38 Ordinance of 78-1592; George believes that such is not applicable to this project. That was  
39 established for commercial downtown, for nonresidential. George further stated that what this  
40 project has done for that area is provide homeowners with beach access that they didn't have  
41 before. He thanked the planners and developer for providing the best project for an area that he  
42 lives in and supports.
  - 43 • Bill Johnson 213 East Grand Avenue. Bill stated that he is a neighbor and an abutter to the  
44 property that is being developed. He feels that the concerns previously raised have not been  
45 addressed. One of the examples is that there is supposed to be a 25 ft setback from an abutter's  
46 property and this property only has a 20 ft setback. He also said that re this property being  
47 grandfathered, he stated that the current ordinance states that if any nonconforming structure shall  
48 be moved, any distance and for any reason, then thereafter it has to conform to the regulations of  
49 the district to which it is being relocated. He also stated that the path to the beach is still in  
50 question, and there were safety concerns with that, specifically a safe means to drop off and park.
  - 51 • Jerry Icarat Grand Atlantic Condominiums. Jerry stated that at the walk through, he expressed  
52 his concern about their parking lot abutting the public access, and that if there were no fence or  
53 wall on the outside of the retaining wall, then people will be using their parking lot. He further

1 stated that Timothy Swenson (applicant) stated that there will be a fence on the right side of the  
2 walkway, but he does not see that on the current plan.

- 3 • Pierce Atwood (letter addressed to Assistant Town Planner Michael Foster, dated June 7, read at  
4 Public Hearing- See Pg 11).  
5 Closed Public Hearing at 6:46 PM  
6  
7

8 PH 2

9 Proposal: Major Subdivision: 20-lot cluster subdivision for single-family dwellings  
10 Owner: Timothy Swenson & Cary Seamans  
11 Location: Wild Dunes Way, Section C of Dunegrass (MBL: 105A-1-C); Zoning: PMUD  
12

13 Comments:

- 14  
15 • Larry Meade 6 Cherry Hills Road. He stated that he is supportive of the application, that the  
16 developers did a good job of meeting the standards of the ordinance. Particularly, he is very  
17 pleased about 2 of the elements that he anticipates will be going forward; one is re the golf cart  
18 paths connecting the 9<sup>th</sup> green to the 10<sup>th</sup> tee at Dune Grass and the other is the proposed  
19 pedestrian/bicycle connection at the subdivision.  
20 One thing that he would like to see become part of this proposal is that the developers put in  
21 curbing on both sides of the entryway on that side of Wild Dunes Way, both for safety and for  
22 stopping erosion.
- 23 • Heather Rice 6 Willow Avenue. She stated that she is an abutter to the site and her concern and  
24 her neighbors' concerns are re the wildlife in that area (and the associated beauty), and drainage  
25 issues.
- 26 • Julianne Eberl 53 Wild Dunes Way. She is the President of the condo association's Board, and  
27 her question from the Board is re the water pressure and how that is being addressed. She stated  
28 that they haven't gotten any information from Maine Water Company, and they don't know who  
29 is responsible for that information and the long range plan of the development. She indicated that  
30 the association had put in a PSI water booster 2 years ago, and they have just been notified that  
31 they need an additional PSI booster. She indicated that they are concerned not only about their  
32 own water pressure in their units, but also for fire prevention and emergency vehicles being able  
33 to access water. A question they have is if the water pressure that goes for fire and safety is on a  
34 separate mechanism from the water pressure that goes into their homes.
- 35 • Gordy & Celeste Murphy 2 Willow Avenue (email of June 9 addressed to Assistant Town  
36 Planner Michael Foster, read at Public Hearing-See Pg 11).  
37

38 Closed Public Hearing at 6:55 PM  
39  
40  
41

42 Regular Business

43 ITEM 1

44 Proposal: Minor Subdivision and Site Plan: 4-lot subdivision for single-family use  
45 Action: Discussion; Final Ruling  
46 Applicant: Estates at Bay View, LLC  
47 Location: 211 East Grand Ave., MBL: 202-2-2; Zoning: Proposed Contract Zone and Shoreland RA  
48

49 Town Planner Jeffrey Hinderliter updated the Board as follows:

50  
51 This subdivision and site plan proposal is associated with the recently proposed and approved Contract zone.  
52 At the March Planning Board meeting the Board approved the Contract zoning agreement.

1 On May 4, the Council approved that contract zoning agreement. This approval included the same language  
2 recommended by the Board, everything was pretty much that the Board reviewed and approved, and the only  
3 significant change was that a stronger enforcement mechanism was added to the agreement.  
4

5 The Contract zone agreement now has full Town approval; although, DEP must approve before it becomes  
6 official.

7 The Town submitted the Contract zone agreement to DEP. DEP response was the Town must apply for a  
8 special local condition. Why this special local condition is required is because shore frontage as defined by  
9 DEP does not actually meet what exists in the field. Both myself and the applicant's attorney have been in  
10 contact with DEP presenting our argument, but nonetheless we are applying for that special condition.  
11

12 Regarding the actual subdivision and site plan project, the Planning Board began a sketch review during the  
13 April meeting and determined the preliminary plan complete at the May meeting. Now we are reviewing the  
14 final plan.

15 During May, the Planning Board approved the preliminary plan with the condition the applicant address all  
16 outstanding Planning board, staff, department head, and Wright-Pierce comments. As usual, we find  
17 something else as we get closer and closer to the end goal. From the staff's perspective, this comes down to  
18 DEP's review and then trying to find some more definition with the beach access. In regards to the beach  
19 access, one of the primary concerns being that the access isn't being protected from people cutting across  
20 their lawn and all that. We discussed this with the applicant who revised the plan to show a fence in that area  
21 of concern.  
22

23 Tonight, the Board has the option to vote on final approval or wait until some of the outstanding issues are  
24 addressed. We had some good abutter comments, and what you have in front of you is a letter from the  
25 applicant's attorney, who has a different perspective on the setback question. The lot is in the shoreland zone,  
26 and the shoreland zone does have a separate nonconforming standard. Also, in the Contract zone ordinance,  
27 the introduction and purpose statement states that "occasionally variances don't work" and that's why  
28 contract zones are established. Setbacks in this plan have been represented throughout this project.  
29 We do believe there are some outstanding issues, and we are comfortable offering the Planning Board a  
30 couple of options. We do feel that if the Planning Board choose to approve the proposal, the 6 conditions are  
31 sufficient and strong enough to get those outstanding questions locked up.  
32

33 Chris McDonald, from BH2M, representing the applicant, then spoke, requesting final approval for the  
34 subdivision at 211 East Grand Avenue. Since last meeting, comment responses were provided on May 24 as  
35 well as was a revised set of plans that addressed such comments. Comments from Stephanie Hubbard at  
36 Wright-Pierce have been addressed and discussed, and a couple of her comments are for the Board's  
37 consideration. One of the questions existing is re the width of the trail, and another is re drainage between  
38 Lots 3 and 4 and Lots 1 and 2. Chris indicated the location of the stormwater runoff and where that will run  
39 into catch basins. Another question Stephanie had is on the low impact development standards for the  
40 project. Chris explained that with the net reduction of impervious area it is effectively a low impact  
41 development. Chris also stated that they had the opportunity to follow up with the Fire Department; one of the  
42 questions was re the width of the access road. Chris stated that the Fire Department was ok with the width of  
43 the access road being 18', and Chris also stated that each of the individual buildings will be sprinkled.  
44

45 Timothy Swenson then updated the Board re the access road and keeping people off the adjacent properties.  
46 He indicated on the revised drawing where the fence will be added, running the entire length of the property,  
47 so that people using the access road cannot go on the abutters' property.  
48

49 Chair Mailhot then asked the Board for any questions or comments. Vice Chair Walker inquired about a  
50 question that came up during the Site visit, which was what materials will be used for the right of way. Tim  
51 replied that they are proposing either concrete or asphalt. Vice Chair replied that he would prefer a porous  
52 material to allow the water to pass through. Tim replied that if that was what the Board requests, then that is  
53 what they will do.

1 Ms. Dube then asked of Town Planner Jeffrey Hinderliter if the only open item were re the DEP request.  
2 Jeffrey replied that there are a couple of questions remaining but feels that those will be addressed through  
3 those conditions.  
4 Chair Mailhot had additional questions and asked that the applicant respond: One of the questions was what  
5 type of material will be used for the fence; applicant Timothy Swenson replied that a wooden stockade fence  
6 will be used, custom made, with a beachy look. Top of fence is 8' w/ swoops in it. An additional question was  
7 about trash removal; it was discussed and determined that per HOA docs, the HOA will be responsible for  
8 maintenance of the right of way.  
9 Chair Mailhot then asked if the Board has a copy of the HOA docs; Timothy Swenson replied that a  
10 preliminary set was submitted. Town Planner Jeffrey Hinderliter then mentioned some laws that were coming  
11 down, and inquired as to whether by including those docs in the packet, would the Town then be responsible  
12 for enforcing what was included in those docs? Chair Mailhot then inquired about the short term rentals and  
13 if the HOA docs addressed that; Timothy Swenson replied yes, and that no daily rentals would be allowed but  
14 weekly rentals or more would be allowed. Chair Mailhot then expressed concerns re parking with rentals.  
15 Timothy Swenson replied that the people that live there may not rent, and that there will be No Parking signs  
16 added along the right of way. Chair Mailhot then inquired about the Contract zone language stating that the  
17 historic structure is going to be preserved, and stated that she would want to see something in their final  
18 approvals where there is a very specific condition about that home not being torn down. Chair Mailhot then  
19 referenced Wright Pierce's request for some final design information about the wall, that it is proposed to be  
20 completed by others; Timothy Swenson replied that BH2M is not engineering for a structural wall, that the  
21 engineering will be done by others. To add to the discussion re preservation, Town Planner Jeffrey  
22 Hinderliter then added that within the Contract zone agreement, we have the conditions of preservation as part  
23 of the agreement.  
24

25 Chair Mailhot then asked if the Board if they were ready to make a final ruling or if we needed additional  
26 information.

27 Ms. Hubert replied that she feels that there are too many outstanding issues and should delay final approval of  
28 this. Ms. Dube asked what outstanding issues were not yet addressed. Chair Mailhot then asked who pays for  
29 the special site condition permit with the DEP; Town Planner Jeffrey Hinderliter responded that he does not  
30 think there is any cost to it, there is no form for it, but the process is to create the argument why this special  
31 condition exists.

32 Town Planner Jeffrey Hinderliter reiterated to the Board that if a change were to be made to the building (and  
33 thus potentially changing the historic structure), such would at a minimum have to go before the Planning  
34 Board; he further recommended that such be added as a 7<sup>th</sup> Condition to strengthen that. Timothy Swenson  
35 asked what condition this would be – the Board advised the condition would be that language be added stating  
36 that the existing historic structure could not be torn down, not removed, etc., that the existing structure as  
37 proposed remains as it exists.

38 Ms. Dube made a motion to accept the proposal with the existing 7 conditions; there was no second. Ms.  
39 Hubert then made a motion that the Board delay approval until corrections and additional information be  
40 provided. Such a motion was determined to not be necessary. Chair Mailhot then requested that applicant  
41 come back once everything is wrapped up.  
42  
43

#### 44 ITEM 2

45 Proposal: Ordinance Amendments (NC3): Amend Ch. 78, Art.VI. Sec. 78-870 (b) (setbacks)  
46 Action: Review Draft Ordinances; Schedule Public Hearing  
47 Applicant: The Local LLC  
48  
49

50 Town Planner Jeffrey Hinderliter updated the Board as follows:

- 51 • This is an ordinance revision proposing to reduce the principal and accessory building/structure setbacks
- 52 for properties in the NC3 District
- 53 • The proposed front and side setback is 5', the proposed rear is 10'

- 1 • The NC3 District includes 9 parcels located at the Washington/Atlantic Ave and Central Park Ave
- 2 intersections
- 3 • Current property use includes apartment buildings, multifamily, restaurant, convenience store, club house
- 4 • Applicant is The Local LLC who approached the Planning office to discuss their options after they found
- 5 that an addition to their existing restaurant could not move forward due to a setback issue
- 6 • After considering the comp plan, property use, and existing building location we determined the district
- 7 setback reduction was a reasonable option
- 8 • At the May meeting the Planning Board determined more information was needed before a public hearing
- 9 is scheduled. Specifically, the Board requested that the applicant measure the building distance to
- 10 property lines for all properties within the NC3
- 11 • The applicant submitted the requested info
- 12 • The result is many of the existing building distances to front and side property lines do not meet current
- 13 or even the proposed setbacks. In fact, development is more clustered than staff's initial assessment
- 14 • Since the May meeting, department heads were briefed on the proposal. Overall, the comments
- 15 represented more concern than support. Some of the comments included the following:
- 16 \* Reducing the setbacks sets a bad precedent
- 17 \* Will this open the door to other ordinance amendment requests like this
- 18 \* If this moves forward and property begins to expand they will likely need sprinklers
- 19 \* Will this enable higher density
- 20 \* Potential to create parking issues
- 21 \* Potential to impact snow removal efforts
- 22 • We recommend the Planning Board schedule a public hearing for 8 July.

23  
24 Ms. Hubert then asked if the building setbacks of areas surrounding this area are being taken into account.  
25 Town Planner Jeffrey Hinderliter replied that yes, the setback requirements of those areas were being  
26 taken into account and such was the reason for the proposed rear setback being set at 10'. Ms. Hubert  
27 then asked what is the setback for those districts, and felt that the setbacks in this district should be the  
28 same as those of the abutting properties. Town Planner Jeffrey Hinderliter replied that the R-2 district has  
29 setbacks of rear at 20' and side yard setback is 15'. Ms. Hubert felt that the setbacks of abutting  
30 properties be the same. Chair Mailhot then asked that if there is no support for this, do we still need to do  
31 a public hearing? Town Planner Jeffrey Hinderliter felt that regardless of what the Board decides, perhaps  
32 the applicant should consider other options. Vice Chair Walker then asked if there was a waiting period  
33 after which the applicant can go back to the zoning board for a variance; Town Planner  
34 Jeffrey Hinderliter replied that the zoning board never issued a decision, but in terms of the variance  
35 request, that they would not be able to approve this.

36  
37  
38 **ITEM 3**

39 Proposal: Major Subdivision: 20-lot cluster subdivision for single-family dwellings  
40 Action: Discussion; Final Ruling  
41 Owner: Timothy Swenson & Cary Seamans  
42 Location: Wild Dunes Way, Section C of Dunegrass (MBL: 105A-1-C); Zoning: PMUD  
43

44 Assistant Town Planner Michael Foster indicated that for June there were no new application materials, and  
45 provided an update since the May meeting: the applicant did meet with staff and Wright Pierce to discuss sewer  
46 issues; more information is needed for the proposed connection. And the applicant did begin discussion with  
47 assessing to meet the addressing requirements.

48  
49 Bill Thompson, of BH2M Engineers then updated the Board: One of the questions from the site walk on June 3  
50 was re the buffer; he feels that the applicants will be able to maintain a significant and sufficient buffer for the  
51 neighbors. Another question was re the sanitary sewer. Bill replied that the applicant will be installing a low  
52 pressure force main serving all of the homes, and said that the parties are now in agreement that such could work.  
53 Bill commented about the design and grading for all of the lots, that the lots will be on a high point in grading so  
54 the lot development water would all come back to the road, into the collection system and into the pond, so that

1 they are significantly reducing the surface water. He added that there is now an existing 8” storm drain that will  
2 remain that is coming into our property, and we will be piping with field inlets and a 12” storm drain and will be  
3 bringing that water down to the street and into the existing system. Re the issue raised at the public hearing re  
4 curbing, the existing plan does allow for curbing coming out of the radiuses of the road, and a retaining wall may  
5 be considered to eliminate erosion. As far as the issue of water pressure, Bill replied that he has not yet heard any  
6 comments from the Fire Dept re water pressure problems. Assistant Town Planner Michael Foster did indicate  
7 that he had received a memo from the Fire Dept back in December stating that water pressure was one of the  
8 items to be verified, and that if pressure were not sufficient then sprinkling would be required.

9  
10  
11 ITEM 4

12 Proposal: Conditional Use: Child Care Facility  
13 Action: Determination of Completeness; Schedule Site Walk; Schedule Public Hearing  
14 Applicant: Phoebe Cram  
15 Location: 188 Portland Ave; MBL: 103-1-1; Zoning: RD  
16

17 Last month the Planning Board began review of this conditional use child care facility proposal. This proposal is  
18 for a child care facility to provide care for 8-9 children.  
19 The State licenses daycare facilities and approved the applicant to care for up to 12 children. This also needs local  
20 approval and sign off before the applicant can receive state licensure.  
21 We received a letter update from the applicant, Phoebe Cram, dated 28th May. From the letter and from  
22 conversations with Phoebe, the definition and classification differences between our local ordinance and the state  
23 rules, has made this a bit confusing for how many children she could apply to care for. I will provide more details  
24 in a minute on the number of children.  
25

26 At the June meeting there were a couple items that the Planning Board had asked about. This was for:

- 27
- 28 ○ requirements for private collection of solid waste for businesses
- 29 ○ child care facility distancing requirements
- 30 For distance to closest child care facility, the way the distancing is to be measured isn't
- 31 specified, but the closest daycare has closed based on the information received. The following
- 32 responses were in the applicant's letter to the Planning Board:

33 Waste Removal: *"We will either hire a trash removal service OR bring trash to the transfer station ourselves."*

34 The waste removal section of our ordinance requires a dumpster for businesses (the location of the dumpster  
35 should be identified):

36  
37 Child care facility distancing – *"4 Cardinal Way Daycare: The daycare at 4 Cardinal Way in Old Orchard Beach  
38 is no longer operating (closed)."*

39 Staff also received the below email 5/14/2021 from DHHS Childcare Licensing Specialist Catherine  
40 Paglio:

41 *Good Morning, 4 Cardinal Lane was a licensed home childcare provider, but just last week notified me  
42 that she was permanently closed. She is no longer providing childcare. Cathy*

43 Utilizing the Maine Licensed Child Care Search on the Child Care Choices website, staff verified the only  
44 licensed child care facility listed in OOB is located at 13 Harmon Ave, approx. 2 miles away. 4 Cardinal Ln is no  
45 longer listed.

46 Number of children to be cared for:

47 This proposal is for a child care facility to provide care for 8-9 children.

48 OOB ordinance identifies four types of *Child care facilities*:

49 *Day care facility, Family day care home, Group day care home, and Nursery school*

50 Based on our ordinance, a Family day care home is for the care of one to six children and Group day care home is  
51 for the care of seven to twelve children. The state Department of Health and Human Services who licenses  
52 daycares doesn't use the term "group daycare home" and they allow family daycare providers to care for up to 12  
53 children in a residence. Based on our ordinance, it appears this proposal would be classified as a Group day care

1 home. The issue with this is that a Group day care home “shall be permitted only on lots that fully comply with the  
2 minimum lot and frontage requirements of the zoning district within which they are located.” For this proposal  
3 this lot does not fully comply with those minimal lot and frontage requirements.  
4

5  
6 Parking

7 To provide care for 8-9 children, this would require 4 parking spaces total; 1 for each nonresident employee and  
8 one parking space for every four children. The applicant stated they can accommodate 8 cars.

9 Access

10 The applicant had planned to provide a turnaround while having the septic upgrade, but the required setbacks for  
11 installation of septic won’t allow for the turnaround that was originally planned. The applicant has been given  
12 ideas by the excavation and septic companies to have a “hammerhead” driveway design, but that entails having  
13 the town move a culvert so that could happen. The applicant has reached out to Public Works for more  
14 information.

15 Septic

16 The permit for septic has been approved by Codes and is being installed. Codes was going to hold back on issuing  
17 the permit until the Conditional Use was approved due to the sizing of the system to support the daycare. The  
18 permit was issued because there was an issue with the old system and it needed to be replaced.  
19

20 RECOMMENDATIONS JUNE 2021:

21 With Conditional Uses, a Site Walk can be scheduled at any time during review of the application. If scheduling a  
22 site walk this should be scheduled for 1<sup>st</sup> July 2021. Staff recommends a Site Walk be scheduled even if a  
23 determination of completeness isn’t made, to be able to review parking, the driveway access, and sight distances.  
24 Remember a determination of completeness is that the application contains all relevant information necessary to  
25 make a reasonable and informed decision, and is not denial or approval of the proposal. The 1<sup>st</sup> motion is for  
26 group day care home which doesn’t appear to be able to get approval based on the Rural District lot size  
27 requirements. The 2<sup>nd</sup> motion is for Family day care home determination which seems could be approved. The  
28 applicant did state in her letter to the Board that they are willing to be approved for the town ordinance definition  
29 of a Family child care for 1-6 children if the Planning Board isn’t willing to accept a proposal for a reduced  
30 number of children under a Group day care home.  
31

32 The Planning Board can make a motion to determine this complete if the applicant identifies this as a Family day  
33 care home and the determination is contingent upon the applicant revising the application for a Family day care  
34 home.  
35

36 The applicant then confirmed what Assistant Town Planner Michael Foster stated about trash removal and 4  
37 Cardinal Way, and added that she would be licensed as a Family child care provider. Based on square footage  
38 requirements and the number of children to be cared for, the application stated that she was now asking that her  
39 proposal be approved for 8-9 children instead of 12.

40 Chair Mailhot then stated that a Site walk should be scheduled for July 1<sup>st</sup> at 5:30 PM. Ms. Hubert then  
41 commented that she has concerns that the Group day care home standard of 40,000 sq ft is a setback for neighbors  
42 to have a larger lot versus something that DHHS would consider, meaning DHHS would not be considering the  
43 impact on neighbors.

44 Applicant then stated that they have privacy fences on both sides of their property to buffer.

45 Chair Mailhot then asked for other questions or comments. No motion was made to make this application  
46 complete, so the Site Walk will be on July 1 at 5:30 PM.  
47

48 Other Business

49 No other business was brought up.  
50

51 Good and Welfare

52 Vice Chair Walker stated that the water tower looks tremendously incomplete. Town Planner Jeffrey Hinderliter  
53 stated that he would call about that, that we’re still technically in the spring. Chair Mailhot then asked Town  
54 Planner Jeffrey Hinderliter about the Murphy-McDonald Portland Ave consent agreements, to which he replied

1 that they were reaching a conclusion. It was determined that a Code officer is needed to enforce the Code, that he  
2 can't enforce the Code as a Town Planner. Jeffrey also added that in regard to McDonald, we came to a consent  
3 agreement but lost our primary Code officer at that time. He then engaged Brian Murphy to begin working to get  
4 his proposal into some type of conformance with the understanding that we had a Code officer coming in soon.  
5

6 Ms. Hubert then asked if in regard to the Child care proposal (ITEM 4), that if the applicant asked for approval for  
7 1-6 children, could the Board move this forward? Town Planner Jeffrey Hinderliter stated that the Board could  
8 reopen that item and discussion, and schedule a Public Hearing for a Family day care facility. Ms. Dube then  
9 asked to reopen the item for the Family day care. Vice Chair Walker then made a motion for determine of  
10 complete application for a Conditional Use child care facility located at 188 Portland Ave. subject to receiving a  
11 revised application for a Family Day care home for 1-6 children with a Site Walk scheduled for July 1 and a  
12 Public Hearing scheduled for July 8 at 6:30 PM; this motion was seconded by Mr. Hitchcock. Chair Mailhot  
13 then asked the Board for any discussion on the motion; seeing none Chair Mailhot then asked Town Planner

14 Jeffrey

15 Hinderliter to call for a vote:

16 Ms. Hubert - YES

17 Mr. Hitchcock - YES

18 Ms. Dube - YES

19 Vice Chair Walker - YES

20 Chair Mailhot - YES

21  
22 Chair Mailhot then stated that the motion carries 5-0.  
23

24 Vice Chair Walker then asked what was going on with the development of the property at the old funeral parlor.  
25 Assistant Town Planner Michael Foster answered that there was a piece in the agreement for the Contract zone,  
26 that it had to be filed with the registry within 30 days of getting the agreement from the Town, that they just got  
27 and filed that agreement, and that we are waiting on an updated Site Plan which was a required condition  
28 showing the access to the row; other than that their plan is to start construction in August.  
29

### 30 ADJOURNMENT

31 Seeing that there was nothing else for discussion, Chair Mailhot adjourned the meeting at 8:31PM  
32  
33  
34

### 35 PUBLIC HEARING #1 Minor Subdivision and Site Plan: 4-lot subdivision for single-family use 36 SUBMITTED PUBLIC COMMENT

37  
38 **Pierce Atwood (letter addressed to Assistant Town Planner Michael Foster)**  
39

**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

40  
41  
42  
43  
44  
45  
46 **VIA EMAIL**

47  
48 June 7, 2021  
49

Admitted in: CO, MA, ME, NH

50  
51 Michael Foster, Assistant Town Planner  
52 Town of Old Orchard Beach  
53 1 Portland Ave.



1 Old Orchard Beach, ME 04064

2  
3 Re: Site Plan & Minor Subdivision Application, 211 East Grand Avenue (the “Application”),  
4 submitted by Estates at Bay View LLC (the “Applicant”).  
5

6 Dear Mike:  
7

8 As you know, I represent Margaret and William Johnson, residents of 213 Grand Avenue, and  
9 abutters to the proposed subdivision and development of 211 East Grand Avenue (the “Property”). As  
10 you know, the Old Orchard Beach Town Council approved a Contract Zone for the Property, however  
11 there were several issues that were not addressed in that process and need to be addressed by the  
12 Planning Board as part of the Site Plan and Subdivision process.  
13

14 1. **The proposed Site Plan continues violates the Town Ordinance Sec. 78-1592, which**  
15 **requires all loading/unloading activities to be conducted off public streets and on the site**  
16 **destination. The Town Council did not address this issues as part of the Contract Zone**  
17 **approval.**  
18

19 This continues to be an issue. The Contract Zone as approved requires a 4’ public right of way  
20 to the beach, as reflected on the Site Plan. Sec. 78-1592 provides in relevant part that:  
21

22 *In order to promote pedestrian and traffic safety and maintain access for emergency vehicles,*  
23 *all loading/unloading activities shall be conducted off public streets and private ways and*  
24 *shall occur on the site destination for the loading activity.*  
25

26 While the Site Plan calls for a public beach access, there is no provision for parking. This lack of  
27 parking creates a burden on the public street and neighboring property owners and presents significant  
28 safety issues as the public will be stopping their cars on a main thoroughfare in the Town for the loading  
29 and unloading beach-goers and beach paraphernalia. The Town Council did not address this issue,  
30 leaving it to the Planning Board to address as part of its Site Plan review. *As part of the Site Plan*  
31 *process, the Planning Board should require the Applicant to comply with Section 78-1592 or the*  
32 *Ordinance and provide for parking within the subdivision for the public to access the public ROW to the*  
33 *beach.*  
34

35 2. **The relocated building on Lot 4 is greater than 35 feet and thus requires a rear set back of**  
36 **25 feet and a front setback of 20 feet. Those setbacks are not met by the proposed location**  
37 **of the building as depicted on the Site Plan. A variance is required to proceed.**

38 Section 78-1004 of the Town’s Zoning Ordinance provides that for buildings in excess of 35 feet  
39 in height, the setback are increased by 5 feet for each additional 10 feet in height or portion thereof. The  
40 relocated building is at least 45 feet high such that the rear setback should be at least 25 feet and the  
41 front setback should be 20 feet. Those setbacks are not satisfied under the proposed relocation of the  
42 existing building. The Applicant argues that the building is grandfathered. While that may be true if the  
43 property was not being subdivided with new lots being created and the house being moved to a new  
44 location, but it is not grandfathered in this situation. This is a new lot that did not exist before and  
45 structures on a new lot need to comply with current setback requirements. The attorney for the  
46 Applicant has stated in her February 22, 2021 letter to the Planning Board that a “nonconforming

1 structure may be relocated so long as it is not made more nonconforming.” We disagree with that  
2 statement. Section 78-178 of the Town Ordinance states that

3 (d) *Relocation of structures. Should any nonconforming structure be moved for any reason*  
4 *for any distance, it shall thereafter conform to the regulations for the district in which it*  
5 *is located after it is moved.*

6 The existing home is being relocated. Under the above Ordinance section, it must now conform to the  
7 regulations for the Residential Beachfront District. That includes a 25 foot rear setback and the 20  
8 foot front setback. The Planning Board does not have authority to grant a waiver of a required setback.  
9 That requires a variance, which can only be granted by the Zoning Board of Appeals of the Town.  
10 *Before the Planning Board can move forward on this Application, the Applicant must get a variance*  
11 *from the Zoning Board before this Application can proceed.*

12 3. **Applicant needs to establish that it continues to have sufficient title, right and interest in**  
13 **and to the Property.**

14 To satisfy the requirements of title, right and interest, the Application included a copy of the  
15 Purchase and Sale Agreement dated October 1, 2020. However, the Agreement provided that the  
16 Closing was to occur within 10 days after completion of 7 Sailboat Lane, Saco and that such  
17 completion was to take place within five (5) months of the Agreement, which would have been March  
18 of 2021. The Application did not include any amendment extending the closing date. Without more,  
19 it would appear that the Agreement has expired, as has the Applicant’s right, title and interest in and to  
20 the Property.

21 4. **Applicant has made no showing that the 18 foot right of way would satisfy fire,**  
22 **emergency and other safety concerns.**

23 While the Contract Zone allows for an 18 foot right of way to the Property, it does not relieve  
24 the Planning Board of its duty under the Site Plan and Subdivision Ordinance to ensure that  
25 developments properly address fire and safety concerns. At the very least, police, fire and other  
26 emergency departments of the Town should weigh in whether they have any concerns with the 18 foot  
27 right of way being the only access to these four structures.

28 5. **The Planning Board has the right to impose reasonable conditions on this development to**  
29 **ensure compliance with the requirements and spirit of the Contract Zone.**

30 This project was pushed through on the promise that it would produce a less dense project that  
31 what could be built on the Property. While that is questionable, it would clearly not be the case if the  
32 owners of the structures are permitted to engage in short term rentals, such as Airbnb, VRBO and  
33 similar services. In that situation, the use of the Project would be very dense. If the Applicant  
34 overcomes all of the other hurdles of Site Plan and Subdivision approval, we would submit that the  
35 Planning Board should impose a condition that the properties could not be used for short term rentals.

36 When this project was first in front of the Planning Board for Contract Zone review, we were  
37 advised that my clients would have another chance to discuss their concerns with the Planning Board.  
38 This is that chance. On behalf of the Johnsons, I urge the Planning Board not to approve the Site Plan  
39 and Subdivision Application for the Property for all of the reasons cited above. Would you please  
40 forward this letter to the Planning Board as part of your informational packet. Thank you.

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Sincerely,



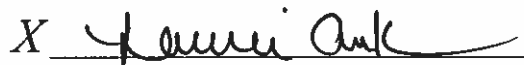
Dennis C. Keeler

cc: Margaret & William Johnson  
Diana Asanza, Town Manager

**PUBLIC HEARING #2 Major Subdivision: 20-lot cluster subdivision for single-family dwellings  
SUBMITTED PUBLIC COMMENT  
Gordy & Celeste Murphy (email of June 9 addressed to Assistant Town Planner Michael Foster)**

We are located at 2 Willow Avenue and we are concerned about water in our basement as we understand there will be a pond behind our house which we may find ourselves pumping out of our basement. We've experienced it in heavy rains before.  
Gordy and Celeste Murphy

*I, Laurie Aberizk, Administrative Assistant to the Planning Board of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of Eleven (11) pages is a true copy of the original minutes of the Planning Board Meeting of June 10, 2021.*

X   
Laurie Aberizk