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2
3 **OLD ORCHARD BEACH PLANNING BOARD**
4 **Public Hearing & Regular Meeting**
5 **January 9, 2020 6:30 PM**
6 **Town Council Chambers**
7 **MEETING MINUTES**
8

9 **CALL MEETING TO ORDER 6:30 PM**

10
11 **PLEDGE TO THE FLAG**

12
13 **ROLL CALL**

14
15 **Present:**

16 Chris Hitchcock
17 Robin Dube
18 Marianne Hubert
19 Vice Chair Win Winch
20 Mark Koenigs
21

22 **Absent:**

23 Chair Linda Mailhot
24 David Walker
25

26 **Selection of Vice Chair and Chair**

27 The Board has decided to vote on this at the next Planning Board meeting so that more members were
28 present.
29

30 **Approval of Minutes: 12/5/19, 12/12/19**

31
32 **MOTION:**

33 Chris Hitchcock made a motion to approve the 12/5/19 and 12/12/19 meeting minutes, seconded by
34 Marianne Hubert.
35

36 **VOTE:**

37 Chris Hitchcock - Yes
38 Robin Dube - Yes
39 Marianne Hubert - Yes
40 Vice Chair Win Winch - Yes
41

42 **PASSES:**

43 (4-0)
44

45 **Public Hearings**

46 **Proposal:** Zoning Map Amendment: Change portion of the Industrial Zoning District to the
47 Rural Zoning District for the property located at Ross Rd (MBL: 105-2-7).

48 **Owner:** James & Susan D Ford Trustees/Mezoian Development, LLC

49 **Location:** Ross Rd (105-2-7); Current Zoning: RD and ID
50

1 Opened the Public Hearing at 6:32 PM

2
3 Richard ? asked if it was just that piece of land that would be changing from Industrial to Rural.
4 Vice Win Winch stated that this was correct.

5
6 The following is a letter that was forwarded to the Planning Board:

7
8 **January 9, 2020**

9 Mr David LaQuerre

10 154 Ross Road Old Orchard Beach, Maine 04064

11
12 Mr Jeffrey Hinderliter

13 Planner Town of Old Orchard Beach

14 1 Portland Avenue

15 Old Orchard Beach 04064

16 **Dear Mr Hinderliter:**

17 I am writing to you in response to the proposal to amend the zoning map located on Ross Road (MBL:
18 105-2-7).

19 As a long time resident of Old Orchard, and having lived on the Ross Road for over 35 years we have
20 seen a steady increase of traffic. We do not oppose the amendment if there is a discussion of and plan for
21 the impact of additional homes which carry with it increased traffic. With all the new housing on and
22 around Ross Road there has been no investment in improving the infrastructure.

23 The addition of sidewalks and possibly widening the road or even adding a bike lane should be included
24 in any discussion related to the change of zoning.

25 Sincerely,

26
27 David LaQuerre

28
29 Public Hearing closed at 6:33 PM

30
31 **Regular Business**

32 **ITEM 1**

33 **Proposal: Zoning Map Amendment: Change portion of the Industrial Zoning District to the**
34 **Rural Zoning District for the property located at Ross Rd (MBL: 105-2-7).**

35 **Action: Discussion; Recommendation**

36 **Owner: James & Susan D Ford Trustees/Mezoian Development, LLC**

37 **Location: Ross Rd (105-2-7); Current Zoning: RD and ID**

38
39 Planner Jeffrey Hinderliter stated that this proposal encompasses about 22 acres of a lot that is around
40 close to 90 acres. In addition, it is only this parcel that is associated with the change. This proposal
41 appears to pass all of the zoning amendment tests. In fact, according to the adopted comp plan, this lot
42 should be in the Rural District. The one problem is a statement in the property owner's letter of
43 authorization- "Any zoning change should be conditioned on Mezoian Development LLC purchasing the
44 land and should not go into effect until title is transferred." We questioned how this statement would
45 impact the proposal- can the PB and Council attach a condition like this to a general zoning change (not a
46 contract zone)? If this condition were not applied would the property owner still authorize the applicant
47 to pursue the zoning change?

1 If that condition is applied then what the Planning Board would most likely be doing is reviewing the
2 proposal under the same current zoning standards that did not work.
3 The property owner’s attorney offered his opinion (submitted at the December meeting and this meeting)
4 which, in part, states: “The Town has the power to determine when a zone change becomes effective. It
5 can grant approval of a zone change to be effective as of a certain date. That date could be phrased as
6 being the date the property is sold to Mezoian Development” (Attorney Richard Hull, letter dated
7 12.6.19).

8
9 We asked Town Attorney, Phil Saucier, for his opinion. Phil’s opinion:

10
11 “You are right that the proposed condition to the requested zoning amendment is the type of condition
12 that can be contemplated through conditional or contract zoning, and not a zoning amendment with
13 general applicability. Such zoning amendments should not be conditioned on the identity of an individual
14 parcel of land.”

15
16 The Town Attorney is advising the Planning Board “not” to attach the condition. However, he also stated
17 that it might work in certain scenarios if this zoning change and the review of the development project
18 took parallel tracks. He also stated that there were other options and is certainly something that staff could
19 look into.

20 The Planning Board has several options and 4 of those options would be to provide some sort of
21 recommendation to the council, and the last 2 options are to table this proposal and look at what some
22 other possibilities might be.

23
24 Planning Board Member Mark Koenigs joined the meeting.

25
26 **MOTION:**

27 Robin Dube made a motion to table this proposal without prejudice while the Applicant prepares the
28 subdivision application so the subdivision and zoning amendments can run of parallel tracks, seconded by
29 Marianne Hubert.

30
31 **VOTE:**

32 Chris Hitchcock - Yes
33 Robin Dube - Yes
34 Marianne Hubert - Yes
35 Vice Chair Win Winch - Yes
36 Mark Koenigs - Yes

37
38 **PASSES:**

39 (5-0)

40
41 **ITEM 2**

42 **Proposal:** Conditional Use: Private Utility Facility (ground mounted solar array)
43 **Action:** Determination of Completeness; Schedule Site Walk and Public Hearing
44 **Owner:** Paradise Acquisition LLC
45 **Location:** 60 Portland Ave (205-1-32); Zoning: R1 and GB1

46
47 Planner Jeffrey Hinderliter stated that the PB was introduced to this proposal at the November 2019
48 meeting. At that time, the proposal was brought to the PB for one primary reason- to ask the PB’s
49 thoughts on whether the ground mounted solar area can be defined as a “public/private utility facility.”
50 At the conclusion of discussion, the PB asked staff to consult with the Town Attorney and report back to
51 the PB.

1 The Town Attorney stated that it is reasonable to determine a solar correction array facility meets the
2 public/private utility facility definitions. This opinion was forwarded to the owners so they are moving
3 forward with their formal application. They have given the Planning Board their first formal submission
4 for Conditional Use Review.

5
6 There is discussion of enactment of a moratorium that is related to solar facilities. At this time, it is only a
7 discussion. Discussion on this proposal needs to be focused on how it meets the standards that the
8 Planning Board has jurisdiction over which is the Conditional Use Standards.
9 Staff is recommending tabling the decision on determination of completeness without prejudice until the
10 applicant provides responses to any Planning Board comments and the bulleted items on page 9 of the
11 January 2020 memo.

12
13 Dan Robinson with Revision Energy introduced himself. They feel that the application is complete
14 however they are working on the additional responses to get back to the PB.
15 Robin Dube was concerned that the noise level is above the noise level day or night.
16 Dan Robinson stated that from the lot line there would be no measureable noise (within the 50' setback).

17
18 Marianne Hubert asked if this could fall under light industrial or commercial.
19 Planner Hinderliter stated that the standard that this falls under is private or public utility facility, it does
20 not make the distinction.

21 They will have to get a business license for this facility.

22 Robin Dube asked where this solar energy is going to.

23 Dan Robinsin stated that this will be going out to CMP's grid.

24 Vice Chair Win Winch asked what is the value of the whole solar array.

25 Dan Robinson stated that it is \$500,000.

26 Marianne Huber asked how many houses will it power.

27 This will power approximately 20-25 houses. It follows the path of least resistance.

28
29 Robin Dube asked if there is going to be an access road that goes in to where this is located.
30 Dan Robinson stated that there will not be an access road however if they need any service, maintenance
31 etc. they are able to access this array thorough Paradise Park. The site has been cleared. They are still
32 waiting for DEP permits.

33
34 Robin Dube asked what is Paradise Park gaining from this.

35 Dan Robinson stated that Paradise Park is completely separate from this project.

36
37 Mark Koenigs mentioned that looking at the site plan, they are showing the electrical underground going
38 part way down and the overhead electrical going out to Cascade.

39 Dan Robinson stated that they will be putting power poles down through the middle of the road from
40 Cascade Road out about 450 ft. This is where the overhead will stop and then underground about 450 ft.
41 and the remainder is about 250 ft.

42 They will have more details on the CMP corridor at a later date.

43

44 **MOTION:**

45 Robin Dube made a motion to table the decision on Determination of Completeness without prejudice
46 until after the Applicant provides responses in writing and plans "when necessary" to any outstanding
47 Planning Board comments and the bullet items on page 9 of the Old Orchard Beach January 2020
48 Planning Board memo. Robin Dube made a motion to schedule a site walk on February 6, 2020 at 5:30
49 pm., seconded by Chris Hitchcock.

50

- 1 **VOTE:**
- 2 Chris Hitchcock - Yes
- 3 Robin Dube - Yes
- 4 Marianne Hubert - Yes
- 5 Vice Chair Win Winch - Yes
- 6 Mark Koenigs - Abstain

7

8 **PASSES:**
9 **(4-0-1)**

10

11 **ITEM 3**

12 **Proposal: Major Subdivision and Site Plan Review Sketch Plan: 22-lot residential subdivision**
13 **and 8-10 single-resident houses to be built as part of a condo association**

14 **Action: Discussion and Recommendations**

15 **Owner: Mark and Claire Bureau, Mark Bureau**

16 **Location: Red Oak Drive (Phase II); 139 Portland Ave; Zoning: RD**

17

18 Josh Baston with Atlantic Resource Consultants out of Freeport, Maine introduced himself.

19

20 Assistant Planner Michael Foster stated that this is an expansion of an existing subdivision on Red Oak
21 Drive. In 2018 the PB approved a 9-lot subdivision (Red Oak Phase III Subdivision Plan) on the same
22 land where this current sketch plan is being proposed. This is not an amendment to that recently approved
23 plan because Sec. 78-219. - Duration of approval states that site plan approval shall expire if project
24 construction has not commenced within one year of the approval date, and this timeframe has since
25 lapsed. In June 2019, the PB saw a sketch plan for a 22 lot single-family subdivision and 32 condo units
26 in multiple buildings for this same land.

27 There is one question on the plans that were submitted, it shows 20 lots but the cover letter did say 22 lots
28 and he believes that was just a typo. Lots 18 and 19 are part of the subdivision but separate from the
29 primary lot locations and appear to be on a different proposed street. Lot 19 has frontage on Portland Ave.
30 Also, in looking at the 8 single resident houses to be part of condo association, some of these appear to be
31 very close or in the wetland depicted on the submitted Phase III Site Layout Plan. This wetland area is
32 shown as Resource Protection (RP) on our Shoreland Zoning map.

33

34 There were some staff comments:

35

36 **Sec. 74-277 - Requirements to connect to Public Sewer**

37 Required improvements (#2) requires where a public sewer line is located within 1,500 feet of a proposed
38 subdivision at its nearest point, the sub divider shall connect with such sewer line, provided the sewer
39 district certifies that extending the services will not be a burden on the system. There were questions as to
40 the capacity of the Portland Ave pump station. A review of this pump station was completed by Wright-
41 Pierce and details are in Memo dated 12/9/19 with conclusion below:

42 Based on the run-time data collected in 2018 and 2019, assumptions regarding the existing pump
43 capacity, and the proposed flows reported by the developers engineer from the Red Oak
44 development, we have concluded that the existing Portland Avenue Pump Station would have
45 capacity to serve the proposed development. With completion of this project, limited remaining
46 capacity would remain within the existing pump station without upgrades to the pumps.

47 There were also some comments on Street Design and Construction Standards.
48 Design standards requires that subdivisions containing 15 lots or more have at least two street connections
49 with existing public streets. There appears to be a connection but it is not clear how this connects through
50 proposed lot 18 and through lot 20. The cover letter also notes that the proposed secondary access is for

1 public safety services. If the proposed secondary access is only designed for public safety service, a
2 waiver would be required as outlined in Sec. 74-34. – Variances and waivers. Another question is if these
3 streets and infrastructure are proposed to be public or private?
4

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

6 Lot Size

7 RD requires a minimum lot size of 40,000 sf with sewer or water, but this also requires a net lot area of
8 30,000 sf with public sewer or water. It is important to remember that net lot area means *the area of*
9 *contiguous land suitable to support a building unit enclosed within the boundary lines of a lot, minus land*
10 *below the normal high water line of a waterbody or upland edge of a wetland, areas beneath roads*
11 *servicing more than two lots, or land with slope gradients of 50 percent or more.*

12 Frontage

13 Lots in the RD zone are required to have 200' of frontage. Lots 6 and 19 appear to have less than required
14 and should be verified.

15 There does not appear to be a proposed cul-de-sac, but the cul-de-sac frontage is listed on the sketch plan
16 as 75', but the ordinance requires 125' frontage on a cul-de-sac.

17 Lot Width

18 Lots in the RD zone require a lot width of 200'. Lot width means *the horizontal distance between the side*
19 *lot lines measured at the setback line*, and in this case RD has a side setback requirement of 25'. Lots 3, 4,
20 5, 6, 15, and 19 appear to be very close or under the required width. These should be verified.

21 **Sec. 78-965. – Performance standards.**

22 #4 Buffering, requires all buffering for the rural district shall conform to the landscaping and buffering of
23 division 7 of article VIII of this chapter. Sec. 78-1822. – Buffering, requires that *buffering shall achieve*
24 *between 75 percent to 100 percent yearround visual obstruction as specified by the planning board*. This
25 will be especially important where lots in the proposed subdivision will abut other properties and on
26 proposed lots 4, 5, and 6 that will abut Seacoast RV Resort.

27
28 There were also some comments that were submitted by the Planning Board Chair Mailhot.

- 29 • Question about the location of the cemetery being shown on the map.
- 30 • What are the plans for the required second means of egress?
- 31 • What is going on with the recent fill activity for the lot that appears to be adjacent to lot 19 and
32 won't that fill affect the drainage into adjacent lots 19 and 20 that are included on this proposal.

33
34 Josh Baston stated that he would be happy to dimension the whole thing once they get to that point. He
35 will be sure to meet all of the setbacks and various frontage requirements. There is a paved road and will
36 be adding a fire access gate and this will be that secondary access.

37 The owner maintained the utility easement so they can go in and connect to that existing sewer.

38 They are filling on the last lot on phase I.
39

40 Marianne Hubert asked where they are with the DEP Permit.

41 Josh Baston stated that they have gone on a sitewalk with DEP and they have done the wetland
42 assessment with them.

43 Next month they will be doing a full site location permit. He added that he had to focus on the sewer
44 capacity first.

45 In addition, this is for 20 lots and not the 22 lots that was stated in the memo.

46 These will be single-family rentals.

47 Josh Baston also mentioned that he will also sit down with the Old Orchard Beach Fire Chief to see what
48 his concerns are.
49

1 They are going to build 2 stream crossings. One stream crossing has already been approved for Phase 1.
2 They will both be culverts.

3
4 Mark Koenigs suggested for the Planning Board to be looking at the ordinances and requirements and try
5 to be fair with that and just be cautious.

6 Robin Dube stated to make sure that the foundations are located where they say they are going to be
7 located.

8
9 **Other Business**

10 **Good and Welfare**

11
12 Mark Koenigs stated that he had a neighborhood meeting last night in regards to the proposed one-way
13 streets on Fern Avenue and West Old Orchard Street.

14 There is a grant-funded project with monies to upgrade the sidewalks.

15 There is a summerhouse that is kiddy-corner to his house and there is a contractor who had been working
16 on his summer home who has an RV, and has been driving in and out of the corner of the lot onto the
17 intersection on Highland Avenue and Third Street creating a safety issue as well.

18 Mr. Koenigs asked if Code Enforcement would be the one to notify of this.

19 Planner Hinderliter stated that the Code Enforcement Officer would be responsible for enforcement.

20
21 **ADJOURNMENT 7:35 PM**

22
23 *I, Valdine Camire, Administrative Assistant to the Planning Board of the Town of Old Orchard*
24 *Beach, do hereby certify that the foregoing document consisting of Seven (7) is a true copy of the*
25 *original minutes of the Planning Board Meeting of January 9, 2020.*

26
27 