

1
2 OLD ORCHARD BEACH PLANNING BOARD
3 Public Hearing & Regular Meeting MINUTES
4 November 10, 2022 6:30 PM
5 Town Hall Council Chambers
6
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9 *MINUTES MAY NOT BE TRANSCRIBED VERBTIM. SECTIONS MAY BE PARAPHRASED FOR*
10 *CLARITY. A COMPLETE RECORDING MAY BE OBTAINED BY CONTACTING THE TOWN CLERK AT*
11 *207-934-4042 OR kmclaughlin@oobmaine.com*
12
13

14 CALL MEETING TO ORDER

15
16 PLEDGE TO THE FLAG

17
18 ROLL CALL

19
20 Chair Walker asked Assistant Town Planner Michael Foster for the roll call and Michael took the roll call
21 as follows:

- 22
23 Win Winch
24 Jay Kelley
25 Robin Dube
26 Chair Walker
27 Vice Chair Hitchcock
28

29 Chair Walker then stated that Mr. Kelley will be voting tonight in the absence of Ms. Hubert.
30
31
32

33 Public Hearings

34 PH 1

35 Proposal: Minor Subdivision: Add a single unit which creates a 3rd unit for subdivision purposes
36 Applicant: Windsor Construction LLC
37 Location: 41 Smithwheel Rd; MBL: 210-1-23; Zoning: R4
38

39 Chair Walker introduced this and opened the Public Hearing at 6:31pm, and asked that if anyone were
40 wishing to speak on this, to please come up to the podium and introduce yourself and state your address for
41 record. Jill Soule of 39 Smithwheel Road then approached the Board. She stated that there were concerns
42 about whether there was going to be a fence there as that property is adjacent to the Smithwheel condos
43 pool. Also, there was a question about the sharing of the plowing. Chair Walker then stated that such will
44 be covered under regular business, and asked if there were anyone else wishing to speak. Susan Thomas of
45 43 Smithwheel Road then approached the Board. Susan stated that she was next door to the duplex and
46 questioned when this was going to take place, if it was already approved, to which Chair Walker stated that
47 would be ruled on during regular business. Susan stated that they had numerous issues when the applicant
48 was building next door and wants to ensure that such will not be the case again. Chair Walker stated that
49 the utilities for the property were already stubbed in so Susan should have no effect with this construction.
50 Susan then asked about the shape of the property and the construction, and Ms. Dube showed her the

1 drawings re the proposed construction. Chair Walker then asked if there were anyone else wishing to speak,
2 and seeing no one, closed the Public Hearing at 6:36pm.
3
4
5
6

7 PH 2
8

9 Proposal: Site Plan: 4 dwelling unit residential building
10 Applicant: Coastal Real Estate Holdings LLC
11 Location: 58 Portland Ave., MBL: 205-1-30; Zoning: GB1
12

13 Chair Walker opened this Public Hearing at 6:36pm, and asked if there were anyone wishing to speak.
14 Seeing no one, Chair Walker closed this Public Hearing at 6:37pm.
15
16
17

18 PH 3

19 Proposal: Conditional Use Shoreland Zoning: Removal, Relocation, 30% expansion of two
20 nonconforming structures
21 Applicant: David and Kristin Fournier
22 Location: 16 Walnut St., MBL: 104-3-1; Zoning: BRD, RA (Shoreland)
23

24 Chair Walker opened this Public Hearing at 6:37pm, and asked if there were anyone wishing to speak.
25 Debra Austin, a unit owner at Davenport by the Sea (adjacent property) approached the Board. She stated
26 that they had an informative meeting the evening before with an engineer re their erosion problem with
27 Buildings B, C, and D. She stated that they had concerns about the boundary line to the cabins and what
28 impact that may have on their property. She also stated that there is road work scheduled for Walnut Street,
29 and they have a real concern about erosion and water on their property. Chair Walker then asked if there
30 were anyone else wishing to speak. Seeing no one, Chair Walker closed this Public Hearing at 6:38pm.
31
32

33 Minutes: 10/13/22
34

35 Chair Walker stated that they had the Minutes, and Ms. Dube made a motion to accept the Minutes as
36 written, motion was seconded by Vice Chair Hitchcock. Chair Walker then asked if there were any
37 discussion, and seeing none, called for the vote, and Assistant Town Planner Michael Foster took the vote
38 as follows:
39

40 Win Winch YES
41 Jay Kelley YES
42 Robin Dube YES
43 Chair Walker YES
44 Vice Chair Hitchcock YES
45

46 Chair Walker stated that carries 5-0.
47
48
49

50 Regular Business

1 ITEM 1

2 Proposal: Minor Subdivision: Add a single unit which creates a 3rd unit for subdivision purposes
3 Action: Final Review and Ruling
4 Applicant: Windsor Construction LLC
5 Location: 41 Smithwheel Rd; MBL: 210-1-23; Zoning: R4
6

7 Assistant Town Planner Michael Foster updated the Board as follows:
8

- 9 • Tonight, we had the public hearing and this proposal is up for final ruling.
- 10 • This application for a third unit was determined complete last month subject to receiving the following:
- 11 1. *Satisfactory responses to staff and Wright Pierce comments, concerns, and questions.*
- 12 2. *Addressing meeting the requirements of Sec. 74-153. – Submissions, 15.*
- 13 3. *Executed maintenance agreement for the Smithwheel Farm Condo private way access.*
- 14
- 15

16 **Regarding the above conditions:**

- 17 • The applicant has provided updated responses to previous staff and Wright Pierce comments.
- 18 • The applicant will need to provide responses to any remaining staff and Wright Pierce comments, and you were provided with their most recent memo this evening.
- 19 • Addressing has been reviewed for E-911 by the assessor and has been approved.
- 20 • Exhibit A (deed) was included in the submittal dated 17 October 2022 for the rights to use the private way.
- 21 • A letter with reference to a maintenance agreement for the Smithwheel Farm Condo private way access has been provided but a more legible copy with attachments will need to be provided.
- 22
- 23
- 24
- 25

26 **Additional staff comments:**

- 27 • The applicant has identified on the site plan that the tree at the driveway entrance will be removed.
- 28 • The proposed driveway is shown on the plans to taper from about 15’ wide at the entrance to 18’ wide at the rear and this would meet the 12’ minimum width requirement for a single-family driveway.
- 29 • This was reviewed with Fire Chief LaMontagne and approved (email dated Nov 3 2022).
- 30 • The applicant has provided email documentation from Maine Water for the installation of the water line.
- 31
- 32
- 33
- 34

35 **RECOMMENDATIONS:**

36 The applicant has responded to previous staff and Wright Pierce comments as needed. They will need to
37 provide responses to any remaining comments from Wright Pierce. Responses to Section 74-2 Subdivision
38 criteria have been provided and are in the memo on pages 4-5, after the recommended motion which begins
39 on page 3. Planning staff recommends conditional final approval to ensure we receive remaining
40 documentation and responses to Wright Pierce comments.
41

42 Chair Walker then stated that they did receive subdivision criteria, which he read into the record as follows:
43

- 44 (1) The proposed subdivision will not result in undue water or air pollution. In making this
45 determination it shall at least consider the following:
- 46 a. The elevation of the land above sea level and its relation to the floodplains;
- 47 b. The nature of soils and subsoils and their ability to adequately support waste disposal;
- 48 c. The slope of the land and its effect on effluents; and

1 d. The applicable state and local health and water resources regulations;
2

3 ***Applicant response: Development area is generally at elevation 44. There is no 100 year flood***
4 ***zone within***
5 ***this development. Units will be served by public water. This site is served by public sewer. These***
6 ***units will be served by public water and public sewer.***
7

8 (2) The proposed subdivision has sufficient water available for the reasonably foreseeable needs of
9 the subdivision;

10 ***Applicant response: Public water was extended for these units from the existing watermain in***
11 ***Smithwheel Road.***

12 (3) The proposed subdivision will not cause an unreasonable burden on an existing water supply, if
13 one is to be utilized;

14 ***Applicant response: There will be no unreasonable burden on the existing public water supply.***

15 (4) The proposed subdivision will not cause unreasonable soil erosion or reduction in the capacity of
16 the land to hold water so that a dangerous or unhealthy condition may result;

17 ***Applicant response: All construction will be per Maine DEP Best Management Practices. This***
18 ***includes all measures to stabilize this site and minimize erosion and its capacity to manage***
19 ***surface water. The developed area is on relatively level ground.***

20 (5) The proposed subdivision will not cause unreasonable highway or public road congestion or
21 unsafe conditions with respect to use of the highways or public roads existing or proposed;

22 ***Applicant response: The proposed units will access from an existing access drive utilizing a***
23 ***proposed curb opening. Sight distances exceed the minimum standards outlined in the Town***
24 ***zoning.***

25 (6) The proposed subdivision will provide for adequate solid and sewage waste disposal;

26 ***Applicant response: Unit owners will place their trash barrels at the end of their entrance to***
27 ***Smithwheel Road for municipal pick up.***

28 (7) The proposed subdivision will not cause an unreasonable burden on the ability of a municipality
29 to dispose of solid waste and sewage if municipal services are to be utilized;

30 ***Applicant response: There are no known issues with the ability of the municipality to handle the***
31 ***solid waste from these 3 units. The municipality will be handling any sewage waste at the Town's***
32 ***facility.***

33 (8) The proposed subdivision will not place an unreasonable burden upon local, municipal or
34 governmental services;

35 ***Applicant response: There will be no unreasonable burden on local municipal or governmental***
36 ***services from 3 new residential units.***

37 (9) The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of
38 the area, aesthetics, historic sites or rare and irreplaceable natural areas;

39 ***Applicant response: The proposed units occupy a residential parcel with open space/ undeveloped***
40 ***area behind this parcel. There are no known historic sites in or around this site.***

41 (10) The proposed subdivision is in conformance with a duly adopted subdivision regulation or
42 ordinance, comprehensive plan, development plan, or land use plan, if any;

1 ***Applicant response: This project will conform to all subdivision regulations for a minor***
2 ***subdivision. All units will meet the requirements of setbacks and density.***

3 (11) The subdivider has adequate financial and technical capacity to meet the standards stated in
4 subsections (1) through (10) of this section;

5 ***Applicant response: The applicant has the financial and technical capacity to complete this***
6 ***project. The applicant will submit a performance guarantee prior to construction.***

7 (12) Whenever situated, in whole or in part, within 250 feet of any pond, lake, river or tidal waters, the
8 proposed subdivision will not adversely affect the quality of such body of water or unreasonably
9 affect the shoreline of such body of water;

10 ***Applicant response: No ponds, lakes, river or tidal waters are within 250 feet of this project.***

11 (13) The proposed subdivision will not, alone or in conjunction with existing activities, adversely
12 affect the quality or quantity of groundwater;

13 ***Applicant response: The approval of this residential project will not adversely affect the quantity***
14 ***or quality of groundwater. All units are served by public water and public sewer.***

15 (14) The proposed subdivision will not unreasonably interfere with access to direct sunlight for solar
16 energy systems.

17 ***Applicant response: The proposed construction of homes under the current zoning height limits***
18 ***will not unreasonably interfere with access to direct sunlight for solar energy systems.***

19
20 Bill Thompson, Project Manager with BH2M Engineers, then approached the Board. He introduced himself
21 and stated that he was there with King Weinstein of Windsor Construction. Bill stated that they are
22 proposing to add 1 unit, to build in the back, and this triggered subdivision status. Bill reiterated that the
23 tree will be removed, the road will taper as described by Michael Foster and such has been approved by the
24 Fire Chief, and the applicant has obtained Maine Water's certification and acceptance. Re the 2 comments
25 introduced at the Public Hearing, Bill stated that they will not be installing a fence, the area is well
26 vegetated w trees and shrubs, there was no proposal for a fence, and the abutter's pool is fenced. Re the
27 utilities, the water line has been extended to service this property, and there will be no construction or
28 disturbance with the road. Bill then added that the property is shaped as an L, and there is nothing going in
29 on the piece that goes behind the neighbor. Bill also stated that re the Wright Pierce comments, they will be
30 addressing the stormwater comments and their memo will be coming back to the Planning Board indicating
31 they have accomplished what was requested. Chair Walker then asked if any Board members had
32 questions, and Ms. Dube then asked how many units were allowed before a dumpster was necessary, to
33 which Assistant Town Planner Michael Foster answered that he thinks the answer is 5 but that he would
34 have to confirm. Ms. Dube then asked about the pump station, particularly if it was adequate with all the
35 new construction. Bill Thompson replied that a letter was requested from the Wastewater Department but
36 no response has yet been received, at which point Assistant Town Planner Michael Foster stated that they
37 will follow up with Wastewater. King Weinstein then stated that the Town had put a whole new line in and
38 gravity not a pump station is in play there, that there is a little pump station on site going from the building
39 to Smithwheel Road. Chair Walker then stated that staff will follow up on that, and asked if there were a
40 motion. Vice Chair Hitchcock then made the following motion:

41
42 ***I make a motion to approve the final plan for a minor subdivision to add a single unit which creates a 3rd***
43 ***unit, located at 41 Smithwheel Road, MBL 210-1-23; Zoning R4, applicant Windsor Construction LLC,***
44 ***with the following conditions:***

- 45 1. *Minor Subdivision approval is dependent upon and limited to the proposal and plans contained in*
46 *the application dated 18 August 2022, and all supporting documents and oral representations*

1 submitted and affirmed by the applicant and its agents, and conditions imposed by the Planning
2 Board; any variation from such proposals, plans, supporting documents and representations are
3 subject to review and approval by the Planning Board, provided that de minimis variation is subject
4 to review and approval by the Town Planner.

- 5 2. Provide executed maintenance agreement for the Smithwheel Farm Condo private way access to the
6 Planning Department before any building permits are issued.
- 7 3. Provide Maine Water acceptance letter for service line to 41 Smithwheel Rd to the Planning
8 Department before any building permits are issued.
- 9 4. Provide satisfactory submittals and responses to remaining Wright Pierce comments before any
10 building permits are issued.

11
12 Ms. Dube seconded the motion, at which point Chair Walker asked Assistant Town Planner Michael Foster
13 to call for the vote. Assistant Town Planner Michael Foster took the vote as follows:

14
15 Win Winch YES
16 Jay Kelley YES
17 Robin Dube YES
18 Chair Walker YES
19 Vice Chair Hitchcock YES

20
21 Chair Walker stated that motion carries 5-0.

22
23
24
25 ITEM 2

26 Proposal: Site Plan: 4 dwelling unit residential building
27 Action: Final Review and Ruling
28 Applicant: Coastal Real Estate Holdings LLC
29 Location: 58 Portland Ave., MBL: 205-1-30; Zoning: GB1
30

31 Assistant Town Planner Michael Foster updated the Board as follows:

- 32
33 • Tonight, we had the public hearing on this proposal, you are conducting final review, and, if ready,
34 can issue a final ruling.
- 35 • At the October meeting the Planning Board determined the application complete subject to
36 receiving applicant responses to:
 - 37 ○ *Site plan criteria for approval,*
 - 38 ○ *Planning Board comments, Fire Department comments, and Wright-Pierce comments*
- 39
40 • Two of the primary outstanding matters are waivers of driveway location standards and short-term
41 rentals.
- 42 • Regarding waiver requests, last month the Planning Board decided to pause the vote on the waivers
43 until after the public hearing. The applicant is seeking waivers of:
 - 44 • 78-1491(E) “*Driveways on major roads.* Along arterial and collector streets, multiple driveways
45 servicing a single parcel may be permitted, provided the minimum separation between each
46 driveway meets the following criteria.”
 - 47 ○ The applicant is requesting the Planning Board waive the 125’ separation distance required
48 between two driveways on the same property.

- 1 • 78-1491 (F) 2 “A minimum 100-foot separation shall be maintained between any driveway and the
- 2 curblane tangent of intersecting arterial and/or collector streets. Based on existing or projected
- 3 traffic conditions, the Planning Board may require more than 100-foot separation distances.”
- 4 ○ The applicant is requesting the Planning Board waive the 100’ separation distance a
- 5 driveway must be from the curblane tangent of an intersecting street.
- 6 • To grant a waiver, the Planning Board must find the physical constraints of the site make
- 7 compliance with the design standards of this division impractical or technically unfeasible, and
- 8 modification of those standards will not create unsafe conditions for vehicles or pedestrians.
- 9 • The applicant’s position for the waiver request is the same as last month. See the applicant’s waiver
- 10 request letter, dated 23 September, in this month’s packet for their reasoning why waivers should be
- 11 granted.
- 12 • Regarding staff comments, there’s nothing new to add this month
- 13 • If valid issues with vehicle and pedestrian safety were not presented during the public hearing, then
- 14 we recommend the Planning Board grant waivers of 78-1491 (E) and (F)2 for the following reasons:
- 15 1. *All curb cuts exist;*
- 16 2. *Modification of the standards will not create unsafe conditions for vehicles or pedestrians.*
- 17 *The traffic report concludes the proposed development is expected to result in negligible*
- 18 *impacts; and*
- 19 3. *The physical constraints of the site make compliance with the design standards of this*
- 20 *division impractical. There is no location on the property that would meet the intersection*
- 21 *offset standards.*
- 22

23 **Short term rental**

- 24 • It is our opinion this project does not require a restriction on short term rentals.
- 25 • The applicant provides solid information (traffic report, attorneys letter, and response to site plan
- 26 criteria #7) to support their request and there doesn’t seem to be justification, through ordinance
- 27 noncompliance or project related, to counter their info
- 28

29 **Remaining comments**

- 30 • For tonight’s meeting, the remaining outstanding items are ensuring the project addresses Fire
- 31 Department and Wright-Pierce comments.
- 32

33 Below are the comments received from the Fire Department:

- 34 • This building will require a sprinkler system that will need to meet NFPA 13 and the local
- 35 ordinance for fire alarm monitoring, building access (NFPA 1 and Town Ordinance).
- 36 • Fire flow should be analyzed. (NFPA 1).
- 37 • Depending on final road length a hydrant in the complex may be required if both units access the
- 38 same parking lot. I will need to review further (NFPA1 and Town Ordinance).
- 39 • A note was added to the revised site plan (see plan in your packet, note #20). This appears to
- 40 satisfy the sprinkler and fire flow comment. To ensure the Fire Department requests are met, a
- 41 condition is attached.
- 42

43 Wright-Pierce comments: Wright-Pierce memo dated 10/28/22 is included in this month’s packet. As you

44 see there are several comments in Wright-Pierce’s memo that need a response from the applicant.

45 Summary of Wright-Pierce comments:

- 1 • Update trench patch detail to show 2-inch 9.5 mm HMA for the sidewalk (General Comments, p 2, #4).
- 2
- 3 • Did the applicant secure an ability to serve letter from ME Water? (Utility Design, p 2, #1).
- 4 • Secure ability to serve letter from Wastewater Dept (Utility Design, p 3, #2).
- 5 • Add note to the 12" N-12 storm drain indicating "slope to be determined based on test pit" (Utility Design, p 3, #3).
- 6
- 7 • Test pit summary included with Nov. submission. Recommend test pit location shown on plan.
- 8 Adjust design to maintain a minimum of 1 ft. of separation between the bottom of the pond and
- 9 groundwater table to minimize standing water in the basin (Stormwater Management, p 3, #1a).
- 10 • Add sediment forebay to provide sediment pretreatment (Stormwater Management, p 3, #1b).
- 11 • Add spot grades in the parking lot area adjacent to existing building. Concern is water will be
- 12 directed towards building (Stormwater Management, pgs 3-4, #2).
- 13 • Town confirm whether requirements of a maintenance agreement and annual certifications
- 14 submitted to the Town should apply (Stormwater Management, p 4, #3a). Please read the entire
- 15 comment from Wright Pierce in their memo.
- 16 • Additional updates to the site-specific post construction BMP's in Inspection & Maintenance
- 17 manual are recommended. Also, it should be clear which form should be used when inspecting the
- 18 field inlet-outlet structure (Stormwater Management, pgs 4-5, #3b).
- 19 • Remove note at end of section 1.7 (Stormwater Management, p 5, #3c).
- 20

21 Recommendations

- 22 • **First** the Planning Board should vote on the waiver request. If the waiver request is granted, the
- 23 Planning Board can move forward to final vote. If it is not granted, the Planning Board should
- 24 postpone their final decision to allow the applicant an opportunity to address the Planning Board's
- 25 concerns.
- 26 • The waiver request is in your packet and options on waiver motion are on page 12 of your memo.
- 27

28 **Note-** if waiver not granted, the Planning Board should state why the location of driveways will not be safe
 29 for vehicles or pedestrians.

- 30 • As mentioned we recommend the Planning Board grant the waiver request for the reasons stated
- 31
- 32 • **Second**, if the waiver is granted and the Planning Board feels the proposal is ready for a final vote,
- 33 we recommend a vote include one of the following motions that are on page 12 of your memo
- 34 • We recommend the Planning Board conditionally approve this proposal.
- 35

36 Chair Walker then stated that the first order of business will be to address the waiver request, and asked if
 37 anyone wished to speak on this. Seeing no one, Ms. Dube made the following motion:

38 *Motion (to grant): Based on the documentation provided by the applicant, we find the location of the*
 39 *driveways will not create unsafe conditions for vehicles or pedestrians; therefore, grant waivers of Old*
 40 *Orchard Beach Ordinance Sec.78-1491 (E) and (F)2.*

41 Vice Chair Hitchcock seconded the motion, at which point Chair Walker asked Assistant Town Planner
 42 Michael Foster to call for the vote. The vote was called as follows:

43 Win Winch YES
 44 Jay Kelley YES
 45 Robin Dube YES

1 Chair Walker YES
2 Vice Chair Hitchcock YES

3
4 Chair Walker stated that motion carries 5-0. Chair Walker then read the following criteria for approval:

5
6 **1. The proposed project conforms to all standards of the zoning district and meets or exceeds**
7 **performance standards specified in this article and article VIII of this chapter.** *Applicant's response:*
8 The proposed project meets the standards of the zoning district for unit density, setbacks, parking and all
9 standards outlined in article VIII of this chapter with the exception of waiver request Sec. 78-149€ and Sec.
10 78-1491 (F)(2).

11
12 **2. The proposed project has received all required zoning board of appeals and/or design review**
13 **permits as specified in division 2 of article II and article V of this chapter if applicable, and has or**
14 **will receive all applicable federal and state permits.** *Applicant's response:* No zoning board of appeals
15 action is required for this project and no federal or state permits are required.

16
17 **3. The proposed project will not have an adverse impact upon the quality of surficial or**
18 **groundwater resources.** *Applicant's response:* The residential project includes a stormwater detention
19 basin designed to manage the surface water, also, the site is served by public water with no impact to
20 groundwater resources.

21
22 **4. The project provides adequate stormwater management facilities to produce no additional peak**
23 **runoff from the site during a 25-year storm event or any other event so required by the planning**
24 **board, and will not have an undue impact on municipal stormwater facilities or downstream**
25 **properties.** *Applicant's response:* Stormwater management includes a detention pond to reduce peak
26 runoff for a 25- year storm event resulting in no impact on municipal stormwater facilities. Design also
27 results in no impact on downstream properties.

28
29 **5. The proposed project will not have an adverse on-site and off-site impact upon existing vehicular**
30 **and pedestrian circulation systems within the community or neighborhood.** *Applicant's response:*
31 Any additional traffic entering the intersection from the existing project driveway would be
32 indistinguishable from existing traffic area traffic patterns. Pedestrian traffic is served by an existing
33 sidewalk on Portland Avenue.

34
35 **6. The proposed project will not have an adverse impact upon environmental quality, critical wildlife**
36 **habitats, marine resources, important cultural resources, or visual quality of the neighborhood,**
37 **surrounding environments, or the community.** *Applicant's response:* The residential use will not have
38 any impact on environmental quality. No other adverse impacts will result including visual quality of the
39 neighborhood. Project are is a mix of commercial/residential uses.

40
41 **7. The proposed project will not produce noise, odors, dust, debris, glare, solar obstruction or other**
42 **nuisances that will adversely impact the quality of life, character, or the stability of property values**
43 **of surrounding parcels.** *Applicant's response:* The development of this residential use will not result in
44 any impacts from noise, odor, dust, debris, glare or solar obstructions. The proposed residential building
45 will maintain the quality of existing buildings in the immediate area.

46
47 **8. The proposed project will not have a negative fiscal impact on municipal government.** *Applicant's*
48 *response:* The proposed use will be subject to municipal fees associated with this use. No negative fiscal
49 impact will result from the residential use.

1 **9. The proposed project will not have an adverse impact upon surrounding property values.**

2 *Applicant's response:* The proposed residential building will be constructed to all building codes and will
3 be typical to all existing surrounding buildings.
4

5
6 Chair Walker then asked if any Board members had any questions or concerns, and seeing none, Ms. Dube
7 made the following motion:
8

9 *I motion to approve the site plan application from applicant Coastal Real Estate Holdings LLC proposing*
10 *a 4-unit residential building and associated site work located at 58 Portland Ave., MBL: 205-1-30, with the*
11 *following conditions:*
12

- 13 1. Before approval of any building or plumbing permit, the applicant shall address the Fire
14 Department comments to the satisfaction of the Fire Department staff.
- 15 2. Wright-Pierce comments shall be addressed to planning staff satisfaction before any building,
16 plumbing or electrical permit is approved.
17

18 The motion was seconded by Vice Chair Hitchcock, at which point Chair Walker asked Assistant Town
19 Planner Michael Foster to call for the vote. Assistant Town Planner Michael Foster took the vote as
20 follows:
21

22 Win Winch YES
23 Jay Kelley YES
24 Robin Dube YES
25 Chair Walker YES
26 Vice Chair Hitchcock YES
27

28 Chair Walker then wanted to note that Ms. Hubert had stated that she was against this proposal, but because
29 she couldn't attend this meeting, she couldn't vote.
30

31
32 **ITEM 3**

33 Proposal: Conditional Use Shoreland Zoning: Removal, Relocation, 30% expansion of two
34 nonconforming structures
35 Action: Final Review and Ruling
36 Applicant: David and Kristin Fournier
37 Location: 16 Walnut St., MBL: 104-3-1; Zoning: BRD, RA (Shoreland)
38

39 Assistant Town Planner Michael Foster updated the Board as follows:
40
41

- 42 • At the October meeting, the Planning Board determined the application complete subject to the
43 applicant submitting a plan showing proposed cottages' distance to the closest HAT and wetland
44 area, and addressing items identified in the October memo's "Additional Comments", which
45 included:
 - 46 • *More details on the location and type of the proposed infrastructure improvements which*
47 *include sewer lines.*
 - 48 • *Now that this will be year-round, what is the snow storage/removal plan? Where will snow*
49 *be stored on the property?*

- *Trash removal plan? As I recall 5 units require private pick-up.*
- *Identify cottage parking location on plan.*
- *The shoreland zoning ordinance allows seasonal to year-round conversions through permitting and approvals by the Local Plumbing Inspector (LPI). This should be a condition of approval.*

Cottage Shoreland Zoning Setbacks

- First, and most importantly, are the proposed cottages moved away from the HAT and wetland to the greatest practical extent **and** are the new locations less nonconforming than the existing locations?
- After review of the submitted plans, our first reaction was no, because the measurements on the plan show proposed cottages are closer to HAT and wetland areas compared to existing cottages.
- The cottages may be relocated to the greatest extent practical, although, the new location is more nonconforming because the cottages are closer to the regulated area which results in a reduced setback.
- When thinking this through we had to ask ourselves, which regulated resource is more important, HAT or wetlands, and what does the shoreland zoning ordinance language consider an increase in the nonconformity of a structure?
- Regarding the importance of the regulated resource, State law requires municipalities to regulate setbacks from wetlands that require regulation under shoreland zoning.
- Regarding stand-alone HAT areas, regulating these areas is voluntary- setbacks from the HAT are not required because these areas are not specifically included with OOB's shoreland zoning ordinance.
- The areas where the HAT is identified but a waterbody does not exist is the town's regulation based on an elevation of where water may exist in the case of a highest annual tide. A HAT can literally be over a paved area.
- Wetlands on the other hand are different- they physically exist, have vegetation, and serve as habitats for a variety of wildlife.
- So, in our opinion, especially considering resource protection, wetlands are a priority compared to HAT areas where there is no water present.
- Not saying HAT areas should be ignored, but when considering applying greatest extent practical and increase in setbacks nonconformity, the resource that physically exists (the wetlands) should be the focus.

Regarding increase in nonconformity of a structure

- The shoreland zoning ordinance states: "there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. The key to this- is the closest portion of the proposed structure closer or further away to the closest point of the regulated resource when compared to the existing structure.
- Concerning cottage #1 and if we focus on the wetland distance, the closest distance of the existing cottage to the wetland is 52.1' and the proposed cottage is 59.1'.
- The proposed cottage is less nonconforming than the existing cottage because it is further away from the wetland.
- Regarding HAT distance, the closest distance of the existing cottage to the HAT is 76.5' and the proposed cottage is 59.9'.

- 1 • The proposed cottage is more nonconforming because it is closer to the HAT compared to the
- 2 existing cottage.
- 3 • So, by pulling the structure further away from the wetland it ends up being closer to the HAT.
- 4 • Concerning cottage #2, it's the opposite of cottage #1- cottage #2 is closer to the wetland and
- 5 further from the HAT.
- 6 • Proposed cottage #2 is 79.9' from the wetland, existing cottage is 87'.
- 7 • Regarding the HAT distance, proposed cottage #2 is 46.4', existing cottage is 43.8'.
- 8 • So, by pulling the structure further away from the HAT it is closer to the wetland.
- 9 • In addition to the shoreland zoning setbacks, both cottages are within town side and rear setbacks.
- 10 • This is another challenge the applicant had to face when relocating the cottages.
- 11 • You'll see the proposed cottages have been relocated so they now meet these setbacks and are now
- 12 conforming when it comes to the setbacks.
- 13 • We tried to outline the constraints so you will be able to see the difficulty with placing the cottages
- 14 in a location that is less nonconforming with HAT, wetland and town side and rear setbacks.

15 Additional Comments

- 16 • Regarding the applicant's conformance with the additional comments mentioned above, some have
- 17 been addressed.
- 18 • Infrastructure details and location, snowbank location, and trash removal plan need more work- see
- 19 comments below under recommendations.

20 Recommendations

- 21 • The shoreland setback matter is a difficult one because of the cottage's proximity to the HAT and
- 22 wetlands, and, if you consider the town's side and rear setbacks, it's even more difficult to find a
- 23 proposed cottage location that is less nonconforming for all setbacks.
- 24 • With this proposal Town Planner Jeffrey Hinderliter tried to think outside of the box and consider
- 25 what deserves the most protection, and he feels the regulated protected resource which is the
- 26 wetlands should be the focus.
- 27 • He attempted to find a reasonable resolution to a difficult setback matter that seems fair to the
- 28 applicant and meets the intent of our ordinances. Recommendations:
- 29 • *Cottage #1 size and location is acceptable.*
- 30 • *Cottage #2 is closer to wetland than the existing cottage. Cottage size should be reduced*
- 31 *and location should be shifted south so it is as close to 87' (existing cottage distance) from*
- 32 *the wetland as possible. Amend the plan to show new location.*
- 33 • *More details on the location and type of the proposed infrastructure improvements which*
- 34 *include sewer lines.*
- 35 • *Snow storage location facing the wetland to the east should be relocated so it is further*
- 36 *away.*
- 37 • *Dumpster location should be looked at.*
- 38 • *Seasonal conversion permit does not need to be addressed until after the Planning Board's*
- 39 *decision but I will include this as a condition.*
- 40

41 We believe the above should be addressed before the Planning Board issues a final decision. Once the

42 above is complete the Planning Board should be in a better position to approve.

43 Chair Walker then asked Assistant Town Planner Michael Foster if staff reviewed these with the applicant,

44 to which Michael answered that he wasn't sure about the most recent comments. Chair Walker then asked

45 if the applicant wished to speak. Applicant David Fournier then approached the Board and stated that he

46 wasn't able to review the memo until today. David did have a question on Cottage #2 – does he need to

47 reduce the size and move it or just move it? Chair Walker and Assistant Town Planner Michael Foster

1 answered that David would need to speak with Town Planner Jeffrey Hinderliter to clarify that. Applicant
2 David Fournier then asked about the infrastructure and if he needed to show the location of both the
3 existing and proposed sewer lines, to which Assistant Town Planner Michael Foster and Chair Walker
4 answered yes, both will need to be shown on the plans. Ms. Dube then commented that it would be to the
5 applicant's advantage to put in new pipes, and Chair Walker stated that the applicant would be
6 grandfathered with being able to connect to the existing pump station as he has existing sewer lines. Chair
7 Walker then stated that they would delay a ruling on this until the proposal is ironed out with Planning
8 staff. A member in the audience asked if any comments could now be heard, to which Chair Walker stated
9 that no, the Public Hearing is closed, but comments could be submitted to the Planning office. Mr. Kelley
10 then asked if this item needed to be legally tabled, to which Chair Walker replied yes. Mr. Kelley then
11 made a motion to table this item until the next regular meeting or until the applicant comes forward with all
12 the necessary material. This was seconded by Ms. Dube, and Chair Walker stated this motion carries 5-0.
13
14

15 ITEM 4

16 Proposal: Site Plan: Additions and alterations to existing mixed use building (restaurant, walk-up
17 serving window, 2 residential units)
18 Action: Determination of Completeness Review; Schedule Site Walk; Schedule Public Hearing
19 Applicant: DURP LLC
20 Location: 93 West Grand Ave., MBL: 313-4-3; Zoning: DD2
21

22 Chair Walker stated that the applicant withdrew the application for this item.
23

24 Other Business

25 NONE
26

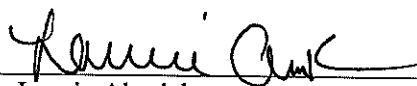
27 Good and Welfare

28 NONE
29

30 ADJOURNMENT

31 Chair Walker asked for a motion to adjourn. Motion was made by Mr. Winch and seconded by Vice Chair
32 Hitchcock, and Chair Walker stated that motion carries 5-0. Meeting was adjourned at 7:28pm, and Chair
33 Walker reminded members that there is a special meeting scheduled for December 1.
34
35

36 *I, Laurie Aberizk, Administrative Assistant to the Planning Board of the Town of Old Orchard Beach, do hereby*
37 *certify that the foregoing document consisting of Thirteen (13) pages is a true copy of the original minutes of the*
38 *Planning Board Meeting of November 10, 2022.*
39

40
41 X 
42 Laurie Aberizk
43