

1
2 **OLD ORCHARD BEACH PLANNING BOARD**
3 **Regular Meeting**
4 **February 9, 2023, 6:30 PM**
5 **Town Hall Council Chambers**
6

7 *MINUTES MAY NOT BE TRANSCRIBED VERBATIM. SECTIONS MAY BE PARAPHRASED FOR*
8 *CLARITY. A COMPLETE RECORDING MAY BE OBTAINED BY CONTACTING THE TOWN CLERK*
9 *AT 207-934-4042 OR kmclaughlin@oobmaine.com*
0

1 **CALL MEETING TO ORDER**
2

3 (VC) Hitchcock called the meeting to order and said that Chair Walker was
4 at home recovering from elective surgery. In his absence, Mr. Kelley will
5 be voting tonight, and Mr. Dupuis will be an alternate who may participate
6 in any discussions.
7

8 **PLEDGE TO THE FLAG**
9

0 **ROLL CALL**
1

2 (VC) Hitchcock requested (TP) Hinderliter to read the roll call and it was
3 the following:
4

5 (VC) Hitchcock
6 Ms. Dube
7 Mr. Winch
8 Ms. Hubert
9 Mr. Kelley
0 Mr. Dupuis
1

2 **MINUTES**
3

4 (VC) Hitchcock asked if there were any discussions or corrections
5 concerning the minutes from the January 12 meeting and there were none.
6 Ms. Dube made a motion to move approval and Mr. Winch seconded the motion.
7

8 **CALL FOR VOTE**
9

0 (VC) Hitchcock requested (TP) Hinderliter to call for the vote and that
was the following:
1

2 Mr. Kelley: YES
3 Ms. Hubert: YES
4 Mr. Winch: YES
5 Ms. Dube: YES
6 Vice Chair Hitchcock YES
7

8 (VC) Hitchcock states that the motion carries 5-0.
9

1 REGULAR BUSINESS

2
3 **ITEM 1**

4
5 **Proposal:** Conditional Use Shore land Zoning: Removal, Relocation, 30%
6 expansion of two nonconforming structures

7
8 **Action:** Final Ruling

9
0 **Applicant:** David and Kristin Fournier

1
2 **Location:** 16 Walnut St., MBL: 104-3-1; zoning: BRD, RA (Shore land)

3
4 (TP) Hinderliter updated the board with the following:

5
6 This proposal is for the removal, relocation, and 30% expansion of two
7 cottages that are located at 16 Walnut St. These cottages are shoreline
8 zoning, non-compliant structures. These structures are nonconforming
9 because they are within 100 feet of the Highest Annual Tide and a couple
0 of wetland setbacks.

1
2 Primary standards that these sorts of proposals must meet are:

- 3
4
- Conformance with the standard conditions in the Shore Land zone
 - Conformance with the conditional use criteria
 - Proposed structure must be relocated away from the (HAT) highest annual tide and wetlands to the greatest practical extent
 - Proposed structure expansion cannot exceed more than 30% of existing structures' volume and square footage.
- 5
6
7
8
9
0

1 We reviewed this proposal in March but the following conditions remain;

- 2
3
- Shifting the location of proposed cottage number two so it is further away from the wetlands than the existing cottage number two.
 - We request more details about the location and the sewer and water line improvements.
 - Relocating the snowbank further away from the wetland to the East which is closer to the railroad tracks.
 - Relocating the dumpster.
- 4
5
6
7
8
9
0

1 The applicant has met their burden of proof and we are satisfied with this
2 proposal but we request one thing. Cottage two has been shifted away from
3 the wetland but it is now closer to the highest annual tide. The wetlands
4 are important because they exist compared to the highest annual tide. We
5 request to have the front part of the cottage shortened up a few feet to
6 match the existing cottage number two which will make it no more non-
7 conforming than the cottage that is already there. The front corner of
8 cottage number two could be matched up to the existing staircase from the
9 current cottage number 2. Besides that, we recommend approval. On page

1 four of your memo, you will see a motion and a couple of conditions to
2 finalize approval.

3
4 The applicant Mr. Dave Fournier has questions about the conditions
5 concerning the dumpster not being permanent. (TP) Hinderliter states the
6 board is now comfortable with the dumpster, and the utilities, but the
7 cottage location still needs to be adjusted before we finalize approval.
8 Mr. Fournier agrees to this since it is only about one or two feet. The
9 applicant has nothing further for the board.

0
1 Ms. Dube states *I make a motion to approve the Conditional Use Shore Land*
2 *zoning: Removal, Relocation, and 30% expansion of two non-conforming*
3 *structures located at 16 Walnut St. with the following conditions:*

- 4 *1. Secure seasonal conversion permits before construction begins.*
- 5 *2. Applicant works with the assessing department for addressing purposes*
6 *before building permits are approved.*
- 7 *3. Before building permits are submitted, the applicant works with Waste*
8 *Water the Public Works department to ensure that sewer lines are*
9 *sized correctly and that the system can accommodate year-round use.*
- 0 *4. The applicant must secure Maine Water approval before building*
1 *permits are submitted.*

2
3
4 Mr. Kelley seconded the motion.

5
6 **CALL FOR VOTE**

7
8 (VC) Hitchcock requested (TP) Hinderliter to call for the vote and that
9 was:

0
1 Mr. Kelley: YES
2 Ms. Hubert: YES
3 Mr. Winch: YES
4 Ms. Dube: YES
5 (VC) Hitchcock: YES

6
7 **(VC) Hitchcock stated that the motion carries 5-0.**

8
9 **ITEM 2**

0
1 Proposal: Site Plan and Subdivision Amendment: Add unit, reconfigure
2 parking, adjust lot lines (10 & 2 Little River Rd), connect
3 public sewer to 10 Little River Rd, pool, internal path and
4 vegetation adjustments, and condition amendment

5
6 Action: Rule on Amendment

7
8 Applicant: Steve Trask, Tony Fernandez, Scott Weymouth
9

1 Location: Little River Rd., MBL: 201-3-1, 2, 4, 5, 6; Zoning: BRD, RA
2 (Seven Mile Beach Condo)

3
4 (TP) Hinderliter updated the board with the following:

5
6 In March of 2022, the planning board conditionally approved a 25-unit
7 condo project. Construction is planned to begin this year but they are
8 requesting to modify the approved plans, which include:

- 9
0 • Several changes to the amendments that are shown on the approved
1 subdivision plans. The changes include parking changes, a pool, a
2 passageway to the pool, and adjustments to property lines.
- 3
4 • An extension of the commencement of the construction date because it
5 is only good for one year and they are most likely going to run
6 behind on this project. They are requesting an extension to the
7 commencement of construction until the 10th of March, 2024, which is a
8 year's extension.
- 9
0 • The final request is to allow one unit to be rented year-round which
1 previously had a short-term rental restriction.

2
3 They have recently gained control of the lot located at 10 Little River Rd
4 and they are allocating just over 4,000 square feet from the 10 Little
5 River Rd lot to the main lot. I verified the square footage requirements
6 and everything works fine with that but there are also some minor grading
7 and vegetation changes. There were several conditions related to the
8 commencement of construction that were listed in the March 2022 approval.

9
0 I would like to mention that one of the conditions allows staff to approve
1 minor changes but because this proposal includes the addition of a condo
2 unit, the amendment to the short-term rental for one unit and changes of
3 the boundary line, and extends the commencement of construction we felt
4 that this went above the minor change so we required the applicant to go
5 to the planning board with this.

6
7 If this amendment is approved by the planning board, the original
8 conditions will still apply. Tonight you will discuss condition number
9 three which restricts short-term rentals for condo units. If the board
0 decides to approve to change the unit, which is proposed to be unit 26,
1 that condition does not need to change. If the board decides that the
2 short-term rental should run with the entire condo project then that
3 condition would have to be amended from 25 to 26. If approved you will
4 need to include that as part of your decision and to add it to the plan.

5
6 We are requesting clarification on ownership and use of the right of way
7 that leads to the beach. We have discussed this with the applicant but we
8 are still missing clarification on who owns and can use the right of way.
9 I believe the intent was not to use that right of way because there is

1 another right of way that is relatively close by that is used for public
2 access.

3
4 In your packet, there is an amended motion due to the staff and developer
5 still working on the relocated parking spot locations and the sewer line.
6 These two matters are minor and that condition is attached to the 2022
7 approval and our staff and town engineer can assist with this. We feel
8 that there are diminished changes and we will verify that everything is
9 brought into compliance which is the reason for the amended motion.

0
1 (VC) Hitchcock asked (TP) Hinderliter for clarification on the square
2 footage added to the project. You said that you did the math and
3 everything was fine. I know there were issues with the density and at
4 times it seems like they may have to do fewer units than more. So when you
5 said that it was fine is that what you were referring to? (TP) Hinderliter
6 states that since the last approval, developers acquired another lot which
7 added to the square footage. They were able to carve out some square
8 footage to help with the density counts and still make the lot conforming.
9 Ms. Dube understands that they want to change unit 25 into unit 26 but
0 asks if they will be eliminating the original unit 25. (TP) Hinderliter
1 said that originally the planning board approved 24 new condo units and
2 that there was a single family included with the condo that was unit 25.
3 The applicant did not want to skip a number so they proposed to change the
4 number and add that as unit 25, and the former unit 25 will become unit
5 26. Ms. Dube stated that once approval is given for one short-term rental,
6 you know that they are going to come back and request this for the entire
7 building. Mr. Dupuis states that they are requesting this for the single-
8 family house and not the condo units. Ms. Dube reported that (TP)
9 Hinderliter advised them that everything was going to become one project.
0 (TP) Hinderliter states that the short-term rental request is not for the
1 entire project and that it is only for one unit.

2
3 (VC) Hitchcock asked the applicant if he would like to speak to the board.
4 The applicant approached the podium and introduced himself as Kaleb
5 Bourassa, Project Manager. He reports that he would like to clarify that
6 although applicants now have control of the lot at 6 Little River Rd, this
7 is not being added to the density or anything like that. This will remain
8 a single family and this is not part of the amendment at this moment. The
9 density calculations shown reflect what you would have seen in March at
0 the approval. Everything is based on the same lot area, square footage,
1 and all those characteristics. We are requesting the following:

- 2
3 1. A one-year extension on the construction start and end dates. The
4 applicants have been reviewing pricing and are still looking over the
5 project. The market has been very volatile and they are still
6 looking to finish up their financing and get ready to go this year.
7
- 8 2. We want to adjust the lot lines for ten Little River Rd and the main
9 lot which I will refer to as two Little River lots which is
0 reflective of the condominium development. We have adjusted more of

1 the lot lines than on the previous plan to make the lot at 20,000
2 square feet. This is above the town's mandated standards but at the
3 state level for a lot with a septic system. We have been recently
4 notified by the applicant that the septic system has failed and needs
5 replacement.

6
7 3. We are requesting to have this development connected to the public
8 sewer system.

9
0 This property is located in the back dunes and there are very stringent
1 standards that need to be followed here. The town standards limit the lot
2 coverage to 80% but the state standards are only 40%. For the buildings,
3 the standards are that we can cover 60% of the lot but that goes down to
4 only 20% for the state. We have always been well within those standards
5 and that goes back to our permit by rules with DEP.

6
7 Generally, the plan looks like it did last year except where the two
8 duplexes are there was a three-unit building and additionally there were
9 the same two parking spaces. We restructured the parking and were able to
0 add up to 5 parking spaces, 2 for unit 26 and one each for units 25 and
1 24. We also were able to configure an additional visitor's space, a small
2 loading zone, and a pathway that goes over to the pool area.

3
4 (TP) Hinderliter was talking about the right of way to the beach which has
5 not been a part of our proposal. At our last approval, the applicants
6 were not planning to use that right of way. They have not given up or
7 abandoned that right of way and it still exists but for my purposes and
8 what I am here for tonight does not include that right of way.

9
0 There are some very minor grading and landscaping changes there of course
1 the request to make unit 26 which is the stand-alone structure in the back
2 able to do short-term rentals does not mean that they will or won't but
3 just having that ability would be nice for the applicants. So we would
4 like the board's thoughts on that as well.

5
6 There are some additional outstanding items which were the DEP approvals
7 as you had mentioned. We have received all the final approvals and they
8 were sent to the Code Enforcement for the town on Monday.

9
0 So, before we had even thought of doing this proposal here we had been
1 having meetings with those folks to make sure that we were meeting the
2 dune standards, and water permit by rule and we had an adjacent permit
3 rule for some of the roadwork that we are still proposing here.

4
5 We have been working with Chris White who is the director of the Public
6 Works Department as well as the director of Public Waste Water concerning
7 connecting the house at the end of the road to the public sewer system.
8 This area is very flat and at a low elevation which would require some
9 sort of force main. Initially, our thoughts were to put it down the right
0 of way but now we are looking at doing a cross-country system that would

1 connect it to the main sewer for the development. This plan has been
2 signed off by Chris White. We also negotiated with them to put the other
3 lot at 6 River Rd on public sewer as well. To be able to get all of Little
4 River Rd on public sewer with the marsh and other resources is a big win
5 for an area like this.

6
7 Generally, those are the main pieces. We had some minor comments from the
8 Technical Reviewer, Mr. Pierce but we have already addressed those in the
9 plans. The comments that were addressed are the following:

- 1 • Minor grading issues.
- 2 • Updates to the post-construction storm-water management plan.
- 3 • (TP) Hinderliter's comment about adding a standard for space and
4 bulk.
- 5 • Adding additional signage to designate guest spaces, resident spaces,
6 and additional no parking signage by unit 26 by the one-way
7 entrance.

8
9 We are satisfied with what we were able to provide in this plan. Are
0 there any questions?

1
2 (VC) Hitchcock requested clarification on what Kaleb means by road
3 improvements. Kaleb states that there was a portion of land that was going
4 to be conveyed to the town which was one of our standing conditions. We
5 spent time in March and most of April trying to figure out exactly what
6 the town wanted for improvements here. We had 24 feet of pavement if you
7 recall the right of way is only 22 feet wide in Little River. So we are
8 going to provide 30 feet up to the second driveway which includes 24 feet
9 of pavement and there was a five-foot sidewalk.

0
1 (VC) Hitchcock then asked if the sidewalk was raised. Caleb replied he
2 believes the sidewalk was not raised and he thinks that at the last
3 meeting, it was decided not to have a curb. He then states that the
4 motivation of the project was not to add units but to offer some
5 amenities. The pool is one and maybe the parking space but what are the
6 others? Kaleb states that due to limited space and developable areas, this
7 is what we have come up with. If we can offer 1000 square feet that leaves
8 us with only 400 square feet of developable space. Parking was a big piece
9 but the pool would be an added amenity. Mr. Winch asked if unit 26 is
0 considered a regular condo unit, and Kaleb responded yes. Mr. Winch then
1 asked if whoever purchased the unit would become the rental agent if they
2 wanted a short-term rental. Kaleb states that I believe that we can
3 clarify this a little more. Caleb asked (TP) Hinderliter If he remembered
4 how that condition was written. (TP) Hinderliter stated that he thinks
5 that it is pretty specific to say units 1-25 and that condition would run
6 with approval of the project. Mr. Kelley asked if the 5 additional
7 parking spaces towards the rear of the property would require fill to be
8 brought in because they are very close to the wetlands. Kaleb states that
9 most everything is at grade and that we are part of the flood plan and we
0 have addressed a lot of this in our previous application. Most likely we

1 will be replacing what is there with some gravel section. All of the
2 parking spaces are the 100-foot shoreline setback so we are well away from
3 all of the wetlands there. Mr. Kelley then asked if the parking spaces
4 would come under DEP scrutiny and Kaleb replied, yes. Mr. Kelley then
5 asked if the sidewalk was raised. Kaleb says that at the end of the last
6 meeting, it was determined that we were not putting in a curb. Ms. Dube
7 thought that the curb was not being added because of the width of the
8 road. (VC) Hitchcock states that at one point you were going to take space
9 from the island, therefore you would have a 24-foot road, a 5-foot
0 sidewalk, and 3 feet in between. Kaleb asks (TP) Hinderliter if he recalls
1 anything about this. (TP) Hinderliter states that he remembers the
2 discussion about the elevated 5-foot sidewalk but he does not recall
3 anything about the 3 feet in between the sidewalk and the road. (VC)
4 Hitchcock thought that this would have allowed for the sidewalk to be
5 raised. So I was curious if you could go back to a raised sidewalk. Kaleb
6 states that he does not see a problem with the raised sidewalk. (VC)
7 Hitchcock thinks that the board voted for the raised sidewalk last spring.
8 Mr. Dupuis says that he believes that this was voted down and from what he
9 remembers there were only two members who voted for the raised sidewalk
0 everyone else voted against it. (VC) Hitchcock asked (TP) Hinderliter if
1 he recalled anything about the vote to which (TP) Hinderliter replied that
2 he would have to look at the minutes to get a solid answer on this. Mr.
3 Kelley states that the bottom line is that we have an approved plan with
4 our signatures on it and the raised sidewalk is either on there or it is
5 not. (VC) Hitchcock states that this is why he requested (TP) Hinderliter
6 to look into it because if it is raised on the approved plans it should be
7 raised here and if not we will leave it as it is on the approved plan.

8
9 Mr. Kelley states *I would like to make a motion to have a raised sidewalk*
0 *on the Little River Rd side of the project from the end of the project to*
1 *the second entrance. That is my motion.*

2
3 (VC) Hitchcock states that there is a motion on the floor and asks if
4 there is a second. Mr. Winch seconded the motion

5
6 **CALL FOR VOTE**

7
8 (VC) Hitchcock asked (TP) Hinderliter to call for the vote.

9
0 Mr. Kelley: YES
1 Ms. Hubert: NO
2 Mr. Winch: NO
3 Ms. Dube NO
4 (VC) Hitchcock YES

5
6 **The vote goes down as 3-2 minus**

7
8 (VC) Hitchcock states that other than the extension of a year this
9 appeared to be a simple proposal to add one unit and two amenities. Why
0 would we want to change a condition like you propose for unit 26 to be

1 outside of the agreed-upon restriction for the other 25 units? By adding
2 the additional unit and changing the numbers you want it to fall into a
3 different restriction, this does not sound logical to me. Kaleb replied
4 that unit 26 is going to look different than the townhouses that will be
5 built. It is also located in the back of the other units. Ms. Hubert asked
6 if unit 26 has a separate driveway and if that separate driveway will
7 remain. Kaleb reports that unit 26 would lose its separate driveway and
8 access will be through the complex.

9
0 Ms. Dube requests to make a motion and says,

1
2 ***"I would like to make a motion to approve the amended site plan and***
3 ***subdivision application processing requests.***

4
5 ***❖ The Commencement of Construction 1-year extension request of the site***
6 ***plan and subdivision approvals. The New Commencement of Construction***
7 ***date is 10 March 2024.***

8
9 ***❖ Amend plans with the minor amendments identified in the letter from***
0 ***Kaleb Bourassa, of Goral Palmer pages 1 and 2. Accepting parking***
1 ***locations and septic system replacements must be approved by the Town***
2 ***Of Old Orchard Beach staff before the Commencement of Construction***
3 ***with the following conditions:***

4
5 ***1. All conditions that were attached to the 10 March 2022 approval***
6 ***remain in effect.***

7 ***2. Resolve any outstanding matters identified by Wright-Pierce at the***
8 ***construction site meeting.***

9
0 (VC) Hitchcock states that we have a motion on the floor and Mr. Winch
1 seconds the motion. (VC) Hitchcock says that he would like to offer a
2 friendly amendment to the motion which is that the restriction on rentals
3 is for units 1-26 for short-term rentals. He then prompts Ms. Dube to
4 accept his amendment to her motion.

5
6 Ms. Dube accepts that amendment to be part of her motion.

7
8 (VC) Hitchcock requested that (TP) Hinderliter call for the vote which was
9 the following:

0
1 **Mr. Kelley: YES**
2 **Ms. Hubert: YES**
3 **Mr. Winch: YES**
4 **Ms. Dube: YES**
5 **(VC) Hitchcock: YES**

6
7 **The vote goes down as 5-0.**

8
9 **ITEM 3**

1 Proposal: Site Plan: Recreation (?) facility with climbing walls and
2 trampolines

3 Action: Zoning discussion and use interpretation

4 Applicant: Rafi Jacobi

5 Location: 36 Old Orchard St., MBL: 205-3-8

6
7 (TP) Hinderliter updated the board with the following:

8
9 This item proposes to establish a recreational facility located at 36 Old
0 Orchard Street in the vacant lot behind Beach Bagel. The facility will
1 include climbing walls and bungee trampolines and it is a unique
2 opportunity for our downtown area. Before Rafi puts any time or finances
3 into the project we wanted some advisement from the Planning Board. In
4 your memo, there are several comments that we have for this proposal but
5 tonight I am only going to mention three which are:

6
7 ❖ Is this use allowed?

8 ❖ If defined as a recreational facility alone the use is allowed
9 on this lot which is in the DD1 Zoning district. If the bungee
0 trampoline falls under the bungee jumping definition this is not
1 allowed on this lot and is only allowed in the Amusement Overlay
2 District.

3
4 Also, there is a standard that is mixed into the ordinance
5 for temporary structures if the structure is used for a
6 place of business storage or sales then they are only
7 allowed in the amusement district. Is it a climbing wall
8 business storage or sales? If it just stated a place of
9 business that would be different.

0
1 The proposal must meet applicable standards including
2 architectural design standards. The mass and scale may be
3 difficult to meet because it requires compatibility with the
4 local building fabric.

5
6 Earlier this week Rafi had a similar meeting with the DRC
7 to be receptive to the idea but there were some things that
8 they could not get involved in because of their
9 jurisdiction (what they are allowed to do and what they are
0 unable to do.) The planning board has jurisdiction over
1 the entire ordinance and can overrule the DRC. If the DRC
2 is unable to review a standard, it does not mean the
3 standard does not exist, the standards are there. So
4 architectural standards like mass and scale are things that
5 Rafi and the planning board will have to consider.

6
7 ❖ Is location the appropriate for the proposed use?

8 This is difficult to determine since it could be ruled based on
9 personal opinion which could be unfair to the planning board and
0 applicant.

1 Less than 100 feet from this property, is the Amusement
2 Overlay District which was created and designed for
3 recreational things like this.
4

5 I do believe that this is an allowed use but it may be difficult to meet
6 the compliance standards to allow the use.
7

8 Rafi can move forward next month if he wants but I wanted to be as fair as
9 possible to him and to try to get initial thoughts from the planning
0 board. This project will require a full site plan review, and he will need
1 an engineer to design the lot and those things are time-consuming as well
2 as costly. I hate to see him get too invested in this project just to be
3 turned down.
4

5 (VC) Hitchcock asked Rafi to explain the project. Rafi states that there
6 is not a climbing wall in the area so there will not be any competition.
7 This is a great opportunity for Old Orchard Beach. This is not dangerous,
8 it is very safe. There is no bungee jumping, only jumping on a trampoline.
9 The children wear a harness and they safely jump on the trampoline. Again,
0 this is very safe, the harness prevents the children from getting injured.
1 This lot has been vacant for the past 20 years and we can meet all the
2 criteria for this project. Does the board think that this would or would
3 not be useful for the town? (VC) Hitchcock asks if there is anything like
4 this in Maine. Rafi states that there is nothing like this in Maine or New
5 England. Mr. Winch states that since there is a bungee, this would be
6 classified as an amusement, but we can consider the climbing wall. (TP)
7 Hinderliter says that he wants to make sure that this cannot be considered
8 bungee jumping because the participants are not jumping off an elevated
9 location. The participants have a harness on and the bungee is attached to
0 their waist so I believe that we can consider this. Mr. Dupuis asks if
1 Rafi plans on paving and making the lot flat. Another question is what
2 would you do for restrooms? Rafi reports that yes, he plans on paving and
3 he has a store across the street that can accommodate those who ask to use
4 the restroom. Ms. Hubert asks about what the plans are for parking because
5 there is none. Ms. Dube responded that Palace Playland does not have any
6 parking. (TP) Hinderliter states that in the downtown, parking is not
7 required. Ms. Dube states that Rafi should not mention the word bungee at
8 all in the description because years ago the town would not allow it.
9 After all, it was bungee jumping. (VC) Hitchcock asks if we should go
0 forward with this proposal. Mr. Kelley states that if this meets the
1 letter of the law we should have him go through the process that is
2 usually taken. (TP) Hinderliter states that he wanted to see how the board
3 felt about this and he does not feel that anyone is against it. Ms. Hubert
4 asked about the hours of operation and if he plans to operate at night.
5 Rafi states that he plans to use LED lighting. Ms. Dube asks if there is a
6 restriction for lighting and noise. (TP) Hinderliter states that we will
7 need to look into this. The big thing we have to consider is how to secure
8 the area at nighttime. The location is right near bars and is a potential
9 target. Rafi states that you can put the climbing wall down by pressing a
0 button. Sam asked if there would be a fence and Rafi stated that there

