

TO: Old Orchard Beach Planning Board
FROM: Planning Staff
SUBJECT: April Planning Board Meeting Summary
DATE: 13 April 2017

Below is a summary of pertinent issues related to the April Planning Board Agenda items:

Applicant Note: May meeting submission date is 24 April 2017.

ITEM 2

Proposal: Site Plan: Dunkin Donuts- Construct 2080 sq. ft. building and associated parking
Action: Ruling on commencement of construction 1 year extension (no plan changes)
Applicant: JFJ Holdings, LLC
Location: 14 Ocean Park Rd, MBL: 210-1-6

This proposal is before the PB for the purposes of extending the 1 year construction commencement deadline associated with projects approved under Site Plan Review. Dunkin Donuts secured final Site Plan approval, with conditions, on 10 March 2016. On 14 April 2016, D&D received approval of an amended Site Plan to change the delivery time condition. The Findings of Fact were reviewed and approved on 14 April.

It could be argued that construction has commenced because site development activities (removal of cabins, asbestos assessment and removal) took place after the PB's approval. But staff thought this question could be easily cleared up by securing a 1year extension for construction commencement.

The PB may grant 1 year extensions if compelling evidence is presented that additional time is required to meet federal, state, or local permit requirements or in reaction to market changes. The applicant states the delay is in part due to timing of other permitting/approvals that pushed construction off longer than anticipated (see applicant's submission).

Recommendations: Staff recommends the PB grant a 1-year extension of commencement of construction. As a separate note, approval conditions are below (#2 is complete).

1. Deliveries associated with the WB-67 vehicle shall be between the hours of 9:00 am – 3:00 pm and between 6:00 pm – 9:00 pm.
2. The applicant shall submit a post construction storm water management plan and enter into a maintenance agreement with the town before the site work begins.

ITEM 3

Proposal: Major Subdivision and Site Plan Review Amendment: 9-unit residential development
Action: Discussion; Ruling on Amendment
Owner: Tom Gillis
Location: 1-3 Cascade Rd., MBL: 205-16-1, GB1

Update

Seaglass Terrace subdivision amendment is scheduled for final ruling at our April meeting. At our March meeting, Mr. Gillis presented a sketch plan showing changes to the 2007 plan. The primary changes include the unit type and layout, especially units 1, 3, 5, 7 (approved as two, 2 units and proposed as 4 single units) and the condo units now have their own lots. As we found, this proposal is a bit different from other amendments we've reviewed because it is partially built, including most of the infrastructure. So, it may be difficult to change items that physically exist and were built in accordance with previous approvals. Nonetheless, PB and staff had questions concerning the proposal. A number of the questions were addressed by Mr. Gillis at the March meeting and in the plan submitted for April. Below are staff follow-up questions and comments:

- Change unit #10 to #9.
- Note #8 added at staff request due to wetland setback and unit location.
- Note #5 states proposed sidewalk shall extend to proposed SMH 1 and 2. Where are sewer man holes (SMH) 1 & 2? Is this the sidewalk along Cascade Rd. frontage? SMH 1 and 2 should be id on plan.
- How do we ensure the sidewalk is constructed? Should a LOC or escrow be set up to make sure this happens?
- I believe the Mr. Gillis addressed most of the Fire Department comments by sprinkling unit 3, relocation unit 5 so it is within 50' of paved area, and lengthening the fire turnaround. One comment I expect from the FD is addition of fire hydrant within the development. This is due to the distance (more than 500') existing fire hydrants are to buildings in the development. If the Fire Chief requests this it should be added to the final plan. Also, the sprinkler for unit 3 should be a condition and possibly a note on the final plan.
- Snow storage is shown on the plan- we just need to be sure the turnaround remains clear.
- The PB requested existing vs. proposed impervious surface calcs. The plan shows building coverage which does not include all impervious surface (e.g., paved surfaces). Mr. Gillis may have this but I cannot find it in his submission.
- We need a stamp and signature on final plan.
- Comments on plan regarding trash removal. I recommend this language be added as a note.
- Should a note be added to the plan stating the road is to remain private?
- The sewer lines to homes are identified as "psc"- what is "psc"? This should be added in legend.
- Psc connection to unit 3- add a cleanout? Cleanout are usually recommended for individual line lengths of 100' +.
- I assume the circle with S inside is a sewer man hole. This should be added to the legend.
- Does the legend show all existing and proposed?
- Onsite electric show an underground line connecting to unit 10 but I don't see how electric runs throughout the rest of the project. If this is not show it should be identified on the plan.
- Question regarding whether waivers were granted as part of the 2007 approval. After reviewing prior staff notes and approval documents the only waiver was for holding a preliminary plan public hearing.
- Staff needs to review the home owner's docs. These have been submitted but not reviewed.

Recommendations: Staff believes there are a number of issues that need resolution before findings are issued and a plan is signed. Since most of these issues could be resolved by changing the plan it's possible the PB can issue a decision but state the plan will not be signed until the outstanding items are addressed. Or, the PB can table their decision until the items are addressed. Questions in the bullets above should be answered before the PB issues a decision because these questions may lead to plan changes or conditions. Recommended plan changes are below.

Plan Changes

1. Change unit 10 to 9
2. SMH 1 and 2 shown on plan
3. Add fire hydrant within development (if Chief recommends)
4. Add note on plan stating Unit #3 shall be sprinkled
5. Stamp and signature on plan
6. Add note on plan stating trash removal will be private curbside pick-up
7. Add note on plan stating roads shall remain private and maintained by the HOA
8. Add psc to legend
9. Add SMH to legend
10. Add electrical info to plan if not shown

Background

Tom Gillis, owner of Seaglass Terrace, is proposing to amend the 14 July 2007 Planning Board approval of Seaglass Terrace by converting two of the approved two-family buildings into four single-family buildings. At our March meeting, Mr. Gillis is seeking feedback from the PB to help him prepare the amendment application.

The 2007 approval authorized construction of residential subdivision consisting of nine townhouse condominium units. The nine units were divided into three two-family buildings and three single-family buildings. Highlights of the project include construction/replacement of sidewalks along Cascade Road, public water and sewer, private road with a hammerhead at the SW property line, private collection of solid waste, and a Home Owners Association. Staff inserted the 2007 Findings of Fact in the February Seaglass submission.

The proposed 2017 amendment includes the following primary changes (2017 conceptual plan vs. 2007 recorded plan):

- The approved 2 two-family buildings (units 1 & 3 and 5 & 7) are proposed to become 4 single-family buildings. There is no change to the overall unit count.
- Parking areas for the units associated with the change are adjacent to the subdivision's road.
- Units now have their own condo "lot"
- Slight changes to dimensions and location of single-family buildings (units 2, 4 and 6).
- Length of hammerhead changed.
- Dumpster pad removed

I asked Mr. Gillis to provide an update on the completeness status of the project. Mr. Gillis responded with the following:

- Roads: Base paving complete 100% (final paving to be completed at final stage of development. Final pavement 0%
- Earthwork 70%. Cuts and fills were done, stabilized but more grading is needed as the units are built.
- Sanitary Sewer 100% (four man holes installed.) Sewer connections completed to all units and tied in to main at Cascade Road.
- Water mains 85% (Main line completed and connected at street tested but not energized). All services are run to all Lots.
- Drainage 67% North Swale completed and stabilized, Drainage manhole with grate installed under roadway and headwall completed, per DEP permit. Rear swale to be finalized when back units are constructed. Retaining wall eliminated along wetland as not necessary and confirmed with consulting engineer at time (Woodward and Curren).
- Landscaping 15% complete. Landscaping was completed on units 8&10 only. I would place the sidewalk in this part. It has not been started.
- Underground utilities 5% (new pole was installed by CMP at entrance. I keep in contact with CMP every six months and the work will be completed by them once they get the go ahead they will be on site 4 to 6 days to do the install.
- Also what hasn't been started is final pavement, this is best done last. This would include the curbing portion as well.
- My best guess would be we are about 78% complete with the project.

Below are miscellaneous comments and questions associated with the proposed amendment (in no particular order).

- Road to remain private?
- Need HOA documents.

- DEP Permit-By-Rule approved during 2007. I believe this approval expired. Does the existing completed construction fulfill DEP permitting obligations? Is a new or renewed DEP permit required?
- Buildings 1 and 3 are close to the 25' wetland setback. It's important to ensure the plan clearly shows both buildings meet the setback. Also, this should be clearly noted (perhaps in FOF and a note on the plan) the buildings must not be within the wetland setback.
- Building unit numbers skip #9. Please renumber.
- Unit 10- where are parking spaces?
- Unit 8- clearly show parking spaces.
- Unit 6- identify that parking spaces are for unit 6.
- Parking space dimensions? Most are oriented at 90 degrees which requires 9 x 18 (standard) and 8'6" x 17' 6" (compact).
- Regarding the parking spaces abutting the road, is the road considered part of the parking area and must meet the aisle 24' – 25' width standards? If so the applicant will need to request a waiver as the built road is 20' wide. Sec. 78-1568 allows for parking waivers.
- As you'll see below, FD Chief Dube offers comments/concerns regarding road turning radius, distance road is from building, turnaround, hydrants. Note that during 2007, former FD Chief Glass reviewed the proposal and recommended the hammerhead (which is on the plan) and a hydrant at the entrance (not shown on the plan).
- Retaining walls- included with 2007 approval but per Mr. Gillis comments, Woodard and Curran (town's former consulting engineer) authorized removal.
- Dumpster with enclosure not included in 2017 sketch plan. Will this be on formal plan? If not what is the plan for solid waste?
- Hammerhead length the same in 2017 as approved in 2007- 40' off-center on both sides (80' total)?
- Any issues associated with project that came up after approval and during construction that remain unresolved? We're not aware of any but need to review files.
- What makes this a bit different from other amendments we've reviewed is the project is partially built, which includes most of the infrastructure. So, it may be difficult to change items that physically exist.

Department Comments

FD Chief Ed Dube:

In regard to Seaglass Terrace here are some of the requirements they need to meet by NFPA. Unit-3 and Unit-5 do not meet NFPA 18.2.3.1 requirements, and I also need to check on the nearest hydrants locations.

- 1) All roads would be twenty feet wide under NFPA 18.2.3.
- 2) Under NFPA 18.2.3.4.4 Dead End, where a fire department access road exceeds 150 feet in length and is also a dead end an appropriate turnaround is required minimum length equals to the length of the longest fire apparatus which would be our tower truck at 48 feet.
- 3) Under NFPA 18.2.3.4.3 Turning Radius, the road turning radius must be able to accommodate the turning radius of our tower truck at 48 feet long. A handout is attached to this letter with the calculation showing the turning radius for our tower truck.
- 4) All privately owned hydrants would be maintained under NFPA 18.35 Water Supplies and Fire Hydrants.

Under NFPA 18.2.3.2.1 Access to Building, a fire department access road shall extend to within 50 feet of at least one exterior door that can be open from the outside which provides access to the interior of the building. If this not done an approved automatic sprinkler system shall be installed. Under NFPA 18.2.3.2.1.1 where a one or two family dwelling is protected with an approved automatic sprinkler system installed in accordance with NFPA 13D, the distance in 18.2.3.2.1 shall be permitted to be increased to 150 feet.

ITEM 1 & 4

Proposal: Site Plan Review: Expansion of existing nonresidential (retail) building
Action: Discussion; Schedule Final Review/Ruling
Owner: Harrisburg H&P & Harrisburg Group Gen Partnership
Location: 9 East Grand Ave., MBL: 306-2-6, DD1

Update

The primary purpose of the April meeting is to bring forward remaining questions and comments (including those from abutters through the formal public hearing process) so to allow the applicant prepare to address for final plan review/ruling which is scheduled to be held in May. questions include overhang and platform encroachment, building construction, loading/unloading, warehousing, lighting, DEP permitting, and waivers.

Overhang and platform encroachment. One concern discussed at the March meeting was the building overhang and platform appears to extend beyond Harrisburg's property lines and hang over public property. With the submission of the March 2017 Plot Plan, we believe this is in fact the case. We're not aware of a OOB ordinance standard that would allow the PB to authorize this; therefore, we recommend the building plans change to show the overhang and platform do not extend beyond the Harrisburg property line.

Building construction. Abutter and PB members questioned how the building will be constructed without use of adjacent properties for staging, etc. The applicant states this can be done without use of "Richard's Apartments" property but they will most likely need to place temporary staging on public property. Temporary use of public property for staging, etc. for construction projects may be ok but we recommend the applicant discuss with public works, fire, police, and codes just to be sure. Also, is the PB comfortable with the applicants statement that they can construct with use of "Richard's Apartments" property?

Loading and unloading. 78-1592 states "all loading/unloading activities shall be conducted off public streets and private ways...in urbanized sections of town, where off-street loading facilities are impracticable, loading activities shall occur only in loading zones designated by the police chief." There are other non-zoning standards that may have some relation to loading/unloading including: shall not drive within any sidewalk except at a permanent or temporary driveway (54-109) and no person shall stop, stand or park a vehicle on a sidewalk except to avoid traffic conflicts or in compliance with directions from a police officer, other authorized person, or traffic control device (54-186). The applicant states trucks will be unloaded on Harrisburg St. (where unloading/loading zones exist) and product will be delivered by forklift. It appears the primary loading area will be off Kinney Ave.

Warehousing. A question that consistently comes up is will this proposal conduct warehousing or storage operations. OOB Ordinances do not define Warehousing but do define Warehouse Storage as "a use engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment, but excluding bulk storage of materials that are inflammable or explosive or that create hazardous or commonly recognized offensive conditions." The term Storage does not have its own definition and is not identified as a land use. Warehousing is an identified land use allowed in some districts (not the DD1). Warehousing Storage is not identified as a land use. There is no performance standards specifically related to warehousing, warehousing storage or storage.

The applicant's response to the Warehousing use question: "This is not a warehousing use, as no deliveries and shipments occur on a regular basis, there are no warehouse employees, there are no fedex or UPS or US mail trucks making deliveries from this site, or anything else similar to a warehousing operation. The majority of the items delivered will be used for this business, in this site. This is a stock area and retail area, the same as all other second floor and basement stock areas in every other business in town."

As you can see, the applicant intends to store product with a majority of the products to be used for the proposed site. The Note the Warehouse Storage definition states "a use engaged in storage, wholesale, and distribution." So, to be considered a Warehouse Storage or possibly a Warehouse use must the use engage in all three- storage, wholesale and distribution? Or will engaging in one of the three qualify a use as Warehouse Storage? Or is this an "Oxford Comma"

case? Without definitions or performance standards for Storage and Warehousing the only ordinance related term we have is Warehouse Storage. One possible approach to help us rule on this is to ask the applicant to provide evidence that the proposed use does not meet the Warehouse Storage definition. The PB could apply a condition associated with this if approved. Also, this could be tied to occupancy permits if it remains a question.

Lighting. There are questions concerning the brightness and glare of lights onto adjacent properties. This was discussed as part of DRC's review (7 Nov 16 Minutes): "Lighting fixtures are going to be located on the outside. 5 fixtures on the right side and 7 fixtures on the front with LED lighting. They will not be adding more neon signs however they will keep the neon signs on the first floor that are already existing." Also, the Certificate of Appropriateness has the following lighting-related condition: "No neon signs on the upper story. No excessive lights neon or otherwise on the second floor either internal or external."

DEP Permitting. This proposal requires DEP permitting because it's in the rear coastal dune. The applicant is in the process of securing applicable DEP permits. One question- should the PB rule on the proposal after the applicant secures applicable DEP approvals or, if approved, attach a condition that requires the applicant to secure DEP permitting approvals before construction begins.

Waiver request and March 2017 Plot Plan review. Below is a review of the March 2017 Harrisburg Property Plot Plan and Site Plan Application Requirements (78-215) for waiver request purposes (staff comments in **bold**). Staff requested the applicant provide follow-up to the waiver requests including justifications for those items they intend to continue to seek waivers for (not yet received). Remember, in order to grant a waiver the PB must determine "The required application submission will not yield any useful information given the nature and scope of the proposed activity or the existing character of the site."

78-215 (Site Plan Ordinance)

(c) *Plenary site plan review application requirements.* The applicant shall file all designated application fees, as determined by the town council, and provide 13 copies of the following submission items:

(1) A fully executed and signed plenary site plan review application.

No Waiver Necessary, though we may need a bit more info on the application. We can take care of this in my office.

(2) Copy of property deed, option to purchase, or other documentation to demonstrate the applicant's right, title or interest in the property.

Submitted, no waiver required

(3) Proposed site plan, drawn at a scale not to exceed one inch equals 40 feet or at a scale otherwise required by the town planner. Such plan shall be sealed by a professional engineer, landscape architect, or a surveyor licensed in the state and shall contain the following information:

See comments below

a. Property boundary survey class 1, signed and sealed by a state-licensed land surveyor, showing bearings and distances of the subject property boundary, topographic elevations at a contour interval of no more than two feet, location and elevation of all existing and proposed structures, site features and site improvements.

***Is the March 2017 Plan a property survey class 1? If so we'll need a statement on the plan stating this (I think this is pretty standard language they can insert on the final plan). If not, you can either get a class 1 survey prepared (which I recommend) or seek a waiver of the class 1 survey requirement and argue the survey provided has been signed and sealed by a professional land surveyor.**

***Topo elevations are not on the plan. Assuming there is no site work I personally don't see the need for this. Nonetheless, it is part of the site plan requirements so you need to request a waiver.**

***Location of existing and proposed structures, etc. Does the plan show all existing and proposed structures, site features and site improvements? The only items I can think of it does not show the full extent of the proposed overhangs and second floor platforms. These items should be shown on the plan because they are part of the proposed structure and have been questioned. If not, you'll need to request a waiver. I recommend the plan show these items. I expect this particular part of "a" would be difficult to waive.**

b. Information block containing location, address, map-block-lot number of subject property as recorded in the town assessor's office, name and address of the applicant and owner if different. **It's easy to place these items on the final plan so I see no need for a waiver (unless you don't intend to place on final plan)**

c. Approval block providing space for the signatures of planning board members. **You can place this on the final plan- easy enough.**

d. The existing zone in which the property is located. If the property is divided by a zone line, the line shall be delineated and labeled on the site plan. **Simply add "DD1" in the information block on the final plan.**

e. Map scale, north arrow (true north), and date the site plan was prepared including the date of any subsequent revisions made to the plan. **This should be an easy enough addition to the final plan.**

f. Identification and location of all abutters to the applicant's property. **The plan id's all direct abutters so you should be ok.**

g. The dimensions and layout of all building and zoning setback lines. **The plan shows existing building setbacks but the primary questions are associated with the proposed building setbacks, specifically regarding the overhangs and platform. If you intend to continue with proposed overhangs or platforms that extend towards property boundaries (beyond the existing building walls) then it's important you show this on the plan, including the proposed setbacks. You can request a waiver but I believe this would be a hard one for the PB to waive.**

h. Delineation of all existing and proposed public and private easements on or directly adjacent to the property. **I assume the surveyor considered this when preparing the plan so it should this info. You may want to ask- especially if any exist adjacent to the property.**

i. Location, dimensions, and layout of all existing and proposed built elements, including buildings and structures, parking areas, driveways, town/state roads, sidewalks, fences, walls, steps, piers and docks, patios, swimming pools, and signage. **See "a" and "g" above. The primary question- does the plan accurately represent what's proposed? If not, I highly recommend the plan show this. This would be a hard one to waive.**

j. Location of existing site features located on the property, including but not limited to existing streams, wetlands, drainage swales, tree lines, identification and location of specimen trees greater than eight inches caliper, location of existing rock outcrops, and boundary of 100-year flood zone as defined by the Federal Emergency Management Agency flood insurance rate map for the town. **I checked the aerial it appears none of these exist. You should be ok.**

k. Location of existing and proposed utilities including overhead telephone poles and/or underground cables, public sewer and water lines, gate valves, fire hydrants, dumpsters or waste receptacles, private septic systems and water supply wells.

It looks like all the applicable items are shown. You should be ok with this.

l. Specification, layout, and quantity of proposed landscaping plant materials.

I assume none of the above is proposed so you should be ok with this.

m. Location, layout, and dimensions of all existing and proposed drainage facilities, accompanied by detailed drainage calculations signed and sealed by a professional engineer licensed in the state.

Aerial photo does not show drainage facilities existing. If none are proposed you're ok with this.

n. Location, specification, height and photometric data of existing and proposed exterior lighting.

Location and type of fixture included and approved as part of Design Review proposal. Although photometric data was not. You could ask the PB to accept lighting included in the DRC submission as part of your site plan record and request they waive the photometric data.

o. Soil erosion control plan showing location, quantity, and specifications of erosion control devices and strategies to be implemented to minimize on- and off-site sedimentation.

If this proposal is not disturbing soil than no waiver is required.

(4) *Digital submission requirements.* All plan sheets must be submitted in digital format:

No waiver required for these items

(5) Cost estimates for all proposed site improvements.

No waiver required

(6) Building plans of all proposed structures including interior layout, side and front elevations drawn to a scale of not less than one-fourth inch to one foot.

Building plans were submitted that include the above info. One problem is the overhangs and platform shown on the plans appear to extend beyond the property line. So, those plans that show this should be amended.

(7) Schematic elevation of proposed signs, drawn to a scale of not less than three-fourths inch to one foot, and illustrating sign layout, lettering, graphics and logos, materials, color, and proposed illumination.

Are new sign proposed? Based on the DRC submission it appears they are not.

(8) Additional submittals. In addition, the planning board may require any one or all of the additional impact studies and information to be submitted as part of the plenary site plan review application:

These are not "shall require" as the language states the PB "may require" so there is no need to request waivers for these unless the PB feels one or more are required.

a. Fiscal impact assessment, analyzing the projected fiscal impacts to the municipal service delivery system.

b. Traffic impact assessment, analyzing the potential trip generation created by the proposed project and its cumulative impact upon traffic capacity of servicing public streets and level of service performance at off-site intersections.

c. Visual/cultural impact assessment, analyzing the impacts of the project upon prevailing visual quality, architectural fabric, and cultural character.

d. Groundwater study, analyzing the individual and cumulative impacts of the proposed project upon existing groundwater quality.

e. Adaptive reuse study, investigating the potential reuse of major facilities if the proposed use fails.

f. Market study, prepared by a qualified market research firm and indicating the potential feasibility and projected success of a proposed use.

Recommendations: In order to prepare for final plan review, we recommend the applicant provide written responses to the questions/comments above, amend submitted building plans and plot plan, address public comment, provide amended waiver requests, and any other items the PB identifies.

Background

The PB tabled determination of completeness at the December 2016 meeting because the applicants December plenary site plan review submission did not include all relevant information necessary to allow the PB to make a reasonable and informed decision. The PB requested the following information:

1. A completed, signed and properly printed plenary site plan review application (application submitted 1 Dec- has not been reviewed)
2. Waiver requests
3. Responses to the 9 Site Plan Criteria for Approval (78-216 (d)).
4. Any items requested by the PB members and Department Heads.

In response, the applicants March submission includes the above. This first matter we should consider is the waiver requests. The applicant can request waivers (78-215 (d) see below) but they must prove to the PB and the PB must determine “that the required application submission will not yield any useful information given the nature and scope of the proposed activity or the existing character of the site.”

(d) *Waiver of submission requirements.* Specific submission requirements of subsections (b) and (c) of this section* may be waived by the reviewing authority if the authority rules that the required application submission will not yield any useful information given the nature and scope of the proposed activity or the existing character of the site. *Note: “this section” refers only to section 78-215 – Application.

A majority of the applicant’s waiver requests are associated with the site plan. The applicant submitted a boundary survey which includes the site plan information after submission of the waiver request so the original waiver request should change. Although the boundary survey plan is for another property (Chalom, Et. Al.), it includes much of the data associated with this proposal’s property. Below are the site plan requirements. **Highlighted** are the items not included in the Chalom Boundary Survey. Staff notes in **bold** provide comment concerning the particular requirement- in some cases the item is not included and may not be required, other cases we just seek some comment.

(3) Proposed site plan, drawn at a scale not to exceed one inch equals 40 feet or at a scale otherwise required by the town planner. Such plan shall be sealed by a professional engineer, landscape architect, or a surveyor licensed in the state and shall contain the following information:

- a. Property boundary survey class 1, signed and sealed by a state-licensed land surveyor, showing bearings and distances of the subject property boundary, **topographic elevations at a contour**

interval of no more than two feet, location and elevation of all existing and proposed structures, site features and site improvements.

b. Information block containing location, address, map-block-lot number of subject property as recorded in the town assessor's office, name and address of the applicant and owner if different.

c. Approval block providing space for the signatures of planning board members.

d. The existing zone in which the property is located. If the property is divided by a zone line, the line shall be delineated and labeled on the site plan. **Shown**

e. Map scale, north arrow (true north), and date the site plan was prepared including the date of any subsequent revisions made to the plan. **Shown**

f. Identification and location of all abutters to the applicant's property. **Shown**

g. The dimensions and layout of all building and zoning setback lines. **Note: the applicant indicates there will be no horizontal expansion of the building footprint. Also, nonresidential uses in the DD1 have no setback requirement.**

h. Delineation of all existing and proposed public and private easements on or directly adjacent to the property. **Note: review of the deed shows no public or private easements directly on property. We don't know if any exist directly adjacent to the property except the boundary survey shows the E. Grand and Kinney ROW. We recommend the applicant comment on this.**

i. Location, dimensions, and layout of all existing and proposed built elements, including buildings and structures, parking areas, driveways, town/state roads, sidewalks, fences, walls, steps, piers and docks, patios, swimming pools, and signage. **Note: the boundary survey may show all existing and proposed build elements. We recommend the applicant comment on this.**

j. Location of existing site features located on the property, including but not limited to existing streams, wetlands, drainage swales, tree lines, identification and location of specimen trees greater than eight inches caliper, location of existing rock outcrops, and boundary of 100-year flood zone as defined by the Federal Emergency Management Agency flood insurance rate map for the town. **Note: these items do not exist on this property**

k. Location of existing and proposed utilities including overhead telephone poles and/or underground cables, public sewer and water lines, gate valves, fire hydrants, dumpsters or waste receptacles, private septic systems and water supply wells. **Note: the applicable items appear to be shown on the boundary survey.**

l. Specification, layout, and quantity of proposed landscaping plant materials. **Note: landscaping is not included with this proposal.**

m. Location, layout, and dimensions of all existing and proposed drainage facilities, accompanied by detailed drainage calculations signed and sealed by a professional engineer licensed in the state. **Note: new drainage is not associated with this proposal.**

n. Location, specification, height and photometric data of existing and proposed exterior lighting. **Note: the building plans and DRC submission show location, specification and height of exterior lighting but photometric data is not included. Does the PB feel this is necessary?**

- o. Soil erosion control plan showing location, quantity, and specifications of erosion control devices and strategies to be implemented to minimize on- and off-site sedimentation. **Note: it would appear a soil erosion control plan is not necessary as the applicant has indicated site work is not included with this proposal.**

Again the applicant is requesting a waiver of the site plan requirements. With the submission of the Chalom Boundary Survey, a number of the site plan requirements can be met or may not be required due to the nature of the proposal. If this proposal involved construction of a new building (site work, foundation on up, etc.) it would be our opinion that a full site plan is required. Since this proposal's new construction is a second floor addition and within the buildings existing footprint, we believe a full site plan meeting all requirements is not necessary. In addition to the above-mentioned site plan waivers, the applicant is seeking waiver of requirements which you'll find in his March submission.

The PB asked the applicant to address comments received from department heads. The applicant provides this in his March submission. Below are the department comments with the applicant's response in **bold**.

- Codes

I had a brief moment to look over the proposed addition to the Harrisburg building on East Grand. I'm very pro building- especially in Commercial areas but there seems to be some unanswered issues with this proposal.

And there are a couple of points that need some further explanation.

- As you know Warehousing is not a use allowed for this zone- Is the intent to have storage on the second floor-Is the storage solely for this shop or will it be dispersed from structure to structure as needed?
I believe we should resolve this issue once and for all before any approvals are granted. Regardless, isn't this considered an expansion of a non-conforming use at least?
- There is a conveyor system proposed ,why? Does it extend to the basement and the new floor as well?
- The wall facing away from East Grand is a sheer Blank Wall, (back)how is this going to be built without accessing from the abutting property? Is there anything in place that indicated that it will be allowed or can they work from the property lines? Will they be required to fence in the property line?
- I was informed that they intend to load merchandise from a forklift and put it into the second floor at Kinney Ave near the intersection.
- There appears to be a balcony with sliders in the Kinney Street side that would overhang the sidewalk what is the status of Kinney in Width and who owns the sidewalk?
- We have an ongoing issue with trash and debris from the existing business, how much more will be loaded to the existing systems? Currently the dumpsters in place are often overflowing and exposed. Maybe it's time for the owner to step up and have a better system in place. There should not be any outside storage of pallets scrap metals cardboards, plastics etc..... The current system is not adequate.
- Will any off-site improvements be required?

As far as Codes, the storage will be primarily for this building but also supplement the adjacent businesses across Kinney Avenue. This is a conforming use in the DD-1 district and expansions of permitted uses are permitted. This is not a warehousing use, as no deliveries and shipments occur on a regular basis, there are no warehouse employees, there are no fedex or UPS or US mail trucks making deliveries from this site, or anything else similar to a warehousing operation. The majority of the items delivered will be used for this business, in this site. This is a stock area and retail area, the same as all other second floor and basement stock areas in every other business in town. The conveyor is as shown on the plans. The project can be built without accessing the neighbors' parking lot, if required, as the rear wall could easily be built off site in the enclosed parking lot across Kinney Avenue, owned by the Applicant, and craned into place. There are no current issues with the existing trash, and the Applicant owns and manages one of the very few enclosed trash areas in all of Old Orchard Beach. No trash, debris, pallets, or other items will be stored on the site.

- PD

Jeffrey, after reviewing Mr. Harrisburg's plans for adding additional retail space to his property located at, 9 East Grand Avenue, the only concern I have would be related to any loading or unloading of merchandise that might occur at that location. The drawings show a door and balcony on the Kinney Avenue side of the building and a conveyor belt leading to the second floor on the inside. It would appear, based on the drawings, that Mr. Harrisburg plans to load and unload his merchandise from that location. There is no loading zone on Kinney Avenue at that location, and I would not approve one because of the narrowness of the street and the congestion that occurs at that intersection during the summer months. Of course, the Town Council can overrule my decision and authorize one, but, I would not recommend it for the reasons I have mentioned. A couple of years ago, we had issues with Mr. Harrisburg unloading his merchandise from trucks and piling it on the sidewalks in front of his businesses. There were delivery trucks and other vehicles coming and going from Mr. Harrisburg's property on Kinney Avenue, that were creating traffic congestion issues at the intersection of Kinney Ave. and East Grand Avenue. After receiving many complaints from neighbors regarding this, I worked out an agreement with Mr. Harrisburg, where he would load and unload all of his merchandise on Harrisburg street, and deliver it to his stores using a fork lift. He also agreed to discontinue having delivery trucks use Kinney Ave. This agreement was reached in an effort eliminate the piling of boxes on sidewalks and trucks loading and unloading on Kinney Ave. It seems that Mr. Harrisburg, for the most part, has abided by that agreement as I have not received any complaints. I have, on several occasions, observed Mr. Harrisburg's deliveries being made, and it appears that he is, for the most part, honoring the agreement. Understanding that he needs to be able to make deliveries to his businesses, I have no problem with his proposal as long as long as he makes deliveries using a fork lift and does not park delivery vehicles on Kinney Avenue. I would also want to be sure that he doesn't pile boxes in the street or on the public way.

As we discussed at our meeting yesterday, because he has indicated that the addition would be retail space, does that mean that he has to make the addition ADA compliant, elevator, escalator, etc? Also, if by chance he decides to use that space strictly for storage and not retail space, is that something that he can do in that zone? Thanks.

The Applicant responds to the comments by the PD, that the only deliveries, when they are needed, will be by fork lift coming from trucks parked on Harrisburg Street. There are no other police issues. The majority of foot and vehicular traffic is generated by the multi-unit apartments and condos located on Kinney Ave, and the rental condos on the ocean, on both sides of Kinney Avenue. A single fork lift making occasional deliveries within the first 30 feet of Kinney Avenue, along the proposed building will not add to the traffic issues during the very few summer weeks, in any manner whatsoever. Historically there has never been traffic congestion at Kinney Avenue near East Grand Avenue, but actually only near the ocean side of Kinney Avenue, where there are some 30 or more rental condos and apartments without adequate parking.

- FD

I see no second means of egress from the second floor and not sure if they're going to need a sprinkler system.

As far as FD is concerned, if they don't know if a sprinkler will be required, no one does. If required it will be installed. A second large opening double hung window or fire door can be added if required.

ITEM 5

Proposal: Conditional Use Amendment of Approved Plan/Appeals from Restrictions on Nonconforming Uses (Overnight Cabins): Change use of 7 units from seasonal to year-round Hotel (currently 5 year-round use for a total of 12)

Action: Final Ruling

Owner: SRA Varieties Inc., D.B.A. Paul's II

Location: 141 Saco Ave., MBL: 311-1-10

Update

The Omni Inn is scheduled for a final ruling from the PB. At the heart of this ruling is allowing 7 units to be converted to year-round occupancy but there have been a number of other matters that have been considered as part of our review. Included in the update is a list of staff's final questions/comments; staff question/comments to owner; owners response; occupancy permit and license questions; codes response.

Staff final questions and comments:

- The applicant states they will be paving the parking area and then painting the spaces. When will this take place? The spaces should be easily identifiable on the property ASAP. Also, unit #'s should be identified on each space.
- The last concerns from PW Director was identifying the parking spaces behind the store and adding a Handicap space. This is shown on the most recent plan.
- Parking spaces behind the store are at 45 degrees which require a space length of 19' 10". The plan shows 18'. I, personally don't think this is a major issue (as long as the spaces are clearly marked) and certainly an improvement from what exists.
- Hotels require 1 space/unit, plus 50% of required for associated uses, plus 1 space/2 employees. Retail requires 1/250 sq. ft. of net leasable area. The only use that may be associated with this is the store which has its own parking area and meets the retail space requirement. The owners state there are no employees onsite dedicated to the hotel. So, it would appear the proposal can meet the parking space # standard as long as the owners ensure the only 1 vehicle is permitted per unit.
- Unloading for the store takes place in the parking area associated with the store and potentially could interfere with access to the hotel (along with customer parking too). The owners will need to ensure the area used for ingress and egress to the hotel units remains clear at all times.
- Snow storage didn't work as shown on plans. The owners will need to rethink this to ensure parking and interior vehicle maneuverability remains clear during the winter months.
- Considering the comments in the bullets above, parking, unloading and snow storage will need to be monitored by the owner.
- There is concern about units 5 and 6 in building 3 becoming efficiency units. Perhaps a condition should be attached that states building 3 as shown on the 02/05/2017 Parking Layout Plan unit number shall not exceed two.
- Codes states unit layout reflects occupancy permit and all buildings have been inspected and approved.
- Codes states use is identified as a motel (assessing card).
- The proposals use originally was identified as overnight cabin, we have determined the new use fits the hotel definition. The proposal has, in part, been reviewed as if it is a hotel. Also, overnight cabins and hotels have some similarities as both are considered nonresidential uses.
- The owner followed-up with Chief Kelley and it appears the Chief does not have any particular issue with this proposal; he has overall concerns about the issues some winter rentals bring to town.
- The owner followed-up with Chief Dube and the owner states the FD suggested no concerns or recommendations.
- The PB discussed limiting the number of year-round units to 9. If the PB chooses to do this it will be important to establish how this number was arrived at. Why not 8? Why not 10? The location of the units or building?
- Please remember this proposal is reviewed as Appeals from Restrictions on Nonconforming Uses and Conditional Use. First, the PB must find the impact and effects of this use on the neighborhood will not be substantially different from or greater than the impact and effects of the use that existed before this proposal. This is a bit difficult because the prior use (overnight cabins) has not been in operation for some time so it may be difficult to remember how the prior use operated. Second, the proposal must be reviewed as a Conditional Use which includes the PB's evaluation of the owners submission and response to the CU review standards. Note the owner provided info concerning the Appeals from Nonconforming Uses and responses to the CU standards in the Dec. 2016 and Jan. 2017 submissions.

Staff questions and comments to owner:

1. Department Head Comments Update. You provided a response to Department Head comments received before the November 2016 meetings. As you may recall you received Department Head comments (attached as a reminder) after the November 2016 meetings. I recommended you contact the department heads who

provided comments and discuss those comments and then to provide the feedback you received. I believe you informed me you met with PD Chief Dana Kelley and I know you occasionally speak to Codes but we have not yet received an update from you. You may choose to update the Board verbally at their meeting but it is much better if you provide in writing. This is important because the Board will ask for an update on where Department Heads stand on this project and if they have any objections.

2. Parking requirements. Parking requirements, especially number of spaces, are typically based on the property use. The last time the PB discussed this proposal it was felt the Omni use is most closely related to a Hotel and Paul's II is retail. Hotels require 1 space/unit, plus 50% of required for associated uses, plus 1 space/2 employees. Retail requires 1/250 sq. ft. of net leasable area. Since you have no employees on-site dedicated to the Omni and there are no associated uses I expect 12 spaces will be fine. You'll want to be sure the Omni use does not interfere with Paul's II use (in regards to the parking requirements). Please be sure you're prepared to discuss this.

3. Parking space size. Your plan shows individual space dimensions at 9 x 18. This size meets the 90 degree standard but the 45 degree spaces behind the store are supposed to be 9 x 19'10". Personally, I feel the space size is acceptable (as long as it's clearly marked on the ground) but I expect you be asked about this.

4. Parking spaces delineated on the ground. I expect the PB will require the parking spaces to be marked (e.g., painted) on the ground.

5. Access to Union Ave. I see that you've adjusted your plan so travel way behind the store is one-way which only allows traffic to come into the site from Union and not exit onto Union. This is fine and you may continue with this as proposed but I want to remind you the PB did allow this to be a right-turn only exit and I don't want to see you limit yourself.

6. The Board was concerned about some of these units (especially the common space between units 5 and 6) becoming efficiency units.

7. We'll have to amend the application to show the proposal is a hotel. This should not be too difficult and something we can take care of in my office.

8. The Board mentioned they may limit the total number of year-round units. I recall the number 9 mentioned.

Owners response:

Police-

I spoke with Chief Dana Kelley regarding the concerns he has with winter rentals and potential tenants. My understanding is that his concern is with all winter rentals in Old Orchard Beach, not particularly with my project. This is something that the town allows for many other motels/hotels/private homes, I am not understanding why my interest is any different. I discussed with him that I do not want problems or troubled tenants and that I would continue to screen to prevent that. Unfortunately, we can't see in to the future. Drugs and problems do not discriminate. As we all know, those problems exist within any financial and housing dynamics. I will continue to do my best in preventing problems that could potentially impact the community negatively. That's all I can do. I live in this community, I do not to willingly damage it.

Fire-

I spoke with the fire department this week. From my understanding, the original concern was the fire truck not being able to enter between cabins (buildings 2 and 4). I visited the department seeking any recommendations that could be made to move this along and they did not suggest any concerns or recommendations. Hopefully, there will never be a fire emergency in the future, but if there is one, I do not believe the trucks would park between the cabins to fight a fire. In

reality, they could/would fight a fire from across the street or from the store parking entrance to avoid potential harm to themselves or trucks.

Department of Public Works-

I also visited the public works department this week. Again, I was looking for to address any problems and seek any recommendations they had to remediate any problems they might have. They informed me that their only concern was the sidewalk area that runs along Union Ave. I informed them that this has since been paved and they seemed to be unconcerned other than that.

Parking-

I did provide the planning board with an updated parking plan/map. This had suitable parking spaces for the units available. I understand that the town would like those spots painted. I have every intention on doing that once the entire area is paved.

I have spent a substantial amount of money and time on this project. I plan on paving once I start making a return on my investment. It is in my best interest to have this property looking and functioning at its best potential. So, I will be paving in the future.

The right turn only on to Union Ave. can be done if that is what the town wants me to do. It was originally told to me that the exit/entrance behind the store (Union Ave) could potentially cause traffic congestion at the light if someone was trying to turn left into the property from Union Ave. When speaking with all the departments that was not a concern that was ever mentioned again. Again, if the town wants it a right turn exit only, I have no problem with that. Someone just needs to let me know.

At this point, I am hoping to have all 12 units approved for winter rentals. I have tried to do everything that has been asked and I am hoping that this can finally be approved. This project has been extremely time consuming for me and the town. I have no idea why the town/board is suggesting to only allow 9 units vs 12. What is the difference or impact of allowing all 12? Are you suggesting that we take part in this entire process again next year for three units? I am sure your time, and I know my time, could be better utilized somewhere else.

Occupancy permit and license questions:

The PB is trying to determine if the most recently submitted plan (included in April PB packet) represents what exists and exactly what it is that exists in regards to unit layout in each building and what was granted occupancy permits and business licenses as well as what was approved (licenses or occupancy permits) as seasonal and year-round. The PB asked if codes could look into this. I attempted to simplify the questions right to the point to help with your research:

- Which units and buildings have an occupancy permit?
- Do the occupancy permits reflect the same unit layout in each building? If not, what layout was approved as part of the occupancy permit?
- Do the occupancy permits allow for seasonal or year-round use? If it includes both seasonal and year-round, please id which units are seasonal and year-round.
- Which units and building have licenses?
- Do the approved business licenses reflect the same unit layout in each building? If not, what is the approved unit layout?
- Which units are licensed for seasonal use?
- Which units are licensed for year-round?
- What use classification was applied to license and occupancy permits?

Codes response:

I have reviewed the files and gone through many of the documents, especially the business licensing file to refresh myself on this entire project. The Plan attached by you does show what I believe to be accurate summary of the 12 Units. We verified this today by a site visit.

- Which units and buildings have an occupancy permit?

All buildings were inspected and Approved for Occupancy over a very long length of time.

However, building # 5 still does not have a signed occupancy permit at this time. This is the building directly behind the Convenience Store/ Fuel Station. The Singh's never came in for it and they would have yet to pay for the 3 additional units to be included on their license. We worked piece-meal on everything there so when they had a building done and inspected we had them come in and pay for the license fees before it went to Council. They have been called but as of yet have not come in and taken care of this. Again, they are all inspected and approved. (12 Units) As a side note- all 12 units will be up for renewal (APRIL) and before they can operate all fees, and or conditions must be met.

- Do the occupancy permits reflect the same unit layout in each building? If not, what layout was approved as part of the occupancy permit?

The building themselves have the correct number of units as per their proposal. As we did not obtain engineered plans or drawings from the applicants at the time it was either approved by the Planning Board nor when we went to do permits, I have to go off the hand drawn sketches submitted by Pierre Bouthlier, as well as some cobbled together from previous projects at this location. They do match up. (For at least number of units per structure and location thereof.) We learned we need to be involved a bit earlier with these types of projects. There is not an exact cookie cutter plan of each individual unit however, each has subtle differences. I have reviewed each C/O to see if there is anything that stands out and there isn't. There is some confusion on a couple of units as they have the ability to open them up and make room for housing J-1 students. I have attached the letter dated April 05, 2016 which outlines what I believe to be a correct statement as to what we actually allowed there.

- Do the occupancy permits allow for seasonal or year-round use? If it includes both seasonal and year-round, please id which units are seasonal and year-round.

Buildings 1 and 3 were the only two existing buildings that were existing at the beginning of the project and are allowed to be year round. (Total of 5 yr. round units.) The others were conditional as Seasonal (There are 7.) You and I agreed to this format if you recall. The understanding was buildings 1 and 3 were existing dwellings and the others were to be combined as the layout shows. Again remember all units are constructed to the same standard. When we discussed this project in concept stages the intent was to be able to visually identify which areas would be year-round so there would be little doubt which units were rented during the off months.

**** NOTE 1: The construction of all units was to 2009 Codes. Meaning they are as to the best possible extent meet the MUBEC Codes and Energy Codes as there isn't a "Seasonal" Construction type, so all are insulated and on permanent foundations. These are the same standard as a New Dwelling/or a Rehab would follow. Further, we used the method that if a structure requires greater than 50% of the structures(s) value (assessed less land) to complete the work all construction is to today's codes. Therefore, ALL Units must comply to IBC-IRC 2009 Codes.

****NOTE 2: As a sidebar to this we will be re-inspecting all 12 Units to determine if the interior has been altered and to take measurements of all units as well as to view the actual conditions. This action is a result of a previous complaint/concern and not as a result of the PB inquiry. However, we have not had any other complaints that I'm aware of in regards to Police or Fire at the Omni.

- In response to your question regard Type of Structure. The Assessors Card(s) have them as Motel Units

04-05-16

Gagon and Gee:

I am confident that the property at 141 Saco Ave was approved by the Planning Board on June 11th 2015 for 12 units. When we first discussed this project prior to the application for the Planning Board it was going to be buildings that existed were to be grandfathered and only those 5 units were year round. The balance were going to become seasonal . This is how we got the project started if you recall. Again with the Building numbers 1 and 3 being year round and the 3 other buildings being seasonal in use. I have re-read everything in our files and have reviewed the video recording of the meeting as well. At no time have I found that the use can be year-round without going back to the Planning Board. I have also discussed this project with Jeffery Hinderliter whom is the Town of Old Orchard Beach Town Planner. He is in agreement with me in my conclusions. He has researched his files as well and we have the same concept of what was approved.

In order to have the three buildings (Numbers 2, 4, and 5) currently changed from seasonal to year-round use it is my opinion that only the Planning Board can grant the change in use . You would have to apply for a conditional use to have this issue brought forth in front of the Board again. Jeffrey has stated to me he was working with you on this but it was never brought forward by you as the owners.

In order to sign off on occupancy certificates the property must be in compliance with all IBC-IRC 2009 codes and be inspected. You have taken care of many of the items I listed for you previously with the exception of the landscaping which you must discuss with Jeffrey Hinderliter and have him approve the plan.

As far as the fees there is still the amount of \$7400. Outstanding. You have agreed to pay half when we are in agreement and the balance to come in the form of a check postdated 30 days from said agreement.

In the event you want to proceed I will ask the Town Manager to allow this to go forward with the above as conditions.

Background

At the December meeting the PB determined the application complete but felt more information was needed. This additional information includes a revised plan that has the following: 1. Drawn to scale (something that looks like a survey plan); 2. Location of dumpster; 3. Parking spaces with dimensions that meet ordinance standards; 4. Parking aisle and access way dimensions; 5. Unit #'s on cabins; 6. Cabin interior space layout. In response the applicants submitted a revised plan and attached description of each units use (seasonal or year-round). Also included in your January packet:

- Building plans. Note these plans were included with the 2015 submission and appear to offer the best available representation of the buildings, including interior layout. I asked the applicants if these are accurate to which they said they are.
- Applicant's response to PWD, PD, FD comments. These responses were provided by the applicant as their reply to Department Head comments received during the spring and summer of 2016. They do not specifically address the Department Head comments received as part of the application resubmission; although, you'll see that most of the department Head comments are the same or similar as those from

last spring and summer. The applicants included these responses as part of their November 2016 resubmission application. See below for further discussion.

- 12 Conditional Use standard responses. These are the same CU standard responses submitted as part of the November 2016 resubmission application.

The PB asked about the 2016 license status including any condition(s) the Council may have attached to license approval. We checked the license files and Council minutes and found:

- 2.16.16: Council approved 5 year-round units in buildings 1 and 3.
- 3.17.16: License file notes show 3 seasonal units added in building 5. No documentation of Council approval for this.
- 4.19.16: Council approved 6 seasonal units in buildings 2 and 4. This brings the unit count licensed by the Council to 11. Remember, the 3 units added in building 5 were not approved by Council so they're not legally licensed.
- 11.1.16: License file notes show that common space in buildings 2 and 4 were approved as units (approved on 4.19.16). This would increase the licensed amount by 2 units and if the 3 units in building 5 are eventually approved the total unit count will be 14. This exceeds the PB approval of 12 units. License reduced by 2 total units and referred back to Council.
- 11.15.16: Council approved amendment to the license approved on 4.19.16. This amendment reduces the number of units in buildings 2 and 4 to 4 total units (two units in each) which supersedes the previous license for 6 total units (three in each). This brings the licensed unit count to 9. Building 5, which is still not licensed, has 3 units so if this is licensed the total units will equal 12 which is what the PB approved.
- We found no conditions from the Council attached to the approvals.

So, as of today, there are a total of 9 licensed units approved by the Council. 5 year-round units approved in buildings 1 and 3 and 4 seasonal units in buildings 2 and 4. Building 5 which includes 3 units does not have Council license approval. We checked building 5 status with Codes and it has not received an occupancy permit. The PB's decision should not be based on the whether the occupancy permit has or has not been secured (the PB approves projects all the time before occupancy permits are issued- think of new subdivisions with unbuilt homes); although, its issuance could be linked to a condition associated with other parts of the project (e.g., completion of parking areas as shown on the plan).

In regards to the revised site plan included with your January packet and how the units are licensed, things don't quite match up.

- Building 2 license includes 2 units with a center common space. The revised plan shows 3 units including one unit in the common space.
- Building 3 license includes 4 units. The revised plan shows 2 units and common space.
- Building 4 license includes 2 units and common space. The revised plan shows 3 units including one unit in the common space.
- Building 1 license reflects the plan.
- Building 5 is not licensed and does not have an occupancy permit but does reflect the unit count (3) intended for the building.

One concern is can the PB approve a proposal that is different than what the Council approved. Even though the units in buildings 2, 3 and 4 do not reflect what was licensed, the current occupancy of these units does match what the Council approved (e.g., 2 units in building 2 are licensed to be occupied and currently occupied while the 3rd unit is vacant). But, we are still left with a proposal and occupancy that does not match the Council's approval. This may be something Codes needs to sort out as their occupancy permits may not match

this proposal, too. Also, Codes is responsible for licensing so it makes sense they review and offer a recommendation.

Seasonal vs. Year-Round Units (Reference: 11 Sept. 2015 In-Office Meeting Notes- Gee and Jeffrey H; 11 June 2015 PB Minutes). According to my (Jeffrey) information, the number of approved year-round units is 5. According to my 11 Sept. meeting notes, I outlined the next steps associated with the cabin project. Based on these notes and my memory, the owners approached me to see what they need to do to add additional year-round units. I informed them that 5 units were grandfathered and already approved for year-round occupancy. My notes indicate the owners wanted to add 4 more year-round units to bring the total to 9. I informed them that they need to go to the PB to amend their June 2015 approval. I outlined what they need to do for PB submissions. No further action taken by the owners regarding securing PB approval to add 4 more year-round units. The 11 June PB minutes state that 5 units were grandfathered by Code Enforcement- Unit 1 (an original building adjacent to Saco Ave) and Units 4,5,6,7 (an original building parallel to rear property line). In addition the above, the minutes state: "Mr. Bouthiller stated that part of the season these cabins will be used for the J-1 students and the rest of the year they will use them for tourist and longer stay winter rentals and also use some of the % for year round rentals." Although the quote mentions 'longer winter stay' and '% for year round rentals' the only specific statement concerning grandfathering was for Units 1,4,5,6,7. Based on my 11 Sept. meeting notes, I feel my comments continue to recognize that 5 of the 12 units are allowed for year-round use.

The revised site plan appears to show all items requested by the PB and staff. The plan is drawn to scale and used a surveyor's plan data (see plan notes). The parking stall dimensions meet the compact car 90 degree angle standard. The parking aisle and access width also is acceptable. Dumpster location is shown. Unit locations and numbers are shown on the plan and a description of their use (year-round or seasonal) is attached; although, this does not entirely reflect what has been licensed by the Council. The building plans show cabin space layout.

In addition to the above, Department Heads continue to have concerns about the proposal. The applicants feel they acceptably addressed these concerns in their November submission (see responses to PWD, PD, FD and the 12 Conditional Use standards). Below are comments received from Department Heads *after* the applicants provided their responses to PWD, PD and FD.

- Public Works

I just walked around that site and I don't see how the drainage is contained in any way. I think you are going to find silt washing onto the abutters property in the spring.

- PD

Jeffrey, regarding the Omni's proposal to license several more units as year round rentals, I am still adamantly opposed to allowing more of these types of housing units to become year round rental properties. They are not designed to accommodate the needs of a family and never were. They were designed as seasonal cottages and were never meant to house entire family's from September to June. The owners of the property suggest that because they have not had any issues yet, that that it is an indicator that their management skills will prevent any future issues. I strongly disagree with that premise and can tell you that in my many years of experience with this type of housing, that it attracts an element that this community does not want or need. We are not doing the children who end up in these properties for the winter, any favors, by allowing this kind of housing. We see entire family's move into these types of units for the winter, that typically have one bedroom. Sometimes it's just one room. Where do you think everyone sleeps in these kinds of properties when you have two or three children and a couple of adults? We respond to call after call to these kinds of properties for, domestic disputes, drug and alcohol issues, mental health issues, people with warrants for their arrest, and the list goes on. It is almost inevitable that people living in this kind of an environment will have issues. The Omni, regardless of how well they manage their property, will be subject to these kinds of issues, because of the element that they will attract. I do not mean to lump all winter rental properties and the people that

rent them into this category, as it certainly doesn't apply to everyone, but, with the type of housing the Omni offers, It is almost a certainty that they will experience these kinds of issues. I hope the planning board will also consider what properties like this do to the owners of abutting property. It certainly impacts the quality of life for the abutters as well as their property values.

- Codes

I have had a meeting with the owners today 11-01-16 and they have agreed to remove the 2 oil trucks from the property responding to my request that they move them- We agreed they would be off site on 11-07-16. My issue is fire apparatus cannot enter the site and make the radius turns it would need . The corridor must be at least 20ft. wide and if there was a fire the oil trucks would be right in front of several units possibly adding to the already close conditions- remember the loading there is near 50 persons and then you have the gas station and the convenience store.

The issue and my response to how many units are there is 12- That is the number they were approved for by the PB. There seems to be some confusion on what they requested and what was approved. I have information that

documents the number 12 both from the PB ,myself and information you supplied earlier this year. They will alter their application to reflect 12 units. When the buildings were connected there was some thought to use bonus space and making them into suites to accommodate J-1 workers which they did. They are not to be used as two additional units without coming back to the PB. We will monitor this during this year.

Kathy I and Megan met with Gagon and Gee this morning regarding Omni and the 12 v 14 units at this location. as from today on it is and will remain 12 units. They can petition for the 2 they claim Pierre said they could have These 2 will remain part of the units that open as a suite for j-1 students. They are not separate units to be rented individually.

We will monitor these units occasionally to ensure they don't reappear as #13, and 14.....(units.....)

Further, I instructed them to remove the two oil trucks as they are parked in the fire lane area of these structures and may impede fire apparatus from maneuvering around this site. They both agreed to have them out of this property by Monday November 7,2016

- FD: In regards to the Red Rocket on Saco Avenue, I refer to the notes from the previous chief (previous notes below).
 1. A project of this size and being a motel type property we would require a complete and monitored fire alarm system not just a hard wire residential system. This would include a fire alarm panel connected to a monitoring company and a panel showing each zone and each building. Clearly marked.
 2. A Knox box on the front of the "main building" usually located on the front of the building where the fire alarm panel is located.
 3. All doors need to be mastered so we only have to use one key to gain access to any door.
 4. I am concerned with the current gravel driveway as our trucks weigh up to 68,000 lbs. and I am afraid in the spring we will get stuck.
 5. All buildings need numbers that we can see plainly visible. Each unit would also need a number on or near the door.
 6. I have a concern entering or exiting on the Union Ave side as I believe we will not be able to make the swing.
 7. Concern over winter operations and where the snow will be piled and access for us during this time of year.
 8. Is there an onsite manager 24 hours a day?
 9. To my knowledge no Fire Inspection has been done.
 10. A walk through with each shift would be needed.
 11. Access to the rear of the buildings appear to be an issue.
 12. CO detectors in each unit.

The question of use has been asked and it is staff's opinion the current and proposed use is a Hotel. A Hotel is defined as "a building used for transient or permanent lodging of individuals, with or without meals, having ten or more guestrooms." Interestingly, a Hotel is a permitted use in the GB2 District (it falls within the Lodging Establishment definition). Its former use appeared to be Overnight Cabins which is not a permissible use in the GB2. So, establishment as a Hotel actually makes this proposal more conforming.

Finally, it is important to remember this proposal is to be reviewed in accordance with the Responses to the Appeals from Restrictions on Nonconforming Use standard (78-180). In order for the applicant to secure approval under this standard the PB must find "that the impact and effects of this enlargement, expansion, extension, resumption or conversion to another nonconforming use on existing uses in the neighborhood will not be substantially different form or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use." The proposal is to convert 7 seasonal units to year-round use. The applicant provided a response to 78-180 (December submission) but the PB should not use this response alone when ruling on this proposal. The plans, CU standard responses, management plan, and Department Head responses should all be considered when determining if or if not the applicant has met their burden of proof.

Previous Recommendations: The PB should consider:

- Has the applicant acceptably addressed Department Head comments? Note that some may require conditions or further work (e.g., Knox box, exit/right turn only sign and Union Ave).
- The revised plan is an improvement but what is the likelihood what is shown will exist? For example, some of the proposed parking will block an internal property vehicle access that leads to property entrances/exits. Will the proposed parking be ignored at some future time to allow for vehicle passage? The PB could make occupancy of building 5 contingent upon completion of site work, including parking and access layout according to plan.
- The licensed units are not entirely consistent with the revised plan. How should this be resolved? Maybe Codes should review and provide comment by our next meeting.
- Interested in the PB's thoughts concerning the unit management plan (in your December packet). One problem is the applicant states 7 units of the 12 are currently occupied when only 5 are permitted for year-round use. Note- seasonal use is 1 April – 31 October.
- Does the PB believe the proposed conversion of 7 units from seasonal to year-round use will not be substantially different form or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use?
- Ultimately a big question is how will this project perform and work over time. Staff does have concerns.

ITEM 6

Proposal: Site Plan Review: Expansion of existing corps and admin building, parking lot construction, relocation of Church Street, park construction, building demo, landscaping, site work

Action: Sketch Plan Review

Owner: The Salvation Army

Location: 6th St, Union Ave, Church St, Oakland Ave, 15th St; MBL: 311-6-1,12, 8; MBL: 311-4-1,2,3,4,5

First, and most important, the comments below are focused on Option H. The reason for this is because Option N includes elements that assume Salvation Army's ownership of public and private property that it has not yet acquired and the PB does not have the authority to decide on such matters. It assumes ownership or development rights of some kind over Church St. and its ROW as well as a few private parcels. Regarding public property acquisition, this matter falls under the Council jurisdiction and possibly the public as a whole. The applicant should discuss with the town manager to learn more about this process. The PB can discuss, provide suggestions, and hold an informal public hearing but should refrain from any formal decision (including determination of completeness) until the property matter is resolved. At this time Option N should be approached as an item for feedback only.

Below are comments associated with Option H. These comments are primarily related to the sketch plan submission and applicable Ch. 78 Performance Standards (Art. VIII). The applicant should be prepared to address these as they move forward to formal submission.

- The side property setback is 15'. It appears some of the proposed building area is within the setback. If the applicant intends to move forward with building area within the setback they should apply for a variance before proceeding with PB review.
- Lots acquired by the Salvation Army, although owned by the Army, are considered separate parcels for zoning purposes. This means property lines still exist along with any setback, buffer, etc. requirements. The plans show parking lot area crossing the property line, too. The best way to avoid any potential limitations that may result from this is by combining the lots.
- 78-1491 – 1495 (access standards for nonresidential uses) includes driveway standards such as dimensions, sitting, dimensions, sight distances, etc. One particular note that will impact this proposal is one driveway is permitted for each street fronting a parcel.
- 78-1541 – 1544 (parking lot and site circulation) includes parking dimensions and layout, snow removal and landscaping. 1541- do the pedestrian sidewalks meet (f)? How about pedestrian sidewalks for new parking between Church and Union? 1542- Don't forget (f) wheel stops and curbs. 1543- need snow removal plan. 1544- remember screening and buffering plan is needed when adjacent to properties not acquired by the Army including those along Oakland and Church. Street trees in accordance with 78-1771 -1775 needed along Union, Church and 15th.
- 78-1566 – 1568 (required parking spaces) identifies church uses at 1 space per 6 seats in principle sanctuary or meeting. One question- if the space is used for non-church functions should another parking space standard be considered?
- 78-1591 – 1596 (off-street loading). It appears the area ID as Service Area is the proposed loading area. A few thoughts- is there enough room to turn around without backing on the street? May need more buffering along Church St. if the residential properties are not acquired. Need to show lighting.
- 78-1746 – 1827 (landscaping and buffering) includes landscaping and buffering standards primarily for the building. Some of these standards, such as street trees, are also applicable to parking lots.
- The proposal will most likely be required to meet applicable standards in our post-construction stormwater ordinance (Ch. 71).

Recommendations: Sketch plan review provides an opportunity for the PB to offer recommendations- even if they're not specifically related to complying with an ordinance standard. As you know, this proposal includes two options. Staff believes the PB can provide feedback on both but should focus on Option H. We expect a fair amount of public interest so it may be a good idea to have two public hearing hearings or one general comment public meeting before determination of completeness and the formal public hearing after. There are no decisions required at this time.

ITEM 7

Proposal: Subdivision Amendment: Revise Pacer Avenue Subdivision to add 1 Estate Lot
Action: Discussion; Ruling on Amendment
Owner: Ronald A. Patoine
Location: Trotter Lane, MBL: 105-4-34

This proposal is for an amendment to Pacer Avenue Subdivision to allow for the creation of one Estate Lot. The proposal is part of land that was originally subdivided during 1988 and identified as Patoine Place Subdivision. As you'll see in Plan Note 17 (Plan References) there have been a number of plan amendments and new subdivisions since the area was originally subdivided. Pacer Ave Subdivision appears to have come into existence around 1994.

As stated above, this proposal is for the creation of one Estate Lot. An Estate Lot is typically created for lots that may have difficulty with road frontage requirements. An Estate Lot is defined as a building lot with legal access to public street or approved private way via a minimum 50-foot wide access strip which is in fee part of the lot. Minimum Estate Lot size in the RD Zone for lots that have access to water or sewer is 60,000 sq. ft. plus the area of access strip. The

proposal has access to public water and with 68,551 sq. ft., appears to meet the minimum lot area requirement (this includes the access strip area). The access strip serves as the lots frontage.

Recommendations: Staff recommends approval of the “Third Amendment Pacer Avenue Subdivision” as presented.

ITEM 8

Proposal: Subdivision Final Plan Amendment: Amend Final Plan to reflect as-built conditions (parking, landscaping)

Action: Discussion; Ruling on Amendment

Owner: Summer Winds Homeowners Assoc.

Location: 180 Saco Ave, MBL: 208-1-1

Summer Winds has submitted an application that attempts to address the additions made to the development during construction that were not done in accordance with the approved plans. The changes included in the most recent submission: additional parking for guests, rearranging some approved parking spaces and adjustments to the proposed landscaping. The Planning Board requested as a condition for the Summer Winds II development that *“prior to the final plan approval, Summer Winds shall come back before the Planning Board to address changes that were made on the site that were not in accordance with the previously approved site plan.”*

Some issues that were brought up by the Planning Board and Abutters include changes to the location/layout of the clubhouse, additional parking spaces including the new visitor parking area, the placement of a dumpster instead of a compactor, the six foot stockade fence bordering the Urbanski property vs. arborvitae and other landscaping changes, and any changes that were made to the pavement width.

A couple of items noted looking at the plan, it appears to show additional parking/walkways, however, it still lists 94 parking spaces provided at the top of the plan. Is this number still accurate with the update to the plan? One of the items that the Planning Board wanted to see were any changes made to the landscaping. I believe the board specifically requested a landscaping plan. This plan does show the landscaping on site but it does not show any changes in vegetation installed/not installed. It was brought up at a previous meeting that the location of the clubhouse was altered. This has also not been show on the as-built.

Included in your packet for April are abutter comments from the owner of Unit 4. The comments pertain to road measurements, drainage, sump pump, heating units and snow storage. The abutter also requested that the Planning Board consider this information as part of the Summer Winds II proposal.

Recommendations: The Planning Board has two options for the April meeting. One is to rule on the amendment, assuming it reflects what exists on the site and addresses what the Planning Board was looking for. The second option is to wait to make a decision based on the comments from abutters and additional information the board would like to see on the as-built.

ITEM 9

Proposal: Conditional Use, Subdivision Amendment; Site Plan Amendment: 6 unit condominium expansion (Summerwinds II)

Action: Revised Preliminary Plan Review and Ruling; Schedule Final Review/Ruling

Owner: 180 Saco Avenue Development LLC

Location: 180 Saco Ave., MBL: 208-1-1

Update

As you recall, the applicant is proposing to add six additional units at Summer Winds. At the November meeting, the board did not vote in favor of the Preliminary Plan for Conditional Use, Site Plan or Subdivision (see Notice of Decision information below). The primary purpose of the April meeting is to review the most recent preliminary plan, make a ruling and schedule final review/ruling. The Applicant is requesting one waiver to the parking lot aisle width to be reduced from 24’ to 20’ along the proposed bituminous drive.

Prior to the decision in November, a number of things were brought up and discussed during the Planning Board process. Below is a brief summary of these items:

- **UNIT COUNTS:** When the proposal was initially brought before the Planning Board in July, there were concerns regarding unit counts and a 53 for 53 replacement. This was also discussed in August and September, however, for the November meeting staff found that there was nothing in the meeting minutes that held this development to a 53 for 53 replacement.
- **ROAD WIDTHS:** In July, concerns regarding road widths were also discussed. In November, staff pointed out that because this proposal came before the Planning Board as a site plan, the roads, etc. do not meet subdivision standards and at the time (after the 2011 approval) the Planning Board said this process should be followed more thoroughly in the future.
- **HOMEOWNERS ASSOCIATION (HOA):** Some concerns regarding how the existing HOA fits into this new proposal were also discussed as well as some items the Planning Board requested the applicant provide from the HOA.
- **FEMA FLOODPLAIN:** At least one unit is proposed to be located in the FEMA floodplain and a Letter of Map Amendment (LOMA) was requested for the development. Planning Staff has not received an update on the FEMA information.
- **ABUTTER CONCERNS:** Concerns of neighbors from inside and outside of Summer Winds have been a part of this proposal since it was initially brought before the Planning Board in July. The concerns pertain to:
 - Existing infrastructure issues, a number of residents mentioned flooding in the roads and on their properties, especially in the basements. There were also flooding concerns at the adjacent property (176 Saco Ave).
 - Buffering associated with 176 Saco Ave (Brearley Property).
 - Issues with snow removal in the winter and updates to the snow removal plan.
 - Implications of upstream developments, added to this development and impacts to adjacent properties.
 - Addition of extra bedrooms in units.

The Applicant has responded to some abutter concerns including adding a buffer for 176 Saco Ave. The Town has also contracted with Wright Pierce to complete a Comprehensive Drainage Study which will attempt to address the issues associated with upstream developments, combined with this development, and the impacts on adjacent properties.

- **36 INCH CULVERT:** In August, the Planning Board discussed the implications this development might have on the 36" culvert that crosses Saco Ave in this area. The culvert is undersized and has been modeled to overtop the road during a serious flooding event. Concerns regarding the additional six units and their effect on this culvert were discussed. Wright Pierce is completing a Town-wide drainage study that should attempt to provide recommendations on how the Town can address these issues.
- **WIDTH OF THE ACCESS ROAD:** Public Works and the Fire Department had some concerns regarding the access road connecting to these six lots and truck turning movements. According to the Applicant and materials submitted in September, the turnaround at the end of the entrance drive was eliminated and approved by the Fire Chief and the pavement entrance radius was increased to 30 feet. This is something that will have to be reviewed by the Fire Department.
- **GOOSEFARE WATERSHED:** This project is located in the Goosefare watershed, the Town has a different delineation than the DEP of the Goosefare boundaries. This was communicated to the Developer at the August meeting and has been resolved.
- **OPERATIONS AND MAINTENANCE (O&M) PLAN:** It was conveyed to the applicant that this plan should include information on the Annual Certification requirements at the site. There was also discussion about the

HOA accepting responsibility for the O&M Plan for the six additional units and providing a letter to the Planning Board.

- **WAIVER REQUESTS:** Waivers were discussed as part of the project and the applicant appears to still be requesting one waiver: “Article VIII. Sec. 78-1542 parking lot dimensions and layout, waived aisle width from 24’ to 20’ along the proposed bituminous drive”
- **MUNICIPAL SERVICES:** The applicant indicated to the Planning Board that there will be no impact to municipal services because there are not a lot of year round residents and few children staying in the development.
- **APPEALS FROM RESTRICTIONS ON NONCONFORMING USES:** In September, Planning Staff recommended that the applicant provide a response to the Appeals from Restrictions on Nonconforming Uses standard: “*The impact and effects of this enlargement, expansion, extension, resumption or conversion to another nonconforming use on existing uses in the neighborhood will not be substantially different from or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use.*” This issue has not been addressed as the applicant contends that they should not have to go through the CU process.
- **FINANCIAL ISSUES:** The issue about whether or not an applicant can be in default on another project and still move forward with this proposal was discussed in September. According to the Town Attorney, because the applicant is under a separate entity, the Town cannot hold up the approval of Summer Winds II due to the applicant being in default on another proposal.
- **AS-BUILT FOR SUMMER WINDS (CHANGES MADE DURING CONSTRUCTION):** In November, the Planning Board discussed changes that were made to the existing Summer Winds development that were not done in accordance with the approved site plan. The Planning Board requested that Summer Winds come back with information including: the location/layout of the clubhouse, additional parking spaces including the new visitor parking area, the placement of a trash compactor instead of a dumpster, the six foot stockade fence bordering Urbanski vs. arborvitaes and other landscaping changes, any changes that were made to the pavement width.
- **LOW IMPACT DEVELOPMENT (LID):** In November, the Town and Wright Pierce recommended the use of LID in this area to treat stormwater, however, it is not a requirement for the applicant to meet.
- **SUMP PUMP DISCHARGES:** There are a number of sump pumps that discharge into the area where the proposed units are to be located. The sump pumps are associated with units 6, 7, 5 and 4.

The bulleted information above gives you some background on the issues associated with the proposal that the Planning Board has previously dealt with. Below, we summarize the issues we feel have been addressed and those that still remain outstanding.

The following issues have attempted to be addressed through Town Staff and the Applicant:

- As discussed above, concerns regarding unit counts were brought up and the 53 for 53 replacement. Planning Staff looked through the meeting minutes and listened to recordings and could not find any specific language that held this development to a 53 for 53 replacement. Because meetings were not recorded in 2011 when this was originally discussed, we are in agreement that this is not something we can put any further research into to try and come out with a different answer.
- Concerns were discussed about the road width of the existing development and staff pointed out that because the proposal came before the Planning Board as a site plan, the roads, etc. did not meet subdivision standards. This is something that has already been approved through the Planning Board process.
- The applicant attempted to provide a buffer for the abutter at 176 Saco Ave, this includes additional arborvitaes.

- There were concerns about upstream developments and the cumulative impact of all of the developments on downstream properties. This was discussed and the Town is in the process of completing a town-wide drainage study that should attempt to address some of these concerns.
 - The issue of the 36” culvert is something that the Town is looking at through the drainage study and grant opportunities. It is likely that this would have to be upgraded to a box culvert which could cost upwards of hundreds of thousands of dollars and is not something that can be put on this development.
- The applicant has indicated that there will be no impacts to municipal services with this development.
- Initially, the Applicant indicated that this project was not in the Goosefare watershed, however, this was discussed as the Town delineation of the watershed is different than the DEP and has been resolved.
- Staff and the Planning Board had concerns about the applicant being in default on other projects, however, this was discussed with the attorney and the project cannot be held up because it is under a separate entity.
- Wright Pierce recommended the use of LID on the site. Making this recommendation is a requirement for the Town under MCM5 of the MS4 permit, however, it is only a recommendation for the applicant to consider not a requirement.

The following items, in our opinion, remain outstanding:

- The Assistant Planner emailed BH2M to request the following documentation for the Planning Board to make a decision at the November meeting:
 - Landscaping Plan
 - Letter from the HOA Chair assuming amendment responsibilities
 - FEMA Map Amendment (It was indicated that the project cannot be approved without this letter).
 - As-built plan showing more than just parking so the Planning Board can see what changes were made at the development that were not done in accordance with the approved site plan.

When the Planning Board made a motion to vote on this project, a number of conditions were attached to the motion including that the applicant address the information in the email from the Assistant Planner dated November 4, 2016. The only item from the above bulleted list that we have received is the as-built plan, this does show the landscaping on site. We still have not received the letter from the HOA or the FEMA Map Amendment.

- Also associated with the as-built plan, the Planning Board requested that the Developer come back with a calculation of the amount of impervious surface that changed from what was approved vs. what was built at the site. The Planning Board requested that this calculation be reviewed by Wright Pierce. It appears that this calculation has been included in the April submission, however, it has not been reviewed by Wright Pierce.
- Public Works and the Fire Department had concerns about truck movement radius which was addressed by the applicant. We are still awaiting follow-up comments from the Fire Chief and Public Works on these changes.
- A number of abutters came forward with concerns regarding flooding on the existing roads and in basements. I do not believe this issue has been addressed by the applicant. Additional abutter comments that were submitted for the April meeting have been included in your packet.
- The sump pumps associated with units 7, 6, 5 and 4 discharge into the area where the proposed units are located. I do not believe this issue has been addressed by the applicant.
- As part of the April submission, the application states that the applicant will be responsible for the O&M Plan for Phase II of Summer Winds and that the Post-Construction O&M will transfer to the Homeowners Association. At the top of the O&M Plan it states “the Owner, Summer Winds Homeowners Association will be responsible for

Post Construction operation and maintenance. The following plan is intended to replace the current O&M Plan for the Summer Winds Facility.” The Planning Board asked that a letter from the HOA chair be submitted assuming amendment responsibilities which was not received with the last submission. Since the existing O&M Plan for Summer Winds is going to be replaced with this one, the association should be notified.

- Planning Staff is awaiting a response to the Appeals from Restrictions of Nonconforming Use standard: “*The impact and effects of this enlargement, expansion, extension, resumption or conversion to another nonconforming use on existing uses in the neighborhood will not be substantially different from or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use.*”
- The applicant is requesting a waiver of the aisle width from 24’ to 20’ along the proposed bituminous drive. The Planning Board should review this request.
- An issue was brought up regarding extra bedrooms in some of the units, according to Codes, this issue has not yet been resolved. See attached email from CEO Dan Feeney.
- The Developer is reluctant to pay Peer Review fees associated with the materials submitted for the April meeting, therefore, the newest materials submitted have not been passed along to Wright Pierce for review and comment. It is recommended that Wright Pierce review the materials and provide comments to the Planning Board especially for items the Planning Board requested review on.

The information above gives you an idea of where the items associated with this proposal stand now. Back in November, the Planning Board did not vote in favor of the proposal for Conditional Use, Site Plan, or Subdivision and below is the information from the Notice of Decision(s) that led to that ruling.

CONDITIONAL USE:

Three conditions were attached to the Conditional Use decision:

- *That prior to the final plan approval, Summer Winds shall come back before the Planning Board to address changes that were made on the site that were not in accordance with the previously approved site plan.*
- *That Summer Winds II come back with the current amount of impervious surface today vs. the approved plan.*
- *That Summer Winds II address the outstanding issues in the email dated 11/4/16 from the Planning Department to Bill Thompson (BH2M).*

The Planning Board did not vote in favor of the Conditional Use because it did not meet the following CU standards:

- (1) **Conditional Use Standard #1:** *The proposed use will not result in significant hazards to pedestrian or vehicular traffic, on-site or off-site.*
 - a. The Planning Board has adequacy concerns about the crown and the road width and finds that it does not meet year round use. The adequacy of the road and the amount of traffic and turnaround, especially in the piece with the 6 proposed units pose a problem, specifically the way it is designed with a 90 degree angle.
- (2) **Conditional Use Standard #11:** *The Applicant’s proposal must adequately provide for drainage through and for preservation of existing topography within its location, particularly in minimizing any cut, fill, or paving intended.*
 - a. The Planning Board requests information on the increase in impervious surface between what was approved vs. what exists on site.
 - b. The increase in impervious surface will create more problems for units 4, 5, 6 and 7 who currently have sump pumps discharging to the area where the proposed 6 units are going to be.

SITE PLAN:

Four conditions were attached to the Site Plan decision:

- *That prior to the final plan approval, Summer Winds shall come back before the Planning Board to address changes that were made on the site that were not in accordance with the previously approved site plan.*
- *That Summer Winds II come back with the current amount of impervious surface today vs. the approved plan.*
- *That Summer Winds II address the outstanding issues in the email dated 11/4/16 from the Planning Department to Bill Thompson (BH2M).*
- *The applicant must meet the requirements of Site Plan standard #2 which are to have all of the required ZBA and Design Review permits as specified in division 2 and article 5 of this chapter if applicable and has or will receive all applicable federal and state permits.*

The Planning Board did not vote in favor of the Site Plan because it did not meet the following Site Plan standards:

- (1) **Site Plan Standard #1:** *The proposed project conforms to all standards of the zoning district and meets or exceeds performance standards specified in article and article VIII of this chapter.*
 - a. The proposal did not receive the conditional use, as it was previously voted down, therefore the project did not meet or exceed the performance standards.
- (2) **Site Plan Standard #2:** *The proposed project has received all required Zoning Board of Appeals and/or Design Review permits as specified in division 2 of article II and article V of this chapter, if applicable, and has or will receive all applicable federal and state permits.*
 - a. The FEMA Letter of Map Amendment and the Stormwater PBR have not yet been received for the project.
- (3) **Site Plan Standard #4:** *The proposed project provides adequate stormwater management facilities to produce no additional peak runoff from the site during a 25-year storm event or any other event so required by the planning board, and will not have an undue impact on municipal stormwater facilities or downstream properties.*
 - a. The Planning Board requests information on the increase in impervious surface between what was approved vs. what exists on site.
- (4) **Site Plan Standard #5:** *The proposed project will not have an adverse on-site and off-site impact upon existing vehicular and pedestrian circulation systems within the community or neighborhood.*
 - a. The Planning Board has adequacy concerns about the crown and the road width and finds that it does not meet year round standards.

SUBDIVISION:

Four conditions were attached to the Subdivision decision:

- *That prior to the final plan approval, Summer Winds shall come back before the Planning Board to address changes that were made on the site that were not in accordance with the previously approved site plan.*
- *That Summer Winds II come back with the current amount of impervious surface today vs. the approved plan.*
- *That Summer Winds II address the outstanding issues in the email dated 11/4/16 from the Planning Department to Bill Thompson (BH2M).*
- *The applicant shall secure any and all governmental permits required.*

The Planning Board did not vote in favor of the Subdivision because it did not meet the following Subdivision standards:

- (1) **Subdivision Standard #4:** *The proposed subdivision will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.*
 - a. The Planning Board requests information on the increase in impervious surface between what was approved vs. what exists on site.

- (2) **Subdivision Standard #10:** *The proposed subdivision is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan, if any*
 - a. The proposal did not receive the conditional use or site plan, as they were previously voted down, therefore the project did not meet or exceed the performance standards and is not in conformance with the ordinances.

- (3) **Subdivision Standard #13:** *The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water*
 - a. The Planning Board requests information on the increase in impervious surface between what was approved vs. what exists on site.

RECOMMENDATIONS (April): Given the fact that there are still outstanding issues, and a number of the issues are substantial, Planning Staff recommends tabling the proposal until the issues have been addressed by the Applicant. Staff is still waiting for escrow funds in order to have Wright Pierce review the proposal so it has not yet been peer reviewed. The April meeting is a good time to wrap up outstanding items and provide the applicant with comments and items to address to receive a preliminary plan decision in May.

~~~~~

**(BACKGROUND) NOVEMBER MEETING**

**Old Orchard Beach Planning Board November Meetings (11/3/16 & 11/10/16)**

*Conditional Use, Subdivision Amendment, Site Plan Amendment: 6 unit condominium expansion of Summer Winds II located at 180 Saco Ave in the GB-1 and R4 districts. MBL: 208-1-1.*

**BOARD ACTION:** Preliminary Plan Decision, Schedule Final Review

**Summary of Findings (Summer Winds):**

I took a look at hard copy files, electronic files, meeting minutes/notes, and I went back through and listened to all the meeting recordings that were available for the project. Unfortunately, meetings were not televised in 2011 when the Summer Winds development was originally discussed so we can only rely on the meeting minutes for 2011 rather than the recordings.

What was interesting is when I went back and listened to the tapes from 2013 (Seasonal-Year Round proposal), the Planning Board was discussing with BH2M how Summer Winds is not a major subdivision and that it was presented as a site plan and never intended to be a subdivision. It was discussed during the 2013 meetings that the proposal came before the board as a seasonal cluster development, similar to what was done in Wells. However, Wells has an ordinance for this type of development and Old Orchard Beach does not so Nugent (Code Officer/Planner at the time) had the applicant go through everything: Conditional Use, Site Plan, and Major Subdivision. The Planning Board talked about how the process was done by mistake and that it should not have gone through as a Site Plan prior to going through as a Major Subdivision. They compared the project to Seacoast RV which had roads designed to subdivision standards even though it is a seasonal project.

One Planning Board member at the 11/14/13 meeting was concerned with setting a precedent with this subdivision: *“This is a 53 unit major subdivision, the design standards for a residential use (78-1414) minimum roadway width is 16 feet and this project must comply with the subdivision review standards in Chapter 74. This means that it would require a waiver from 74-306, 74-307, 74-309, 74-310, 74-311 and 74-312 which is basically the entire section that specifies what roadways in a major subdivision must be constructed to. Every other subdivision moving forward will be able to point to this subdivision and say ‘they did it this way so we are also doing it this way’ problems will come to the Planning Board and questions as to why these roads are different and this will open a can of worms.”* At the time, Jeffrey said to the Planning Board that the proposal already went through back in 2011 so the road is already there, there are no waivers needed for the project that already exists because now it was before the board just to change the use from seasonal to year

round. It is the same case now, the project was approved in 2011 with the road width, etc. under site plan which has no road width requirements.

The Planning Board also discussed in 2013 that the Developer cannot be held responsible for a failure that this was not pushed through as a Major Subdivision prior to the Site Plan review. If it had been pushed as a Major Subdivision, it would have been designed differently, there would have been fewer units, it would not have been developed to this density, etc. The Planning Board talked about looking into this process more thoroughly in the future and stand fast by the process on the first go around so that it does not come back like this and cause danger.

**Notes from the meeting recordings are included in the Summer Winds timeline attachment.**

One thing to point out is that the Summer Winds project received Major Subdivision approval. From the Findings of Fact P.3 (August 11, 2011): “*the proposed plan demonstrates consistency with the GB-1 and R4 Zoning Districts, the Subdivision Ordinance, Site Plan Review Ordinance and Conditional Use.*” From the Findings of Fact P.4 “*the project meets setback, space and bulk, and parking requirements and applicable performance standards as required for approval in the GB-1 and R4 zoning district and the Subdivision Ordinance. The project received Conditional Use approval on 21 July 2011 including approval of appeals from restrictions of nonconforming uses.*”

***Comments re: Unit Count:***

There was nothing in the meeting minutes that conditioned this project as a 53 for 53 replacement. It was mentioned in the meeting minutes but nothing was said that they cannot expand beyond 53 units.

**Thoughts on Moving Forward:** If the Planning Board decides to grant Preliminary Plan approval to Summer Winds, the following condition should be attached to the approval:

*Prior to final plan approval, the Summer Winds development shall come back before the Planning Board for an amendment to address changes that were made on site that were not in accordance with the approved site plan.*

**Planning Board Questions for Wright-Pierce & Follow-Up from 10/13/16 Meeting (Stephanie’s Responses):**

- In terms of LID BMPs: They’re proposing an underdrain system which will act as infiltration and benefit the stormwater quality and since the area is small they don’t feel they need to add anything else. *Because the area is so small do you have any suggestions of what they could put there to treat the runoff?* **The underdrained system they are proposing is basically a perforated conveyance system, and while may provide some infiltration during small storms, will likely pick up groundwater and discharge to the outfall (path of least resistance). This provides really no treatment on the quality side (with the exception of some larger TSS collected in the sump of the catch basin proposed. The focus on this comment is to provide some water quality treatment. There are a number of low impact BMPs which can be used to provide some form of quality treatment in an area like this including bioretention filters, tree box filters, etc. Again, the hope is to promote some treatment at this project.**
  
- One thing the Planning Board noted on the site walk and I’m not sure if this was on the plans but units 6, 7, 5 and 4 each have sump pumps and the pumps discharge the basement water into the grass where the proposed units are going. Bill mentioned that he’ll look into putting pipes so that the water won’t be infiltrating into the grass and flooding the proposed units. This is something we’ll have to follow up on. **I would recommend that the location of the discharges be shown on the plans (I do not recall seeing them noted earlier). It is recommended that the sump discharges be redirected outside of the project area.**
  
- There are 6 new units with 12 proposed parking spaces and they only have one storm drain for that section. Do you feel that’s adequate enough for the new phase? **Catch basins are generally designed to collect and discharge runoff from roadways, front lawns, etc. As this is a short section of roadway and the soils in front of the lots will have some capacity for infiltration, I am not concerned with just one basin. Larger storms there may be some ponding, but that**

would occur in the centerline of the road based on BH2M design. The capacity of the system to move water is a function of the pipe sizing, which has been modeled and shown to function based on BH2M calculations.

**Email to Bill Thompson & Bernie Saulnier re: Summer Winds Improvements not According to Plan (10/27/16):**

Because there are a number of on-site changes that were made to the Summer Winds development that were not on the final approved plans including:

- Location/layout of the clubhouse
- Additional parking spaces
  - New visitor parking area
- Trash compactor vs. dumpster on site
- 6' stockade fence bordering Urbanski vs. arborvitaes
- Other landscaping changes
- Potential changes in pavement width

Staff agrees that Summer Winds is going to have to come back before the Planning Board as an amendment to address the changes that were made that were not on the originally approved plans. Under State statute (30-A S 4407) “*Any application for subdivision approval which constitutes a revision or amendment to a subdivision plan which has been previously approved shall indicate that fact on the application and shall identify the original subdivision plan being revised or amended. In reviewing such an application, the municipal reviewing authority shall make findings of fact establishing that the proposed revisions do or do not meet the criteria of section 4404.*”

The good news is that this can be done simultaneously with the Summer Winds II proposal, however, before the final plan approval, the amendment will have to be sorted out. This can be put as a condition of preliminary plan approval.

**Information re: Owner in default on performance bond for another subdivision**

*Response from the Town Attorney:* Because the other subdivision is under a separate entity, the Town cannot hold up the approval of Summer Winds II.

**Re: Win’s Question (How did Summer Winds end up with the narrow roads)?**

The answer to this question was not evident in the meeting minutes or any other supporting documents. After listening to the recording for the 10/10/13 meeting, a Planning Board member mentioned a fear that accepting roads that do not meet subdivision standards on a basis that they “performed well” over the winter would set a bad precedent for future proposals. A recommendation was made that a re-engineering of the road is done so that they meet the major subdivision standards or that Stephanie agrees the proposal is okay.

Stephanie’s Response:

Basically, our earlier concern remains valid with respect to this project in that the design of the storm drainage system does not allow for winter maintenance and would cause concerns during winter maintenance on the roadway. I have bulleted concerns below.

- The roadway was not designed/built to typical roadway standards with a crown thereby providing the center and traveled portion of the roadway to be cleared of ice and snow during winter conditions. The concern is that there is the potential for snow/ice buildup and runoff to cause icing on the roadway making this a safety concern.
- The SD system was built with underdrains acting as the SD system. While there are CBs, there is potential for clogging (I believe these are for groundwater management in the development as well).
- There is limited locations for snow storage within the site.

While we recognize the developer's desire, the above remain concerns from a safety/access and maneuvering standpoint to convert this development to year round.

*A condition of the 2013 Planning Board approval was that a snow and ice plan be required for the site which addresses Planning and Wright Pierce concerns.*

***The proposal came before the board as a Site Plan and the project was treated as such which is why the roads, etc. do not meet subdivision standards. The Planning Board in 2013 recognized the mistake that was made and in the future wanted to ensure the process was followed more thoroughly.***

### **Meeting Minutes (Seasonal-Less Seasonal-Year Round)**

#### **11/10/11 – Meeting Minutes (Summer Winds): Season Extension**

Mr. Bill Thompson, Agent representing Bernie Saulnier stated to the Board that he is here to get an amendment to extend the season for 2 months. December 31<sup>st</sup>. There are no changes to the site or units.

2 issues that have come up are:

- 1.) Snow removal. There would be no problem with snow removal.
- 2.) Water and sewer issues would be fine as they are built to withstand the cold months. The water will be shut off on December 31<sup>st</sup>. There is a 4' crawl space.

Mr. Cote asked how will the homeowners know that they must be out on December 31<sup>st</sup>.

Mr. Thompson stated that this will be in the Condo docs.

Mr. Cote was concerned with the plowing during the winter months for emergency vehicles to get in and out if there is an emergency for safety issues.

Charlene Farley from Maine Coast Properties informed the Board that several of the potential buyers stated that they would like to stay until December 31<sup>st</sup>.

Mr. Hinderliter stated that the findings of facts would only state the extra months and assumed that the water shut off would be in the condo docs.

Mr. Darling asked if there would be any gates in the entrance.

Mr. Thompson stated that there would be one at each entrance.

Mr. Darling also asked if there will be any heat in the crawl spaces.

Mr. Thompson stated that the only heat will be in the living spaces.

Mr. Koenigs stated that he has a problem with this coming back to the Board 2-3 months after it has been approved and asking to amend it does not sit well with him as a Board Member and asked why this wasn't included with the marketing research in the first place.

Charlene Farley stated that a lot was based on the marketing of other mobilehome parks/cottages. This was a unique project and until you open the door, you find out what the public is actually looking for. This has been driven by the buyers that want to be in Old Orchard for a longer period.

Mr. Koenigs then asked why does the development that was sited as being further down the coast (Wells) that was similar, not used as part of your market research?

Attorney Ordway stated that the Town of Wells has an entirely different ordinance. If this project had been done in Wells it would not require a subdivision approval. They classify them as seasonal motels and they specify the season. He stated that the Planning Board's and all other subdivision ordinances prevent the type of marketing that you said should have been done in advance.

Mr., Koenigs asked why just seasonal, why not year round?

Attorney Ordway stated that this was never proposed for a year round project and it is not suited for one.

Mr. Darling asked if another public hearing on the amendment be appropriate to bring out concerns from abutters.

Mr. Koenigs stated that he thinks that the concerns have been voiced and responded to properly.

Mr. Cote mentioned that he does not want this project coming back in the spring for something else.

Mr. Darling asked a question of Ms. Farley: How many potential buyers objected to purchasing because of the October 31<sup>st</sup> closer date?



Mrs. Farley stated that 12 are on the list if the season changes.

Mr. Cote asked how many had sold so far.

Mrs. Farley stated that 12 are on the list and 12 are under reservation.

Mr. Cote made a motion to approve the extension to December 31<sup>st</sup> on 180 Saco Avenue for 53 seasonal dwelling sites for conditional use. Mr. Darling Seconded the motion.

### **9/12/13 – Meeting Minutes (Summer Winds): Seasonal (9 Months to Year Round)**

Bernie Saulnier from 180 Saco Avenue, Developer/Owner of Summerwinds, LLC introduced himself to the Board Members. Mr. Saulnier was here to discuss the change from seasonal (9 months) to year round units. The reason is that they have been struggling with the sales of these units. The buyers are retirees and they would like to see these units be year round. Mr. Saulnier stated that he had sent letters to the Town Planner discussing the infrastructure and buildings. They have a landscaper who does the snowplowing for them and he has prepared a snow management plan. Bill Thompson, BH2M Engineering introduced himself to the Board Members. They are the original engineers for Summerwinds. One of the questions that the Town Planner had is how can we transfer seasonal to year round when the project was designed for seasonal use.

Mr. Thompson informed the Board Members that we do not have 2 sets of standards for design. (utilities, water, sewer, storm drainage). The road that was designed was pitched to the center with a catch basin/collection system to handle the storm water.

It is still an acceptable road design. Nothing will be substandard or impacted. And with any maintenance system, the catch basins will be uncovered from snow, and storm water will be handled. Everything was designed to the proper depth. The site was designed to handle public safety (fire, rescue, etc and proper turning radius). Mr. Thompson sees no issues with these year round units.

Mr. Hinderliter's primary concern is the maintenance of the road. He wants to make sure that what hasn't been built is designed to a level to accommodate year round use and what is constructed to a level that will accommodate year round use. Mr. Hinderliter is in favor of the Town Engineer review this proposal so that we can get that confirmation.

Carl D'Agostino stated that this is the kind of Economic Development with regard to increasing our housing inventory that we want in our community.

Chair Weinstein asked if there are heating systems in the units.

Mr. Saulnier stated that the units are all built to be year round cottages with 2 x 6 construction, insulated, on a frost wall, and have heating systems.

Mr. Hinderliter questioned the condo docs and renting.

Mr. Saulnier stated that the Condo Docs say that they can rent only to 6 people at a time. If these units go year round, he will amend the Condo Docs to read that they can only rent during the peak weeks.

Mr. Hinderliter would like to see clarification of this.

Chair Weinstein would also like to see the legal documents from Mr. Saulnier's lawyer.

Mark Koenigs suggested that if we do approve year round, that we make the amended Condo Docs a condition of the approval. If they go with seasonal, it should be conditioned that they cannot be year round rentals.

Mr. Hinderliter informed the Board Members that if they would like to see this proposal move forward, they can condition it to meet those standards to the satisfaction of our town engineer so at least it can move forward.

Mark Koenigs made a motion to table this item without prejudice. Seconded by Carl D'Agostino.

All approved.

### 10/10/13 Meeting Minutes

Chair Weinstein read an email from Jeffrey Hinderliter concerning items discussed with Les Berry from BH2M on the design of the storm water drainage system.

In speaking with Jeffrey Hinderliter today, he said that if the owners provide engineering standards that the roadway meets the regular subdivision standards for roads and if there is a maintenance management system that is worked out ahead of time for winter maintenance, that would address many of his concerns.

Bill Thompson, from BH2M Engineering along with Bernie Saulnier (owner/applicant) response to Stephanie Hubbards (Wright/Pierce) concerns:

- With the storm drain, the pipes are perforated to infiltrate some storm water back into the ground with the clogging issue from the roadway sand. This is a basic maintenance issue.
- All roads in Old Orchard Beach have catch basins at the curb, pipes connecting and they need to be cleaned out occasionally.
- There is plenty of vacant land for snow storage.
- The hydrant is active year round.

Mr. Thompson added that this project was designed for town standards and DOT standards.

Win Winch was concerned who will be liable for the safety of the roads.

Carl D'Agostino read a letter from Go Green Landscaping, which is the landscaping company for the plowing of snow in Summerwinds. They basically stated that there is ample storage space for snow removal and they allow for 24 hour access for emergencies.

Mr. D'Agostino recommends that the Board needs to see a re-engineering of the road so that they meet our major subdivision standards along with a letter from Stephanie Hubbard, our Town Engineer, agreeing that she approves this road for the winter months.

Win Winch stated that by the Planning Board's definition this will be a year round major subdivision because there are more than 5 year round units.

The Board Members present all agreed that they are in favor of the project if Stephanie Hubbard has no problem approving this.

Win Winch made a motion to table this item without prejudice until they get the approval from Ms. Hubbard. Seconded by Mike Fortunado.

### 11/14/13 Meeting Minutes

Bill Thompson, BH2M Engineering, Bernie Saulnier and David Melevsky, President of Go Green Landscaping, Inc. introduced themselves to the Board Members.

They have met with Stephanie Hubbard from Wright Pierce and she was comfortable with the design. Her primary concerns were the snow and ice maintenance removal.

Mr. Hinderliter read a list of conditions (that are incorporated in the motion below) which will ensure that the project will be properly maintained for the life of the project and meet the towns and Ms. Hubbard's requirements and protect the property owners of Summerwinds.

Carl D'Agostino made a motion to amend the Subdivision Approval for 180 Saco Avenue, MBL 208-1-1 approving seasonal use to year round use with the following conditions:

**1. The roads that are part of the Summerwinds location at 180 Saco Avenue remain private roads in perpetuity.**

**2. Formal ice and snow maintenance plan shall be created in accordance with the following:**

- a. The plan shall be created by the current owner, current applicant and/or representatives and shall be submitted to the Old Orchard Beach Town Planner and Old Orchard Beach Consulting Engineer or before December 1, 2013.
- b. The plan can be implemented only after the Town Planner, Town Engineer and Planning Board approve it.
- c. The plan shall become part of the Summerwinds or any future development name/owner Condo Association Documents.
- d. The plan shall be recorded in the York County Registry of Deeds within 60 days by ordinance but as soon as possible. Proof of this recording shall be submitted to the Town Planner.
- e. Any adjustments, changes, amendments to the plan shall require Old Orchard Beach Planning Board approval.
- f. The plan shall remain in effect with the development no matter who the property owners are.

Seconded by Win Winch.

Mr. Hinderliter added that this is a non conforming use. And there is a standard in our ordinance which allows non-conforming uses to expand, so when the Planning Board begins to review these ordinances, these are the things that they may want to think about. These are our controlling documents.

**Comment from Mr. Urbanski (10/23/16)**

In a subsequent meeting held October 13, the developer strongly and vehemently makes assertions that other communities have not posed the kinds of opposition he has faced in Old Orchard Beach. This is a curious and confusing comment for two major factors.

First, over the last several years, the developer or applicant has appeared before the Planning Board asking for special considerations, revisions, amendments and/or permits altering the Summer Winds original plans; each time the Board has yielded.

Secondly, it is perplexing to see the developer making front page news in the Portland Press Herald on October 11, 2016, two days earlier than the OOB meeting. As you can read in the enclosed attachment, Portland city leaders and community representatives are questioning the developer's ideas and communications with them over the last several months; this time as they consider a building moratorium because of various factors.

**(September Meeting)**

The primary purpose of the September meetings is to conduct a site walk and hear from the public. As you know, this proposal has generated quite a bit of abutter interest. Due to this interest, it is an appropriate time to gather all outstanding questions, comments, concerns so that we (staff, applicant) can provide feedback. In addition to abutter comments, PB members, staff and Wright-Pierce have questions and comments. After the September meetings it is staff's intent to consolidate comments and provide to the applicant so they may address as part of their next Preliminary Plan submission. Below are staff and Department comments.

**Misc. Comments (September)**

- Use of existing infrastructure (Developers Right, Title, Interest). This proposal requires use of infrastructure that is within the existing, developed portion of the Summerwinds. Summerwinds is a private development. Does the developer have the legal ability to use this infrastructure?
- Addressing existing infrastructure issues. Some of the existing infrastructure within Summerwinds may not be performing adequately now that the development is fully built and occupied. For example, a number of residents state the increase in flooding on property but especially basements. Summerwinds II, although a slightly different name, is still part of the original Summerwinds. So, a question is should the developer of Summerwinds II be

responsible for remedy of existing problems. Note- abutters not within Summerwinds have the same concerns (see letter from 176 Saco Ave. residents).

- Address snow removal.
- Wright-Pierce Comments. Wright-Pierce memo dated 30 August provides comments associated with the submission you received as part of your August packets. There are no new September submissions from the applicant included. I expect the applicant will address these comments as part of a future submission.
- Waiver requests. Based on the August submission, it appears waivers will be required if the applicant wishes to continue with what is proposed. The applicant should provide waiver requests (including justifications- see 74-34 for language) as part of the Preliminary Plan submission.
- Impacts to municipal services. Summerwinds was originally approved as a seasonal community. As such, it was shown to have few impacts to municipal services. Now that it is a year-round community with a proposed expansion, should municipal impacts to services (e.g., schools) be further evaluated?
- 36" culvert across Saco Ave. This culvert ability to adequately address stormwater from the existing and proposed development has been questioned. The applicant states that to their knowledge there have been no significant changes made to the watershed area contributing to the culver crossing and the proposal will not increase peak flow rates above the pre-development conditions. So, it appears no changes are proposed. Wright-Pierce memo recommends further review by PWD.
- Appeals from restrictions on nonconforming uses (78-180). This proposal requires review under the Conditional Use appeals from restrictions on nonconforming uses. The applicant's previous submission includes responses to the 12 Conditional Use Standards but does not directly respond to 78-180. I recommend the applicant respond to the following: The impact and effects of this enlargement, expansion, extension, resumption or conversion to another nonconforming use on existing uses in the neighborhood will not be substantially different from or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use.
- One particular concern from an abutter- has the applicant (or town) studied or taken into account the flows above this property and how they may impact stormwater and stream flow onto adjacent properties? How will the existing and proposed systems address the additional flow? In regards to the town, to our knowledge, we have not addressed this matter. Although, the town has identified the need for a comprehensive, town-wide drainage study and just this month received RFP's to perform such a study.
- Unit Count. A question has been raised if the Summerwinds property, as a whole, can exceed 53 units. Originally the project was approved as an even swap- 53 overnight cabins for 53 condo units. Thought is the applicant got a 'waiver' from the full review process due to the even swap. This original approval is the primary reason the appeals from restrictions on nonconforming uses applied to this proposal. So, as part of the PB's evaluation of the 53 unit question, 78-180 and the applicant's response to this standard should be considered. Megan researched this and provided a memo as part of September staff submissions. Staff will seek the PB's thoughts before we proceed.
- Default on other projects. As part of the Major Subdivision Final Plan standards, 74-232 (b) states: No plan shall be approved by the planning board as long as the subdivider is in default on a previously approved plan. In the case of the 6 lot proposal, the same person who is proposing this development has not secured a performance bond for another project he's responsible for. Although it is the same person, the property owners are different entities. So, this creates the question- what does 74-232 (b) mean by 'subdivider'? Is it the person? The entity? This is important because if the subdivider of this project is the same as the project in default it appears the PB cannot approve Final Plan. I believe we need legal advice on this.

### MS4 Comments (September)

One of the questions is the applicability of Chapter 71, Post Construction Stormwater Ordinance, to this project- is the proposed subdivision required to meet Chapter 71 standards?

In Chapter 71 “*Construction Activity*” is defined as “construction activity including one acre or more of disturbed area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will disturb equal to or greater than one acre”

The previously approved Summerwinds development does not have an approved Post-Construction Stormwater Management Plan which is required as part of Ch. 71 standards. Because the additional 6 lots are part of the larger subdivision, the applicant will have to submit a Post-Construction Stormwater Management Plan for the entire development. Additional coordination with the applicant is needed on this issue.

In addition to the above, Wright-Pierce provides MS4 comments in their 30 August memo. I expect the applicant will address these comments in the next submission.

### Department Head Comments (September)

#### CODES

I have some reservations that will need to be addressed with this proposal

1. Does the ownership change cause it to be a new not Phased expansion of Summer Winds. Does the new company have documentation sufficient for expansion and use of the roads in Summer Winds?
2. Will the Developer be asked to supply all necessary documents for his financial capacity? It is my understanding the Current proposal is not the same organization as the first 53 units?
3. Has all DEP docs been transferred top this developer?
4. The area where the proposed road is connecting to a private way has this or will this be addressed?
- 5 Will the road proposed infringe on the existing structures to cause issues with drainage and snow removal? Very narrow.
6. Access for emergency vehicles may be a concern with this proposal for access.
7. Drainage- are there plans for handling ground water intrusion and are they sufficient? There have been complaints that some of these units have infiltration into the crawl spaces we inspected some and did find water in at least 1 of them . the others had active sump pumps

#### PUBLIC WORKS

For Summerwinds II I recommend that the designer check the truck turning at the intersection. Could a fire vehicle, moving van or trash truck make this turn?

#### FIRE DEPARTMENT

My concern in any project that we have is adequate hydrant coverage and that we have wide enough road to handle our fire apparatus, our largest fire truck is our tower truck at 47 feet long and 68000 pounds.

#### TAX ASSESSOR

Below is an email conversation between Assessor George Greene and abutter Jeanne Hackert. Jeanne Hackert had tax-related questions so I referred her to George. Her letter is included with the other abutter letters you received at the workshop. Email chain begins with George

Jean,

On the question you had regarding what the assessment and taxes are on the property that Summerwinds is proposing to add 6 more condo sites to, where the 53 units are not located;

This acreage is part of the Summerwinds Condo Association parcel. The declarant, which is the developer, has the intangible development rights to add six units per the condominium documents. These intangible rights are **not** fee simple, real estate, tangible property which can be taxed. Intangible rights, according to Maine Case law to date, are not taxable. When you look at the Summerwinds Condo documents you will see that the full parcel(10+ acres) is incorporated into the development. Again, the developer only has the intangible development rights, the potential, to add 6 more units should he be allowed to do so. Not taxable.

Reply from Hackert:

My question is the acreage, the entire remainder not presently occupied by any building, the entire undeveloped remainder. This intangible rights, If you say it's assessed now between the 53 condo units when they finish putting in the rest of the 150(sarcasm) down in the future will the initial 53 get lower taxes because there are more lots to divide amongst?

I am home now, re-read your response and spoke to an adviser.

1) The developer appears to have "potential" rights to add 6 more units. However, they cannot do so without the town's permission. This is the reason for the proposal & the meeting on Sept.8th, to obtain approval from the town.

2) Each cottage owner is not being taxed for just their individual house but also for the lot of land that their houses are sitting on(the latest records I show is that the land value each owner is being taxed is \$31,300.) So the building and their lot go hand in hand.

3)Condo fees paid by the condo owners are towards all common areas and expenditures such as for maintenance/upkeep of the grounds, buildings(clubhouse,etc), insurances etc. Condo fees is what each condo owner splits amounts the number of units towards these expenses.

The undeveloped land, where the 6 units are proposed to be placed, along with the remainder of the 10+ acres(yet to be developed) still need to be taxed along with all common buildings. Whether the taxes for these come from part of the condo fees or wherever, property taxes must be charged for them and someone needs to pay for them.

However, the latest property tax card 2016 (Vision ID:105921, Map ID:208/1/1-0//) shows assessed value of zero?? They have not been taxed apparently since it's purchase back in 2011.

Greene reply to Hackert:

The land presently in question is owned in common with the other 53 units just like the streets, the clubhouse, the pool, etc. The valuation on each condo unit reflects those common areas, too. Again, the developer only has intangible development rights, I think until 2019, to put 6 more units on this land. These intangible rights are not taxable. I repeat, are not taxable according to Maine Case Law. The card that you are looking at 208-1-1-0 is the condo main card which is just used to identify the condominium project. All condo mains have no value. There isn't any physical land or building associated with the condo main card. Therefore, no taxes. Each condo owner has a land value as prescribed by State law. The summation of 53 land values to date comprise the land value for all 10+ acres that are common elements and limited common elements; basically the polygon parcel of land known as Summerwinds. I hope this answers all your questions.

#### Regarding Extra Bedrooms In Existing Units

The question of extra bedrooms may not be directly applicable to the current proposal before the PB; although, it may have some relation as some of the infrastructure (e.g. sewer) is shared. Below is staff input regarding the extra bedrooms as related to planning permitting.

Follow-up regarding the extra bedroom(s) on the planning-related permitting side. Another tricky matter. I'll try to be clear with my written thoughts.

- The Conditional Use and Site Plan FOF did not specifically address bedrooms; although, bedroom info was included by reference through the FOF's identification of submitted material (see attachment pp 7 – 8, highlighted language). The submitted material included bedroom-related info by number per cottage (p 2) and public sewer GPD estimate (pp 4 – 5). Both referenced documents show the proposal included 1 bedroom for each cottage.
- Chris White felt the applicants sewer GPD estimates were not accurate and should be based on 2 people/building @ 50 GPD/occupant (p 6). This doubled the applicants GPD estimate. The records are not clear which estimate was used as the final GPD.
- This brings two immediate questions:
  1. Which GPD estimate was used and does it allow for more than 1 bedroom? The records do not clearly show if the applicants or Chris' estimate was used. If Chris' estimate was then it appears the GPD was based on occupants and not bedrooms. But, Chris used the same GPD per occupant as the applicant did per bedroom. So, if the applicant used Chris' GPD estimate then the sewage flow was based on 2 bedroom cottages. Note that Chris states (p 6) since the cottages were preexisting the estimated daily flow should not have an adverse impact on the wastewater treatment process. This also brings up another question- does the number of bedrooms matter when Chris feels it should be based upon the number of occupants? This is probably a difficult number to arrive at unless it's based on the code approved occupant load.

Does the addition of bedrooms require further PB review? If the design sewage flow does not match the number of occupants (or number of bedrooms?) then yes, in my opinion it does require additional PB review. Remember the basis of the approval was to replace 53 overnight cabins with 53 cottages which I believe the intent was not for these to become single-family dwellings (in a traditional sense). Also, the applicant's cover letter (p 2) states "The one bedroom cottage..." So, it can be said that what was part of the record during the original Summerwinds approval was 1 bedroom cottages. The change to the proposal, through the addition of more bedrooms, could be considered a revision to what was approved; although, the revision standard appears to be related to plans and not typed documents. So, I'm not completely certain if the addition of bedrooms beyond what was approved requires further PB review. I intend to bring this up to the PB at the Sept meeting.

**RECOMMENDATIONS (September):** Staff sees the September meetings as an opportunity to gather all comments. Staff intends to consolidate comments and provide to applicants so they can address as part of their next submission. Please identify any particular issues the PB would like staff to focus on. Note- the Subdivision Ordinance requires the PB to take action on the Preliminary Plan within 30 days of a Public Hearing or within another mutually agreed upon time.

### **BACKGROUND (August Meeting)**

The August proposal includes PB review of Summerwinds II Preliminary Site Plan and Major Subdivision Applications as well as a Conditional Use Application for Appeal from restrictions on non-conforming uses. Also, to schedule a Site Walk and Public Hearing. The applicants August submission includes revised plans and documentation which address PB, staff and Wright-Pierce (7.6.16 memo).

On the face of it the proposal seems rather simple as a six lot subdivision; although, this is quite complicated. This is due, in part, to the way the way it was originally reviewed and approved and as well as the fact it includes 3 separate applications (actually 4 when we add the Floodplain Application). Trying to sort through all the material has become quite a task and still requires more staff time before action is taken on the Preliminary Plan.

In addition to the above, staff received quite a few letters from residents at Summerwinds (some you have received, some not yet as we just received them this week) which include a number of concerns associated with the proposed development and problems with the existing development (not all planning-related). The level of interest in this adds

another dimension to staff review as it takes more time to research. Staff finds that it is important that we schedule the Public Hearing for September because receiving and evaluating public comment is an important part of allowing us to complete Preliminary Plan review.

- Need existing and proposed building coverage calculations. Since this proposal is in the GB1 District, the 35% max building coverage calculation applies. Note- the GB1 District does not include standards for impervious surface or lot coverage calcs.
- We found a concept plan from 2011 that identifies the area associated with this proposal as housing.
- The unit count matter is still not resolved to staff's satisfaction. So far we found all approvals clearly show only 53 units. One problem is we still have not established why. We see the 53 unit count is matched to the unit count that existed when it was Jeremiah's Cabins but we've yet to find documentation stating if it must be limited to this number. A simple density calc allows 88 units (5,000 sq. ft./unit @ lot size 10.18 acres) so it certainly doesn't appear to be limited by minimum lot size. So, we think if there is a cap it must be tied to something else such as the Appeals from restrictions on non-conforming uses standard. We continue to research this and need more time to do so.
- #21. Snow Storage: Any modifications to be made to the current snow storage plan? The 6 proposed lots are in the area currently designated as snow storage. The Planning Board conditionally approved the conversion of Summer Winds cottages to year-round with the stipulation that a formal ice and snow maintenance plan be created.
- The applicant addresses the concerns associated with the 36" culvert crossing Saco Ave. Staff believes we need Wright-Pierce input on this before we move forward
- Does the developer have the exclusive rights to develop this area?
- Does the developer have the rights to use Summerwinds roads, utilities, etc. for Summerwinds II? If so, does he need written authorization to extend and use the infrastructure from the HOA? As far as I'm aware the only way Summerwinds II can come into existence is through the extension and use of Summerwinds infrastructure. Summerwinds is a private development.
- What role and rights does the Summerwinds HOA have? And is this something the town can get involved with (think of Dunegrass and our attorney's opinions).
- Need to have up to date deed and condo docs from the association that show this can be done.
- Wright-Pierce has not yet provided peer review comments for the August submission.
- Recommend adding buffering along lot line shared with Leary property.

#### Department Head Comments (August)

#### PUBLIC WORKS

I have reviewed the documents submitted by BH2M date June 2016 for this project.

The access road is proposed to be 18 feet wide. This is very narrow and a fire truck and another vehicle could have problems passing each other.

All underground utilities shall have a detectable warning tape above the utility.

Sidewalks should be handicap accessible.

Where the proposed drive connects to the existing access road, truck turning movements should be checked. They should check for both fire vehicles and moving vans.

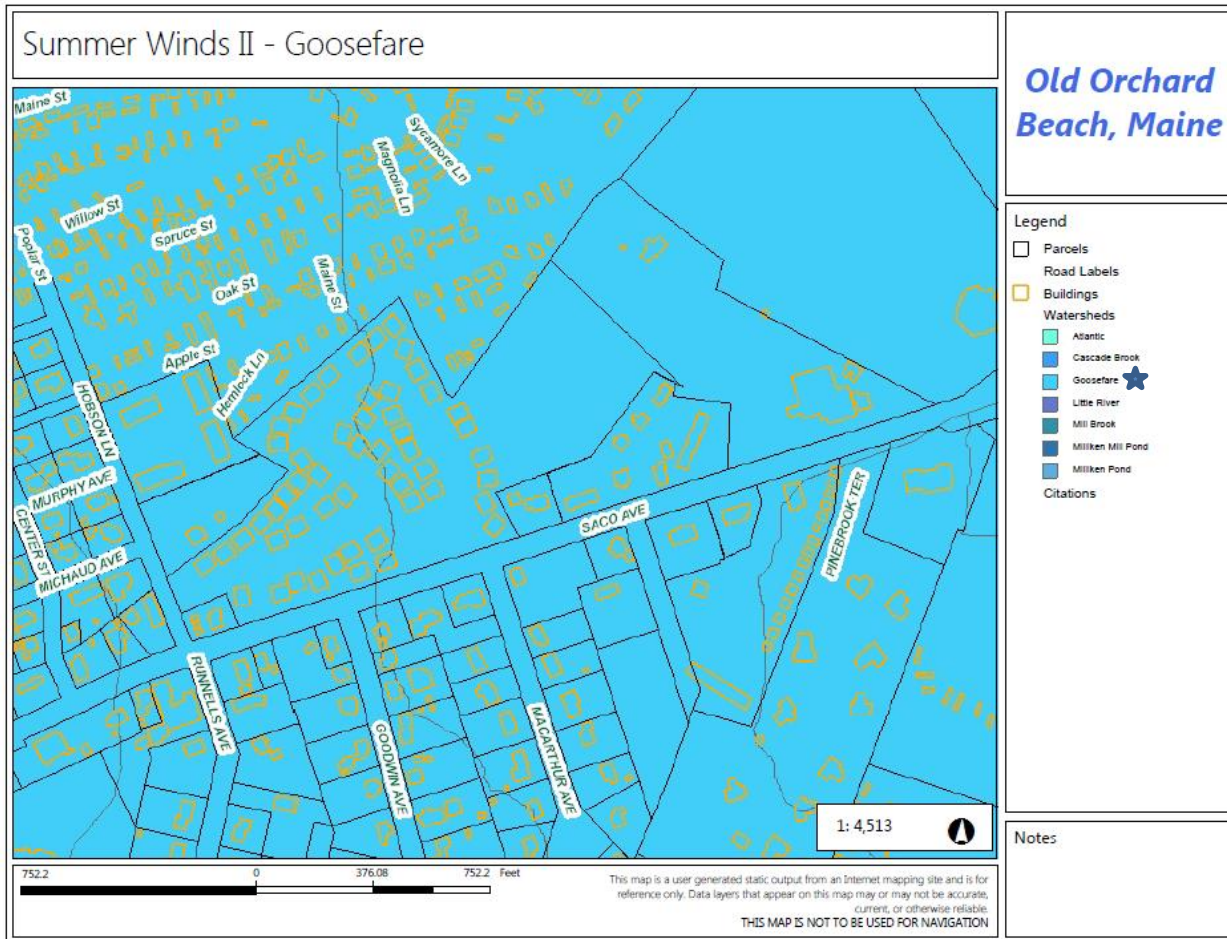


Sewers and drains serving Summerwinds II will be the responsibility of the developer and/or homeowners association.

Electronic copies of plans and specifications shall be provided to the Town in a format specified by the planning department. Survey markers shall be tied in to the State grid.

MS4 Comments (August)

#12. *Goosefare Brook Watershed*: While the project doesn't fall under the Ch. 500 Appendix listing of the Goosefare Watershed under the DEP, the Town has its own delineated Goosefare Brook Watershed which this project is included in (see map below). Under the Town's MS4 program this means the project will be subject to additional requirements during the inspection process including a minimum of 2 inspections annually and one completed during a rain event.



#17. *Operations & Maintenance Review*: The O&M plan currently used by the Summer Winds development needs some updates:

- "...at the time the Home Owners Association is formed the Association will be responsible for all other stormwater facilities." – This should be updated now that the HOA has been formed for Summer Winds.
- The O&M Plan should include the Annual Certification requirement for the Sediment Forebay behind buildings 32/33 that connects through a culvert to a catch basin on Saco Ave which is part of the Town's MS4. The inspection needs to be completed by a Qualified Stormwater Inspector as defined in Ch. 71 of the Town's ordinance and should be clearly outlined in the O&M Plan.

Recommendations (August)

Staff recommends that PB continue Preliminary Plan Review and schedule a Site Walk for 1 September and Public Hearing for 8 September.

## **BACKGROUND (July Meeting)**

To get right to the point, this proposal requires a more detailed staff review than time allowed for so that we may properly prepare you for the July meeting. Not only do we need to consider the proposed development (Summerwinds II) but we also need to consider the existing development (Summerwinds I). Just some of the issues to consider:

- Unit count- can the unit count exceed 53?
- Roads- The PB have already spoke of concerns regarding road width and drainage within Summerwinds. The residents have similar concerns. How will the addition of 6 units impact this situation?
- Does the developer have the exclusive rights to develop this area?
- Does the developer have the rights to use Summerwinds roads, utilities, etc. for Summerwinds II? If so, does he need written authorization to extend and use the infrastructure from the HOA? As far as I'm aware the only way Summerwinds II can come into existence is through the extension and use of Summerwinds infrastructure. Summerwinds is a private development.
- What role and rights does the Summerwinds HOA have? And is this something the town can get involved with (think of Dunegrass and our attorney's opinions).
- Was this area required to be preserved as open space?
- Other PB related permitting may be required such as Conditional Use for the expansion of nonconforming use and floodplain.

As you know, we have already received a number of letters from residents within Summerwinds who have offered concerns associated with the proposed development as well as the existing, built development. The July meeting is not a Public Hearing but these letters offer the PB (and developer) an advance notice of the residents' concerns and will prepare you as to what you should expect at the Public Hearing, which we recommend scheduling for August.

Having said the above, the PB can continue review of the Preliminary Plan, schedule a Site Walk and Public Hearing. We do not need to determine the Preliminary Plan as complete in order to hold a Site Walk and Public Hearing. It's just that this proposal, even though only 6 units, appears to be more complicated than other subdivisions of this size; therefore, warrants a more detailed look into questions we don't normally have.

### **Recommendations (July)**

With the summer residents here, we believe August is a good time to schedule a Site Walk and Public Hearing. Also let's continue Preliminary Plan review during August- we'll hopefully have answers to many questions by then.

## **OTHER BUSINESS**

### **1. Discussion: Appeals from Restrictions on Nonconforming Uses (78-180).**

As found at our March meeting the changes we are considering are, in part, are covered in 78-177 (3) and 78-179 (d)

Nonconforming use of land. 78-177 (3). If any such nonconforming use of land ceases for any reason for a period of more than two years, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located

Nonconforming uses of structures. 78-179 (d) *Cessation of use*. If any such nonconforming use of a structure ceases for any reason for a period of more than two years, any subsequent use of such structure shall conform to the regulations specified by this chapter for the district in which such structure is located

and the whole intent of the appeals from restrictions on nonconforming uses standard is to offer an appeal of 78-177 & 179 to allow the owner of a nonconforming use or structure to extend the nonconforming time frame beyond the 2 year expiration up to 10 years. This is because 78-177 & 179 allows what 78-180 does for up to 2 years. It is 78-180 that allows an owner to extend this 2 year expiration to 10 years through the Appeals from Restrictions on Nonconforming Uses process. With the above our approach to amending 78-180 changes. Before we formalize any amendment and submit for the PB's 1<sup>st</sup> reading the following questions and comments should be discussed:

1. Should we just let the standards in 78- 177 & 179 limit the continuance of nonconforming use of land and structures at 2 years and not offer an appeal through the PB? The way I interpret this is it would cap nonconforming use and structure enlargement, increase, extension, movement, reconstruction, alteration, or resumption at two years, period. If this is what we decide than 78-180 could be entirely deleted because 78- 177 & 179 appears to cover it.
2. Should we do as suggested in #1 but permit some flexibility by allowing people to improve their nonconforming use of land and structures beyond 2 years? If so, how much flexibility and what do we consider an improvement?
3. Should we keep 78-180 and still offer the appeal through the PB but shorten the 10 year time frame? If we decide to keep this standard I suggest something like: "...for a period of more than two years, but less than five years".
4. Should we keep the same time frame and general language in 78-180 but change the authority to rule on the Appeals from Restrictions on Nonconforming Uses to the ZBA and leave PB with authority to rule on conditional use? If we do this the amendments could become a bit more complicated because the ZBA has specific statutory authority- we would just need to check on this. Also, the ZBA should be included in our discussions.

Staff provides proposed amendments to 78-180 (below) but the changes are mostly cleaning up the current language. Once we receive more specific guidance from the PB we can create language that reflects this guidance.

### **Background**

78-180 allows a nonconforming use of land or a nonconforming use of a structure to be enlarged, increased, extended, moved, reconstructed, structurally altered, converted to another nonconforming use, or resumed after cessation for a period of more than two years but less ten years upon approval by the PB as a Conditional Use.

As you can probably see, this standard provides a lot of flexibility in regards to what someone can do with a nonconforming use after the use ceases for more than 2 years. In fact, this standard allows you to change the nonconforming use into another nonconforming use so it can be said that all uses, even those that are not permissible by ordinance, are in fact permissible if you have a nonconforming use and you cease the use for more than 2 years. A proposal for conversion, resumption, expansion, etc. does require PB consideration but it gives the PB rather broad standards for review which are wide open for interpretation- this makes it difficult for the PB and applicant.

A standard such as 78-180 does have some positives but its current language leaves the town open to potentially undesirable uses which could create considerable impacts. The language could be tightened up while still

allowing reasonable leniency for conversions, expansions, etc. of nonconforming uses of land and structures.

Points to consider:

- The town already has standards in place that deal with nonconforming use of land (78-177) and structures (78-179). The standard we're considering allows an owner of a nonconforming use or structure to essentially "waive" the standards in 78-177 and 179 as long as the PB finds a proposal is acceptable. Really, one of the primary differences is 78-180 allows the nonconforming use of land and structure standards to be extended to 10 years.
- Reduce the 10 years to a shorter time-frame. This may be applicable only for resuming and converting nonconforming uses if the PB feels proposals that enlarge, increase, extend, move, reconstruct, structurally alter nonconforming uses can have a more lenient time frame.
- Delete or amend the "converted to another nonconforming use" language. This language pretty much smacks the principles of zoning in the face as it could be interpreted to allow any use to be established on a property that has a nonconforming use, even if the use is specifically prohibited.
- Tighter PB review standards? Adding something such as "...will have no greater adverse impact according to the criteria listed in..." then add criteria. Also, maybe some types of development will not need PB review or even be exempt. For example, 1 & 2 family residential use will typically not have the same impact a hotel, apartment building or nonresidential use.
- Perhaps we take the language within the nonconforming standard and create individual requirements for each. For example, change of nonconforming use, resumption of nonconforming use, expansion, etc. could have their own individual standards.
- Remember, we are only dealing with the nonconforming use of land or structure. This does not include how a structure meets setbacks, height requirements (that's nonconforming structure) or if a lot meets the minimum lot area requirements (that's nonconforming lot). This standard only regulates how the property or structure is used.
- When you dive into this you'll see it's really not as easy as it seems as there are a number of matters, scenarios, etc. to consider. On the other hand, it could be quite easy- delete 78-180 all together and allow 177 and 179 to regulate nonconforming uses of land and structures and if someone needs relief, apply to ZBA.
- If someone wanted to seek relief from 78-177 or 179 then they could go to the ZBA. Interestingly, it appears the ZBA does not have the ability to grant a variance for nonconforming use and structure appeals- variances are "authorized only from dimensional requirements." But someone could file an administrative appeal which is an appeal of the interpretation of a standard. This is also why I believe the only chance for an appeal, without getting into ZBA's authority, is through the PB and that's why it's in 78-180.

Below is 78-180 which is the primary standard we are considering. Following is 78-176, 177 and 179 which should be used as part of our consideration.

### **CURRENT LANGUAGE**

Sec. 78-180. - Appeals from restrictions on nonconforming uses.

Notwithstanding sections 78-177(1) through (3) and 78-179(b) through (d), a nonconforming use of land or a nonconforming use of a structure may be enlarged, increased, extended, moved to another portion of the lot or parcel, reconstructed, structurally altered, resumed after cessation for a period of more than two years, but less than ten years, or converted to another nonconforming use on the lot which it occupied on the effective date of the ordinance from which this chapter derives or amendment of this chapter, upon approval of the planning board as conditional use pursuant to article VII of this chapter. The planning board may not approve any such enlargement, increase, extension, movement, construction, alteration, resumption or conversion, unless it finds that the impact and effects of this enlargement, expansion, extension, resumption or conversion to another

nonconforming use on existing uses in the neighborhood will not be substantially different from or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use.

Sec. 78-176. - Continuation of nonconformance.

Any lawful use of buildings, structures, premises, or parts thereof existing at the effective date of the ordinance from which this chapter derives or amendment of this chapter and made nonconforming by this chapter or any amendment thereto may be continued although such use does not conform with this chapter or amendment thereto, subject to this division.

(Ord. of 9-18-2001, § 4.3.1)

Sec. 78-177. - Nonconforming use of land.

Continuance of nonconforming use of land shall be subject to the following:

- (1) No such nonconforming use shall be enlarged or increased or extended to occupy a greater area of land than that occupied at the effective date of the ordinance from which this chapter derives or amendment of this chapter.
- (2) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of the ordinance from which this chapter derives or amendment of this chapter.
- (3) If any such nonconforming use of land ceases for any reason for a period of more than two years, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located

Sec. 78-179. - Nonconforming uses of structures.

- (a) *Generally.* No existing structure devoted to a nonconforming use shall be enlarged, extended, constructed, moved or structurally altered except in changing the use of the structure to a conforming use.
- (b) *Extension of nonconforming use.* Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the effective date of the ordinance from which this chapter derives or amendment of this chapter, but no such use shall be extended to occupy any land outside such building.
- (c) *Superseded by permitted use.* If a nonconforming use of a structure or premises is superseded by a permitted use for a period of one year, the nonconforming use shall not be thereafter resumed.
- (d) *Cessation of use.* If any such nonconforming use of a structure ceases for any reason for a period of more than two years, any subsequent use of such structure shall conform to the regulations specified by this chapter for the district in which such structure is located.

**PROPOSED LANGUAGE**

Below are the changes to 78-180 suggested at our February workshop (note with a number of after-the-fact staff adjustments to clear up other language). New language in **bold**, deleted language struck

Sec. 78-180. - Appeals from restrictions on nonconforming uses.

Notwithstanding sections 78-177(1) through (3) and 78-179(b) through (d), a nonconforming use of land or a nonconforming use of a structure may be enlarged, increased, extended, moved to another portion of the lot or parcel, reconstructed, structurally altered, **or** resumed after cessation for a period of more **less** than two years, but less than ten years, or converted to another nonconforming use on the lot which it occupied on the effective date of the ordinance from which this chapter derives or amendment of this chapter, upon approval of the planning board as conditional use pursuant to article VII of this chapter. The planning board may not approve

any such enlargement, increase, extension, movement, **reconstruction**, alteration, **or** resumption or conversion, unless it finds that the impact and effects of this enlargement, expansion **increase**, extension, **movement**, **reconstruction**, alteration, **or** resumption or conversion to another nonconforming use on existing uses in the neighborhood will not be substantially different from or greater than the impact and effects of the nonconforming use **on existing uses in the neighborhood** before the proposed enlargement, expansion **increase**, extension, **movement**, **reconstruction**, alteration, **or** resumption or conversion to another nonconforming use.

## **2. Discussion: Planning Board approval expiration for Subdivision, Site Plan and Conditional Use**

The proposed changes to subdivision, site plan and conditional use approval expiration were introduced to the PB at the March workshop. The PB offered comments and questions which include the following:

- The expiration clock begins when a project receives “final approval”. Do we consider final approval as the day the PB votes on the project or signs the mylar? Should final approval be defined?
- Administrative review of project commencement and substantial completion. Should staff have the ability to authorize project extensions? If so, should it be limited to those projects that are originally approved administratively or should it include PB approved projects? As proposed, subdivision does not allow admin review. Site plan and CU allows for admin only if it was originally approved as admin.
- Should we set a specific limit to the number of extension requests? It was suggested to we limit the number to 2 one year requests for project commencement and substantial completion.
- Should we define “intended purpose”? Intended purpose is used in the substantial completion definitions: “sufficiently completed to allow the subdivision to be used for its intended purpose.”
- Are expiration dates on subdivision projects legal? Staff checked with legal and yes, we can add expiration dates. This gets tricky when the subdivision includes lots and the lots are recorded. If a subdivision expires it’s quite possible the ability to developer the lots will expire too. So it could become a bit of a messy title and assessing matter to undue the lots. Also, what if the subdivision is half developed but not substantially complete and people are living in homes on these lots? We can assume the town will have a performance guarantee in place to finish the infrastructure but there’s a possibility of something unforeseen. Maybe the expiration dates should be tied to infrastructure but what if the subdivision involves construction of a condo building where infrastructure may be minimal?
- Reach out and encourage developers to begin and complete projects. As we’ve found this can be tough because the reason vary and are sometimes caused by unpredictable events. Examples, market conditions, death, divorce, etc. Staff can contact developers when project expiration dates approach but there’s not much we can do beyond finding out the reasons for delay and trying to work with them to get projects started and completed. Maybe having an expiration date will in itself encourage developers to begin and complete projects.

Assuming we can resolve the remaining issues at our April workshop, staff can prepare formal ordinance amendments that will reflect the proposed language below, along with any changes, for the PB’s 1<sup>st</sup> reading at the May meeting.

### **Background**

As you may know, we’ve found that our subdivision, site plan and conditional use ordinances project approval expiration standards may be lacking. For example, our CU standards do not have a project approval expiration date which basically means a CU project approved by the PB can pretty much run indefinitely before construction begins. Another example is subdivision which has project expiration standards but they’re tied to plan recording (74-234 a) and a rather odd one that appears to be tied to phased development (74-234 b)

Common project expiration standards are one year to begin construction and two years to substantially complete construction. Our site plan ordinance includes standards similar to the above but the key language, project commencement and substantially completed, is not defined. “Substantial Start” is defined (“completion of 30 percent of a permitted structure or use measured as a percentage of estimated total cost”) but that language is not used in subdivision, site plan or conditional use.

Coming up with proposed language wasn’t as simple as originally thought. Meaning and intent of language, interpretation, twists of words, appropriate words, correct supporting language that flows within each ordinance, conflicting language, etc. all need to be considered- it’s actually tricky. Also, subdivision, site plan and CU cover many different projects within each of the ordinances (e.g., a subdivision can include creation of lots with new roads as well as a division of units within a building with no new roads). So trying to come up with a definitions and supporting language that fits all potential scenarios is difficult. In addition to planning-related project commencement and substantial completion codes has standards related to their permitting. To avoid conflicts the definitions are included with the applicable ordinance (e.g., subdivision) or the applicable ordinance is specifically identified within the definition.

Note that these amendments will apply to projects approved after adoption of the language and those projects that have not yet received substantive review (review of a project to determine if it complies with criteria) when the ordinance is amended. Generally, an approved but undeveloped project will be grandfathered absent any language that includes an expiration clause.

## **CURRENT LANGUAGE**

### **SUBDIVISION:**

74-234: (a) Any subdivision plan not so filed or recorded within 90 days of the date upon which such plan is approved and signed by the planning board as provided in this subsection shall become null and void, unless the particular circumstances of the applicant warrant the planning board to grant an extension which shall not exceed two additional periods of 90 days.

(b) At the time the planning board grants final plan approval, it may permit the plan to be divided into two or more sections subject to any conditions the planning board deems necessary in order to ensure the orderly development of the plan. The applicant may file a section of the approved plan with the tax assessor and the registry of deeds if such section constitutes at least ten percent of the total number of lots contained in the approved plan. In these circumstances, plan approval of the remaining sections of the plan shall remain in effect for three years or a period of time mutually agreed to by the municipal officers, the planning board and the subdivider.

Sec. 74-61. - Required. (Performance Gaurantee)

(a) At the time of the approval of the application for a subdivision, the applicant shall tender either a certified check payable to the town or a performance bond payable to the town issued by a surety company in an amount adequate to cover the total cost of all required improvements, taking into account the time span of the bond and the inflation rate for construction costs. The conditions and amount of such certified check or performance bond shall be determined by the planning board with the advice of various municipal departments, agencies, and legal counsel. Since all improvements shall be completed within two years, unless the subdivision is approved in phases or the planning board extends the date of completion, the bond shall be for no more than two years.

### **SITE PLAN:**

78-219: Site plan approval and all the legal rights, privileges, and duties thereof shall expire if project construction has not commenced within one year of the approval date and if the project is not substantially completed within two years of the approval date. The town planner and code enforcement officer may grant up to a one-year extension on administrative approvals, and similarly the planning board may grant a one-year extension on plenary site plan review approvals if compelling evidence is presented that additional time is required to meet federal, state, or local permit requirements or in reaction to market changes.

CONDITIONAL USE: Nothing

## **PROPOSED LANGUAGE**

### **SUBDIVISION**

Add definitions for Project Commencement and Substantial Completion in 74-1. Delete last sentence in 74-234 (b). Add new Section 74-235 Project Commencement and Substantial Completion. New language in **bold**, deleted is struck

Sec. 74-1. Definitions.

**Project commencement means the date on-site construction activity begins in accordance with an approved and recorded subdivision plan.**

**Substantial completion means the stage or part of an approved and recorded subdivision is sufficiently completed to allow the subdivision to be used for its intended purpose.**

Sec. 74-61. - Required.

(a) At the time of the approval of the application for a subdivision, the applicant shall tender either a certified check payable to the town or a performance bond payable to the town issued by a surety company in an amount adequate to cover the total cost of all required improvements, taking into account the time span of the bond and the inflation rate for construction costs. The conditions and amount of such certified check or performance bond shall be determined by the planning board with the advice of various municipal departments, agencies, and legal counsel. Since all improvements shall be **substantially** completed within two years, unless the subdivision is approved in phases or the planning board extends the date of completion, the bond shall be for no more than two years.

Sec. 74-234. Final approval and filing.

(b) At the time the planning board grants final plan approval, it may permit the plan to be divided into two or more sections subject to any conditions the planning board deems necessary in order to ensure the orderly development of the plan. The applicant may file a section of the approved plan with the tax assessor and the registry of deeds if such section constitutes at least ten percent of the total number of lots contained in the approved plan. In these circumstances, plan approval of the remaining sections of the plan shall remain in effect for three years or a period of time mutually agreed to by the municipal officers, the planning board and the subdivider.

**Sec. 74-235. Project Commencement and Substantial Completion.**

**Subdivision final approval and all the legal rights, privileges, and duties thereof shall expire if project construction has not commenced within one year of the approval date and if the project is not substantially completed within two years of the approval date. The planning board may grant a one-year extension on project commencement and substantial completion if compelling evidence is presented that additional time is required to meet federal, state, or local permit requirements or in reaction to market changes.**

### **SITE PLAN**



Add definitions for Project Commencement and Substantial Completion in 78-1. Add “Project Commencement and Substantial Completion” and “final”, delete “Duration of approval” in 78-219. New language in **bold**, deleted is struck

Sec. 78-1. Definitions.

**Project commencement (site plan and conditional use) means the date on-site construction activity begins in accordance with a site plan or conditional use final approval.**

**Substantial completion (site plan and conditional use) means the stage or part of a project sufficiently completed to allow the project to be used for its intended purpose in accordance with site plan or conditional use final approval.**

Sec. 78-219. Duration of approval **Project Commencement and Substantial Completion.**

Site plan **final** approval and all the legal rights, privileges, and duties thereof shall expire if project construction has not commenced within one year of the approval date and if the project is not substantially completed within two years of the approval date. The town planner and code enforcement officer may grant up to a one-year extension on administrative approvals, and similarly the planning board may grant a one-year extension on plenary site plan review **final** approvals if compelling evidence is presented that additional time is required to meet federal, state, or local permit requirements or in reaction to market changes.

#### CONDITIONAL USE

Add definitions for Project Commencement and Substantial Completion in 78-1 (Note: same as site plan definition). Add new Section 78-1241 Project Commencement and Substantial Completion. New language in **bold**, deleted is struck

Sec. 78-1. Definitions.

**Project commencement (site plan and conditional use) means the date on-site construction activity begins in accordance with a site plan or conditional use final approval.**

**Substantial completion (site plan and conditional use) means the stage or part of a project sufficiently completed to allow the project to be used for its intended purpose in accordance with site plan or conditional use final approval.**

**Sec. 78-1241. Project Commencement and Substantial Completion.**

**Excepting more restrictive standards stated within Article VII of this Ordinance, conditional use final approval and all the legal rights, privileges, and duties thereof shall expire if project construction has not commenced within one year of the approval date and if the project is not substantially completed within two years of the approval date. The town planner and code enforcement officer may grant up to a one-year extension on administrative approvals, and similarly the planning board may grant a one-year extension on conditional use final approvals if compelling evidence is presented that additional time is required to meet federal, state, or local permit requirements or in reaction to market changes.**