



OLD ORCHARD BEACH
PLANNING BOARD
April 2018 MEMO

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ITEM 2

Proposal: Subdivision Amendment: Amend “8 Lots at Wild Dunes Way” Subdivision to Add 9th Lot
Action: Discussion; Ruling
Owner: Dominator Golf LLC
Location: Wild Dunes Way; MBL: 105A-200 (portion of)

<u>Dominator Subdivision Amendment</u>	<u>Project Status</u>
Sketch Plan	Not Required
Application Complete	Not Required
Preliminary Plan	Not Required
Site Walk	Not Required
Public Hearing	Not Required
Ruling	Pending

As of 4/10/18, DEP has not approved the addition of a bioretention filter to Lot #9. If this approval is not secured by April 12, the PB will need to decide if the project should move forward with a condition that the applicant secures DEP approval before the start of construction or if the PB should wait until they secure approval. Wright Pierce comments (3 April) include recommendations and a number of small items including additional details that should be submitted before construction. The memo was sent to the Applicants Engineer (BH2M) but Staff has not yet received BH2M’s response. We expect they will discuss at the meeting.

Planning Staff discussed the current use of bioretention filters in the project. The current process is that Codes goes to the site to complete building inspections and grants occupancy permits but Staff does not have a way to confirm that the filters are constructed in accordance with the plan. Planning Staff and Wright Pierce made a recommendation that a potential condition could be added to the plan that a certification from the Engineer be submitted before granting an occupancy permit. The condition could be something as simple as “before granting an Occupancy Permit, a certification shall be submitted by the Project Engineer that says the bioretention filters are constructed in accordance with the approved plan.”

RECOMMENDATIONS:

The PB should determine if this project can move forward with a condition if DEP approval is not secured by April 12th and if the Applicant/Engineer acceptably addresses Wright Pierce comments. Also, the PB should consider the addition of a condition tied to occupancy permits regarding the bioretention filters in the project currently.

If the PB is comfortable approving before DEP approval is secured we recommend the following: Motion to conditionally approve the subdivision amendment for 8 Lots at Wild Dunes Way to add a 9th lot. Location: Wild Dunes Way; MBL: 105A-200 (portion of). Conditions:

1. Lot development shall not begin until applicable DEP permits are approved.
2. Before granting an Occupancy Permit, a certification shall be submitted by the Project Engineer that states the bioretention filters are constructed in accordance with the approved plan.

BACKGROUND (MARCH):

This proposal is an amendment to the “8 Lots at Wild Dunes Way” subdivision plan. The 8 Lots at Wild Dunes Way plan created 8 lots for single-family homes along various locations of Wild Dunes Way (see plans). This amendment proposed to add a 9th lot for single-family use. Like the formerly approved lots, there is no need for creation of new roads as the driveway will directly connect to Wild Dunes Way. Public water and sewer will serve this lot. Stormwater will be managed by a perimeter drip edge and possibly a small bio-retention basin. Stormwater is still being designed and will require DEP approval. Below are comments for consideration:

- We expect updated Wright-Pierce peer review comments next week. We feel these comments need to be received and the applicant needs an opportunity to address.
- Open space calcs on plan (area being removed, total area remaining). The memo mentions the switch with the Inn but the calcs should be on the plan.

- Regarding unit count and swaps, during the review and approval of the 8 Lots at Wild Dunes Way proposal, questions were raised as to whether the applicant is required to purchase or otherwise obtain the transfer of units, lots, or development rights from other owners of properties within Dunegrass. The Planning Board considers such questions to be matters of private property law, not relevant to the Board's review of the application and not within the Board's jurisdiction to decide. The Board therefore expresses no opinion on such questions. Although, the PB and staff are concerned about impacts that unplanned (not part of the original Dunegrass plan) lots may create to the original planning of the development. These impacts include real and measurable issues such as sewer capacity, traffic counts and other matters such as the overall vision of Dunegrass. Typically, PB's findings ask that applicants show where the units come from so to insure the total amount of units allocated to all of Dunegrass remains at its originally approved amount-589. For example, the 8 Lots at Wild Dunes Way approval showed where these 8 units came from: "8 units to 8 Lots at Wild Dunes Way Subdivision, leaving 0 units originally approved for Section B that can be developed in other locations within the subdivision in the future." This new proposal indicates the development of lot 9 is in exchanges for the area known as The Inn. Is the PB comfortable with this swap? What was The Inn site planned to be- an Inn? A single unit?
- How will it be known if someone looks at The Inn plan that a unit cannot be established there and that it is now open space? Should the plan that shows "The Inn" lot be amended to recognize this? Also, note 17 and the language below the scale on Sheet 1 does not include language that a unit or units cannot be built. Instead it mentions "the area" and "lot". I believe both the note and language in the box should state unit or unit site.
- Prior Wright-Pierce comment (5 January- see in packet): Important that developer specify how the new lot will connect to sewer and we do not want that to be through the FM that comes from PS 500 at the Birches. Also developer should clarify the proposed "swap" with the parcel adjacent to the clubhouse. What will that parcel now be and how is this swap formalized and documented so it is clear going forward as additional development is proposed at Dunegrass?
- Building envelope shown- please include front, side and rear setbacks as a new note.
- DEP is requiring an amended site location permit. The applicant is in the process of securing this permit. Should DEP approval be secured before the PB rules on this proposal? This will deal with stormwater so it may be wise that the applicant secures DEP approval before the PB rules on this proposal.
- There are discussions about who is responsible for payment of some fees associated construction inspections and peer review of the previously approved 8 Lots at Wild Dunes Way. Note that this must be resolved before this amendment is approved because the subdivision ordinance states that no plan shall be approved by the board as long as the subdivider is in default on a previously approved plan. The subdivider, Dominator Golf LLC, is the same for both the 8 Lots at Wild Dunes Way and the amendment before the PB.

RECOMMENDATIONS (March):

Staff feels there are a number of items that need resolution before the PB rules on this proposal. We ask the PB and applicant discuss the comments above and identify what is needed for the next meeting. Since the project can't begin until DEP approval is secured there is some time to resolve any outstanding issues.

ITEM 3

Proposal: Ordinance Amendments: Consideration of zoning ordinance amendments associated with contractor businesses in the Rural District
Action: Discussion; Schedule Public Hearing
Owner: Debbie Macdonald
Location: RD Zoning District

ORDINANCE AMENDMENTS	Project Status
<i>Introduction</i>	February
<i>Review Draft/Public Comment</i>	April
<i>Public Hearing</i>	Recommend May
<i>Final Ruling/Recommendation to Council</i>	

Contractor Storage Yard 1 (CSY1) zoning change. Your April packet includes ordinance amendments that will allow a CSY1 as a Conditional Use within a specific area along Portland Ave and new standards that are specific to establishment of a CSY1. Although brief, the standards do have a fair amount of thought behind them. Conditional Use’s do not have many standards when it comes to specific plan details, so, I added scaled site plan requirements that I hope will provide the most important details in regards to the sites function, potential impacts, etc. of a CSY1. The “Minimum Development Standards” create a baseline that all CSY1 must meet- the intent is to consider the sites function, potential impacts to abutters and address the “good neighbor” criteria called for in the comp plan. One of the more interesting sets of standards is the “Other Review Criteria” which is my attempt to provide standards that allow the PB to apply conditions that are more site and development specific. I don’t like to use subjective ordinance language but it seemed appropriate here because it falls under Condition Use. We’ll be interested in your comments on the language.

Public Private Utility Facility (Frack Tank). This is no longer part of the zoning amendment consideration. The applicant intends to submit a Condition Use permit to establish the frack tank as a public/private utility facility. I expect the CU permit will be submitted for the May meeting and we’ll provide more comment at that time. One of the primary arguments continues to be is does it meet the public/private utility facility definition. An abutter who objects to this proposal through his attorney (Mr. Libby) has argued that it does not meet the definition (you received this in your March packet and have a new letter in your April packet attached to the CSY1 ordinance change). I asked Ms. MacDonald’s attorney to provide an argument why they feel it does meet the definition. Again, we expect the PB will see this as a Conditional Use application at the May meeting.

RECOMMENDATIONS:

Staff recommends the PB discuss the Contractor Storage Yard 1 amendments, make any language suggestions or changes, and schedule a public hearing to be held on 10 May.

BACKGROUND (MARCH):

At the February meeting, the PB decided to pursue consideration of zoning ordinance amendments in attempt to address concerns associated with businesses operated by Debbie MacDonald. These businesses include excavation contractor and a type of sewage disposal/storage unit (frack tank) business. Sparing all from the details of our work, we’ll get right to the point with where we are for March.

Sewage Disposal/Storage Unit

Regarding the sewage disposal/storage unit (identified as a frack tank), our intern found something interesting. “Public and private utility facilities” are allowed as a Conditional Use in the RD. Public/private utility facilities are defined as:

“Facilities for the transmission or distribution of water, gas, sewer, electricity or wire communications, excluding wireless telecommunications facilities.”

This leads us to the questions: Can the business use be described as a facility for the transmission or distribution of sewer? Is a frack tank and use associated with it a public/private sewer facility? Is the frack tank and use associated with it a facility used for the transmission or distribution of sewer? We broke down the ordinance definition of Public/private utility facilities into key words (transmission, facility, private sewer, distribution) and searched definitions for each in our

ordinances, legal and English dictionaries. Based on our findings it appears the frack tank and its use could be defined as a Public/private utility facility. If this does not work we're still working on a way to see if we can make a zoning amendment work for this. It's a bit more complicated trying to fit this use in the RD without a more comprehensive zoning language change.

To proceed, we need the PB's opinion on whether the use associated with the frack tank can or can't move forward as a Public/private utility facility. We see it as:

- It can: This means the PB is of the opinion that this business can fall under the definition Public/private utility facility and MacDonald's can apply for a Conditional Use permit without the need for zoning amendments. If this is the case the MacDonald's can begin work on their Conditional Use submission. Note that this will be more of an advisor opinion from the PB, not a formal determination. The MacDonald's, through their Conditional Use submission, will still need to prove it fits the definition and meets applicable ordinance standards before it's approved.
- It can't: This means the PB opinion is this business cannot be defined as a Public/private utility facility. Because this is just an opinion the MacDonald's could still apply for a Conditional Use permit and argue they feel the business can be defined as a public/private utility facility; although, it will most likely require zoning amendments. To create zoning amendments, staff will ask the PB many of the same questions we have for the excavation business discussion (see below).

Another option is it can move forward as a Public/private utility facility but we need to create additional ordinance standards that provide more specific regulation. This may be a bit tricky because we would change the standards associated with an already allowed use potentially during the permitting process. The perception: "The use is permitted but we don't like how it's allowed so we're going to change the rules." This does happen, though, typically through use of a moratorium.

Excavation Business

While preparing to work on ordinance amendments, we found the need for further direction from the PB and as well as more time to create the standards. Creating standards has proven to be a bit more difficult due to the predominate use in the RD is residential and the fact we want to avoid spot zoning. Although one person may operate a contractor business in a manner that respects neighbors, another may not so we should plan for standards that find a balance between appropriate regulations that protect residential properties from detrimental impacts while allowing the business to exist without excessive controls.

Before we create formal ordinance standards, we'd like to get the PB's thoughts on the comments and questions below. Note- the town already has standards that regulate many of these items. Think of standards that may be specific to an excavating contractor business in the RD (e.g., Contractor Storage Yard 2 has specific Conditional Use standards that only apply to this use). Remember, think of all potential businesses that could operate, not just MacDonald's.

- Will the current definition of Contractor Storage Yard 1 definition work?
Contractor storage yard 1 means the principal place of business for a building or landscape contractor operating a fleet of three or more construction/commercial vehicles and customarily consisting of offices, display areas, storage yards for building supplies, earth material, construction vehicle storage, and fueling storage facilities not exceeding 10,000 gallons in capacity and used exclusively for the fueling of the vehicles stored on site.
- Should the use be allowed in the RD?
- If it should, where will it be allowed? Should it be allowed in the entire RD? A portion of the RD (e.g., lots abutting Portland Ave from the Ross Rd intersection to Scarborough town line) Note the map from staff submitted this month shows a cluster of non-residential activity along Portland Ave.
- Should it be a Conditional Use? As a permitted use that requires Site Plan Review?
- What should the performance standards address? Especially consider protections for abutting residential property.
- Traffic- amount, vehicle type, time of day, travel routes?
- Access on/off site, to main roads?
- Stormwater- rainfall & runoff, system design, system management?
- Noise- sources, typical dB of sources, time of day, buffering/noise control?

- Air Quality- sources (stationary, mobile, fugitive), problems & effects, control of adverse effects?
- Lighting/illumination- footcandle at property lines, type, cutoffs, location, fixtures?
- On-site material storage- location, buffering, type of material stored?
- Hours of business operation? All activities- trucks starting up in the yard during the morning, activities on-site.
- Buffers- business from roads, business from abutting property, storage yards, parking areas, type of buffers (vegetation, fencing)?
- Hazardous materials- type, storage, protections/containment?
- On-site fueling, fuel storage?
- Vehicle and equipment storage and parking- location, buffering?
- Signs- location, size, illumination?

RECOMMENDATIONS (MARCH):

First, staff recommends the PB offer an opinion regarding the septic disposal/storage unit (frack tank) business- is it a Public/private utility facility? Does the PB think the business use can be described as a facility for the transmission or distribution of sewer?

Second, staff needs further guidance from the PB before we create standards associated with the excavation business. Most importantly, should it be allowed in the RD; if yes, how should the use be defined (is Contractor storage yard 1 ok?); where should it be allowed; how should it be reviewed (e.g., Conditional Use); what standards should specifically apply to the use

BACKGROUND (FEBRUARY):

Debbie Macdonald and her family’s property (169 -173 Portland Ave, 3 properties) received complaints (included in your packets, as well as the town’s initial response from Manager Larry Mead) regarding the operation of excavating, wood and other material processing, and a type of sewage disposal/storage unit business. The complaints allege operation of these businesses is violating OOB ordinances. As part of our attempts to address this we are looking at a few options, one is amending zoning ordinance language to allow these uses to legally exist. Our thought’s...

Regarding the excavation business and possibly the wood/materials processing, Contractor Storage Yard 1 will be a new use allowed in the Rural District (RD). Establishment of this use will require PB approval as a conditional use or site plan review proposal. Use defined as:

Contractor storage yard 1 means the principal place of business for a building or landscape contractor operating a fleet of three or more construction/commercial vehicles and customarily consisting of offices, display areas, storage yards for building supplies, earth material, construction vehicle storage, and fueling storage facilities not exceeding 10,000 gallons in capacity and used exclusively for the fueling of the vehicles stored on site.

The above definition is already included in the town’s zoning ordinance. It may need to be changed so that it includes a retail sales component, need more clarification, etc.

Performance standards. In addition to current performance standards applicable to nonresidential uses (e.g., buffers, parking), there may be specific standards that only apply to Contractor Storage Yard 1 such as hours of operation, minimum lot size, etc.

Regarding the sewage disposal/storage unit, we’re still working on a way to see if we can make a zoning amendment work for this. It’s a bit more complicated trying to find a way to fit this use in the RD without a more comprehensive zoning district change. Reasons include the potential impacts and that uses such as these may be more appropriate in an industrial district. Although, if you think about it, will a use such as this present any more impact when compared to an agriculture use (which is permissible in the RD). In your packet is a letter from Debbie MacDonald identifying the service provided.

The question of “Spot Zoning” is something to consider as part of our review. Spot zoning has been defined as the process of singling out a property for a use classification totally different from the surrounding area for the benefit of the

property owner to the detriment of other owners. To determine whether a proposed amendment creates a spot zone, the following should be considered:

- Size of area associated with the amendment. Is it just a small parcel, neighborhood, entire zoning district?
- Use classification and development of adjacent property
- Relation of amendment to existing zoning patterns and objectives
- History of the amendment
- Benefits or detriments to the owner, adjacent owners, neighborhood, town
- Is the proposed change pursuant to and consistent with the comp plan

When deciding if a proposed amendment constitutes spot zoning the PB should apply the comments above to the facts of the specific proposal.

To sum up, the excavation and wood/material processing business would be allowed as a Contractor Storage Yard 1 use and require PB conditional use or site plan review approval to establish the use. Existing and possibly new performance standards will apply. The definition may need to be amended to include other uses, provide clarity, etc. The sewage disposal/storage unit is a bit trickier and needs more thought. I intend to visit Blow Brothers to get a better understanding of how this use operates.

Moving forward to our next meetings, we'll be working on:

- Consideration and incorporating PB thoughts (see below)
- Research RD District and existing uses
- Research the comp plan. Maine law (30A § 4352) requires that a zoning ordinance be pursuant to and consistent with a comp plan adopted by the municipality's legislative body. Provisions in a zoning ordinance should be supported by info in our comp plan demonstrating why the uses should be allowed in a particular area.
- Spot Zoning
- Other zoning options
- Develop standards and present at the next meeting

At this point, we're looking for guidance on this before a formal proposal is submitted. We need your thoughts on:

- The approach to the excavation business.
- How should we handle the sewage disposal/storage use
- Should the Contractor Storage Yard 1 definition be amended?
- What standards should apply? Should we create new standards specific to these businesses?
- Spot Zoning?
- Claims made in violation letters and how this may impact PB's review.

ITEM 4

Proposal: Ordinance Amendments: Medical Marijuana Storefronts

Action: Discussion

Applicant: Town of Old Orchard Beach

ORDINANCE AMENDMENTS

Project Status

<i>Introduction</i>	March
<i>Review Draft/Public Comment</i>	April
<i>Public Hearing</i>	May
<i>Final Ruling/Recommendation to Council</i>	

At the March meeting the Planning Board requested that Planning Staff create an ordinance that defines Medical Marijuana Storefront and prohibits them. In your April packets are draft ordinance amendments that Staff believes support the PB’s request and the intent of the moratorium.

The amendments are simple- they define medical marijuana storefronts and prohibit the use town-wide. The amendments will change/add language to Chapter 18 (Businesses) and Chapter 78 (Zoning). Note- the PB only has jurisdiction over the changes to Chapter 78. The Council has sole jurisdiction over Chapter 18 amendments; although, the PB can offer comment.

RECOMMENDATIONS:

Staff recommends the PB discuss the amendments, make any language changes, and schedule a public hearing to be held on 10 May.

BACKGROUND (MARCH):

On 6 February 2018, the Council enacted a moratorium on Medical Marijuana Storefronts (MMS). The moratorium defines MMS as “as an establishment which resembles a retail storefront in terms of signage, hours of operation and accessibility to patrons, and which is operated by one or more Primary Caregivers as defined by 22 M.R.S.A. § 2422(8-A), Medical Marijuana Caregivers as defined in the Zoning Ordinance, or any other individuals or entities for the sale, distribution or administration of medical marijuana and medical marijuana products to Qualifying Patients as defined by 22 M.R.S.A. § 2422(9) or any other individuals.” The moratorium was enacted in response to concerns associated with initiatives to establish MMS’s in Old Orchard Beach. Below are comments concerning key points and Planning Board (PB) responsibilities, current medical marijuana language, discussion points, and next steps.

Important note- this moratorium and the regulations we create are only associated with medical marijuana activities, specifically, retail medical marijuana activities such as MMS. We are not working on recreational medical marijuana activities- the Council already enacted an ordinance that prohibits such activities.

KEY POINTS & PB RESPONSIBILITIES

Moratorium key points and PB responsibilities include the following:

- Took effect on 6 Feb. and continues to remain in-effect for 61 days. The Council can extend, repeal or modify the expiration date.
- The Council determined “unregulated development of the retail sale of medical marijuana raises a number of concerns related to public safety and welfare, including, but not limited to, potential adverse effects on neighborhoods, and potential adverse effects on the Town’s tourism industry.”
- And the “Town’s existing ordinances are inadequate to prevent the potential for serious public harm from the establishment and operation of retail medical marijuana activities.”
- During the moratorium, the “Town will work on developing appropriate land use regulations concerning retail medical marijuana activities.”
- During the time the moratorium is in-effect “no official, officer, board, body, agency, agent or employee of the Town of Old Orchard Beach shall accept, process or act upon any application, including but not limited to a building permit, certificate of occupancy, site plan review, conditional use, or any other approval, relating to the establishment of a medical marijuana storefront.”

- Because any changes will include amendments to Chapter 78, the PB is responsible for developing appropriate land use regulations concerning retail medical marijuana activities including MMS's.
- The PB's scope has limits due to the moratorium language. Interpretation of this language shows the Council determined our current ordinances do not adequately regulate retail medical marijuana activities and task us with developing regulations that addresses concerns related to public safety and welfare which include, but are not limited to potential adverse effects on neighborhoods and the town's tourism industry.
- The town currently regulates medical marijuana (see below) but these regulations do not include retail medical marijuana uses such as MMS.
- The PB will create ordinances and hold a public hearing and provide a recommendation to Council. The PB can hold a workshop to hear from others who have an interest in this.
- Although the Council can extend the moratorium expiration date the PB should consider this a priority so we may complete our work as soon as possible. Due to the meeting dates and actions required by ordinance (public hearings, etc.) we'll need at least one 60 day extension.

CURRENT MEDICAL MARIJUANA ORDINANCES

During 2015, the Town adopted ordinance regulations related to Medical Marijuana Production Facilities and Medical Marijuana Registered Dispensaries. The purpose of the regulations is to create local zoning controls to regulate medical marijuana as a land use; restrict where growing and processing operations are allowed; require a PB approval process; implement performance standards for growing/processing operations and dispensaries; and, establish a business licensing requirement to monitor ongoing consistency with the Maine Medical Use of Marijuana Program. Highlights of the adopted ordinance regulations include:

- Chapter 78 amendments:
 - A. Allowing Medical Marijuana Production Facilities and Medical Marijuana Registered Dispensaries to be established as a conditional use within the General Business 1 (GB1) Zoning District. Both uses are not permissible for those properties that are with GB1 and Historic Overlay (HO) Zoning Districts.
 - B. Allowing Medical Marijuana Production Facilities as a conditional use within the Industrial District (ID).
 - C. Prohibiting Medical Marijuana Registered Dispensaries in the ID
 - D. Approval process identifying applicable review standards, application requirements, extended distance for abutter notifications, site walks, and public hearings.
 - E. State authorization before submission of a Conditional Use Application. The applicant must demonstrate their authorization to cultivate, process and store medical marijuana pursuant to the Maine Use of Medical Marijuana Program.
 - F. Exempting Medical Marijuana Home Production in any qualifying patient's residence or any medical marijuana caregiver's primary year-round residence. Note- as I understand, the town cannot regulate (through its ordinances) these Medical Marijuana uses.
 - G. Performance Standards that are specifically designed to regulate Medical Marijuana Production Facilities and Medical Marijuana Registered Dispensaries. These standards include, but are not limited to security, outside appearance, odor control, and proximity limits (by distance) to other Medical Marijuana Production Facilities and Medical Marijuana Registered Dispensaries as well as uses that may not be compatible (e.g., day care, schools, town parks, church).
- Chapter 18 (Business Licenses) amendments:
 - A. Requiring staff and Council approval of a Medical Marijuana Business License before a Medical Marijuana Registered Dispensary or Medical Marijuana Production Facility can conduct business.
 - B. State Authorization. Before issuance, renewal or amendment of a License, the applicant must demonstrate their authorization to cultivate, process and store medical marijuana pursuant to the Maine Use of Medical Marijuana Program. Loss of such State authorization shall automatically invalidate the Town-issued License.
 - C. At initial and subsequent licensing, the Old Orchard Beach Police Department, Fire Department and Code Enforcement Officer shall inspect the premises to ensure security meets State requirements and applicable Town of Old Orchard Beach licensing criteria.

Note Definitions:

Medical Marijuana Production Facility: A facility used for cultivating, processing, and/or storing medical marijuana by one or more medical marijuana caregiver(s) at a location which is not the medical marijuana caregiver's primary year-round residence or their patient's primary year-round residence. This shall be considered a commercial use.

Medical Marijuana Registered Dispensary: A not-for-profit entity registered pursuant to state law that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, paraphernalia or related supplies and educational materials to qualifying patients and the primary caregivers of those patients. Note that a dispensary may be either a single facility, or it may be divided into two separate but related facilities where growing is done at only one of the facilities. This shall be considered a commercial use.

DISCUSSION POINTS

As mentioned above, the PB is tasked with developing regulations that addresses concerns related to public safety and welfare which include, but are not limited to potential adverse effects on neighborhoods and the town's tourism industry. Current ordinances regulate Medical Marijuana Production Facilities and Registered Dispensaries but do not regulate retail medical marijuana activities such as Medical Marijuana Storefronts. In order to change this language and develop standards that follow the Council's direction we offer a few discussion points:

- Should retail medical marijuana activities such as MMS be allowed? If so, in what districts?
- If allowed, maybe a use such as MMS could fit within our current medical marijuana ordinances so the same performance standards (e.g., odor, distance to incompatible uses) apply.
- Does the "retail" component make MMS different from our current allowed medical marijuana uses that it just won't fit in the current ordinances?
- If allowed, what regulations should apply?
- Should they be allowed but with limited numbers (e.g., only 2 allowed in the district)? Allowed but not in the entire district?
- Should there be design guidelines? Operation guidelines?
- How should MMS be licensed and/or permitted? Who should be responsible for reviewing and approving? Should it be a conditional use?
- Should there be specific performance standards, setbacks, lot size, noise, etc. requirements for each use?
- Your concerns about retail

NEXT STEPS

At the PB's March meeting, staff requests the Board discuss and provide guidance to assist us with development of ordinance standards. We are working under a moratorium which means our consideration has time limits. Moratorium expiration can be extended but we should ensure our work is complete within a reasonable amount of time. Proposed schedule:

- March: PB discuss and provide guidance to staff
- April: PB discuss draft ordinance, ask for public comment, offer recommendations
- May: PB finalize ordinance, schedule a public hearing
- June: PB hold a public hearing and provide recommendation to Council

ITEM 5

Proposal: Site Plan Review: Demo existing building and construct new 7,225 sq. ft. retail building including associated parking, sidewalks and other site improvements
Action: Discussion; Determination of Completeness; Schedule Site Walk; Schedule Public Hearing
Owner: Zaremba Group
Location: 19 Heath St., MBL: 309-9-33, DD2

19 HEATH STREET

Project Status

<i>Application Complete</i>	Completed in March
<i>Site Walk</i>	Scheduled for April
<i>Public Hearing</i>	Scheduled for April
<i>Final Ruling</i>	N/A

At the March meeting, the Planning Board determined this application complete and scheduled a Site Walk and Public Hearing for April. The purpose of the April meetings are to hold the Site Walk and conduct the Public Hearing. Due to the snowstorm delay in March, there were several updates/materials received between the time the memo was produced and the meeting. These included responses to our memo and Wright Pierce comments dated 2/1 and 2/8, an updated plan-set to reflect required changes as well as a Performance Guarantee worksheet. You received these materials electronically and/or on your desk at the March meeting.

Wright Pierce reviewed the plan changes from the comments in February and provided another memo dated 3/15 which is the only item that has been included in your packets this month for Dollar General. **As of 4/4/18, Planning Staff has not received a response from the Applicant on the most recent set of WP comments.**

The Town Manager asked that the Applicant address the crossing area at the corner of Saco, Heath and Fort Hill. DPW also mentioned that they have sewer line repairs slated for that area and it would be good to coordinate those with the improvements made to the intersection. In their most recent submission, the Applicant indicated they will coordinate with DPW once a decision has been made. Town Staff would like to see a design of the intersection prepared by the Applicant. Planning Staff spoke with Department Heads at the Development Review meeting and they agreed that the preparation of this plan could be something that is added as a Condition of Approval to the project. An example condition could be “*No permits shall be issued for this project aside from a demolition permit until a plan is submitted and approved by Town Staff that addresses crosswalks and sidewalks in the area of Saco Avenue, Heath Street and Fort Hill Ave.*” If the PB is not comfortable with adding this as a condition, the board could request that this plan be submitted for the May meeting.

RECOMMENDATIONS (APRIL):

The purpose of the April meeting is to hold the Site Walk and Public Hearing, consider public comment and schedule a final ruling for May. The only two outstanding items at this point, aside from discussion at the Public Hearing, are responses to Wright Pierce comments and a plan for the intersection.

BACKGROUND (MARCH):

The Planning Board saw this proposal back in January as a Sketch Plan. It is to demolish the existing building and associated features and construct a 7,225 square-foot Dollar General with 30 parking spaces. The proposed project is located in the DD2 Zone and also triggers review by the Design Review Committee (DRC). The DRC is expected to review the proposal at their March meeting.

Planning Staff received comments from Staff and Wright Pierce on the proposal. Two Wright Pierce memos have been included in your packet dated 2/8/18 and 2/21/18. Also included in your packets for March is a plan-set and the Plenary Site Plan application and supporting materials.

One item that is missing are the responses to the 9 Site Plan Review Criteria which are required for the project:

- (1) The proposed project conforms to all standards of the zoning district and meets or exceeds performance standards specified in this article and article VIII of this chapter.

- (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.
- (3) The proposed project will not have an adverse impact upon the quality of surficial or groundwater resources.
- (4) The 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.
- (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.
- (6) The proposed project will not have an adverse impact upon environmental quality, critical wildlife habitats, marine resources, important cultural resources, or visual quality of the neighborhood, surrounding environs, or the community.
- (7) The proposed project will not produce noise, odors, dust, debris, glare, solar obstruction or other nuisances that will adversely impact the quality of life, character, or the stability of property values of surrounding parcels.
- (8) The proposed project will not have a negative fiscal impact on municipal government.
- (9) The proposed project will not have an adverse impact upon surrounding property values.

Two Comments were received from Town Staff on the proposal:

- **Town Manager:** Address the crossing area at the corner of Saco, Heath and Fort Hill. A landing is needed for pedestrians and will this will require cooperation of the Owner to use a portion of their land. It would make sense to have a Maintenance Easement Agreement with the Town to protect both parties.
- **DPW:** Replacement of the Sewer Line in the area of the newly proposed Sidewalk. Coordination is going to be required by the Developer and the Town for this replacement.

Several Comments were received from Wright Pierce on the proposal:

Missing Items –

- Showing the location of snow storage on the plans.
- The photometric plan that was submitted did not include property lines or parcel information other than the building.

Wright Pierce General Recommendations –

- Recommend installing a guardrail with fencing for protection of the sidewalk along the western corner of the building for both pedestrian and vehicle traffic along Fort Hill Ave.
- Calculate Sight Distance and note it on the plans.
- Discussion of sewer main repairs and coordination with DPW.
- The property line of the subject parcel is located within the southern drive aisle of Heath Street.
- Recommend reviewing the crosswalk and pedestrian crossings at the intersection of Heath Street, Fort Hill Ave and Saco Ave with the Town and perhaps DOT (Saco Ave).
- The existing OHE utility pole is proposed to be located in the middle of the proposed sidewalk. A review of this location is recommended.

Wright Pierce Stormwater Comments –

- How will Catch Basin 2 be modified to accommodate the new sidewalk? Looking for details on this.
- It appears that the sidewalk on Fort Hill is flush with the road surface, how will the drainage infrastructure work in this area?
- Recommend further review of the existing sidewalk channel on the eastern property boundary. It appears the runoff will overtop the existing curb line to the adjacent property and bypass the structure.
- How is runoff from the southeast corner of the property being managed?
- Review of groundwater depth in the area.

- Clarification of the wet area and drainage culvert behind the existing building.
- Will the petroleum staining/odor on the soils affect stormwater leaving the site?

Addressed Wright Pierce Comments –

- This is a redevelopment project, however, it is only disturbing 0.89 acres. The trigger for Chapter 71 is all new development and redevelopment over one acre within the regulated area. This project does not meet that threshold.

Planning Staff recommends the Applicant provide responses to each of these comments.

Ordinance Requirements:

(78-1544) Landscaping – A landscaping plan has been provided, the ordinance requires (1) screening parking lots from public streets and (2) buffering them from adjacent properties.

(78-1821) Screening and Buffering – The requirements for *screening* include achieving between 25 to 75% visual obstruction from established viewpoints as specified by the PB. *Buffering* requirements shall achieve between 75-100% year-round visual obstructions as specified by the PB. The recommendation are conifer buffers that are a minimum of 8 feet in height at installation and 6 feet on center. Note the requirement for screening the parking are less than the requirement for buffering them from adjacent properties.

The ordinance is a little vague on the types of street trees and essentially leaves the decision up to the PB on the landscaping plan. One requirement is that street trees are installed in the ROW of the public street. It does say that they could be on private property if the area does not meet conditions to locate them in the ROW, however, there are some conditions associated with this option:

- The center of the tree has to be located no further than 25 feet from the ROW property line.
- The property owner grants the Town a maintenance easement that enables the Town free access in perpetuity for horticultural maintenance purposes.

On the right side looking at the aerial below, one Autumn Brilliance Serviceberry tree is proposed with 12 Hummingbird Summersweet Shrubs behind it. On the left side are 14 Hummingbird Summersweet Shrubs.





The *Autumn Brilliance Serviceberry* grows to 20 to 25 feet high and wide and it is a fast-grower. The *Hummingbird Summersweet* are slow-growing, compact, up to 3-4 feet tall.

On the left side in the aerial below, 4 *Palsade American Hornbeams* are proposed. They grow to be 20 to 30 feet tall and 15 to 20 feet wide. They do not appear to be a yearround buffer.



On the back-side of the site in the aerial below they are proposing 7 *Oregon Green Australian Pine* trees. These grow to be 10-12 feet and 8 to 10 feet wide in 10 years. They can become 20 feet tall with age. There are also 4 of these proposed on the left side of the site in the aerial below. The Ordinance says that a conifer buffer shall be 8 feet when planted. It is unclear from the materials submitted if that is their height when installed.



Several other trees were listed on the plan but Planning Staff did not see them used on the site plan. It does list quantities for them. The plan should be updated to reflect which landscaping materials are going to be used on the site and the associated quantities. Sec.78-1825 of the Ordinance has an effective period for landscaping and says “all designated screening and buffering shall achieve the required degree of visual obstruction within 3 years of installation.”

Sec. 78-1491(c) – Sight Distance. The speed limit on this street is 25MPH so sight distance needs to be 257 feet minimum. Wright Pierce recommends this be shown on the plan in both directions.

Sec. 78-1541 – Parking Lot and Site Circulation Standards. It appears that the project meets these standards. This section says that parking lots located within the DD-2 districts shall, wherever possible, install porous pavement surfaces on all nonhandicap parking spaces, in order to minimize surface runoff into Town drainage systems. The Town has recently completed a Comprehensive Drainage Study and this area of Town was identified as one of the areas that is at capacity. Installing porous pavement at this project would help mitigate some of the impacts of stormwater in this area. Planning Staff is recommending that the Applicant provide a maneuverability diagram of a truck for trash pickup and store deliveries.

Sec. 78-1543 – Snow Removal. All parking lots shall provide a suitable on-site disposal area to accommodate plowed snowfall. Snow disposal areas shall not be located in designated pedestrian walks or pathways. This needs to be shown on the plans provided.

RECOMMENDATIONS (MARCH):

There are a few items that still need to be submitted for this project including:

- Responses to the 9 Site Plan Review Criteria.
- Showing the location of snow storage on the plan.
- An updated Performance Worksheet.
- Updates to the Photometric Plan to show the property line including where Abutting properties are located in relation to the footcandles.
- Plan to replace the sidewalk and make street improvements to Heath Street/Fort Hill Ave/Saco Ave.

There are also a number of items that Planning Staff recommends be discussed and/or submitted including:

- A truck template maneuverability plan and associated delivery times for both trash pickup and store deliveries.
- Is the landscaping plan provided adequate? Should the tree buffer on the lower Heath Street side be coniferous?
- Discussion on Wright Pierce comments including those pertaining to stormwater.
- Discussion on the requirement of pourous pavement.

If the Planning Board decides to make a determination of completeness, Planning Staff recommends it be contingent on the Applicant submitting the items listed above. Planning Staff has made the Applicant aware of these items, they are working on them and may have them prepared prior to the meeting next week.

Recommended Motion: I will make a motion to determine the application complete to construct a 7,225 sq. ft. retail building including associated parking, sidewalks and other site improvements located at 19 Heath Street.

Recommended Motion: I will make a motion to schedule a site walk for April 5th at 5:30PM and to schedule a public hearing for April 12th at 7PM.

BACKGROUND (JANUARY):

This proposal is for the demolition of the existing building and associated features at 19 Heath Street and the construction of a 7,225 square-foot retail building with 30 parking spaces. The proposed retail use is a Dollar General store. This proposal is in a very preliminary stage and proposals in the early stages like this offer an opportunity for the PB to discuss and provide recommendations to the Applicant on what direction the project should go.



The property is located in the DD2 Zone and requires review by the DRC. A preliminary sketch was brought before the DRC at their December meeting. At that meeting, the DRC had some recommendations for the Applicant including building design elements as well as:

- Placing a fence around the HVAC unit.
 - Locating the HVAC unit in the center of the roof.
- Planting quick growing trees along Fort Hill Ave – they recommended Spruce/Evergreen.
- Constructing the building such that it could, in the future, support a second story.

There are a few items that Planning Staff would like the PB to consider and these are items that the Applicant should be prepared to address in their formal submission.

Miscellaneous Items:

1. The previous use of the site was a car repair place. Therefore, there is the potential for contamination. The Applicant indicated at the DRC meeting that they will be completing testing at the site but it is unclear as to what extent this testing will cover.

2. The backside of the site are four homes along Fort Hill Ave. The elevation change in this area is significant. The homes on Fort Hill Ave will essentially be looking down on the roof of the proposed Dollar General. Is the proposed 6' fence an adequate buffer? Should there be a vegetative buffer instead? A 6' privacy fence is also proposed on the left side of the property adjacent to the condos on Heath Street. Is this an adequate buffer or should there be a vegetative buffer in this area as well?
3. Placement of the HVAC unit on the roof, the DRC recommended locating this in the center of the roof with a fence around it.
4. Currently, the dumpster is proposed to be located in the back of the building adjacent to the homes along Fort Hill Ave. Is this an adequate location for the dumpster?
5. There have been some conversations between Town Staff and the Applicant regarding repairing/installing a sidewalk along Saco Ave and upgrades to that intersection at the corner.
6. What type of lighting are they proposing to use in the parking lot/on the building. Will this cause any issues for the Abutters?
7. At the Development Review meeting, Staff discussed different aspects of the project including: preserving the trees/vegetative buffer along Fort Hill, reducing light pollution (i.e. installing shoebox lighting that projects down), sidewalk/intersection along Heath and Saco Ave, stormwater retention.
 - a. *Note: This project is less than an acre, therefore, it does not trigger Chapter 71 of our stormwater ordinance, however, stormwater is included under the 9 site plan review criteria and calculations will be required for the 25-year storm event or any other event required by the Planning Board.*

Chapter 78 Performance Standards (Art. VIII) Items:

- 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.
- 78-1491 – 1495 (access standards for nonresidential uses) includes driveway standards such as dimensions, sitting, dimensions, sight distances, etc.
- 78-1541 – 1544 (parking lot and site circulation) includes parking dimensions and layout, snow removal and landscaping. 1543- need snow removal plan. 1544- remember screening and buffering plan is needed when adjacent to abutting properties Street trees in accordance with 78-1771 -1775 needed along Heath Street and Saco Ave/Fort Hill
- 78-1566 – 1568 (required parking spaces) identifies retail uses as one space per 250 sq. ft net leasable area. The building is proposed to be 7,225 sq. ft. which requires 29 parking spaces. 30 have been proposed.
- 78-1591 – 1596 (off-street loading). 1593(c) wherever possible, driveways or access to loading facilities shall be physically separated from customer parking lots, walkways or driveway entrances. Is this something that can be achieved here? The loading area is proposed to be in the back of the building adjacent to Fort Hill. 1594 landscaping/buffering of these facilities and lighting for security purposes.
- 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.

9 Site Plan Review Criteria Items (78-216(d)):

The proposal will have to demonstrate compliance with the 9 Site Plan Review Criteria:

- (1) The proposed project conforms to all standards of the zoning district and meets or exceeds performance standards specified in this article and article VIII of this chapter.
- (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.
- (3) The proposed project will not have an adverse impact upon the quality of surficial or groundwater resources.

(4) The 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.

(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.

(6) The proposed project will not have an adverse impact upon environmental quality, critical wildlife habitats, marine resources, important cultural resources, or visual quality of the neighborhood, surrounding environs, or the community.

(7) The proposed project will not produce noise, odors, dust, debris, glare, solar obstruction or other nuisances that will adversely impact the quality of life, character, or the stability of property values of surrounding parcels.

(8) The proposed project will not have a negative fiscal impact on municipal government.

(9) The proposed project will not have an adverse impact upon surrounding property values.

RECOMMENDATION (JANUARY): A preliminary review like this allows for the PB to offer recommendations – even if they are not specifically related to complying with an ordinance standard. Staff recommends the PB provide feedback on the proposal, there are no decisions required at this time.

ITEM 6

Proposal: Major Subdivision: 9 Lot Residential Subdivision (Red Oak Phase III)
Action: Preliminary Plan Review/Determination of Completeness; Schedule Site Walk and Public Hearing
Owner: Mark & Claire Bureau
Location: 141 Portland Ave, MBL: 104-2-2

RED OAK	Project Status
Sketch Plan	Completed in January
Preliminary Plan	Submitted in July, Revised in November, Revised in March
Application Complete	Recommended for April
Site Walk	Recommended for May
Public Hearing	Recommended for May
Preliminary Plan Vote	Pending
Final Review	Pending

At the last meeting, the PB decided to hold off until April to schedule the site walk/public hearing and make a determination of completeness on the application. The Applicant has made several revisions to the plan and submitted an updated cover letter that attempts to address Staff comments and Wright Pierce comments. Below is where we stand with those:

- Planning Staff recommended that the Applicant update the application and responses to the subdivision criteria to reflect the change in lot numbers since the sketch plan. *This has been included in the 3/21 submission.*
- Wright Pierce comments dated 3/6 have been responded to in the 3/21 submission. Many of the comments pertained to stormwater. WP is reviewing the 3/21 responses and we expect to have additional comments by the PB meeting.
- Planning Staff recommended that test pit locations be shown on the plan, locations have been included in the 3/21 submission, however, some of them are shown outside of the lot and building envelopes. We will need some clarification on the location of them and whether or not easements would be necessary.
- Planning Staff recommended that an updated deed be included for the Bureau lot. *The Applicant indicated that this has been included in the 3/21 submission.*
- Planning Staff recommended that a Performance Guarantee worksheet quantifying the amount for the Letter of Credit and Escrow be submitted. This has been included in the 3/21 submission, however, there are a number of revisions that will be necessary including updating it to remove “Dunegrass Section B” “Cherry Hills” “Prepared by Jessica Wagner” and old notes at the bottom.
- Planning Staff recommended that the Applicant provide an update on permitting for the project. *This has been included in the 3/21 submission.*
- Assessing Staff indicated that a portion of lot 7 appeared to be on Town property according to the in-house GIS and the project still remained in tree growth. The Applicant has indicated that the boundary survey they had shows the portion of lot 7 is not on Town property. They also indicated that all lots and easements will be removed from tree growth prior to project approval.
- Planning Staff questioned whether or not this project would be intended to be accepted by the Town and it is currently not proposed to be public but will be constructed in accordance with Town Standards. Because the initial 750 feet of roadway was constructed back in the 2004-2005 timeframe and the Town does not have documentation on how it was constructed, we recommend, and the Applicant agrees, that a condition be added to the plan that states “*should the Applicant petition the Town to accept the road, the Applicant shall provide as-built documentation of the existing 750 feet of roadway and the Town shall review for conformance with Town Standards.*”
- To address the Wright Pierce comment about how this project does not include individual lot development, the Applicant has proposed to add a condition that “*no building permit shall be issued until a residential site plan is submitted to the CEO that shows, at a minimum, septic location, lot development, grading, water and power utility service, and stormwater management design that complies with MDEP Chapter 500 standards.*” Planning Staff will need to have a conversation with the Applicant about this because Codes Staff does not typically review a stormwater management design. Roof driplines are also referenced in the plans which is contradictory if they are not including information on individual lot development.

- The Applicant appears to be achieving their Net Development Density (NDD) by utilizing the Bureau lot, however, this project has been presented as a “9 lot subdivision” and does not appear to include the bureau lot in the plans as “Lot #10.” Planning staff believes the plans and materials should be updated to include this lot as part of the subdivision if it is how they are achieving the density for the project.

RECOMMENDATIONS (APRIL):

The purpose of the April meeting is to schedule the Site Walk, Public Hearing and make a Determination of Completeness of the project. There are a few items that need to be submitted/addressed as discussed above including:

- WP review of the most recent submission materials and response to their comments.
- Clarification on the locations of test pits.
- Minor revisions needed to the Performance Guarantee worksheet.
- Discussion about the recommended condition concerning Codes Staff reviewing a residential site plan that includes stormwater management.

Aside from these items, the role of the PB for the April meeting is to make a Determination of Completeness, the PB does not have to vote on the Preliminary Plan. That can happen after those items are received/clarified.

Staff does feel that the application is complete, we have received the plan materials, updated Subdivision responses, etc. so we recommend you make that determination and schedule the Site Walk/Public Hearing for May.

Recommended Motion: I will make a motion to determine the application complete for a 9 lot residential subdivision off of Red Oak Drive.

Recommended Motion: I will make a motion to schedule a Site Walk for May 3rd at 5:30PM and to schedule a Public Hearing for May 10th at 7PM.

BACKGROUND (MARCH):

This project was brought before the Planning Board in January of 2017 as a Sketch Plan and was brought back before the Planning Board in July of 2017 as a Preliminary Plan and you last saw the plan in November of 2017 as a Preliminary Plan. It is now back before the Planning Board as an updated Preliminary Plan. It is for a 9-lot subdivision at the end of the existing Red Oak Drive off of Portland Ave with a proposed cul-de-sac at the end. Currently, there are four lots with homes on Red Oak Drive that were approved back in 2004-2005. The last lot was completed in summer of 2016.

There were a number of items discussed in July and November, many of them pertaining to Wright Pierce comments. A number of the Wright Pierce comments pertained to stormwater. The submission materials for March were provided to Wright Pierce for review and comment. The new submission attempts to address the comments.

In your packets for March are:

- Responses to the Wright Pierce/Staff comments from July and November
- An updated Plan Set
- HOA Documents
- Post-Construction Stormwater Management Plan (PCSWMP)

Because this project has gone through a number of iterations, some of the materials such as the responses to the 14 subdivision criteria need to be updated. Planning Staff also recommends that an updated Application be updated to reflect the change from 8 to 9 lots.

Responses to the 14 Subdivision Criteria that were submitted in July of 2017: *Sec. 74-2*. In approving subdivisions within the Town, the Planning Board shall consider the following criteria and before granting approval shall determine the following.

The proposed subdivision:

1. *Will not result in undue water or air pollution*

Response: The project will not create undue water or air pollution during or after construction.

2. *Has sufficient water available for the reasonably foreseeable needs of the subdivision.*

Response: The project will be served by public water and will readily have water available for the foreseeable future.

3. *Will not cause an unreasonable burden on an existing water supply, if one is to be utilized*

Response: The project will be served by public water and will readily have water available for the foreseeable future.

4. *Will not cause unreasonable soil erosion or reduction in the capacity of land to hold water so that a dangerous or unhealthy condition may result.*

Response: The project will be constructed to meet the requirements of the Basic Standards of Chapter 500 of Maine Stormwater Law and will also be constructed in accordance with Chapter 71 of the Town of Old Orchard Beach Land Use Ordinances.

5. *Will not cause unreasonable highway or public road congestion or unsafe condition with respect to use of the highways or public roads, existing or proposed.*

Response: The project will result no unreasonable impacts on the highways or public roadways. According to the ITE manual, 8 additional residential lots results in only 80 total daily trips and 8 peak hour trips, which does not trigger any State traffic permitting requirements. ****This needs to be updated to reflect 9 lots****

6. *Will provide for adequate solid and sewage waste disposal.*

Response: The project will be built to Town of Old Orchard Beach standards and it is anticipated that the Town of Old Orchard Beach curbside pick-up will be available by contract service until such time as the roadway is accepted by the Town of Old Orchard Beach. All solid waste accumulated during construction will disposed of in a safe and adequate manner by the contractors/owner. Sewage waste generated during construction will be handled by portable toilets. Household sewage will be handled by septic systems to be designed and installed to all local and State requirements.

7. *Will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage of municipal services if they are to be utilized.*

Response: The project will not burden the ability of the municipality to dispose of solid waste due to its relatively small size and impact to solid waste generation. There will be no impacts to sewer disposal services as the project is served by private septic's.

8. *Will not place an unreasonable burden upon local, municipal or governmental services.*

Response: The project will not unreasonably burden municipal or governmental services due to its relatively small size.

9. *Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.*

Response: The project will not have any adverse effects on the scenic or natural beauty of the area, aesthetics, historic sites or any rare and irreplaceable natural areas. The proposed development will protect the existing Jones Creek by preserving open space within the stream buffer area. The project will be an extension of the existing development which maintains large swaths of wooded areas on relatively secluded lots.

10. *Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or any land use plan, if any*

Response: The proposed project has been designed in accordance of all local codes and ordinances.

11. *Owner has adequate financial and technical capacity to meet the standards stated in the ordinance.*

Response: The applicant has successfully constructed a number of previous, successful projects and owns the property free and clear. The project engineer, surveyor and other design professionals have successfully designed and permitted many projects in York County and have over 100 years of combined experience in residential design and permitting.

12. *Whenever situated, in whole or in part, within 250 feet of any pond, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.*

Response: The project does not fall within 250 feet of any pond.

13. *Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.*
Response: The project will be served by public water and will utilize stormwater BMPs which retain, filter and infiltrate stormwater run-off back into the ground. As such, no adverse effects on the quality or quantity of groundwater are anticipated.

14. *Will not unreasonably interfere with access to direct sunlight for solar energy systems.*
Response: The project will not interfere with any solar energy systems by affecting their access to direct sunlight.

There are a few other items that Planning Staff recommends be submitted prior to the board making a determination of completeness including:

- The original plan showed test pit locations on each of the lots, however, Planning Staff did not see these on the updated plan. Where the lot sizes and locations changed, Planning Staff recommends these be shown on the updated Preliminary Plan.
- It appears that a portion of the Bureau lot was split to allow for the full lot sizes and an additional lot, Planning Staff did not see an updated deed in the submission materials.
- Planning Staff received comments from Maine Water about extending water through this area back in November. Maine Water is continuing to review the proposal and will have comments back to the Applicant about the plan. Planning Staff is still waiting on an ability to serve letter from them.
- An updated Performance Guarantee worksheet is needed for the project.
- It is unclear what DEP permits have been secured for the project and if they required a FEMA Letter of Map Amendment (LOMA) for the floodplain area.
- Assessing Staff indicated that a portion of the proposed subdivision is still in a designated tree growth area. It also shows a portion of Lot 7 is on Town property on the Town's GIS. This will have to be clarified.
- One comment received from Wright Pierce in November was associated with stormwater management and that it is only for the roadway and not for future impervious areas associated with individual lots. One recommendation by the Applicant is that a Condition of Approval be added to the project that requires a lot development plan meeting Chapter 500 standards and still maintaining the integrity of design. This decision will be up to the Planning Board.
- There were comments received from Staff in November about whether or not this project is intended to become public or private, it is unclear if this was addressed.

RECOMMENDATIONS (MARCH):

This project is before the Planning Board for a Determination of Completeness and to schedule a Site Walk/Public Hearing. In order to determine the Application Complete, Planning Staff recommends that the application materials including responses to the subdivision criteria be updated to reflect the 9 lots. Planning Staff is still waiting on comments from Wright Pierce and anticipates them to be received prior to the meeting next week.

If the Planning Board decides to make a Determination of Completeness, it should be contingent on receiving updated application materials and the items listed above.

Recommended Motion: I will make a motion to determine the application complete to construct a 9 lot residential subdivision located at 141 Portland Ave.

Recommended Motion: I will make a motion to schedule a site walk for April 5th at 5:00PM and to schedule a public hearing for April 12th at 7PM.

BACKGROUND (NOVEMBER):

This project was brought before the Planning Board in January as a Sketch Plan and was back before the PB in July as a Preliminary Plan. Since July, the Applicant has made some changes to the materials after a review by DEP. Some of these changes include:

- Adding the adjacent parcel to the subdivision which added more land to the project area;
- Creation of a 9th lot;
- This project is no longer a cluster subdivision, the lots will conform to the space and bulk requirements of the Rural Zone;

- The turn-around has been converted from a hammerhead to a cul-de-sac;
- Some changes were made to the Stormwater Management Plan.

Currently, there are four lots with homes on Red Oak Drive that were approved back in 2004-2005. The last lot was completed in the summer of 2016. There is a five foot sidewalk proposed as part of the new phase and this will be a continuation of the sidewalk from the first and second phases. The project will be served by public water and septic systems.

Originally, the Applicant was applying for a cluster subdivision with eight lots, now they have changed the plans so that it is a subdivision that conforms to the space and bulk requirements of the rural zone and has 9 lots.

The existing riprap pond at the end of the existing Red Oak Drive will be converted into an Underdrained Soil Filter which will treat the existing roadway as well as a portion of the proposed roadway. The remainder of the roadway will be treated by an underdrained soil filter at the end of the proposed development.

Comments on the Materials:

The project is mislabeled as Phase IV and should be labeled as Phase III.

In July, there were several issues that were discussed from the Wright Pierce memo and some by Planning Staff. Some of them have been addressed, but still require further information and others have not been addressed. The last set of comments received from WP were on 6/30/17. Several of these comments have not been addressed. A new set of WP comments are included in your packets with additional outstanding items including:

- Updating Sheet C-100 to reflect the changes from a Cluster Subdivision to a Subdivision that meets space and bulk requirements.
- Providing an ESC plan and details for long-term site protection other than wrapping the site with silt fence.
- Providing a detail section for the proposed gravel access road to the underdrained soil filter at the end of the cul-de-sac.00
- Reviewing the discharge point of the cul-de-sac as it appears to be directed towards the adjacent Seacoast RV property.
- Providing information on the proposed outlet of the underdrained soil filter in the pond construction details.
- Using consistent terminology for the liner in the both of the underdrained soil filters.
- Providing information on how the outlet control structures for both underdrained soil filters will not become buoyant.

A Post-Construction Stormwater Management Plan (PCSMP) was submitted for the project in July for the Planning Board to review but was lacking a few components and Planning Staff had a few comments on the plan:

- Under **Project Contact Information**, it says the responsible party for the maintenance of stormwater BMPs is the Developer Mark Bureau. Does this mean there isn't going to be an HOA for the development and that the Developer will be responsible for all maintenance of the BMPs?
- Under **Project Narrative**, it does not indicate what federal permits are required for the project. For example, a PBR through the DEP is required but is not listed under this section.
- Under **MS4 Identification Plan**, it says this section is not applicable, however, we still need a list of BMPs proposed on the project, regardless if they discharge into the Town's MS4. The PCSWP Guidance Document has an example table that shows how this can be listed.

Staff had questions about whether or not the project is intended to be public or private.

There were comments made by the Fire Chief in July and response comments from the Applicant were not included in the most recent submission materials.

The Town Manager provided a comment to staff: *I would prefer that the road remain a private road. However if it is to become a public road the initial portion of the access road to Portland Avenue needs to be demonstrated to have been built to Town standards.*

The subdivision should include street lighting with energy efficient luminaires.

RECOMMENDATIONS: Staff does not feel that the application is complete and does not recommend that the PB make a determination of completeness at this meeting or schedule a Site Walk. This meeting should be an opportunity for the board to discuss what items remain outstanding including those associated with the PCSMP, staff comments, and comments from Wright Pierce. Planning Staff recommends that the Applicant come back with the changes for the December meeting.

No motion required.

BACKGROUND (JULY MEETING):

This project was brought before the Planning Board in January as a sketch plan. It is for the creation of 8 lots off of Red Oak Drive. Currently, there are four lots with homes on Red Oak Drive that were approved back in 2004-2005. The last lot was completed in the summer of 2016. There is a five foot sidewalk proposed as part of the new phase. This will be a continuation of the sidewalk from the first and second phases. The project will be served by public water and septic systems. It is unclear what type of lighting will be provided in the development.

There were a couple of discussion points that came up during the January meeting:

- There were some issues associated with the pond that was constructed as part of Phase II of the Subdivision. The pond was constructed within 75 feet of the stream, however, the piping associated with the pond was within 25 feet of the stream. It appears from the plans that the existing riprap pond at the end of Red Oak Drive will be converted into an underdrained soil filter which will treat the existing roadway and a portion of the proposed roadway. They are also proposing a bioretention filter at the end of the development.
 - The applicant has indicated that the MDEP Permit by Rule was filed “after the fact” that included restoration of the stream bank (for disturbance within 25’ of the stream) and the site is now “legal” per the permit acceptance and restoration (trees have been planted). The NRPA PBR Application Packet has been included in your Red Oak materials.
- The applicant plans to submit a Letter of Map Amendment (LOMA) for the FEMA regulated area because the stream banks are well established and high. Planning Staff has asked for documentation on this.
 - The Applicant has indicated that it will likely take longer than this project approval for the FEMA adjustment so they are moving forward with the 100-year flood plan “as is” and have designed the lots so that if the line ever does get accepted as a remapped line, they’ll be able to amend the subdivision plan.

A Post-Construction Stormwater Management Plan (PCSMP) has been submitted for the project for the Planning Board to review. Planning Staff has a couple of comments on the plan:

- Under **Project Contact Information**, it says the responsible party for the maintenance of stormwater BMPs is the Developer Mark Bureau. Does this mean there isn’t going to be an HOA for the development and that the Developer will be responsible for all maintenance of the BMPs?
- Under **Project Narrative**, it does not indicate what federal permits are required for the project. For example, a PBR through the DEP is required but is not listed under this section.
- Under **MS4 Identification Plan**, it says this section is not applicable, however, we still need a list of BMPs proposed on the project, regardless if they discharge into the Town’s MS4. The PCSWP Guidance Document has an example table that shows how this can be listed.

It is unclear whether this project is intended to be private or public. In January, the applicant mentioned the project remaining private, however, in the application under solid and sewage waste disposal it indicates: “...until such time as the roadway is accepted by the Town of Old Orchard Beach...”

DEPARTMENT COMMENTS (JULY):

FD:

In regards to Red Oak Phase-3 here are some of the requirements they need to meet by NFPA.

- 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.
- 5) 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.
- 6) We need to check on the nearest hydrants locations.

RECOMMENDATIONS: Staff recommends that the PB schedule a site walk for August 3rd and a public hearing for August 10th.

BACKGROUND (JANUARY MEETING):

Project Background:

In 2004, the Red Oak development located at 143 Portland Ave was approved as a minor, 3-lot subdivision. In 2005, the applicant came back for an amendment to extend the main road and create one additional lot (Phase 2). The last lot was completed in the summer of 2016.

Construction Background:

In early February (2016), Codes staff noticed some severe erosion and sedimentation control issues at the last lot under construction on Red Oak Drive. As a result, the Town had Stephanie from Wright Pierce come out and complete inspections at the site. Inspections were completed in February, March, and May (reports attached). The Town also completed several inspections.

The DEP got involved at the end of July, early August due to the issues onsite, primarily associated with the stream. Audie Arbo at the DEP spoke with Marc Bureau (Owner/Developer) after she discovered that no current permits existed for the work being done on Red Oak Drive. The only permit found was a Permit by Rule for an outfall pipe on Red Oak Drive in 2006. The main issue was that a stream crossing was put in without a Section 10 Permit by Rule (PBR). Work was also done within 25 feet of the stream, which now required an after-the-fact Natural Resources Protection Act Individual permit for activity adjacent to a protected natural resource. In addition, the rip rap in the bed of the stream channel needed to be removed by hand to allow for the natural stream bed to be exposed. Audie also recommended having the engineer hired for the next phase of the project look into whether the road would trigger the need for a Stormwater permit.

In September, Audie met with Marc Bureau's agent and engineer on-site and together they were working on a restoration plan to move the stormwater feature outside of 25 feet from the stream and put in an after the fact permit application for the stream crossing.

January Update from Audie:

On January 3, 2017 Audie Arbo at DEP has not received a plan and the enforcement case is still open regarding the project. She has put in another phone call to the agent to ask where the plan and timeline for corrective action is and got an email from the agent stating she will have an after-the-fact Permit By Rule for the crossing and a restoration plan for moving the structures away from the stream very soon.

Comments were received from Stephanie on December 23rd, see attached memo.

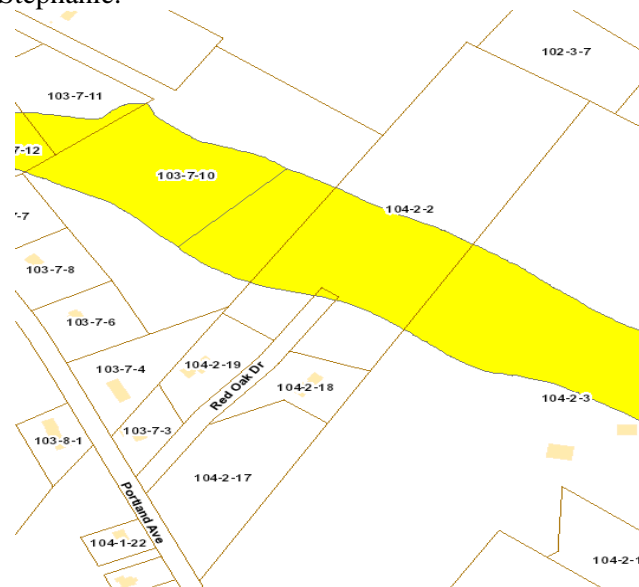
Additional Town Comments:

The house adjacent to Lot 9 on the other side of the stream was just completed this past summer. On the approved plans from 2005 it shows this lot as part of Phase II (see attached plans). In addition, the parcel number (104-2-2) on the Town's GIS shows that house as part of the same MBL as these 9 additional units. It is unclear on the sketch plan whether this lot is considered part of Phase II as shown on the 2005 approval.



It's unclear whether or not Lot 1 is a buildable lot. A detention pond was constructed this past summer in that area and it's unclear where the building envelope for this new lot is in relation to the pond. It's recommended that this pond be shown on the plan. The building envelope shown to the left of the stream is in the same area as the pond which was located within 25 feet of the stream (see attached photos).

FEMA implications – 3 or more of the proposed lots are in the designated FEMA flood zone “A.” This is also addressed in the Wright Pierce memo from Stephanie.



One of the building envelopes for Lot 9 is tucked in the corner of the lot, how could an access drive be put in to get to this building without impacting the stream?

As a heads up this project is over an acre and in the MS4 regulated area so the Town will be looking for the applicant to enter into a Maintenance Agreement and provide a Post-Construction Stormwater Management Plan for the development.

They shall also provide the Town with a list of all BMPs proposed on site and designate any of them that could discharge to the Town's MS4 (i.e. Portland Ave).

DEPARTMENT COMMENTS (JANUARY)

FD:

In regards to Red Oak Subdivision Phase-2 and Ross Road Subdivision they must both meet the following.

- NFPA: 18.3 Fire Hydrants
- NFPA: 18.2.3 Fire Department Access Road
- NFPA: 18.2.3.4.4 Dead Ends
- NFPA: 18.2.3.4.3 Turning Radius -The Turning Radius must meet the dimensions of the department Aerial Truck.

Public Works:

- I don't see anything for storm water.
- I would like to see the dimensions of the cul de sac for plowing.
- Would cul de sac be large enough to fit fire apparatus

ITEM 7

Proposal: Subdivision Amendment: Amend Church St. Station Plan to change location of one building unit and add easement
Action: Discussion; Ruling
Owner: Church Street LLC
Location: 164 Saco Ave., MBL: 208-1-9, GB1 & R4

Church Street Station	Project Status
<i>Sketch Plan</i>	N/A
<i>Preliminary Plan</i>	N/A
<i>Application Complete</i>	N/A
<i>Site Walk</i>	N/A
<i>Public Hearing</i>	N/A
<i>Preliminary Plan Vote</i>	N/A
<i>Final Review</i>	N/A

At the March meeting, the PB re-approved Church Street Station because the 2016 plan was not recorded within the specified 90 days as required by Ordinance. Prior to the start of construction, Maine Water took a look at the plan and realized that back in 2016 they overlooked the fact that their water shut off valve for the campground across the street was located within close proximity to Unit #1 and they did not have an easement. Maine Water requested an easement from the Applicant and the Applicant agreed to provide a 30’ easement for Maine Water to access the water shut off valve and adjusted the location of Unit #1 to twist it away from the water shut off valve. This amendment does not change unit counts, road location, utility location or any other major plan items.

RECOMMENDATIONS:

This is a relatively simple plan amendment and Planning Staff recommends that the PB approve the amendment.

Recommended Motion: Motion to approve the subdivision amendment for Church Street Station to adjust the location of Unit #1 and add a 30’ easement for Maine Water located at 164 Saco Avenue.

BACKGROUND (MARCH):

On 13 October 2016 the PB unanimously granted conditional approval of a 40-unit condominium project titled “Church Street Station.” Approved subdivisions must be recorded in the registry of deeds within a specific time frame (90 days and can be extended 2x). If the subdivision is not recorded within the time frame it becomes null and void- subdivision ordinance language:

Sec. 74-234. - Final approval and filing.

(a) Upon completion of the requirements in subdivision II of this division and this subdivision above the notation to that effect upon the plan, it shall be deemed to have final approval and shall be properly signed by a majority of the members of the planning board and shall be filed by the applicant with the tax assessor. The plan shall then be filed with the county registry of deeds. 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.

As part of pre-development preparation, staff found that the subdivision plan was not recorded. Staff reached out to BH2M and the applicants and found they didn’t have documentation of the recorded plan so we concluded it was not recorded. Because the subdivision plan was not recorded staff determined that the proposal could not move forward until the plan was recorded. Because PB signatures on the approved plan were dated October 2016, we are well beyond the 90 days (and two extensions) recording time frame, and the language in 74-234 (e.g., null and void), staff determined that recording the previously signed plan would not meet our ordinance requirements and, most likely, the registry of deeds requirements. So to resolve this, staff determined the plan will need to be re-approved by the PB. Staff consulted our town attorney on this matter. He replied:

Since the subdivision approval is deemed null and void if not recorded within 90 days of approval, the Board should vote to re-approve the plan before signing it. Thus it should be noticed in the normal course and follow the same procedures, but the Board could simply refer to the prior submissions and vote to approve the subdivision and adopt the prior findings of fact at the same time before signing the plan.

He agrees the plan must be re-approved and continues with “it should be noticed in the normal course and follow the same procedures.” The statement we quoted made us think that subdivision would need to go through the entire review process again, which staff feels is unnecessary because the plan has minor changes and those changes were added to comply with PB conditions (i.e., DEP approval). Our attorney followed with “the Board could simply refer to the prior submissions and vote to approve the subdivision and adopt the prior findings of fact at the same time before signing the plan.” This will not require the PB to go through the entire process again and staff supports this approach.

Regarding the “minor changes” between the new and former plans. Staff believes they are minor because they do not change unit count, building placement, road location, buffers, parking, and other critical parts of the development. The changes resulted from compliance with DEP, which the PB required as part of a condition attached to the 2016 approval: “All applicable Maine DEP permits shall be approved before construction begins.” Changes include:

- Amended wetland impacts. Wetland impacts reduced by 124 sq. ft. See note 18.
- 25’ setback added to northwest side of stream.
- Snow storage area between units 5 & 6 has a minor location change.

It’s staff opinion these changes were already authorized by the PB because they are related to the Findings of Fact which required compliance after the PB signed the plan.

RECOMMENDATIONS (MARCH):

Staff recommends the PB motion to re-approve the Final Plan titled Church Street Station to develop 40 single-family style freestanding condominium units, roads and associated infrastructure located at 164 Saco Ave, MBL 208-1-9. Re-approval includes adoption of the 13 October 2016 Findings of Fact. This project was originally approved on 13 October 2016.

ITEM 8

Proposal: Subdivision/Site Plan Amendment: Amend Atlantic Park Condominium to allow construction of 21 new units, sidewalks, parking, access ways, landscaping, and other misc. improvements.
Action: Discussion; Schedule Site Walk and Public Hearing
Owner: KAP Atlantic, LLC
Location: 11 Smithwheel Rd., MBL: 210-1-7

<u>Atlantic Park Amendment</u>	<u>Project Status</u>
<i>Sketch Plan</i>	N/A
<i>Application Complete</i>	Pending
<i>Preliminary Plan</i>	Pending
<i>Site Walk</i>	Pending
<i>Public Hearing</i>	Pending
<i>Ruling</i>	Pending

As stated in the background below (please read), the proposed Atlantic Park amendments are basically a re-approval of a proposal that secured PB approval during 2003. The problem is the 2003 PB approval is not valid because it was not recorded. So, it is really an amendment of the original plan which was approved during 1989. Some of the existing built portions of Atlantic Park was permitted in accordance with the valid and approved 1989 plan, other parts were permitted in accordance with the 2003 plan that does not legally exist. 92 units were and are still are approved because the 1989 approval is the only one that is legally valid. The 2003 proposal reduced the number but is not valid. The 2018 amendment is similar to 2003 and reduces the total unit count to 55. 34 units are constructed. This proposal will add 21 new units. Ultimately, the proposed 2018 amendment will help correct this which should help current property owners as titles will be cleaner.

The Planning Board reviewed this proposal during November 2017 and decided not to make a decision on the proposal until the Applicant addressed the outstanding items listed in the memo. These included:

- Address items in the 2010 Notice of Decision (NOD)
- Address items in the 2010 Wright-Pierce Peer Review memo
- Address comments from Department Heads
- Submit a letter identifying modification, issues, etc.
- Submit 2 full plan sets and any additional info that’s changed (e.g., stormwater)

Planning Staff did not see where the above-mentioned items were addressed in the current submission. The 2010 NOD requested several items that may no longer be applicable (i.e. size of the swimming pool, parking space evaluations, lighting, decks/stairs violating setback, shoreland zoning implications, etc.) but the Applicant should address each of these in their submission materials.

The Wright Pierce memo from 2010 had a number of comments pertaining to stormwater and utilities. We did not see a response to these in the submission materials. Note- Planning Staff is still waiting for updated comments from Wright Pierce on this current proposal which we feel are critical moving forward. So, it is probably best the applicant wait until we receive updated comments.

New comments that have yet to be addressed include those from Department Heads back in November that are listed in the background information below. These include providing an assessment of the existing sewer infrastructure, the ability of the system to handle the additional units, providing an updated plan pertaining to stormwater and drainage, added traffic at the corner of Smithwheel and Ocean Park road, emergency access connection and a turnaround at Reserve Ave, as well as ensuring the project meets NFPA standards for road widths, trucks and hydrants.

Planning Staff is waiting for a letter from the Applicant identifying what currently exists on the site as well as what is proposed and how these will work together once the amendment is approved. This is directed to roads and utilities- can existing infrastructure support proposed development? The condition of existing infrastructure?

RECOMMENDATIONS:

Planning Staff recommends the PB use this meeting as an opportunity to discuss the project with the Applicant and that the Applicant come back for the May meeting with the above-mentioned items. A public hearing and site walk is not required but we feel should be scheduled to allow the public an opportunity to speak and the PB to view the site.

BACKGROUND (NOVEMBER):

The proposed Atlantic Park amendments is essential a re-approval of a proposal that received approval during 2003 but because the 2003 approval was not recorded, it is not valid. So, it is really an amendment of the original plan which was approved during 1989. To understand this project some background is necessary.

Basically, it appears the 1989 approval is the only Planning Board approval that legally exists. This approval was for a 92 unit condo project (see attached 1989 FOF for description). During 2003 the development owner presented a plan that reduced the number of units to 55 and made a number of other adjustments. The plan was approved by the Planning Board but was not recorded within 90 days of the approval. Because the 2003 plan was not recorded the approval is void. Problem is it appears construction took place after 2003 that was in accordance with the 2003 plan. This should not have happened because the 2003 plan did not legally exist. Another proposal was brought to the Planning Board during 2010 but did not secure final approval.

So where does this leave us? Based on research and subdivision statute and ordinance language, the only plan that legally exists is the 1989. Due to all that has happened since 1989 (the 2003 voided plan, zoning changes, etc.) we have informed those that are interested in resurrecting Atlantic Park that, in our opinion, before additional units are constructed a plan needs to be prepared and presented to the Planning Board. Below is a bit more info regarding project history as well as additional info that is pertinent to the PB's review which was not included with the applicants submission (attached separately).

Brief History

- Originally approved in 1989 as a 92 unit condo project. A Finding of Fact was issued.
- Amended in 2003. The primary amendments were reducing the condo unit number to 55 and amending the DEP stormwater application. A Finding of Fact was issued.
- Interestingly, it appears the 2003 amendments, although approved by the Planning Board (FOF issued), are void because the mylar was never recorded. If this is so, the only valid, legal approval is the original, 1989 one. An important note is construction continued (including permits issued) after 2003 in accordance with the 2003 amendments.
- Amendments were brought before the Planning Board in 2007 and 2010 but there is no record of PB approval of these amendments.
- During consideration of the 2010 amendments, it appears that several issues were found- some associated with past matters some exclusive to the 2010 proposal. Staff and the town's engineer mentioned several issues that needed resolution before the PB could approve the 2010 amendments. Based upon little to no information in the towns' records, it appears the applicant decided not to move forward after receiving staff and engineer comments. Although the 2010 proposal was conditionally determined complete, there is no record of its approval.
- Since 2010, there appears to be no PB action; although, there has been interest in regards to moving the project forward.

Summary of Additional Info

- 1989 FOF. This is the original approval and, in my opinion, the only legal approval.
- 2003 FOF. This is the only formal written findings I found associated with the PB's approval of the 2003 amendments. It is important to note that although the PB formally approved the 2003 amendments, it was not recorded; therefore, we believe the approval is not legally in-effect. Applicable Subdivision Ordinance standard (adopted 1986):

Sec. 74-234. - Final approval and filing.

- (a) Upon completion of the requirements in subdivision II of this division and this subdivision above the notation to that effect upon the plan, it shall be deemed to have final approval and shall be properly signed

by a majority of the members of the planning board and shall be filed by the applicant with the tax assessor. The plan shall then be filed with the county registry of deeds. 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.

- 2003 DEP Approval. This document is DEP's approval of changes to the stormwater management system (relocation of the detention pond). The document includes DEP's conditions. Documentation after 2003 questions if this approval expired (see attachments dated 2010). Is this approval still valid?
- 2010 BH2M Ltr. This letter was drafted by BH2M and included as part of the 2010 amendment submissions. There is some interesting info in this letter including mention of whether the 2003 approval is valid. This is a good summary and we recommend that the applicant provide a similar letter describing proposed modifications, issues as well as any updates (e.g., work done after the date of the letter, DEP permitting status, etc.).
- 2010 NOD. This Notice of Decision is a determination from the town that the 2010 amendment application is complete as well as identifying what needs to be done for full approval. The NOD does not formally approve the 2010 amendments. No further PB approval-related action was found after this- the 2010 amendments were not formally approved. The NOD identifies outstanding matters which we believe have not been resolved. The applicant should address these items.
- 2010 WP Peer Review. The 2 August 2010 peer review memo identifies items that needed resolution. We do not know if these items remain unresolved- we need further comment from the applicant's engineer. If they require plan adjustments, stormwater plan changes, etc., this info must be submitted for peer review.

So, this is a bit complicated. It is our opinion the original 1989 approval is the only approval that is legally in-effect. A proposal was approved in 2003 but the signed plan was not recorded which made the approval invalid. During 2010 a proposal was submitted that was essentially the same as the one submitted during 2003. The 2010 proposal did not secure final approval. The 2017 proposal appears to reflect the 2010 proposal, which is similar to what was approved during 2003. What complicates this more is construction activity moved forward in accordance with the 2003 proposal.

The good news is the 2017 proposal seeks to remedy a situation that remained unresolved for years. Unfortunately, construction did proceed in accordance with a plan that is not legally valid, but, that 2003 plan did receive full PB approval. The PB can't reverse construction that has taken place, especially that which is associated with occupied buildings. But the PB can request some improvements to items that exist such as surface pavement, sidewalks etc., approve the new updated construction and above all make an invalid project valid. Why and how this happened we have no answers and can only speculate.

DEPARTMENT COMMENTS

Town Manager

My comments with respect to the proposed amendment to the Atlantic Park subdivision:

1. The applicant should provide an assessment of the existing sewer infrastructure and the ability for the system to handle the additional units.
2. The applicant should provide an updated plan pertaining to storm water and drainage.
3. I am concerned with the added traffic at the entrance on Smithwheel Road. The Dunkin Donuts facility was not a reality when this subdivision was approved many years ago. There should be an assessment of the implications to this area and consideration of whether a second access should be provided through Reserve Avenue (with only right turns permitted exiting on to Ocean Park Road towards I-195).
4. There is currently an emergency access connection at Reserve Avenue. Is this grass based access sufficient to sustain heavy fire equipment?

Public Works

I have concerns about the drainage profile for this area. There is a single outfall and large amount of impervious area. We could have water quality issues with a small retention basin. Also the rate of flow could cause a wash out. Both of these could impact the water quality and ultimately our MS-4 Permit. It is his issue but enforcement on our end could be time consuming and difficult.

The load rating on the Emergency access is important because of the 65,000 pound fire apparatus.

Turning Radius in the Park could also be an issue for Fire Apparatus

Impact on our sewer system needs to be accessed by Stephanie. It could hurt future development up stream of this. (Side note we need some type of impact fee for this type of development for increasing sewer pipe size downstream of this area)

Fire/Ambulance

In regard to Atlantic Park Condominium here are some of the requirements they need to meet by NFPA.

- 1) All roads would be twenty feet wide under NFPA 18.2.3.
- 2) 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.
- 3) All privately owned hydrants would be maintained under NFPA 18.35 Water Supplies and Fire Hydrants. They may need to some Hydrants.
- 4) 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.

RECOMMENDATIONS (NOVEMBER):

Staff supports this proposal but believes there are outstanding matters that must be resolved. We recommend the applicant do the following:

- Address items in the 2010 Notice of Decision
- Address items in the 2010 Wright-Pierce Peer Review memo
- Address above-mentioned Department comments
- Submit a letter identifying modification, issues, etc.
- Submit 2 full plan sets and any additional info that's changed (e.g., stormwater)

ITEM 9

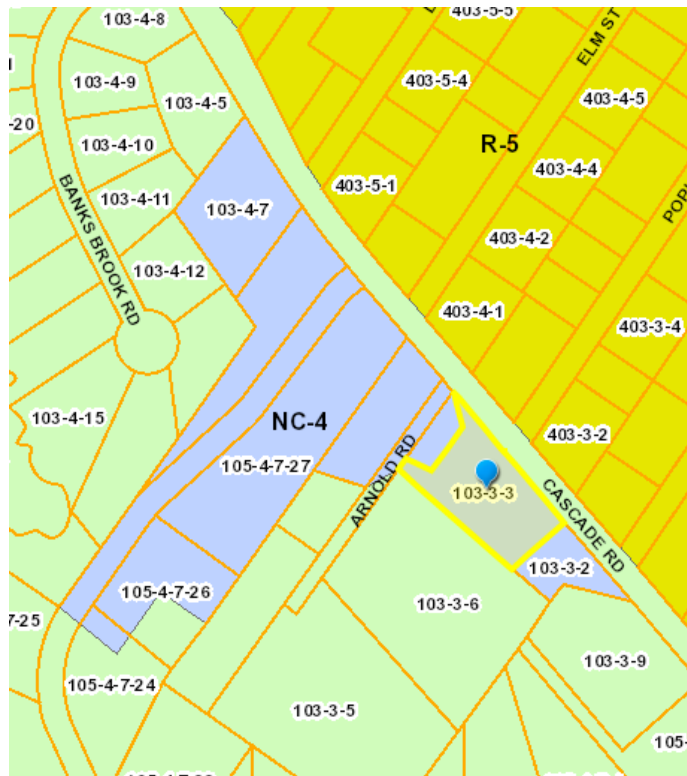
Proposal: Site Plan Sketch Plan Review: Construct 40' x 80' Garden Center
Action: Discussion; Recommendations
Owner: Robillards Garden Center, LLC
Location: 85 Cascade Rd., MBL: 103-3-3

CASCADE RD. GARDEN CENTER

Project Status

<i>Sketch Plan</i>	Submitted in April
<i>Application Complete</i>	Pending
<i>Site Walk</i>	Pending
<i>Public Hearing</i>	Pending
<i>Final Ruling</i>	Pending

This proposal is for the demolition of existing cabins/cottages and a single-family home and the construction of a 40x80 building and associated storage bins/parking to support a Garden Center. This proposal is in the sketch plan stage and as you know proposals in early stages like this offer an opportunity for the Planning Board to discuss and provide recommendations to the Applicant on what direction the project should go.



The Applicant is proposing to connect to the existing public water and install an onsite septic system. The proposal currently uses the existing curbcut for two-way traffic and proposes to create an additional “exit only” drive so that they can separate the store customers from the customers purchasing bulk products such as mulch.

The property is located in the NC-4 district (Cascade Road Neighborhood Commercial District). Another parcel in this district also used to be a garden center a few years ago. Garden centers and agricultural uses are permissible in the NC-4 district. However, because this is construction of a new nonresidential structure it requires review as a Site Plan by the Planning Board.

The lot size is 50,094 sq. ft and the minimum lot size with water is 40,000 sq. ft in this district so it meets those requirements. It also exceeds the frontage requirement of 200 feet.

Ordinance requirements that the project will have to meet include:

Applicable Parking Requirements (Sec. 78-871(c)):

- (2) – All off-street parking facilities accommodating four or more spaces shall be buffered from adjacent residential properties and shall be screened from the street if so located in the front yard per standards described in Subdivision IV of Division 7 of Article VIII of this chapter.
- (3) – Where the building is only proposed to be 3,200 sq. ft. it doesn't meet the "5,000 sq. ft in net leasable area" threshold for parking distribution.

Applicable Signage Requirements (Sec. 78-871(d)):

- (1) – *Materials*: Signage shall be constructed of wood, metal and or fabric or composite materials.
- (2) – *Area and Dimensions*: Allowable signage shall be one square foot of signage per linear foot of storefront fronting directly onto Cascade Road. Free standing signs shall not exceed 8 ft. in height, square footage of signage allocated for the freestanding sign shall be subtracted from the maximum allowable square footage for the property. Permitted sign area is not transferable between sides of the building located on a corner lot.

Applicable Lighting Requirements (Sec. 78-871(e)):

- (1) – All freestanding site lighting shall not exceed the height of the principle building or 14 feet, whichever is less.
- (2) – From a nonresidential use, not shed more than 0.5 footcandle onto surrounding residential properties or 1.0 footcandle onto surrounding nonresidential properties.
- (3) – Be shielded to prevent point source glare.

Applicable Performance Standards (Ch. 78, Art. VIII, Div. 4):

Applicable Parking Standards (Sec. 78-1491) –

- (a) – *Siting*: Access driveways for multifamily and nonresidential uses shall be sites in the most appropriate location, given existing site topography and project layout, surrounding land uses, and prevailing traffic conditions.
- (b) – *Orientation*:
 - (1) All driveways shall be oriented at 90 degrees to the street or private way.
 - (2) The PB may permit driveway intersections with the street at an angle not to exceed 60 degrees in circumstances where the nature of the use or existing highway alignment precludes a right-angle intersection.
- (c) – *Sight Distance*: All driveways servicing nonresidential and multifamily uses shall be designed so as to meet or exceed sight distance standards established in Sec. 78-1466(c) which for this 40MPH stretch is 410 feet.
- (e) – *Driveways on Major Roads*: Along arterial and collector streets, multiple driveways servicing a single parcel may be permitted, provided the minimum separation between each driveway meets the following criteria: 40MPH stretch is 185 feet in separation.
- (f) – *Offset from Intersections*:
 - (2) – A minimum 100-foot separation shall be maintained between any driveway and the curblin tangent of intersecting arterial and/or collector streets. Based on existing or projected traffic conditions, the PB may require more than 100-foot separation distances.

Applicable Driveway Dimensions (Sec. 78-1492) –

One-Way Drives (Minimum): 12 Feet, (Maximum): 20 Feet
Two-Way Drives (Minimum): 24 Feet, (Maximum): 26 Feet
Curblin Radius (Minimum): 5 Feet, (Maximum): 15 Feet

Applicable Turning Lanes (Sec. 78-1493) –

This all depends on how many trips they are expecting during peak hour. If it is more than 50 vehicles, they will have to provide a separate right turning lane **(a)**, if it is expected to generate in excess of 30 left-turning vehicles during the peak hour, they shall construct a turning lane in the public street **(b)**.

Applicable Driveway Design Specifications (Sec. 78-1494) –

These requirements get into driveway grades, profiles, and cross sections and they depend on the number of trips per day (more or less than 20 trips per day). This information is something the Applicant should submit with their formal submission.

Applicable Parking Lot and Site Circulation Standards (Sec. 78-1541, 78-1542, 78-1543) –

These requirements get into general performance standards of the parking lot as well as stall access and dimensions of the parking areas and stalls. This section of the ordinance also gets into designating snow disposal areas.

Applicable Landscaping Standards (Sec. 78-1544) – These requirements include landscaping and buffering standards primarily for the building. Some of these standards, such as street trees, are also applicable to parking lots.

Applicable Parking Standards (Sec. 78-1566) – It appears this proposal will have to meet the retail space requirements 1 space per 250 sq. ft net leasable area which equals about 13 parking spaces. This section of the ordinance lists several different uses but does not define garden center separately. Sec. 78-1567 discusses the number of handicapped spaces required and it is based on the number of total parking spaces.

Applicable Off-Street Loading Standards (Sec. 78-1591 – 78-1596) – Wherever possible, driveways or access to loading facilities shall be physically separated from customer parking lots, walkways or driveway entrances. Where will these area be designated?

If the project is going to disturb greater than 1 acre, it will need to meet the Chapter 71, Post-Construction Stormwater Management ordinance including the requirement to submit a Post-Construction Stormwater Management Plan for the PB to review.

The proposal will have to demonstrate compliance with the 9 Site Plan Review Criteria (78-216(d)):

- (1) The proposed project conforms to all standards of the zoning district and meets or exceeds performance standards specified in this article and article VIII of this chapter.
- (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.
- (3) The proposed project will not have an adverse impact upon the quality of surficial or groundwater resources.
- (4) The 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.
- (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.
- (6) The proposed project will not have an adverse impact upon environmental quality, critical wildlife habitats, marine resources, important cultural resources, or visual quality of the neighborhood, surrounding environs, or the community.
- (7) The proposed project will not produce noise, odors, dust, debris, glare, solar obstruction or other nuisances that will adversely impact the quality of life, character, or the stability of property values of surrounding parcels.
- (8) The proposed project will not have a negative fiscal impact on municipal government.
- (9) The proposed project will not have an adverse impact upon surrounding property values.

RECOMMENDATIONS (APRIL):

This meeting is an opportunity for the PB to review the project in the early stages and offer recommendations to the Applicant of items for them to address in their formal submission. Planning Staff expects a number of items will need to be discussed in the formal submission as indicated above including:

- Details on signage including type, materials, size
- Details on lighting including height and footcandle calculations
- Sight distance and multiple driveway separation on a major road (need to show that they can achieve the 185 feet)
- Number of trips during peak hour and the number of trips in general expected at the site
- Landscaping including types of vegetation, locations, how the buffer will be achieved for the parking lot (front yard) and adjacent properties, street trees
- Parking – what will the parking look like in the back of the site next to the storage bins, how will it be accessed, how will patrons access the building
- Will the project be disturbing 1 acre or more – stormwater ordinance requirements
- Where will loading areas be for materials that are delivered to the store, how will the truck maneuver?