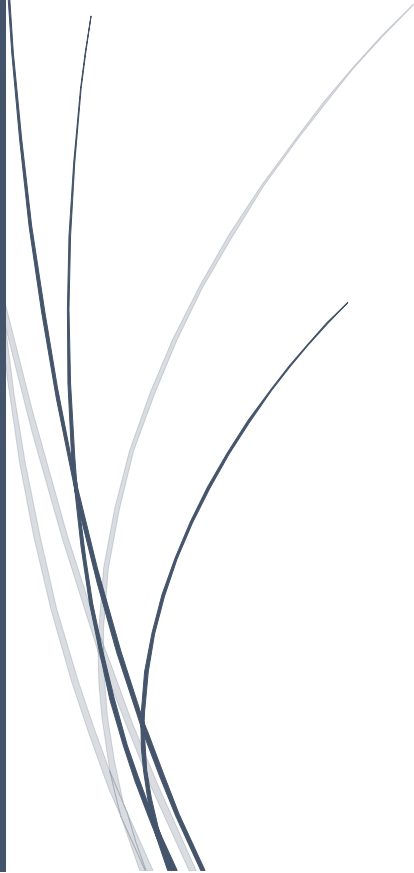


**OLD ORCHARD BEACH**  
**April 2019**  
**PLANNING BOARD**  
**MEMO**



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**WORKSHOP**

**Proposal:** Ordinance Amendment and Zoning District: Creation of Saco Avenue Overlay District  
**Action:** Discussion With DRC  
**Applicant:** Town of Old Orchard Beach Design Review Committee

**\*NOTE: This is a workshop agenda item for April only. The purpose is to discuss the proposal with the DRC.**

<u>Ordinance Amendment: SAGO</u>	<u>Project Status</u>
<i>Introduction</i>	March
<i>Discussion/Workshop</i>	Scheduled with DRC for April
<i>Public Hearing</i>	Pending
<i>Recommendation</i>	Pending

The purpose of the April meeting is for the Planning Board and DRC to come together to discuss a zoning amendment to create the Saco Avenue Gateway Overlay District.

The background information for March goes through some of the questions/changes but Planning Staff felt it would be important to provide the PB with some background information on the DRC and the purpose of this discussion.

For the new PB members, the Design Review Committee in Town reviews proposals in the two downtown districts to ensure construction follows a certain set of architectural standards. They make recommendations to the PB and the PB makes the final ruling on their recommendations.

At the time a new Dunkin Donuts was proposed in one of the gateways into Town (2016), neither the DRC nor the PB had the authority to regulate the aesthetics of the building. This essentially set the stage for a conversation on potential design standards in the Towns gateways. While the DRC currently has jurisdiction over the two downtown districts, they identified other areas in Town where they felt design standards should apply.

The first gateway identified is the Saco Avenue corridor from the spur to where the downtown districts pick up on Heath Street. They refer to this area as the “Saco Avenue Gateway Overlay.”

The primary purpose of the standards are to beautify one of the main gateways into Town. The DRCs intent was to create standards that would require redevelopment, new development and substantial changes to be reviewed by the committee and follow a certain architectural pattern, similar to the downtown districts. The draft ordinance that you have in your packets is essentially the same ordinance in place for the downtown districts, except that it has been modified to reflect more of what exists along Saco Ave.

The ordinance would allow the DRC to make a recommendation to the PB on how a buildings exterior, including landscaping and parking areas should look. The process is in the early stages and the DRC is seeking feedback from the PB on what the board would like to see in the “Saco Avenue Gateway Overlay.” Are there standards they have proposed too stringent? Are the standards not stringent enough? Are there additional standards that should be added? Standards that should be removed? We posed a number of questions in the March background below based on the ordinance provisions, purpose, applicability and performance standards. We recommend you go through those questions and offer your thoughts to the committee.

Planning Staff also feels that it important to point out that land use and building aesthetics are very closely intertwined. This makes it easy for the DRC to get into land use issues when looking at building aesthetics. Planning Staff has tried to steer away from land use topics as those are regulated specifically by the PB. The intent here is to regulate building aesthetics and the conversation needs to stay focused on that.

This is all still in the preliminary stages and will have to be formally reviewed by both the PB and Town Council which includes public hearings before any formal adoption.

### **BACKGROUND (MARCH):**

The Design Review Committee (DRC) has been brainstorming and coming up with design standards to preserve and in some cases beautify out gateways into Town. One of the gateways identified was the “Saco Avenue Gateway Overlay” (SAGO) from the entrance off I-95 through to where the current downtown districts pick up.

Some of you may recall the Dunkin Donuts that was proposed on the corner of Smithwheel Road. At the time, neither the DRC nor the PB had the authority to regulate the aesthetics of the building. This would give the DRC and the PB a chance to review and make changes to a buildings exterior, including landscaping and parking areas in one of the main gateways into Town.

The DRCs primary thoughts are to create standards that would require redevelopment, new development and substantial changes to be reviewed by the committee and follow a certain pattern.

The process is still in the early stages and a draft ordinance has been created based on the current Downtown District 1 & 2 ordinances. The DRC would like feedback from the PB on what the board would like to see in these districts. It is important to point out that this is just a discussion and before any of these changes move forward they would need to be reviewed and approved by both the Planning Board and the Town Council, which includes public hearings.

Below is a breakdown of the ordinance requirements discussed by the DRC.

### **Ordinance Provisions**

*(DRC Authority):*

This new ordinance will require review by the Design Review Committee for: (1) Any structural modification, addition or demolition or construction of new exterior of any nonresidential, mixed use and multifamily structures. (2) Construction, modification or addition of existing and proposed residential structures – over a certain dollar value that still needs to be set. (3) Construction or alteration of new or existing decks, porches, stairs, patios, fences, walls and other structure within view of the public street or sidewalk. (4) Installation, addition or modification of signage.

1. How does the PB feel about having these uses under the purview of the DRC?
  - o Would the PB like to see more or less regulated areas?

### **Ordinance Purpose:**

There are four primary purposes of the SAGO: (1) to produce a visual effect on tourists coming into town that is inviting in appearance. (2) to provide incentives for residential development and offer a transition between the character, uses and scale of the downtown, as well as the abutting residential districts. (3) To accommodate commercial activities that are inappropriate to the downtown due to compact settlement in the beachfront area by establishing standards to encourage expansion of commercial uses while also preserving the existing building line and mixed use character of the area. (4) To promote the conversion of existing residential structures to small office and retail operations that generate relatively lighter trip generation and parking demand.

1. What does the PB feel the purpose of a design district should be as you drive into Town from the spur?
2. Are there any standards in the current draft that the PB feels should be changed or removed? Any that should be added?

## **Ordinance Applicability:**

The ordinance is geared towards all properties that are VISIBLE from Saco Ave from Ocean Park Road and Saco Ave, beginning at the 1-95 off-ramp and extending down Ocean Park Road and Saco Avenue ending at Heath Street.

1. How and who is responsible for determining if a property is visible? Is there a better term?
2. How does the PB feel about regulating this area?
3. Are there other areas that should be included?
4. Areas that should be excluded?

## **Performance Standards – Architectural Design Standards:**

### *Mass and Scale:*

- Requires buildings to be compatible with surrounding structures or local building fabric.
  - Only includes proposed buildings, but should it include redevelopment and renovations?

### *Building Heights:*

- All reconstruction needs to maintain the existing height.
- All new structures cannot be taller than 2 stories.
- If there is an established building pattern, the height of new or modified buildings needs to maintain the pattern.

### *Rooflines:*

- Pitched roofs need to be between 12/8 and 12/6. Flat roofs are not allowed.

### *Fenestration (window/door arrangement):*

- Window and door area cannot be less than 25% nor more than 66% of the façade area facing the public sidewalk (likely on Temple Avenue).
- Arrangement needs to provide a visual rhythm without appearing monotonous.
- Window dimensions and construction need to be complementary to architectural character and historical period of the structure.
- Windows of differing dimensions are allowed as long as they are in a logical spot on the building.
- Ribbon windows and curtain glass walls are NOT allowed.
- Conservatories and sunrooms need to be harmoniously integrated into the façade of the building.

### *Façade Materials:*

- Preferred materials are wood clapboard or cedar shingles.
- Exterior of residential and commercial structures needs to use calm colors such as: white, cream, taupe, soft blues, soft greens, and soft grays. Darker colors can be used sparingly with light trim and shutters. Bright and bold colors are not allowed.
- Historical structures need to be painted with colors that fit the color palette of the historical era when the structure was constructed.
- Red brick, concrete and textured concrete masonry units, vinyl or aluminum siding, glass, metal, stucco and t-111 are not allowed.
- Mechanicals including HVAC units, dumpsters and trashcans need to be located out of site from the public street.

### *Architectural Details:*

- Appropriate architectural features include: Carved roof brackets, bargeboards, cornices with reveals and moldings, storefront bulkheads with recessed or raised panels, cornerboard corbelling, pilasters and columns, spindles, brackets, finials and balustrades for porches, railings and roof overhangs.

### *Fences, Railings and Steps:*

- Fences, steps and porches need to reflect the architectural character, materials and historic period of the principal structure. Finials, reveals, balustrades, spindles and other decorative elements shall be incorporated wherever possible and appropriate.
- Freestanding fences visible from sidewalk need to be constructed of a durable wood, such as cedar, redwood or of metal or combination as approved by the DRC.
  - All fences need to be painted or stained white or neutral colors, or the color of the principal structure (if appropriate). Rod iron fences are allowed if painted black.

### **Streetscape Improvements:**

These are new standards the DRC is trying to get in place for several design districts. The standards would require landscaping improvements. The DRC is still working on refining these. We recommend the DRC discuss with the PB what they would like to see for landscaping.

- All yards abutting Saco Avenue and Ocean Park Road need to include fences or other barriers (low shrubbery) to create a separation from the road.
- If a building is demolished for a parking lot, a landscaping plan needs to be reviewed by the DRC.
  - What are the requirements for the landscaping plan? What would the PB like to see?

### **Signs:**

The DRC already has sign standards established for the current downtown districts and has modified them a bit for the SAGO.

- For materials, the signs need to be wood, metal, plastic, composite materials or fabric.
- The signs need to be illuminated by external light fixtures affixed to building, sign or uprights emanating from the ground.
- Area and dimensions needs to be further discussed.
- Sandwich board signs and neon signs are not permissible.

**ITEMS 1&5**

**Proposal:** Site Plan: Second Floor Addition to Existing Structure – Retail/Stockroom Purposes  
**Action:** Rule on Waiver Requests; Final Ruling  
**Owner:** Harold Harrisburg  
**Location:** 9 East Grand Avenue, MBL: 306-2-6, DD1 District

<u>Site Plan: 9 East Grand Avenue</u>	<u>Project Status</u>
<i>Sketch Plan</i>	
<i>Application Complete</i>	March 2019 (most recent)
<i>Site Walk</i>	April 2019
<i>Public Hearing</i>	April 2019
<i>Final Ruling</i>	Pending

This month the PB is scheduled to hold a site walk and public hearing as well as voting on waivers and possibly final ruling. This proposal, in some manner, has been on the PB agenda for a few years and it looks like it has reached a point where the PB can make a decision- either this month or May.

First the PB should vote on the two waivers (see March 2019 Submission). If the waiver vote fails (one or both) then it will be difficult for the proposal to move forward. There is one more potential waiver that has not been requested. 78-215 3 and 3.a. states (highlights added by staff):

- 3. Proposed site plan, drawn at a scale not to exceed one inch equals 40 feet or at a scale otherwise required by the town planner. Such plan shall be sealed by a professional engineer, landscape architect, or a surveyor licensed in the state and shall contain the following information:
  - a. Property boundary survey class 1, signed and sealed by a state-licensed land surveyor, showing bearings and distances of the subject property boundary, topographic elevations at a contour interval of no more than two feet, location and elevation of all existing and proposed structures, site features and site improvements.

A licensed surveyor signed and sealed plan showing the location of existing structures was submitted (see BH2M Plan). The plan showing the proposed structure location is not signed and sealed by a professional engineer, landscape architect, or a surveyor licensed in the state (large plan included in your March packet). The lot data on this plan appears to reflect the same lot data on the BH2M plan but the problem is the plan is not signed and sealed. The PB should determine if the plan showing the proposed location is acceptable. If it is not, the applicant can request a waiver or submit a plan that includes the land surveyor’s signature and seal.

If the waivers are granted the PB should then discuss, what staff believes, are the remaining primary concerns: encroachment on adjacent property during construction, warehousing use of the second floor, and loading/unloading.

Construction Encroachment

Regarding construction encroachment, the applicant states (see Feb 2019 document) no use or encroachment of the neighbor’s property will be required or used at any time. The use of Kinney Avenue may be needed and if this is so, the applicant will coordinate with the police department. When reviewing Site Plan Review Criteria (see SPR Criteria Responses), please keep in mind # 5 and possibly # 7 are the criteria most applicable to construction encroachment. The applicant’s response to construction encroachment should be included when reading Criteria # 5 and possibly #7.

Use of Second Floor

Regarding use of the second floor, the concern is the product stored on this floor will be distributed to locations other than 9 East Grand Ave which then creates a warehouse use on this Property which is not permissible in the DD1 District. The

applicant states (see Feb 2019 document) no wholesale and distribution of manufactured products will occur at any time from this location. This location will be used for stock and retail sales for this location.

As most of you know, this has been one of the primary concerns throughout the PB's review of the proposal. During the PB's review of this proposal during 2017, Attorney James Katsiaticas assisted the PB and provided a letter addressing this concern (see Jim K Letter). We recommend you read this letter as part of your consideration. Below you will see we include Attorney Katsiaticas recommended condition if the PB choose to approve this proposal.

Site Plan Review Criteria # 1 is most applicable to this concern. If the PB feels the use is warehouse storage, the proposal cannot meet this standard because warehouse storage is not an allowed use in the DD1; therefore, the proposal would not conform to all standards of the zoning district.

#### Loading/Unloading

The applicant states (see March 2019 Submission) deliveries will continue along Harrisburg St., then be fork-lifted on pallets to the parking lot owned by the applicant along Kinney Ave. Then product may be delivered by handcart and some by forklift on pallets to the Property. Boxes will then be hand carried into the building. The once a month deliveries are not expected to take more than 1 hour from loading on Harrisburg St to the inside of 9 East Grand Ave.

OOB Zoning Ordinance includes off-street loading standards (Secs. 78-1591-1596). 78-1592 states "all loading/unloading activities shall be conducted off public streets and private ways...in urbanized sections of town, where off-street loading facilities are impracticable, loading activities shall occur only in loading zones designated by the police chief." There are other non-zoning standards that may have some relation to loading/unloading including: shall not drive within any sidewalk except at a permanent or temporary driveway (54-109) and no person shall stop, stand or park a vehicle on a sidewalk except to avoid traffic conflicts or in compliance with directions from a police officer, other authorized person, or traffic control device (54-186).

Police Chief Dana Kelley, the Fire Department and Public Works have discussed concerns during earlier reviews of this proposal (see below). An earlier version of this proposal showed a second floor balcony and sliding door. This was removed as part of the applicants attempt to address PD, PW and FD requests.

Attorney Katsiaticas discusses loading/unloading in his letter. As he notes, Site Plan Review Criteria #5 requires that "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." He recommends the PB attach a condition which is identified in the conditions below (excluding delivery "made only by forklift" language)

Important Note: if a final ruling is not made at the April meeting the PB must make a final ruling at the May meeting (30 days after the public hearing or 60 days after determination of completeness).

#### **RECOMMENDATIONS:**

Before the PB begins final review, the Board should hear public hearing comments and rule on the waivers. The PB may find additional time is needed due to public comment and/or because the waiver requests require additional information. If the waivers are not granted or further info is needed we recommend the PB does not move forward with final ruling at the April meeting.

If the PB decides to approve the waivers and feels comfortable moving to final ruling the PB should discuss the 3 remaining primary concerns (in staff's opinion) as well as overall conformance of the proposal with the Site Plan requirements and Review Criteria. Something to remember, if a PB member determines the proposal cannot be approved, that determination should be based on the application materials/submissions and responses in the application documentation nonconformance with one or more of the Site Plan Review Criteria.



If the PB votes to approve the waivers and overall Site Plan Review Criteria, we recommend the following minimum conditions:

Conditions:

1. Delivery of merchandise to the Property and building shall not be made by vehicles parked on Kinney Avenue or East Grand Ave.
2. The stockroom use on the second floor is limited to an accessory use to the permitted retail use of the Property – it is limited to the storage of merchandise only for retail sale on the Property. No merchandise shall be stored or stocked on the second floor for retail sale off or outside of the Property and no warehouse storage use shall be conducted on the second floor.
3. The structure shall comply with Maine Department of Environmental Protection Coastal Sand Dune Regulations.

**BACKGROUND (MARCH):**

At the February meeting the PB decided 3 additional items must be submitted before the Board can determine the application complete. The three items:

1. Formal waiver requests
2. Large set of building plans
3. Detailed loading/unloading written plan

All items were received and in your March packet. Also, an updated site plan is included in the large building plan set (see sheet 8). The updated site plan shows the proposed building footprints, including overhangs. This accurately reflects the footprint shown on the building plans. One possible problem is the updated plan is not signed and sealed by a land surveyor; although, it uses the boundary survey information shown on the previously submitted site plan which was prepared by a licensed land surveyor.

At this time the applicant has submitted all requested documentation; therefore, we recommend the PB determine the application complete, schedule at site walk and public hearing, and conduct final review which will include a vote on waivers. Remember, a determination of completeness is not ruling on how the submissions comply with the site plan standards, it's a determination that the PB has all the info needed to make a fair and informed decision. Determination of compliance will take place during final ruling.

Police Chief Dana Kelley provided comment on the revised delivery plan. Chief Kelley's comments:

Jeffrey, I am writing to follow up on our conversation last week concerning Mr. Harrisburg's expansion plan for 9 East Grand Avenue. As we discussed, I am not opposed to Mr. Harrisburg's proposal and agree that we should work with Mr. Harrisburg to ensure that he is able to receive deliveries, but at the same time, be mindful of any public safety concerns that his deliveries may caused in the past. As you know, Mr. Harrisburg agreed, a few years ago, that if we designated a loading zone on Harrisburg Street, that he would make sure that all of his deliveries were received there, and that he would then deliver his goods to the individual stores by fork lift. He agreed that he would not receive or send out any deliveries using Kinney Avenue. As mentioned in a prior e-mail, we have, in the past, received numerous complaints from abutters of his properties complaining that delivery trucks had routinely blocked access to Kinney Avenue, and that the stacking of many boxes on the sidewalk impeded the safe passage of pedestrians. Attorney Weinstein states in his supplemental submission to the planning board dated 02-06-19, that Mr. Harrisburg will comply with the current practice of receiving deliveries on Harrisburg Street, fork lift the items to his Kinney Avenue parking lot, and deliver from there. Attorney Weinstein also noted that, deliveries would be occurring primarily before 7AM, and shouldn't take more than an hour to complete. If this is truly the case, I wonder if imposing a delivery time of no later than 8 AM would be too restrictive? A restriction would ensure that most of his deliveries would be complete before foot and vehicular traffic start to increase. Just a thought. If Mr. Harrisburg continues to comply with the loading and unloading

arrangements as he has in the past, I would be fine with his proposal, as long as large numbers of boxes are not stacked on public sidewalks while waiting to be delivered, and that no vehicles will be loading or unloading from Kinney Avenue. Thanks.

**RECOMMENDATION:**

Staff recommends the PB determine the application complete, schedule a site walk and public hearing. Also, we recommend the applicant and PB consider Chief Kelley’s comments during final review

*Recommended Motion:* I will make a motion to make a determination of completeness for the second floor addition to an existing structure to be used for Retail/Stockroom purposes at 9 East Grand Avenue

*Recommended Motion:* I will make a motion to schedule a Site Walk for April 4, 2019

*Recommended Motion:* I will make a motion to schedule a Public Hearing for April 11, 2019

**BACKGROUND (FEBRUARY):**

This proposal was on the December 2018 agenda and tabled. Pages 15 – 21 (ending at “2017 Background”) includes info most applicable to your Feb 2019 review. The last time the PB conducted a thorough review was 2017. This memo picks up where the proposal was left during 2017 and offers 2019 background and follow-up.

**BACKGROUND (2019):**

As some of you may recall, this proposal was in front of the PB during 2017. After two 30 day extensions the proposal was formally withdrawn by the applicant at the October 2017 meeting. The application was withdrawn because information missing from the record jeopardized a favorable vote. So, the applicant decided the cleanest way to move forward was to withdraw and submit a new application that conforms to the submission requirements and site plan review standards.

The 2018/2019 submission includes a new application, responses to the Site Plan Review Criteria, and revised building plans. The most significant change is the proposed 2<sup>nd</sup> floor platform/balcony and doors facing Kinney Ave. are removed. This is a significant change because of the loading/unloading concerns at this location. Also the roof pitch has been reduced so building height is now under 35’.

As stated above, the application was withdrawn because information was missing. This information was associated with the following items: overhang and balcony property line encroachment, building construction interference with adjacent property, loading/unloading plans, DEP permitting, waiver requests, and submitted site plan. As you’ll see below, staff believes some questions have been answered or are close to being answered and some remain.

This is important because the questioned items relate to the proposals conformance with the 9 Site Plan Criteria for Approval, which is what the PB use to determine if a project is approved or denied. The criteria most relevant to the questioned items are: 1 (conformance with Site Plan and other zoning requirements); 2 (has or will receive all state and federal permits); 5 (adverse impacts to pedestrian and vehicular traffic); 7 (create nuisances that will cause adverse impacts). An example, the PB could find the applicants submission does not conform with Site Plan Criteria for Approval (d) (1) because the plans submitted to not conform with the Plenary Site Plan Review Application Requirements 78-215 (c) (3) a, g, i, n. Another example, the proposed location for unloading/loading into the building will create an adverse off-site impact because the proposed method will create a potential dangerous condition to pedestrian traffic on the sidewalk; therefore, we find the proposal does not conform to Criteria for Approval (d) (5).

**2017 OUTSTANDING ITEM RECOMMENDED CHANGES AND 2019 FOLLOW-UP**

The following items were identified as the primary outstanding matters towards the end of the PB’s 2017 review. At that time the proposal was close to a conclusion before being withdrawn. This left these items as open and in need of further information. Below are comments on each outstanding item and a 2019 follow-up.

**1. Overhang and balcony property line encroachment.** Change building plans to show the roof overhang and balcony facing Kinney Ave do not extend beyond the Harrisburg property line.

2019 Follow-Up: The building plans have been changed and the balcony has been removed. Regarding the roof overhang, this may now conform but without a site plan (not submitted with the 2018/19 application) we can't conclude this is so. We have several site plans on file but they may have changed as a result of the building plan adjustments. We ask the applicant to submit a site plan that accurately shows the new proposal (the applicant states a site plan is being prepared and will be submitted prior to the next meeting). It would be helpful if the site plan showed the proposed building distance to the property lines.

**2. Building construction.** Provide written construction plan including how building will be constructed without use of the abutting property (Richards Apartments LLC). Abutter and PB members questioned how the building will be constructed without use of adjacent properties for staging, etc. The applicant states this can be done without use of "Richard's Apartments" property but they will most likely need to place temporary staging on public property. Temporary use of public property for staging, etc. for construction projects may be ok but we recommend the applicant discuss with public works, fire, police, and codes just to be sure.

2019 Follow-Up: Building construction has been a particular concern of an abutter. The PB has concerns too. During 2017, the applicant stated construction methodology indicates construction can take place on-site but will also require the temporary closing of the bottom of Kinney Ave. The applicant feels the abutter claims are her own opinion and without justification or basis. The applicant states no use or encroachment of the neighbor's property will be required or used at any time. Also, according to the applicant, the question of trespass on private property does not have bearing on the PB's decision. I expect this concern will come up again so the PB should think about this.

**3. Loading and unloading (See Katsiaticas memo #3).** Provide written loading/unloading plan. Recommend plan consider the bullets below.

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

- What is the primary delivery truck (e.g., box truck, pickup, larger truck)?
- When will the primary delivery truck arrive at the initial delivery point and when will product from delivery truck be transported to 9 E. Grand (e.g., morning, afternoon, evening, time frame)? I recommend you be as specific as possible (between 6 AM and 7 AM) and try to keep deliveries at times when there is minimal pedestrian and vehicular traffic.
- How often will deliveries take place- how many times per day, week or month (e.g., once each week)?
- How long will it take to unload the primary delivery truck (e.g., 20 minutes)?
- How much time will it take to deliver the product from the initial delivery point to 9 E. Grand (e.g., 20 minutes)?
- Once the product arrives at 9 E. Grand, how long will it take to unload into the building (e.g., 20 minutes)?
- Where will initial delivery take place (e.g., Harrisburg St.)?
- How will product be transported (e.g., hand carry, fork truck) from initial delivery point to 9 E. Grand?

- Where will product be delivered into the 9 E. Grand building?
- How will product be delivered into the 9 E. Grand building?
- What safety measures will be in place to reduce conflicts, damage or harm to pedestrians and vehicles?
- Once product arrives at 9 E. Grand will it be unloaded directly into the building? Will it temporarily sit on the sidewalk or somewhere else nearby unloaded into the building?

2019 Follow-Up: One of the primary concerns during prior reviews was the use of the proposed balcony and doors on the 2<sup>nd</sup> floor (facing Kinney Ave.) as a loading area/unloading area. To address these concerns the applicant provided a detailed loading and unloading plan which was helpful. Staff relies on our experts comments, Police and Fire (see Department Comments p. 21), for this proposal because they have the most experience with these matters. As you'll see both PD and FD had concerns- mostly with the originally proposed loading/unloading location- the balcony on the 2<sup>nd</sup> floor. The balcony and doors have been removed so this should resolve that problem. Also, the applicant's revised submission states no second floor loading will be undertaken. The applicants 1/25/2019 letter discusses delivery in some detail and attempt to address the PD/FD concerns and comments in the bullets above. The PB should determine if the applicant adequately addressed loading/unloading concerns and if not, identify what needs to be addressed.

**4. Warehousing (See Katsiaficas memo, 1 & 2).** Provide written response explaining why this proposal is not defined as a Warehouse Storage and Wholesaler but conforms to definition of Retail.

*Warehouse storage* means a use engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment, but excluding bulk storage of materials that are inflammable or explosive or that create hazardous or commonly recognized offensive conditions. (OOB Ch. 78, Art. I)

*Wholesale*. The sale of goods or commodities usu. For resale by a retailer, as opposed to a sale to the ultimate consumer. (Black's Law Dictionary, Abridged Seventh Edition, 2000)

*Retail* means sale to the ultimate consumer for direct consumption and not for resale. (OOB Ch. 78, Art. I)

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

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

As you can see, the applicant intends to store product with a majority of the products to be used for the proposed site. The Note the Warehouse Storage definition states "a use engaged in storage, wholesale, and distribution." So, to be considered a Warehouse Storage or possibly a Warehouse use must the use engage in all three- storage, wholesale and distribution? Or will engaging in one of the three qualify a use as Warehouse Storage? Without definitions or performance standards for Storage and Warehousing the only ordinance related term we have is Warehouse Storage. One possible approach to help us rule on this is to ask the applicant to provide evidence that the proposed use does not meet the Warehouse Storage definition. The PB could apply a condition associated with this if approved. Also, this could be tied to occupancy permits if it remains a question.

2019 Follow-Up: Warehousing was another significant concern during the 2017 review. During 2017, the applicant stated there will not be wholesaling any items from the second floor proposed storage and retail space, nothing will be sold wholesale and distributed from this location. Some items will be dispersed to abutting stores owned by the applicant and the act of moving the product from store to store does not constitute warehousing or distribution. The 1/25/2019 letter states no wholesale distribution of manufactured products will occur at any time from this location submission has little mention of this- response to SPR review criteria #5 states the second floor will be used for stockroom and retail purposes.

A few questions for the applicant and PB- what chance does a product that was placed in an area designated as stockroom in one location become a product that is dispersed to an abutting store (or floor within the same building) and then becomes a wholesaled item at the new location? How could this even be monitored by town staff? Also, exactly what is a stockroom? Note the applicant's previous comments concerning this is that warehousing on the first floor and basement are grandfathered according to the legal opinion we received from attorney Jim Katsiaticas, who was assisting the PB during 2017. I'm certainly not an attorney but when I read (Katsiaticas Memo, p 3):

3. To the extent that stockroom or storage of merchandise on the existing first floor of the Property for off-Property retail sale is a lawful nonconforming use because it was a use of land "existing" at the effective date of adoption or amendment of" the Ordinance, that use of the first floor may continue, but cannot be expanded to the proposed second floor.

I can see how the applicant comes to his interpretation. What I don't see is the above stating it absolutely is a lawful nonconforming use, it says to the extent that it is which leaves me to think this is still an open, unresolved matter. Regarding storage on the proposed second floor, I believe the Katsiaticas is clear (p 2): "Any use of the proposed second floor to store or stock merchandise for sale, wholesale or retail, that would occur **off** the Property, is not permitted."

Again, this was a significant concern during 2017 and remains an item that needs to be discussed. The 1/25/2019 letter states the location will be used for stock and retail sales for this location. I feel comfortable stating if the second floor is used for retail and storage accessory to only that 9 East grand Ave's retail operation, this proposal would be fine.

**5. DEP Permitting.** Update PB on status of DEP permit. This proposal requires DEP permitting because it's in the rear coastal dune. The applicant is in the process of and may have secured applicable DEP permits. If the applicant has not secured DEP approval, should the PB wait until it's approved or attach a condition that requires the applicant to secure DEP approvals before construction begins.

2019 Follow-Up: According to the applicant, the amended building plans show the building height has been reduced to 34'10". A building may do a vertical expansion under the 480-Q minor expansion in a coastal sand dune as long as the proposed building does not expand above the DEP's 35' standard. We received confirmation of this standard from DEP. As far as I'm aware, if the building is under 35' the minor exemption kicks in and a sand dune permit is not required.

**6. Waiver request and July 2017 Plot Plan review.** Amend plan to include items identified below or provide a written waiver request and justification. Below is a review of the July 2017 Harrisburg Property Plot Plan and Site Plan Application Requirements (78-215) for waiver request purposes (staff comments in *italics*).

78-215 (Site Plan Ordinance)

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

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

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

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

*\*The July 2017 site plan is not a class 1 property boundary survey (see note 8 on the plan). The applicant can either get a class 1 survey prepared or seek a waiver of the class 1 survey requirement and argue the survey provided has been signed and sealed by a professional land surveyor.*

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

*\*Location of existing and proposed structures, etc. Does the plan show all existing and proposed structures, site features and site improvements? The only items I can think of it does not show the proposed overhangs and second floor platforms. These items should be shown on the plan because they are part of the proposed structure. A waiver can be requested but since these building elements are part of the proposal I expect they will be difficult to waive.*

g. The dimensions and layout of all building and zoning setback lines.

*The site plan shows existing building setbacks but building plans show proposed overhangs and platforms that may change these setbacks. If the proposal continues with proposed overhangs or platforms that extend towards property boundaries (beyond the existing building walls) then this must be shown on the plan, including the proposed setbacks. A waiver is not necessary if the setbacks shown on the plan are not changing. A waiver can be requested but I believe this would be a hard one for the PB to waive.*

h. Delineation of all existing and proposed public and private easements on or directly adjacent to the property.

*The plan does not show existing public and private easements on or directly adjacent to the property. Perhaps because they do not exist. Did the surveyor consider this when preparing the plan? A waiver is not necessary if they do not exist.*

i. Location, dimensions, and layout of all existing and proposed built elements, including buildings and structures, parking areas, driveways, town/state roads, sidewalks, fences, walls, steps, piers and docks, patios, swimming pools, and signage.

*See "a" and "g" above. The primary question- does the plan accurately represent what's proposed? If not, I highly recommend the plan show this. This will be difficult to waive.*

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

*Aerial photo does not show drainage facilities existing. If not proposed or needed a waiver is not needed.*

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

*Location and type of fixture included and approved as part of the Design Review proposal. Photometric data was not included but still approved by DRC. Applicant can ask the PB to accept lighting included with the DRC submission as part of the site plan record and request they waive the photometric data.*

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

*If this proposal is not disturbing soil than no waiver is required. If it is not disturbing soil, please state this but do not include in waiver requests.*

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

*Building plans were submitted that include the above info. One problem is the overhangs and platform shown on the plans appear to extend beyond the property line. The plans that show this should be amended. In my opinion, a waiver is not needed for this even if the plans are not amended because plans have been submitted. But, the building plans show something the PB can't approve (platform over the ROW) and an encroachment in the setback that is not shown on the site plan. So, it's important that this is sorted out. Either continue with the submitted plans, and possibly risk denial, or amend the plans so the platform does not hang over the ROW.*

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

*Are new signs proposed? Based on the DRC submission it appears they are not. If new signs are not proposed a waiver is not necessary.*

2019 Follow-Up: The comments above were based on the July 2017 Plot Plan. A site plan or plot plan was not included with the 2019 submission at the time of writing this memo. If the applicant wants to continue with the July 2017 Plot Plan, it appears waivers of the following Site Plan Requirements are needed in order for the PB to approve this project:

1. 78-215 (3) a. The portion that reads: Property boundary survey class 1, signed and sealed by a state-licensed land surveyor. Note: a plan was submitted but it is not sealed and states no boundary survey for this parcel has been performed.
2. 78-215 (3) a. The portion that reads: topographic elevations at a contour interval of no more than two feet.
3. 78-215 (3) a. The portion that reads: location and elevation of all existing and proposed structures. Note: The existing structure is shown but does not include an elevation. Regarding the proposed structure, it may be built in the same footprint but the overhangs will reduce the identified distance to property lines by 1' so the distances shown on the plan are not accurate.
4. 78-215 (3) g. The dimensions and layout of all building and zoning setback lines.
5. 78-215 (3) i. Location, dimensions, and layout of all existing and proposed built elements, including buildings and structures.
6. 78-215 (3) n. Photometric data of existing and proposed exterior lighting

The applicant states a new plan is in the works- perhaps the new plan will address some of the items mentioned above and as a result not require waivers. But we will not know that until the plan is submitted and staff has a chance to review. If the applicant continues with the 2017 Plot Plan he will need to submit a written request for each Site Plan Requirement they would like waived. Remember- in order to grant a waiver the PB must determine “The required application submission will not yield any useful information given the nature and scope of the proposed activity or the existing character of the site.” The waiver matter remains and should be resolved before the PB determines the application complete.

### **RECOMMENDATIONS (2019)**

At this time staff feels the application is not complete because an updated site plan, waiver requests, and building overhang have not been addressed and/or submitted. These three items are critical pieces of the proposal that are necessary for the PB to properly and fairly evaluate the proposal.

The applicant addressed concerns about building construction, loading/unloading, warehousing, and DEP permitting. Regarding loading/unloading, ideally the applicant should submit a plan that specifically addresses each bullet under #3, above (pgs. 16 and 17). Regarding warehousing (#4, p 17), the applicant provides a response but is this response enough? Perhaps a condition is appropriate or some other kind of assurance will be necessary. Regarding DEP permitting, the applicant states and building plans show the proposal will not exceed 35’ in height which meets the DEP coastal dune minor expansion standard; therefore, does not require a permit. The proposed height at 34’10” is pretty close to 35’ so the applicant and builder will need to be very careful that this height is not exceeded.

A final note, a determination of completeness does not mean the PB agrees with what’s been submit. It means that the PB has all the info it needs to conduct a proper final review. For example, some may not agree with the response to the loading/unloading issue but because the applicant submitted a response, the PB can at least evaluate. Although, the determination of completeness often sets the direction of the final vote so it is important the applicant understands that submitting all the info the PB needs and that it appears they support is a solid step towards securing a favorable decision.

### **2017 BACKGROUND**

#### **DEPARTMENT COMMENTS (AUGUST 2017):**

PD:

In a follow up to my earlier comments regarding Mr. Harrisburg’s proposed expansion of property he owns at 9 East Grand Ave., I have reviewed the correspondence sent to Department Heads and the Planning Board, by Attorney Neal Weinstein, on 07-24, 2017, that addresses concerns raised by staff. It seems that each response has a qualifier attached that would suggest occasional noncompliance, which appears to be anything but a commitment to adherence. For example, in answer number three, is there any such thing as being, “grandfathered” without restrictions when it comes to loading and unloading? Even if warehousing is grandfathered, would it include rights to load and unload as you please? In 3A, he states that, there will be no delivery vehicles on site, (there can’t be anyway because they have no off street parking for 9 East Grand Avenue) and none will make deliveries to the building for second floor storage and retail. If they are making deliveries to the first floor, how is anyone supposed to know which floor is getting the delivery? If the owner’s pickup truck and box van are used, where will they park to deliver? There are no loading zones on Kinney Avenue near 9 East Grand Avenue, and I will not authorize one because of complaints I have received regarding congestion at that intersection. Two years ago, Mr., Harrisburg committed to me that if I authorized a loading zone on Harrisburg St. he would not use trucks to deliver on Kinney Avenue but would bring it there by forklift instead. Why can’t he do that for all deliveries to 9 East Grand Avenue and eliminate any confusion? This agreement was reached in response to complaints received about delivery trucks causing congestion at the intersection of Kinney Avenue and East Grand Avenue. The objective was to eliminate Kinney Avenue deliveries by truck. If they are suggesting anything that needs to be delivered to the first floor and basement will be by truck, and anything for the second floor will be by fork lift, that makes no sense. I would urge the Planning Board to require all deliveries to that location be made by fork lift. I understand that most businesses in the down town area do not have off street parking, and as a result have to receive deliveries from adjacent



roadways. We are very liberal when it comes to allowing business owners to receive their deliveries, Mr. Harrisburg included. However, there are some locations where allowing deliveries to be made creates too much of a safety concern. I would prefer that any delivery necessary to 9 East Grand Avenue, be made from East Grand Avenue and not Kinney Avenue, unless it is transported there by forklift from Harrisburg Street. I also have a concern with a forklift being used to hoist boxes into a second floor door, over a public sidewalk. Mr. Harrisburg's response is that a supervisor would be present when this takes place. Isn't that an acknowledgement that there might be some danger involved? It's bad enough to block the sidewalk with boxes, never mind hoisting boxes two stories. I would suggest that they be required to carry them inside and bring them to the second floor by hand.

I understand that Mr. Weinstein's opinion is Mr. Harrisburg is somehow "grandfathered" when it comes to how and where he receives deliveries at 9 East Grand Avenue. I do not dispute that he needs to have and should be allowed to receive deliveries to his businesses. However, Because of complaints about congestion and traffic hazards at the intersection of Kinney Avenue and East Grand Avenue (which I have seen myself), I will not authorize a loading zone adjacent to 9 East Grand Avenue on Kinney Avenue, and will not allow deliveries to be made to that property that require illegal parking on Kinney Avenue. Alternatively, I will allow deliveries to be made from the East Grand Avenue side as we do for all other businesses.

FD:

In regards to 9 East Grand Ave, at no time can Kinney Ave be blocked off to prevent emergency apparatus reaching the other structures beyond the 9 East Grand property.

### **BACKGROUND (JULY MEETING 2017):**

The primary purpose of the July meeting is to bring forward remaining questions and comments so to allow the applicant prepare to address for final plan review/ruling which can be scheduled for August. Questions include building construction, loading/unloading, warehousing/storage, overhang and platform encroachment, lighting, DEP permitting, and waivers. Attorney Jim Katsiaficas will help advise the PB. Included in this month's packet is a memo from Attorney Katsiaficas which comments on the proposed expansion, proposed stockroom use, and loading/unloading of merchandise.

Overhang and platform encroachment. One concern discussed at previous meetings was the proposed 2<sup>nd</sup> floor platform appears to extend beyond Harrisburg's property lines and hang over public property. After review of the July 2017 Plot Plan we believe this is true. We're not aware of an OOB ordinance standard that would allow the PB to authorize this; therefore, we recommend the building plans change to show the overhang and platform do not extend beyond the Harrisburg property line.

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

Loading and unloading (See Katsiaficas memo #3). 78-1592 states "all loading/unloading activities shall be conducted off public streets and private ways...in urbanized sections of town, where off-street loading facilities are impracticable, loading activities shall occur only in loading zones designated by the police chief." There are other non-zoning standards that may have some relation to loading/unloading including: shall not drive within any sidewalk except at a permanent or temporary driveway (54-109) and no person shall stop, stand or park a vehicle on a sidewalk except to avoid traffic conflicts or in compliance with directions from a police officer, other authorized person, or traffic control device (54-186). The applicant states trucks will be unloaded on Harrisburg St. (where unloading/loading zones exist) and product will be delivered by forklift. It appears the primary loading area will be off Kinney Ave. To assist the applicant with a loading/unloading plan, we recommended development of a plan that considers the following:

- What is the primary delivery truck (e.g., box truck, pickup, larger truck)?
- When will the primary delivery truck arrive at the initial delivery point and when will product from delivery truck be transported to 9 E. Grand (e.g., morning, afternoon, evening, time frame)? I recommend you be as specific as possible (between 6 AM and 7 AM) and try to keep deliveries at times when there is minimal pedestrian and vehicular traffic.
- How often will deliveries take place- how many times per day, week or month (e.g., once each week)?
- How long will it take to unload the primary delivery truck (e.g., 20 minutes)?
- How much time will it take to deliver the product from the initial delivery point to 9 E. Grand (e.g., 20 minutes)?
- Once the product arrives at 9 E. Grand, how long will it take to unload into the building (e.g., 20 minutes)?
- Where will initial delivery take place (e.g., Harrisburg St.)?
- How will product be transported (e.g., hand carry, fork truck) from initial delivery point to 9 E. Grand?
- Where will product be delivered into the 9 E. Grand building?
- How will product be delivered into the 9 E. Grand building?
- What safety measures will be in place to reduce conflicts, damage or harm to pedestrians and vehicles?
- Once product arrives at 9 E. Grand will it be unloaded directly into the building? Will it temporarily sit on the sidewalk or somewhere else nearby unloaded into the building?

Warehousing (See Katsiaficas memo #1 & 2). A question that consistently comes up- will this proposal conduct warehousing or storage operations. OOB Ordinances do not define Warehousing but do define Warehouse Storage as “a use engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment, but excluding bulk storage of materials that are inflammable or explosive or that create hazardous or commonly recognized offensive conditions.” The term Storage does not have its own definition and is not identified as a land use. Warehousing is an identified land use allowed in some districts (not the DD1). Warehousing Storage is not identified as a land use. There is no performance standards specifically related to warehousing, warehousing storage or storage.

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

As you can see, the applicant intends to store product with a majority of the products to be used for the proposed site. The Note the Warehouse Storage definition states “a use engaged in storage, wholesale, and distribution.” So, to be considered a Warehouse Storage or possibly a Warehouse use must the use engage in all three- storage, wholesale and distribution? Or will engaging in one of the three qualify a use as Warehouse Storage? Or is this an “Oxford Comma” case? Without definitions or performance standards for Storage and Warehousing the only ordinance related term we have is Warehouse Storage. One possible approach to help us rule on this is to ask the applicant to provide evidence that the proposed use does not meet the Warehouse Storage definition. The PB could apply a condition associated with this if approved. Also, this could be tied to occupancy permits if it remains a question.

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

DEP Permitting. This proposal requires DEP permitting because it's in the rear coastal dune. The applicant is in the process of and may have secured applicable DEP permits. If the applicant has not secured DEP approval, should the PB wait until it's approved or attach a condition that requires the applicant to secure DEP approvals before construction begins.

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

### **78-215 (Site Plan Ordinance)**

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

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

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

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

**Done**

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

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

**\*The July 2017 site plan is not a class 1 property boundary survey (see note 8 on the plan). The applicant can either get a class 1 survey prepared or seek a waiver of the class 1 survey requirement and argue the survey provided has been signed and sealed by a professional land surveyor.**

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

**\*Location of existing and proposed structures, etc. Does the plan show all existing and proposed structures, site features and site improvements? The only items I can think of it does not show the proposed overhangs and second floor platforms. These items should be shown on the plan because they are part of the proposed structure. A waiver can be requested but since these building elements are part of the proposal I expect they will be difficult to waive.**

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

**Done**

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

**Done**

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

**Done**

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

**Done**

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

**Done**

g. The dimensions and layout of all building and zoning setback lines.

**The site plan shows existing building setbacks but building plans show proposed overhangs and platforms that may change these setbacks. If the proposal continues with proposed overhangs or platforms that extend towards property boundaries (beyond the existing building walls) then this must be shown on the plan, including the proposed setbacks. A waiver can be requested but I believe this would be a hard one for the PB to waive.**

h. Delineation of all existing and proposed public and private easements on or directly adjacent to the property.

**The plan does not show existing public and private easements on or directly adjacent to the property. Perhaps because they do not exist. Did the surveyor consider this when preparing the plan?**

i. Location, dimensions, and layout of all existing and proposed built elements, including buildings and structures, parking areas, driveways, town/state roads, sidewalks, fences, walls, steps, piers and docks, patios, swimming pools, and signage.

**See "a" and "g" above. The primary question- does the plan accurately represent what's proposed? If not, I highly recommend the plan show this. This will be difficult to waive.**

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

**I checked the aerial it appears none of these exist. You should be ok.**

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

**Done**

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

**Landscaping not proposed- Done**

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

**Aerial photo does not show drainage facilities existing. If not proposed or needed this is done**

n. Location, specification, height and photometric data of existing and proposed exterior lighting. **Location and type of fixture included and approved as part of the Design Review proposal. Photometric data was not included but still approved by DRC. Applicant can ask the PB to accept lighting included with the DRC submission as part of the site plan record and request they waive the photometric data.**

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

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

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

**No waiver required**

(5) Cost estimates for all proposed site improvements.

**No waiver required**

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

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

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

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

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

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

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

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

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

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

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

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

**DEPARTMENT COMMENTS (JULY 2017):**

PD:

Jeffrey, regarding the loading zones on Kinney Avenue, I am aware that at one time there were two signs posted on Kinney Avenue. In May of 1998, a sign was authorized by me in front of the Bernard house, located at 1 Kinney Avenue, and in 2009, I authorized a loading zone sign in front of 5 Kinney Avenue. There is no parking on either side of Kinney Avenue and as a result, guests arriving at the Bernard house and Richards apartments, were parking illegally while they were checking in. The owners of these two properties, requested the signs so that their guests would not be subject to parking tickets while they were checking in. I am not aware that there were or have been any issues with either sign. A couple of years ago, I received complaints from property owners that delivery trucks were creating significant traffic congestion at the intersection of Kinney Avenue and East Grand Avenue. The trucks, on most occasions, were delivering to property owned by Harold Harrisburg. After discussing this issue with Mr. Harrisburg, he agreed that if I gave him a loading zone sign on Harrisburg Street, he would load and unload his goods from there, and transport them by forklift to his various properties. This arrangement seemed like a reasonable compromise by Mr. Harrisburg and seemed to be working. I am not sure of the date, but I believe it was last Fall, I noticed a loading zone sign on a telephone pole, about 85 feet in from the intersection of East Grand Avenue and Kinney Avenue. It was not in the location that it had originally been authorized for, and did not have a parking space lined out on the pavement. Because Mr. Harrisburg had agreed that he did not need to load and unload there, and because of the complaints regarding traffic congestion, I asked Public Works remove the sign.

FD:

I would like to know if Mr. Harrisburg had his Plan Review with the State Fire Marshal yet.

**RECOMMENDATIONS (JULY 2017):** In order to prepare for final plan review, we recommend the following:

1. PB identify the outstanding items and request submission.
2. Applicant submit written response, amended plans and anything else needed to comply with PB's request.

**BACKGROUND (DECEMBER 2016 & MARCH 2017 MEETINGS):**

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

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

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

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

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

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

- a. Property boundary survey class 1, signed and sealed by a state-licensed land surveyor, showing bearings and distances of the subject property boundary, topographic elevations at a contour interval of no more than two feet, location and elevation of all existing and proposed structures, site features and site improvements.
- b. Information block containing location, address, map-block-lot number of subject property as recorded in the town assessor's office, name and address of the applicant and owner if different.
- c. Approval block providing space for the signatures of planning board members.
- d. The existing zone in which the property is located. If the property is divided by a zone line, the line shall be delineated and labeled on the site plan. *Shown*
- e. Map scale, north arrow (true north), and date the site plan was prepared including the date of any subsequent revisions made to the plan. *Shown*
- f. Identification and location of all abutters to the applicant's property. *Shown*
- g. The dimensions and layout of all building and zoning setback lines. *Note: the applicant indicates there will be no horizontal expansion of the building footprint. Also, nonresidential uses in the DDI have no setback requirement.*
- h. Delineation of all existing and proposed public and private easements on or directly adjacent to the property. *Note: review of the deed shows no public or private easements directly on property. We don't know if any exist directly adjacent to the property except the boundary survey shows the E. Grand and Kinney ROW. We recommend the applicant comment on this.*
- i. Location, dimensions, and layout of all existing and proposed built elements, including buildings and structures, parking areas, driveways, town/state roads, sidewalks, fences, walls, steps, piers and docks, patios, swimming pools, and signage. *Note: the boundary survey may show all existing and proposed build elements. We recommend the applicant comment on this.*

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

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

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

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

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

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

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

#### **DEPARTMENT COMMENTS (MARCH 2017)**

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

- Codes

I had a brief moment to look over the proposed addition to the Harrisburg building on East Grand.

I'm very pro building- especially in Commercial areas but there seems to be some unanswered issues with this proposal.

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

- As you know Warehousing is not a use allowed for this zone- Is the intent to have storage on the second floor-Is the storage solely for this shop or will it be dispersed from structure to structure as needed?

I believe we should resolve this issue once and for all before any approvals are granted. Regardless, isn't this considered an expansion of a non-conforming use at least?

- There is a conveyor system proposed ,why? Does it extend to the basement and the new floor as well?



- The wall facing away from East Grand is a sheer Blank Wall, (back)how is this going to be built without accessing from the abutting property? Is there anything in place that indicated that it will be allowed or can they work from the property lines? Will they be required to fence in the property line?
- I was informed that they intend to load merchandise from a forklift and put it into the second floor at Kinney Ave near the intersection.
- There appears to be a balcony with sliders in the Kinney Street side that would overhang the sidewalk what is the status of Kinney in Width and who owns the sidewalk?
- We have an ongoing issue with trash and debris from the existing business, how much more will be loaded to the existing systems? Currently the dumpsters in place are often overflowing and exposed. Maybe it's time for the owner to step up and have a better system in place. There should not be any outside storage of pallets scrap metals cardboards, plastics etc..... The current system is not adequate.
- Will any off-site improvements be required?

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

- PD

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

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

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

- **FD**

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

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

**ITEMS 2&6**

**Proposal:** Major Subdivision: 5 Unit Condominium Building  
**Action:** Preliminary Plan Review, Final Review  
**Owner:** SJ Peacock Builders  
**Location:** 21 Union Avenue, MBL: 315-15-3

<u>Major Subdivision: 21 Union</u>	<u>Project Status</u>
<i>Sketch Plan</i>	February
<i>Application Complete</i>	Complete in March
<i>Site Walk</i>	Scheduled for March
<i>Public Hearing</i>	Scheduled for March
<i>Final Ruling</i>	Pending

The PB reviewed the Preliminary Plan for 21 Union last month and made a Determination of Completeness. The PB also approved three waiver requests:

- (1) To reduce the total parking aisle width for 90 degree spots from 25 feet to 20 feet;
- (2) To eliminate the requirement for a curbed planting island between different parking orientations;
- (3) To reduce the number of parking spaces required from 10 to 8.

The purpose of the April meeting is to hold the site walk and Public Hearing and a make a ruling on the Preliminary and Final plan.

One of the issues discussed at the last meeting was snow removal. The Applicant has indicated that there is not enough space to designate snow storage locations. In significant events, the snow would need to be hauled away. They also discussed obtaining easements from the other owners of South Avenue to use the area for snow storage. In the new submission, the Applicant states *“if the owner is not able to get an easement from the neighbor to use as snow storage, a condition will be added to the condo documents to ensure that snow is removed from the site.”* Sec. 78-1543 of the ordinance requires snow removal be designated on site: *“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.”* Planning Staff recommends the Applicant submit a formal waiver request for the snow storage with a plan for how the snow will be handled off-site. The issue is moving responsibility of subdivision compliance to the condo owners. How can the PB rule that snow removal and storage is acceptable if they do not know exactly how it will be done and if it complies with applicable standards? Also, condo docs are usually not enforced by the town. Note the PD and PWD is questioning this too as they are concerned it will not work.

Another issue was the maneuverability of vehicles parked in the parking space adjacent to the dumpster. Planning Staff recommended the Applicant show how vehicles will maneuver into and out of this parking space with vehicles in the close-by parking spots. In the new submission, the Applicant states: *“the parking lot waivers that were presented were accepted by the Planning Board. Maneuvering around the parking lot won’t be perfect, but cars will be able to get in and out of the parking lot.”*

We received a comment from the Wastewater Director, Chris White on the ability to serve. He said that *“if this is an even swap I don’t have an issue. He just needs to fill out a sewer connection form.”*

Wright Pierce comments have been included in your packets for April. A highlight of the comments:

- With the reduction in the number of parking spaces, WP recommends the Applicant identify which space is associated with which unit.
- Unit 1B notes ADA accessibility but it does not appear that ADA parking spaces are proposed.
- Recommend requirements for parking, maneuvering and snow storage be included in the Condo documents so the owners are aware.

- Confirm there are currently no issues with stormwater discharge in the two locations – South Street easement and portion of Union Ave. Staff will check with DPW to see if there is ponding currently along the roadway.
- There are also several construction details that the Applicant should address before the start of construction.

**RECOMMENDATIONS:**

Planning Staff recommends the PB approve the Preliminary Plan with the following conditions:

1. Submit a formal waiver request from the on-site snow storage requirement (78-1543). Along with the Waiver request, Planning Staff recommends the Applicant submit a plan on how off-site snow storage will be handled.
2. Submit a plan for how to maneuver in the 2 parking spaces adjacent to the dumpster.
3. Submit the “Ability to Serve” letter from ME Water.
4. Address the Wright Pierce comments in the 4/1/19 memo.

Planning Staff recommends these items be addressed before making a ruling on the final plan.

*Recommended Motion:*

*I will make a motion to conditionally approve the Preliminary Plan to construct a 5 Unit Condominium Building at 21 Union Avenue, MBL: 315-15-3 contingent upon submission of the following:*

- *Submission of a formal waiver request from the on-site snow storage requirement with a plan on how off-site snow storage will be handled*
- *Submission of a plan on how vehicles will maneuver in the 2 parking spaces adjacent to the dumpster.*
- *Submission of an ability to serve letter from ME Water.*
- *Address the comments in the 4/1/19 Wright Pierce memo.*

**BACKGROUND (MARCH):**

The PB began reviewing this proposal last month as a sketch plan. The primary discussion was associated with the parking area in the vacant abandoned road next door and the location of the dumpster. As you recall, the area was a Town-owned road at one point that through time and law has been abandoned, however, it appears the Town still has an easement for public access. From our Town Attorney:

*In my view, based on a review of Attorney McGehee’s letter and our conversation, I agree that South Street is likely abandoned due to the Council’s 1983 vote to discontinue the road and the subsequent 30 years of non-action by the Town in not keeping the road passable, and thus any interests the Town had in the way likely passed to the abutting property owners to the center of the way. While there may be private easements remaining for lot owners in the original subdivision, that is a private matter in which the Town has no jurisdiction or authority.*

*There is a presumption, however, that after 1965 a municipality retains a public easement in the way upon discontinuance or a presumption of abandonment unless the municipality specifically states otherwise. It is not clear when exactly the way would have been presumed abandoned; if a public easement remains, abutters cannot legally bar public use of the road.*

*Further, the discontinuance statute (23 M.R.S. § 3028) states that while 30 years of not maintaining a road is prima facie evidence of abandonment, the statute anticipates that a determination of the municipal officers on whether a way has been abandoned is binding until a final determination has been made by a court, I understand that in this case the Town Council has neither made a determination of abandonment nor discontinuance. While there is thus likely a presumption of abandonment, only a court can make the final determination.*

*Given the lingering uncertainty, the Council may want to clear up the matter by either taking a vote to affirmatively determine that the way has been abandoned or to simply formally discontinue the way. Would there be any objections by the abutters to such an action? Further, the Planning Board could move forward but attach a condition of approval similar to other instances in which there may be some questions regarding claims on property.*

At the last PB meeting, we discussed a number of standards the proposal would have to meet, including: Parking, parking lot and site circulation standards, parking lot dimensions and layout, snow removal, landscaping and the potential for some parking waivers. A breakdown of each is discussed below:

**Sec. 78-1542. Parking Lot Dimensions and Layout.** For 90 degree standard parking spaces, the width of the parking lot aisle is required to be 25 feet. The proposal is 20 feet. The Applicant has requested a waiver for this (see below).

**Waiver Request**

**Ordinance Section**

**Section 78-1542 Parking Lot Dimensions and Layout:** (d) Multiple stall orientations. Parking stalls of differing orientations to the aisle shall be separated by a curbed planting island. Where two parking orientation layouts use the opposite sides of the same aisle, the larger aisle width dimension required under subsection (b) of this section shall prevail.

**Waiver Request**

To eliminate the requirement for a curbed planning island between different parking orientations.

**Explanation**

The lot configuration and stall and aisle dimension requirements make it impossible to provide any interior parking lot landscaping without further reducing the number or parking spots proposed.

Sec. 78-1542 also requires a curbed planted island between different parking lot orientations. In this case, it would include the parking spaces facing the building and the parking space adjacent to the dumpster. The Applicant claims there is not enough space for an island and is requesting a waiver from this.

**Waiver Request**

**Ordinance Section**

**Section 78-1542 Parking Lot Dimensions and Layout:** (b) Dimensions. The width of all parking lot aisles and the dimensional layout of parking areas shall conform to the minimum standards established in this subsection. Only one-way traffic shall be permitted for all parking aisles with a stall orientation of less than 90 degrees to the aisle. The minimum standards are as follows:

<i>Stall Orientation to Aisle</i>	<i>Stall Width</i>	<i>Stall Length</i>	<i>Aisle Width</i>	<i>Curb to Curb</i>	<i>Overlap to Overlap</i>
<i>90° standard</i>	<i>9' 0"</i>	<i>18' 0"</i>	<b>25'</b>	<i>61' 0"</i>	<i>61' 0"</i>

**Waiver Request**

To reduce the total parking aisle width to 20 feet from the required 25.

**Explanation**

The lot configuration will not allow for the incorporation of a 25-foot aisle behind the proposed 90-degree parking stalls proposed. There is no option to provide a one-way driveway. The driveway's entrance width of 20 feet, which meets the ordinance, allows for adequate two-way traffic from the site, and a 20-foot aisle width will provide adequate room for access in and out of the parking stalls.

**Sec. 78-1566 Parking Standards.** This discusses the required number of parking spaces which in this case is 10. The Applicant is proposing 8 parking spaces. They currently have 5 parking spaces. The Applicant is requesting a waiver to allow for the 8 parking spaces. Sec. 78-1568 of the ordinance discusses parking waivers. **Sec. 78-1568 Parking Waivers.** The PB may need to grant a waiver for the 2 parking spaces. (1) of this standard says “with respect to the number of parking spaces, the actual parking demand for the applicant’s proposal is less than required in Sec. 78-1566 and a reduction in the number of parking spaces will not create unsafe conditions for vehicles or pedestrians. Planning Staff recommends the applicant show how residents will be able to get out of the last parking space adjacent to the proposed dumpster.

**Sec. 78-1543 Snow Removal.** All parking lots need to provide a suitable on-site disposal area to accommodate plowed snowfall. Snow disposal areas shall not be located in designated pedestrian walks or pathways. The Applicant has

#### ***Waiver Request***

##### **Ordinance Section**

***Section 78-1566 Parking Standards:*** *Except where otherwise prescribed in this chapter, the minimum number of parking spaces required for specific land uses or combination of land uses within the town shall meet the following standards:*

*Single-family, two-family and multifamily: Two spaces per unit*

##### **Waiver Request**

To reduce the total parking required on the site from 10 to 8.

##### **Explanation**

The lot configuration and stall and aisle dimension requirements make it impossible to provide 10 parking spots.

The existing property only has room for 5 parking spots, and that is only achievable without any drive aisle. With the addition of the South Avenue property the lot can now provide 8 parking spots with a 20-foot side drive aisle, vastly improving the overall vehicular access to the site.

indicated that there is not enough space to designate snow storage locations and that in significant snow events the condo owners will need to make arrangements to have snow removed from the property or obtain easements from the other owners of South Avenue to be used for snow storage.

**Sec. 78-871(c) Parking.** The one standard that would apply to 21 Union is #2 that all off-street parking facilities accommodating four or more spaces shall be buffered from adjacent residential properties. The second part of this standard gets into screening from the street. Where the parking is not in the front yard and with the existence of the easement, it likely does not have to be screened from the street.

The Applicant has indicated that the parking lot will be buffered from the residential properties to the southwest by an existing stockade style fence and an existing large tree. A proposed split rail fence and new street tree will be installed between the parking lot and existing sidewalk along Union Avenue. No additional buffering or landscaping is proposed between the parking lot and the adjacent easement and railroad or within the proposed parking lot. Will the split rail fence and tree affect the site distance for the parking lot?

At the Development Review meeting on 2/27/19, Staff discussed acquiring the parking from the parking lot next door or somewhere else in order to meet the parking requirements. Staff discussed that there is a tradeoff here because the Town is getting a brand new structure, more tax revenue, addressing blight and the building already has five units with less parking than proposed. They’re adding more parking but keeping the same number of units.

Comments from Public Works Director:

*“My only concern is the parking situation. More importantly winter parking, and snow storage.*

*It does not seem to have enough snow storage. I understand that there are 5 units in the building now. Not all units have 2 vehicles or even 1 vehicle. Once this building is rebuilt and there are 5 condo units parking and snow plowing will be at a premium. I recommend that parking be held to the current level allowed by code. I also remind the board and the applicant that placing snow in the public right of way is against state law.”*

The Wright Pierce memo has been included in your packets for March. A couple of items to highlight

There is an existing concrete slab on the survey plan, the slab is located adjacent to the portable restrooms. What is the purpose of the slab and is the portion on the easement owned by the Applicant?

Submission of ability to serve letter from MaineWater, DPW and Wastewater(for water and sewer) and letter of financial capacity – did not see these in the submission materials.

Submission of building elevations and layout details.

Define limits of proposed pavement along the western side of the property.

The Applicant plans to reuse the existing utilities. WP recommends details for the reconstruction of the concrete sidewalk with associated granite curbing and restoration of Union Avenue be provided in the event excavation is required for utility connections.

Since the building is in close proximity to the sidewalk, WP recommends a note be added to the site plan detailing the limit of sidewalk restoration. WP also recommends the concrete sidewalk and associated granite curbing extent to the new proposed edge of pavement, with driveway tip-down detailed.

Provide specific details, including the addition of spot grades around the proposed parking lot.

Provide a stormwater narrative summarizing pre-development and post-development drainage patterns and a statement indicating that no existing BMPs or downstream receiving waterbodies will be impacted by this project.

## **RECOMMENDATIONS:**

Planning Staff recommends the PB:

- Rule on the three waiver requests: number of parking spaces, parking stall aisle dimension, requirement of a curbed planting island between different parking orientations.
- Discuss the staff and DPW comments pertaining to snow storage and the number of parking spaces.
- Does the PB have concerns with the proposed street tree and split rail fence on the corner of the parking lot blocking adequate site distance?
- How will a resident be able to get out of the parking space next to the proposed dumpster?
- Discuss WP comments mentioned above with Applicant:
  - Purpose/ownership of the concrete slab;
  - Ability to Serve letters from ME Water, DPW, Wastewater as well as a letter of financial capacity for the project.
  - Building elevations and layout details.
  - Define limits of proposed pavement along western side of property.
  - Sidewalk reconstruction along Union Avenue if excavation is needed.
  - Sidewalk extension to new proposed edge of pavement.

- Spot grades for proposed parking lot.
- Stormwater narrative.

We recommend you discuss these questions with the Applicant, make a ruling on the determination of completeness and schedule a Site Walk/Public Hearing for April. Note a determination of completeness simply means the PB has all of the materials necessary to adequately review and rule on a proposal.

*Recommended Motion: I will make a motion to determine the application complete for the construction of a 5 unit condominium building located at 21 Union Avenue, MBL: 315-15-3.*

*Recommended Motion: I will make a motion to schedule a site walk for Thursday, April 4, 2019 at 5:30PM and public hearing for April 14<sup>th</sup>.*

**BACKGROUND (FEBRUARY):**

This is a new proposal before the board for the tear down and rebuild of a multifamily structure on Union Avenue within the same footprint. The building currently has five units and the Applicant is proposing to construct a new building that will also contain 5 units. This is currently in sketch plan phase which gives the PB the opportunity to review and offer comments before the Applicant provides a formal submission.



The reason the proposal is before the board is because Subdivision law defines a subdivision as “division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period.” The definition of “new structure” includes any structure for which construction begins on or after 9/3/1988. Because the Applicant is proposing to tear down and rebuild the structure, it is considered a “new structure with 3 or more dwelling units” where it’s greater than 4 units, it falls under a Major Subdivision.

The Applicant is proposing to use half of South Street, which they refer to as a paper street, for parking. It is important to note that we already had a conversation about this with our Town Attorney. South Street is not technically a paper street, rather it is a road the Town essentially stopped maintaining. The Town attempted to discontinue the paper street but it was never completed and was therefore considered defective. The Town Attorney referred to this as “abandonment.” However, after 1965, if a road is abandoned, the Town automatically receives an easement in the road unless it is otherwise discontinued. Due to this “easement” our Attorney recommended that half of South Street not be used for any permanent structures, however, parking would be okay. It is important to point this out because you will note they are proposing a dumpster with fencing around it in the paper street area. We suspect they are going to have a hard time moving the dumpster and fence out of that area so it is something we are going to have to work through as the project moves forward.

This proposal is located in our NC-2 which has its own set of standards for building design, parking, signage and lighting. Many of these standards apply to nonresidential uses, however, there are some that may apply here.



**Sec. 78-871(b) Building Design.** These standards get into proportion of height and width, roof shape, scale (size and mass in relation to open space), façade treatment. Where this is a tear down and replacement in the same footprint, some of these standards won't be applicable and many won't be applicable until the building permit process.

**Sec. 78-871(c) Parking.** The one standard that would apply to 21 Union is #2 that all off-street parking facilities accommodating four or more spaces shall be buffered from adjacent residential properties. The second part of this standard gets into screening from the street. Where the parking is not in the front yard and with the existence of the easement, it likely does not have to be screened from the street.

**Sec. 78-871(e) Lighting.** Any freestanding site lighting cannot exceed the height of the principal building or 14 feet, whichever is less and must be shielded to prevent point source glare.

**Sec. 78-1491 Driveway Location and Spacing.** It looks like they meet this standard with the one driveway being adjacent to the proposed parking lot.

**Sec. 78-1492 Driveway Dimensions.** It is unclear what the dimensions are of the access stall. It is proposed to be a 2 way access stall and will need to have a minimum width of 20 feet and 22 feet maximum.

**Sec. 78-1541 Parking Lot and Site Circulation Standards.** They are proposing a 4 foot wide sidewalk adjacent to the parking area. It is important to note that the sidewalks need to be elevated a minimum of six inches above the street pavement at the gutterline and need to provide a minimum 4 foot wide travelway without obstruction.

**Sec. 78-1542 Parking Lot Dimensions and Layout.** The parking stalls are accessed from an off-street parking aisle and are 9x18. The Applicant should confirm that the aisle width is 25'. (c) of this standard addresses multiple stall orientations and says that "parking stalls of differing orientations to the aisle shall be separated by a curbed planting island. Where two parking orientation layouts use the opposite sides of the same aisle, the larger aisle width dimension required under subsection (b) of this section shall prevail. The PB should determine if the Applicant should be required to install a curbed planting island to meet (c) of this standard.

**Sec. 78-1543 Snow Removal.** These areas need to be shown on the plan.

**Sec. 78-1544 Landscaping.** This standard gets into screening, buffering and street trees. We recommend the Applicant submit a landscaping plan for the parking lot.

**Sec. 78-1566 Parking Standards.** This discusses the required number of parking spaces which in this case is 10. The Applicant is proposing 8 parking spaces. They currently have 5 parking spaces.

**Sec. 78-1568 Parking Waivers.** The PB may need to grant a waiver for the 2 parking spaces. (1) of this standard says "with respect to the number of parking spaces, the actual parking demand for the applicant's proposal is less than required in Sec. 78-1566 and a reduction in the number of parking spaces will not create unsafe conditions for vehicles or pedestrians.

#### **RECOMMENDATIONS:**

No decisions need to be made at this meeting. Planning Staff recommends the PB use the opportunity to discuss the proposal with the Applicant.

1. Is there an option for the Applicant to move the dumpster, if it's in lieu of a parking space would the PB be okay with that?
2. What buffering will there be for the parking lot?
3. What are the dimensions of the access stall?
4. How will they handle snow removal?

5. What sort of landscaping are they proposing?
6. Will the PB grant a waiver for the 2 parking spaces?

**ITEM 7**

**Proposal:** Minor Subdivision: 2 Duplex (4 residential units)  
**Action:** Determination of Completeness/Ruling on Preliminary Plan, Schedule Site Walk and Public Hearing  
**Owner:** Earle Enterprises, LLC  
**Location:** 4 Smithwheel Rd, MBL: 210-2-16; Zoning: R4

<u>Minor Subdivision: 4 Smithwheel</u>	<u>Project Status</u>
<i>Sketch Plan</i>	February
<i>Application Complete</i>	Recommended for April
<i>Site Walk</i>	Recommend Scheduling for May
<i>Public Hearing</i>	Recommend Scheduling for May
<i>Final Ruling</i>	Pending

The PB began reviewing this proposal in February as a sketch plan. The proposal is for the development of a minor subdivision (2 duplexes) for a total of four condominium dwelling units associated parking, driveway and infrastructure.

There is currently a single family dwelling on the lot with its own driveway, which will remain. The development is laid out to be separate from the single-family.

When the sketch plan was presented, Staff had concerns about the proposed driveway locations in terms of required driveway and intersection separation standards in the ordinance. Sec. 78-1568 (2) allows the PB to grant waivers of the 125’ driveway separation distance and 100’ from collector curbline as long as the applicant can show constraints of the site make compliance with design standards impracticable or technically unfeasible and modification will not create unsafe conditions for vehicles and pedestrians.

You will note in your materials that the Applicant is requesting two waivers:

- (1) To reduce the minimum driveway spacing on a 30MPH road from 125 feet to 90 feet.  
This allows the current driveway to the single family home to remain and the driveway serving the two duplexes to be located on Smithwheel Road.
- (2) To reduce the offset from intersections from 100 feet to 60 feet.  
This allows the proposed driveway to be placed closer to Ryefield Drive and for the Applicant to provide for adequate site distance.

*We anticipate two other waiver requests will be necessary.*

- The Applicant will need to request a third waiver from Sec. 78-1492 (Driveway Dimensions). For multifamily, 2-way drives, the Town requires a minimum 20-foot driveway width. The proposed driveway is currently 18-feet in width.
- The Applicant will also need to request a fourth waiver from Sec. 78-1542, parking lot dimensions and layout. The Town requires a 24 foot aisle width for 90 degree parking spaces. The Applicant is proposing 20 feet between the parking space adjacent to the Ervin Avenue duplex and the five proposed parking spaces.

In regard to the PB’s ruling on waivers, staff feels this should happen before a vote on the preliminary plan. The reason for this is there may be some objection to the waiver requests and if the waivers fail the proposal will need to be redesigned. See further discussion under Recommendations.

Planning Staff had a few questions for the PB when the proposal was brought forward as a sketch plan:

- How will the single-family work within the condo? Will it be included? If not how will common area, responsibilities (e.g., landscaping), utilities, etc. be divided so it is clear there is an ownership and responsibility separation?

- The Applicant has said that the existing house will remain on the property and will be part of the condo association that will be created.
- Recommend crosswalk extend from new driveway to sidewalk across Smithwheel.
  - This has been shown on the plan.
- Parking area screening and buffering from adjacent properties and public streets is required. There are no specific width requirements but the applicant should ensure there is adequate area to install buffering and screening- especially along the property lines shared with Royal Crest Condo's.
  - The Applicant has indicated that they will keep the existing trees, grassed areas and stockade fencing for landscaping. Looking at the online GIS this buffer appears to be adequate but Planning Staff recommends a “no cut buffer” be shown on the plan for construction purposes in the areas where existing trees are to remain. We recommend the PB check the buffer during the site walk to determine if what exist meets buffering and screening requirements.



- Ensure street trees along Smithwheel will be planted in accordance with applicable ordinance standards. Maintaining a green strip along Smithwheel will enhance aesthetics.
  - The Applicant has shown a proposed tree line along Smithwheel Road.
- Show snow storage location and describe plowing.
  - The Applicant has stated that there is plenty of room for snow storage on the site and this has been shown on the plan.
- Will trash removal include a dumpster? Where will the dumpster be located?
  - The Applicant has indicated that trash removal will be through public waste disposal services. It does not appear that a dumpster is proposed. Ch. 46, Solid Waste, Sec. 46-58 requires trash pick up to be private (because it's more than 4 units when you add the existing house) so the applicant will need to demonstrate how private waste will be handled.
- Exterior lighting location, fixture type and footcandles.
  - No lighting is proposed other than front/porch lights for each unit.

WP Comments in your packets from 4/2/19. The main concern was on the three driveway entrances proposed to the property and making sure the Applicant has looked at other options/opportunities to meet the Town's setback requirements. Some of these questions/thoughts include:

- Is there an opportunity to better the Ervin intersection and limit additional driveway cuts?
- Would it be feasible to use a shared driveway with the existing dwelling? A waiver may be required for the existing driveway opening along Smithwheel Road, which is 95 feet from the Ervin Road intersection.

In addition to the above suggestions, WP had additional considerations which we have broken out into categories:

**Parking/Driveway Area –**

- The PB may want to require this area be reviewed by a traffic engineer given the significant curb openings in the area.
- WP recommends the Applicant denote sight distances on the plans for each driveway location (existing and proposed).
- Discuss the property line, building location and parking layout associated with the neighboring Royal Crest Condominium.
- Identify restrictions on snow storage operations due to proposed infiltration trench.
- Discuss how vehicles will maneuver past the duplex on the Ervin Ave side.
- It may be helpful to run the driveway with AutoTurn to confirm access by fire vehicles.
- WP recommends a discussion between the Town and Applicant on the Ervin Avenue and Smithwheel Road radius which appears to encroach on the property.

**Sewer/Stormwater –**

- DPW may want to CCTV the existing sewer line to the one-story as a result of historic sewer issues at the property.
- Consider if the Applicant should connect to the manhole on Ervin Road for a direct connection and limit construction on Smithwheel. This needs to be confirmed with DPW.
- WP flagged to DPW that they are proposing the installation of a weir structure in Smithwheel. Cleaning may become the responsibility of Town and with the equipment, may be tough. Perhaps the weir should be located inside the property line? DPW needs to comment on this.
- Review components of the stormwater treatment via crushed stone infiltration system and roof edge drip lines.
- Review the Stormwater Management Plans and HydroCAD Calculations.

Planning Staff did not see any Condo Documents submitted, we recommend those be submitted for the next meeting. We also did not see responses to the 14 subdivision standards. The PB use the 14 standards to rule on the proposal so it is important that they are submitted before final ruling.

**RECOMMENDATIONS:**

As you most likely see from the comments above there are a number of outstanding items and issues that need to be submitted and resolved- more work needs to be done. Some of this work involves a PB visit to the site (site walk) so they can evaluate the existing buffer and proposed driveway locations. Other work is needed from the applicant that will require additional submissions (e.g., 14 subdivision review criteria responses, additional waiver request) and possibly plan changes (e.g. weir structure in Smithwheel relocation, relocation of access if waiver's not approved). So, The PB will need to decide if the proposal is ready for final ruling.

An important note about minor subdivisions, they only require pre-application/sketch plan review and final ruling. Site walks and preliminary plan review is not required. There is no specific "determination of completeness" (unlike conditional use and site plan) excepting a mention of "completed plan" which is tied to a final ruling time frame. Public hearings is only required if deemed necessary by the PB.

Although some of the typical procedures are not specifically required, the PB has the authority to require these procedures, where it deems it necessary for the protection of public health, safety, and welfare, that a minor subdivision comply with all or any of the requirements specified for major subdivisions. Staff feels a site walk and public hearing is necessary. A determination of completeness is important too and can replace the need for preliminary review.

First, if the PB deems necessary, staff recommends the PB schedule a site walk and public hearing.

*Motion: I will make a motion to schedule a Site Walk for 5/3/19 at 5:30PM and a Public Hearing for 5/9/19 at 6:30PM.*

Second, the PB should rule on the waivers and determine if preliminary plan review is necessary or if a determination of completeness can take its place.

If the PB determines preliminary plan review is necessary staff recommends the Board: 1. Rule on the waivers; 2. Make a determination of completeness; 3. Rule on preliminary plan. If the waivers are not approved we recommend the PB do not vote on the determination of completeness or preliminary plan because this will most likely result in a denial of the proposal during final ruling. Also, as we note above, two additional waivers may be needed. If the waivers are approved staff recommends the PB make a determination of completeness:

*Motion: I will make a motion to conditionally determine the application complete for the construction of two duplexes for a total of four new residential units at 4 Smithwheel Road, MBL: 210-2-16 in the R4 District contingent upon the submission of condo docs for the property, responses to the 14 Subdivision standard, a private waste collection plan, PB evaluation of existing buffer, response to Wright-Pierce letter dated 4/2/19, (and if necessary) submission of additional waiver requests.*

If a determination of completeness vote is successful the PB can vote on the preliminary plan:

*Motion: I will make a motion to conditionally approve the preliminary plan for the construction of two duplexes for a total of four new residential units at 4 Smithwheel Road, MBL: 210-2-16 in the R4 District contingent upon the submission of condo docs for the property, responses to the 14 Subdivision standard, a private waste collection plan, PB evaluation of existing buffer, response to Wright-Pierce letter dated 4/2/19, (and if necessary) submission of additional waiver requests.*

If the PB determines preliminary plan review is not necessary, staff recommends the PB make a determination of completeness. Approval of waivers is an important part of this proposal so it makes sense to vote on the waivers before a determination of completeness is made. If the waivers are not approved we recommend the PB does not vote on the determination of completeness because this will most likely result in a denial of the proposal during final ruling. Also, as we note above, two additional waivers may be needed. If the PB choose to make a determination of completeness staff recommends the following motion:

*Motion: I will make a motion to conditionally determine the application complete for the construction of two duplexes for a total of four new residential units at 4 Smithwheel Road, MBL: 210-2-16 in the R4 District contingent upon the submission of condo docs for the property, responses to the 14 Subdivision standard, a private waste collection plan, PB evaluation of existing buffer, response to Wright-Pierce letter dated 4/2/19 , (and if necessary) submission of additional waiver requests.*

#### **BACKGROUND (FEBRUARY):**

This proposal is for the development of a minor subdivision which includes the construction of 2 duplexes (4 dwelling units), parking area, driveway, and associated infrastructure. The proposal is a subdivision because it is the creation of 3 or more new dwelling units onto a single parcel of land within a 5 year period (note- subdivision definition includes more than creating lots). The proposal is a minor subdivision because it includes 4 or fewer new structures. This will be a condominium development.

Currently there is a single-family dwelling on this lot. The single-family has its own driveway which will not change. The duplexes will be on the same lot but with the development laid out so it is separate from the single-family. The lot is in the R4 district and all R4 zoning standards check out ok, including the density at 5,000 sq. ft./family unit.

February submission is a pre-application/sketch plan. PB primary responsibilities at the pre-app/sketch phase include:

1. Offer recommendations of what should be included in future submissions.
2. Schedule site inspection.
3. Determine if the sketch plan complies with the sketch plan standards in 74-122.

Regarding 2, as long as the owner is comfortable, individual PB members can drive-by and check out the site on times most convenient for them. Regarding 3, it is staff's opinion this proposal meets applicable sketch plan standards.

Regarding 1, staff offers the following comments and recommendations:

- Please review Wright-Pierce (WP) memo dated 4 Feb.
- How will the single-family work within the condo? Will it be included? If not how will common area, responsibilities (e.g., landscaping), utilities, etc. be divided so it is clear there is an ownership and responsibility separation?
- Regarding driveway locations (see WP memo), it will be difficult to locate a driveway on Smithwheel that meets the 125' driveway on same lot separation (78-1491 (e)) and the 100' separation between driveway and curblines of intersecting collector street, Ryefield (78-1491 (f)). It might be possible if the existing driveway is relocated or the proposed driveway comes off Ervin Lane, but, there still may be a problem. Also, it would probably be safer locating the driveway off Smithwheel so vehicles exiting the development can enter Smithwheel before the right/lift turn lanes leading to the Ocean Park Rd intersection. 78-1568 (2) allows the PB to grant waivers of the 125' driveway separation distance and 100' from collector curblines as long as the applicant can show constraints of the site make compliance with design standards impracticable or technically unfeasible and modification will not create unsafe conditions for vehicles and pedestrians. At this time staff will support a waiver.
- Recommend crosswalk extend from new driveway to sidewalk across Smithwheel.
- Parking area screening and buffering from adjacent properties and public streets is required. There are no specific width requirements but the applicant should ensure there is adequate area to install buffering and screening- especially along the property lines shared with Royal Crest Condo's.
- Show snow storage location and describe plowing. Note- snow cannot be piled in pedestrian walkways.
- Ensure street trees along Smithwheel exist or will be planted in accordance with applicable ordinance standards. Maintaining a green strip along Smithwheel will enhance aesthetics.
- Will trash removal include a dumpster? Where will the dumpster be located? Remember the dumpster must be screened on 3 sides.
- Exterior lighting location, fixture type and footcandles.
- Submit copy of condo docs.

#### **RECOMMENDATIONS (FEB):**

Staff recommends the PB offer recommendations of what should be included in future submissions and vote on the following motion:

Motion to classify the proposed subdivision located at 4 Smithwheel Rd as a Minor Subdivision.

**ITEMS 3&8**

**Proposal:** Ordinance Amendment: Allow Multi-Family Dwellings on Sidewalk Level  
**Action:** Discussion, Council Recommendation  
**Owner:** D.E.C Investments LLC  
**Location:** NC-3 District

<u>Ordinance Amendment: NC-3</u>	<u>Project Status</u>
<i>Introduction</i>	February
<i>Discussion/Workshop</i>	March
<i>Public Hearing</i>	Schedule for April
<i>Recommendation</i>	April

The Planning Board began discussing this ordinance amendment at the February and March meetings and scheduled a Public Hearing for the April meeting. There is nothing new in your packets for April.

**RECOMMENDATIONS:**

Planning Staff recommends the PB make a recommendation to the Town Council that they approve the ordinance amendment.

*Recommended Motion:*

*I will make a motion to recommend the Town Council approve the ordinance amendment to Sec. 78-869(b)(2) conditional uses in the NC-3 district by striking out the language “on any floor except at sidewalk level” thereby allowing multifamily dwellings on the sidewalk level as a Conditional Use in the NC-3 District.*

**BACKGROUND (MARCH):**

The PB began discussing this amendment at the February meeting and was in favor of allowing multifamily (residential) units on the first floor in the Washington Ave NC-3 District. The ordinance amendment is included in your packets. It is important to note that multifamily dwellings are still required to be reviewed by the PB as a Conditional Use so the PB will continue to have control over them. Also, this amendment will not change permitted and conditional uses- the NC-3 District will continue to allow the same commercial uses as it does now. The only change is this will allow multifamily units on the sidewalk level.

Planning Staff needed to find support for the ordinance change in our current comprehensive plan. This was a bit of a challenge because the plan is from 1993 but below are some sections that support this change:

Support in Comprehensive Plan:

- Section III (Inventories and Analyses), B, 1. Summary, Pg. III-5  
“Given this abundance of vacant housing, both now and in the foreseeable future, an affordable homeowner strategy in Old Orchard should probably concentrate on helping low and moderate income households buy into this stock, rather than on building new low cost housing elsewhere.”
- Section IV (Community Goals and Policies), B, Residential Development, Pg. IV-12  
Goal: Strengthen the Integrity of Old Orchard Beach neighborhoods  
Goal: Re-examine existing zoning regulations to consider the allowable mix of uses in residential neighborhoods and zoning boundaries.  
Goal: Promote a wide variety of housing opportunities to meet the needs of various types of households and various income levels.  
B.4. Property owners should be encouraged to upgrade structures and landscaping on their property...  
B.6. The Town should adopt mechanisms to foster construction of well planned, affordable housing developments, including...multifamily dwellings...



- The NC-3 is a designated “Growth Area”
- According to the NC District Implementation Policy Strategies, the NC district primary objective is to meet day-to-day convenience needs of nearby residents reducing the need for automobile. One could argue that allowing sidewalk level dwellings decrease the options of fulfilling this objective. Although, one could counter that land use in this particular NC District already changed and the day-to-day convenience needs are available within walking distance to nearby residents.

**RECOMMENDATIONS:**

Planning Staff recommends the PB schedule a Public Hearing for the April meeting.

*Recommended Motion:* I will make a motion to schedule a Public Hearing on April 11<sup>th</sup> at 6:30 PM to allow multi-family dwellings on the sidewalk level in the NC-3 District.

**BACKGROUND (FEBRUARY):**

This is a new proposal before the PB. The Applicant currently owns 20 Washington Avenue. They would like to convert the first floor of 20 Washington Avenue into a residence. The building currently contains 3 residential units and 2 commercial units, one being the laundromat. The adjacent vacant space has been vacant for several years and the Applicant claims there is not a market for commercial businesses in this area.



The way the current ordinance is written for the NC-3 District in which this is located, it does not allow for multifamily on the first floor. It was probably written this way several years ago when the Washington Ave neighborhood was a booming center of Town.

The PB recently reviewed a proposal for 22 Washington Ave to convert their first floor retail space into a residential unit in the same district. This was allowed because a residential unit already existed on the first floor next door to the commercial unit, allowing for an “expansion of the nonconforming use.” 20 Washington Ave does not already have a residential unit on the first floor, therefore they could not take advantage of the same standard.

Planning Staff recommended the Applicant conduct an informal “market study” to show that this area supports more residential-type uses as opposed to commercial uses. The materials in your packet are what they have submitted regarding the neighborhood.

**RECOMMENDATIONS (FEBRUARY):**

The purpose of this meeting is for the Planning Board to review and offer thoughts before the Applicant brings this forward as a formal ordinance amendment.

- What would the board like to see from the Applicant to support the ordinance change?
- Does the PB support residential units on the first floor in this district?

**ITEM 4&9**

**Proposal:** Ordinance Amendment: Chapter 78, Sec. 78-1272 in its entirety. Amend Accessory Dwelling Unit standards  
**Action:** Discussion, Council Recommendation  
**Applicant:** Town of Old Orchard Beach

<u>Ordinance Amendment: ADU</u>	<u>Project Status</u>
<i>Introduction</i>	February
<i>Discussion/Workshop</i>	March
<i>Public Hearing</i>	Scheduled in April
<i>Recommendation</i>	April

The Planning Board began discussing this ordinance amendment at the February and March meetings and scheduled a Public Hearing for the April meeting. There is nothing new in your packets for April.

**RECOMMENDATIONS:**

Planning Staff recommends the PB make a recommendation to the Town Council that they approve the ordinance amendment.

*Recommended Motion:*

*I will make a motion to recommend the Town Council approve the amendment to the Accessory Dwelling Unit Standards Chapter 78, Section 78-1272 in its entirety.*

**BACKGROUND (MARCH):**

The PB will begin formal consideration of the Accessory Dwelling Unit ordinance amendment this month, which includes scheduling a Public Hearing. Last month, the PB offered comments on a draft prepared by staff. Included in your packets this month is another draft addressing those comments. Below are the changes to address the PB comments:

- The PB wanted to reduce the floor area requirement from 500 square feet. Staff recommended this be confirmed with Code Enforcement to ensure the new minimum would meet applicable building codes. Our Code Enforcement officer said: “*IRC states habitable rooms need to be a minimum of 70 sqft (bedroom and living room) with do dimension less than 7'. Rooms with a sloped ceiling areas with a ceiling height of 5' and less do not count to the 70 sqft. Ceiling height needs to be 7' in habitable room and 6' 8" in bathrooms. The town has an ordinance that says the kitchen has to be 60 sqft. Add a bathroom and you are easily at 250 sqft. In my opinion I would reduce the minimum below 300sqft to eliminate any confusion.*” Planning Staff reduced the minimum size to 300 square feet per his recommendation (**Performance Standard F**).
- The PB wanted to clarify **Performance Standard G** regarding off-street parking. Planning Staff removed the part about any “new” driveway and left it as any expanded driveway entrance.
- Planning Staff changed “Season” to “Seasonal Use” to be consistent with the rest of the ordinance language (**Definitions, D**).

Planning Staff has created a draft covenant which is included in your packets. This will be reviewed by the Town Attorney and will be required for all ADU proposals as per Performance Standard C.

**RECOMMENDATIONS:**

Planning Staff recommends the PB review the ordinance language and schedule a Public Hearing for the April 11<sup>th</sup> Planning Board meeting.

*Recommended Motion:* I will make a motion to schedule a Public Hearing for April 11, 2019 to amend Chapter 78, Section 1272, Accessory Dwelling Units, it its entirety.

## **BACKGROUND (FEBRUARY):**

Due to the recent influx in ADU proposals. The Planning Board asked that Staff look into ordinance amendments. At the last PB meeting, we had a discussion regarding what the PB would like to see regarding ADUs and created a draft ordinance amendment for the PB to review and offer thoughts on.

Planning Staff kept the existing ordinance and included some additions/changes to the Performance Standards. These changes include:

- **Performance Standard (a)** – This is a new standard that requires the lot Owner to live in either the principal structure or the ADU and that neither the principal structure nor the ADU can be rented.
- **Performance Standard (b)** – This is a new standard that requires the ADU Occupant be a relative.
- **Performance Standard (c)** – This is a new standard that requires the Applicant to provide and record in the Registry a Covenant that the ADU will comply with the standards in the ordinance. Planning Staff found a sample Covenant that was created by York, with some tweaks by our Town Attorney, the language could be used for OOB as well.
- **Performance Standard (d)** – This standard already existed, however, we changed the language regarding the primary and “subordinate” entrances into the ADU.
- **Performance Standard (e)** – This is a new standard that briefly touches upon the aesthetics of the ADU. This language was already in the existing ordinance in some capacity but we it could be its own standalone standard.
- **Performance Standard (f)** – This standard already existed, however, we added in the piece about the ADUs being a maximum of 1,000SF and that they cannot have more than two bedrooms.
- **Performance Standard (g)** – This is a new standard that requires off-street parking and language regarding curb cuts or wider driveway width. This was used in another community and seemed to be useful.
- **Performance Standard (h)** – This standard already existed, however, we added in the piece about a single water service as well.
- **Performance Standard (i)** – This is a new standard regarding septic systems. The PB already requires septic system designs this provides the regulatory backing.
- **Performance Standard (j)** – This standard already existed, we changed “main residence” to primary dwelling to be consistent.
- **Performance Standard (k)** – This standard already existed, however, we made the standard clearer by removing the second part that discusses nonconforming uses.
- We added in a section with definitions that apply strictly to the ADU ordinance.

We recommend the PB review the draft amendments to the ordinance and offer thoughts on changes so Planning Staff can bring back another draft for the March meeting.

## **BACKGROUND (JANUARY):**

At the January 10th meeting, the Planning Board will begin the discussion on the Accessory Dwelling Unit (ADU) definition and ordinance provisions. This discussion is in light of the recent influx of ADU proposals the Planning Board has reviewed and the concern brought about by Town Staff regarding the recent use of ADUs for short-term rentals.

We typically think of an ADU as an in-law apartment but it has appeared to morph into more than “just an in-law apartment,” so what would the Planning Board like to see as the sole purpose of an ADU?

### **Helpful Definitions**

First, our Ordinance defines an Accessory Dwelling Unit as “*a separate dwelling unit which is contained entirely within the confines of a building which otherwise retains the design and appearance of a detached, single-family dwelling.*”

That brings us to our next question, how does the ordinance define a dwelling unit? A Dwelling Unit defined as “a room or suite of rooms designed and equipped exclusively for use as living quarters for only one family, including provisions for sleeping, living, cooking and eating. The term includes a mobile home, but does not include trailers or recreational vehicles.”

It is important to note that this definition does include provisions for sleeping, living, cooking and eating, therefore, using the current definition, an ADU cannot be set up as a “motel” type of use where the ADU occupants use the kitchen in the existing home rather than having their own in the ADU.

### **Where ADU are permissible in Town and where are they not (See Attached Map)**

ADUs are permissible as a Conditional Uses (CU) in the following districts:

- Residential 1
- Residential 3
- Residential 5
- Neighborhood Commercial 1
- Neighborhood Commercial 2
- Neighborhood Commercial 3
- Neighborhood Commercial 4
- Rural District
- Beachfront Resort District
- Residential Beachfront District

ADUs are NOT permissible in the following districts:

- Residential 2
- Residential 4
- Industrial District
- Planning Mixed Use Development
- Downtown District 1
- Downtown District 2

*Sec. 78-1272* of the Ordinance pertaining to Accessory Dwelling Units says:

The purpose of the sections concerning accessory dwelling units is to provide a diversity of housing for residents while protecting the single-family character of residential neighborhoods. Accessory dwelling units are allowed as conditional uses in all residential districts and shall comply with the following conditions:

- (1) The accessory dwelling unit shall be accessed via the living area of the primary structure, and all other entrances to the accessory dwelling unit shall appear subordinate to the main entrance. Any proposed additions to the main structure or accessory structures shall be designed to be subordinate in scale and mass to that of the main structure and compatible with the architectural style and quality of the main structure.
- (2) The accessory dwelling unit shall have at least 500 square feet of floor area but shall not exceed 50 percent of the floor area of the main dwelling unit. Floor area measurements shall not include unfinished attic, basement or cellar spaces nor public hallways or other common areas.
- (3) The dwelling shall be served by a single electrical service.
- (4) Only one accessory apartment shall be permitted per lot. It shall be made part of the main residence.
- (5) Accessory apartments shall not be permitted for any nonconforming structure or use, where nonconformity is due to the use of the premises, as opposed to nonconforming dimensional requirements.

It is interesting that it says they are allowed in **ALL** residential districts when it appears they are not allowed in Residential 2, Residential 4 or PMUD (not listed as a CU in the ordinance).

### **Discussion Questions for the Planning Board:**

1. Why do we feel ADU-related ordinance standards need to change?
2. What are the positives and negatives of ADU's?
3. If ADU's are not allowed, would this create problems? Any potential unintended consequences? For example, will this reduce affordable housing options and aging in place alternatives?

4. Are there trends and issues driving the need for ADU's? How do we address these? Are we considering these during our discussion?
5. Should ADU's be allowed but regulated in a different manner (e.g., use for relatives and friends only)?
6. Does the ordinance capture the intent of an "Accessory Dwelling Unit" that the PB would like to see?
7. If not, what information needs to be added into the ordinance to capture that intent?
  - a. Would the PB like to see more information in there regarding them for the purpose of an "in-law" apartment?
8. Should there be information added into the ordinance regarding the use of ADUs for short-term rentals? Is this something the PB wants to prohibit in all ADUs no matter what district they are in?
9. Should the Zoning Districts themselves be amended to allow ADUs in all residential districts as defined in Sec. 78-1272?
10. What changes need to be made to the five ADU conditions?
  - a. Should "*all other entrances shall appear subordinate*" to the ADU be better defined so it is easier to rule on?
  - b. What about the requirement that they have at least 500 square feet of floor area but that they cannot exceed 50% of the floor area of the main dwelling unit. Should this be amended?

**ITEM 10**

**Proposal:** Ordinance Amendment: Amend zoning map and ordinance language associated with a lot in the GB1 District

**Action:** Discussion

**Applicant:** Eastwood Development Corp

<u>Ordinance Amendment: Zoning Map GB-1</u>	<u>Project Status</u>
<i>Introduction</i>	April
<i>Discussion/Workshop</i>	Pending
<i>Public Hearing</i>	Pending
<i>Recommendation</i>	Pending

This proposal is for the extension of the General Business 1 (GB1) Zoning District into the Residential 4 (R4) Zoning District for the lot located at 15 Old Orchard Rd (MBL: 210-10-3). Currently, 400’ feet depth of this lot is zoned GB1, the remainder of the lot is zoned R4 (see applicants submission). The reason for this proposal is to provide more development opportunities and options for this lot. The split districts and different ordinance standards associated with each district impact the property owner’s ability to utilize this lot for its best development potential. This lot is currently vacant. The former use was overnight cabins.

This proposal requires a zoning map and zoning ordinance amendment. A zoning map amendment because the zoning district change will require a change to the official zoning map. A zoning ordinance amendment because the GB1 currently states the maximum depth of the GB1 District is 400 ft.

The R4 District purpose is to accommodate residential, educational, public, and religious uses. The GB1 purpose is to accommodate commercial uses that are inappropriate to the downtown due to the compact settlement pattern. Also to establish development standards that encourage expansion of commercial uses while preserving the existing building line and mixed use character of area.

As indicated in the purpose the R4 District allows a variety of residential uses as well as nonresidential uses such as schools, municipal uses and health care facilities (See Secs. 78-577 & 578). The GB1 District allows a variety of residential and nonresidential uses including single-family, multifamily, retail, professional offices, and medical marijuana (see Secs. 78-802 & 803).

Although this proposal will allow additional land uses, it’s important to remember the PB is not reviewing a specific proposal to establish a use at this time. The PB should consider the potential impact this change may have on existing uses but note that we are reviewing a zoning amendment proposal and not a conditional use, site plan or subdivision application proposing a specific land use. If the amendment is approved it is likely any specific proposal will require further PB review.

**RECOMMENDATIONS:**

Staff recommends the PB hear the applicant explain their proposal, ask questions and provide recommendations. It’s staff’s intent to work with the applicant and prepare amendments for the May meeting.