

TO: Old Orchard Beach Planning Board
FROM: Jeffrey Hinderliter, Town Planner
SUBJECT: August Planning Board Meeting Summary
DATE: 9 August 2012

*****APPLICANT NOTE- September PB meeting submissions due on 27 August*****

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

ITEM 1 & 2 – Town of Old Orchard Beach – Shoreland Zoning Ordinance Amendment – (Public Hearing and Planning Board Recommendation)

- This ordinance amendment proposal seeks to relocate already adopted Shoreland Zoning Ordinance standards by removing the standards from a DEP order and placing those standards within the appropriate place in the Shoreland Ordinance. This amendment does not propose new language- it simply takes already adopted language and puts it in its rightful place in the ordinance.
- The council adopted the new Shoreland Ordinance during late spring and summer of 2011.
- DEP conditionally approved the Shoreland Ordinance during July 2011 and documented this through their typical order letter. This order letter included a few amended standards, which are part of DEP's conditional approval.
- The town was required to adopt the amended standards and apparently did this (though there is some question on this) by including the entire order letter as part of the ordinance. Only the amended standards within the order letter need to be included within the ordinance.
- To find these amended standards, you first must find the DEP order letter in the ordinance. Then you have to figure out where in the ordinance the amended standards belong.
- Adopting the DEP order letter (in its entirety) as part of the ordinance creates confusion and misinterpretation of the ordinance. Taking the amended standards out of the letter and placing those standards in the appropriate place in the ordinance will clear this up.
- Again, this proposal does not change any already adopted standards. It simply requests that we take the amended standards out of the DEP order letter and place these standards in their rightful place in the ordinance.
- The order letter and a memo explaining this (which includes the amended standards).
- **RECOMMENDATION:** Please provide a recommendation on the proposed amendments. The next step will be the Council's consideration.

ITEM 3 – Beachmont Land Development, LLC – 44 Lot Single Family Subdivision (Subdivision/Shoreland Zoning – Continued Review, Schedule Final Review)

BACKGROUND

- This is a new Subdivision and Shoreland Zoning proposal for the development of a 44-lot single family cluster subdivision. Also, a portion of the property associated with this proposal is within the Stream Protection district which means Shoreland Zoning applies; although, the proposed development is not within the SP District.

- This subdivision is proposed as a cluster. This allows the applicant to design a subdivision that alters the layout, dimensional and area requirements that are typically called for in the ordinance without a waiver or variance.
- There are waivers requested, including proposing individual septic systems opposed to a common system which is what Cluster Subdivisions require. The PB
- There are specific standards associated with cluster proposals and they are found in Subdivision Ordinance, Section 74-278. These standards include Basic Requirements (e.g., building design, common water supply, common sewer system), Open Space (e.g., allocation of common open space, covenants, maintenance responsibilities) and Siting and Buffering (e.g., overall site design, building design, internal and perimeter buffering).
- There are waivers requested, including proposing individual septic systems opposed to a common sewer system which is what Cluster Subdivisions require. The PB has discussed these with the applicant at past meetings.
- Cluster Subdivisions do not specifically allow alterations from other subdivision standards- only those that are called for in the cluster standards; although, the Subdivision Ordinance does have a waiver provision (Section 74-34) that allows the PB to waive almost any standard in the subdivision ordinance. To grant a waiver, section 74-34 has specific criteria the PB must apply when determining if waiver requests can be granted.
- The most important initial item is a decision on what the PB feels it can waive or modify. As stated above, the PB has the authority to waive or modify almost any Subdivision Ordinance standard. The applicant has requested specific waivers and the PB should concentrate on these as to whether they can or can't be granted. I highly recommend the PB carefully reviews the waiver standards (section 74-34) during consideration of the waiver requests. Also, it is always good to think out of the box when an ordinance allows the PB to waive a standard. An ordinance may call for something specific but there may be something that could work better. This is why waivers can be a useful tool.
- One of the primary concerns of abutters is the access to Date Street. It appears the applicant will propose a connection to Date Street but it will include a controlled access by way of a breakaway gate. Our subdivision ordinance requires subdivisions over 15 lots to provide 2 street connections for egress/ingress from the subdivision (74-309 I). While two street connections are provided, one is proposed to include the controlled access (Date St.) while the Portland Ave. access provides the primary ingress/egress. This can move forward as proposed but the PB must grant a modification or waiver of 74-309 I. When the applicant reviews the plans with public safety departments, they should specifically point this out.
- The applicant should check with the Fire Department (Whoever is responsible for reviewing- call main number at 934-4911), Police (Deputy Chief Keith Babin 934-5899), Public Works (Bill Robertson 934-2250), and Biddeford/Saco Water Department (Tom Carr) to be sure the proposal is ok with them.
- I believe there is an opportunity to provide public access for the open space adjacent to the stream. Should the town look into this in more detail?
- Since many of the issues associated with this proposal are more engineering related, I'm going to lean on our town engineer for review at this point in the process.

NEW INFO

- As you may recall, there are a few outstanding items:
 1. Documentation showing the use of individual septic systems as an acceptable alternative to the common system. Please note this requires a waiver of Sec. 74-278 (b) (7).
 2. Representation that the Date Street connection will have a barrier that limits through traffic. This requires a waiver of Sec. 74-309 (l).
 3. Responses to the town engineer and public works director comments.
- The applicant submitted a revised set of drawings and additional supporting documentation in response to staff comments, PB comments, public comments, and our town engineer comments. The majority of these revisions are the result of the town engineer's comments. The written documentation provides responses as well as the plans.
- At the time this memo was written, the town engineer's comments in response to the revision have not been received. I expect they will be received sometime before 9 August.
- Regarding the individual septic system request, the applicant submitted a groundwater narrative, test pit report and feasibility study prepared by John Toothaker, a certified soil scientists and licensed site evaluator.
- Regarding the Date Street connection, the plans identify "Date Street not to be used as a construction entrance"; a gate is shown on the plan C-101 as well as the details plan C-304 (included in the 1 August packet). In my opinion, this should successfully address concerns over Date Street access.
- What is the status of DEP permitting?
- Please remember this proposal is a Subdivision, Cluster Subdivision and Shoreland Zoning proposal so you'll need to consider these ordinances when reviewing this application.
- A note for final plan preparation- please be sure it includes all applicable items identified in the subdivision ordinance and show the Shoreland Zoning District(s).
- **RECOMMENDATIONS:** I believe there are two primary outstanding items- the waiver requests and comments from the town engineer and public works. The PB should make a decision on the waiver requests and the applicant has provided amended plans and additional documentation to address town engineer and public works comments. The town engineer is reviewing these amendments and I expect we'll receive her comments back by 9 August. If the applicant thinks they can prepare responses to the town engineer comments (if any are needed) and PB comments in time for the September meeting, then I recommend final review to be scheduled for 13 September. Note: I just received a submission with additional info that I have yet to evaluate (except for the Date Street items).

ITEM 4 – Town of Old Orchard Beach – Edith Libby Memorial Library Expansion (Site Plan Review: Continued Discussion, Schedule Final Review)

BACKGROUND

- This proposal includes an addition to the existing library which doubles its space, expansion to the parking area and site work. All work is associated with the Bond approved by the voters last year.
- As I understand, the land where the library is located is part of memorial park and the library has control over a particular amount of this land.

- Along with the Site Plan Review Ordinance, please pay particular attention to Section 78 Division 7 (Downtown Business Districts), especially Sections 78-661, 78-686 (more for Design Review Committee but the PB should consider this), 78-687, 78-689, and 78-746 through 78-750.
- Overall this is a well-designed project to add much needed space in the library. I ask the PB to pay particular attention to building design and placement since it is in such a critical area of our town. This proposal will require a Certificate of Appropriateness (It's within the DD-2 Zoning District) which means the Design Review Committee needs to review and provide a recommendation before the PB offers a final decision.
- Exterior light fixtures- what types of fixtures are proposed and how will the light be contained so it is primarily located on-site (avoiding light spillover on neighboring properties and the park).
- Stormwater Drainage- It's my understanding there is no storm drainage system that runs along Staples Street; therefore, I question how the stormwater management system will be designed.
- The applicant should check with the Fire Department (Whoever is responsible for reviewing- call main number at 934-4911), Police (Deputy Chief Keith Babin 934-5899), Sewer Treatment (Chris White 934-4416), Public Works (Bill Robertson 934-2250), and Biddeford/Saco Water Department (Tom Carr) to be sure the proposal is ok with them.

NEW INFO

- There were a number of outstanding items associated with proposal including submission of a complete set of site plans, responses to the Site Plan Review Criteria for Approval and discussion with town departments. This information has been submitted. Below are comments from my last memo concerning the above-mentioned items and my responses to my original comments in *italics*.
- Complete set of site plans (to comply with 78-215 (c)). I recommend the applicant pay particular attention to these items.
 1. Property survey signed and sealed by state licensed land surveyor, including topo- existing and finished grades (c.3.a). *Submitted- does the plan show all proposed grades? I suspect the grades will change around the addition (not just the parking lot side). Was the topo done when there was 20 inches of snow on the ground (see note 6 on plan C-1)?*
 2. Identification and location of all abutter's to applicant's property (c.3.f). *Submitted.*
 3. Proposed landscaping planting materials, if any proposed (c.3.l). *Does not show proposed landscaping- are we to assume there is no proposed landscaping with this proposal (including relocated vegetation)?*
 4. Location, layout and dimensions of all existing and proposed drainage facilities, accompanied by drainage calculations signed and sealed by a professional engineer (c.3.m). *Submitted- I've asked our town engineer to review this information and expect comments back by 9 August.*
 5. Soil erosion control plan (c.3.o). *Submitted.*
- I recommend the applicant address each of the Criteria for Approval (78-216 d. 1-9). *The applicant provided responses to the Site Plan Review Criteria for Approval- does the PB feel these responses adequately address the criteria?*

- The site plan shows a new drainage system to First Street- I recommend the applicant discuss this with the Public Works Director. *Has this been done? Was there any response? I recommend the applicant note responses for final review.*
- The applicant should check with the Fire Department (Whoever is responsible for reviewing- call main number at 934-4911), Police (Deputy Chief Keith Babin 934-5899), Sewer Treatment (Chris White 934-4416), Public Works (Bill Robertson 934-2250), and Biddeford/Saco Water Department (Tom Carr) to be sure the proposal is ok with them. *Has this been done? Was there any response? I recommend the applicant note responses for final review.*
- *I have some concerns about the underground utilities (primarily sewer and water) including the conditions of existing utilities and how they all tie in together (I only see drainage pipe inverts). I'll seek additional help with this from our town engineer.*
- *Regarding Design Review Committee consideration, the Committee asked the applicant to address specific items in the Architectural Design Review standards and the applicant has submitted these. The DRC will consider at their 13 August meeting and I expect they will conclude their review at that meeting.*
- **RECOMMENDATIONS:** I believe a few items need to be addressed by the applicant including providing responses from the department heads (even if this is documenting a phone conversation), and addressing comments concerning grading, landscaping and utilities. I expect to receive comments from the town engineer before our 9 August meeting and will recommend the applicant address these. I believe the PB can schedule final review for September with the understanding the applicant will address these items by then.

ITEM 5 – John Glass – Home Occupation: Renting Golf Equipment (Conditional Use Application: Determination of Complete Application, Schedule Public Hearing and possibly Site Walk)

- The applicant is proposing to rent golf equipment via the internet and telephone.
- There will be no on-site customer pick-ups. The rental equipment will be delivered.
- The only traffic associated with this proposal will be the delivery van leaving to drop off and pick up rental equipment. There may be 1-2 delivery trucks (fed-ex, ups) drop off and pick up a month.
- Home Occupations are permitted in the R5 district as a Conditional Use.
- Current use of the property is a single family dwelling. There will be no exterior building modifications. All products will be stored indoors.
- Conditional Use permits do not require a site walk- the PB has the option to determine if one is needed. It is my opinion this proposal meets all applicable review criteria.
- **RECOMMENDATIONS:** This is a pretty simple proposal. I recommend the PB determine the application complete and schedule a public hearing on 13 September. I do not think a site walk needs to be held but PB members may want to drive by the applicant's home.

ITEM 6 – Alouette Atlantic Resort - Remove 3 Buildings and Construct 1 and Site Work (Site Plan Review/Shoreland Zoning – Public Hearing, Site Walk Report, Schedule Final Review)

******PLEASE BRING PREVIOUSLY SUBMITTED MATERIALS******

BACKGROUND

- This is a new Shoreland Zoning, Floodplain and Site Plan Review proposal associated with demo and new construction for portions of the Alouette Beach Resort. The applicant has assembled a very good packet.
- Proposed development includes removal of 3 buildings- a 7 unit motel and two, 1-story buildings that contain 2 motel units in each; Construction of a new motel building with 11 units and an owner occupied unit; New parking layout including parking underneath the new motel building; Site work including new dune creation and rehabilitation of existing dunes, removal of pavement and seawall, removal of footpath through dune and install barriers to control foot traffic through the dunes. A total of 1,075 sq. ft. of new green space.
- The applicant has been working with DEP on this proposal for some time and there are many DEP related issues, such as development in the frontal dune, which the applicant and DEP are in the review process.
- The applicant should check with the Police (Deputy Chief Keith Babin 934-5899), and Public Works (Bill Robertson 934-2250), to be sure the proposal is ok with them.
- I have reviewed this proposal and met with the applicant several times and all items I've asked the applicant to address have been done; therefore, there really is much to add. I offer a few comments below:
 1. As we discussed, a question has come up regarding the property owners desire to secure quiet title to the land that fronts Alouette's property on the beach side. A majority of this land has 'unknown' ownership but a portion appears to be land that includes Mullen Ave. The concern here is if the quiet title includes Mullen Ave. will it then leave open the possibility of blocking public access to the beach. I spoke with Mr. Doe about this and he indicated the owner is Fred is pursuing the title issue for only the land on the beach side of the two properties he owns. This is noted in the application. The area he is pursuing is shown on the boundary survey as owner unknown. It does not include any of Mullen Ave. I relayed this message to our town assessor's and they still have concerns about this.
 2. There is proposed development on property (in the dunes) that is currently not owned by the property owner. The problem with this area is ownership is 'unknown.' The applicant is working on acquiring quiet title- success with this should resolve this issue. One question I have for the PB is should the property owner have ownership rights to this area before a PB decision is made or will some kind of condition suffice?
 3. I believe the quiet title issue for acquiring land in the dune area is not entirely complete at this time; therefore, the right to this land remains and the portions of the project that are associated with this area cannot be approved until it reaches resolution. Acquiring title in this area will resolve issues associated with property ownership and non-shoreland setbacks Does the applicant/owner have an update on the status?
 4. The applicant has worked with DEP for over a year and review continues. Does the PB feel the applicant should secure DEP approvals before the final PB decision or does the PB feel comfortable applying a condition stating construction cannot begin until applicable DEP permit approvals are secured?

5. The application packet has been forwarded to our town engineer for review and comment.

NEW INFO

- The two primary remaining issues are the quiet title matter and DEP permitting.
- It appears the quiet title has been resolved- a copy of the order and final judgment is in your packets. Please note that Mullen Ave. was excluded.
- DEP approvals have not been secured. The PB will need to determine if they feel comfortable approving this proposal without DEP approval (which a condition will be necessary) or should DEP approvals be secured before a final town decision is offered. As I recall, the town has conditionally approved application proposals that have not fully secured DEP approvals.
- I believe all else is in order.
- **RECOMMENDATIONS:** The PB should determine if they feel comfortable approving without DEP approval secured. If so, I recommend the following condition:
 1. Construction shall not begin until all applicable Maine Department of Environmental Protection permit application approvals are secured by the applicant and/or property owner. If these MDEP approvals change the plans and written documentation that were submitted and part of the Planning Board approval, those changes shall be presented to the Planning Board.

ITEM 7 – Oceanview Manor Inc. – Phased development to replace single story residential structures with multi-unit residential structures (Pre-Application Meeting)

- Oceanview Manor Inc. is proposing a complete redevelopment of a site that currently includes several 1-story multi residential unit buildings into 3 multi-story multi residential unit buildings. The use of the property is not changing. Total proposed housing units (61) will not change from what's existing. Also, there is site work proposed including landscaping, parking and roads.
- This is a pre-application submission; therefore, the PB does not need to take any formal action. At this time, the applicant is looking to the planning board to identify any potential areas that could be major issues.
- This proposal requires both Conditional Use and Site Plan Review. Also, my read of the Subdivision Statute definition of "Subdivision" (30-A § 4401 4) leads me to believe Subdivision review is required: "The term 'subdivision' also includes the 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." This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise." I'm open to suggestions if someone has a different read.
- When creating an application, I recommend the applicant divided the submissions into Conditional Use, Site Plan Review and Subdivision. This will help us see how the proposal complies with each applicable ordinance.
- I ask the applicant to please explain the land swap including:
 1. Timing
 2. How the areas will still meet ordinance lot size requirements or if grandfathered, how it will not become more nonconforming. This is applicable to the areas subject to development and those areas that are not.
 3. How will common elements such as roads and parking are dealt with that pass through more than one property?

4. Each of the three charts in the application- are these different, yet to be decided, options? What are the differences?
- Please explain the timing of the phases. When will the project to be complete?
 - During each phase, how will development proceed? How will exiting development be able to continue independently from those areas under construction?
 - This proposal may need a Traffic Movement Permit through MDOT. I recommend the applicant provide the PB written analysis in regards to this. Is a permit required- then this permit must be secured before a final PB vote. A permit is not required- please provide an explanation.
 - Will there be any impacts to public property?
 - Will this continue to be used as a retirement community?
 - I expect DEP permitting is required- has this process begun? Status?
 - Detailed civil drawings, in accordance with the subdivision and site plan review plan specifications, will be required for formal submission. An engineer will most definitely need to be involved to prepare these plans.
 - Does the applicant expect to request any waivers? If so, these should be identified and include responses in accordance with the applicable ordinance waiver standard (74-34 for subdivisions; 78-215 (d) for site plan- submission requirements only; Conditional Use does not have waivers)
 - Wright Pierce will need to provide a complete review of all site work, design and stormwater management systems.
 - The applicant should check with the Fire Department (Chief John Glass 934-4911), Police (Deputy Chief Keith Babin 934-5899), Sewer Treatment (Chris White 934-4416), Public Works (Bill Robertson 934-2250), and Biddeford/Saco Water Department (Tom Carr) to be sure the proposal is ok with them. Please provide documentation of comments.
 - **RECOMMENDATION:** PB to advise applicant on what they should concentrate on and items that need specific attention

ITEM 8 – Town of Old Orchard Beach – Ordinance Amendments associated with Child Care Facilities (schedule a public hearing)

- As a result of a Child Care Facility proposal the PB recently considered, we found ordinance standards did not allow the use to exist even though it appeared to make sense.
- During the PB meeting, it was discussed that one way to resolve this issue was to change ordinance language.
- The proposal before the PB shows these changes and they are quite simple:
 1. Child Care Facilities is a permissible use with the PMUD District by adding this use as a Condition Use under Sec. 78-1023.
 2. The access standards of Sec. 78-1268 (b) (2) a are deleted. You may recall the standards mentioned specific roads that Child Care Facilities are required to have direct access to/from.
- Please note that I have not studied the potential impacts of this change. One reason is because the use seems to be an appropriate fit in this district. A second reason is the use will require Conditional Use review which will provide a more detailed analysis of each proposal. There is safety in knowing the PB will still be responsible for review and can evaluate each proposal based upon the CU standards.
- Please let me know your thoughts on this proposal.

- **RECOMMENDATIONS: I recommend the PB schedule a public hearing for 13 September.**

ITEM 9 – Town of Old Orchard Beach – Ordinance Amendments to the Sign Ordinance (schedule a public hearing)

- **During early July, the Council enacted an emergency ordinance amendment to the sign ordinance (Ch. 78, Art. VIII, Division 5). The council voted 5-0 in favour of the emergency ordinance.**
- **This amendment allows temporary signs associated with events at the ballpark. Events include baseball games.**
- **Before this emergency amendment, the sign ordinance allowed temporary signs only for community festivals, carnivals and special events approved by the Council. It was identified that people who wish to see a baseball game could not locate the ballpark because the ballpark could not legally place off-premises signs. Since baseball games did not qualify as a community festival, carnival or special event, it was determined (after legal consultation) the easiest fix and one that will not jeopardize the intent of the sign ordinance as a whole was to change the temporary sign standard.**
- **Formal adoption of this ordinance amendment allows temporary signs associated with events at the ballpark to be placed anywhere in town (assuming they have the property owners permission); therefore, temporary signs may be located off-premises.**
- **Temporary signs are exempt from the size and dimensional requirements of the zoning district, provided the signage does not pose a safety hazard and meet all relevant conditions prescribed.**
- **Emergency ordinance amendments are in effect for 60 days from the date of enactment. Even though an emergency ordinance may be adopted, it still must go through the appropriate adoption procedure to make it a formal ordinance change. That procedure begins with the PB scheduling and holding a public hearing.**
- **Please remember this only allows temporary signs for events at the ballpark.**
- **RECOMMENNDATION: I recommend the PB schedule a public hearing for 13 September.**