

**TO: Old Orchard Beach Planning Board**  
**FROM: Planning Staff**  
**SUBJECT: August Planning Board Meeting Summary**  
**DATE: 10 August 2017**

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

Applicant Note: September meeting submission date is 28 August 2017.

**ITEM 1 & 5**

**Proposal: Site Plan Review: Expansion of existing nonresidential (retail) building**  
**Action: Discussion; Final Ruling**  
**Owner: Harold H. Harrisburg, Phylis I Harrisburg and Harrisburg Group Gen Partnership**  
**Location: 9 East Grand Ave., MBL: 306-2-6**

At the July meeting the PB tabled any action because they did not receive the requested information. The PB requested the applicant submit the information in response to comments received at the meeting including those in the July PB Meeting Summary. Staff met with the applicant and provided the following information to assist with the PB's request (note: applicant provides a separate response in their August submission:

**July meeting follow-up provided to applicant**

Overhang and platform encroachment. Change building plans to show the overhang and platform do not extend beyond the Harrisburg property line.

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.

Loading and unloading (See Katsiaficas 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?

Warehousing (See Katsiaticas 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.

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.

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.*

## Staff comments regarding applicants 24 July submission

### Overhang and platform encroachment

Change building plans to show the overhang and platform do not extend beyond the Harrisburg property line. The plans have been redrawn and the applicant states the overhang and platform will be entirely within the subject property boundaries. Something to point out is the cantilevered balcony- I expect when this is in the down position it will extend over the property line. Also, it would be helpful if the site plan showed the proposed building distance to the property lines.

### Building construction

Building construction has been a particular concern of an abutter. The PB has concerns too. The applicant explains construction methodology which 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. Also, the question of trespass on private property does not have bearing on the PB's decision.

### Loading/Unloading

The applicant provided a detailed loading and unloading plan which is helpful and should be incorporated as part of any approval. Staff relies on our experts comments, Police and Fire (see Department Comments), for this proposal because they have the most experience with these matters in this area. As you'll see both PD and FD continue to have concerns.

### Warehousing

The applicant states 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. I ask, what chance does a product that was placed in an area designated as storage 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? Note the applicant's response to Loading/Unloading includes comments that warehousing on the first floor and basement are grandfathered according to the legal opinion we received from attorney Katsiaficas. I'm certainly not an attorney but when I read (Katsiaficas Memo, p 30):

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 Katsiaficas 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."

I'm still trying to wrap my head around this and unfortunately can't offer clear guidance in response to the applicant's comments. What I can clearly state is if the second floor was used for retail and storage accessory to only that buildings retail operation, this proposal would be fine.

### DEP permitting

The applicant indicates DEP permit approval is required and it is not anticipated that any problems exist with obtaining this permit. The PB has the option of waiting for DEP approval before issuing a decision or applying a condition requiring the owner/applicant secure applicable DEP permit approvals before construction begins.

## Waivers

Based on the applicant's submissions, 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

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."

## Public Hearing

Because of new information submitted and application timing the PB scheduled a second public hearing. As of 3 August we received comments from one abutter, Lisa Gribbin. Ms. Gribbin's comments include her response to the applicants August submission. Note the PB must rule on the proposal within thirty days of the public hearing unless the applicant agrees to extend this deadline.

## DEPARTMENT COMMENTS:

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.

### **RECOMMENDATIONS**

The PB should first rule on the waivers. If the PB does not accept one or more of the waivers or cannot apply a condition to ensure its compliance at a later date than the PB cannot approve the proposal as submitted. Second the PB should review the applicant's response to the requested items. This includes discussion about items such as warehousing. Third, do comments received at the public hearing warrant further review from the PB. Finally, does the PB feel they are prepared to rule on the proposal tonight. If so, what, if any conditions should be attached.

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

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. A butter 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 request 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):**

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):** 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 DD1 have no setback requirement.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- The wall facing away from East Grand is a sheer Blank Wall, (back)how is this going to be built without accessing from the abutting property? Is there anything in place that indicated that it will be allowed or can they work from the property lines? Will they be required to fence in the property line?

- I was informed that they intend to load merchandise from a forklift and put it into the second floor at Kinney Ave near the intersection.

- There appears to be a balcony with sliders in the Kinney Street side that would overhang the sidewalk what is the status of Kinney in Width and who owns the sidewalk?

- We have an ongoing issue with trash and debris from the existing business, how much more will be loaded to the existing systems? Currently the dumpsters in place are often overflowing and exposed. Maybe it's time for the owner to step up and have a better system in place. There should not be any outside storage of pallets scrap metals cardboards, plastics etc..... The current system is not adequate.

- Will any off-site improvements be required?

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

- PD

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

not park delivery vehicles on Kinney Avenue. I would also want to be sure that he doesn't pile boxes in the street or on the public way.

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

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

- FD

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

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

## **ITEM 2 & 6**

**Proposal: Major Subdivision: 20 lot cluster subdivision for single-family residential use (Eastern Trail Estates)**

**Action: Discussion; Waiver Ruling; Preliminary Plan Ruling; Final Ruling**

**Owner: Ross Road LLC**

**Location: Ross Rd, MBL: 107-1-4, 14 & 16**

<u>ET ESTATES</u>	<u>Project Status</u>
Sketch Plan	Completed in January
Preliminary Plan	Submitted in May; amended in June and July
Site Walk	Held in June
Application Complete	Conditionally determined complete in July
Public Hearing	Scheduled August
Prelim Plan Vote:	Scheduled for August

At the July meeting, the Planning Board voted the application complete contingent on the waiver requests and scheduled the Public Hearing for August 10<sup>th</sup>. The purpose of tonight's meeting is for the Planning Board to gather comments from the public and make a ruling on the Preliminary Plan. In your packet for August, the Applicant has submitted updated application materials and design plans that attempt to address concerns raised by the Planning Board, Staff and Wright Pierce.

In July, one of the concerns discussed by the Planning Board was the previous use of the site as a junkyard. Planning staff and the Planning Board chair went out to the site with Randy McMullin at DEP and he said the materials that are likely underground are "inert" and because of this DEP does not have any concerns about the site.

Email from Randy McMullin:

The import thing to keep in mind for something to be "risky" there needs to be a good pathway of exposure for a human to get "dosed".



Example would be if there were drinking water wells located in the plume of something nasty underground then you would be able to get it into your body from normal water for drinking or cooking and bathing.

This proposed subdivision has city water so that pathway is just not there. Most garden plants are not really very good in pulling contaminants into the plant flesh we eat. Maine real estate laws require the seller to notify the buyer of anything out of the normal here. In short Kevin should tell any buyers that this place used to be a junkyard in the 60's. Anything the homeowners dig up and want removed to a real disposal location, they will have to do themselves would be my guess.

Also here is our definition of "inert fill" from here...in Chapter 400.1.RRR

<http://www.maine.gov/sos/cec/rules/06/096/096c400.doc>

**RRR. Inert fill.** "Inert fill" means clean soil material, including soil from road ditching and sand from winter sand cleanup; rock; bricks; crushed clean glass or porcelain; aged, fully-hardened asphalt; and cured concrete; that are not mixed with other solid or liquid waste, and are not derived from an ore mining activity.

There are a few updates to point out from the new submission materials. These pertain to waivers, sight distance, Saco implications, access to the Eastern Trail and the cluster subdivision standards and are described below.

### Waivers

First, at the last meeting, the Planning Board voted to table the waiver request for the second means of egress that is required for over 15 lots. The board wanted additional information on the ownership of Easy Street. A deed describing the use of Easy Street by the applicant has been submitted for August. Staff recommends that this deed be reviewed by the Old Orchard Beach Assessor. An update on this will be provided at the August 10<sup>th</sup> meeting. Note: If the Planning Board decides to move forward with the waiver, the subdivision waiver requirements apply (74-34):

*(a) Where the planning board finds that extraordinary and unnecessary hardships may result from strict compliance with this chapter or where there are special circumstances of a particular plan, it may vary this chapter so that substantial justice may be done and the public interest secured, provided that such variations will not have the effect of nullifying the intent and purpose of the official map, the comprehensive plan, or the zoning ordinance in chapter 78, where such exist.*

*(b) Where the planning board finds that, due to special circumstances of a particular plan, the provision of certain required improvements is not requisite in the interest of public health, safety, and general welfare or is inappropriate because of inadequate or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements, subject to appropriate conditions.*

*(c) In granting variances and modifications, the planning board shall require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified*

As a reminder from the July meeting, regarding the subdivision access waiver, if the PB does not feel comfortable with this they can limit the number of lots developed that will use the single access to Ross Rd. to 14 lots until a second access is approved and constructed. Assuming lots 19 and 20 will have their own driveways to Ross Rd, I believe it is fair to exclude these from the 14 lots. So, the 14 lots will come from lots 1 – 18. If the PB decides not to grant the waiver but allow the proposal to move forward as described above, the applicant should identify the 14 lots by placing a note on the signed plan and the PB should add a condition. Something to note- the infrastructure, utilities, etc. abutting the excluded 4 lots must still be built.

### Sight Distance

The PB had concerns about sight distance on Ross Road. The ordinance, §74-309(m) states that the required amount of distance on the 35MPH road for passenger cars is 350 feet, for single-unit trucks it is 475 feet. The ordinance does allow

for a 30% reduction, however, it states: “*Note: Where it is impossible to meet these sight-distance standards, due to physical conditions, a maximum variance of 30 percent may be permitted, in accordance with the waiver provisions in section 74-34. The 30-percent variance is consistent with the absolute minimum stopping distance requirements on wet pavements established by the state department of transportation.*” The variance must still comply with the three subdivision waiver requirements listed above (74-34). The applicant should submit a formal waiver request that shows why it is impossible to meet the sight-distance standards due to physical conditions.

### **Saco Implications**

There were questions raised at the July meeting regarding how this project will work with access through Old Orchard Beach to get to the Saco portion. Some of the points raised:

- Are there elements of this proposal that need the Saco piece of the development to be constructed in order for the OOB piece to function properly?
- There was also a question about the infrastructure that will be used by the Saco portion that the OOB Planning Board approved- is this project designed to accommodate the future expansion?
- What if the Saco piece is not built?
- What is the timing of the Saco development?

Responses to each of these were not included in the submission for the August meeting.

### **Eastern Trail Access**

At the July meeting, the Planning Board had some questions about access to the Eastern Trail. Some of the questions raised:

- Will this be public access?
- What if Mary’s Way is a private road will public access still be permitted?
- How will this work before development of the Saco piece?

The Applicant indicated verbally that the project owner is planning on having non-restricted access to the Eastern Trail and that they will have sidewalks throughout the development as it is intended to be accepted as a public road. It is still unclear how this access will work without the Saco piece developed.

### **Cluster Subdivision Standards**

§74-278 of the ordinance says that “all planned unit developments and cluster development shall meet the requirements for a residential subdivision, including planning board approval, except those requirements related to layout, setbacks, frontages and areas.” This is how the applicant was able to have 70 feet of frontage for lot 4.

### **DEPARTMENT COMMENTS:**

Wright-Pierce offers comments in a separately attached memo. A majority of the comments were addressed, however, a few minor comments remain outstanding and/or require further coordination. We recommend the applicant address these comments and include any plan and application changes in the next submission.

WWTF:

If this is going to be on septic tanks then I have no concern. If they will be on public sewer I will take a closer look.

*Others:*

Staff expressed some concerns about one means of egress and snowplowing at the Development Review meeting, however, further comments were not received.

### **RECOMMENDATIONS:** Planning Staff recommends the following:

1. Vote on the two remaining waiver requests. If the PB decides to grant or not grant a waiver the reasons why should be stated. If a waiver is not granted in regards to the single street connection, we recommend the PB consider the option discussed above (**pending comments from the Assessor**).
2. Discuss the other issues identified in this memo and any others you may have (i.e. waivers, sight distance, Saco implications, Eastern Trail access) what can be resolved by explanation? What needs to be submitted to resolve?

3. Preliminary plan vote. If the PB feels the application can receive preliminary plan approval it must be contingent upon receiving corrections, additions, etc. as identified by the Board.

### **BACKGROUND (JULY MEETING)**

This project was brought before the Planning Board in January as a sketch plan. In May, the Preliminary Plan was submitted and in June a site walk was held. The proposal is for the creation of 20 lots with one access to Ross Rd. The project will be served by public water, individual septic systems and natural gas from the Eastern Trail. There is a second phase of the project which will be located in Saco with approximately 13 additional lots that abut the Eastern Trail.

At the PB's last meeting, it was determined the preliminary plan was not complete. There were a couple of outstanding issues so the PB decided to table the preliminary plan decision. Below is a summary of these issues and where we stand:

- Cluster subdivisions have specific standards in the subdivision ordinance (74-278). We recommend the applicant demonstrate how the proposal conforms to each standard. If the applicant feels a particular standard is not applicable we ask them to provide a brief explanation. Since this proposal is a cluster subdivision, we feel that it is critical the applicant demonstrate conformance to 74-278. Also, the PB needs this to properly evaluate the proposal. *The applicant has provided responses to these in their July submission.*
- Although we received Wright-Pierce comments, none of these pertain to stormwater because we received the stormwater report late (3 May). Because stormwater is a significant part of Wright-Pierces' technical review, we feel this review must be completed before the proposal is determined complete. *Wright Pierce comments have been received for the July meeting.*
- The proposal includes more than 15 lots and only one access. 78-309 (1) requires subdivisions with 15 or more lots to have at least two street connections. The applicant can seek a waiver but must provide a formal request in accordance with 74-34. *A formal waiver request has been provided in their July submission.*

Two waiver requests have been submitted with this application:

- Waiver request of the requirement of having at least two street connections with existing public streets for subdivisions that contain 15 or more lots (74-309 (1) ).
- Waiver request to allow individual subsurface disposal systems for the 20 lots. The applicant has provided a letter from a soil scientist discussing installing individual septic systems versus a common septic system to serve all of the lots.

Because both waiver requests are associated with subdivision ordinance standards the subdivision waivers requirements apply (74-34):

- (a) Where the planning board finds that extraordinary and unnecessary hardships may result from strict compliance with this chapter or where there are special circumstances of a particular plan, it may vary this chapter so that substantial justice may be done and the public interest secured, provided that such variations will not have the effect of nullifying the intent and purpose of the official map, the comprehensive plan, or the zoning ordinance in chapter 78, where such exist.
- (b) Where the planning board finds that, due to special circumstances of a particular plan, the provision of certain required improvements is not requisite in the interest of public health, safety, and general welfare or is inappropriate because of inadequate or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements, subject to appropriate conditions.
- (c) In granting variances and modifications, the planning board shall require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified

Regarding the subdivision access waiver, if the PB does not feel comfortable with this they can limit the number of lots developed that will use the single access to Ross Rd. to 14 lots until a second access is approved and constructed. Assuming lots 19 and 20 will have their own driveways to Ross Rd, I believe it is fair to exclude these from the 14 lots. So, the 14 lots will come from lots 1 – 18. If the PB decides not to grant the waiver but allow the proposal to move forward as described above, the applicant should identify the 14 lots by placing a note on the signed plan and the PB should add a condition. Something to note- the infrastructure, utilities, etc. abutting the excluded 4 lots must still be built.

The applicant has indicated that the roads are going to be constructed to be offered as public streets. Department heads and staff expressed some concerns about this at the May and January meetings (see Department Comments below). The primary concerns are the dead end streets for snow storage and plowing as well as the one means of egress. Mary's Way is a dead end until the Saco piece is built. Ordinances require some kind of turn-around.

The Planning Board wanted more information on how this project will work with access through OOB to get to the Saco portion. Are there elements of this proposal that need the Saco piece of the development to be constructed in order for the OOB piece to function properly? There was also a question about the infrastructure that will be used by the Saco portion that the OOB Planning Board approved- is this project designed to accommodate the future expansion? What if the Saco piece is not built? What is the timing of the Saco development?

The developer indicates the subdivision will have access to the Eastern Trail. Will this be public access? What if Mary's Way is a private road will public access still be permitted? How will this work before development of the Saco piece?

Lot driveways. Lots 19 and 20 driveway locations should be shown on the plan. What is the site distance for both lots? Ensure Lots 1 and 18 driveways are off Mary's Way- please place note on the plan.

Lots 1 and 18 are double frontage lots adjacent to an arterial road. Lots such as these typically require a 20' easement along the arterial frontage (Ross Rd) to be reserved as a planting screen and no driveway access. With the concerns about traffic on Ross, a planting screen may not be a good idea.

Sight distance. Ross Rd speed limit along this section is 35 mph. Ordinance site distance for 35 mph is 350' for passenger cars and 475' for single-unit trucks (includes two-axle, four-tire trucks and other single unit trucks). The traffic assessment prepared by Traffic Solutions states the site distance is 400 ft. plus and meets MDOT site distance requirements of 305 ft. Although it meets MDOT's site distance requirements it is not known if it meets town requirements for single-unit trucks because a specific measurement is not provided.

The Planning Board had concerns at the site walk that this development was previously a junkyard. It appears from the submission materials that no subsurface exploration was conducted that was specific to determining the extent of the junkyard and if it would impact the subdivision. The concern is the unknown this creates- what may seem ok now may not be once road, utility, home/lot development, and other forms of excavation begin. The purpose of subdivision review is to ensure the comfort, convenience, safety, health, and welfare of the people; protect the environment; and to promote an economically sound and stable community. Therefore, it's important to know if there are elements of the junkyard that remain and could be detrimental to the subdivisions' future residents and the environment.

For lot 4 to be developed the road needs to be improved along the entire frontage. Based on the plan it appears it will only be partially improved along the frontage.

Fire Department Chief Ed Dube requests a fire hydrant at the corner of Ross Rd and Mary's Way and another on Kylie Lane (see Department Comments July). Chief Dube stated it would be very helpful to place a hydrant on Ross Rd.

Wright-Pierce offers comments in a separately attached memo. We recommend the applicant address these comments and include any plan and application changes in the next submission.

There is a wetland complex in the area designated as lots 1-4. At the January meeting, BH2M mentioned filling these in and that DEP permits would be required. Staff has not received any updates on this process.

The Post Construction Stormwater Management Plan (PCSMP), O&M Plan has been submitted, however, it is missing the following elements:

- Site-specific project description with a list of State and Federal permits required by the project.
- List of site-specific BMPs with a designation on which ones could discharge to the MS4. An example table of this is included in the PCSMP Guidance Document.

### **DEPARTMENT COMMENTS (JULY):**

FD:

In regard to Eastern Trail Estates off the Ross Road can we move the hydrant from Mary's way to the corner of Ross Road and Mary's Way and add another one on Kylie Lane.

### **RECOMMENDATIONS (JULY):** Planning Staff recommends the following:

1. Vote on waiver request. The waiver request is critical to this proposal moving forward as proposed. If the PB decides to grant or not grant a waiver the reasons why should be stated. If a waiver is not granted in regards to the single street connection we recommend the PB consider the option discussed above.
2. Discuss the other issues identified in this memo and any others you may have. What can be resolved by explanation? What needs to be submitted to resolve?
3. Determination of completeness. If the PB feels they can determine the application complete it must be contingent upon receiving corrections, additions, etc. as identified by the Board.
4. Schedule a public hearing for the August meeting.

### **BACKGROUND (MAY MEETING):**

This project was brought before the Planning Board in January as a sketch plan. At the time it was for the development of 20 lots off of Ross Road, adjacent to Easy Street. They are now proposing to develop 21 lots which will be served by public water and natural gas from the Eastern Trail. There is a second phase of this project to be located in Saco with approximately 13 additional lots that abut the Eastern Trail.

At the January meeting, BH2M stated that the roads will be constructed to be offered as public streets. The Planning Board had some questions/concerns at that meeting to be followed up on (*italics* list below are outstanding):

1. *With the project split between two Towns, does this change the definition of "cluster zoning"? The Planning Board wanted information on how this project will work with access through OOB to get to the Saco portion. There was also a question about the infrastructure that will be used by the Saco portion that the OOB Planning Board approves. What happens with a cluster subdivision that abuts another municipality?*
2. The Planning Board wanted to see a traffic study for a basic idea of what will happen in the Ross Road area. This has been submitted for the May meeting.
3. *The applicant is requesting a waiver to the centralized collection system standard. In the Town Ordinance Sec. 74-278(7): Planned Unit and Cluster Developments "all structures with required*

*plumbing in a planned unit development or cluster development shall be connected to a public sanitary sewer system, if available, or to a central collection and treatment system in accordance with the sanitation sections of this chapter.” The Planning Board discussed that if this is going to be waived for each proposal, why is it still part of our ordinance?*

- 4. The project contains 21 lots with only one means of egress, which will be the proposed Mary’s Way off of Ross Road. This is a major concern that has been discussed by Planning Staff and Department Heads. At the January meeting, the Planning Board discussed the use of Easy Street as a second means of egress with an emergency breakaway gate? How can the second means of egress be achieved with this development? With the Lands’ End Subdivision that was approved in 2008, Easy Street was supposed to be brought up to subdivision standards, however, this project was never started.*
- 5. There is a wetland complex in the area designated as lots 1-4. At the January meeting, BH2M mentioned filling these in and that DEP permits would be required. Planning Staff has not received an update on this.*
- 6. The application did not include a stormwater management report so this has not been reviewed by Wright Pierce.*

There were some other items discussed at the January meeting including:

- The notification procedure with Saco. Because this project is located within 500 feet of a municipal boundary, Saco will be notified through the Public Hearing process. The City Planner, Bob Hamblen received the sketch plan and has received a copy of the preliminary plans for the subdivision.
- The Planning Board also discussed the potential of trail networks in the open space portion of the site. Because the subdivision will eventually abut the Eastern Trail, there is the potential for trail networks to connect from the Eastern Trail through to Ross Road. A conversation has already started with the Eastern Trail Management District (ETMD) about potential trail connections as well.
- Because this project is located in the Goosefare watershed and is over one acre a Maintenance Agreement will have to be signed and a Post-Construction Stormwater Management Plan including a list of all BMPs with designation on the ones that discharge to the Towns MS4 (i.e. Ross Road) will have to be submitted and reviewed by the Planning Board.
- Wright Pierce comments were received for the May meeting and have been included in your packet. Stephanie does have some outstanding concerns listed in her memo.

Additional discussion items for the May meeting. There are three primary items staff feels need to be addressed before the PB determines the proposal complete.

1. Cluster subdivisions have specific standards in the subdivision ordinance (74-278). We recommend the applicant demonstrate how the proposal conforms to each standard. If the applicant feels a particular standard is not applicable we ask them to provide a brief explanation. Since this proposal is a cluster subdivision, we feel that it is critical the applicant demonstrate conformance to 74-278. Also, the PB needs this to properly evaluate the proposal.
2. Although we received Wright-Pierce comments, none of these pertain to stormwater because we received the stormwater report late (3 May). Because stormwater is a significant part of Wright-Pierces’ technical review, we feel this review must be completed before the proposal is determined complete.
3. The proposal includes more than 15 lots and only one access. 78-309 (l) requires subdivisions with 15 or more lots to have at least two street connections. The applicant can seek a waiver but must provide a formal request in accordance with 74-34.

There are some concerns regarding Lot 21. We have been told this lot is currently under contract and may be sold before a final decision is made on the proposed subdivision. Town ordinances state “no person may convey, offer or agree to convey any land in a subdivision which has not been approved by the planning board and recorded in the registry of deeds. With the language above we wondered is the sale of a lot that is in a proposed subdivision that has not yet been approved a violation of subdivision law. We researched this and based upon what we found (town attorney legal opinion), it appears this is not a violation as long as the contract or offer to sell the lot is contingent upon subdivision approval. If three or more lots associated with the subdivision were for sale before the subdivision was approved than this would be violation because three or more lots creates a subdivision. The Law Court ruled on a matter similar to this (Paldac v. Rockland)- because three or more lots must be created before a subdivision occurs, placing one housing unit did not create a subdivision since it was the “first lot”. The Court noted, until a property owner “actually creates a subdivision, the fact that it has filed an application for approval does not halt its freedom to pursue other legal uses of the land as well.” Having said the above we do feel this could be questioned and delay the subdivision from moving forward. We felt an easy remedy was to remove Lot 21 from the subdivision as it can be sold separately without triggering subdivision review by itself (the creation of 1 lot). We received revised plans (11 x 17) showing the removal of Lot 21 which are included in this month’s submission. Finally, the Town Manager, Public Works Director, PD Chief, and Fire Chief offer comments that need to be addressed by the applicant.

**DEPARTMENT COMMENTS (MAY):**

Public Works:

**DECLARATION OF OWNERS ASSOCIATION WITH COVENANTS, RESTRICTIONS AND CONDITIONS.**

From the Preliminary Application:

4. Purposes and Power ...” Open space areas and roadway areas shown on the Plan, including without limitation, maintenance and preservation of the same, and enforcement of all covenants and restrictions set forth herein.”

States:

- a) Removal of snow from the Common areas including, without limitation, sidewalks (if any), walkways, and driveways; and...
- f) Maintenance and repair of roads and sidewalks until the same are accepted by the Town; and
- g) Collection and removal of refuse and rubbish from the Subdivision

Comments: Reading this we can assume that

- 1. The association is responsible for snow removal on the sidewalks
- 2. They will maintain the roads (plowing?) until its accepted.
- 3. They are responsible for trash collection.

On the Plan:

Need a place for snow storage in the cul de sac and need a place at the Town Line.

Who is responsible for Street Lights? Should be association.

I feel that we should not have another development with dead end streets.

Town Manager:

I wasn't at yesterday's meeting so I am commenting without the benefit of seeing the latest proposal.

Nonetheless my thoughts at that the Town should be clear that we will not accept these streets unless they are built to allow for efficient winter maintenance. No dead end streets, no need to remove snow, adequate snow storage.

**RECOMMENDATIONS (MAY):** We feel there are still a number of outstanding items that need to be addressed before the Planning Board can rule on the preliminary plan. The Planning Board can schedule a site walk for 1 June but a public hearing should not be scheduled until the application is determined complete.

## **BACKGROUND (JANUARY MEETING):**

### **Project Background:**

This is a Sketch Plan proposal for a Major Subdivision – 20 lots – off of Ross Road adjacent to Easy Street and across from “Reclaim the Plains – Blueberry Plains.” The current use is an undeveloped wooded lot.

### **Comments from Planning Staff, Departments and Wright Pierce:**

There is an area on the plan designated as “future development” – the development of up to 20 lots will occur in Saco at a later date after the Old Orchard Beach portion. There is the potential for access concerns with only having one entrance to the lots. This concern could be further exacerbated knowing the future development potential on the Saco side. A conversation has already begun with Saco’s Planner Bob Hamblen. Staff felt it was important to get them involved early on in the process and keep them involved as the project moves forward.

Per the Town’s Ordinance (74-231(f)): If a subdivision is located within 500 feet of a municipal boundary, a public hearing shall be held. The Planning Board shall notify the clerk and the Planning Board of the adjacent municipality involved at least 10 days prior to the hearing. Comments and recommendations made by the Planning Board of the adjacent municipality shall be given due consideration in the deliberations and decision-making process of the Planning Board.

This project is in the Rural District of Town. There could be opportunities for open space/trails as part of this development that the Planning Board could take into consideration.

This project is over an acre and located in the Goosefare watershed. There will be Chapter 71 (Post-Construction Stormwater Ordinance) implications. The Town will be looking for the Developer to enter into a Maintenance Agreement, submit a Post-Construction Stormwater Management Plan and provide the Town with a list of all BMPs proposed on site with a designation on those that have the potential to discharge to the Town’s MS4 (i.e. Ross Road).

In addition, this project is in the Goosefare Watershed and because of its close proximity to Saco, there is the potential for the Developer to pay into Saco’s Compensation Fee Utilization Plan (CFUP). This would allow the developer to allocate funds toward future projects in the Goosefare watershed in lieu of additional improvements on site. The Town of Old Orchard Beach does not have this Plan in place, it is something the Planning Board will look into this year, however, it is something to consider as part of this proposal.

## **DEPARTMENT COMMENTS (JANUARY):**

### **PD:**

Jeffrey, as we discussed Wednesday at our development meeting, I have concerns with adding another 20 homes and possibly an additional 10 or 12 future homes, to what is in my opinion, an already overloaded intersection at Ross and Cascade Rds. It seems that, individually, these projects in and around that intersection, do not, by themselves, warrant a traffic study. However, collectively, it seems like to me that they should. I understand that we currently do not require impact fees for any future road or intersection improvements. I don’t see how we can keep adding housing to this area, and not, at some point, have to consider the overall impact these projects will surely have on the intersection of Cascade and Ross rd. It is poorly designed, has poor sight distances, and is a high crash area. Unfortunately, it doesn’t meet the warrant required by MDOT for a signal. Anyone who has had to experience that intersection, especially during the summer, knows how difficult and dangerous it can be. We keep adding more and more housing, but do not address the long term traffic impacts. It seems to me, that developers should be paying for future costs associated with the impact on infrastructure and traffic related problems, created by developments they build. The intersection of Ross Road and Cascade Rd, should be addressed now, and I don’t think it is fair to put the burden of any immediate or future improvements (signals, road improvements, street lights and sidewalks) on the backs of tax payers. Other than for these reasons, I do not have any objections to these kinds of projects moving forward. They certainly contribute to the revenue stream through property taxes, but, I can’t help but wonder if the overall



impact on our schools, costs for plowing and maintaining new roadways, police and fire services, and potential infrastructure improvements, outweighs any benefit derived from additional tax revenues. It may be that we have to change our ordinances to require impact fees on these types of projects, perhaps even a moratorium on future development until these issues can be addressed.

- FD:  
 In regards to Red Oak Subdivision Phase-2 and Ross Road Subdivision they must both meet the following.  
 NFPA: 18.3 Fire Hydrants  
 NFPA: 18.2.3 Fire Department Access Road  
 NFPA: 18.2.3.4.4 Dead Ends  
 NFPA: 18.2.3.4.3 Turning Radius -The Turning Radius must meet the dimensions of the department Aerial Truck.

Wright Pierce comments were received on December 22, 2016. A couple of things to point out specifically from Stephanie’s memo:

- A portion of the property to be developed (Lots 1-4) appears to be in what is designated as a wetland on the GIS, construction details will have to be provided for this area.
- According to the Town ordinance, any development with greater than 15 lots requires a second means of egress. There is the possibility of using Easy Street, however, this is a private dirt road and at this time it’s unclear whether or not the street could be brought up to subdivision standards and used as access for the subdivision.
- In 2011 the Town reviewed the Land’s End Subdivision which was proposed to be located in this area to the left of Easy Street. As part of the subdivision approval, Easy Street was to be upgraded and used as an access to the 8 proposed lots (*see attached plans & FOF*).
- The 20 lots are to be served by individual onsite subsurface disposal systems, there is the possibility of connecting each of the lots to one centralized collection system and given the fact that the project is in the Town’s priority watershed, this is something that should be looked into. In the Town Ordinance Sec. 74-278(7): Planned Unit and Cluster Developments “all structures with required plumbing in a planned unit development or cluster development shall be connected to a public sanitary sewer system, if available, or to a central collection and treatment system in accordance with the sanitation sections of this chapter.”

**ITEM 3 & 7**

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

**Action:** Discussion; Final Ruling

**Owner:** The Salvation Army

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

<u>SALVATION ARMY</u>	<u>Project Status</u>
Sketch Plan	Submitted in
Preliminary Plan	Submitted in July
Application Complete	Conditionally determined complete in July
Site Walk	Scheduled August
Public Hearing	Scheduled August
Final Plan	Scheduled July

At the July meeting, the PB agreed the applicant needs to address staff and Wright-Pierce comments. Staff comments included three primary issues (one was addressing Wright-Pierce comments) and several miscellaneous other issues. The applicant’s response includes a memo addressing staff comments, memo addressing Wright-Pierce comments, pavement

stormwater discussion, deed for a recently acquired property, revised engineer plan set, and revised architectural plan set. Also, Wright-Pierce reviewed the response (applicant's August submission) to their comments and provided a new memo (26 July) to which the applicant provided a response (memo dated 31 July). Note the 26 July and 31 July are stapled together and titled "Applicant's response to WP memo and WP memo"

Regarding the three primary issues:

1. Waiver request. The PB granted the waiver at the July meeting.
2. Full boundary survey. The applicant states an updated boundary plan will be provided before the start of construction. A class 1 survey was provided but does not include some recent info. According to the applicant the recent info does not impact the area associated with the proposal. The PB appeared to be comfortable with accepting the submitted boundary survey and applying a condition.
3. Grading and drainage comments in Wright-Pierce memo. The applicant's August submission addresses Wright-Pierce comments. Wright-Pierce appears to have three concerns with the applicant's most recent response (31 July): ownership of some of the utility lines, town's ability to access and maintain utility lines, "continued ponding" of stormwater. Comments from Wright-Pierce email:
  - \* There are a few comments that I would say require further coordination and discussion with the Town/DPW to determine if the long term access is acceptable (particularly if owned by the Town), so I would make sure that these can be addressed prior to construction beginning, as this will impact the layout. Additionally, there are a few areas where the applicant is proposing "continued ponding" of stormwater, so I guess I would ask how the Town would like to handle this issue, particularly as it is an off-site stormwater discharge. If helpful, we can chat about some of the comments.
  - \* So, I am generally unclear on who owns what when it comes to some of the utility lines (storm/sewer). The report they provided lead me to believe the Storm drain line being redirected behind the building is/will be owned by the Town. I would recommend any utility lines owned/maintained by the Town had a drainage or utility easement giving the Town the right to enter, maintain, repair, replace these lines in perpetuity. This would be different than the maintenance agreement in my opinion.

Proposal's often have a few engineering details to work out after PB approval but before construction begins. We believe these issues can be resolved but we are not clear if they present an important enough issue that needs resolution before the PB vote. As Wright-Pierce states, we need Public Works input. We asked the Public Works Director for comment. It's possible that we could add a condition requiring that this be addressed before construction begins.

Regarding the other issues:

- Response to Wright-Pierce comments. The applicant provided two memo responding to WP comments- 24 July response to WP 3 July comments and 31 July response to WP 26 July comments. There are some outstanding issues which are discussed above. Also, both WP and the applicant state some matters require input and further coordination with the Public Works Director. Staff and the applicant have contacted the Director. We recommend the applicant provide a list of what needs further coordination with the Director.
- List of site-specific BMP's. This is done.
- Public or private easements identified. The applicant states the final boundary survey will show all easement info. One question- are easements necessary for utilities? The Public Works Director was asked to comment.
- Proposed signs. Only signs are for traffic and parking.
- Dumpster screening. Screening added.
- Buffer/screening. The applicant states the existing and proposed vegetation and fencing meets the 25% - 74% buffer/screening requirements. Staff agrees.
- Parking lot landscaping. Staff feels the revised landscaping plan meets applicable ordinance standards.
- Street trees. Staff feels the revised landscaping plan meets applicable ordinance standards.
- Add individual tree details. Added to landscaping plan.
- Proposal exceeds the number of required parking spaces.
- Curbing and wheel stops. Shown on revised plans. Note FD Chief Dube prefers they not install granite curbing and no sharp edges. According to the construction detail drawing the curbing is concrete and it appears will be angled.

- HVAC noise. The stated the HVAC units will be moved to the roof and meet the 55/45 dBA standard, year-round. I believe the units will include a noise buffer. If this is so please add to the details plan.
- Status of DEP permitting. The applicant states the proposal requires a Permit-By-Rule. Once the PB determines no further plan changes are required the applicant will submit the PBR application to DEP. The PB could add a condition requiring the applicant to secure the PBR before construction begins.

A site walk and public hearing is scheduled during August. Occasionally these meetings bring issues to our attention that we were not previously aware of and may require the PB additional time to consider. There has been a fair amount of discussion concerning this proposal but staff does not know if the discussion is associated with issues substantial enough to warrant further engineering or other work.

**DEPARTMENT COMMENTS:**

FD:

In regards to the Salvation Army project, I would like to know what they plan on using for curbing in the parking lot and adjacent to the property Joe Cooper and I would prefer not to see granite curbing. On another note, I recently had a tour of the Church on the corner of Union and 6<sup>th</sup> Street, I was surprised to see that this 100 year old structure has no fire alarm system. I was wondering during this major project if they would consider putting a fire alarm system in that structure?

WWTF:

This is a substantial expansion and I will need their engineers to calculate how much more flow will be discharged. I expect PW will want to know if the plan to replace or add sewer connections. If so, we should be given drawings that indicate where these new connection will be.

**RECOMMENDATIONS:**

Staff believes our comments have been acceptably addressed. Also, we are comfortable with an updated survey submitted before construction begins as long as the applicant understands if the updated survey changes what the PB approves in regards to the building, parking or substantial changes to utilities including stormwater the proposal will need to come back to the Board. Our concern is the Wright-Pierce comments regarding ownership of some of the utility lines, town’s ability to access and maintain utility lines, and “continued ponding” of stormwater. Some comments require the Public Works Directors’ input. We could consider adding a condition that requires these issues be worked out to the satisfaction of planning staff, Public Works Director and Wright-Pierce before construction begins. Finally, we have yet to receive public comment so I’m unsure if this will bring new issues that require further evaluation to PB’s attention.

If the new issues are not brought to the PB’s attention and the Board is comfortable with conditions, Staff recommends approval with the following conditions:

1. An updated boundary survey shall be submitted to the town before construction begins.
2. Ownership of utility lines, the town’s ability to access and maintain utility lines, and “continued ponding” of stormwater shall be resolved to the satisfaction of planning staff, Public Works Director and Wright-Pierce before construction begins.

**BACKGROUND (JULY MEETING):**

The Salvation Army is proposing the construction of a 12,000 +/- sq. ft. addition to the existing building, parking lots between Union and Church, loading/unloading area adjacent to the addition, sidewalks, landscaping, infrastructure, and other site work to support the proposed addition and parking lots. The proposal was introduced to the PB as a sketch plan at the April meeting (see background below). The proposal is now prepared for formal preliminary plan review and a determination of completeness. Also, scheduling a site walk and public hearing.

A lot of work has been done since the last time the PB considered this proposal. The applicant and staff were in regular contact while prepping for this preliminary plan submission. Some of the primary issues found during sketch plan, which included lot merger, setbacks, and overall site layout, have been or are in the process of being resolved.

As part of preliminary plan review the PB is tasked with a determination of completeness. A preliminary plan can be determined complete when the application contains all relevant info necessary to make a reasonable and informed

decision. Often the PB finds an application is complete but requests more or improved information. In such instances the PB makes a determination of completeness contingent upon the applicant making corrections, additions, etc. identified by the Board. I believe this is the case with this proposal.

There are three primary issues that need resolution- waiver request, boundary survey and Wright-Pierce grading and drainage comments. There are other issues that need clarification, plan amendments, etc. See below for further info (Wright-Pierce memo is included in this month's packet).

#### Three Primary Issues:

- Waiver request. The applicant is requesting a waiver of 78-1491 (d) which limits the number of driveways along local streets to one per lot. The proposal includes 3 parking lots (2 new) each with their own driveway along Church St. One of the reasons this request is made is due to staff recommendation to merge lots. By merging lots it makes a cleaner layout and allows for easier navigation of zoning standards. If the lots were not merged, the proposal would most likely have 3 driveways (one/lot). So, access to Church would most likely be the same with or without the merger. But the merger allows for a better overall plan. The applicant's packet includes a traffic report (which considered the driveways) and concludes there will be a net positive impact on the surrounding roadway network. Also note that the existing Union Ave driveway will be removed with this plan and as noted in the traffic report, elimination will improve access management. There are no objections from department heads and planning staff.
- A full boundary survey is not included in this submission. The applicant notes this survey is being done and will be provided prior to issuance of building permits. The plans include approximate property boundaries identified via an "on-the-ground" survey in June 2017 and are sealed by a land surveyor and engineer. The applicant states that they believe the property line location is sufficient for planning purposes. One question- there are areas where the proposed building is right at the minimum property line setback (15 ft.) so is sufficient for planning purposes good enough. In my opinion, I believe it is as it will be the responsibility of code enforcement to verify the proposal meets applicable setbacks before permit issuance and during construction.
- Grading and drainage comments. Wright-Pierce notes in their 7/3/17 memo that downstream receiving facilities have noted the existing storm drainage facilities are taxed, and therefore the management or pre-development to post-development flows are critical in this project area. The memo includes several comments regarding this which we'll need the applicant to address.

#### Other Issues (no particular order of importance):

- Response, including any plan amendments/additions, to the comments is Wright-Pierce memo dated 7/3/17.
- A Post-Construction Stormwater Management Plan (PCSMP) has been submitted for the project for the Planning Board to review. We recommend a list of site-specific BMPs with designation on where they discharge to and if they have the potential to discharge to the Towns MS4.
- Existing public and private easements marked N/A- why N/A? Was this researched?
- No proposed signs?
- Add dumpster fence section in the details.
- No changes to buffer along new building area facing Oakland Ave. This should be ok for the properties owned by the Salvation Army because they will be merged. But there are 2-3 properties not owned by the Army which will be close to the proposed building. Should the buffer/screening in this area be increased or does it already meet the buffer requirements? Does the buffer/screening meet 78-1821 – 24? The area is now a parking lot which has different buffer/screening standards than a building.
- Parking lot buffer/screening is shown on the plan but it's difficult to determine how it meets 78-1544. Maybe just a brief explanation will do.
- Street trees (along Church and Union)- please explain how the conceptual planting plan meets 78-1771 – 1775 (Street Trees).
- Individual trees that are part of the planting plan should be added to the detail plan or as part a landscaping plan.
- Proposal exceeds the required # of parking spaces. Required- 46 (1/6 seats @ 275); Proposed- 75.
- Wheel stops and curbs (78-1542 f)- couldn't find on the plan or detail sheets.

- HVAC compressors/noise. Area associated with proposed development is in the R2 District which has a noise standard of (dBA) 55 day, 45 night. Although, 26-62 (13) specifically regulates noise associated with the Salvation Army Pavilion which reference the MBL that includes the land associated with the building expansion. This allows for 70 day, 60 night at certain time of the year. The applicant could argue the 70/60 standard applies to the area associated with the building addition but this would only benefit them on a seasonal basis- the noise standard goes back to 55/45 during the fall/winter months. So, the applicant needs to demonstrate how the proposal meets 55/45 dBA. I assume the HVAC compressors may be the biggest generator of noise.
- Status of DEP permitting?

**DEPARTMENT COMMENTS (JULY):**

Nothing received

**RECOMMENDATIONS (JULY):** Staff recommends the following:

1. Vote on the waiver request. Staff supports this request.
2. Discuss the full boundary survey. Will the survey data provided be sufficient enough to move forward? Staff believes it is as long as the updated boundary survey is provided to codes at the time of permitting.
3. Discuss the other issues identified in this memo and any others you may have. What can be resolved by explanation? What needs to be submitted to resolve?
4. Determination of completeness. If the PB feels they can determine the application complete it must be contingent upon receiving corrections, additions, etc. as identified by the Board.
5. Schedule site walk (3 August).
6. Schedule a public hearing (10 August) if the application is determined complete.

**BACKGROUND (APRIL MEETING):**

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

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

- The side property setback is 15'. It appears some of the proposed building area is within the setback. If the applicant intends to move forward with building area within the setback they should apply for a variance before proceeding with PB review.
- Lots acquired by the Salvation Army, although owned by the Army, are considered separate parcels for zoning purposes. This means property lines still exist along with any setback, buffer, etc. requirements. The plans show parking lot area crossing the property line, too. The best way to avoid any potential limitations that may result from this is by combining the lots.

- 78-1491 – 1495 (access standards for nonresidential uses) includes driveway standards such as dimensions, siting, dimensions, sight distances, etc. One particular note that will impact this proposal is one driveway is permitted for each street fronting a parcel.
- 78-1541 – 1544 (parking lot and site circulation) includes parking dimensions and layout, snow removal and landscaping. 1541- do the pedestrian sidewalks meet (f)? How about pedestrian sidewalks for new parking between Church and Union? 1542- Don't forget (f) wheel stops and curbs. 1543- need snow removal plan. 1544- remember screening and buffering plan is needed when adjacent to properties not acquired by the Army including those along Oakland and Church. Street trees in accordance with 78-1771 -1775 needed along Union, Church and 15<sup>th</sup>.
- 78-1566 – 1568 (required parking spaces) identifies church uses at 1 space per 6 seats in principle sanctuary or meeting. One question- if the space is used for non-church functions should another parking space standard be considered?
- 78-1591 – 1596 (off-street loading). It appears the area ID as Service Area is the proposed loading area. A few thoughts- is there enough room to turn around without backing on the street? May need more buffering along Church St. if the residential properties are not acquired. Need to show lighting.
- 78-1746 – 1827 (landscaping and buffering) includes landscaping and buffering standards primarily for the building. Some of these standards, such as street trees, are also applicable to parking lots.
- The proposal will most likely be required to meet applicable standards in our post-construction stormwater ordinance (Ch. 71).

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

**ITEM 4 & 8**

**Proposal: Conditional Use (Home Occupation): Psychic Readings**  
**Action: Discussion; Final Ruling**  
**Owner: Mary & Greg Desjardins**  
**Location: 94 Saco Ave, MBL: 206-5-10**

<u>Psychic Readings</u>	<u>Project Status</u>
Sketch Plan	Not submitted or required
Preliminary Plan	Submitted in July
Application Complete	Conditionally determined complete in July
Site Walk	Scheduled August
Public Hearing	Scheduled August

At the July meeting the PB determined the application complete with the condition that a purchase and sale agreement be submitted for the August meeting. The purchase and sale agreement was requested because it was not clear the operator of the business (Sam Miller) is the home owner. As you may recall, the home occupation standards state a home occupation shall be carried on wholly within the principal single-family detached dwelling unit or owner-occupied two-family dwelling.

In response to the PB's condition, a lease agreement with a tenant purchase option (Exhibit O) has been submitted. A few comments concerning this submission:

- The lease agreement term is June – November 2016. Is there updated documentation to show the term was amended or the lease agreement renewed?
- According to the tenant purchase option, the option expires on 1 Dec. 2017 if not exercised. What if the PB approves the proposal and the option expires after approval? What assurances or guarantees can be given to ensure option will be exercised? The PB may want to consider a condition that tie into the business license. This could state something like: Any business license approval associated with this home occupation approved by the Planning Board shall expire on \_\_\_\_\_ unless the operator of the home occupation provides proof that the operator owns the property on or before the expiration date. This condition shall be stated on the approved business license. The operator/future owner should provide the PB with an update.
- In the lease agreement, 10 c states no business of any sort shall be conducted at the premises. Does the operator have the owner’s permission to use the property for the proposed home occupation?

In addition to the ownership matter, the question of sign size needs to be resolved. The applicant is proposing a 12 sq. ft. sign claiming the sign area is grandfathered. A home occupation sign area is limited to 2 sq. ft. The question is can the 12 sq. ft. be grandfathered. The term ‘grandfathering’ typically implies that there is some kind of nonconformity that exists. It can be said the existing sign is conforming for most of the allowed uses in the GB2, except for home occupations which have their own sign standards. It becomes nonconforming if a home occupation is permitted and uses the existing sign area. If the proposal is for a home occupation than the home occupation standards must be met. Home occupations have a specific sign size because the intent of home occupations is to ensure the residential character of a property is maintained. If a home occupation with a 12 sq. ft. sign existed before this proposal and was licensed for a continuous period of 1 year, I would opine the sign area is grandfathered. In my opinion the sign area is not grandfathered because: 1. A home occupation has not been licensed by the Council and/or been in operation for a continuous period of one year; 2. The business that was licensed with the 12 sq. ft. sign area has not been licensed by the Council and/or been in operation for a continuous period of one year; and 3. the home occupation is a specific use with its own sign area standard.

78-1624 (below) applies to nonconforming signs. I recommend you use this standard when considering the grandfathered request.

Lawfully nonconforming signs in existence at the time of the adoption of the ordinance from which this chapter derives can remain, be altered, and be repaired. Lawfully existing square footage of signage may be rearranged and redistributed on the premises, but only in conformity with the applicable design standards in the individual zoning districts. Any existing sign that is nonconforming with the standards of this division shall be made to comply with this division if any of the following conditions exist:

- (1) Any enlargement or alteration of an existing lawfully nonconforming sign that increases the nonconformity of the signage under this division and the applicable district.
- (2) The existing business operation, displaying the nonconforming sign, has not been licensed by the town council and/or been in operation for a continuous period of one year.
- (3) Any signage that violates [section 78-1622](#)

In addition to the above, the PB has not yet heard from abutters. A public hearing is scheduled this month which may result in comments that we have not considered. We received a voice mail from a resident at 90 Saco Ave. The resident does not support this proposal- uses such as these do not belong in a residential area and are more appropriate downtown. Also concerned about property value impacts.

## **RECOMMENDATIONS:**

1. Home occupations are required to be owner-occupied. Documentation has been submitted indicating the home occupation operator has a purchase option; although, the operator has not secured ownership. If the PB approves this proposal some kind of assurance or guarantee should be in place.
2. The PB must decide on the sign size.
3. Dumpster must be shielded on 3 sides.

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

This proposal is for the establishment of a psychic reading service as a home occupation. The current use of the property is a two-family dwelling. The psychic readings will take place in the enclosed 6 x 12 front porch. The home occupation will operate 7 days/week by appointment. There are no product sales. Parking for the proposal will utilize the existing driveway/parking area.

Home occupations are a Conditional Use (CU). In addition to the 12 CU standards (78-1240), the proposal must comply with the home occupation definition and the standards specific home occupation (78-1267). The applicant's submission includes responses to the CU and home occupation standards.

You may recall seeing a psychic recently operating at this same location. It was found this operation was in violation of the zoning ordinance because the personal service use as a stand-alone use is not permissible in the GB2 and due to minimum lot area/use requirements. To reestablish this business legally one option was to secure approval as a home occupation. Home occupations are a permissible use in the GB2 and they do not need to meet minimum lot area requirements. But, to qualify as a home occupation the proposal must comply with the home occupation definition, home occupation standards (1267) and CU standards (1240).

The applicants' submission is solid and appears to conform to a majority of the applicable standards mentioned above.

- Home occupation or profession shall be carried on wholly within the principal single-family detached dwelling unit or owner-occupied two-family dwelling. The deed identifies the owner as Mary and Gregory Desjardin. It appears the home occupation will be operated by Sam Miller. So, is the home occupation owner-occupied?
- Home occupations signage standard states: "A single sign identifying the name, address, and profession of a permitted home occupation or a lawfully existing nonconforming home occupation is permitted, provided such sign is nonilluminated and does not exceed two square feet." The applicant is proposing a 12 sq. ft. sign. The applicant states: "there is an existing grandfathered, and legally permitted sign already on the property which is 2-sided and is approximately 12 sq. ft. each side, and which is less than the allowed signage in the GB2 district but more than a Home Occupation allows in a residential district." A check of the permit file finds a 2-sided 12 sq. ft. sign was approved (2008) as a business sign for Weichert Realtors. Although it is true that a 12 sq. ft. sign was allowed for this property, Weichert Realtors was a permitted use (business, professional) and not a home occupation. So, the question- can grandfathering sign area apply when the use is changed? 78-1624 regulates nonconforming signs and, in part, states that lawfully existing square footage of signage may be rearranged and redistributed on the premises, but only in conformity with the applicable design standards in the individual zoning district. The proposed sign meets the design standards in the individual zoning district (GB2); although, the sign standard in question is part of the CU home occupation requirements- it's separate from the GB2 district. So, what does the PB think- is the 12 sq. ft. grandfathered or is the sign limited to 2 square feet?
- Dumpster must be shielded on 3 sides.

## **DEPARTMENT COMMENTS (JULY):**



Nothing received

**RECOMMENDATIONS (JULY):** I believe the PB can determine the application as complete but the questions asked in the bullets above should be answered. If they are not satisfactorily addressed at the July meeting the PB can determine the application complete contingent upon the applicant satisfying PB requests to resolve the questions before final ruling. If the PB determines the application complete a public hearing can be scheduled for the August meeting. Also, a site walk may be scheduled for August if the PB chooses.

## **OTHER BUSINESS**

### Food Truck/Mobile Food Business

On 2 August 2017, the Council enacted a moratorium on mobile food businesses. The moratorium defines mobile food businesses as “any business not qualifying as a restaurant or convenience store and offering for sale foodstuffs to be consumed by the public off premises, as the term Food Stand is defined in Chapter 78 of the Code of Ordinances of the Town of Old Orchard Beach, and including, in addition to food stands, food trucks and food carts.” The moratorium was enacted in response to concerns associated with food trucks and how mobile food businesses are regulated. Below are comments concerning moratorium key points, current language, current language interpretation, discussion points, and next steps.

### **MORATORIUM KEY POINTS**

The moratorium (attached with this memo) includes the following key points and PB responsibilities:

- Takes effect on 2 August and expires on 1 October (61 days). The Council can extend, repeal or modify the expiration date.
- The Council have “acted to limit the licensing of food trucks and mobile food businesses and further expressed the intent to limit licensing of food trucks and other mobile food businesses.”
- The “Town’s existing ordinances do not adequately regulate food trucks or other mobile food businesses to prevent serious public harm from commercial development.”
- A mobile food business is “any business not qualifying as a restaurant or convenience store and offering for sale foodstuffs to be consumed by the public off premises, as the term Food Stand is defined in Chapter 78 of the Code of Ordinances of the Town of Old Orchard Beach, and including, in addition to food stands, food trucks and food carts.”
- The PB is responsible for “studying the appropriate amending of land use ordinances regarding the regulation of mobile food businesses” and “developing land use regulations concerning food trucks and other mobile food businesses.”
- The PB’s scope has limits due to the moratorium language. Interpretation of this language shows the Council determined our current ordinances do not adequately regulate food trucks or other mobile food businesses and task us with developing standards that limit licensing of food trucks and other mobile food businesses to prevent harm to commercial development.
- Mobile Food Business as defined in the moratorium is not currently defined in our ordinances. It includes language in the currently defined term “Food Stand” and adds “and including, in addition to food stands, food trucks and food carts.”
- Ordinance changes will include amendments to Ch. 78; therefore, the PB will hold a public hearing and provide a recommendation to Council.
- Although the Council can extend the moratorium expiration date the PB should consider this a priority so we may complete our work as soon as possible. Due to the meeting dates and actions required by ordinance (public hearings, etc.) I expect we’ll need at least one 60 day extension.

## **CURRENT LANGUAGE**

Below is the current ordinance language that is most closely related to food trucks and mobile food businesses.

### Food Stand Definition

Food stand means any business not qualifying as a restaurant or a convenience store as defined in this section, and offering for sale foodstuffs to be consumed by the public off premises.

### Food Stand Permissible Locations, Setbacks, Sales

Sec. 78-717. Permitted uses in the downtown district 1 (DD-1) shall be classified as follows:

(1) Primary uses. Primary uses are as follows:

g. Food stands (located between First Street/Milliken Street and the beach) with a minimum ten-foot setback from the front property line.

Sec. 78-1083. Permitted uses in the amusement overlay district (AO) shall be classified as follows:

(2) Complementary uses. Complementary uses are as follows:

d. Food stands with a minimum of a ten-foot setback from the front property line.

Sec. 50-246 (Streets, Sidewalks, and Other Public Places Ordinance). Outside Solicitation of Sales (Note: this may apply- see comments in Current Language Interpretation, below)

No person shall engage in the solicitation, sale or rental of any goods, wares or merchandise outside the enclosed portion of a building.

## **CURRENT LANGUAGE INTERPRETATION**

In an attempt to determine whether a food truck or mobile food businesses are a permitted use in the DD1 and AO Zoning Districts and because there is no definition for food truck or mobile food business in the town's ordinances, it appears the use classification that is the best fit is "Food Stand." Chapter 78 ordinance defines a Food Stand as:

Any business not qualifying as a restaurant or convenience store as defined in this section, and offering for sale foodstuffs to be consumed by the public off premises.

The DD1 allows Food Stands in a specific area- between First Street and Milliken Street and the beach with a minimum 10 foot front property line setback (see attached map). The AO District allows Food Stands within the entirety of the district provided there is a 10 foot front property line setback (see attached map). Because the definition includes the language "any business not qualifying as a restaurant or convenience store" it has been interpreted by some that a food truck or mobile food business is permissible as a Food Stand as long as it's within the DD1 specific areas and AO, meets the 10' setback, and does not allow food to be consumed on premises which means food may be purchased on-site but it must be consumed off-site (per the definition of Food Stand).

Regarding Sec. 50-246, Outside Solicitation of Sales states: "No person shall engage in the solicitation, sale or rental of any goods, wares or merchandise outside the enclosed portion of a building." Food trucks and mobile food businesses are not buildings so sales will take place outside the enclosed portion of a building because a building does not exist. Also, a food truck and mobile food business engages in sales. The problem lies in is

food considered “goods, wares or merchandise.” I believe the closest fit is “goods” but unfortunately, goods are not defined in the ordinance. When a term is not defined in an ordinance it is common to use a dictionary. I used two dictionaries, Webster’s New World and Black’s Law, to find a definition for goods:

(Webster’s New World) goods: 1. personal property 2. wares 3. Fabric

(Black’s Law) goods: 1. Tangible or movable personal property other than money; esp., articles of trade or items of merchandise <goods and services>. \*The sale of goods is governed by Article 2 of the UCC. 2. Things that have value whether tangible or not <the importance of social goods varies from society to society>.

Considering the above-mentioned definitions, I find the only way food may be defined as goods is in Black’s Law definition: “Things that have value whether tangible or not.” This standard may not apply but it has some relationship to our discussion.

## **DISCUSSION POINTS**

As discussed above, the PB is tasked with developing ordinance language that limits licensing of food trucks and other mobile food businesses. Current ordinance language regulates food stands which have been interpreted by some to include food trucks and all mobile food businesses. In order to change this language and develop standards that follow the Council’s direction we offer a few discussion points:

- What should we do with the current Food Stand definition? Current standards?
- New definitions- Mobile Food Business, Food Truck, Food Stand, Food Vendor?, anything else?
- What are other names of food prep and servicing businesses that are temporary and not mobile?
- How will we be sure that regulations do not impact businesses like Lisa’s Pizza and Bills that have no seating, are similar to a food stand, yet are in permanent structures?
- Should there be separate land use classifications for each mobile food business?
- Where should they be permitted? Not permitted? We can allow a use but not in the entire district (similar to food stands in DD1).
- Who should be responsible for reviewing and approving? Should it be a conditional use?
- Should there be specific performance standards, setbacks, etc. requirements for each use?
- If in design districts should DRC review?
- Food consumed off premises? What is off premises? This is something that could be included in a performance standard.

## **NEXT STEPS**

At the PB’s August meeting, it’s staff’s hope the Board will provide us with some guidance to assist us with development of ordinance standards. We will have draft ordinance standards prepared for the PB September meeting.