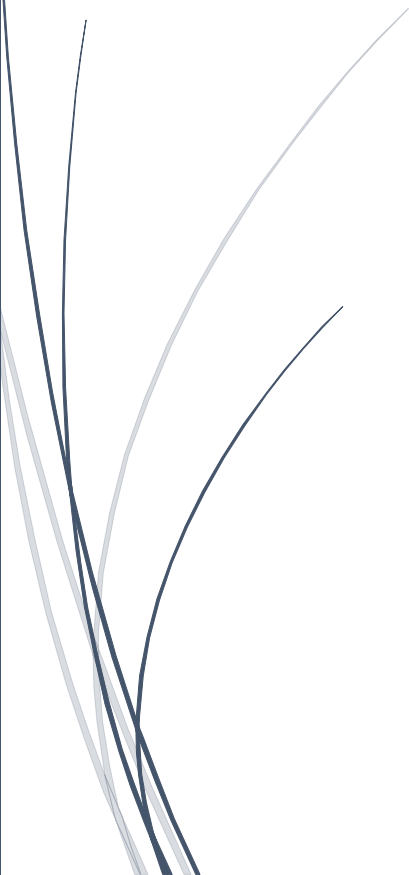


**OLD ORCHARD BEACH  
December 2018  
PLANNING BOARD  
MEMO**



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## *Regular Business*

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**ITEM 6**

**Proposal:** Subdivision Amendment: Relocate proposed detention basin #1; Relocate proposed sewer lines; Relocate proposed building G; Relocate and add stormwater pipes and catch basins; Proposed road retaining wall replaced with rip rap.  
**Action:** Ruling on Waiver Request; Ruling on Amendment  
**Owner:** KRE Properties Inc.  
**Location:** Settlers Ridge Condo's, Ross Road, MBL: 103-1-5, RD

<u>Subdivision Amendment: Settlers Ridge</u>	<u>Project Status</u>
Sketch Plan	Not Required
Preliminary Plan	Not Required
Application Complete	Not Required
Site Walk	Not Required
Public Hearing	Not Required
Preliminary Plan Vote	Not Required
Final Review	Pending

At the last meeting, the Planning Board tabled the proposal while waiting for the Applicant to continue to work with Wright Pierce to address outstanding comments. There were three primary items discussed as “requiring feedback.” One was in regards to porous pavement. Attar indicated that the Developer had used porous pavement on other projects in other communities, one example was Islington Place in Haverhill, Massachusetts. The Planning Board asked Planning Staff to check with Staff in Haverhill to see how the pavement has held up in that development. We heard from the City Engineer who said they do not have a lot of experience with porous pavement and that Islington Place is private. They do vacuum the pavement once per year. The City Engineer drove by the development and said it looks good, he did recommend the pavement not be used anywhere with greater than a 5% slope.

Porous pavement is discussed further in the Wright Pierce memo, the three points of note are: maintenance, maneuvering, and slope. It sounds like Wright Pierce is still waiting for further information from Attar on each of these items. It is important to note that maintenance requirements for the pavement are discussed in the Post-Construction Stormwater Management Plan (PCSWMP).

The second item was the stormwater discharge location. At the last meeting, the Planning Board requested information from the abutter regarding the discharge onto his property. This is also discussed in the Wright Pierce memo. Should the Town also consider the need for an off-site drainage easement as well as written correspondence from the Abutter?

Lastly, were the number of dead-end parking spaces and the requirement for 4 point turns. This is still shown on the plan. Wright Pierce has discussed it in their memo. The Planning Board still needs to decide if this is acceptable.

The Applicant will need to submit a waiver from *Sec. 78-1541* which will need to be granted by the PB regarding sidewalk width. They are proposing a 36-inch wide sidewalk from the parking lot to the building. The ordinance states that sidewalks shall be elevated a minimum of six inches above the street pavement at the gutter line and shall provide a minimum four-foot wide travel way without obstruction.

There are other items discussed in the Wright Pierce memo including:

- The submission of an updated performance guarantee (which can be completed once all of the outstanding issues have been addressed).
- Extension of the road and utilities from the existing Pilgrim Place (have the easements been sorted out for this). Ability to serve letters from the Town on the sewer system and MaineWater (WP and Wastewater are working on the remaining items for the sewer, MEWater indicated on 11/19/18 that they are still marking up the plan). Chris white has indicated that based on the Wright Pierce memo (included in your packets): *Wright Pierce is indicating there is capacity for the Settlers Ridge development but advises that the pump station is close to capacity. Before any further development takes place that discharges to Ross Road pump station a more comprehensive study will be needed. Not addressed in this memo is the downstream infrastructure which should also be reevaluated in the near future.*

- Further details provided as noted in the WP memo under “General Plan/Construction Comments.”
- Address the stormwater model concerns as listed in the WP Memo.
- Updates to the Post-Construction Stormwater Management Plan.
- The Town is still waiting for a signed Maintenance Agreement to be submitted to ensure the stormwater features will be maintained.

#### **RECOMMENDATIONS:**

Prior to making a decision on the proposal, Planning Staff recommends the Planning Board discuss:

- The implications on using porous pavement
- The requirement of a letter/easement from the Abutter on the stormwater discharge location
- The dead end parking space implications

Planning Staff also recommends the Applicant submit:

- A waiver for the reduced sidewalk width
- A finalized easement from Pilgrim Place for the extension of the road and utilities
- An ability to serve letter from Wastewater and ME Water
- A plan to address the details listed in the WP memo under “General Plan/Construction Comments” and “Stormwater Model Concerns” as well as updates to the PCSWMP
- Submission of a signed and executed Maintenance Agreement

#### **BACKGROUND (NOVEMBER):**

At the last meeting, the Planning Board tabled the proposal while waiting for the Applicant to work with Wright Pierce to address outstanding comments. Wright Pierce provided a memo on 10/29/18 which has been included in your packet. The memo has been split up into three categories:

- **Items Requiring Feedback** – Final items that need to be discussed/confirmed with the Planning Board.
- **Outstanding Information** – Items that still need to be provided, some are awaiting final confirmation related to the items requiring feedback such as the Performance Guarantee and the PCSWMP.
- **General Plan/Construction** – Items that the Applicant and Wright Pierce can work through – they include plan notes/references such as how/what/type and details on specific items. There are also **Stormwater Model Review** items listed in the memo for WP to coordinate on with the Applicant.

The most important items for the Planning Board to consider are the items requiring feedback. There are three primary feedback items.

The first item is a discussion on **porous pavement**. Staff has expressed concerns about the inclusion of porous pavement due to the large amount of maintenance required. Wright Pierce has also expressed concerns about the maneuverability of vehicles on the pavement which may cause ruts and maintenance issues. Attar Engineering has indicated that the Developer has used porous pavement on other projects in other communities and the maintenance requirements will be included in the PCSWMP that’s provided to the HOA.

*Comment from the Town Manager’s Office on this:* I do not support using porous pavement for the access drive and parking lot as a means of avoiding additional DEP review. The porous pavement requires regular maintenance (periodic sweeping with a commercial sweeper) for it to function as intended and, even if maintained properly it does not work indefinitely. When it needs resurfacing it is not just an overlay, the base and surface need to be redone. I am skeptical that this is likely to take place under the management of an HOA, or whoever is responsible for maintenance. For that reason I support the Board requiring the use of regular pavement.

*Comment from Joe Cooper (DPW Director) on this:* Cleaning of the stormwater system; Support of H2O or our fire truck. Really concerned if that is not put in place properly it will not support the fire apparatus when it needs to; Condo association is not going to be familiar with this. Should the association be managed by an engineer or environmental firm?

The second item for the PB to consider is the **stormwater discharge location**. One of the discharge points is the northeast property line which may impact the adjacent property owner. Should the Applicant be responsible for coordinating with this property owner and reporting back to the PB?

The third item are a number of **dead-end parking spaces**. In order for residents to get out of the parking spaces, they are going to be required to make 4 point turns. Is this acceptable?

Another item that was discussed in the WP memo is the sidewalk width shown as 36 inches wide. The Ordinance (Sec. 78-1541) says that the sidewalk “shall provide a minimum four-foot wide travelway without obstruction.” The Applicant shall submit a formal waiver request from this provision.

There are some outstanding items that are discussed in the WP memo. These include the Right, Title and Interest (RTI) for sewer connection and roadway improvements. At the last PB meeting, the Developer indicated that there is a specific easement that allows for the connection to sewer utilities and to the existing roadway network. Planning Staff is waiting for these documents to be submitted.

We are also waiting for ability to serve letters from Maine Water and Chris White (Wastewater).

**RECOMMENDATIONS (NOVEMBER):** Planning Staff recommends that the PB discuss the three items requiring feedback: porous pavement, stormwater discharge location and the dead-end parking spaces and provide feedback to Staff and the Developer. We also recommend the Developer submit the information on the RTI and coordinate with WP on the remaining general plan/construction comments listed in the WP memo.

**BACKGROUND (OCTOBER):**

Wright Pierce continues to have a number of comments regarding the proposal. The following is an email received from Stephanie on 10/2:

I started looking at this last night and it appears I am still going to have a number of comments. There are some things outstanding (documentation requested not included in the application) and I am finding some additional minor details that will need to be sorted out, but there remain a few larger picture items:

- What are the defined easements to cross the existing development for the roadway and utility connections? I want to make sure the limits and locations of these easements are defined and that they are staying within these or have the RTI to utilize land outside of the easements.
- Stormwater Design:
  - The proposed project continues to detail point source (ie outfall) connections discharging directly to the property line. While there is a pre- vs post- assessment, my concern is that there is a change in how the stormwater is getting to the property lines (difference between runoff and impervious surface with direct point source discharge. While the aerial imagery shows this as wooded, it is not their property, and I want to make sure we understand the downstream receiving bodies and that this does not impact the adjacent properties (both developed, undeveloped and future development potential).
  - In reviewing the hydroCAD model, there are a few questions and comments I have regarding the outlet controls for the site. I am also concerned that while the model is also looking to the 25-year storm event utilizing the old TR-55 precipitation data. We already know that precipitation trends are noting higher precipitation trends (NOAA precip.net information available), and given the downstream implications (not fully described) I am not sure stopping the model at the 25-year storm event will prevent off-site impacts during higher storm events.
- Roadway and Retaining Wall Construction: More detail needs to be shown and whether they will be able to complete the construction within the property line. They have indicated that the final design would be prepared and reviewed during construction, but I recommend these details be evaluated during this phase (from a preliminary standpoint) to ensure that temporary construction easements will not be needed.
- Parking Lots – my original comment may not have been clear, but they have dead-ended the parking lots. Even with a 24-foot wide drive aisle, backing up with require some maneuvering space behind the vehicle. With dumpsters and snow storage in the way, those last few spots will become unusable.

In an effort to keep costs down for the Developer, Wright Pierce recommended addressing the large picture items identified above before they continue to spend time with the smaller details. Stephanie indicated she is willing to meet with Attar to discuss the details.

There was also a comment received from the Fire Department: *The code requires some sort of turnaround on any road that is more than 150 feet long. A hammer head, probably the least costly method needs to be as long as the largest piece of Fire Apparatus in our jurisdiction. Tower 71 (Ladder Truck) is just shy of 50 feet in length.*

**RECOMMENDATIONS (OCTOBER):**

Planning Staff recommends the PB does not make a ruling on the proposal until these details have been sorted out and Wright Pierce is satisfied. Once Wright Pierce is satisfied with the amendment, Planning Staff will be satisfied.

**BACKGROUND (SEPTEMBER):**

In 2016, the Applicant brought a subdivision amendment forward to revise the location of stormwater infrastructure, relocate a building and change some walkways/lighting. There were a number of comments discussed in 2016 from the Abutters as well as Wright Pierce. The Planning Board recommended the Applicant address the concerns in the Wright Pierce memo and provide a new submission to the board.

In this new submission, there are still a number of outstanding comments from Wright Pierce and the Abutters.

**RECOMMENDATION:** Planning Staff does not recommend moving forward on this amendment until the comments from Wright Pierce have been addressed.

**BACKGROUND (NOVEMBER 2016):**

Settler's Ridge is proposing a subdivision amendment which includes relocation of detention basin #1; relocation of Building G; side slope/road support/stabilization change from retaining wall to rip rap; relocation and addition of new stormwater piping and catch basins; changes (width and location) to walkways; addition of exterior lighting.

Originally, Settler's Ridge (formerly Pilgrim Place- PB approved the name change during 2012) was approved by the PB as what appears to be a two phase project. The first phase was buildings A-F which is built out. The second phase is buildings G, H, I which has not been constructed. The second phase is associated with this proposed amendment. Building G, H, I are towards the rear of the Settler's Ridge lot with building's A-F closer to Ross Rd. Buildings G, H, I have a total of 24 units with 8 units in each building.

During 2013, the PB approved a subdivision amendment to adjust the parking lot areas to reduce impervious surface by 4,000 sq. ft. To do this, the building locations were slightly adjusted, parking lots rearranged and sidewalk width and locations altered.

Wright-Pierce performed peer review of the new amendment and submitted a memo (included in your November packets) which identifies numerous issues. Staff feels it is important the applicant address these issues (including any follow-up plan adjustments) before the PB rule on this proposal. The WP memo was emailed to the applicant's engineer.

Dept. comments:

- WWTF (in November packets): "The additional flow will not have a significant impact downstream at the pump stations in terms of capacity. I do however advise the planning board the pump stations beyond Ross Road pump station is in need of improvements due to age and condition"
- FD (in November packets): "The only question I have at this time is who is responsible for the hydrants and if they are private see the attached Town Ordinance." Note- if they are privately owned the PB could attach the following condition: All privately owned fire hydrants shall be tested and maintained in accordance with applicable NFPA 25 standards. The developer and/or Home Owners Association shall be responsible for complying with this condition.
- Assessing (not in November packet): Assessing is questioning whether King Weinstein, as KRE Properties Inc, owns this property. According to Assessing, Gary Salamacha, who apparently was (or is?) also identified as KRE Properties Inc., claims that he owns the property. The deed attached to the subdivision amendment application is signed by King Weinstein as VP of KRE Properties Inc. The deed book and page as identified on the deed itself is the same book and page identified on the tax records. This appears to show Mr. Weinstein has right, title and interest and planning staff has not seen legal documentation to support Mr. Salamacha's claim. We have followed up on this and it appears Mr. Weinstein can apply for this amendment.

**RECOMMENDATIONS:** Staff believes the applicants engineer should respond to the WP memo before the PB rules on the proposal. This is because there are a number of important issues that need resolution before a vote take place.

**ITEM 7**

**Proposal: Conditional Use: Home Occupation**  
**Action: Final Ruling**  
**Owner: Michael Goyet**  
**Location: 114 Portland Avenue, MBL: 104-1-28**

<u>Home Occupation: 114 Portland</u>	<u>Project Status</u>
<i>Sketch Plan</i>	N/A
<i>Application Complete</i>	Complete in November
<i>Site Walk</i>	Scheduled for December
<i>Public Hearing</i>	Scheduled for December
<i>Final Ruling</i>	Recommended for December

The PB reviewed this proposal at the last meeting, made a determination of completeness and scheduled the public hearing for December. There were a few outstanding items discussed at the last meeting.

1. A kitchen rehab that had been completed without first securing permits. This has been sorted out with the Code department.
2. Where the HO is going to take up “about” 400 square feet in the basement and the Ordinance only allows for it to be up to 412 square feet. Planning Staff asked for a plan showing the Home Occupation. This has been provided. It looks like the HO will be 375 square feet.
3. Planning Staff also requested additional information be submitted on what is proposed for a sign. They gave us three different sizes and locations so we requested some clarification. The Applicant provided this information to Planning Staff on 12/5 and it is included in your packets. It appears the final size of the sign will be 12”x18.”

As provided in your packet of information, it appears that the Applicant already moved into the Home Occupation on December 1<sup>st</sup> without securing PB approval. Our Code Officer reached out to the Applicant about this.

**RECOMMENDATIONS:**

The comments above are the only comments remaining on our end so we recommend the Planning Board make a final vote on the project.

Recommended Motion: *I will make a motion to approve the application complete to establish a home occupation at 114 Portland Avenue MBL 104-1-28.*

**Responses to the Conditional Use Standards:**

**Sec. 78-1240. - Standards.**

Before authorizing any conditional use, the planning board shall make written findings certifying that the proposed use is in compliance with the specific requirements governing individual conditional use and demonstrating that the proposed use meets the following standards:

- (1) The proposed use will not result in significant hazards to pedestrian or vehicular traffic, on-site or off-site.  
***The use of this new location will not impact to increase traffic patterns or impede pedestrian access in or out of the driveway.***
- (2)The proposed use will not create or increase any fire hazard.  
***The use of this new office space is purely design work. We do nothing else that will cause a fire hazard.***
- (3)The proposed use will provide adequate off-street parking and loading areas.  
***There will be no additional parking needed or space for trucks to unload. The existing home and driveway has ample existing parking.***
- (4)The proposed use will not cause water pollution, sedimentation, erosion, or contamination of any water supply.  
***There will be no products from conducting my business from this location that would cause pollution, erosion, contamination or sedimentation of any type.***
- (5)The proposed use will not create unhealthful conditions because of smoke, dust or other airborne contaminants.  
***There are no unhealthful conditions from my type of work. I.e. smoke, dust, or airborne contaminants.***



(6)The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties.

***The use of this space for my office will have no impact to the neighbors of any type or form.***

(7)The proposed use will provide adequate waste disposal systems for all solid and liquid wastes generated by the use.

***The additional waste generated from my business is mostly paper which will be recycled.***

(8)The proposed use will not adversely affect the value of adjacent properties.

***Having my business in my home will not affect neighboring property values since it is in my basement. Most people will have no idea that it is there since no additional traffic is generated.***

(9)The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.

***The hours of operation will be 8AM-5PM Tuesday – Friday. There are no noises generated from my business.***

(10)The applicant's proposal must include any special screening or buffering necessary to visually obstruct the subject property from abutting uses or to ensure the continued enjoyment of abutting uses.

***There will be no visual impact on neighbors since the office will be in my basement. There will be no additional traffic generated because everything we order is shipped directly to the clients.***

(11)The applicant's proposal must adequately provide for drainage through and for preservation of existing topography within its location, particularly in minimizing any cut, fill, or paving intended.

***There will be no additional drainage caused by my office being located in my basement.***

(12)The applicant must be found to have adequate financial and technical capacity to satisfy the criteria in this section and to develop and thereafter maintain the proposed project or use in accordance with all applicable requirements.

***This business is 40 years old and has a stable long term clientele which generated sufficient income to maintain operations. I expect that less than \$1,000 will be needed to set up my existing basement to adequately serve by office needs. I.E. new caret tiles, paint, shelving and additional free-standing lighting. All of which I sell.***

### **Responses to the Home Occupation Standards:**

#### **Sec. 78-1267. - Home occupations.**

The purpose of the home occupation provision is to permit the conduct of only those businesses that are reasonably compatible with the residential districts in which they are located. Home occupations shall comply with the following conditions:

(1) The occupation or profession shall be carried on wholly within the principal single-family detached dwelling unit or owner-occupied two-family dwelling or within a building or other structure accessory thereto.

***My business will be moved into my finished basement of my single family home. No renovations or additions are needed.***

(2) The occupation or profession shall be carried on by household members occupying the dwelling unit and one nonresident employee.

***I am the principle occupant/business owner. I have a book keeper that works 3-4 hours/week at the office.***

(3) There shall be no exterior display, no exterior sign except as expressly permitted by division 5 of article VIII of this chapter, no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building.

***I do not plan on any significant exterior signage for the business. A small unlighted sign (12"x18") will be mounted to the existing fence at the entrance to my long driveway. The signage size is negotiable to meet code.***

(4) No nuisance shall be generated, including but not necessarily limited to offensive noise, vibration, smoke, dust, odors, heat, glare, traffic or parking.

***My company is a commercial design firm. We generate no noise, dust, smoke, vibration, odors, heat, glare, dust or traffic.***

(5) The traffic generated by such home occupation shall not increase the volume of traffic so as to create a traffic hazard or disturb the residential character of the immediate neighborhood.

***I have very few clients that visit my office so no additional traffic will be generated.***

- (6) No retail sales shall be permitted, except those sales which are incidental to the services provided by the home occupation.

***My business is 100% wholesale. No deliveries are made to my location nor shipped out. No off street parking is necessary. My existing driveway has ample parking as is.***

- (7) The home occupation may utilize:

- a. Not more than 20 percent of the dwelling unit floor area, provided that for the purposes of this calculation unfinished basement and attic spaces are not included.
- b. Unfinished attic and basement spaces
- c. One accessory structure. The floor area utilized in the accessory structure shall not exceed 50 percent of the total floor area of the dwelling unit as previously calculated.

***My existing home has about 2100 sq. ft. of living space. The new office is 400 sq. ft. in the basement.***

- (8) There shall be no change in the outside appearance of the building or premises or other visible evidence of the conduct of such home occupation.

***No exterior changes are needed to the existing building.***

- (9) There shall be no alteration to the character or usefulness of the dwelling unit or accessory structure for normal residential purposes.

***No alterations or cosmetic changes are needed to the existing structure.***

- (10) 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. Freestanding signs shall not exceed six feet in height and shall be located on the principal property. Wall-mounted signs shall be located on the principal building and shall not extend beyond the first story.

***A small non illuminated sign of 12"x18" will be mounted to the existing fence at the entrance to my driveway.***

- (11) The following uses shall not be operated as home occupations:

- a. Facilities for the repair of motor vehicles.
- b. Automobile towing services.

***We only do design work.***

## **BACKGROUND (NOVEMBER):**

Planning Staff did not receive the complete application materials by the October meeting deadline, therefore, the proposal was tabled. Since then, we received the necessary materials and a description of the project is listed below.

This proposal is for the establishment of a design business as a home occupation. The current use of the property is a single-family dwelling with a proposed Accessory Dwelling Unit (see item #5 below). The design business will be in the finished basement with a separate entrance from the garage. It will operate 4-6 hours a day Tuesday through Friday. There will not be any deliveries or clients at the home. Parking will be in the existing driveway which has space for 5-6 cars (see aerial below).



Home Occupations are a Conditional Use (CU) in the Rural District. In addition to the 12 CU Standards (78-1240), the proposal must comply with the home occupation definition and the standards specific to home occupations (78-1267). Responses to the Home Occupation standards as well as the Conditional Use standards have been included in your packet this month.

*Home Occupation definition:* An occupation or profession which is customarily **carried on in a dwelling unit** or in a building or other structure accessory to a dwelling unit, **carried on by household members occupying the dwelling unit**, clearly **incidental and secondary to the use of the dwelling unit for residential purposes**, which can be conducted within a residential dwelling **without changing the appearance or condition of the residence** or accessory structures, and which **conforms to the requirements of Sec. 78-1267**.

The deed for the property identifies Michael and Karen Goyet as the owners. It appears the home occupation will be operated by Michael Goyet in the basement of the existing dwelling with no changes to the outside appearance aside from a sign which is discussed below.

Planning Staff had a comment on one of the Home Occupation standards:

**#7:** The home occupation may utilize:

- a. Not more than 20 percent of the dwelling unit floor area, provided that for the purposes of this calculation unfinished basement and attic spaces are not included.
- b. Unfinished attic and basement spaces.
- c. One accessory structure. The floor area utilized in the accessory structure shall not exceed 50 percent of the total floor area of the dwelling unit as previously calculated.

According to our property record card, the square footage of the dwelling unit is 2,061 sq. ft. This allows for up to a 412 sq. ft. addition in the basement. The applicant indicates that the new office will be 400 sq. ft. in the basement. This is not shown on a plan. The PB should determine if a plan for the Home Occupation should be submitted.

**#10:** A single sign identifying the name, address, and profession of a permitted home occupation or lawfully existing nonconforming home occupation is permitted, provided such sign is nonilluminated and **does not exceed two square feet**. Freestanding signs shall not exceed six feet in height and shall be located on the principal property. Wall mounted signs shall be located on the principal building and shall not extend beyond the first story.

In the Application materials, it says the sign will be 3” x 6” long on the side of the mailbox. In the Conditional Use Application narrative, it says 12” x 18” and in the responses to the Conditional Use Standards it says 12” x 16”. Planning Staff recommends further clarification be submitted on this – what will be the size of the sign and where will it be located. The Home Occupation Standards also state that a single sign identifying the name, address and profession of a permitted home occupation is permitted. What is proposed to be located on the sign?

Finally, According to Code Enforcement, a shed was placed in the Emerson Drive common right-of-way and kitchen rehab was done without securing permits. Code Enforcement informed the owner of this and, according to Codes, this matter has not yet been resolved.

#### **RECOMMENDATIONS (NOVEMBER):**

Planning Staff recommends the Applicant submit further information on the proposed signage. The PB should also determine if a plan should be submitted showing the layout of the basement. Other than these two items, the proposal is fairly straight forward. We recommend the board determine the application complete contingent on the submission of:

- Further information on the proposed sign and how it complies with standard #10 – what is the size, where will it be located, what is proposed to be on it.
- Plan showing location of the Home Occupation in the Basement to ensure it is under 412 sq. ft.
- Resolution of outstanding Code Enforcement matters in regards to the shed and kitchen rehab on or before 12.12.18.

Aside from these items, the PB can schedule a site walk for the December meeting, however, where we have a proposal for an Accessory Dwelling Unit at the same property, we recommend holding off on scheduling a Site Walk in December

for this proposal. They are not necessary for Conditional Use Applications. We do recommend the board schedule a Public Hearing for December 13<sup>th</sup> at 7:00PM.

Recommended Motion: *I will make a motion to determine the application complete to establish a home occupation at 114 Portland Avenue MBL 104-1-28 contingent on the submission of further information on signage as well as a plan showing the layout of the basement.*

Recommended Motion: *I will make a motion to schedule a public hearing for December 13<sup>th</sup> at 7:00PM.*

**BACKGROUND (OCTOBER):**

**PLEASE NOTE:** The PB gave the Applicant until 10/2 to submit responses to the Home Occupation and Conditional Use standards. These were not received, therefore, the application is not complete. We recommend the PB table the item until the November meeting.

## ITEM 8

**Proposal:** Conditional Use: Accessory Dwelling Unit  
**Action:** Final Ruling  
**Owner:** Michael Goyet  
**Location:** 114 Portland Avenue, MBL: 104-1-28

<u>ADU: 114 Portland</u>	<u>Project Status</u>
Sketch Plan	N/A
Application Complete	Complete in November
Site Walk	Scheduled for December
Public Hearing	Scheduled for December
Final Ruling	Pending

The PB reviewed this proposal at the last meeting, made a determination of completeness and scheduled both the site walk and public hearings for December. There were a few issues that were discussed at the last meeting, below are an update on each:

- Planning Staff requested further information on where the additional parking spot will be located. The Applicant submitted a plan showing the parking spot. Below is an aerial on where it appears the spot will be located based on the drawing submitted. It appears the spot will be 15' wide by 10' long. Looking at the property line it appears it will be tight to fit a 10x15-paved area in that spot.



- There were also some issues discussed regarding the setbacks. The Applicant indicated he can use the Emerson Drive ROW as setback area. If he cannot use the ROW area, the Applicant will only have an 11 foot setback. The requirement is 25 feet for the side and 50 feet for the front.
  - We checked with our Town Attorney on this and the response from our Attorney was that: *Generally the ROW line is considered the lot line for both setback purposes and lot area calculations; the ROW is not part of the lot but is instead a separate parcel that is usually owned in fee by another entity (i.e. the Town, developer, or homeowner's association). In addition to the definitions you included below, the definition in the Zoning Ordinance of a street line is "the right-of-way line of a street."* Thus the front line of the lot begins at the ROW line. In some instances in older subdivisions the ROW is held only through an easement, so it would be important to get a better understanding of the specifics of this situation, including whether or not there is a survey which would be conclusive.
  - Looking at the plan, it specifically states "Common Right-of-Way." Therefore, this is going to require review by the Zoning Board of Appeals. If the Applicant has information showing that the ROW is held

only through an easement, then they need to provide that information to the board along with a survey of the property.

- Staff also requested a plan showing the number of bedrooms as well as a general layout of the Accessory Dwelling Unit. A layout has been submitted and included in your packets; however, there are no dimensions on the plan. Would the PB like to have those submitted?
- There was also a shed placed in the ROW and a kitchen rehab completed without first securing permits. This has been sorted out with the Code Enforcement department.

**RECOMMENDATIONS:**

Planning Staff recommends the board make a decision on the parking information submitted, should more information be provided? The board should also decide if more information should be submitted regarding the layout of the interior (dimensions?). There is also the outstanding issue regarding the 11 foot setback from the ROW line. Planning Staff recommends further information be submitted on that prior to making any decisions.

*No motion necessary.*

**BACKGROUND (NOVEMBER):**

Planning Staff did not receive the complete application materials by the October meeting deadline, therefore, the proposal was tabled. Since then, we received the necessary materials and a description of the project is listed below.

This proposal is for a 750 square foot Accessory Dwelling unit to be constructed on the existing home located at 114 Portland Ave.

Accessory Dwelling Units are permissible in the Rural District as long as they meet the Conditional Use Accessory Dwelling standards and Conditional Use Review Criteria. The purpose of ADUs is to provide a diversity of housing for residents while protecting the single-family character of residential neighborhoods.

Regarding this proposals conformance with the 5 Accessory Dwelling Unit Standards (78-1272):

- (1) States the ADU shall be accessed through the living area of the primary structure and all other entrances to the ADU shall appear to be subordinate to the main entrance. Also, proposed additions shall be subordinate and architecturally compatible with the primary structure. It appears that the shared entrance will be through the front entrance of the home, through the kitchen, into the garage area and into the ADU. There is a second entrance proposed looking from the front, on the right side of the structure to access the ADU directly. The Applicant indicates that a small additional paved parking spot will be located in front of the entrance and added onto the existing driveway. The plan does not show the location of that proposed parking spot. We recommend that be provided to the Planning Board.





*(Photo from Property Record Card – Proposed Addition to the Right of the Garage)*

- (2) States the ADU at least 500 sq. ft. but not exceed 50% of floor area of the primary structure. Assessing records show the primary structure floor area at 2,061 sq. ft. The proposed ADU is 750 sq. ft.
- (3) States the ADU and primary structure served by the same electrical service. In the responses to the 5 ADU standards, the Applicant states “my Electrician told me he would connect the service to the existing home, but could add a service panel to the new addition in case access is needed by the tenant (my mother) if that is acceptable to code. Because this is proposed as an ADU, a second electrical service is not permitted. Only one is permitted on the main home. The Applicant should revise the response to this standard to reflect that.
- (4) States one ADU per lot and made part of the primary dwelling. The proposal meets this standard.
- (5) States the ADU shall not be permitted for any nonconforming structure or use where nonconformance is due to use of the premises. A single family dwelling is a permitted use; therefore, is a conforming use of the premises.

The Application also has to comply with the 12 Conditional Use Standards:

CU Standard #3 states the proposed use will provide adequate off-street parking areas. The Applicant writes a small additional paved parking spot will be located in front of the entrance. 15’ x 20’. This will be added on to the existing driveway. At this time we can fit 2-3 cars in our driveway when 2 cars are in the garage. There is about 650-700 sq. ft. of paved surface of that is part of the “right of way” which is not considered “OUR” driveway. We recommend the Applicant submit a plan showing the parking area, perhaps by use of an aerial photo (accessed via Town website GIS). Looking at the GIS, it appears that the parking area is limited.



Looking at the plans, we had a few additional comments. They are showing an 11 Foot (appears to be side) setback from the property line to the addition. The setbacks in the Rural District for this type of use are as follows:

- Side & Rear – 25 Ft.
- Front – 25 Ft.

The plan should be updated to reflect these setbacks.

It is also not clear how many bedrooms are proposed for the Accessory Dwelling Unit or the general layout.

According to Code Enforcement, a shed was placed in the Emerson Drive common right-of-way and kitchen rehab was done without securing permits. Code Enforcement informed the owner of this and, according to Codes, this matter has not yet been resolved.

Due to the influx in Accessory Dwelling Unit proposals, the Town Manager provided a comment on them: My comments here are not directed specifically to any of the pending applicants but rather to the broader topic of the universe of requested accessory dwelling applications. I request that the Board include as a condition of approval for accessory dwellings that the dwelling may not be used for short-term rentals (defined as 31 days or less), that the accessory dwelling

may only be rented for long term use if the primary dwelling is owner occupied, and that these two requirements be recorded in the registry of deeds so that any future owners are fully aware of this limitation. My rationale for this is that an accessory dwelling should substitute for an approved two unit use on a residential parcel. In the OOB rental market it can be too tempting for an owner to use the accessory dwelling as a means of generating income through short term rentals, or turning the property into a 2-unit property.

Planning Staff will recommend a condition be added to each ADU proposal moving forward to address the concern.

**RECOMMENDATIONS (NOVEMBER):**

Planning Staff recommends the Planning Board hold off on making a determination of completeness until:

- Information on parking is submitted
- The ADU Standard #3 is updated regarding the single electrical service meter
- Setbacks are sorted out
- A plan showing number of bedrooms/a general layout is submitted
- Resolution of outstanding Code Enforcement matters in regards to the shed and kitchen rehab.

*No Motion Necessary this month.*

**BACKGROUND (OCTOBER):**

**PLEASE NOTE:** Responses to the Accessory Dwelling Unit Standards were not received by the extended deadline of 10/2. Therefore, Planning Staff recommends that the PB table this item until the November meeting.



**ITEM 9**

**Proposal:** Conditional Use: Accessory Dwelling Unit  
**Action:** Final Ruling  
**Owner:** David and Deborah Walker  
**Location:** 5 Winona Avenue, MBL: 321-5-3

<u>ADU: 5 Winona</u>	<u>Project Status</u>
<i>Sketch Plan</i>	N/A
<i>Application Complete</i>	Complete in November
<i>Site Walk (Not Required)</i>	N/A
<i>Public Hearing</i>	Scheduled for December
<i>Final Ruling</i>	Recommended for December

The PB reviewed and determined the application complete last month and scheduled a Public Hearing for December. Where the ADU is already constructed, the board did not feel a Site Walk would be necessary.

**RECOMMENDATIONS:**

This proposal is very straightforward. Planning Staff recommends the board approve the proposal with the following conditions:

1. The ADU shall not be used for short-term rentals (31 days or less).
2. The ADU may only be rented for long-term use if the primary dwelling unit is owner occupied.
3. The Findings of Fact shall be recorded in the York County Registry of Deeds within 30 days of their approval.

**Recommended Motion:** *I will make a motion to approve the application for an Accessory Dwelling Unit at 5 Winona Avenue, MBL: 321-5-3 with the following conditions:*

1. *The ADU shall not be used for short-term rentals (31 days or less).*
2. *The ADU may only be rented for long-term use if the primary dwelling unit is owner occupied.*
3. *The Findings of Fact shall be recorded in the York County Registry of Deeds within 30 days of their approval.*

**Responses to the Conditional Use Standards:**

**Sec. 78-1240. - Standards.**

Before authorizing any conditional use, the planning board shall make written findings certifying that the proposed use is in compliance with the specific requirements governing individual conditional use and demonstrating that the proposed use meets the following standards:

- (1) The proposed use will not result in significant hazards to pedestrian or vehicular traffic, on-site or off-site.  
***There will be no additional traffic generated as this is an existing ADU with seasonal use mostly and private off-street parking.***
- (2)The proposed use will not create or increase any fire hazard.  
***This property was built according to all applicable Town and State codes for fire safety. It was inspected for insurability and has a hard wired smoke and carbon monoxide detection system.***
- (3)The proposed use will provide adequate off-street parking and loading areas.  
***There are four private parking spaces with the current driveway as well as two garage spaces when required. There are also four street spaces available but not needed for this ADU.***
- (4)The proposed use will not cause water pollution, sedimentation, erosion, or contamination of any water supply.  
***The proposed ADU is in current use therefore will have no impact on the existing nor adjoining properties.***
- (5)The proposed use will not create unhealthful conditions because of smoke, dust or other airborne contaminants.  
***This is an administrative request for an existing ADU. There will be no unhealthful conditions generated by this request.***
- (6)The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties.

***This is an administrative request for an existing ADU. There will be no noise, fumes, vibrations, fire hazards nor restriction of air or light generated to neighboring properties by this request.***

(7)The proposed use will provide adequate waste disposal systems for all solid and liquid wastes generated by the use.

***There is weekly public trash pick-up at this location as well as city sewerage previously approved for a five bedroom dwelling. The current dwelling consists of four bedrooms.***

(8)The proposed use will not adversely affect the value of adjacent properties.

***This is a new year-round home constructed amongst older seasonal properties will only serve to enhance current property values.***

(9)The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.

***This ADU will only have limited use during peak seasons which is generally three to four months when family members come to visit.***

(10)The applicant's proposal must include any special screening or buffering necessary to visually obstruct the subject property from abutting uses or to ensure the continued enjoyment of abutting uses.

***Construction of this residential property was approved by the Planning Office in 2016 with existing buffering. No new buffering is required for this request. This ADU currently exists within the previously approved plans.***

(11)The applicant's proposal must adequately provide for drainage through and for preservation of existing topography within its location, particularly in minimizing any cut, fill, or paving intended.

***Plans for drainage, cut, fill and paving were previously approved with building plans submitted in 2015. There will be no new changes to topography generated by this request.***

(12)The applicant must be found to have adequate financial and technical capacity to satisfy the criteria in this section and to develop and thereafter maintain the proposed project or use in accordance with all applicable requirements.

***This is an administrative request with no new construction required. This ADU was built during the initial construction phase in 2016. There should be no financial impact as a result of this administrative request.***

## **Responses to the Accessory Dwelling Unit Standards:**

### **Sec. 78-1272. - Accessory dwelling unit.**

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

(1) The accessory dwelling unit shall be accessed via the living area of the primary structure, and all other entrances to the accessory dwelling unit shall appear subordinate to the main entrance. Any proposed additions to the main structure or accessory structures shall be designed to be subordinate in scale and mass to that of the main structure and compatible with the architectural style and quality of the main structure.

***This ADU is accessed through the existing front door of this property which is a common entrance.***

(2) The accessory dwelling unit shall have at least 500 square feet of floor area but shall not exceed 50 percent of the floor area of the main dwelling unit. Floor area measurements shall not include unfinished attic, basement or cellar spaces nor public hallways or other common areas.

***This existing ADU was built at 569 sq. ft. which includes one bedroom, one living room, one full bathroom and an eat-in kitchen. The entire residential property has 2816 square feet of living space with ADU comprising 20.2% of the main dwelling unit.***

(3) The dwelling shall be served by a single electrical service.

***There is only one service serving this home with one meter from Maine Central Power Company.***

(4) Only one accessory apartment shall be permitted per lot. It shall be made part of the main residence.

***This is the only ADU on this lot. It has existed since 2016 when the current occupancy permit was issued.***

- (5) Accessory apartments shall not be permitted for any nonconforming structure or use, where nonconformity is due to the use of the premises, as opposed to nonconforming dimensional requirements.

N/A

**BACKGROUND (NOVEMBER):**

This proposal is to formally authorize an already constructed Accessory Dwelling Unit (ADU). During 2015, the Walker's secured building permit approval to construct the dwelling shown in the submission. At that time, they were not informed of the ADU requirements. After recent discussions with the Walker's, it was determined their 2015 proposal included an ADU. So, the Walker's are moving forward with PB approval of the ADU.

As you may know, ADU's are permissible in the R3 zoning district as long as they meet the Conditional Use Accessory Dwelling standards and Conditional Use Review Criteria. Right to the point, the owner/applicant submission demonstrates compliance with the above-mentioned standards and criteria.

As previously stated in November's memo, staff has concerns about ADU's becoming short-term rentals. The Walker's state the ADU's use is exclusively for family members when they visit. Although staff has no concerns with this ADU use as a short-term rental under current ownership, we can't guarantee this will not happen at some point in the future- especially if ownership is transferred. So, when this proposal is voted on, it is appropriate to apply the same short-term rental conditions as those stated in this memo for other ADU's.

**RECOMMENDATIONS (NOVEMBER):**

Staff recommends the PB determine the application complete and schedule a site walk (Note- not required for conditional use proposals) and public hearing.

***Recommended Motion:** I will make a motion to determine the application complete for an Accessory Dwelling Unit at 5 Winona Ave., MBL: 321-5-3.*

***Recommended Motion:** I will make a motion to schedule a Site Walk at 5 Winona Ave on 6 December at \_\_\_\_ (if you choose to schedule) and a Public Hearing on 13 December.*

**ITEM 10**

**Proposal:** Site Plan Review: 40 x 60 Maintenance Building  
**Action:** Final Ruling  
**Owner:** Seacoast RV Resort LLC  
**Location:** 1 Seacoast Lane, MBL: 102-3-7

Site Plan: Seacoast RV Maintenance Bldg.	Project Status
Sketch Plan	Submitted in July
Application Complete	Complete in November
Site Walk	Scheduled for December
Public Hearing	Scheduled for December
Final Ruling	Recommended for December

The PB reviewed this proposal at the last meeting, made a determination of completeness and scheduled a Site Walk and Public Hearing for December. Last month, Wright Pierce had a minor of small details. BH2M reviewed and responded to the concerns. Wright Pierce provided a subsequent memo, which has been included in your packets, BH2M already addressed the remaining WP comments and WP responded letting us know that all of their comments had been addressed.

There was one point of clarification made by WP regarding the setback line. They show a 30-foot setback in the notes, however the detail sheet shows a 52’ setback. WP was wondering if both setback lines needed to be shown for clarity. Building setbacks in the campground overlay district are 50’ whereas campsites are 30’. BH2M indicated that they left the 30 foot setback as a reference to the use of the project which is a campground and that setback conditions for the amendment are outlined in note #16. Planning Staff is okay with this.

We received one comment from Wastewater regarding sewer capacity associated with the new building:  
*I don't have a capacity issue with the new maintenance building located at 1 Seacoast Lane. My understanding is that the building will contain one bathroom. One bathroom is not significant enough to affect anything downstream. This would be considered a commercial building and the connection fee should be charged as such. If they are proposing to discharge anything other than what comes from the bathroom this should be noted. If this is noted, code enforcement should review the plans and comment on any pretreatment requirements.*

**RECOMMENDATIONS:**

With no remaining concerns, we recommend the PB approve the maintenance building.

**Recommended Motion:** *I will make a motion to approve the application for a 40x60 maintenance building at the Seacoast RV campground, MBL: 102-3-7.*

78-216(d): All site plan review applications shall be evaluated, approved, approved with conditions, or denied based on the following findings of fact:

**Responses to the 9 Site Plan Review Criteria:**

- (1) The proposed project conforms to all standards of the zoning district and meets or exceeds performance standards specified in this article and article VIII of this chapter.  
***Project site is zoned for this existing use. Our proposed improvement is for a maintenance building and will meet all setbacks per zoning. All performance standards specified in Article VIII shall be met.***
- (2) The proposed project has received all required zoning board of appeals and/or design review permits as specified in division 2 of article II and article V of this chapter, if applicable, and has or will receive all applicable federal and state permits.  
***ZBA is not required for this project. All performance standards in division 2 Article II and Article V have been met.***
- (3) The proposed project will not have an adverse impact upon the quality of surficial or groundwater resources.  
***The stormwater design for this small increase in impervious will prevent any adverse impact on the quality of surface drainage or groundwater. This site is served by public water and sewer.***

- (4) The project provides adequate stormwater management facilities to produce no additional peak runoff from the site during a 25-year storm event or any other event so required by the planning board, and will not have an undue impact on municipal stormwater facilities or downstream properties.  
*The small increase of impervious will be managed to prevent any peak runoff from a 25-year storm. The proposed increase in impervious is 1/10 of an acre.*
- (5) The proposed project will not have an adverse on-site and off-site impact upon existing vehicular and pedestrian circulation systems within the community or neighborhood.  
*The proposed use will not result in any new vehicular trips from the existing use. The proposed maintenance building will be used by the existing staff.*
- (6) The proposed project will not have an adverse impact upon environmental quality, critical wildlife habitats, marine resources, important cultural resources, or visual quality of the neighborhood, surrounding environs, or the community.  
*The proposed 2,400 s.f. maintenance building will be located to the rear of the existing R.V. sites and will exceed the minimum setback along the one abutting residential property.*
- (7) The proposed project will not produce noise, odors, dust, debris, glare, solar obstruction or other nuisances that will adversely impact the quality of life, character, or the stability of property values of surrounding parcels.  
*All proposed activities associated with the maintenance building will be conducted in the building. No noise, odors, debris, glare or other nuisances are anticipated. The existing use is a season R.V. park requiring minimal maintenance.*
- (8) The proposed project will not have a negative fiscal impact on municipal government.  
*No negative fiscal impact on municipal government will result from this construction and use of the maintenance building.*
- (9) The proposed project will not have an adverse impact upon surrounding property values.  
*The proposed maintenance building will be buffered from the one residential property. No outside storage or services will be conducted along this abutting property.*

**BACKGROUND (NOVEMBER):**

The PB saw this proposal back in July as a Sketch Plan. At the time it was for the addition of campsites and a maintenance building. Currently, the proposal is back for just the 40' x 60' Maintenance Building at the existing Seacoast RV. It will go in the area where an existing barn is located with an access road in between sites 22 and 23. This is a fairly straight forward proposal, maintenance facilities are allowed as an accessory use in the CGO. However, since the building is proposed to be greater than 1,000 sq. ft., it triggers the requirement for review as a site plan.

The setbacks in the Rural District are 25 feet (side/rear) and 50 feet from the property line. The Applicant claims that the building setback is 52 Feet from the property line. This should be shown on the plan for confirmation purposes.

Wright Pierce had a number of minor details they wanted adjusted. We recommend the Applicant address these in their next submission.

**RECOMMENDATIONS (NOVEMBER):**

Planning Staff recommends the Applicant show the 50 foot setback line on the plan-set and address the Wright Pierce comments in their next submission. The PB should make a determination of completeness and schedule a Site Walk for 5:30PM on December 6<sup>th</sup> and Public Hearing for December 13<sup>th</sup>.

*Recommended Motion: I will make a motion to determine the application complete for a 40x60 maintenance building at the Seacoast RV campground, MBL: 102-3-7.*

*Recommend Motion: I will make a motion to schedule a site walk at 5:30PM on December 6, 2018 and a Public Hearing on December 13, 2018.*

**BACKGROUND (JULY):**

This is a Site Plan proposal for the addition of 7 full utility R.V. Campsites at the Seacoast RV Resort Campground and a 40x60 maintenance building. The project right now is in the Sketch Plan review stage which gives the PB a chance to review before a formal submission is made. The Campground Overlay District allows campground expansions of up to

five sites per year through an Administrative Site Plan review process. However, anything more than that requires Site Plan Review through the Planning Board.

Planning Staff began review of this proposal and noticed on the GIS and on the Zoning Maps that the Campground Overlay District does not appear to encompass the lot where the expansion is proposed (102-3-7). The green lines on the map below are the extent of the CG Overlay.



Campground Overlay (Online GIS)



Campground Overlay (Official Zoning Map)

What is interesting with this one is the approval timeline vs. when campgrounds were required to register. Our Town Ordinance says in Sec. 78-1221: *“The requirements of the campground overlay district shall apply to all campgrounds in all zoning districts, except that campgrounds in operation as of November 5, 2003 shall be included in the campground overlay district only if they are designated as a ‘registered campground’ by the planning board no later than April 1, 2004. Existing campgrounds not so registered shall be governed by the regulations for the zoning district in which they are located and, to the extent they do not comply with such zoning district requirements or with the requirements of this campground overlay district, shall be deemed nonconforming uses, subject to the restrictions and limitations on nonconforming uses contained in article III of this chapter.”* Seacoast RV was original approved by the Planning Board on April 8, 2004. The first amendment was approved on September 9, 2005 and the second amendment subsequently approved on June 13, 2013. Because the requirement to register as a campground had a deadline of April 1, 2004, the original approval and subsequent amendments came in after that deadline which would explain why Planning Staff could not find a registration packet.

In addition, each proposal that was brought before the PB labeled this parcel as “Seacoast R.V. Resort, L.L.C.” However, in the notes section of each plan, the area for the proposal is labeled as 26.5+ acres. The size of the Seacoast RV Parcel (102-3-5) is 26.5 acres according to our GIS records. However, since the plan is labeled as 26.5+ it could have been intended to include the 2 acre parcel (102-3-7) which is 2 acres. Planning staff recommends that the Applicant provide additional information on this parcel to show that it should be included as part of the Campground Overlay (CGO).

Another item that Planning Staff recommends be submitted with the formal application is a current update/list of how many sites exist in the campground today as well as how many State Licenses the campground holds. According to our licensing files, the property has a total of 89 sites. It is unclear how many state licenses the campground holds.

Regarding a formal submission, this will require Plenary Site Plan Review and will have to meet the Performance Standards under Sec. 78-1229 of the ordinance which applies to any campground expansion or campsite upgrades in the



campground overlay district but do not affect existing conditions, buildings or sites. This is assuming that the 2 acre parcel is located in the CGO. The applicable standards pertaining to this expansion are listed below:

- **Buffering:** The perimeter of all campgrounds and areas that abut residential properties shall be visually screened from adjacent properties in accordance with the standards of Article VIII, Division 7 (landscaping and buffering) of the zoning ordinance. One item to point out is that this may trigger the requirement for a 100 foot buffer of any property line. Sec. 78-1229(1)(c) states that *“with the exception of the main entrance and associated registration building, no campsites, recreation areas, roadways, service areas or other improved areas shall be located within 100 feet of any property line, and the 100-foot buffer shall be kept in a natural vegetated state. The requirements of this subsection 78-1229(1)c. shall apply to all campgrounds established after January 1, 2000 and to extensions of existing campgrounds onto land which was not part of the registered campground approved by the planning board under section 78-1226, but shall not apply to campsite upgrades and campground expansions within a registered campground.”* The Planning Board will have to determine whether or not this requirement is necessary based on the materials to be submitted by the Applicant regarding the status of that parcel. On the plan, a buffer is shown, however, the size of it is not labeled.
- **Signage:** If there is signage proposed for the project, the ordinance standards say that there is no limit to informational signs within the campground. However, standards are spelled out for signage that may be viewed from a public way. This is likely not applicable in this case because the lots are proposed away from Ross Road, however, it is good to keep in mind.
- **Parking and Circulation:** For each RV Campsite, 1 off-road parking space needs to be provided. In addition, it looks like a new 20’ paved drive is proposed to access this section. The Performance Standards identify the internal roadways in a campground overlay district as driveways. Roads designated for one-way traffic need to be a minimum of 10 feet wide and roads designated for two-way traffic need to be a minimum of 15-foot wide. The proposed 20 foot drive appears to be the only means of egress and it exceeds the 15 foot requirement. However, the ordinance also says that in order to preserve the rustic character of the campground setting, driveway surface materials are permitted to remain as gravel or crushed stone, provided that the use of those materials is not determined by the PB to pose an erosion or sedimentation hazard. The proposed drive is paved. There is a stream crossing in the area so the PB may make that determination that using gravel or stone could post an erosion hazard.
- **Lighting:** No campground lighting of buildings or roads shall shed more than 0.1 foot-candles of illumination on any adjacent residential property. All external lighting shall consist of shielded luminaries or downlights so as not to produce point sources of glare and nuisances to adjacent properties and motorists on nearby streets. This should not be a problem in this section of the campground as it appears to be secluded from adjacent residential homes. There is one area adjacent to the home at 102-3-8 that they may have to worry about. The Applicant should submit foot-candle calculations for both the road serving the campsites and the proposed maintenance building.
- **Emergency Vehicular Access/Pedestrian Evacuation Egress:** The ordinance requires a 15-foot wide driveway connecting the internal campground road to a public or private street with a gravel or crushed stone surface, access gate fitted security lock system that is operable and accessible to municipal emergency services OR a pedestrian evacuation egress in those situations where the PB determines that an emergency vehicular access to a street is infeasible. The area needs to be a 10-foot wide path that connects a major driveway/footpath within the campground to an off-site path, sidewalk, or open space and is of suitable gradient and dimension to accommodate the rapid evacuation of pedestrians from the campground in the event of an emergency. An area like this may already exist in the campground but the Applicant should show how this section will connect to that.
- **Space and Bulk Requirements** for the CGO that are most applicable to this proposal:
  - **Building Setbacks** in the CGO have to meet the requirement of the underlying district which is the Rural District.
    - **Front Yard (All Structures):** 50 ft.
    - **Side Yard (Principal Structures/Detached Garages and Accessory Structures):** 25 ft.
    - **Rear Yard (Principal Structures/Detached Garages and Accessory Structures):** 25 ft.

The setbacks for the building are not shown on the plan so these will have to be explained when the Applicant makes a formal submission to ensure it meets these.

- **Campsite Density:** 1 Site/2,500 s.f. NDD for RVs, and 1 site/5,000 s.f. NDD if the campsite itself is located in the Shoreland Zone, however, that is not the case here. Portions of Seacoast RV are located in the Shoreland Zone but not these sites.
- **Minimum Site Width:** 30 Ft. for an R.V.

- **Minimum Site Length:** 40 Ft. for an R.V.
- **Setback (RV and Seasonal Campsites):** 30Ft. from Public Road, Side yard/Rear property line/residential property line.

Permitted accessory uses in the CGO which are “*customarily subordinate and incidental to the permitted uses and provided that such accessory uses are reserved primarily for the use of registered occupants and visitors of the campground and not the general public*” include:

- “*Registration offices, administration and maintenance facilities*” so this facility is allowed as an accessory use in the CGO. However, because it is greater than 1,000 sq. ft it triggers the requirement for review as a Site Plan.

Planning Staff also recommends that the Applicant provide information on how stormwater will be handled from the 7 additional sites and the maintenance building. If the total disturbed area is greater than 1 acre, it will trigger the requirements for Chapter 71. Having said this, the existing Seacoast RV is already subject to Ch. 71 based on the 2013 expansion and already follows the requirements under Ch. 71. This may just be a simple amendment to the documents they already have in place for stormwater including the Post-Construction Stormwater Management Plan.

The Applicant will also have to apply for DEP permits for the stream crossing and we will want to have this reviewed by Wright Pierce.

**RECOMMENDATION (JULY):**

Where this proposal is in a Sketch Plan phase, it is a good opportunity for the PB to review and discuss with the Applicant without having to make any formal decisions.

- Planning Staff recommends when the Applicant submits their formal submission that they also submit additional information on this particular parcel (102-3-7) to show that it has historically been included as part of the CGO.
- The Applicant should also provide a current update/list on how many sites exist in the CG today and how many State Licenses the Campground holds.
- And we recommend they address the bulleted items above in terms of Space and Bulk Requirements/Performance Standards.



**ITEM 11**

**Proposal:** Conditional Use: Addition to existing OOB Skatepark (Phase II)  
**Action:** Ruling on Waiver Request; Final Ruling  
**Owner:** Town of Old Orchard Beach  
**Location:** 14 E. Emerson Cummings Blvd (Ballpark); MBL: 207-3-6

<u>Conditional Use: Skatepark (Phase II)</u>	<u>Project Status</u>
Sketch Plan	Submitted in September
Application Complete	Complete in November
Site Walk	Scheduled for December
Public Hearing	Scheduled for December
Final Ruling	Recommended for December

At the time of writing the last memo, Planning Staff had a few items that needed to be addressed by the Applicant before we recommended the application be determined complete. The applicant submitted those to us prior to the PB meeting and the PB determined the application complete, scheduled a site walk and a public hearing for December. Here is an update on where we stand with each:

- Revised site plan showing the handicapped stall access aisle. This had already been shown on the plans but was unclear, it has been revised in the new submission for clarification.
- There is a waiver request in your packet for December. If you recall from last month, Sec. 78-1542 of the ordinance states: “All parking stalls shall be directly accessible from only an off-street parking aisle. No stall shall be accessed through another parking stall or directly from a public street or private way.” Since the proposed parking stalls are accessed directly from Ballpark Way, Planning Staff recommended the Applicant submit a waiver request. The PB will have to rule on this request this month.
- Planning Staff also recommended the Applicant revise the responses to the Site Plan Review Criteria (d), (3), (5), (6), and (7) to clearly show the projects conformance. These were updated for the last meeting.
- Lastly, Planning Staff requested test pit results. These were also submitted for the last meeting.
- Planning Staff advised the Applicant that the proposal is a conditional Use, not Site Plan, so revised responses to the 12 Conditional Use criteria are listed below.

**RECOMMENDATIONS:**

Planning Staff recommends the PB rule on the waiver request and make a final ruling on the proposal.

*Recommended Motion: I will make a motion to grant the waiver request from Sec. 78-1542 of the Ordinance, which states “all parking stalls shall be directly accessible from only an off-street parking aisle. No stall shall be accessed through another parking stall or directly from a public street or public way” to allow parking stalls to be accessed directly from Ballpark Way.*

*Recommended Motion: I will make a motion to approve the Phase II addition to the Old Orchard Beach Skateboard Park located at 14 E. Emerson Cummings Blvd. MBL: 207-3-6.*

**Responses to the Conditional Use Standards:**

**Sec. 78-1240. - Standards.**

Before authorizing any conditional use, the planning board shall make written findings certifying that the proposed use is in compliance with the specific requirements governing individual conditional use and demonstrating that the proposed use meets the following standards:

- (1) The proposed use will not result in significant hazards to pedestrian or vehicular traffic, on-site or off-site. *The project, as proposed, is the expansion of an existing Skateboard Park on the existing Skateboard Park site. This project will not impact existing vehicular circulation but is proposing improvements based on feedback received from current use. Pedestrian circulation changes are not proposed and will be maintained as existing with regards to access to and from the skateboard park.*

- (2) The proposed use will not create or increase any fire hazard.  
*The project will include concrete surfaces (no structures) access is available to the site for fire equipment. We do not anticipate this project will create or increase fire hazard.*
- (3) The proposed use will provide adequate off-street parking and loading areas.  
*As we understand, the original permitting and construction of the original skateboard park in 2015 provided for parking to be located within the ballpark parking lot. During the sketch plan review, it was noted that vehicles (maximum 3-4 at peak times in the day) tend to pull in and utilize the parking area between Ballpark Way and the existing fence line defining the Skateboard Park (which did not provide adequate depth for cars to be fully off the road). The proposed parking defines these areas and also provides for the installation of additional signage along Ballpark Way either side of the skateboard park restricting parking along the roadway (which was of noted concern). The proposed parking maintains the parking as currently utilized, with modification to accommodate the full length of vehicles by relocation of the fence line. As discussed during the September 2018 meeting, parking can and has been restricted along the Skateboard Park during programs which require peak usage along Ballpark Way. This would be monitored by the Recreation Department.*
- (4) The proposed use will not cause water pollution, sedimentation, erosion, or contamination of any water supply.  
*The project will include the design of stormwater management facilities to support the development and treatment of both the quality and quantity of stormwater. Erosion and sedimentation controls are incorporated into the design during construction (see plans) and the site will be stabilized with vegetation/grass following construction.*
- (5) The proposed use will not create unhealthful conditions because of smoke, dust or other airborne contaminants.  
*We do not anticipate this project will generate odors, dust, glare or other nuisances.*
- (6) The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties.  
*Like many projects, temporary construction noise may be expected, however this noise would be consistent with construction projects in general and will be limited, in general, to work day hours between 7:00AM and 8:00PM daily. Following construction, noise expected will be that of skateboarding, which is consistent with the existing use of the site. We do not anticipate this project will generate odors, dust, glare or other nuisances. Construction will be in-ground and therefore not include solar obstructions.*
- (7) The proposed use will provide adequate waste disposal systems for all solid and liquid wastes generated by the use.  
*No liquid wastes are expected to be generated from the expansion of the skateboard park. Management of solid waste is currently completed by DPW and Recreation department and this will continue with the expansion.*
- (8) The proposed use will not adversely affect the value of adjacent properties.  
*This is an expansion for the existing uses at the existing site. We do not anticipate this expansion would impact adjacent properties.*
- (9) The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.  
*This is an expansion for the existing uses at the existing site. Following construction, noise expected will be that of skateboarding, which is consistent with the existing use of the site. The ballpark is typically open dawn to dusk.*
- (10) The applicant's proposal must include any special screening or buffering necessary to visually obstruct the subject property from abutting uses or to ensure the continued enjoyment of abutting uses.

*The project is the expansion of the existing skateboard park and will be located adjacent to the existing park on the backside. No additional clearing is required for the expansion. The skateboard park is screened on the north and east by existing woodlands. The park can be seen from ballpark way (access point) and the ballpark, which is also recreational.*

- (11) The applicant's proposal must adequately provide for drainage through and for preservation of existing topography within its location, particularly in minimizing any cut, fill, or paving intended.

*The proposed project is the expansion of the existing skateboard park. The expansion has been designed to capture and treat any runoff from the proposed project area and treat thru an Underdrained Soil Filter (stormwater BMP), providing treatment for quality and quantity. The design has reviewed and designed to be above the seasonal high groundwater table. The expansion is proposed adjacent to the existing park and has been designed to fit in with the existing site, limiting the need for cut/fill.*

- (12) The applicant must be found to have adequate financial and technical capacity to satisfy the criteria in this section and to develop and thereafter maintain the proposed project or use in accordance with all applicable requirements.

*The project has been funded by the Town of Old Orchard Beach and approved by the Town Council. The Town will have the long-term responsibility for maintenance of the facilities, including the skateboard park and stormwater management facilities.*

#### **BACKGROUND (NOVEMBER):**

This month the PB begins consideration of the formal OOB Skateboard Park Phase II Site Plan Review application. The Phase II expansion includes 1,600 sq. ft. of new skatepark area (slight increase from sketch plan), stormwater systems (under draining soil filter, soil filter basin, pipe) and a gravel parking area along Ballpark Way. In addition to Site Plan Review, this proposal requires a stormwater permit from MDEP.

At the sketch plan meeting, PB and staff had a few comments. The primary concern, which was also brought to our attention by the Ballpark Commission, was parking. The concern was adequate off-street parking at the skatepark was not provided which resulted in vehicles parking along the shoulder of Ballpark Way. This created potential dangers to pedestrians and vehicle flow during times of events at the ball field. This month's submission attempts to address this by providing parking off Ballpark Way, adjacent to the skatepark. Also, and this appears to have happened after the site plan was prepared, the Ballpark Commission reconsidered and offered an official position in support of the proposal to have skatepark visitors use the Ballpark parking lot as needed (note- this was questioned during sketch plan). The Commissions support may change the skatepark needs for adjacent parking.

Staff analysis of the proposed parking as shown on the site plan finds two problems. First, Sec. 78-1542 states: "All parking stalls shall be directly accessible only from an off-street parking aisle. No stall shall be accessed through another parking stall or directly from a public street or private way." As proposed, parking stalls are accessed directly from Ballpark Way. I believe Ballpark Way is a public street and not a driveway. Second, the plan provides for one handicap space but the space does not include the 5' access aisle.

Sec. 78-1568 allows the applicant to seek a waiver of the off-street parking aisle standard as long as it can be demonstrated that "the physical constraints of the site make compliance with the design standards of this division impractical or technically unfeasible, and modification of those standards will not create unsafe conditions for vehicles or pedestrians." The handicap 5' access aisle cannot be waived.

Other comments from the sketch plan meeting include DEP permitting and how it should be treated during PB's ruling, site lighting, adequate buffer, changes to use (more traffic, noise, etc) as a result of expansion, definitive design at time of formal submission. The responses to questions such as these are typically found in the written application (e.g., responses to review criteria) and/or the design (e.g., site plan). Its staff's opinion the applicant's responses to some of the Site Plan Review Criteria need additional info to clearly show the project's conformance. Specifically, Review Criteria (d) (3), (5), (6), and (7)- Note: see submission pgs 3 & 4. Staff is confident the proposal can conform, but it must be shown.

#### **RECOMMENDATIONS (NOVEMBER):**

Moving forward, staff recommends submission of the following before the PB determines the application complete:

1. Revised site plan showing handicap stall access aisle.
2. If continuing with the proposed parking as shown on the 10.22.18 site layout plan, a waiver request of Sec. 78-1542.
3. Revised responses to Site Plan Review Criteria (d) (3), (5), (6), and (7).
4. Test pit results.

**BACKGROUND (SEPTEMBER):**

OOB Skatepark Phase I was approved by the PB during April 2014. Jason Webber, OOB Rec Director, is now proposing an addition to the skatepark (Phase II). Phase II includes a 1,300 sq. ft. addition to the halfpipe and a few more potential additions (“alternatives”). Proposed as a sketch plan right now, the PB has an opportunity to provide feedback before formal submission.

Some of the concerns during Phase I included hazards to pedestrians, parking, noise, glare from lights, adequate buffer, trash, crime, misc impacts to abutting properties. As I have heard and observed, overall, the skatepark has been a great success. Those who use it appear to take personal responsibility for the upkeep and oversight. I was made aware of some concerns during project construction and initial use, similar to those the PB had. But I’ve heard only good comments about the skatepark during the past few years.

The skatepark falls within the ballpark’s DEP site location and stormwater permitting. With the additional impervious surface, DEP permitting is much more comprehensive with Phase II compared to the original proposal. Wright-Pierce will oversee engineering.

Overall, this proposal seems straight forward. Quick review of the conditional use criteria and the sketch plan shows no red flags. Stormwater design will be the most technical piece of this proposal. A few comments:

- With DEP permitting having the most significant role with the proposal, does the PB think the applicant should secure all DEP permitting approvals before the PB provides a final ruling?
- Will light pole remain within skatepark? Proposed lighting locations?
- Parking still adequate?
- Buffer still adequate?
- Does the applicant expect any changes to the use as a result of the expansion? More traffic, noise, etc.
- We’ll need the definitive design at the time of formal submission.

**RECOMMENDATIONS (SEPTEMBER):**

Staff recommends the PB offer their thoughts. Motions are not necessary.

**ITEM 12**

**Proposal:** Conditional Use: Accessory Dwelling Unit  
**Action:** Determination of Completeness, Schedule Site Walk, Schedule Public Hearing  
**Owner:** Lisa Kidd  
**Location:** 10 Garden Street, MBL: 403-2-5

<u>Conditional Use: 10 Garden ADU</u>	<u>Project Status</u>
<i>Sketch Plan</i>	Submitted in December
<i>Application Complete</i>	Pending
<i>Site Walk</i>	Pending
<i>Public Hearing</i>	Pending
<i>Final Ruling</i>	Pending

This is a new application for an Accessory Dwelling Unit on Garden Street. There are a number of items missing from the Application materials:

- Completed Application
- Responses to the Accessory Dwelling Unit & Conditional Use Standards need to be refined
- Septic System design showing it can support the 1 bedroom addition

Planning Staff recommends the Planning Board table this proposal until the January meeting.

**ITEM 13**

**Proposal:** Site Plan: Second Floor Addition to Existing Structure – Retail/Stockroom Purposes  
**Action:** Determination of Completeness, Schedule Site Walk, Schedule Public Hearing  
**Owner:** Harold Harrisburg  
**Location:** 9 East Grand Ave, MBL: 306-2-6

<u>Site Plan – 9 East Grand Avenue</u>	<u>Project Status</u>
<i>Sketch Plan</i>	N/A
<i>Application Complete</i>	Pending
<i>Site Walk</i>	Pending
<i>Public Hearing</i>	Pending
<i>Final Ruling</i>	Pending

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

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

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

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

**2017 OUTSTANDING ITEM RECOMMENDED CHANGES AND 2018 COMMENTS**

The following items were identified as the primary outstanding matters towards the end of the PB’s 2017 review. At that time the proposal was close to a conclusion before being withdrawn. This left these items as open and in need of further information. Below are comments on each outstanding item and a 2018 follow-up.

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

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

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

2018 Follow-Up: Building construction has been a particular concern of an abutter. The PB has concerns too. During 2017, the applicant stated construction methodology indicates construction can take place on-site but will also require the temporary closing of the bottom of Kinney Ave. The applicant feels the abutter claims are her own opinion and without justification or basis. Also, according to the applicant, the question of trespass on private property does not have bearing on the PB’s decision. I expect this concern will come up again so the PB should think about this.

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

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

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

2018 Follow-Up: One of the primary concerns during prior reviews was the use of the proposed balcony and doors on the 2<sup>nd</sup> floor (facing Kinney Ave.) as a loading area/unloading area. During 2017, the applicant provided a detailed loading and unloading plan which was helpful. 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 had concerns- mostly with the originally proposed loading/unloading location- the balcony on the 2<sup>nd</sup> floor. The balcony and doors have been removed so this should resolve that problem. Also, the applicant’s 2018 submission states no second floor loading will be undertaken. We expect some kind of loading/unloading to still take place so the applicant should create a new plan addressing the applicable bullets above now that the plan has changed.

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

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

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

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

A question that consistently comes up- will this proposal conduct warehousing or storage operations. OOB Ordinances do not define Warehousing but do define Warehouse Storage as "a use engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment, but excluding bulk storage of materials that are inflammable or explosive or that create hazardous or commonly recognized offensive conditions." The term Storage does not have its own definition and is not identified as a land use. Warehousing is an identified land use allowed in some districts (not the DD1). 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? 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.

2018 Follow-Up: Warehousing was another significant concern during the 2017 review. During 2017, the applicant stated there will not be wholesaling any items from the second floor proposed storage and retail space, nothing will be sold wholesale and distributed from this location. Some items will be dispersed to abutting stores owned by the applicant and the act of moving the product from store to store does not constitute warehousing or distribution. The 2018 submission has little mention of this- response to SPR review criteria #5 states the second floor will be used for stockroom and retail purposes.

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

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



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

Again, this was a significant concern during 2017 and remains an item that needs to be addressed today. I feel comfortable stating if the second floor is used for retail and storage accessory to only that 9 East grand Ave's retail operation, this proposal would be fine.

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

2018 Follow-Up: According to the applicant, the amended building plans show the building height has been reduced to 34'10". A building may do a vertical expansion under the 480-Q minor expansion in a sand dune section as long as the proposed building does not expand above the DEP's 35' standard. As far as I'm aware, if the building is under 35' the minor exemption kicks in and a sand dune permit is not required.

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

78-215 (Site Plan Ordinance)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**2018 Follow-Up:** The comments above were based on the July 2017 Plot Plan. A site plan or plot plan was not included with the 2018. If the applicant wants to continue with the July 2017 Plot Plan, it appears waivers of the following Site Plan Requirements are needed in order for the PB to approve this project:

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

If the applicant continues with the 2017 Plot Plan he will need to submit a written request for each Site Plan Requirement they would like waived. Remember- in order to grant a waiver the PB must determine “The required application submission will not yield any useful information given the nature and scope of the proposed activity or the existing character of the site.”

### **RECOMMENDATIONS (2018)**

Before the PB determines the application complete we recommend the following:

1. Submission of a site plan. The site plan should include, but not be limited the proposed building location including overhangs.
2. Address concerns about building construction.
3. Create new loading/unloading plan.
4. Address warehousing concerns and questions.
5. Submission of waiver requests.

### **2017 BACKGROUND**

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

PD:

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

objective was to eliminate Kinney Avenue deliveries by truck. If they are suggesting anything that needs to be delivered to the first floor and basement will be by truck, and anything for the second floor will be by fork lift, that makes no sense. I would urge the Planning Board to require all deliveries to that location be made by fork lift. I understand that most businesses in the down town area do not have off street parking, and as a result have to receive deliveries from adjacent roadways. We are very liberal when it comes to allowing business owners to receive their deliveries, Mr. Harrisburg included. However, there are some locations where allowing deliveries to be made creates too much of a safety concern. I would prefer that any delivery necessary to 9 East Grand Avenue, be made from East Grand Avenue and not Kinney Avenue, unless it is transported there by forklift from Harrisburg Street. I also have a concern with a forklift being used to hoist boxes into a second floor door, over a public sidewalk. Mr. Harrisburg's response is that a supervisor would be present when this takes place. Isn't that an acknowledgement that there might be some danger involved? It's bad enough to block the sidewalk with boxes, never mind hoisting boxes two stories. I would suggest that they be required to carry them inside and bring them to the second floor by hand.

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

FD:

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

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

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

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

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

Loading and unloading (See Katsiaticas 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 Katsiaticas 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.

#### **DEPARMENT COMMENTS (JULY 2017):**

PD:

Jeffrey, regarding the loading zones on Kinney Avenue, I am aware that at one time there were two signs posted on Kinney Avenue. In May of 1998, a sign was authorized by me in front of the Bernard house, located at 1 Kinney Avenue, and in 2009, I authorized a loading zone sign in front of 5 Kinney Avenue. There is no parking on either side of Kinney Avenue and as a result, guests arriving at the Bernard house and Richards apartments, were parking illegally while they were checking in. The owners of these two properties, requested the signs so that their guests would not be subject to parking tickets while they were checking in. I am not aware that there were or have been any issues with either sign. A couple of years ago, I received complaints from property owners that delivery trucks were creating significant traffic congestion at the intersection of Kinney Avenue and East Grand Avenue. The trucks, on most occasions, were delivering



to property owned by Harold Harrisburg. After discussing this issue with Mr. Harrisburg, he agreed that if I gave him a loading zone sign on Harrisburg Street, he would load and unload his goods from there, and transport them by forklift to his various properties. This arrangement seemed like a reasonable compromise by Mr. Harrisburg and seemed to be working. I am not sure of the date, but I believe it was last Fall, I noticed a loading zone sign on a telephone pole, about 85 feet in from the intersection of East Grand Avenue and Kinney Avenue. It was not in the location that it had originally been authorized for, and did not have a parking space lined out on the pavement. Because Mr. Harrisburg had agreed that he did not need to load and unload there, and because of the complaints regarding traffic congestion, I asked Public Works remove the sign.

FD:

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

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

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

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

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

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

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

(d) *Waiver of submission requirements.* Specific submission requirements of subsections (b) and (c) of this section\* may be waived by the reviewing authority if the authority rules that the required application submission will not yield any useful information given the nature and scope of the proposed activity or the existing character of the site.

\*Note: "this section" refers only to section 78-215 – Application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.**