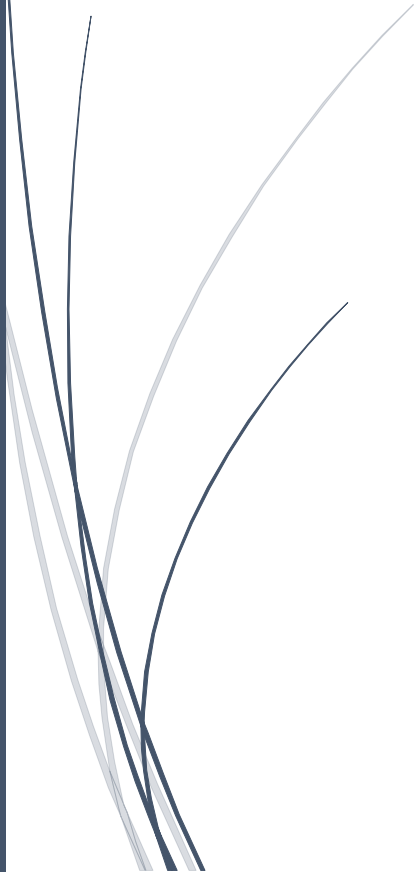


**OLD ORCHARD BEACH
February 2019
PLANNING BOARD
MEMO**



February 2019 Planning Board Memo: Table of Contents

Regular Business

ITEM 1 & 3: Minor Subdivision: 189 Saco Avenue	PAGE 3
ITEM 2 & 4: Conditional Use, Shoreland Zoning: 21 Winona.....	PAGE 11
ITEM 5: Accessory Dwelling Unit: 10 Garden.....	PAGE 13
ITEM 6: Site Plan: 9 East Grand.....	PAGE 15
ITEM 7: Accessory Dwelling Unit: 206 Portland	PAGE 31
ITEM 8: Minor Subdivision: 4 Smithwheel.....	PAGE 33
ITEM 9: Major Subdivision: 21 Union.....	PAGE 35
ITEM 10: Ordinance Amendment: NC-3 District.....	PAGE 37
ITEM 11: Ordinance Amendment: Accessory Dwelling Units.....	PAGE 38

ITEM 1 & 3

Proposal: Minor Subdivision: 2 Duplex Dwellings with a Total of 4 Residential Units
Action: Ruling on Preliminary Plan, Ruling on Final Plan
Owner: Donald Bouchard
Location: 189 Saco Avenue, MBL: 208-3-12

<u>Minor subdivision: 189 Saco</u>	<u>Project Status</u>
<i>Sketch Plan</i>	N/A
<i>Preliminary Plan</i>	Submitted in August 2018, January 2019
<i>Application Complete</i>	Determined at January Meeting
<i>Site Walk</i>	Scheduled for February
<i>Public Hearing</i>	Scheduled for February
<i>Preliminary Plan Vote</i>	Pending
<i>Final Review</i>	Pending

The Planning Board reviewed this proposal last month, determined it complete and scheduled the Site Walk and Public Hearing for February. The PB also granted a waiver request to allow for a 27 foot driveway entrance for both the Saco Ave and Macarthur Ave duplex.

One of the primary concerns was regarding parking, Sec. 78-806(a)(1) of the ordinance states no parking shall be permitted in the front setback yard. The duplex on Macarthur Avenue still included parking in the front setback. No provisions appeared to exist for a driveway exemption of waiver so Planning Staff recommended the Applicant apply for a variance through the ZBA. The Applicant went before the ZBA on January 28th and the decision was tabled. Without the variance, this Applicant cannot receive final plan approval from the Planning Board.

The Applicant has decided to rework the plan so that they do not require a variance from the ZBA. They have requested the application be tabled at the February meeting.

Hi Jeffery,

I wanted to reach out and discuss the 189 Saco Ave project. We were at the ZBA the other night and it was tabled so they could look at some more information, however we have decided to change the plan so we wont need the ZBA variance.

That being said, I think we are going to need to table the next planning board meeting on this project while we work up the new layout, grading and utilities for review. For the most part it will be very similar to the last plan, but we are planning a different approach with the access and parking for the site.

My question is with the upcoming site walk, can we keep that as scheduled, at least for the planning board to get a look at the property, we can have new site plans to look at for that date, but obviously wont have full design drawings to be reviewed by staff and the board for the next workshop and planning board meeting.

I would like to keep the scheduled site walk on and then table the Planning Board meeting until we get the new design in for review. Please advise on what direction we should take to go forward in light of this new information.

And in addition to 189 Saco Ave, we have two other projects on the agenda. Is it helpful to show up for the workshop meeting for these?

Thank you for your time,

Travis Letellier, P.E.
Director of Civil Engineering

(w) 207.883.1000 x107
(f) 207.883.1001

NORTHEAST CIVIL SOLUTIONS, INC.
www.northeastcivilsolutions.com

RECOMMENDATIONS:

We recommend the Planning Board table the proposal until the Applicant brings back the revised plan (likely in March).

BACKGROUND (JANUARY):

The Planning Board last saw this proposal back in August of 2018. It is for the construction of 2 duplexes on the corner of Macarthur Ave and Saco Ave. Below are the plans for the original vs. new proposal. The big difference is the addition of a t-turnaround for the duplex that egress onto Saco Avenue.

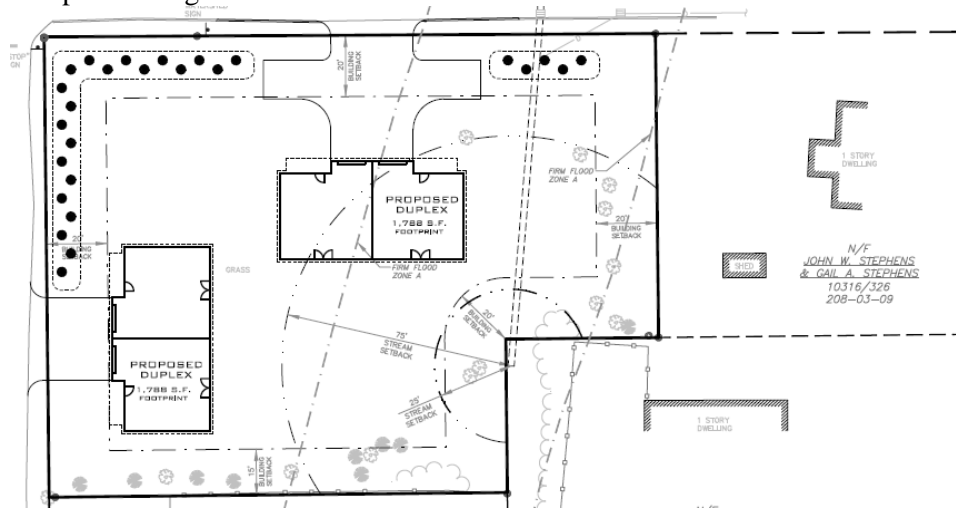


Figure 1: New Proposal (January 2019)

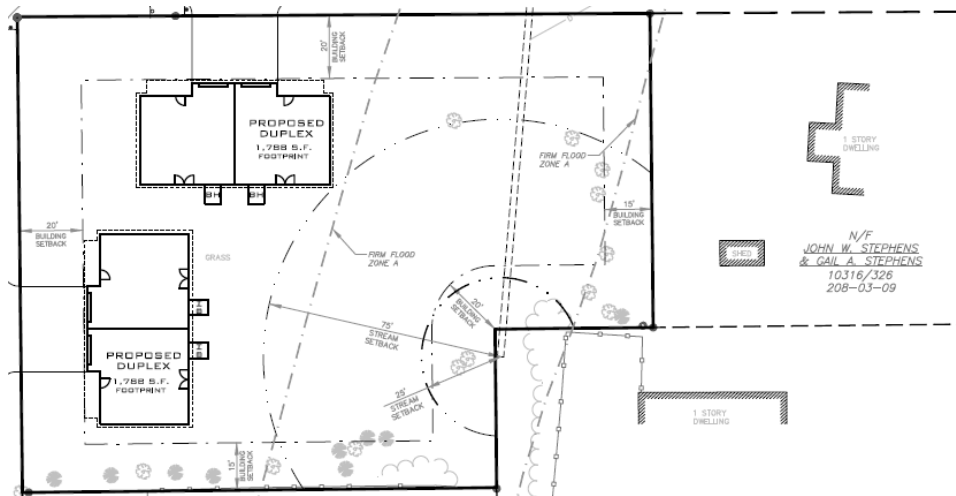


Figure 2: Original Proposal (August 2018)

Waivers

Important to note up front, there is one waiver request associated with this proposal:

- 78-1467: For single and two-family residences, widths of driveways at the street as measured 20 feet from the curb-line shall not be less than 12 feet in width, with a maximum right-of-way clearance of 15 feet to accommodate emergency vehicle access. Maximum driveway width at the curbline shall not exceed 20 feet. A 27' driveway entrance is proposed as it allows for a shared curb cut and eliminates the need for an additional access along both Saco Avenue and Macarthur Avenue. It also allows for a reduction in impervious surface on site via driveway width and building cover, placing the garage entrances closer together on the building design.

Sec. 74-34 of the Ordinance gets into the circumstances in which the PB can grant waivers, Staff thought it would be important to point out for the board:

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

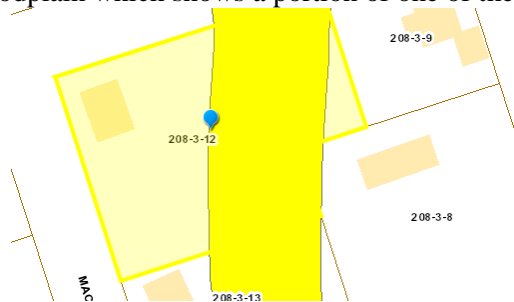
At the August meeting, there was a concern regarding parking. Sec. 78-806(a)(1) states no parking shall be permitted in the front setback yard. At the time both duplexes showed driveways in the front setback. In the 2019 update, it appears the Duplex fronting Saco Avenue have removed parking in the front setback, however, the duplex on Macarthur Avenue is still showing parking in that front setback. We are not aware of a driveway exemption or waiver. Planning Staff has recommended the Applicant apply for a Variance through the ZBA.

At the August meeting, Planning Staff requested additional clarification on the exterior lighting. The ordinance says it cannot exceed the height of the building or 14 feet and must be shielded to prevent point source glare. The Applicant has indicated in the 2019 materials that the lighting they propose will meet this standard.

There was a concern regarding the proposed buffer location and sight distance. In the 2019 submission, they have incorporated an alternating pattern of arborvitae and pushed them off the property line by 8 feet to alleviate this concern.

A Permit by Rule (PBR) was approved by DEP for work adjacent to the stream and included the updated building and pond locations.

A point of discussion is the current floodplain which shows a portion of one of the duplexes in the A Floodzone.



Additional standards apply to the building, being located in the floodplain, however, it appears the standards will apply during construction. The Planning Board needs to be aware of one section in our ordinance (listed below):

Sec. 70-35. - Review of subdivision and development proposals.

The planning board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on five or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- (1) All such proposals are consistent with the need to minimize flood damage;
- (2) All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages;
- (3) Adequate drainage is provided so as to reduce exposure to flood hazards;

- (4) All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency;
- (5) Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a special flood hazard area, are to be constructed in accordance with section 70-32 of this article. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the planning board or local reviewing authority as part of the approval process.

Planning Staff has specifically highlighted #5 which pertains to a condition of plan approval. Planning Staff will draft a condition for the board that satisfies this standard before the next meeting. We recommend the Applicant provide a response to each of these five standards demonstrating how they comply.

Wright Pierce has provided updated comments for the 2019 meeting. There were some concerns brought up regarding the sewer layout and connections, runoff from Saco and Macarthur, existing easement over the 36-inch pipe and the driveway layout. Staff discussed these at the Development Review meeting, further coordination is recommended between the Developer and Public Works.

There is a culvert/drainage easement associated with the 36-inch culvert. No details were provided on the location and width of the easement. WP says the Town should consider a 20-foot to 30-foot easement to formalize for future repair and replacement. This culvert is slated for replacement in the next few years. In the Applicants response they say there is no mention of a defined width or other details to locate the easement other than the existing underground pipe. Sec. 74-311(g) of the ordinance says: Where open ditches, channels, streams, or natural drainage courses are used either to collect or discharge stormwater, adequately sized perpetual easements shall be provided, and appropriate erosion control measures taken. No stormwater will be permitted to drain across a street or across an intersection. Planning Staff recommends a 30 foot easement be formalized to upgrade the culvert.

Note 7 on the Boundary Survey says “Restrictions include limitations on the type and number of buildings for each lot.” The Applicant provided a response from their attorney stating that the restriction on the property should not be an issue in regards to this project. This is similar to another project the Planning Board saw where our Town Attorney determined that the Planning Board does not have the authority to interpret and enforce a private deed covenant. The Applicant has provided right, title and interest in the property.

RECOMMENDATIONS:

There are a few items for the Planning Board to consider this month:

1. There is 1 waiver request associated with the 27 foot driveway width (Ordinance only allows for 20 feet).
2. The Applicant will need to obtain a variance for parking in the front setback on Macarthur.
3. No lighting has been proposed, the ordinance requires that this meet a certain standard. Should it be shown on the plan?
4. Is the PB all set with the alternating arborvitaes 8 feet off of the property line?
5. The PB will need to add a condition for one of the duplexes located in the floodplain.
6. Responses from the Applicant on the five floodplain standards.
7. The Applicant will need to address the outstanding Wright Pierce comments.
8. Formalization of a 30 foot easement to upgrade the 36-inch culvert adjacent to the property.
9. Planning Staff recommends the Applicant provide updated responses to the 14 Subdivision Criteria.
10. Planning Staff recommends the Applicant show snow storage locations on the plan for the turnaround area.

If the Planning Board is okay with the proposal as presented, the board can make a determination of completeness and schedule a Site Walk/Public Hearing for February.

Recommended motion (If okay with granting the waiver): *I will make a motion to approve the waiver request from Sec. 78-1467 to allow for a 27' shared curbcut, driveway entrance on Macarthur Avenue and a 27' shared curbcut driveway entrance on Saco Avenue.*

Recommended motion (If okay with the materials as submitted): *I will make a motion to determine as complete for a minor subdivision to create two duplex units with a total of 4 residential units at 189 Saco Avenue. Also, to schedule a Site Walk on February 7th at 5:30PM and a Public Hearing on February 14th.*

BACKGROUND (AUGUST 2018):

This is a new proposal before the Planning Board for the creation of two 1,788 square foot duplexes on the corner of Macarthur and Saco Ave. Included in your packets for August are the application materials, plan-set and comments from Wright Pierce dated 7/31/18.

The PB should concentrate on ensuring the project complies with applicable standards in the subdivision ordinance (minor subdivision), GB1 zoning district requirements and applicable performance standards in Ch. 78, Article VIII.

Waivers

Important to note up front, there is one waiver request associated with the project:

- *78-1467: For single and two-family residences, widths of driveways at the street as measured 20 feet from the curb-line shall not be less than 12 feet in width, with a maximum right-of-way clearance of 15 feet to accommodate emergency vehicle access. Maximum driveway width at the curblines shall not exceed 20 feet. A 27' driveway entrance is proposed.*

The Applicant has also requested a second waiver to feature overhead electric service to the residential dwellings. Planning Staff took a look at the ordinance and it appears that *Sec. 74-275* is the section that would apply here and it says: *"The size, type and location of public utilities, such as...electricity...in a subdivision shall be approved by the Planning Board and installed in accordance with local practice...utilities shall be installed underground except as otherwise approved by the Planning Board..."* It does not appear as if a waiver would be required from that section, the PB is authorized to approve utility location.

Planning Staff recommends the Applicant submit a formal waiver request for the driveway width, citing the ordinance and the reason they are seeking a waiver. The reason has already been documented in the submission materials but this should be a standalone document that cites the specific ordinance standards from which a waiver is requested.

Sec. 74-34 of the Ordinance gets into the circumstances in which the PB can grant waivers, Staff thought it would be important to point out for the board:

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

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

GB1 Zoning District

Regarding GB1 standards, two standards stick out- 78-805 Rear Setback and 78-806 (a) (1) Parking.

Regarding setbacks, the rear lot line for a corner lot is the line opposite the front lot line of least dimension. In this case, the front lot line of least dimension is the one abutting Macarthur Ave. So, the rear lot line is towards the eastern portion of the property, adjacent to the Stephens and Joncas properties. GB1 requires a 20' rear setback for residential lots. The plan shows a 15' setback abutting the Stephens property. Plans should be amended to show a 20' setback. Note: this does not impact building location.

Regarding parking, 78-806 (a) (1) states no parking shall be permitted in the front setback yard. Both duplex's show driveways in the front setback which makes it reasonable to assume parking will be in the front setback. Staff understands the need for this standard but it's a bit hard to digest regarding residential driveways. Nonetheless, we are not aware of a driveway exemption or waiver. This will require additional thought. Note: building relocation (e.g., further into the lot to allow for parking out of the setback) will be difficult due to the location of the 75' stream setback and floodplain.

One item to be discussed for additional clarity is exterior lighting. What is proposed for lighting? The ordinance says it cannot exceed the height of the building or 14 feet, whichever is less and it must be shielded to prevent point source glare (78-806(b)(2)(a)&(c)).

Performance Standards (Ch. 78, Art VIII)

Sec. 78-1466(c) of the ordinance requires 257 feet of sight distance on Macarthur and 308 feet on Saco Ave. Do the driveways meet these? Planning staff did not see sight distances listed on the plan. The ordinance also says a driveway cannot be within 50 feet of the curblin tangent of intersection local streets. The distance from the driveway coming off of Saco Ave and Macarthur should be measured in relation to their distance to the intersection. Does it meet or exceed 50 feet? One concern about site distance is the proposed buffer location. We'll need more info on this.

Secs 78-1821 – 1827 regulate screening and buffering. The plans show a proposed vegetative buffer along both street frontages. The southern and at least part of the eastern appear (based on aerials) to have an existing buffer. The applicant should demonstrate how the proposal complies with 78-1821 – 1827.

Misc Comments

- Important to note our ordinances have different standards for 2 family and multifamily (3+). The PB is reviewing two, 2 family dwellings and not a multifamily (see definitions). Although there may be multiple dwelling units, there are two unconnected 2 family dwellings.
- An update on the status of the DEP Permit by Rule (PBR) should be provided to the Town.
- The existing fire hydrant is located 298+/- Ft. away on Macarthur Ave, Planning staff is waiting for a comment from the Fire Department on this.
- Public Works has requested that all utilities are served from Macarthur. It appears that a sewer line is proposed on Saco Ave. The applicant should coordinate further with DPW on the intent of this comment.
- HOA docs – I believe Cavanaugh Road should be spelled Kavanaugh.
- HOA docs- Be sure to include maintenance of stormwater systems language.
- Currently a portion of the property is in a regulated floodplain. The buildings are not within the floodplain. The proposed floodplain maps show both buildings in the floodplain. These maps, according to FEMA, are scheduled to become official during 2019. We just want to be sure the applicant and owner are aware of this in case they build next year.
- A traffic report was submitted from Traffic Solutions was submitted for the project. This report lists how many trips are expected to be generated, however, does not make a determination as to whether or not the trip

generation could cause problems on Saco Ave and/or Macarthur Ave. The PB should decide whether or not a more in depth traffic analysis should be required. It is staff's opinion the traffic generation numbers do not warrant further study.

- A letter was submitted from Maine Water that indicates they do have the ability to serve the two duplexes, however, they would like the size of the pipe to be upgraded "in advance of the project" or at least a plan in place to do so. Planning Staff checked in with Maine Water to see what their objective was with that comment.
- This is not subject to MS4 stormwater requirements.

Wright-Pierce Comment Summary

For drainage, you will see we have made some site specific recommendations and considerations based on our modeling of the drainage system. I would be more than happy to review and discuss these results with the applicant engineer, but hopefully are comments (which are a bit lengthy) help cover our concerns and recommendations.

- Update HOA docs to clarify long-term operation and maintenance of proposed stormwater pond.
- Do driveways meet minimum sight distance requirements for single and two-family residences Sec. 78-1466 – Saco Ave 30 MPH speed limit, Macarthur 25 MPH – 308 foot and 257 foot sight distance.
- Driveway for one of the proposed duplex units is access from Saco Ave, Saco ave is a major arterial...applicant may want to provide additional commentary on consideration for evaluation of access off Macarthur ave or additional maneuvering areas for duplex...comment from Joe?
- Boundary survey – Comment 6a references a culvert/drainage easement associated with 36-inch culvert but no details were provided on location/width of easement. If details aren't available Town should consider a 20-30ft. easement to formalize for future repair/replacement.
- Boundary survey – note 7 says "restrictions include limitations on type and number of buildings for each lot" this wasn't referenced in the app package. Recommendation that these restrictions be confirmed that they meet the requirements of the subdivision plan.
- Sheet 3 of 8 shows a CB located over the existing 36-in pipe, the invert in is lower than the invert out is that right?
- Sheet 4 of 8 shows a row of arborvitae along corner of MacArthur and Saco Ave – sight distance with this at the intersection and access to Saco Ave?
- Inconsistencies between pre-development watershed plan and hydrocad. Review and update.
- Would not recommend a direct connection from the proposed development to the 36-in culvert – drainage study considerations. Maybe applicant should meet with WP to discuss. Recommend use of LID b/c in Town delineation of Goosefare.
- Drainage easement for shallow swale proposed to direct runoff to unnamed stream is recommended to ensure the mitigation/drainage is maintained in perpetuity.
- Moratorium on road if repaved in 2018 or 2019. Flag to applicant on schedule coordination.
- New FEMA expands Zone A onto this property.

RECOMMENDATIONS:

The proposal is scheduled for a preliminary plan determination of completeness. The PB should determine if it is ready for this or if additional info is necessary. Staff feels there are a few primary issues that should be resolved before the application is determined complete:

1. Driveway width waiver request
2. Above or underground utilities
3. Parking in the front setback
4. Sight distance
5. Screening and buffering compliance
6. Public works request that all utilities be served from Macarthur Ave
7. Applicants response to ME Water comments
8. Address Wright-Pierce comments

Once the applicant addresses and responds to these primary issues (and other comments and questions mentioned above). Staff expects the preliminary plan can be determined complete.

ITEM 2 & 4

Proposal: Conditional Use: Shoreland Zoning Nonconforming Structure 30% Expansion
Action: Final Ruling
Owner: Cynthia Lyons
Location: 21 Winona Avenue, MBL: 321-6-3

<u>Shoreland Zone: 21 Winona</u>	<u>Project Status</u>
<i>Sketch Plan</i>	N/A
<i>Application Complete</i>	Determined in January
<i>Site Walk (Not Required)</i>	N/A
<i>Public Hearing</i>	Scheduled for February
<i>Final Ruling</i>	Recommended for February

NOTE: Please bring last months packet (no new materials required for this month)

At the January meeting, the PB determined this proposal was complete subject to the condition that the applicant secures ZBA approval for the front exterior stairs (Winona Ave. side) before PB final ruling. On 28 January the ZBA granted approval. It is staff’s opinion the PB can approve this proposal.

RECOMMENDATIONS:

Staff recommends the PB grant final approval. Please review the Conditional Use and Shoreland Zoning standards in your January packet.

Motion: Motion to grant final approval for the conditional use shoreland zoning nonconforming structure 30% expansion application dated 18 December 2018 proposing to reconstruct the single-family building located at 21 Winona Ave., owner Cynthia Lyons.

BACKGROUND (JANUARY):

This proposal is for the reconstruction and 30% expansion of a single-family dwelling in the shoreland zone.

Reconstruction and expansions of nonconforming structures in the shoreland zone must meet 5 primary ordinances:

1. Reconstructed structures must be relocated so they are set back from the water (in this case the HAT) to the greatest practical extent.
2. Structure expansion does not exceed 30% of the existing square footage or volume.
3. Structure expansion does not increase the nonconformity (e.g., building the structure closer to the water setback).
4. Proposal conforms to the 12 Conditional Use criteria.
5. Proposal conforms to the 8 standard conditions in the shoreland zone.

Regarding this proposal’s conformance with each of the above:

1. The structure cannot move anywhere else on the lot without it being nonconforming or even more nonconforming to other setbacks; therefore staff feels the structures proposed location is set back at the greatest extent possible. The site plan shows a building envelope that conforms to setback requirements. As you’ll see it is quite small and the structure can’t be shifted without encroaching into other setbacks. In addition to setbacks, floodplain is an important factor in the structures location. Floodplain will be discussed below.
2. The proposed expansion does not exceed the 30% of the existing square footage or volume. After several attempts, the applicant managed to design this project so it falls just under 30%. The applicant does an excellent job showing the calculations (see plans). Also, the cover letter provides a summary.
3. The proposed structure is not closer to the water setback than the existing structure. In fact, the proposed structure is slightly further away from the water at the southwest corner.
4. The applicant’s responses to the 12 Conditional Use criteria show the proposal conforms to these criteria.
5. The applicant’s responses to the 8 standard conditions in the shoreland zone as well as the submitted plans show the proposal meets these conditions.

A challenging piece of this proposal is the floodplain. As you'll see on the site plans, there are 3 different flood zones on this property- A2, B, C. The A2 zone is the zone that is most restrictive. Development in this zone requires structures to meet applicable floodplain regulations. Even if a portion of a structure is located in this zone, the entire structure is treated as if it's in the zone. Zones B and C are not regulatory zones so structures placed in these zones do not have regulatory requirements.

In order to comply with A2 zone floodplain requirements, the applicant decided to remove the portions of the structure that are in the zone. As you'll see in the proposed site plan, the structure southwest corner has been altered so all portions physically attached to the ground are not in the A2 zone. A small portion of the cantilevered deck will hang over the zone with a finished floor elevation of 14.83' which is 5.83' above the A2 zone base flood elevation of 9'. These alterations effectively removed the proposal from the A2 zone which removed the structure from required compliance with the floodplain regulatory requirements.

So, all the boxes appear to be checked to make this project one the PB can approve. There is one problem- a portion of the proposed stairs at the front of the structure (facing Winona) is being horizontally expanded outside of the footprint of the original structure in the front setback. Although the setback distance is not decreasing, the structure and proposed staircase is nonconforming and nonconforming structure expansions having special rules that allow for expansions but still have limitations as to what and how a structure can expand. Town ordinances allow for this expansion because the stairs are part of an egress. Although, approval must be secured through the Zoning Board of Appeals through the nonconforming means of egress standards.

This is not necessarily a shoreland zoning matter because it does not impact the shoreland zoning water setback. In fact the PB would most likely not hear of this because it is a non-shoreland nonconformance matter and typically administered by the PB and Code Office. But, because stairs are part of the structure being reviewed by the PB, the PB must consider this during review of the proposal. We believe the need for ZBA should not hold this proposal up from moving forward in the PB process but it should be resolved before the PB's final ruling.

RECOMMENDATIONS (JANUARY):

Staff recommends the PB determine the application complete with the following condition: The applicant/owner shall secure ZBA approval for the front stairs before the PB issues a final ruling. Also, we recommend a public hearing is scheduled for 14 Feb and, if the PB feels there is a need, a site walk for 7 Feb.

Recommended motion: *I will make a motion to determine as complete the Conditional Use Shoreland Zoning nonconforming structure 30% expansion application for expansion of a single-family dwelling located at 21 Winona Ave with the following condition: The applicant or owner shall secure Zoning Board of Appeals approval for the front stairs before the PB issues a final ruling. Also, to schedule a Site Walk on 7 Feb at 5:15PM (if you choose to schedule) and a Public Hearing on 14Feb.*

ITEM 5

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>Accessory Dwelling Unit: 10 Garden</u>	<u>Project Status</u>
<i>Sketch Plan</i>	N/A
<i>Application Complete</i>	February (Conditionally)
<i>Site Walk</i>	Recommend Schedule for March
<i>Public Hearing</i>	Recommend Schedule for March
<i>Final Ruling</i>	Pending

This is a new proposal before the Planning Board for the establishment of an Accessory Dwelling Unit at 10 Garden Street. The proposal includes an addition onto the single-family home to the left of the current garage. The existing garage will be converted into a work room with two double hung windows instead of a garage door. A new garage will be constructed on the left of the existing garage with the ADU behind the garage.



ADUs are permissible in the R-5 District as long as they meet the Conditional Use Accessory Dwelling standards and Conditional Use Criteria.

Regarding this proposals conformance with the 5 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.

It appears that a door is proposed between the new garage and the existing home. When you enter through the door, you will be in the garage and have the option to go right into the work room or up a small set of stairs into the ADU. The PB will need to determine if this meets the “subordinate” standard. In order to

access the ADU through the living area of the primary structure, the occupants would need to enter through the main entrance in the front of the home. We recommend this be shown on the plan so it is clear.

- (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.

The application materials indicate the square footage of the main home is 2,160 sq. ft. and the ADU is 988 sq. ft. Looking at the Property Record Card it appears the first floor is 1,044 sq. ft. and the finished portion of the basement is 576 sq. ft. We recommend further information on the 2,160 sq. ft. figure be submitted to ensure it complies with this condition.

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

This is not shown on the plan, however, the home will only have 1 meter.

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

Only 1 ADU is proposed for this lot.

- (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

Setbacks are not shown on the aerial provided, it appears that they do have space, however, Planning Staff recommends they show the setbacks on the plan. For the R-5 District they are as follows:

Front: 20 Ft.
Side Yard: 15 Ft.
Rear Yard: 20 Ft.

The proposal also has to demonstrate compliance with the 12 Conditional Use Standards. These responses are listed in your memo.

RECOMMENDATIONS:

If the PB decides to make a determination of completeness, we recommend it be contingent upon the following:

- Show clearly on the plan how ADU occupants will access the ADU and how the door between the main home and the garage is considered “subordinate.”
- Submit calculations of the current floor area of the home to ensure compliance with ADU standard #2 regarding the 50% floor area.
- Show setbacks on the plan.

Please note, a determination of completeness does not ensure approval of the application, it simply means the Planning Board has all of the pieces necessary to review an application.

Recommended Motion: I will make a motion to make a determination of completeness for the creation of an Accessory Dwelling Unit at 10 Garden Street contingent upon the submission of the following:

- Show clearly on the plan how ADU occupants will access the ADU and how the door between the main home and the garage is considered “subordinate.”
- Submit calculations of the current floor area of the home to ensure compliance with ADU standard #2 regarding the 50% floor area.
- Show setbacks on the plan.

Recommended Motion: I will make a motion to schedule a Site Walk for March 7, 2018 at 5:30PM

Recommended Motion: I will make a motion to schedule a Public Hearing for March 14, 2018.

ITEM 6

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 Avenue, MBL: 306-2-6

Site Plan: 9 East Grand Avenue	Project Status
<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

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

BACKGROUND (2019):

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

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

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

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

2017 OUTSTANDING ITEM RECOMMENDED CHANGES AND 2019 FOLLOW-UP

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

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

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

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

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

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

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

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

- Once product arrives at 9 E. Grand will it be unloaded directly into the building? Will it temporarily sit on the sidewalk or somewhere else nearby unloaded into the building?

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

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

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

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

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

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

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

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

2019 Follow-Up: Warehousing was another significant concern during the 2017 review. During 2017, the applicant stated there will not be wholesaling any items from the second floor proposed storage and retail space, nothing will be sold wholesale and distributed from this location. Some items will be dispersed to abutting stores owned by the applicant and

the act of moving the product from store to store does not constitute warehousing or distribution. The 1/25/2019 letter states no wholesale distribution of manufactured products will occur at any time from this location submission has little mention of this- response to SPR review criteria #5 states the second floor will be used for stockroom and retail purposes.

A few questions for the applicant and PB- what chance does a product that was placed in an area designated as stockroom in one location become a product that is dispersed to an abutting store (or floor within the same building) and then becomes a wholesaled item at the new location? How could this even be monitored by town staff? Also, exactly what is a stockroom? Note the applicant's previous comments concerning this is that warehousing on the first floor and basement are grandfathered according to the legal opinion we received from attorney Jim 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 Katsiaficas is clear (p 2): "Any use of the proposed second floor to store or stock merchandise for sale, wholesale or retail, that would occur **off** the Property, is not permitted."

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

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

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

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

78-215 (Site Plan Ordinance)

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

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

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

a. Property boundary survey class 1, signed and sealed by a state-licensed land surveyor, showing bearings and distances of the subject property boundary, topographic elevations at a contour

interval of no more than two feet, location and elevation of all existing and proposed structures, site features and site improvements.

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

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

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

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

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

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

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

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

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

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

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

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

Location and type of fixture included and approved as part of the Design Review proposal. Photometric data was not included but still approved by DRC. Applicant can ask the PB to

accept lighting included with the DRC submission as part of the site plan record and request they waive the photometric data.

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

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

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

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

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

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

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

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

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

RECOMMENDATIONS (2019)

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

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

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

2017 BACKGROUND

DEPARTMENT COMMENTS (AUGUST 2017):

PD:

In a follow up to my earlier comments regarding Mr. Harrisburg's proposed expansion of property he owns at 9 East Grand Ave., I have reviewed the correspondence sent to Department Heads and the Planning Board, by Attorney Neal Weinstein, on 07-24, 2017, that addresses concerns raised by staff. It seems that each response has a qualifier attached that would suggest occasional noncompliance, which appears to be anything but a commitment to adherence. For example, in answer number three, is there any such thing as being, "grandfathered" without restrictions when it comes to loading and unloading? Even if warehousing is grandfathered, would it include rights to load and unload as you please? In 3A, he states that, there will be no delivery vehicles on site, (there can't be anyway because they have no off street parking for 9 East Grand Avenue) and none will make deliveries to the building for second floor storage and retail. If they are making deliveries to the first floor, how is anyone supposed to know which floor is getting the delivery? If the owner's pickup truck and box van are used, where will they park to deliver? There are no loading zones on Kinney Avenue near 9 East Grand Avenue, and I will not authorize one because of complaints I have received regarding congestion at that intersection. Two years ago, Mr., Harrisburg committed to me that if I authorized a loading zone on Harrisburg St. he would not use trucks to deliver on Kinney Avenue but would bring it there by forklift instead. Why can't he do that for all deliveries to 9 East Grand Avenue and eliminate any confusion? This agreement was reached in response to complaints received about delivery trucks causing congestion at the intersection of Kinney Avenue and East Grand Avenue. The objective was to eliminate Kinney Avenue deliveries by truck. If they are suggesting anything that needs to be delivered to the first floor and basement will be by truck, and anything for the second floor will be by fork lift, that makes no sense. I would urge the Planning Board to require all deliveries to that location be made by fork lift. I understand that most businesses in the down town area do not have off street parking, and as a result have to receive deliveries from adjacent roadways. We are very liberal when it comes to allowing business owners to receive their deliveries, Mr. Harrisburg included. However, there are some locations where allowing deliveries to be made creates too much of a safety concern. I would prefer that any delivery necessary to 9 East Grand Avenue, be made from East Grand Avenue and not Kinney Avenue, unless it is transported there by forklift from Harrisburg Street. I also have a concern with a forklift being used to hoist boxes into a second floor door, over a public sidewalk. Mr. Harrisburg's response is that a supervisor would be present when this takes place. Isn't that an acknowledgement that there might be some danger involved? It's bad enough to block the sidewalk with boxes, never mind hoisting boxes two stories. I would suggest that they be required to carry them inside and bring them to the second floor by hand.

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

FD:

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

BACKGROUND (JULY MEETING 2017):

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

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

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

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

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- 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). Warehouse Storage is not identified as a land use. There is no performance standards specifically related to warehousing, warehousing storage or storage.

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

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

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

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

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

78-215 (Site Plan Ordinance)

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

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

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

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

Done

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

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

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

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

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

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

Done

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

Done

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

Done

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

Done

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

Done

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

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

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

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

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

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

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

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

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

Done

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

Landscaping not proposed- Done

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

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

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

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

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

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

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

No waiver required

(5) Cost estimates for all proposed site improvements.

No waiver required

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

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

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

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

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

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

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

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

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

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

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

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

DEPARTMENT COMMENTS (JULY 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.

ITEM 7

Proposal: Conditional Use: Accessory Dwelling Unit
Action: Determination of Completeness, Schedule Site Walk, Schedule Public Hearing
Owner: The Village at Pond View Woods, LLC
Location: 206 Portland Ave, MBL: 103-1-432

<u>ADU: 206 Portland Ave</u>	<u>Project Status</u>
<i>Sketch Plan</i>	N/A
<i>Application Complete</i>	Recommend Conditionally for February
<i>Site Walk</i>	Recommend Scheduling for March
<i>Public Hearing</i>	Recommend Scheduling for March
<i>Final Ruling</i>	Pending

This is a new proposal before the Planning Board for an Accessory Dwelling Unit (ADU) in the Village at Pond View Woods (Orchard Estates) Subdivision. The Applicant is proposing to tear down the existing red brick home and replace with a single-family home that includes an ADU.

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.

Regarding this proposals conformance with the 5 Accessory Dwelling Unit (ADU) 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.
The application shows the main entrance as through the front of the building facing Portland Avenue. Where there are other entrances proposed, Planning Staff recommends the Applicant show how Occupants will walk through the existing living space to get to the ADU.
- (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.
The square footage of the main home is 2,128 and the ADU is 864 sq. ft. It meets this standard.
- (3) The dwelling shall be served by a single electrical service.
This is not shown on the plan, however, the home will only have 1 meter per the responses to the ADU criteria.
- (4) Only one accessory apartment shall be permitted per lot. It shall be made part of the main residence.
Only 1 ADU is proposed for the lot.
- (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

RECOMMENDATIONS:

If the PB decides to make a determination of completeness, we recommend it be contingent upon the following:

- Show clearly how occupants will walk through the existing living space to get to the ADU.

Please note, a determination of completeness does not ensure approval of the application, it simply means the Planning Board has all of the pieces necessary to review an application.

Recommended Motion: I will make a motion to make a determination of completeness for the creation of an Accessory Dwelling Unit at 206 Portland Avenue contingent upon the submission of the following:

- Show clearly on the plan how ADU occupants will access the ADU through the existing home and how the additional doors between the main home and the ADU are considered “subordinate.”

Recommended Motion: I will make a motion to schedule a Site Walk for March 7, 2018 at 5:45PM

Recommended Motion: I will make a motion to schedule a Public Hearing for March 14, 2018.

ITEM 8

Proposal: Minor Subdivision: 2 Duplex (4 residential units)
Action: Pre-Application/Sketch Plan Review; Schedule Site Walk
Owner: Earle Enterprises, LLC
Location: 4 Smithwheel Rd, MBL: 210-2-6

Minor Subdivision: 4 Smithwheel	Project Status
<i>Sketch Plan</i>	Submitted for February
<i>Application Complete</i>	Pending
<i>Site Walk</i>	Pending
<i>Public Hearing</i>	Pending
<i>Final Ruling</i>	Pending

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

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

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

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

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

Regarding 1, staff offers the following comments and recommendations:

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

- Ensure street trees along Smithwheel exist or will be planted in accordance with applicable ordinance standards. Maintaining a green strip along Smithwheel will enhance aesthetics.
- Will trash removal include a dumpster? Where will the dumpster be located? Remember the dumpster must be screened on 3 sides.
- Exterior lighting location, fixture type and footcandles.
- Submit copy of condo docs.

RECOMMENDATIONS:

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

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

ITEM 9

Proposal: Major Subdivision: 5 Unit Condominium Building
Action: Pre-Application/Sketch Plan Review; Schedule Site Walk
Owner: SJ Peacock Builders
Location: 21 Union Avenue, MBL: 315-15-3

<u>Major Subdivision: 21 Union</u>	<u>Project Status</u>
<i>Sketch Plan</i>	N/A
<i>Application Complete</i>	Pending
<i>Site Walk</i>	Pending
<i>Public Hearing</i>	Pending
<i>Final Ruling</i>	Pending

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

RECOMMENDATIONS:

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

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

ITEM 10

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

<u>Ordinance Amendment: NC-3</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

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



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

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

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

RECOMMENDATIONS:

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

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

ITEM 11

Proposal: Ordinance Amendment: Accessory Dwelling Unit (78-1272)

Action: Discuss Draft Amendments

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

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

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

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

BACKGROUND (JANUARY):

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

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

Helpful Definitions

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

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

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

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

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

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

ADUs are NOT permissible in the following districts:

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

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

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

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

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

Discussion Questions for the Planning Board:

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

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