

TO: Old Orchard Beach Planning Board
FROM: Jeffrey Hinderliter, Town Planner
SUBJECT: July Planning Board Meeting Summary
DATE: 10 July 2014

*****APPLICANT NOTE- August PB meeting submissions due on 29 July*****

*****APPLICANT NOTE- Please remember the town needs digital plan submissions*****

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

MINUTES

- 5 June Workshop: Change date on header from 1 May to 5 June
- 12 June Regular Meeting: Table- not complete. Change date on header from 8 May to 12 June

ITEM 1 & 5

Proposal: Site Plan: 1-unit, 1-story addition to the top of the Temple Ave structure (hotel), minor parking lot changes and re-construction of the primary exterior stair to make it code compliant with current building and life safety codes
Action: Public Hearing, Site Walk Report, Schedule Final Review
Owner: Billow House LLC
Location: 2 Temple Ave, MBL: 324-16-7

Background:

This proposal includes the addition of 1 unit to the existing Billow House hotel, off-street parking space and lot adjustments, re-construction of primary staircase, replacement of existing parking lot side porches, and some landscaping improvements.

I've met with the applicant a number of times and I'm confident this is a solid application as most issues have been addressed and became part of this submission. There are two outstanding items I believe the PB should consider: 1. On and off-street parking requirements; 2. Professional licensing.

A. Regarding on and off street parking requirements- This proposal is within the NC-1 district which allows on-street parking on public streets (78-871 (c) (1)). Waivers and other special approvals are not required to meet this standard, the applicant simply needs to establish how the proposal meets the language within the standards as part of the Site Plan submissions.

The applicant asked for clarification on this:

“Below is the parking text for the NC-1 that I mentioned seemed a little confusing.

(c) *Parking*. Notwithstanding the parking standards specified in division 4 of article VIII of this chapter, all uses in the neighborhood commercial districts, with the exception of residential and lodging establishments, shall conform to the following parking requirements:

(1) Where the town has established on-street parking on public streets within the neighborhood commercial districts 1, 2, and 3, new development of nonresidential

properties fronting such facilities are exempt from the required amount of off-street parking specified under division 4 of article VIII of this chapter.”

My reply to the applicant:

“On and off-street parking. I believe you don’t need to request a waiver as long as: 1. You identify the ordinance allows on-street parking and 2. You establish, by plan and/or written documentation, that on-street parking is available within close proximity to the Billow House.”

B. Regarding professional licensing- 78-215 (c) (1) of the Site Plan Ordinance states, in part, “Proposed Site Plan...shall be sealed by a professional engineer, landscape architect, or a surveyor licensed in Maine.” The applicant is a Maine Licensed Architect. 78-215 (d) allows the applicant to seek a waiver of the above-mentioned standard.

The applicant asked for clarification on this:

“Since I am a Maine Licensed Architect (ME Lic # 3313) and NOT a civil engineer or landscape architect, I don’t know if you feel it necessary to request a waiver for that formality. There were not enough plantings or site improvements to warrant hiring either in my view.”

My reply to the applicant:

“License waiver. I recommend you request a waiver from 78-215 (c) (3). To justify the waiver, please explain why you feel the requirement will not yield any useful info given the nature and scope of the proposed activity or the existing character of the site.”

I recommend the PB determine the Site Plan Review application as complete and schedule a site walk and a public hearing on 10 July. For the next submission, I recommend the applicant:

- A. Establish, by plan and/or written documentation, that on-street parking is available within close proximity to the Billow House and how this proposal meets the on-street parking standard.
- B. Request a waiver from 78-215 (c) (3). To justify the waiver, please explain why you feel the requirement will not yield any useful info given the nature and scope of the proposed activity or the existing character of the site.

10 July Update:

There were no issues identified at the site walk. Much work has gone into this proposal before this meeting and it appears to be a straight forward proposal. I believe there are a few outstanding items that I recommend the applicant address before the next meeting.

RECOMMENDATIONS: I recommend the PB schedule final review for the August meeting contingent upon receiving the following from the applicant:

- A. Establish, by plan and/or written documentation, that on-street parking is available within close proximity to the Billow House and how this proposal meets the on-street parking standard.
- B. Request a waiver from 78-215 (c) (3). To justify the waiver, please explain why you feel the requirement will not yield any useful info given the nature and scope of the proposed activity or the existing character of the site.

C. Submit any discussions and/or permits associated with DEP review.

ITEM 2 & 6

Proposal: Conditional Use: Establish a Tattoo Parlor and Body Piercing business within an existing building
Action: Public Hearing, Site Walk Report, Final Review
Applicant: Robert Johnson
Location: 1 Ocean Park Rd., MBL: 210-11-4

Background:

As you may recall, this proposal has some background concerning zoning changes. The Council recently approved an amendment to the ordinances to allow Tattoo Parlors as a Conditional Use within the GB-1 District. Conditional Use standards exclusively related to Tattoo Parlors were not adopted; therefore, the PB will review this proposal in accordance with the 12 standards identified in 78-1240. The 12 standards are as follows:

Sec. 78-1240. - Standards.

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

- (1) The proposed use will not result in significant hazards to pedestrian or vehicular traffic, on-site or off-site.
- (2) The proposed use will not create or increase any fire hazard.
- (3) The proposed use will provide adequate off-street parking and loading areas.
- (4) The proposed use will not cause water pollution, sedimentation, erosion, or contamination of any water supply.
- (5) The proposed use will not create unhealthful conditions because of smoke, dust or other airborne contaminants.
- (6) The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties.
- (7) The proposed use will provide adequate waste disposal systems for all solid and liquid wastes generated by the use.
- (8) The proposed use will not adversely affect the value of adjacent properties.
- (9) The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.
- (10) The applicant's proposal must include any special screening or buffering necessary to visually obstruct the subject property from abutting uses or to ensure the continued enjoyment of abutting uses.

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

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

This proposal is actually quite simple as it does not include a building expansion (only interior work) and should not provide as much on and off-site impacts as related to vehicle traffic as its former use. When considering this proposal, I believe the following Conditional Use Standards are those the PB and applicant/owner should concentrate on:

(1) The proposed use will not result in significant hazards to pedestrian or vehicular traffic, on-site or off-site.

(3) The proposed use will provide adequate off-street parking and loading areas.

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

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

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

In addition to the 5 above-mentioned standards (and related to these), I believe it is important to recognize the importance of this building and location as part of the primary gateway to OOB. I have faith that the applicant/owner understands this and his intension is to have a business that contributes to the success and beautification of OOB.

I recommend the PB determine the Conditional Use application as complete and schedule a site walk, public hearing and final review on 10 July. For the next submission, I recommend the applicant:

- A. Provide more detailed responses to Conditional Use Standards 1, 3, 6, 8 and 9 (stated above). This should include a sketch plan of the parking lot identify spaces directly associated with the Tattoo Parlor.
- B. If the PB feels appropriate, I recommend the applicant/owner provide a response as to how this use will contribute to the success and beautification of OOB.

10 July Update:

There were no issues identified at the site walk and abutters did not attend. After further discussions (since the June meeting) with the applicant and the property owner, I feel the applicant has successfully complied with applicable ordinance standards.

RECCOMENDATIONS: I recommend the PB approve the Conditional Use Permit to allow the establishment of a Tattoo Parlor at 1 Ocean Park Road.

ITEM 3 & 7

Proposal: Site Plan: Establish 9 new campsites within Paradise Park Campground
Action: Public Hearing, Site Walk Report, Schedule Final Review
Owner: Paradise Acquisition LLC
Location: 50 Adelaide Rd., MBL: 106-2-2

Background:

This proposal originally was submitted as an Administrative Site Plan Review as a 5 campsite expansion proposal. Admin Site Review allows town staff to review a project and, if acceptable, approve without PB involvement. The Campground Overlay District allows campground expansions by up to 5 sites per year through the Admin Site Review process. Part of this process includes abutter notification.

Typically, Admin Site Plan Review receives little (if any) abutter interest but there was concern (and possibly some confusion) concerning this proposal; therefore, I thought it should receive formal PB review.

As a result of the resubmission to the PB, the applicant increased the number of campsites to 9 but kept the sites in the same location. I need to perform a more detailed review which I will have ready for you during your July meeting.

I recommend the PB complete and schedule a site walk on ??? and public hearing on 10 July.

10 July Update:

A number of abutters attended the site walk and voiced concerns about the proposed project as well as how they're impacted by the Campground as it exists. These concerns included:

- The overall continued expansion of the Campground
- Use of Greenacre Rd. as an exit
- Smoke from campfires
- Noise
- The fence and vegetative buffer on the campground adjacent to the Birch Lane area
- Dumping of materials
- Runoff
- Excessive use of work trucks on fire lanes

A majority of these concerns are associated with the Campgrounds operation as it exists today. Since the PB's primary responsibility at this time is reviewing the current proposal, this should be your focus. I do believe it is worthwhile to consider the concerns associated with the existing Campground as part of the PB's review but to not necessarily use these to approve or deny the 9 site proposal. Although, I think that this may provide an opportunity to address the concerns.

Upon completion of the public hearing, I intend to research the proposal, the concerns, previous approvals/town records, and visit the Campground. I will report my findings to you at the August meeting.

RECOMMENDATIONS: I recommend the PB continue discussion and schedule final review for the August meeting. If PB members have additional thoughts after tonight's meeting, please forward to me within the next 2 weeks.

ITEM 4

Proposal: Site Plan: Removal of existing building and construction of a three story retail and residential 10,976 sq. ft. building
Action: Final Review
Owner: The Harrisburg Group
Location: 11 East Grand, MBL: 306-3-3

As you know, both the PB and DRC have reviewed this for several months. Because we still have an open public hearing and issues still on the table, I thought it is best to gather all information, organize it, see how it relates to applicable ordinances, and then provide a more detailed response. After tonight's meeting, I will prepare my findings and send out within a timely manner.

10 July Update:

I have not received additional information from the applicant since the 12 June meeting. I recommend the PB table this proposal and schedule final review for 14 August.

ITEM 8

Proposal: Private Way: Establish access to one lot across a paper street to develop a single-family dwelling
Action: Discussion, Schedule Site Walk and Public Hearing
Owner: Aeron and Eric Dupee
Location: Hemlock Street, MBL: 403-1-5

Background:

This proposed private way is brought before the PB to answer one primary question before a formal application is submitted- in order to establish a private way for access to MBL 403-1-5, which private way standards apply, the 1 lot or 2 lot standards? Further info below:

- The applicant/owner has a lot that they wish to develop into a single-family use.
- Currently, the lot does not have a formal, developed road/way to access the lot. Hemlock Street ends at the southern lot line. Hemlock continues as a paper street along the frontage of the lot associated with this proposal.
- As I understand, a private way must extend along the entirety of the lot frontage.
- There is another undeveloped lot across the paper street from this proposal. This lot is not part of the proposal and under different ownership.
- Because the private way must be extended across along the entirety of the lot frontage for the lot associated with this proposal, the other undeveloped lot will have the ability to use the private way for access.
- Since the other lot (the one not associated with this proposal) will have the ability to use the private way for access, does this mean the proposal must be constructed in accordance with the 2 lot standards because both the applicant/owners lot and the other lot will have access to the private way?
- When considering which standards (1 or 2 lots) apply, I believe the key is what does "access" mean? Our ordinance does not have a definition of "access" (although access strip is defined), so I'll refer you to Black's Law Dictionary for a definition: "An opportunity or ability to enter, approach, pass to or from, or communicate with."
- 78-1411 states, in part, "The Planning Board may approve the use of private ways to provide access to lots existing or proposed..."

- Considering the definition of access and the language in 78-1411, does the PB feel the proposed private way will provide 1 or 2 lots with the “ability to enter, approach, pass to or from, or communicate.”
- Please note there are other matters that must be considered when reviewing private ways that are not included in this memo. I only concentrated on the applicant’s question. The other matters will be reviewed upon submission of a formal application.

I recommend the PB determine which private way standards apply- those for 1 lot or those for 2. The PB may schedule a site walk and public hearing for July or may choose to wait until a formal application is submitted.

10 July Update:

At the June meeting, the PB determined the proposal must meet the 2 lot private way standards. The July submission is in response to that. After I receive the PB’s thoughts during our meeting this evening, I will provide a more thorough review of the proposal for the August meeting.

Attached to this memo is a document I assembled from town ordinances associated identifying the standards that are most applicable when developing a private way to serve 1 and 2 residential lots. Please use this when reviewing the proposal.

RECOMMENDATIONS: I recommend the PB schedule a site walk for 7 August and Public Hearing on 14 August.

ITEM 9

Proposal: Conditional Use, Site Plan, Subdivision Amendment: Revise building 5 from 6 units to 3 units; Revise building 3 from 6 units and construct three buildings with two buildings containing 2 units in each and one building containing 3 units. Over-55 residential condominiums- 10 total units.

Action: Final Review, Sign Mylar

Owner: CHA Builders, LLC.

Location: Emerson Cummings Boulevard and McCallum Drive (Cider Hill), MBL: 107-3, PMUD

Background:

This proposal is simply a change of use from office space to residential. Cider Hill was originally approved during 2002 as a project that contained age restricted housing, congregate care and office space. Over time, the project was adjusted and developed in phases. The phase associated with this proposal was approved during 2004 as office space and a large congregate care building.

The changes for this proposal only include a change of use from the approved office buildings (3 and 5, northern corner of the proposed plan) to 12 units (6 per building) of age restricted housing. Literally, nothing else is changing from the 2004 approval- the building location remains the same, parking the same, stormwater management the same, impervious surface, etc. (see 11 x 17 excerpt of the 2004 approved plan to compare).

I reviewed applicable zoning standards and a majority of the files (which if stacked, are probably 5 feet high) in order to determine if this project can be approved or if there are any restrictions and “red flags” that may not allow 12 additional units and found no reason that the proposal cannot move forward.

10 July Update:

This proposal has been ongoing for a number of months. The PB held a Site walk and public hearing as well as continued discussions. During the May meeting, it was determined the final item was for the applicant to secure DEP approval. DEP approval was secured during June (document in this month's packet).

RECOMMENDATIONS: I recommend the PB approve the Conditional Use, Site Plan and Subdivision Amendment to allow: Revised building 5 from 6 units to 3 units; Revise building 3 from 6 units and construct three buildings with two buildings containing 2 units in each and one building containing 3 units. Over-55 residential condominiums- 10 total units to be located at Emerson Cummings Boulevard and McCallum Drive (Cider Hill). Please sign the Mylar.

ITEM 10

Proposal: Subdivision and Conditional Use Amendment: construct an inn facility consisting of 24 guestrooms with ancillary features common to golf course facilities. The proposed project includes three carriage house structures with associated parking and site features.
Action: Discussion, schedule site walk and public hearing
Owner: Pine Ridge Realty Corporation
Location: Wild Dunes Way (Adjacent to existing Dunegrass Clubhouse Facility)., MBL: 105A-1-200

I've worked with the owners engineer for a number of months on this proposal and most of my comments have been addressed before its presentation as a formal proposal this evening. At this time, I'm interested in in the public comments as well as submitting for town staff review. I do not have additional information for this evening as I will wait to receive public and staff comments and then perform further evaluation.

RECOMMENDATIONS: I recommend the PB schedule a site walk for 7 August and Public Hearing for 14 August.

ITEM 11

Proposal: Subdivision and Conditional Use: Establish 27 free-standing condominiums
Action: Discuss proposal
Owner: Dominator Golf LLC
Location: Wild Dunes Way, Adjacent to Dunegrass Section C, MBL: 105A-1-200

This proposal is not a formal application at this time, as I understand; it is being presented to the PB so the applicant can receive PB advice concerning questions they have. I believe the primary question is associated with the transfer of development rights and does Dominator Golf have the right to develop this property. I'll leave it up to the applicant/owner to ask the question, which should be very specific.

Please note: Dunegrass is a very complicated project- there is a mountain of files and many things to consider, including past and pending legal matters. I've found there are no simple questions. I say this because I feel the PB should be careful when answering questions without proper legal advice when those questions are associated with such a complicated project. If the PB chooses to answer questions, I recommend general terms are used and it is simply advice.

RECOMMENDATIONS: I recommend the PB table this matter until:

1. Applicant/owner submits, in writing, the specific questions they have.
2. Once I receive these questions, allow me to contact the town attorney so the PB can receive proper legal advice.
3. Upon receipt of the legal advice, schedule for continued PB consideration.

ITEM 12

Proposal: Establish a mixed use for the building of Medical marijuana research and product development, Primary Caregiver service/grow facility/ medical eatable products
Action: Discuss proposal, schedule site walk and public hearing
Owner: Pierre Bouthiller
Location: 60 Saco Ave., MBL: 206-10-1

As stated above, Mr. Bouthiller is proposing a Medical Marijuana facility for use by multiple caregivers to be located at 60 Saco Ave. (the former Post Office building). At this time, the proposal is not a formal application; the applicant is only seeking feedback from the PB about the proposed use for this property.

As you may guess, the town zoning ordinances do not include specific standards and land use classifications for Medical Marijuana. I discussed this with the applicant and informed him that the first step should be a determination as to what land use classification, as identified as part of the General Business 2 District (the zoning district where the building is located), the proposed Medical Marijuana use could fit within. I asked the applicant to identify the use (or uses) he feels his proposed use could fall within and describe why he feels this is so. As stated within the applicants' submission, he feels the proposed use could qualify as a Business or Professional use (which is permissible in the General Business 2 District) and describes why he feels this way. The applicant submitted this information which is in this months' packet.

Identifying if the use can fall within the Business and Professional use classification is critical because if the use is not identified within the zoning ordinance, it is not permissible. There are times when a use may not be specifically identified but can fit within the definition of another use which could than make the use permissible.

In addition to the above, at the 15 July Council meeting, the Council will discuss and act on a proposed Emergency Ordinance establishing a Moratorium on Medical Marijuana Non-Residential Production. If this is approved, the Moratorium will immediately be in-effect. Because, at this time, this is not a formal proposal and simply an informal request for PB guidance as it relates the how the proposal fits within the current use classifications as well as an introduction to the PB (i.e.formal permit approval is not scheduled for this evening), informal discussion is not the sort of action that triggers vested rights. Because the PB will take no formal action this evening, the proposal is essentially 'halted' if the moratorium is enacted. By 'halted' I mean that town staff, boards, officers cannot accept or act upon for any approval relating to the establishment or operation of a business for Medical Marijuana Non-Residential Production during the time the emergency ordinance Moratorium is in-effect. Moratoriums are in-effect for 60 days but may be extended by the Council. During the Moratorium, I expect the town will develop ordinances to regulate Medical Marijuana for Non-Residential Uses. These ordinances could include identifying zoning district where the use is permissible and not permissible as well as performance standards to regulate the use. Although the emergency ordinance Moratorium is not in-effect at this time, I believe it safe to proceed as if it will be enacted by the Council on 15 July.

RECOMMENDATIONS: I recommend the PB table action on this proposal until the emergency ordinance Moratorium is repealed.

