

TO: Old Orchard Beach Planning Board
FROM: Jeffrey Hinderliter, Town Planner
SUBJECT: June Planning Board Meeting Summary
DATE: 14 June 2012

*****APPLICANT NOTE- July PB meeting submissions due on 25 June*****

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

ITEM 1 & 5 – Beachmont Land Development, LLC – 44 Lot Single Family Subdivision (Subdivision/Shoreland Zoning – Public Hearing, Site Walk Report, Schedule Final Review)

BACKGROUND

- This is a new Subdivision and Shoreland Zoning proposal for the development of a 44-lot single family cluster subdivision. Also, a portion of the property associated with this proposal is within the Stream Protection district which means Shoreland Zoning applies; although, the proposed development is not within the SP District.
- This subdivision is proposed as a cluster. This allows the applicant to design a subdivision that alters the layout, dimensional and area requirements that are typically called for in the ordinance without a waiver or variance.
- There are waivers requested, including proposing individual septic systems opposed to a common system which is what Cluster Subdivisions require. The PB
- There are specific standards associated with cluster proposals and they are found in Subdivision Ordinance, Section 74-278. These standards include Basic Requirements (e.g., building design, common water supply, common sewer system), Open Space (e.g., allocation of common open space, covenants, maintenance responsibilities) and Siting and Buffering (e.g., overall site design, building design, internal and perimeter buffering).
- There are waivers requested, including proposing individual septic systems opposed to a common sewer system which is what Cluster Subdivisions require. The PB has discussed these with the applicant at past meetings.
- Cluster Subdivisions do not specifically allow alterations from other subdivision standards- only those that are called for in the cluster standards; although, the Subdivision Ordinance does have a waiver provision (Section 74-34) that allows the PB to waive almost any standard in the subdivision ordinance. To grant a waiver, section 74-34 has specific criteria the PB must apply when determining if waiver requests can be granted.
- The most important initial item is a decision on what the PB feels it can waive or modify. As stated above, the PB has the authority to waive or modify almost any Subdivision Ordinance standard. The applicant has requested specific waivers and the PB should concentrate on these as to whether they can or can't be granted. I highly recommend the PB carefully reviews the waiver standards (section 74-34) during consideration of the waiver requests. Also, it is always good to think out of the box when an ordinance allows the PB to waive a standard. An ordinance may call for something specific but there may be something that could work better. This is why waivers can be a useful tool.

- One of the primary concerns of abutters is the access to Date Street. It appears the applicant will propose a connection to Date Street but it will include a controlled access by way of a breakaway gate. Our subdivision ordinance requires subdivisions over 15 lots to provide 2 street connections for egress/ingress from the subdivision (74-309 I). While two street connections are provided, one is proposed to include the controlled access (Date St.) while the Portland Ave. access provides the primary ingress/egress. This can move forward as proposed but the PB must grant a modification or waiver of 74-309 I. When the applicant reviews the plans with public safety departments, they should specifically point this out.
- The applicant should check with the Fire Department (Whoever is responsible for reviewing- call main number at 934-4911), Police (Deputy Chief Keith Babin 934-5899), Public Works (Bill Robertson 934-2250), and Biddeford/Saco Water Department (Tom Carr) to be sure the proposal is ok with them.
- I believe there is an opportunity to provide public access for the open space adjacent to the stream. Should the town look into this in more detail?
- Since many of the issues associated with this proposal are more engineering related, I'm going to lean on our town engineer for review at this point in the process.

NEW INFO

- There are no new submissions from the applicant as part of this month's review.
- New items in your packet include comments from our town engineer and public works director. I've emailed these to Mr. Blais and recommended that he be prepared to address each comment.
- One of the primary outstanding items is the waiver request. As I recall, the PB requested a letter or some kind of documentation to be submitted showing individual septic systems will be better for this project than a common system.
- There was an item on page 2 of the application that needs to be corrected- please be sure this is complete before final review.
- The applicant spoke to the departments listed above. We received written comments from public works. Can the applicant provide info concerning the other discussions (it can simply be writing down the conversation).
- What is the status of DEP permitting?
- Is the breakaway gate adjacent to Date Street specifically identified on the plan? If not, I recommend this be placed on the plan.
- Please remember this proposal is a Subdivision, Cluster Subdivision and Shoreland Zoning proposal so please be sure to consider these ordinances when reviewing this application.
- A note for final plan preparation- please be sure it includes all applicable items identified in the subdivision ordinance and show the Shoreland Zoning District(s).
- **RECOMMENDATIONS:** I believe there are two primary outstanding items- the waiver request and comments from the town engineer and public works. It is important that these be addressed by the applicant.

ITEM 2 & 6 – Alouette Atlantic Resort - Remove 3 Buildings and Construct 1 and Site Work (Site Plan Review/Shoreland Zoning – Public Hearing, Site Walk Report, Schedule Final Review)

BACKGROUND

- This is a new Shoreland Zoning, Floodplain and Site Plan Review proposal associated with demo and new construction for portions of the Alouette Beach Resort. The applicant has assembled a very good packet.

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

NEW INFO

- One of the primary issues was the question as to whether a portion of Mullen Ave. would continue to be included with the property owners desire to secure quiet title to land adjacent to his property. The property owner amended the quiet title so it excludes Mullen Ave. The order and final judgment that documents this and is included within your packet.
- I received no comments from staff or our town engineer.
- I believe the quiet title issue for acquiring land in the dune area is not entirely complete at this time; therefore, the right to this land remains and the portions of the project that are associated with this area cannot be approved until it reaches

resolution. Acquiring title in this area will resolve issues associated with property ownership and non-shoreland setbacks Does the applicant/owner have an update on the status?

- Status of DEP permitting?
- **RECOMMENDATIONS:** I believe the two outstanding items are title to the dune area and DEP permitting. As far as I know, securing title is necessary before the PB can offer a final decision. DEP permit approval also is an important part of this project- the PB should determine if DEP approvals must be secured before a final decision or if a condition of approval addressing this can be attached.

ITEM 3 & 7 – Zettran LLC – Sales and Rentals within existing Building (Conditional Use Application- Public Hearing, Site Walk Report, Final Review)

BACKGROUND

- The applicants are proposing to offer sales and rentals of surfboards, kayaks, paddle boards, and other beach related items out of the existing main office. The proposal will be located at the Little Miss Cottages off East Grand Ave. It will operate June – August, 7 days a week with hours 8:00 AM to 6:00 PM.
- This proposal does not include any building expansion or new construction- the products and transactions will utilize existing space on the applicant’s property.
- It’s my understanding the sales and rentals are primarily for those who stay in Little Miss Cottages.
- Zoning permits this as a conditional use in the Beachfront Resort District as long that it’s an ancillary use to lodging establishments.
- This appears to be a straight forward proposal- I do not see how this proposal will negatively impact the neighborhood. Three items the applicant should be sure to address are: 1. Provide at least 2 spaces for off-street parking, 2. The business shall be conducted entirely on the owner’s property and 3. The applicant shall ensure that nothing associated with this proposal interferes with safe pedestrian access and sitelines to the sidewalks and crosswalks and vehicle sitelines.

NEW INFO

- There are no new submissions.
- The applicant positively addressed the three items mentioned above regarding parking, business location and sitelines. As I recall, there were no additional concerns.
- **RECOMMENDATIONS:** Assuming all goes well with the public hearing, I believe the PB can approve this Conditional Use Application tonight.

ITEM 4 & 8 – Richard and Candi Ireland – Child Care Facility (Conditional Use Application: Public Hearing, Site Walk Report, Continue Conformance Discussion)

BACKGROUND

- The applicants are proposing to establish a pre-school and learning center for 3, 4 and 5 year olds (September – June) within an existing commercial building.
- The commercial building is adjacent (and it would seem part of) to Cider Hill which is an age-restricted community. Initially, I thought there may be age-restrictions attached to the subject property as well but I found nothing that restricts the ages of occupants within the commercial building or the property where its located (which is separate from Cider Hill).

- **There are specific standards associated with the Child Care use found within the Conditional Use Ordinance that I ask you to carefully read when reviewing this proposal:**

Definitions:

Child care facilities mean as follows:

- (1) Day care facility means a house or place in which 13 or more children may for consideration be cared for, on either a regular or nonrecurring basis, and which is licensed by the state department of human services as a day care facility, also which conforms to section 78-1268.**
- (2) Family day care home means a house or other place in which one to six children may for consideration be cared for and which fully complies with the rules and regulations of the state department of human services, also which conforms to section 78-1268.**
- (3) Group day care home means a house or other place in which seven to 12 children may for consideration be cared for and which is licensed by the state department of human services as a day care facility, also which conforms to section 78-1268.**
- (4) Nursery school means a house or other place in which a person or combination of persons maintains or otherwise carries out for consideration during the day a regular program which provides care for three to 12 children, provided that:**
 - a. No session conducted for the children is longer than 3 1/2 hours in length;**
 - b. No more than two sessions are conducted per day;**
 - c. Each child in attendance at the nursery school attends only one session per day;****and**
 - d. No hot meal is served to the children.**
 - e. Also, which conforms to section 78-1268.**

78-1268 Child Care Facilities

(a) All child care facilities, family day care homes, group day care homes, day care center facilities, and nursery schools shall comply with the following conditions:

- (1) Required play areas for children shall be permitted in rear and side yards only.**
- (2) All play areas shall be enclosed by a fence 48-inch in height above finished grade. Fence gates shall be latched at the top.**
- (3) Day care facilities are prohibited in multifamily housing units.**
- (4) Individual child care facilities shall be situated no closer to another child care facility than five times the minimum frontage requirement for the zoning district within which the proposed facility is located.**
- (5) Off-street parking shall be provided as follows: One parking space per each nonresident employee and a minimum of one parking space per every four children, or portion thereof, of the total number allowed under the state license.**

(b) All child care facilities, family day care homes, group day care homes, day care center facilities and nursery schools shall comply with the following conditions, if applicable:

(1) Family day care homes not subject to inspection by the state fire marshal's office shall request an inspection and written report by the local fire inspector's office determining that there are no fire safety hazards present in the home. If fire safety hazards are found to exist, the applicant shall comply with the recommended corrective actions prior to the issuance of a statement of compliance by the code enforcement officer.

(2) Group day care homes, day care facilities and nursery schools shall comply with the following conditions:

a. Access shall be permitted only from the following arterial and collector streets: Ross Road, Cascade Road (Route 98), Portland Avenue, Saco Avenue (Route 5), Old Orchard Road, Ocean Park Road (Route 5), and West Grand Avenue or Temple Avenue in the neighborhood commercial district.

b. Such facilities shall be permitted only on lots that fully comply with the minimum lot and frontage requirements of the zoning district within which they are located, except that state-licensed facilities existing on the effective date of the ordinance from which this chapter derives shall be allowed to continue upon demonstration of an existing license active. If the use ceases for any reason, for a period of 12 months, any subsequent use of the property shall conform to the regulations specified in the zoning district where the property is located.

- Two particular items are very important at this time and I ask for the PB's input on these:
 1. Does the proposal fit one of the definitions within the Child Care Facilities Definition? If it does not, then we need to figure which use this will be classified as and whether such use is permitted within the zoning district (PMUD) and what standards apply. A key to this is how many children the applicants intend to have at the facility (the maximum); therefore, I believe we need further input on this.
 2. What is the PB's interpretation of the standard underlined above (b) (2) a? Does this mean if the proposal is a Child Care Facility it is only permitted if it has direct access to one of the roads in this standard? If the PB feels it is direct access, then I don't believe the proposal can move forward as a Child Care Facility because it does not have direct access to these roads.
- There are other standards associated with this proposal such as the fencing requirement and those within the PMUD district that I ask you to carefully consider too.

NEW INFO

- There is no new info submitted with the June packet.
- The primary issue that remains is whether the ordinance will allow this proposal because of the access standards. The use, as described by the applicant, doesn't seem to entirely fit within the Child Care Facilities definitions; although, it appears to be the use that most closely related to this proposal. This is still an outstanding issue and I seek PB's guidance. Should I turn the question of to our town attorney?
- Mailing expense for public hearing and site walks. When we plotted the areas that will be required for public notification, we came up with approximately 930 addresses. The post cards we mail are 0.23 each and with two mailings, the town would incur a \$430 cost. Due to this excessive cost and considering the use may not conform to the ordinance, I thought it would be wise to discuss with Chair Winch

before mailing. It was decided to continue to hold the public hearing because newspaper advertisements were already sent but to hold off on mailed notifications until the PB made a determination as to whether this proposal conforms with applicable ordinance requirements. If the PB feel this proposal will can move forward, we will need to re-advertise and mail notice for the site walk and public hearing.

- **RECOMMENDATIONS:** I believe what is most important at this time is for the PB to determine if this proposal can move forward as proposed, specifically regarding whether this is defined as a Child Care Facility and how the access standards of (b) (2) a apply. If the PB feels the proposal clearly does not meet the standards, I do not believe the proposal can move forward as presented.

ITEM 9 – Town of Old Orchard Beach – Edith Libby Memorial Library Expansion (Site Plan Review: Determination of Completeness, Schedule Public Hearing and Site Walk)

BACKGROUND

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

NEW INFO

- I believe a complete set of site plans are needed that represent applicable information in Section 78-215 (c). I recommend the applicant pay particular attention to these items
 1. Property survey signed and sealed by state licensed land surveyor, including topo- existing and finished grades (c.3.a).
 2. Identification and location of all abutter's to applicants property (c.3.f).
 3. Proposed landscaping planting materials, if any proposed (c.3.l)

4. Location, layout and dimensions of all existing and proposed drainage facilities, accompanied by drainage calculations signed and sealed by a professional engineer (c.3.m).
 5. Soil erosion control plan (c.3.o).
- I recommend the applicant address each of the Criteria for Approval (78-216 d. 1-9) with specific attention to the following:
 1. The proposed project provides adequate stormwater management facilities to produce no additional peak runoff from the site during a 25-year storm event or any other event so required by the planning board, and will not have an undue impact on municipal stormwater facilities or downstream properties (criteria 4).
 2. The proposed project will not have an adverse impact upon environmental quality...important cultural resources, or visual quality of the neighborhood, surrounding environs or the community (criteria 6)
 3. The proposed project will not produce noise, dust, odors, debris, glare, solar obstruction or other nuisances that will adversely impact the quality of life, character, or stability of property values of surrounding properties (criteria 7)
 4. The project conforms to all standards of the zoning district and meets or exceeds the performance standards specified in this article and article VIII of this section (criteria 1)
 - The site plan shows a new drainage system to First Street- I recommend the applicant discuss this with the Public Works Director.
 - The applicant should check with the Fire Department (Whoever is responsible for reviewing- call main number at 934-4911), Police (Deputy Chief Keith Babin 934-5899), Sewer Treatment (Chris White 934-4416), Public Works (Bill Robertson 934-2250), and Biddeford/Saco Water Department (Tom Carr) to be sure the proposal is ok with them.
 - **RECOMMENDATIONS:** If the PB chooses to determine the application complete, I recommend they make this conditional based on providing the information stated above. If you choose to schedule a site walk and public hearing, please note our next meeting fall on 4 and 12 July.

ITEM 10 – Edward & Linda Everest – Subdivision Amendment (Dunegrass Section B): Proposal to reduce the rear setback from 30’ to 15’ for 3 vacant lots (Ruling on Amendment Application)

- This proposal seeks to amend a subdivision plan by reducing the rear lot line setback from 30’ to 15’ for lots B12, B13 and B14.
- This proposal is located in the Planned Mixed Use Development (PMUD) Zoning District. The PMUD property line setbacks are applicable for the projects property lines, not necessarily the individual lots with the project. The project is Dunegrass.
- Since the project is Dunegrass, which Section B was part of when original approved in 1988, it’s my understanding the setbacks are applicable only for the outermost property boundaries of the entire Dunegrass site and not the individual sections within Dunegrass (unless one of the sections boundaries happen to be part of the outer property lines of Dunegrass). Section B property boundaries are not part of the outer boundaries of Dunegrass.
- I see no issues with this proposal.
- **RECOMMENDATION:** I recommend the PB approve this subdivision amendment.

ITEM 11 – Shai Properties Management – Appeals from restrictions on non-conforming uses: Resume use of 12 seasonal cottages (Discussion, ruling, schedule site walk and public hearing)

- The applicant is seeking to resume the seasonal Overnight Cabin use on this property and make much needed rehab to the buildings and site.
- The current property has a number of overnight cabins that have been unlicensed since the 2003/2004 season. The zoning ordinance does not include overnight cabins in the lodging definition and separately defines the use and only allows them in the BRD Zone.
- The property is located in the GB2 Zone. Overnight Cabins are not a permitted or conditional use in this zone; therefore, are considered a nonconforming use at a nonconforming density. Because they have not been used for greater than 2 years, they are subject to the following:

Sec. 78-177. Nonconforming use of land.

Continuance of nonconforming use of land shall be subject to the following:

- (1) No such nonconforming use shall be enlarged or increased or extended to occupy a greater area of land than that occupied at the effective date of the ordinance from which this chapter derives or amendment of this chapter.
- (2) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of the ordinance from which this chapter derives or amendment of this chapter.
- (3) If any such nonconforming use of land ceases for any reason for a period of more than two years, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located.

Sec. 78-180. Appeals from restrictions on nonconforming uses.

Notwithstanding sections 78-177(1) through (3) and 78-179(b) through (d), a nonconforming use of land or a nonconforming use of a structure may be enlarged, increased, extended, moved to another portion of the lot or parcel, reconstructed, structurally altered, resumed after cessation for a period of more than two years, but less than ten years, or converted to another nonconforming use on the lot which it occupied on the effective date of the ordinance from which this chapter derives or amendment of this chapter, upon approval of the planning board as conditional use pursuant to article VII of this chapter. The planning board may not approve any such enlargement, increase, extension, movement, construction, alteration, resumption or conversion, unless it finds that the impact and effects of this enlargement, expansion, extension, resumption or conversion to another nonconforming use on existing uses in the neighborhood will not be substantially different from or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use.

- Since the Overnight Cabins are still within the nonconforming time frame listed above (less than 10 years), the PB may approve this as an Appeals from restrictions on nonconforming uses.
- The criteria for approval is that the PB must find the impact and effects of this resumption will not be substantially different from or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion.

- **There are no requirements for a public hearing and site walk, in fact, the PB could make a decision on this proposal tonight. Although, the PB could choose to hold a public hearing and site walk.**
- **We need something from the property owner stating Shai Properties Management is authorized to apply for this proposal. Current property owner is listed as GSB Corporation.**
- **It's important to insure the cabins are only for seasonal use.**
- **RECOMMENDATIONS: The proposal is well put together and it will help rehab a site that is in much need of it in a very visible area of town. The approval criteria are not too difficult (in this case) to show conformance. I think the PB needs to decide if a public hearing and site walk should be held (although not required). Also, we need a letter of authorization from the property owner and a condition to insure this approval is for seasonal use only.**