

TO: Old Orchard Beach Planning Board
FROM: Planning Staff
SUBJECT: June Planning Board Meeting Summary
DATE: 8 June 2017

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

Applicant Note: July meeting submission date is 26 June 2017.

ITEM 1 & 3

Proposal: Conditional Use: Establish a Café (Bakery) within an existing building
Action: Public Hearing; Final Ruling
Owner: 4 Kidds LLC
Location: 64 Saco Ave., MBL: 206-10-7, GB2

This proposal is for the establishment of a café within an existing building. The proposed location was formerly occupied by the “Curl up and Die” business and is adjacent to the old post office. The café will provide walk in service as well as seating for 8. Coffee, pastries, sandwiches, and non-alcoholic drinks will be offered for customers. The Café will be open 7 days/week from 6 AM to 2 PM. Parking is available on-site for approx. 9 vehicles (note: parking is allowed on Saco Ave in front of the business- this has been confirmed by the PD Chief). There will be two deliveries each week. A dumpster, which will be emptied 1x/week, is provided at the rear of the property. The interior will be remodeled to accommodate the café use. A deck is proposed at the front of the building (see comments below concerning this). A fence exists at the rear (northwest) and one side (southwest) of the property. Former uses of the property include restaurant, hair salon and retail.

At the May meeting the following was recommended:

- Amend the plan by removing the proposed deck and adding a section of fence adjacent to the dumpster.
- Amend Review Criteria #10 regarding use of the existing fence as screening. Also, if the applicant feels this is accurate, screening is not necessary for the portion of the property that abuts the former post office because the proposed café will not cause a detrimental visual impact to the former post office property.
- The PB was concerned about deliveries before 7 AM so a brief statement indicating deliveries will not take place before 7 AM unless it is an emergency.

The June submission includes a revised plan and a letter addressing the above. It appears these submissions acceptably address PB and staff comments.

Background comments from May:

- The proposed front deck does not meet the front setback requirements (15 ft). The applicant could seek a variance to allow the deck but the PB cannot approve the proposal if the deck is included. Staff recommends the applicant amend the plan by removing the proposed deck. This seems to be the easiest remedy so the project can move forward. If the applicant secures a variance at some future date the proposal could come back (possibly administrative review).
- Dumpsters are required to be screened on at least three sides (46-62). The proposed dumpster is at the rear of the property and appears to be hidden, for the most part, from public view. Also, the dumpster will be screened by an existing fence on two sides. One more section of fence may be needed to ensure compliance with Sec. 46-62.
- The proposal will have 2 truck deliveries each week. We do not expect this will cause negative impacts to on or off-site vehicle and pedestrian flow but it would be helpful if the applicant provide approx. time of day for deliveries and where the delivery vehicle will park when product is delivered.
- Review criteria #10 asks for screening and buffering. The existing fence provides a majority of the screening. The one area that is not screened is the line that separates the café from the former post office. Staff feels screening or buffering is not necessary because the café proposal will not cause a negative visual impact to the former post office property.

- The proposal will use a similar parking layout and entrance/exit used for prior uses. Interestingly, it is similar to what was approved by the PB when this property was proposed to become a restaurant. Parking standards actually are minimal- town wide performance standards require 1 space per 4 seats but the GB2 District parking standards reduce this to 1 space because only 50% of what's required for off-street spaces if the town allows parallel parking on Saco Ave. in front of the business (which it does).
- During 2015 the town approved a zoning change to allow the café use (as a Conditional Use) in the GB2 District. This property is in the GB2 District and in fact, it was one of the former owners of the property who proposed the zoning change.

RECOMMENDATIONS: Staff recommends the PB approve this proposal.

ITEM 2 & 4

Proposal: Zoning Map Amendment: Change Zoning District from Industrial District to Rural District for lot identified as MBL 105-2-16

Action: Public Hearing; Recommendation to Council

Owner: David Deshaies

Location: Ross Rd., MBL: 105-2-16, ID/RD

This purpose of this proposal is to amend the town zoning map by removing the Industrial District (ID) and replacing with the Rural District (RD) for the lot located at 91 Ross Rd., MBL: 105-2-16. Currently the lot includes both ID and RD (see submission). This proposal will remove the ID and create a lot that's entirely zoned RD. The reason behind this amendment is the owner would like to create two lots for residential building purposes and the ID standards would prevent this.

One of the primary tests associated with zoning district changes is its conformance with the comprehensive plan. Staff reviewed the Future Land Use Plans from both the currently adopted and draft comp plans and concludes that this proposal is in conformance with both plans. The current plan shows the subject area as RD. The draft plan shows the subject area as Residential 1 (R1) which will allow residential uses and be somewhat similar to the RD. It could be said the entire lot should have changed to RD years ago.

Because the proposal is a zoning change and part of Chapter 78, it requires a public hearing to be held by the PB as well as a PB recommendation to the Council. Once the PB's work is complete, the proposal will move to the Council for their consideration and decision.

Sec. 78-31. - Amendments to chapter.

(a) This chapter may be amended from time to time as the needs of the town require after public hearing on a proposed amendment held by the planning board and following posting and publishing of notice of the hearing.

(b) Such notice shall be posted in the town office at least 14 days before the public hearing and shall be published at least two times in a newspaper of general circulation in the town. The date of the first publication must be at least 14 days before the hearing, and the date of the second publication must be at least seven days before the hearing.

(c) Amendments to this chapter shall be adopted only after favorable vote of a majority of the members of the town council.

RECOMMENDATIONS: Staff recommends the PB provide a recommendation that supports the proposed zoning amendment.

ITEM 5

Proposal: Ordinance Amendment: Amendment to Chapter 78 – Zoning, Article III – Conformance and Nonconformance, Division 2 – Nonconformities, Section 78-180- Appeals from restrictions on nonconforming uses.

Action: Discussion; Schedule Public Hearing

At the PB Workshops this spring, the Board considered a few options/discussion points (see below) regarding how the ordinance amendment should move forward to the formal review process. A majority of members felt the first option, which included deleting 78-180, was the best. First option:

Should we just let the standards in 78- 177 & 179 limit the continuance of nonconforming use of land and structures at 2 years and not offer an appeal through the PB? The way I interpret this is it would cap nonconforming use and structure enlargement, increase, extension, movement, reconstruction, alteration, or resumption at two years, period. If this is what we decide than 78-180 could be entirely deleted because 78-177 & 179 appears to cover it.

This option will delete 78-180 and let 78-176 – 179 control nonconformities. Deleting 78-180 will remove a property owner’s ability to enlarge, increase, extend, move to another portion of the lot or parcel, reconstruct, structurally alter, convert to another nonconforming use, or resume a nonconforming use of land or nonconforming use of structure after cessation for a period of more than two years, but less than ten years. 78-176 – 179 allows a property owner to do the above but limits the time frame to a max of two years.

Options/Discussion Points

1. Should we just let the standards in 78- 177 & 179 limit the continuance of nonconforming use of land and structures at 2 years and not offer an appeal through the PB? The way I interpret this is it would cap nonconforming use and structure enlargement, increase, extension, movement, reconstruction, alteration, or resumption at two years, period. If this is what we decide than 78-180 could be entirely deleted because 78- 177 & 179 appears to cover it.
2. Should we do as suggested in #1 but permit some flexibility by allowing people to improve their nonconforming use of land and structures beyond 2 years? If so, how much flexibility and what do we consider an improvement?
3. Should we keep 78-180 and still offer the appeal through the PB but shorten the 10 year time frame? If we decide to keep this standard I suggest something like: “...for a period of more than two years, but less than five years”.
4. Should we keep the same time frame and general language in 78-180 but change the authority to rule on the Appeals from Restrictions on Nonconforming Uses to the ZBA and leave PB with authority to rule on conditional use? If we do this the amendments could become a bit more complicated because the ZBA has specific statutory authority- we would just need to check on this. Also, the ZBA should be included in our discussions.

78-180 Current Language

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.

Appeals from Restrictions on Nonconforming Uses (Examples):

- *May 11, 2017, SRA Varieties Inc., D.B.A. Paul's II (Red Rocket)* – Change use of 7 units from seasonal to year-round Hotel (currently 5 year-round use for a total of 12).
- *January 8, 2015, 183 Temple Ave* – Allow an Accessory Dwelling Unit.
- *November 8, 2012, 141 Saco Ave (Red Rocket)* – Reopening of 12 seasonal cottages, replacement of existing cottages with new cottages.
- *April 21, 2011, 47 East Grand* – Increase the number of rental rooms from 6 to 9 within the existing structure.
- *March 10, 2011, 180 Saco Ave (Summer Winds)* – Demolish 53 overnight cabins and replace with 53 seasonal dwelling units.
- *May 13, 2010, 44 Union Ave* – Re-establish 3 dwelling units.

Example of how this standard could be applied:

A convenience store is next to your home (or in your neighborhood) and the owner decides to close the store. A convenience store is not a permissible or conditional use in your zoning district; therefore, is considered a nonconforming use. Under 78-180, the owner or another owner could resume, expand, etc. that use or even establish another nonconforming use such as an adult business, salvage facility, manufacturing up to 10 years from the date the store was discontinued. The resumption, expansion, conversion of the use will require PB review as a Conditional Use, but with this standard, it allows the use to be established.

RECOMMENDATIONS: Staff recommends the PB schedule a public hearing and recommendation for the July meeting.

ITEM 6

Proposal: **Approved 32-lot Cluster Subdivision for Single-Family Homes**
Action: **Condition compliance discussion and action concerning red brick home**
Owner: **The Village at Pond View Woods LLC**
Location: **206 Portland Ave., MBL: 103-1-432**

During March 2015, the PB conditionally approved 32-lot single-family residential cluster subdivision including 2,600 linear feet of roads, underground utilities, stormwater management, public water, individual septic systems, open space, and vegetative buffers. This subdivision includes a red brick home (on lot 32) which although not on a historic registry, is thought of as an important structure in OOB. The PB and developers discussed several options to help preserve this structure, including an attempted gift to the town. Ultimately, the PB decided to add a condition and note on the subdivision plan to help preserve the historic style of the house.

Not long after approval the PB questioned the status of the red brick home in regards to what was happening. I met with the owners and we agreed the best way to move forward was to prepare a plan (by a design profession) that would analyze the home in regards to its preservation or replacement and provide recommendations regarding condition compliance. The town did not receive a plan and the home's deterioration significantly increased.

During January of this year PB members brought the home's deterioration to staffs attention and questioned the status of the plan and condition compliance. Immediately after the January meeting, the Codes Office began an enforcement action to demolish the home (enforcement letters in packet). It was determined that removal without a plan to preserve the historic style of the home would not comply with the Orchard Estates Finding of Fact condition (FOF in packet). The enforcement action was temporarily halted and Planner McLaughlin continued her efforts to request the development owners address the condition. After receiving updates at each meeting and finding no satisfactory responses to the PB and staff's request, the PB decided to place consideration of condition compliance as a formal action item on the June agenda.

Finding of Fact Condition

The Planning Board placed ten conditions on this approval. Condition 7 was associated with the red brick home:

7. Note shall be added to the plan to ensure the historic style of the house is preserved. See Note 21- Exhibit H, Sheet 1.

Note 21 refers to a note that was placed on the subdivision plan and states: Lot 32 developer and/or future owner of existing house shall maintain existing exterior features to preserve the historical style of the home.

Subdivision Review Criteria

The subdivision ordinance includes 14 subdivision review criteria which the applicant is required to respond to and the PB must consider each response before granting approval. Criteria 9 response includes statements regarding the red brick home:

9) The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas;

The proposed development has been designed so as to not impact the scenic or historic significance of this site. The Applicant is proposing 6.6 acres of open space along Milliken Mill Pond for the enjoyment of all lot owners. A permanent public easement for foot traffic only is established between lot 32 and Milliken Mill Pond. Lot 32 developer and/or future owner of existing house shall maintain existing exterior features to preserve the historic style of the home.

Most Recent Emails (also included in packet)

On 15 May, Megan emailed the following to the development owners:

Hi Peter and Deron,

This email is to let you know that the Planning Board decided at the meeting on Thursday to put an update on the red brick house as a formal agenda item for the June Planning Board meeting (June 1st and June 8th). They'll expect to receive an update from you with the plans at that time. As you recall, this was a Conditional of Approval associated with the March 12, 2015 approval of your project:

(9) The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas;

The proposed development has been designed so as to not impact the scenic or historic significance of this site. The Applicant is proposing 6.6 acres of open space along Milliken Mill Pond for the enjoyment of all lot owners. A permanent public easement for foot traffic only is established between lot 32 and Milliken Mill Pond. Lot 32 developer and/or future owner of existing house shall maintain existing exterior features to preserve the historic style of the home.

Condition of Approval (#7):

Note shall be added to the plan to ensure the historic style of the house is preserved. See Note 21- Exhibit H, Sheet 1.

Note states: Lot 32 developer and/or future owner of existing house shall maintain existing exterior features to preserve the historic style of the home.

Please let us know if you have any questions and we'll look forward to seeing you at the June Planning Board meeting.

Megan

She received the following reply from owner Peter Bouchard:

Thank you for the update.

The house has a poor foundation that if anyone tried to re-engineer the upper structure, the house would fracture and collapse. The brick had not been maintained for decades and thus is not structurally sound.

On top of vandilism and theft it creates a challenging opportunity to maintain. Apparently local folk lore is that the house is haunted and trespassers frequent the home on specific haunting nights (what ever those are).

The document should have stayed "if possible" to reasonably maintain.

Thank you

On 30 May, I followed-up with the email below:

Hi, Peter and Deron

Please note the Planning Board will discuss and act on the 2015 Finding of Fact condition compliance associated with the brick home at The Village at Pond View Woods (Orchard Estates). I expect the PB will focus on review criteria #9 and condition #7 in the attached FOF.

Megan emailed you earlier this month concerning this to which Peter responded. We will submit this response to the PB. The 1 June meeting is a workshop where staff updates the PB on agenda items. The PB will take no action on this item at the workshop. The 8 June regular meeting is more formal- this will be your opportunity to speak to the PB about this matter. Also, the PB can take formal action at this meeting.

I intend to ask the PB to allow you to prepare a report or some kind of documentation that will address the PB's concerns. I expect a time frame will be attached to submission of this report, possibly before the July PB meetings or within a certain number of days. It's my hope we can resolve this in a manner that is acceptable to the PB and you.

Thank you and take care,

And received the following reply from owner Deron Barton:

Jeffery,

Thank you for this information and we will be sure to attend. As an update Peter and I do have an alternative design completed for a replacement dwelling that we believe will maintain the period integrity the PB is expecting. Additionally, we will have an inspection report that will provide detailed information supporting the economic feasibility of renovating the existing dwelling vs replacing the dwelling new. We are expecting this report from the inspector by June 5th at which time will submit both the plans and the report for internal review prior to the June 8th meeting.

Thanks again for this reminder and we look forward to seeing you again soon,

RECOMMENDATIONS: Staff recommends that we review and discuss the submissions mentioned in Deron's email and their compliance with the condition. Discussion should include the PB's thoughts on the intent and application of the condition. Also, is the owner violating the condition.

CERTIFICATE OF APPROPRIATENESS

ITEM 1

Proposal: Parking lot buffer
Action: Certificate of Appropriateness Ruling
Owner: Daphne & Dennis Rioux
Location: 4 Cleaves St., MBL: 305-5-6, DD2

This proposal is for installation of a parking lot buffer/screening. The parking lot is associated with a lodging use (Rebekkah Inn). A parking lot existed on this property but it was mostly grass and gravel. The owners want to pave the area to provide a more durable surface that is less susceptible to erosion, ruts and other forms of damage. The parking area itself is not under DRC review, it is the buffer/screening. The screening includes removal of chain link fence, replacing with a white vinyl fence which will range in height to allow for a clear sight line at the Cleaves/E. Grand intersection. Some additional landscaping will be installed.

RECOMMENDATIONS: The DRC will not provide a recommendation on this proposal until 5 June. Staff will update the PB at the 8 June meeting.

ITEM 2

Proposal: Amend Slyders proposal to allow 4'x4' building with 2 signs
Action: Certificate of Appropriateness Ruling
Owner: Old Orchard Beach Associates. Applicant: Archie Miller
Location: 16 Old Orchard St., MBL: 205-5-5, DD1

The proposal is for the installation of a 4 x 4 shed-type building and signage on the property where Slyders is located. The building will be used for psychic readings. We expect a few issues with this proposal including the shed-type building and signage. But the primary issue is the applicant has sign off from a person who is not the property owner. Mike Paul is identified as the owner on the application and the lease agreement but is not the owner according to the assessment records- Old Orchard Beach Associates is the owner. Staff contacted the actual property owner and it appears quite clear he is not authorizing this proposal. Because the applicant does not have the owner's permission we expect the proposal will not move forward. It's possible the DRC will table action until this matter is resolved.

Department Comments

Codes

I'm concerned about this shed being used as a place of business it fall under a temporary use much the same as a trailer.

The signage that was shown is in excess of what percentage would be appropriate for that location in DD1

There was no Plans submitted showing how the shed was constructed

There were no design plans of proper anchoring of the shed to the concrete

There are no plans indication any illumination (extensions cords would be prohibited in that location due to pedestrian traffic

RECOMMENDATIONS: The DRC will not provide a recommendation on this proposal until 5 June. Staff will update the PB at the 8 June meeting.

OTHER BUSINESS

1. Discussion: Planning Board approval expiration for Subdivision, Site Plan and Conditional Use

The proposed changes to subdivision, site plan and conditional use approval expiration have been discussed at several workshops. The PB offered comments and questions which include the following:

- The expiration clock begins when a project receives “final approval”. Do we consider final approval as the day the PB votes on the project or signs the mylar? Should final approval be defined?
- Administrative review of project commencement and substantial completion. Should staff have the ability to authorize project extensions? If so, should it be limited to those projects that are originally approved administratively or should it include PB approved projects? As proposed, subdivision does not allow admin review. Site plan and CU allows for admin only if it was originally approved as admin.
- Should we set a specific limit to the number of extension requests? It was suggested to we limit the number to 2 one year requests for project commencement and substantial completion.
- Should we define “intended purpose”? Intended purpose is used in the substantial completion definitions: “sufficiently completed to allow the subdivision to be used for its intended purpose.”
- Are expiration dates on subdivision projects legal? Staff checked with legal and yes, we can add expiration dates. This gets tricky when the subdivision includes lots and the lots are recorded. If a subdivision expires it’s quite possible the ability to developer the lots will expire too. So it could become a bit of a messy title and assessing matter to undue the lots. Also, what if the subdivision is half developed but not substantially complete and people are living in homes on these lots? We can assume the town will have a performance guarantee in place to finish the infrastructure but there’s a possibility of something unforeseen. Maybe the expiration dates should be tied to infrastructure but what if the subdivision involves construction of a condo building where infrastructure may be minimal?
- Reach out and encourage developers to begin and complete projects. As we’ve found this can be tough because the reason vary and are sometimes caused by unpredictable events. Examples, market conditions, death, divorce, etc. Staff can contact developers when project expiration dates approach but there’s not much we can do beyond finding out the reasons for delay and trying to work with them to get projects started and completed. Maybe having an expiration date will in itself encourage developers to begin and complete projects.

In addition to the above, the PB asked staff to see how surrounding municipalities regulate expirations. Staff reviewed Biddeford, Saco, Scarborough, and Arundel Subdivision Site Plan and Conditional Use Ordinances and found the following (note- ordinance excerpts are in packets):

- Biddeford:
 - *Subdivision- Valid for 2 years, proposed infrastructure must be completed to serve 75% of approved lots
 - *Site Plan and CU- Did not find expirations
- Saco:
 - *Subdivision- Substantial construction within 2 year, substantial construction means completion of road base. Subdivisions without roads the completion and issuance of occupancy permit for 1 units is considered substantial construction. One, 2-year extensions authorized by PB
 - *Site Plan- Substantial construction commenced within 12 months. Substantial construction means completion of foundation, addition or other evidence satisfactory to the Planning Departments. Two, 12 month extension authorized by town planner.
 - *Conditional Use- Construction must commence within 12 months. One, 6 month extension authorized by PB.

- Scarborough:
 - *Subdivision- Could not find a specific expiration date. It appears to be tied to the Performance Gaurantee.
 - *Site Plan- 1 year from the date of approval unless applicant has started substantial construction. One, 1 year extension authorized by town planner.
 - *Conditional Use- Could not find a CU Ordinance.
- Arundel:
 - *Subdivision- Substantial completion within 2 years of the date of approval. Substantial completion is no less than 30% of the costs of the proposed improvements in a subdivision. If consists of lots, buildings on those lots not included in 30%. Extensions are not identified.
 - *Site Plan- Substantial completion with 2 years of approval date. Staff may grant one, 1 year extension for admin reviews. PB one, 1 year extension on Site Plan approvals.
 - *Conditional Use- Construction must begin within 2 years of approval date.

Background

As you may know, we've found that our subdivision, site plan and conditional use ordinances project approval expiration standards may be lacking. For example, our CU standards do not have a project approval expiration date which basically means a CU project approved by the PB can pretty much run indefinitely before construction begins. Another example is subdivision which has project expiration standards but they're tied to plan recording (74-234 a) and a rather odd one that appears to be tied to phased development (74-234 b)

Common project expiration standards are one year to begin construction and two years to substantially complete construction. Our site plan ordinance includes standards similar to the above but the key language, project commencement and substantially completed, is not defined. "Substantial Start" is defined ("completion of 30 percent of a permitted structure or use measured as a percentage of estimated total cost") but that language is not used in subdivision, site plan or conditional use.

Coming up with proposed language wasn't as simple as originally thought. Meaning and intent of language, interpretation, twists of words, appropriate words, correct supporting language that flows within each ordinance, conflicting language, etc. all need to be considered- it's actually tricky. Also, subdivision, site plan and CU cover many different projects within each of the ordinances (e.g., a subdivision can include creation of lots with new roads as well as a division of units within a building with no new roads). So trying to come up with a definitions and supporting language that fits all potential scenarios is difficult. In addition to planning-related project commencement and substantial completion codes has standards related to their permitting. To avoid conflicts the definitions are included with the applicable ordinance (e.g., subdivision) or the applicable ordinance is specifically identified within the definition.

Note that these amendments will apply to projects approved after adoption of the language and those projects that have not yet received substantive review (review of a project to determine if it complies with criteria) when the ordinance is amended. Generally, an approved but undeveloped project will be grandfathered absent any language that includes an expiration clause.

CURRENT LANGUAGE

SUBDIVISION:

74-234:

(a) Any subdivision plan not so filed or recorded within 90 days of the date upon which such plan is approved and signed by the planning board as provided in this subsection shall become null and void, unless the particular circumstances of the applicant warrant the planning board to grant an extension which shall not exceed two additional periods of 90 days.

(b) At the time the planning board grants final plan approval, it may permit the plan to be divided into two or more sections subject to any conditions the planning board deems necessary in order to ensure the orderly development of the plan. The applicant may file a section of the approved plan with the tax assessor and the registry of deeds if such section constitutes at least ten percent of the total number of lots contained in the approved plan. In these circumstances, plan approval of the remaining sections of the plan shall remain in effect for three years or a period of time mutually agreed to by the municipal officers, the planning board and the subdivider.

Sec. 74-61. - Required. (Performance Gaurantee)

(a) At the time of the approval of the application for a subdivision, the applicant shall tender either a certified check payable to the town or a performance bond payable to the town issued by a surety company in an amount adequate to cover the total cost of all required improvements, taking into account the time span of the bond and the inflation rate for construction costs. The conditions and amount of such certified check or performance bond shall be determined by the planning board with the advice of various municipal departments, agencies, and legal counsel. Since all improvements shall be completed within two years, unless the subdivision is approved in phases or the planning board extends the date of completion, the bond shall be for no more than two years.

SITE PLAN:

78-219: Site plan approval and all the legal rights, privileges, and duties thereof shall expire if project construction has not commenced within one year of the approval date and if the project is not substantially completed within two years of the approval date. The town planner and code enforcement officer may grant up to a one-year extension on administrative approvals, and similarly the planning board may grant a one-year extension on plenary site plan review approvals if compelling evidence is presented that additional time is required to meet federal, state, or local permit requirements or in reaction to market changes.

CONDITIONAL USE: Nothing

PROPOSED LANGUAGE

*SUBDIVISION

Add definitions for Project Commencement and Substantial Completion in 74-1. Delete last sentence in 74-234

(b). Add new Section 74-235 Project Commencement and Substantial Completion. New language in **bold**, deleted is ~~struck~~

Sec. 74-1. Definitions.

Project commencement means the date on-site construction activity begins in accordance with an approved and recorded subdivision plan.

Substantial completion means the stage or part of an approved and recorded subdivision is sufficiently completed to allow the subdivision to be used for its intended purpose.

Sec. 74-61. - Required.

(a) At the time of the approval of the application for a subdivision, the applicant shall tender either a certified check payable to the town or a performance bond payable to the town issued by a surety company in an amount adequate to cover the total cost of all required improvements, taking into account the time span of the bond and the inflation rate for construction costs. The conditions and amount of such certified check or performance bond shall be determined by the planning board with the advice of various municipal departments, agencies, and legal counsel. Since all improvements shall be **substantially** completed within two years, unless the subdivision is

approved in phases or the planning board extends the date of completion, the bond shall be for no more than two years.

Sec. 74-234. Final approval and filing.

(b) At the time the planning board grants final plan approval, it may permit the plan to be divided into two or more sections subject to any conditions the planning board deems necessary in order to ensure the orderly development of the plan. The applicant may file a section of the approved plan with the tax assessor and the registry of deeds if such section constitutes at least ten percent of the total number of lots contained in the approved plan. ~~In these circumstances, plan approval of the remaining sections of the plan shall remain in effect for three years or a period of time mutually agreed to by the municipal officers, the planning board and the subdivider.~~

Sec. 74-235. Project Commencement and Substantial Completion.

Subdivision final approval and all the legal rights, privileges, and duties thereof shall expire if project construction has not commenced within one year of the approval date and if the project is not substantially completed within two years of the approval date. The planning board may grant a one-year extension on project commencement and substantial completion if compelling evidence is presented that additional time is required to meet federal, state, or local permit requirements or in reaction to market changes.

*SITE PLAN

Add definitions for Project Commencement and Substantial Completion in 78-1. Add “Project Commencement and Substantial Completion” and “final”, delete “Duration of approval” in 78-219. New language in **bold**, deleted is struck

Sec. 78-1. Definitions.

Project commencement (site plan and conditional use) means the date on-site construction activity begins in accordance with a site plan or conditional use final approval.

Substantial completion (site plan and conditional use) means the stage or part of a project sufficiently completed to allow the project to be used for its intended purpose in accordance with site plan or conditional use final approval.

Sec. 78-219. ~~Duration of approval~~ **Project Commencement and Substantial Completion.**

Site plan **final** approval and all the legal rights, privileges, and duties thereof shall expire if project construction has not commenced within one year of the approval date and if the project is not substantially completed within two years of the approval date. The town planner and code enforcement officer may grant up to a one-year extension on administrative approvals, and similarly the planning board may grant a one-year extension on plenary site plan review **final** approvals if compelling evidence is presented that additional time is required to meet federal, state, or local permit requirements or in reaction to market changes.

*CONDITIONAL USE

Add definitions for Project Commencement and Substantial Completion in 78-1 (Note: same as site plan definition). Add new Section 78-1241 Project Commencement and Substantial Completion. New language in **bold**, deleted is ~~struck~~

Sec. 78-1. Definitions.

Project commencement (site plan and conditional use) means the date on-site construction activity begins in accordance with a site plan or conditional use final approval.

Substantial completion (site plan and conditional use) means the stage or part of a project sufficiently completed to allow the project to be used for its intended purpose in accordance with site plan or conditional use final approval.

Sec. 78-1241. Project Commencement and Substantial Completion.

Excepting more restrictive standards stated within Article VII of this Ordinance, conditional use final approval and all the legal rights, privileges, and duties thereof shall expire if project construction has not commenced within one year of the approval date and if the project is not substantially completed within two years of the approval date. The town planner and code enforcement officer may grant up to a one-year extension on administrative approvals, and similarly the planning board may grant a one-year extension on conditional use final approvals if compelling evidence is presented that additional time is required to meet federal, state, or local permit requirements or in reaction to market changes.

2. Guidance Document for Post Construction Stormwater Management Plan

Planning Staff has taken on the task of trying to come up with a way to address the number of repetitive emails/communications we have to send regarding submission requirements. This plan is the first attempt at trying to address one of the requirements that applies to all projects over one acre. The plan is intended to be used as a guide for the Planning Board and Applicants to be able to meet the Chapter 71 stormwater requirements.

Not only does this help Planning Staff reduce the number of repetitive communications for each individual project, it should also help to limit the amount of back and forth between the Town, Wright Pierce and an applicant because all of the requirements are nicely laid out in one document that the Applicant can refer to as they write their plan.

The purpose of a Post-Construction plan is for the applicants to identify what stormwater BMPs they are proposing on site, where they discharge to, what type of maintenance they will require and the Annual Certification requirements. The Planning Board is responsible for ensuring this plan is submitted and meets ordinance requirements.

This guidance document will now be provided to all Planning Board applicants required to comply with Chapter 71.