

TO: Old Orchard Beach Planning Board
FROM: Jeffrey Hinderliter, Town Planner
SUBJECT: May Planning Board Meeting Summary
DATE: 10 May 2012

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

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

ITEM 1 & 4 – Casey Morris (1 lot Private Way: Public Hearing; Site Walk Report; Final Review

BACKGROUND

- This proposal is to create a Private Way to access one lot. The purpose for creating the Private Way is so the applicant can create a conforming lot by obtaining frontage on the Private Way.
- Currently, there is no right-of-way or road in this location; it is undeveloped for our purposes.
- This is different from the Private Way's we've reviewed lately because there is no paper street, public/private rights or easements or rights to use. This makes it much easier.
- The PB should identify any outstanding issues, if any exist.

NEW INFO

- I've received no new info since our April meeting
- At our April meeting, the PB discussed showing the location of the proposed driveway and culvert. The plan has not been amended to show this.
- **RECOMMENDATION:** If the PB feels the driveway and culvert should be shown on the plan (and assuming there are no other issues), the PB could condition approval to show these items on a plan.

Note to applicant: By 25 May, please submit 2 Mylar's and 2 paper copies of the final plans, representing what's already been submitted and if the PB requires, the driveway and culvert too.

ITEM 2 & 5 – 7-11 (Site Plan Review: Public Hearing; Site Walk Report; Schedule Final Review

BACKGROUND

- This is a new Site Plan Review application. The proposal is to replace existing fuel dispensers, canopies, underground storage tanks and necessary piping and replacing with new. This includes removing the two existing canopies and installing one new canopy and four new fuel dispensers.
- The proposal required a setback variance, which it received at the February ZBA meeting (Two existing canopies are nonconforming in regards to the setback requirements. The proposed canopy is will also be nonconforming to the setback requirements and one setback will become more nonconforming).
- The Site Plan Review Criteria for Approval (78-216 d. 1-9), have not been specifically addressed. Providing written responses and supporting documentation for each of these 9 standards is important because this, along with plan requirements, is how the PB determines if a proposal complies with the Site Plan

Review Ordinance. The PB may choose to conditionally determine the proposal is complete, requesting that the review criteria responses are submitted by 23 April (submission deadline for May meetings).

- One particular item the PB should consider is traffic movement in and out of the site. As we all know the halfway section is dangerous. By relocating the canopy, which means relocating the fuel dispensers, will this create or further exacerbate a problem traffic area? Also, the underground fuel tanks will be relocated so they are closer to the road. How will trucks refuel these? Where will the trucks be parked when refueling? What time of the day will trucks refuel? When reviewing the proposed canopy location, further consideration should be applied to internal vehicular and pedestrian circulation. I believe this is critical information the PB needs to know and there may be an opportunity to improve this traffic problem.
- The applicant should check with the Fire Department (Chief John Glass 934-1750), 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

- New info submitted since our April meeting is responses to the Performance standards as requested above.
- The PB requested that we look into the previous proposal to alter the road layout and traffic flow at the halfway intersection. I briefly reviewed what we have in the town's electronic files and it is my opinion the work as designed will have little, if any, impact on 7-11's proposal. This info has been submitted to the applicant's engineer. In terms of the halfway intersections status, the term used is "dead". There have been no discussions which included me that would lead me to believe this will be resurrected anytime soon.
- I'm not sure if the applicant has discussed the proposal with the department's mentioned above. I have not heard from any department head on this proposal (note: Chief Glass is not available for 6-8 weeks- I recommend contacting the FD @ 934-4911 and asking for whoever is the Chief's replacement.
- We'll need documents showing the underground fuel tanks removal and installations have received applicable state approvals.
- **RECOMMENDATIONS:** I believe the PB needs to determine if the applicant has:
 1. Satisfactorily addressed the review criteria.
 2. Satisfactorily addressed the comments/concerns on interior and exterior traffic movement.

If the PB feels these issues have not been addressed (or anything else) in a way that allows them to make an informed decision, I recommend the PB identify what should be submitted.

ITEM 3 & 6 – Virginia Tent LLC (Site Plan Review; Public Hearing; Site Walk Report; Final Review

BACKGROUND

- This proposal includes removing an existing clubhouse and replacing with a new clubhouse, pool house and other site improvements (attached deck, light fixtures, fence, formally marked parking spaces, walkways, and landscaping).
- A review of the Campground Overlay and Residential 2 District Minimum Lot Size and Performance Standards shows this proposal is in conformance with the applicable regulations. I have a few comments/questions:

1. How will the proposed lighting meet 78-1229 (5) lighting requirements for proposed exterior lighting.
 2. Plan notes show the proposal includes an accessory building which does not conform to the height requirements- is this a mistake on the plan?
 3. Is there available location for safe unloading/loading that will not interfere with other vehicular traffic?
 4. The applicant should check with the Fire Department (Chief John Glass 934-1750), Police (Deputy Chief Keith Babin 934-5899), Sewer Treatment (Chris White 934-4416) and Biddeford/Saco Water Department (Tom Carr) to be sure the proposal is ok with them.
 5. There are no specific parking standards (for number of spaces) applicable to a use such as this (I feel it should be identified as ‘assembly’) that I could find in the Campground Overlay District or the Parking section of the Performance Standards (Article VIII). Currently, there are no designated spaces for the existing clubhouse so at least the applicant is now providing formal spaces.
 6. The Campground Overlay (CO) and Site Plan Review Ordinances have Buffer Standards. The CO buffer standard applies to campground expansions or campsite upgrades. The 100’ buffer does not appear to apply because the campground was established before 1 January 2000 and because this proposal does not include the extension of the campground onto land which was not part of the registered campground. Although it is my opinion the buffer standards cited above do not apply, it does appear the buffer standards of Article VIII, Division 7 may apply. To determine if it does apply, the PB should first read the opening paragraph of Section 78-1229- does the removal of an existing building and replacement effect existing conditions, buildings or sites? If the PB thinks it does, then the Buffer Standards of Article VIII, Division 7 apply and the applicant will need to be sure the proposal conforms to this standard. If it does not, Division 7 may still apply because the applicability of this Division states “All new construction of nonresidential...uses requiring plenary review...shall be subject to the performance standards in this division for landscaping and buffering.” If the PB feels Division 7 applies, I believe the applicant should concentrate on the screening and Buffering standards (78-1821 – 1827)
- The Site Plan Review Criteria for Approval (78-216 d. 1-9), have not been specifically addressed. Providing written responses and supporting documentation for each of these 9 standards is important because this, along with plan requirements, is how the PB determines if a proposal complies with the Site Plan Review Ordinance. The PB may choose to conditionally determine the proposal is complete, requesting that the review criteria responses are submitted by 23 April.
 - Overall, this proposal is an improvement- the new clubhouse is attractive, site design should improve pedestrian and vehicle circulation and this will be quite an aesthetic improvement.

NEW INFO

- New info for our May meeting includes submission of responses to Site Plan Review Criteria.
- All items mentioned above have been addressed by the applicant. I believe the one outstanding item that need further consideration by the PB is the buffer standard. I believe the site walk will help identify whether there is a need for a buffer (one may already exist).

- **RECOMMENDATIONS:** I believe the PB should determine if a buffer is required and if so, which one is it and where should it be located. If a buffer is required the applicable plan(s) should be amended to show the buffer location, including the type of buffer. If the proposal needs a buffer, the PB could condition approval based on amending applicable plans and submitting these plan by 25 May 2012. I think this is a well-prepared proposal and a nice site improvement.

ITEM 7 - Seacoast RV Resort LLC (Site Plan Review Amendment- Concept Plan Review- Continued Discussion)

BACKGROUND

- This is a conceptual plan review for the addition of 12 seasonal campsites.
- This is conceptual because there appears to be a ‘grey’ area involving interpretation of the Campground Overlay District Buffer Requirements. The applicant is seeking the PB’s insight on this- interpretation of the buffer standard will determine if the proposal can or can’t move forward.
- The primary question- does the 100’ buffer standard in 78-1229 1(c) apply or does the buffer standard in Article VIII, Division 7 as well as the setback standard apply? The key is interpretation of 78-1229 1(c). Please carefully read this standard.
- 78-1229 1(c) could be read the 100’ buffer does not apply because this proposal is a campground expansion within a registered campground. This proposal is not creating a new campground or is it an extension of an existing campground. Extensions, as I understand, happen when an existing campground acquires more land that was not part of the registered campground on 1 January 2000 (I believe this is why the 2010 Hid’n Pines proposal required a 100’ buffer- they acquired more land to be part of the campground that was not part of the original campground). Expansions are campgrounds that add new campsites to land that already exists in the registered campground- no new land is acquired to expand the campground.
- One additional question- does the addition of 12 campsites require full site plan review or is an amendment acceptable.

NEW INFO

- New info since our last meeting includes:
 1. Letter from BH2M offering their opinion on campground registration
 2. Document from OOB Licensing Clerk showing what appears to be the registration beginning 2004
 3. February 2004 PB minutes documenting the PB’s decision on Seacoast RV
 4. Original Findings of Fact from February 2004
 5. Findings of Fact from a proposal amendment during 2005
- As you’ll see in the documents above, I believe they clearly show Seacoast RV was approved during 2004 and registered after that.
- The PB will need to decide which buffer standard applies. If the PB wishes, I can submit this to the town attorney.
- **RECOMMENDATIONS:** If the PB believes the 100’ buffer applies, the plan cannot move forward. If the 100’ standard does not apply but the buffer standards in Article VIII, Division 7 apply along with the setback, then the proposal can move forward.

ITEM 8 – Town of Old Orchard Beach (Conditional Use- Construct a Skateboard/BMX Complex)

- Jason Webber from the OOB Recreation Department is proposing to construct a Skateboard/BMX complex on land within the ballpark facility.
- At the time of this memo, I have no plans or other submitted documentation so I can't offer constructive feedback. I know it is proposed adjacent to the ballpark and the Council would like public input.
- The proposal is before the PB at this time simply for discussion purposes. This gives the PB an opportunity to identify issues they feel the applicant should pay specific attention to.
- It may be a good idea for the PB to schedule a site walk and invite all abutters. This will offer abutters an opportunity to see just where this complex is proposed to be located. Although, this should only happen when the applicant is properly prepared to represent the proposal in a setting where people will want specific details and information.
- **RECOMMENDATIONS:** The PB is not required to take any action on this proposal at this time. The PB may wish to inform the applicant on specific issues and schedule a site walk once the applicant is prepared to publicly present the proposal.

ITEM 9 – Pyle (Final Review)

BACKGROUND

- This proposal includes a project to alter the interior of an existing 3 unit apartment building to add a single motel unit (Lodging).
- This proposal is very similar to a proposal we reviewed last summer. As you may recall, Mr. King Weinstein was conditionally approved to add a motel unit at his property located on 30 Washington Avenue.
- The NC3 Zone allows Lodging as a conditional use with NO DENSITY standards.
- One of the primary issues associated with this proposal (much like Mr. Weinstein's) is parking. This property currently has no off-street parking available. There are parking requirements: 1 space per room plus 50%. The lot currently is non-conforming with regard to the number of spaces due to the 3 existing units and no off-street parking available. Parking waivers can be requested by the applicant. The following zoning section is applicable:

Sec. 78-1568. Parking Waivers.

(a) The planning board may grant waivers from the standards of this division only in cases where the applicant can demonstrate that:

(1) With respect to the number of parking spaces, the actual parking demand for the applicant's proposal is less than required in section 78-1566 and a reduction in the number of parking spaces will not create unsafe conditions for vehicles or pedestrians; or

(2) With respect to standards other than the required number of parking spaces, the physical constraints of the site make compliance with the design standards of this division impractical or technically unfeasible, and modification of those standards will not create unsafe conditions for vehicles or pedestrians.

- If this proposal is to move forward, the applicant must make a formal written request for waiver of the parking standards. This request should include why the proposal cannot offer parking, with reference to the Parking Waiver standards cited above.

- The PB applied specific conditions to Mr. Weinstein’s proposal to ensure it remains a lodging unit (e.g., minimum 30 day stay; owner/operator shall register and pay applicable Maine lodging sales tax as applicable; A hotel/lodging ledger of occupants shall be maintained). The PB should considering doing the same for this proposal. Please advise the planner on these conditions at tonight’s meeting.
- The PB has held public hearings and site walks.

NEW INFO

- The applicant submitted a formal waiver request of the parking standards.
- As I recall, the only outstanding issue is parking.
- The applicant attempted to secure off-street parking from the owner of the lot across the street (where the convenience store is) from his apartment building but has had a difficult time connecting. It is my understanding that even if a waiver is granted; the applicant will continue to work on securing off-street parking.
- The PB should determine which conditions apply. Below are the conditions applied to Mr. Weinstein’s 34 Washington Ave proposal which is similar to Mr. Pyle’s. Although the project is similar to 34 Washington, not all the conditions attached to that proposal will apply to Mr. Pyle’s. I’ve underlined those conditions I feel are most applicable. Conditions:

1. The main entrance of the building shall be on Atlantic Avenue.
2. Minimum 30 day stay for resident.
3. Atlantic Avenue shall be the only parking lot ingress/egress.
4. The proposed use shall be a lodging unit as defined in the Old Orchard Beach Code of Ordinances. A sign stating this shall be installed at or near the primary entrance.
5. All applicable local and state licenses shall be secured.
6. The lodging unit shall be furnished.
7. Utilities shall be included.
8. The owner/operator shall register and pay applicable Maine lodging sales tax as applicable.
9. The unit shall meet applicable requirements for such use under the National Electrical Code and MUBC.
10. Maid service shall be made available.
11. A hotel/lodging ledger of occupants shall be maintained.

- RECOMMENDATION: I believe if the PB feels comfortable granting the waiver, this proposal can be conditionally approved.

ITEM 10 – Alouette Atlantic Resort - Remove 3 Buildings and Construct 1 and Site Work (Site Plan Review/Shoreland Zoning – Determination of Completeness; Schedule Site Walk and Public Hearing)

- 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.
- **RECOMMENDATIONS:** This is a well done proposal that has had considerable staff and DEP input before this application submission. If the PB determines the proposal is complete I recommend this be conditional so we are sure the property ownership issue is something that needs resolution. I recommend the PB schedule a site walk and Public Hearing during June.

ITEM 11 – Beachmont Land Development, LLC – 44 Lot Single Family Subdivision (Subdivision/Shoreland Zoning – Determination of Completeness; Schedule Site Walk and Public Hearing)

- This is a new Subdivision and Site Plan Review proposal for the development of a 44-lot single family cluster subdivision. Also, a portion of the property associate 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.
- 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.
- 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.
- What is the status of DEP permitting?
- 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.
- **RECOMMENDATIONS:** The applicant has put together a very thorough packet. There are several waivers requested and the PB should decide on these; although, it may be wise to wait until we receive public safety feedback on the Date Street access. I believe the proposal has switched to engineering so we'll look to our town engineer for future feedback. I recommend the PB schedule a site walk and public hearing. Please note the site walk may take some time.

ITEM 12 – Town of Old Orchard Beach – Edith Libby Memorial Library Expansion (Site Plan Review – Pre-Application Review)

- This proposal includes an addition to the existing library which doubles its space, expansion to the parking area and site work.
- 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.
- At this time, the proposal is before the PB as a pre-application so this is a good time for the PB to identify any red flags and/or just provide general feedback.
- 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.
- **RECOMMENDATIONS:** Provide the applicant with feedback to assist them with the formal application submission.

ITEM 13 – Zettran LLC – Sales and Rentals within existing Building (Conditional Use Application- Determination of Completeness; schedule Public Hearing and Site Walk)

- 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.
- **RECOMMENDATIONS:** I believe this is a relatively simple proposal as long that the applicant ensures this proposal complies with the three items listed above. There is no building construction or expansion associated with this, it's a seasonal use geared primarily to those who lodge on-site, and it's clearly accessory to the primary lodging use of the property. I believe the PB can determine it's complete and schedule a site walk and public hearing.

ITEM 14 – Richard and Candi Ireland – Child Care Facility (Conditional Use Application: Determination of Completeness; Schedule Site walk and Public Hearing)

- 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.
- **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 is a Child Care Facility and meets the access standards then I believe it can move except I believe the fencing requirement is something the PB must review both on paper and on site (I recommend the applicant stake the location. If the PB feels the proposal clearly does not meet the standards, I do not believe the proposal can move forward as presented.

ITEM 15 – Cari-Lyn Lane – Amend Landscape Plan (Conditional Use Application Amendment)

- This proposal seeks to amend a previously approved (2003) conditional use application which was approved by the PB to demo an existing multi-unit building and construct a duplex with attached garage on Summit Street. The amendment is to reduce the buffer as shown on the 2003 site plan.
- As part of the signed plan, quite an elaborate buffer was represented on the plan. Everything has been constructed with the exception of the buffer.
- Based on my review of the 2003 Findings of Fact (in your packet), it appears the PB did not require construction of a buffer; therefore, it appears the buffer was voluntarily proposed. Although, one of the FOF conditions states the designated street trees shown on the plans shall be installed.
- Review standard #10 of 78-1240 in the Conditional Use Ordinance has a buffer standard:
 (#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.
- It is my opinion the Conditional Use Ordinance states that a buffer is required, but the PB statement in the Findings of Fact (in reply to review standard #10) appears to state that a buffer is not required which leads me to believe that placement of the buffer as shown on the plans is voluntary.

- **I believe the buffer can be altered as long as review standard #10 is fulfilled. If you review the amended plan and photographs, you'll see a vegetative buffer and fence exists which could fulfill review standard #10.**
- **RECOMMENDATIONS: If the PB feels the amended plan, along with the existing vegetation and fence, meets the buffer requirement of review standard #10 of the Conditional Use Ordinance, then I believe the PB can approve this proposal as presented.**

Note to applicant: If approved by the PB, please submit 2 mylars and 2 paper copies by 25 May