



OLD ORCHARD  
BEACH May 2019  
PLANNING BOARD  
MEMO

# May 2019 Planning Board Memo: Table of Contents

## *Regular Business*

ITEM 2: <b>Major Subdivision:</b> 21 Union.....	<b>PAGE 3</b>
ITEM 3: <b>Minor Subdivision:</b> 4 Smithwheel.....	<b>PAGE 14</b>
ITEM 4: <b>Accessory Dwelling Unit:</b> 206 Portland Ave.....	<b>PAGE 21</b>
ITEM 5: <b>Subdivision Amendment:</b> Eastern Trail Estates.....	<b>PAGE 29</b>
ITEM 6: <b>Conditional Use:</b> Small Cell Antenna on Utility Pole.....	<b>PAGE 32</b>

**ITEM 2**

**Proposal:** Major Subdivision: 5 Unit Condominium Building  
**Action:** Final Review  
**Owner:** SJ Peacock Builders  
**Location:** 21 Union Avenue, MBL: 315-15-3

<u>Major Subdivision: 21 Union</u>	<u>Project Status</u>
<i>Sketch Plan</i>	February
<i>Application Complete</i>	Complete in March
<i>Site Walk</i>	Held in March
<i>Public Hearing</i>	Held in March
<i>Final Ruling</i>	Pending

At the April meeting, the Planning Board approved the preliminary plan. However, the board felt that there were still some remaining questions that needed to be addressed regarding parking since the waiver to reduce parking from 10 to 8 spaces had already been granted.

In addition, turning diagrams were presented but did not address the concerns of getting in and out of spaces when the lot is full. There were also changes to parking space sizes to account for ADA parking that need to be reviewed by Planning Staff.

Snow storage was another issue that was discussed as well as documentation for an agreement with the abutter for storage on their property. The Applicant indicated they have a verbal agreement but the PB wanted something in writing.

Before making a final ruling, the PB requested the following:

- A formal lease agreement prepared and presented to the board.
- A snow storage lease agreement.
- Submission of a plan on how vehicles will maneuver in the two parking spaces adjacent to the dumpster. ✓
- Submission of an ability to serve letter from ME Water. ✓
- Respond to the comments on the 4/1/19 WP memo. ✓

Included in your packets for the May meeting is a waiver for snow removal, an email from ME Water about the ability to serve, responses to the 4/1/19 WP memo and a new plan with turning diagrams. WP comments were also received on 4/30/19, which are in response to the May submission. A number of the comments pertained to stormwater but others are also discussed below.

The applicant is seeking another waiver from Sec. 78-1543 which requires on-site snow storage locations be designated. They have indicated that they are still working on a lease agreement for the other half of South Avenue. With that agreement, snow storage will be provided off of the property but the waiver for on-site snow storage would have to be granted for this to work.

### Waiver Request

#### Ordinance Section

**Section 78-1543** All parking lots shall provide a suitable on-site disposal area to accommodate plowed snowfall. Snow disposal areas shall not be located in designated pedestrian walks or pathways

#### Waiver Request

To eliminate the requirement to provide an on-site snow disposal area.

#### Explanation

The lot is very small and to accommodate the proposed 8 parking spots and drive aisle there is no remaining room on the site to provide for snow storage.

An agreement has been reached between the owner and the neighbor to provide an easement for snow storage directly adjacent to this site.

The Applicant included turning diagrams in their submission. The “auto-turn” appears to work with a standard car. However, it’s unclear what size vehicle was used in the model. The ordinance requires 9x18 parking spots which are based on a standard sized vehicle. With the advent of larger vehicle sizes, the PB may want to look into amended the parking standards in the ordinance to require larger spots.

One issue with the addition of the handicapped parking spots is that the spot to the left of the handicapped spot is now only 8.5’ wide. The parking spots are required to be 9’x18’. Even if this spot was designated as compact, it would need to be at least 8.6’ x 17.6’ so it is short by about .1’. The Applicant can designate 40% of parking spots to be compact, which would leave them with 3 spots.

#### **Responses to Subdivision Criteria:**

*Sec. 74-2:* In approving subdivisions within the town, the planning board shall consider the following criteria and before granting approval shall determine the following:

*(1) The proposed subdivision will not result in undue water or air pollution. In making this determination it shall at least consider the following:*

- a. The elevation of the land above sea level and its relation to the floodplains;*
- b. The nature of soils and subsoils and their ability to adequately support waste disposal;*
- c. The slope of the land and its effect on effluents; and*
- d. The applicable state and local health and water resources regulations;*

The proposed project will not result in undue water or air pollution. No pollutants will be created as part of this project pre, during or post-construction. The residential use will not have any effect on surrounding resources such as water or air, slope of the land and soil/subsoils.

*(2) The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;*  
There is sufficient water available for the reasonably foreseeable needs of the subdivision. An ability to serve letter has been submitted to the Town stating that Maine Water can and will provide water to the proposed development with the existing infrastructure on Union Avenue.

*(3) The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be utilized;*

The project will not cause an unreasonable burden on the available water supply. Maine Water has the capacity to serve the proposed development with the existing water supply/infrastructure on Union Avenue.

*(4) The proposed subdivision will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;*

This development will not cause unreasonable soil erosion or reduction in the capacity of the land to neither hold water, nor will a dangerous or unhealthy condition will result. The development will practice best management practices to avoid adverse effects from erosion and will not disturb enough land to cause undue effects.

*(5) The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed;*

This project will not cause unreasonable highway or public road congestion or unsafe condition with respect to use of the highways or public roads existing or proposed.

*(6) The proposed subdivision will provide for adequate solid and sewage waste disposal;*

The public waste disposal service will provide adequate solid waste disposal for the 5-unit condominium development. An ability to serve letter has been submitted to the Town stating that the Old Orchard Beach Department of Public Works can and will provide sewage disposal systems for the proposed development with the existing infrastructure on Union Avenue.

*(7) The proposed subdivision will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized;*

The proposed development will not cause an unreasonable burden on the ability of the municipality to dispose of solid and sewage waste.

*(8) The proposed subdivision will not place an unreasonable burden upon local, municipal or governmental services;*

The proposed development will not place an unreasonable burden upon local, municipal or governmental services. The proposed development will meet all criteria set forth to be ensure no unreasonable burden upon such services.

*(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 will not have any adverse effect on the scenic or natural vistas of the area, aesthetics, historic sites or rare and irreplaceable natural areas. This site does not have any known historic significance.

*(10) The proposed subdivision is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan, if any;*

This project is in conformance with all applicable subdivision regulations set forth in the Town's ordinance and comprehensive plan.

*(11) The subdivider has adequate financial and technical capacity to meet the standards stated in subsections (1) through (10) of this section;*

The owner has adequate financial and technical capacity to meet all standards set forth in the ordinance. Please see letter of financial capacity submitted within the application materials.

*(12) Whenever situated, in whole or in part, within 250 feet of any pond, lake, river or tidal waters, the proposed subdivision will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water;*

This development is not located within 250' of any pond.

*(13) The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater; and*

This project will not affect the quantity or quality of groundwater in the area.

*(14) The proposed subdivision will not unreasonably interfere with access to direct sunlight for solar energy systems.*

This project will not interfere with direct access to sunlight for any solar energy systems. There are no solar energy systems in the area.

## **RECOMMENDATIONS:**

The proposal is up for final ruling but there are still a few outstanding items. First the PB needs to rule on the waiver for snow storage. If the PB does not rule in favor of the waiver for snow storage the Applicant is going to have to somehow re-work the plan to designate a spot on-site for snow storage.

Second, we are still waiting for the lease agreement for South Street and the snow storage lease agreement.

Third, there is a discrepancy with the parking spot to the left of the handicapped parking space, it is too short and does not meet the parking standards.

If the PB rules in favor of the waiver request for snow storage and decides to approve the final plan, we recommend it be with the following conditions:

1. Before the start of construction, two lease agreements shall be submitted. One for ownership of South Street and the other for snow storage on the abutting property.
2. Lengthen the parking space to the left of the handicapped parking space to meet ordinance requirements.
3. Address the comments in the WP memo dated 4/30/19.

It's important to note that within 30 days of a public hearing, the PB needs to make a final ruling on the proposal. This can be to approve, modify and approve or disapprove the final plan. If the PB chooses to modify or disapprove the plan, the reasons need to be in writing. If the PB does approve the final plan, we recommend you read the responses to the 14 subdivision criteria into the record.

*Recommended Motion (If waiver granted and approved): I will make a motion to approve the final plan for a 5 unit condominium building at 21 Union with the following conditions:*

1. *Before the start of construction, two lease agreements shall be submitted. One for South Street and the other for snow storage on the abutting property.*
2. *Lengthen the parking space to the left of the handicapped parking space to meet ordinance requirements.*
3. *Address the comments in the WP memo dated 4/30/19.*

*Recommended Motion (If waiver not granted and approved): I will make a motion to approve the final plan for a 5 unit condominium building at 21 Union with the following conditions:*

1. *Before the start of construction, two lease agreements shall be submitted. One for South Street and the other for snow storage on the abutting property.*
2. *Lengthen the parking space to the left of the handicapped parking space to meet ordinance requirements.*
3. *Designate an on-site spot for snow storage that shall be reviewed and approved by Planning Staff before the start of construction.*
4. *Address the comments in the WP memo dated 4/30/19.*

*Recommended Motion (If waiver not granted and disapproved): I will make a motion to deny final plan approval for the 5 unit condominium building at 21 Union for the following reasons:*

- *State reasons here. Could be the same as the conditions listed above.*

## **BACKGROUND (APRIL):**

The PB reviewed the Preliminary Plan for 21 Union last month and made a Determination of Completeness. The PB also approved three waiver requests:

- (1) To reduce the total parking aisle width for 90 degree spots from 25 feet to 20 feet;
- (2) To eliminate the requirement for a curbed planting island between different parking orientations;
- (3) To reduce the number of parking spaces required from 10 to 8.

The purpose of the April meeting is to hold the site walk and Public Hearing and a make a ruling on the Preliminary and Final plan.

One of the issues discussed at the last meeting was snow removal. The Applicant has indicated that there is not enough space to designate snow storage locations. In significant events, the snow would need to be hauled away. They also discussed obtaining easements from the other owners of South Avenue to use the area for snow storage. In the new submission, the Applicant states *“if the owner is not able to get an easement from the neighbor to use as snow storage, a condition will be added to the condo documents to ensure that snow is removed from the site.”* Sec. 78-1543 of the ordinance requires snow removal be designated on site: *“All parking lots shall provide a suitable on-site disposal area to accommodate plowed snowfall. Snow disposal areas shall not be located in designated pedestrian walks or pathways.”* Planning Staff recommends the Applicant submit a formal waiver request for the snow storage with a plan for how the snow will be handled off-site. The issue is moving responsibility of subdivision compliance to the condo owners. How can the PB rule that snow removal and storage is acceptable if they do not know exactly how it will be done and if it complies with applicable standards? Also, condo docs are usually not enforced by the town. Note the PD and PWD is questioning this too as they are concerned it will not work.

Another issue was the maneuverability of vehicles parked in the parking space adjacent to the dumpster. Planning Staff recommended the Applicant show how vehicles will maneuver into and out of this parking space with vehicles in the close-by parking spots. In the new submission, the Applicant states: *“the parking lot waivers that were presented were accepted by the Planning Board. Maneuvering around the parking lot won’t be perfect, but cars will be able to get in and out of the parking lot.”*

We received a comment from the Wastewater Director, Chris White on the ability to serve. He said that *“if this is an even swap I don’t have an issue. He just needs to fill out a sewer connection form.”*

Wright Pierce comments have been included in your packets for April. A highlight of the comments:

- With the reduction in the number of parking spaces, WP recommends the Applicant identify which space is associated with which unit.
- Unit 1B notes ADA accessibility but it does not appear that ADA parking spaces are proposed.
- Recommend requirements for parking, maneuvering and snow storage be included in the Condo documents so the owners are aware.
- Confirm there are currently no issues with stormwater discharge in the two locations – South Street easement and portion of Union Ave. Staff will check with DPW to see if there is ponding currently along the roadway.
- There are also several construction details that the Applicant should address before the start of construction.

## **RECOMMENDATIONS:**

Planning Staff recommends the PB approve the Preliminary Plan with the following conditions:

1. Submit a formal waiver request from the on-site snow storage requirement (78-1543). Along with the Waiver request, Planning Staff recommends the Applicant submit a plan on how off-site snow storage will be handled.
2. Submit a plan for how to maneuver in the 2 parking spaces adjacent to the dumpster.
3. Submit the “Ability to Serve” letter from ME Water.
4. Address the Wright Pierce comments in the 4/1/19 memo.

Planning Staff recommends these items be addressed before making a ruling on the final plan.

### *Recommended Motion:*

*I will make a motion to conditionally approve the Preliminary Plan to construct a 5 Unit Condominium Building at 21 Union Avenue, MBL: 315-15-3 contingent upon submission of the following:*

- *Submission of a formal waiver request from the on-site snow storage requirement with a plan on how off-site snow storage will be handled*
- *Submission of a plan on how vehicles will maneuver in the 2 parking spaces adjacent to the dumpster.*
- *Submission of an ability to serve letter from ME Water.*
- *Address the comments in the 4/1/19 Wright Pierce memo.*

## **BACKGROUND (MARCH):**

The PB began reviewing this proposal last month as a sketch plan. The primary discussion was associated with the parking area in the vacant abandoned road next door and the location of the dumpster. As you recall, the area was a Town-

owned road at one point that through time and law has been abandoned, however, it appears the Town still has an easement for public access. From our Town Attorney:

*In my view, based on a review of Attorney McGehee's letter and our conversation, I agree that South Street is likely abandoned due to the Council's 1983 vote to discontinue the road and the subsequent 30 years of non-action by the Town in not keeping the road passable, and thus any interests the Town had in the way likely passed to the abutting property owners to the center of the way. While there may be private easements remaining for lot owners in the original subdivision, that is a private matter in which the Town has no jurisdiction or authority.*

*There is a presumption, however, that after 1965 a municipality retains a public easement in the way upon discontinuance or a presumption of abandonment unless the municipality specifically states otherwise. It is not clear when exactly the way would have been presumed abandoned; if a public easement remains, abutters cannot legally bar public use of the road.*

*Further, the discontinuance statute (23 M.R.S. § 3028) states that while 30 years of not maintaining a road is prima facie evidence of abandonment, the statute anticipates that a determination of the municipal officers on whether a way has been abandoned is binding until a final determination has been made by a court, I understand that in this case the Town Council has neither made a determination of abandonment nor discontinuance. While there is thus likely a presumption of abandonment, only a court can make the final determination.*

*Given the lingering uncertainty, the Council may want to clear up the matter by either taking a vote to affirmatively determine that the way has been abandoned or to simply formally discontinue the way. Would there be any objections by the abutters to such an action? Further, the Planning Board could move forward but attach a condition of approval similar to other instances in which there may be some questions regarding claims on property.*

At the last PB meeting, we discussed a number of standards the proposal would have to meet, including: Parking, parking lot and site circulation standards, parking lot dimensions and layout, snow removal, landscaping and the potential for some parking waivers. A breakdown of each is discussed below:

**Sec. 78-1542. Parking Lot Dimensions and Layout.** For 90 degree standard parking spaces, the width of the parking lot aisle is required to be 25 feet. The proposal is 20 feet. The Applicant has requested a waiver for this (see below).

#### **Waiver Request**

#### **Ordinance Section**

**Section 78-1542 Parking Lot Dimensions and Layout:** (d) Multiple stall orientations. Parking stalls of differing orientations to the aisle shall be separated by a curbed planting island. Where two parking orientation layouts use the opposite sides of the same aisle, the larger aisle width dimension required under subsection (b) of this section shall prevail.

#### **Waiver Request**

To eliminate the requirement for a curbed planting island between different parking orientations.

#### **Explanation**

The lot configuration and stall and aisle dimension requirements make it impossible to provide any interior parking lot landscaping without further reducing the number of parking spots proposed.



Sec. 78-1542 also requires a curbed planted island between different parking lot orientations. In this case, it would include the parking spaces facing the building and the parking space adjacent to the dumpster. The Applicant claims there is not enough space for an island and is requesting a waiver from this.

**Waiver Request**

**Ordinance Section**

**Section 78-1542 Parking Lot Dimensions and Layout:** (b) Dimensions. The width of all parking lot aisles and the dimensional layout of parking areas shall conform to the minimum standards established in this subsection. Only one-way traffic shall be permitted for all parking aisles with a stall orientation of less than 90 degrees to the aisle. The minimum standards are as follows:

Stall Orientation to Aisle	Stall Width	Stall Length	Aisle Width	Curb to Curb	Overlap to Overlap
90° standard	9' 0"	18' 0"	25'	61' 0"	61' 0"

**Waiver Request**

To reduce the total parking aisle width to 20 feet from the required 25.

**Explanation**

The lot configuration will not allow for the incorporation of a 25-foot aisle behind the proposed 90-degree parking stalls proposed. There is no option to provide a one-way driveway. The driveway's entrance width of 20 feet, which meets the ordinance, allows for adequate two-way traffic from the site, and a 20-foot aisle width will provide adequate room for access in and out of the parking stalls.

**Sec. 78-1566 Parking Standards.** This discusses the required number of parking spaces which in this case is 10. The Applicant is proposing 8 parking spaces. They currently have 5 parking spaces. The Applicant is requesting a waiver to allow for the 8 parking spaces. Sec. 78-1568 of the ordinance discusses parking waivers. **Sec. 78-1568 Parking Waivers.** The PB may need to grant a waiver for the 2 parking spaces. (1) of this standard says “with respect to the number of parking spaces, the actual parking demand for the applicant’s proposal is less than required in Sec. 78-1566 and a reduction in the number of parking spaces will not create unsafe conditions for vehicles or pedestrians. Planning Staff recommends the applicant show how residents will be able to get out of the last parking space adjacent to the proposed dumpster.

**Sec. 78-1543 Snow Removal.** All parking lots need to provide a suitable on-site disposal area to accommodate plowed snowfall. Snow disposal areas shall not be located in designated pedestrian walks or pathways. The Applicant has indicated that there is not enough space to designate snow storage locations and that in significant snow events the condo owners will need to make arrangements to have snow removed from the property or obtain easements from the other owners of South Avenue to be used for snow storage.

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

The Applicant has indicated that the parking lot will be buffered from the residential properties to the southwest by an existing stockade style fence and an existing large tree. A proposed split rail fence and new street tree will be installed between the parking lot and existing sidewalk along Union Avenue. No additional buffering or landscaping is proposed between the parking lot and the adjacent easement and railroad or within the proposed parking lot. Will the split rail fence and tree affect the site distance for the parking lot?

At the Development Review meeting on 2/27/19, Staff discussed acquiring the parking from the parking lot next door or somewhere else in order to meet the parking requirements. Staff discussed that there is a tradeoff here because the Town is getting a brand new structure, more tax revenue, addressing blight and the building already has five units with less parking than proposed. They're adding more parking but keeping the same number of units.

### **Waiver Request**

#### **Ordinance Section**

**Section 78-1566 Parking Standards:** *Except where otherwise prescribed in this chapter, the minimum number of parking spaces required for specific land uses or combination of land uses within the town shall meet the following standards:*

*Single-family, two-family and multifamily: Two spaces per unit*

#### **Waiver Request**

To reduce the total parking required on the site from 10 to 8.

#### **Explanation**

The lot configuration and stall and aisle dimension requirements make it impossible to provide 10 parking spots.

The existing property only has room for 5 parking spots, and that is only achievable without any drive aisle. With the addition of the South Avenue property the lot can now provide 8 parking spots with a 20-foot side drive aisle, vastly improving the overall vehicular access to the site.

Comments from Public Works Director:

*"My only concern is the parking situation. More importantly winter parking, and snow storage.*

*It does not seem to have enough snow storage. I understand that there are 5 units in the building now. Not all units have 2 vehicles or even 1 vehicle. Once this building is rebuilt and there are 5 condo units parking and snow plowing will be at a premium. I recommend that parking be held to the current level allowed by code. I also remind the board and the applicant that placing snow in the public right of way is against state law."*

The Wright Pierce memo has been included in your packets for March. A couple of items to highlight

There is an existing concrete slab on the survey plan, the slab is located adjacent to the portable restrooms. What is the purpose of the slab and is the portion on the easement owned by the Applicant?

Submission of ability to serve letter from MaineWater, DPW and Wastewater(for water and sewer) and letter of financial capacity – did not see these in the submission materials.

Submission of building elevations and layout details.

Define limits of proposed pavement along the western side of the property.

The Applicant plans to reuse the existing utilities. WP recommends details for the reconstruction of the concrete sidewalk with associated granite curbing and restoration of Union Avenue be provided in the event excavation is required for utility connections.

Since the building is in close proximity to the sidewalk, WP recommends a note be added to the site plan detailing the limit of sidewalk restoration. WP also recommends the concrete sidewalk and associated granite curbing extent to the new proposed edge of pavement, with driveway tip-down detailed.

Provide specific details, including the addition of spot grades around the proposed parking lot.

Provide a stormwater narrative summarizing pre-development and post-development drainage patterns and a statement indicating that no existing BMPs or downstream receiving waterbodies will be impacted by this project.

### **RECOMMENDATIONS:**

Planning Staff recommends the PB:

- Rule on the three waiver requests: number of parking spaces, parking stall aisle dimension, requirement of a curbed planting island between different parking orientations.
- Discuss the staff and DPW comments pertaining to snow storage and the number of parking spaces.
- Does the PB have concerns with the proposed street tree and split rail fence on the corner of the parking lot blocking adequate site distance?
- How will a resident be able to get out of the parking space next to the proposed dumpster?
- Discuss WP comments mentioned above with Applicant:
  - Purpose/ownership of the concrete slab;
  - Ability to Serve letters from ME Water, DPW, Wastewater as well as a letter of financial capacity for the project.
  - Building elevations and layout details.
  - Define limits of proposed pavement along western side of property.
  - Sidewalk reconstruction along Union Avenue if excavation is needed.
  - Sidewalk extension to new proposed edge of pavement.
  - Spot grades for proposed parking lot.
  - Stormwater narrative.

We recommend you discuss these questions with the Applicant, make a ruling on the determination of completeness and schedule a Site Walk/Public Hearing for April. Note a determination of completeness simply means the PB has all of the materials necessary to adequately review and rule on a proposal.

*Recommended Motion: I will make a motion to determine the application complete for the construction of a 5 unit condominium building located at 21 Union Avenue, MBL: 315-15-3.*

*Recommended Motion: I will make a motion to schedule a site walk for Thursday, April 4, 2019 at 5:30PM and public hearing for April 14<sup>th</sup>.*

### **BACKGROUND (FEBRUARY):**

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



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

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

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

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

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

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

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

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

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

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

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

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

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

**Sec. 78-1568 Parking Waivers.** The PB may need to grant a waiver for the 2 parking spaces. (1) of this standard says “with respect to the number of parking spaces, the actual parking demand for the applicant’s proposal is less than required

in Sec. 78-1566 and a reduction in the number of parking spaces will not create unsafe conditions for vehicles or pedestrians.

**RECOMMENDATIONS:**

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

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

**ITEM 3**

**Proposal:** Minor Subdivision: 2 Duplex (4 residential units)  
**Action:** Determination of Completeness/Ruling on Preliminary Plan  
**Owner:** Earle Enterprises, LLC  
**Location:** 4 Smithwheel Rd, MBL: 210-2-16; Zoning: R4

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

Due to the number of units, this project is considered a minor subdivision which has fewer requirements than a major subdivision. However, the PB can decide how to classify a project and decided last month to classify it as a major subdivision which allows for more design oversight and project review.

At the last meeting, the Applicant requested waivers for driveway spacing and distance from Ryefield. They needed to request additional waivers for driveway width and parking lot width for maneuvering. The PB felt more work was necessary before making a decision on the waivers.

There were additional issues that needed to be addressed including: snow removal, street trees, private water plan, stormwater systems, sewer lines). The site walk at the May meeting should help the PB visualize the size of the project and driveway locations.

For the May meeting, the Applicant is still requesting three waiver requests:

- (1) To reduce the minimum driveway spacing on a 30MPH road from 125 feet to 90 feet.  
This allows the current driveway to the single family home to remain and the driveway serving the two duplexes to be located on Smithwheel Road.
- (2) To reduce the offset from intersections from 100 feet to 60 feet.  
This allows the proposed driveway to be placed closer to Ryefield Drive and for the Applicant to provide for adequate site distance.
- (3) To reduce the aisle width for 90 degree parking spaces from 25 feet to 20 feet.  
The site is too compact and there is not enough space for the additional 5 feet.

It appears they will also need to submit a fourth waiver.

- (4) To reduce the offset separation between the existing driveway on the parcel to Ervin Road, from 100 feet required to 95 feet as currently proposed.

Planning Staff recommended a “no cut buffer” be shown on the plan for construction purposes and did not see that included in this months submission.

Wright Pierce comments have been included in your packets for May. There are still a number of outstanding comments that need to be addressed. A highlight of those comments is below:

- The PB should determine if a Traffic Engineer should review the location of the existing/proposed driveways before granting waivers.
- Is there an opportunity for a shared driveway with the existing 1-story dwelling? Could they improve the Ervin Ave intersection for better access?
- The AutoTurn modeling shows maneuvering of a normal vehicle. This assumes other cars are parked properly in the other spots and a “car.” It does get close to fence lines and buildings. Could there be a better option for parking? WP also recommends the PB consider fire vehicles and the direction they may be coming from.
- The stormwater system doesn’t meet MDEP guidelines. They recommended alternative locations be looked at.

- Their stormwater system as proposed is a direct connection into the Towns MS4. They will need to submit Annual Certifications.

There were also a number of coordination comments that appeared to be similar to last months. For example:

- Driveway/parking proximity to the Royal Crest Condos.
- Ervin and Smithwheel Roads encroaching onto the parcel. Discuss intersection and determine if any. formal coordination is needed between the Applicant and the Town.
- Potential CCTV of sewer line for the existing home.
- Submission of a performance guarantee.
- Sewer connection coordination with the manhole/inverts.
- Stormwater treatment and construction details.

**RECOMMENDATIONS:**

Like last month, there are still a number of outstanding items and issues that need to be resolved. At the time of writing this memo, we have not held the site walk yet so that should help to provide answers to the PB on some of the issues discussed in the WP memo. WP has a number of suggestions for ways to look at improving the parking/driveway situation without waivers and we recommend the PB discuss these with the Applicant.

In addition to the items discussed above, there are still four waiver requests that the PB needs to rule on. We recommend the PB: 1. Rule on the waivers; 2. Make a determination of completeness; 3. Rule on the preliminary plan. Similar to last month, if the waivers are not approved we recommend the PB does not vote on the determination of completeness or preliminary plan because this will most likely result in a denial of the proposal during final ruling. Also, one additional waiver may be necessary. If the waivers are approved, we recommend the PB make a determination of completeness:

*Recommended Motion: I will make a motion to conditionally determine the application complete for the construction of two duplexes for a total of four new residential units at 4 Smithwheel Road, MBL: 210-2-16 in the R4 District contingent upon the submission of: PB evaluation of existing buffer, response to the 4/30/19 WP memo and (if necessary) submission of additional waiver request.*

If a determination of completeness vote is successful, the PB can vote on the preliminary plan:

*Recommended Motion: I will make a motion to conditionally approve the preliminary plan for the construction of two duplexes for a total of four new residential units at 4 Smithwheel Road, MBL: 210-2-16 in the R4 District contingent upon the submission of: PB evaluation of existing buffer, response to the 4/30/19 WP memo and (if necessary) submission of additional waiver request.*

If the PB does not rule in favor of the three waiver requests that have been submitted (with 1 additional request pending) then we recommend you do not make a determination of completeness of vote on the preliminary plan at the May meeting and identify what is lacking or what you recommend the plan should show.

It's important to note to the applicant/owner the PB is trying to help them secure approval so it would be to their benefit if they make revisions that reflect what the PB request. Of course they can continue with the current submission, the PB can make a determination of completeness and rule on the preliminary plan; although the preliminary plan vote may not be one that is favorable. Remember, a determination of completeness is not an approval or denial; it's a determination that all items have been submitted to allow the PB to conduct a proper review and rule on the proposal. If an applicant/owner wants to increase their chances for a favorable ruling, it's a good idea to put for a proposal that reflects the PB's recommendations before a determination of completeness is made.

**BACKGROUND (APRIL):**

The PB began reviewing this proposal in February as a sketch plan. The proposal is for the development of a minor subdivision (2 duplexes) for a total of four condominium dwelling units associated parking, driveway and infrastructure.

There is currently a single family dwelling on the lot with its own driveway, which will remain. The development is laid out to be separate from the single-family.

When the sketch plan was presented, Staff had concerns about the proposed driveway locations in terms of required driveway and intersection separation standards in the ordinance. Sec. 78-1568 (2) allows the PB to grant waivers of the 125' driveway separation distance and 100' from collector curbline as long as the applicant can show constraints of the site make compliance with design standards impracticable or technically unfeasible and modification will not create unsafe conditions for vehicles and pedestrians.

You will note in your materials that the Applicant is requesting two waivers:

- (5) To reduce the minimum driveway spacing on a 30MPH road from 125 feet to 90 feet.

This allows the current driveway to the single family home to remain and the driveway serving the two duplexes to be located on Smithwheel Road.

- (6) To reduce the offset from intersections from 100 feet to 60 feet.

This allows the proposed driveway to be placed closer to Ryefield Drive and for the Applicant to provide for adequate site distance.

*We anticipate two other waiver requests will be necessary.*

- The Applicant will need to request a third waiver from Sec. 78-1492 (Driveway Dimensions). For multifamily, 2-way drives, the Town requires a minimum 20-foot driveway width. The proposed driveway is currently 18-feet in width.
- The Applicant will also need to request a fourth waiver from Sec. 78-1542, parking lot dimensions and layout. The Town requires a 24 foot aisle width for 90 degree parking spaces. The Applicant is proposing 20 feet between the parking space adjacent to the Ervin Avenue duplex and the five proposed parking spaces.

In regard to the PB's ruling on waivers, staff feels this should happen before a vote on the preliminary plan. The reason for this is there may be some objection to the waiver requests and if the waivers fail the proposal will need to be redesigned. See further discussion under Recommendations.

Planning Staff had a few questions for the PB when the proposal was brought forward as a sketch plan:

- How will the single-family work within the condo? Will it be included? If not how will common area, responsibilities (e.g., landscaping), utilities, etc. be divided so it is clear there is an ownership and responsibility separation?
  - The Applicant has said that the existing house will remain on the property and will be part of the condo association that will be created.
- Recommend crosswalk extend from new driveway to sidewalk across Smithwheel.
  - This has been shown on the plan.
- Parking area screening and buffering from adjacent properties and public streets is required. There are no specific width requirements but the applicant should ensure there is adequate area to install buffering and screening- especially along the property lines shared with Royal Crest Condo's.
  - The Applicant has indicated that they will keep the existing trees, grassed areas and stockade fencing for landscaping. Looking at the online GIS this buffer appears to be adequate but Planning Staff recommends a "no cut buffer" be shown on the plan for construction purposes in the areas where existing trees are to remain. We recommend the PB check the buffer during the site walk to determine if what exist meets buffering and screening requirements.





- Ensure street trees along Smithwheel will be planted in accordance with applicable ordinance standards. Maintaining a green strip along Smithwheel will enhance aesthetics.
  - The Applicant has shown a proposed tree line along Smithwheel Road.
- Show snow storage location and describe plowing.
  - The Applicant has stated that there is plenty of room for snow storage on the site and this has been shown on the plan.
- Will trash removal include a dumpster? Where will the dumpster be located?
  - The Applicant has indicated that trash removal will be through public waste disposal services. It does not appear that a dumpster is proposed. Ch. 46, Solid Waste, Sec. 46-58 requires trash pick up to be private (because it's more than 4 units when you add the existing house) so the applicant will need to demonstrate how private waste will be handled.
- Exterior lighting location, fixture type and footcandles.
  - No lighting is proposed other than front/porch lights for each unit.

WP Comments in your packets from 4/2/19. The main concern was on the three driveway entrances proposed to the property and making sure the Applicant has looked at other options/opportunities to meet the Towns setback requirements. Some of these questions/thoughts include:

- Is there an opportunity to better the Ervin intersection and limit additional driveway cuts?
- Would it be feasible to use a shared driveway with the existing dwelling? A waiver may be required for the existing driveway opening along Smithwheel Road, which is 95 feet from the Ervin Road intersection.

In addition to the above suggestions, WP had additional considerations which we have broken out into categories:

**Parking/Driveway Area –**

- The PB may want to require this area be reviewed by a traffic engineer given the significant curb openings in the area.
- WP recommends the Applicant denote sight distances on the plans for each driveway location (existing and proposed).
- Discuss the property line, building location and parking layout associated with the neighboring Royal Crest Condominium.
- Identify restrictions on snow storage operations due to proposed infiltration trench.
- Discuss how vehicles will maneuver past the duplex on the Ervin Ave side.

- It may be helpful to run the driveway with AutoTurn to confirm access by fire vehicles.
- WP recommends a discussion between the Town and Applicant on the Ervin Avenue and Smithwheel Road radius which appears to encroach on the property.

#### **Sewer/Stormwater –**

- DPW may want to CCTV the existing sewer line to the one-story as a result of historic sewer issues at the property.
- Consider if the Applicant should connect to the manhole on Ervin Road for a direct connection and limit construction on Smithwheel. This needs to be confirmed with DPW.
- WP flagged to DPW that they are proposing the installation of a weir structure in Smithwheel. Cleaning may become the responsibility of Town and with the equipment, may be tough. Perhaps the weir should be located inside the property line? DPW needs to comment on this.
- Review components of the stormwater treatment via crushed stone infiltration system and roof edge drip lines.
- Review the Stormwater Management Plans and HydroCAD Calculations.

Planning Staff did not see any Condo Documents submitted, we recommend those be submitted for the next meeting. We also did not see responses to the 14 subdivision standards. The PB use the 14 standards to rule on the proposal so it is important that they are submitted before final ruling.

#### **RECOMMENDATIONS:**

As you most likely see from the comments above there are a number of outstanding items and issues that need to be submitted and resolved- more work needs to be done. Some of this work involves a PB visit to the site (site walk) so they can evaluate the existing buffer and proposed driveway locations. Other work is needed from the applicant that will require additional submissions (e.g., 14 subdivision review criteria responses, additional waiver request) and possibly plan changes (e.g. weir structure in Smithwheel relocation, relocation of access if waiver's not approved). So, The PB will need to decide if the proposal is ready for final ruling.

An important note about minor subdivisions, they only require pre-application/sketch plan review and final ruling. Site walks and preliminary plan review is not required. There is no specific “determination of completeness” (unlike conditional use and site plan) excepting a mention of “completed plan” which is tied to a final ruling time frame. Public hearings is only required if deemed necessary by the PB.

Although some of the typical procedures are not specifically required, the PB has the authority to require these procedures, where it deems it necessary for the protection of public health, safety, and welfare, that a minor subdivision comply with all or any of the requirements specified for major subdivisions. Staff feels a site walk and public hearing is necessary. A determination of completeness is important too and can replace the need for preliminary review.

First, if the PB deems necessary, staff recommends the PB schedule a site walk and public hearing.

*Motion: I will make a motion to schedule a Site Walk for 5/3/19 at 5:30PM and a Public Hearing for 5/9/19 at 6:30PM.*

Second, the PB should rule on the waivers and determine if preliminary plan review is necessary or if a determination of completeness can take its place.

If the PB determines preliminary plan review is necessary staff recommends the Board: 1. Rule on the waivers; 2. Make a determination of completeness; 3. Rule on preliminary plan. If the waivers are not approved we recommend the PB do not vote on the determination of completeness or preliminary plan because this will most likely result in a denial of the proposal during final ruling. Also, as we note above, two additional waivers may be needed. If the waivers are approved staff recommends the PB make a determination of completeness:

*Motion: I will make a motion to conditionally determine the application complete for the construction of two duplexes for a total of four new residential units at 4 Smithwheel Road, MBL: 210-2-16 in the R4 District contingent upon the submission of condo docs for the property, responses to the 14 Subdivision standard, a private waste collection plan, PB evaluation of existing buffer, response to Wright-Pierce letter dated 4/2/19, (and if necessary) submission of additional waiver requests.*

If a determination of completeness vote is successful the PB can vote on the preliminary plan:

*Motion: I will make a motion to conditionally approve the preliminary plan for the construction of two duplexes for a total of four new residential units at 4 Smithwheel Road, MBL: 210-2-16 in the R4 District contingent upon the submission of condo docs for the property, responses to the 14 Subdivision standard, a private waste collection plan, PB evaluation of existing buffer, response to Wright-Pierce letter dated 4/2/19, (and if necessary) submission of additional waiver requests.*

If the PB determines preliminary plan review is not necessary, staff recommends the PB make a determination of completeness. Approval of waivers is an important part of this proposal so it makes sense to vote on the waivers before a determination of completeness is made. If the waivers are not approved we recommend the PB does not vote on the determination of completeness because this will most likely result in a denial of the proposal during final ruling. Also, as we note above, two additional waivers may be needed. If the PB choose to make a determination of completeness staff recommends the following motion:

*Motion: I will make a motion to conditionally determine the application complete for the construction of two duplexes for a total of four new residential units at 4 Smithwheel Road, MBL: 210-2-16 in the R4 District contingent upon the submission of condo docs for the property, responses to the 14 Subdivision standard, a private waste collection plan, PB evaluation of existing buffer, response to Wright-Pierce letter dated 4/2/19, (and if necessary) submission of additional waiver requests.*

### **BACKGROUND (FEBRUARY):**

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

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

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

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

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

Regarding 1, staff offers the following comments and recommendations:

- Please review Wright-Pierce (WP) memo dated 4 Feb.
- How will the single-family work within the condo? Will it be included? If not how will common area, responsibilities (e.g., landscaping), utilities, etc. be divided so it is clear there is an ownership and responsibility separation?
- Regarding driveway locations (see WP memo), it will be difficult to locate a driveway on Smithwheel that meets the 125' driveway on same lot separation (78-1491 (e)) and the 100' separation between driveway and curblin tangent of intersecting collector street, Ryefield (78-1491 (f)). It might be possible if the existing driveway is relocated or the proposed driveway comes off Ervin Lane, but, there still may be a problem. Also, it would probably be safer locating the driveway off Smithwheel so vehicles exiting the development can enter Smithwheel before the right/lift turn lanes leading to the Ocean Park Rd intersection. 78-1568 (2) allows the PB to grant waivers of the 125' driveway separation distance and 100' from collector curblin as long as the applicant can show constraints of the site make compliance with design standards impracticable or technically unfeasible and modification will not create unsafe conditions for vehicles and pedestrians. At this time staff will support a waiver.
- Recommend crosswalk extend from new driveway to sidewalk across Smithwheel.

- Parking area screening and buffering from adjacent properties and public streets is required. There are no specific width requirements but the applicant should ensure there is adequate area to install buffering and screening- especially along the property lines shared with Royal Crest Condo's.
- Show snow storage location and describe plowing. Note- snow cannot be piled in pedestrian walkways.
- Ensure street trees along Smithwheel exist or will be planted in accordance with applicable ordinance standards. Maintaining a green strip along Smithwheel will enhance aesthetics.
- Will trash removal include a dumpster? Where will the dumpster be located? Remember the dumpster must be screened on 3 sides.
- Exterior lighting location, fixture type and footcandles.
- Submit copy of condo docs.

**RECOMMENDATIONS (FEB):**

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

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

**ITEM 4**

**Proposal:** Conditional Use: Accessory Dwelling Unit  
**Action:** Final Ruling  
**Owner:** The Village at Pond View Woods, LLC  
**Location:** 206 Portland Ave, MBL: 103-1-432; Zoning RD

ADU: 206 Portland Ave	Project Status
Sketch Plan	N/A
Application Complete	Complete in February
Site Walk	Held in March
Public Hearing	Held in March
Final Ruling	Required in May

On March 14, 2019, the Old Orchard Beach Planning Board held a public hearing and reviewed the application for an Accessory Dwelling Unit (ADU) at 206 Portland Avenue.

The proposal was tabled for the following reasons:

- The Planning Board did not agree that the ADU met the standards in Sec. 78-1272 of the ordinance pertaining to ADUs for two reasons:
  - The first standard states that the ADU shall be accessed via the living area of the primary structure. The Planning Board stated that accessing the ADU from the garage does not qualify as entering through the living area of the primary structure.
  - The second standard states that ADUs shall be designed to be subordinate in scale and mass to that of the main structure. The PB stated that the current design of the ADU gives the appearance of a large two family home rather than a single family home with an ADU, thereby not meeting this standard.
- The Planning Board requested a septic system design be submitted ensuring the new system will meet current DEP setbacks for water bodies.

Per Sec. 78-1238(b)(c) of the Town ordinance the Planning Board is required to make a decision on the proposal by **May 9, 2019: Sec. 78-1238 (b)(4) Conditional use review ruling. Within 60 days of the public hearing**, the planning board shall either approve, approve with conditions, or deny the application based on the application's conformance with the applicable performance standards and regulations of this chapter. At the time of decision, the planning board will issue findings of fact documenting the application's compliance or noncompliance with the standards of section 78-1240 and all other standards established in this article, article VIII of this chapter, and other relevant sections of this chapter.

To ensure the Planning Board has the materials needed to make an informed ruling on the proposal, we recommend the Applicant submit the following for this month:

- Revised plan showing access into the ADU from the living area of the primary structure and an ADU that is subordinate in scale and mass to the main structure.
- New septic system design for the home and the ADU ensuring it is placed within applicable DEP setbacks for water bodies.

A new submission has been included in your packets.

The PB asked for the original conditions of approval associated with the house. The Planning Board placed ten conditions on this approval back in 2015. 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 is reference to a note placed on the approved 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."

Looking at the exterior layout that has been submitted, Planning Staff feels that it does give the appearance of a single-family home rather than a two family (more so than the previous submission). The only sticking point for Staff are the architectural aspects of the building. For example, is the addition of the dormer loft on the ADU “compatible with the architectural style and quality of the main structure?” This is for the PB to decide.

As far as the other standards:

1. Accessed via the living area of the primary structure (this standard also includes meeting the architectural style and quality of the main structure).
  - a. The ADU is accessed via a breezeway on the first floor and is located above the garage. There is a “subordinate” entrance on the left side of the garage but it appears the ADU occupant would need to enter through that door and into the breezeway in order to access the ADU.
2. At least 500SF of floor area but not 50 percent of the floor area of the main dwelling.
  - a. It appears to meet this standard.
3. Single electrical service.
  - a. It appears to meet this standard.
4. Only one Accessory Apartment per lot and part of the main residence.
  - a. It appears to meet this standard.
5. ADUs are not allowed for nonconforming structures or use.
  - a. It appears to meet this standard.

Responses to the Standards:

**Sec. 78-1272. - Accessory dwelling unit.**

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

- (1) The accessory dwelling unit shall be accessed via the living area of the primary structure, and all other entrances to the accessory dwelling unit shall appear subordinate to the main entrance. Any proposed additions to the main structure or accessory structures shall be designed to be subordinate in scale and mass to that of the main structure and compatible with the architectural style and quality of the main structure.

*The dwelling is new construction and entrances to the dwelling are designed to be subordinate in scale and mass to the primary entrance of the main dwelling and are all consistent with the primary dwellings architectural design and quality.*

- (2) The accessory dwelling unit shall have at least 500 square feet of floor area but shall not exceed 50 percent of the floor area of the main dwelling unit. Floor area measurements shall not include unfinished attic, basement or cellar spaces nor public hallways or other common areas.

*The accessory dwelling measures 784 sq. ft. in size. The square footage is at least 500 sq. ft. and is under 50% of the living floor area of the main dwelling, for the first and second floor, equaling 2,578 sq. ft. These measurements do not include unfinished attic, basement or cellar spaces, nor public hallways or other common areas.*

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

*The dwelling shall be served by a single electrical service.*

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

*The subject dwelling contains one accessory apartment and it is part of the main dwelling residence.*

- (5) Accessory apartments shall not be permitted for any nonconforming structure or use, where nonconformity is due to the use of the premises, as opposed to nonconforming dimensional requirements.

*The subject dwelling accessory apartment is not part of a nonconforming structure or use, where nonconformity is due to the use of the premises, as opposed to nonconforming dimensional requirements.*

**Section 78-1240 Conditional Use Standards:**

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

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

The residential use of the subject property will not change nor will the use create or result in significant hazards to pedestrian or vehicular traffic, on or off site.

2. *The proposed use will not create or increase any fire hazard.*

The proposed use will not create or increase any fire hazard as it will meet or exceed all existing fire protection codes and requirements.

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

The proposed use will provide adequate off-street parking and loading areas as the proposed driveway and parking areas are sufficient in size and easily accessible.

4. *The proposed use will not cause water pollution, sedimentation, erosion, or contamination of any water supply.*

The proposed use will not cause water pollution, sedimentation, erosion, or contamination of any water supply due to the nature of the proposed residential use.

5. *The proposed use will not create unhealthful conditions because of smoke, dust or other airborne contaminants.*

The proposed use will not create unhealthful conditions because of smoke, dust or other airborne contaminants due to the nature of the proposed residential use.

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

The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties as the proposed use will be consistent with existing residential property uses in the neighborhood.

7. *The proposed use will provide adequate waste disposal systems for all solid and liquid wastes generated by the use.*

The proposed use will provide adequate waste disposal systems for all solid and liquid wastes generated by the use and will be serviced by the same residential trash disposal and recycling services that are available and servicing neighborhood homes.

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

The proposed use will not adversely affect the value of adjacent properties as the building will be new construction that will enhance curb appeal.

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

The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation as the proposed use will be consistent with existing residential uses in the neighborhood.

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.*

There will be no special screening or buffering necessary to visually obstruct the subject property from abutting uses or to ensure the continued enjoyment of abutting uses as the existing natural setting will not be changed, modified or disturbed.

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

The applicant's proposed use will not change the existing setting and or topography, therefore this proposal will not require to provide for drainage through and for preservation of existing topography within its location, particularly in minimizing any cut, fill, or paving intended as the existing setting and topography.

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

The applicant has completed comparable projects in the neighborhood that support the adequate financial and technical capacity to satisfy the criteria in this section and to develop and thereafter maintain the proposed project or use in accordance with all applicable requirements.

**RECOMMENDATIONS:**

We recommend the PB review the new materials submitted and make a final ruling on the application. It is important to note that (as mentioned above), the PB must make a final ruling on this proposal this month due to the timeframe of the Public Hearing and Determination of Completeness.

If the PB is in favor of the new design and layout, we recommend the PB read the responses to the ADU and CU Standards into the record and approve the application.

***Recommended Motion:***

*I will make a motion to approve the Accessory Dwelling Unit located at 206 Portland Avenue in the Rural District MBL: 103-1-432.*

**BACKGROUND (MARCH):**

The PB began reviewing this proposal at the February meeting. There were a few concerns regarding the aesthetics of the proposed building. It appeared there were too many doors leading into the building and the PB felt as if it resembled a 2 or even a 3 family and that it did not meet the characteristics of an ADU.

Planning Staff reached out to the Applicant and recommended some entrances into the ADU be removed to help strengthen the proposal. In your packets are a new set of drawings. One door on the left side of the building has been removed.

If you look at the floor plans, you'll note that there are three logical ways of entering the ADU. One is through the sliding glass door in the back of the building, which Planning Staff believes would qualify as "subordinate." The second is through the garage in the front of the building and the third is through the remaining door on the garage side of the structure which would bring them into what appears to be a breezeway in the "primary structure," they would then have to cross through the garage to enter the ADU.





At this point, the primary item the PB needs to decide upon is whether or not the ADU is accessed via the living area of the primary structure. The two primary questions to answer: Is a garage considered “access?” Is a breezeway considered “living area?”

Responses to Standards –

**Sec. 78-1272. - Accessory dwelling unit.**

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

- (6) The accessory dwelling unit shall be accessed via the living area of the primary structure, and all other entrances to the accessory dwelling unit shall appear subordinate to the main entrance. Any proposed additions to the main structure or accessory structures shall be designed to be subordinate in scale and mass to that of the main structure and compatible with the architectural style and quality of the main structure.

*The application shows the main entrance as through the front of the building facing Portland Avenue. Where there are other entrances proposed, Planning Staff recommends the Applicant show how Occupants will walk through the existing living space to get to the ADU.*

- (7) The accessory dwelling unit shall have at least 500 square feet of floor area but shall not exceed 50 percent of the floor area of the main dwelling unit. Floor area measurements shall not include unfinished attic, basement or cellar spaces nor public hallways or other common areas.

*The square footage of the main home is 2,128 and the ADU is 864 sq. ft. It meets this standard.*

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

*This is not shown on the plan, however, the home will only have 1 meter per the responses to the ADU criteria.*

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

*Only 1 ADU is proposed for the lot.*

- (10) Accessory apartments shall not be permitted for any nonconforming structure or use, where nonconformity is due to the use of the premises, as opposed to nonconforming dimensional requirements.

*N/A*

**Section 78-1240 Conditional Use Standards:**

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

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

The residential use of the subject property will not change nor will the use create or result in significant hazards to pedestrian or vehicular traffic, on or off site.

2. *The proposed use will not create or increase any fire hazard.*

The proposed use will not create or increase any fire hazard as it will meet or exceed all existing fire protection codes and requirements.

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

The proposed use will provide adequate off-street parking and loading areas as the proposed driveway and parking areas are sufficient in size and easily accessible.

4. *The proposed use will not cause water pollution, sedimentation, erosion, or contamination of any water supply.*

The proposed use will not cause water pollution, sedimentation, erosion, or contamination of any water supply due to the nature of the proposed residential use.

5. *The proposed use will not create unhealthful conditions because of smoke, dust or other airborne contaminants.*

The proposed use will not create unhealthful conditions because of smoke, dust or other airborne contaminants due to the nature of the proposed residential use.

6. *The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties.*  
The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties as the proposed use will be consistent with existing residential property uses in the neighborhood.
7. *The proposed use will provide adequate waste disposal systems for all solid and liquid wastes generated by the use.*  
The proposed use will provide adequate waste disposal systems for all solid and liquid wastes generated by the use and will be serviced by the same residential trash disposal and recycling services that are available and servicing neighborhood homes.
8. *The proposed use will not adversely affect the value of adjacent properties.*  
The proposed use will not adversely affect the value of adjacent properties as the building will be new construction that will enhance curb appeal.
9. *The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.*  
The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation as the proposed use will be consistent with existing residential uses in the neighborhood..
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.*  
There will be no special screening or buffering necessary to visually obstruct the subject property from abutting uses or to ensure the continued enjoyment of abutting uses as the existing natural setting will not be changed, modified or disturbed.
11. *The applicant's proposal must adequately provide for drainage through and for preservation of existing topography within its location, particularly in minimizing any cut, fill, or paving intended.*  
The applicant's proposed use will not change the existing setting and or topography, therefore this proposal will not require to provide for drainage through and for preservation of existing topography within its location, particularly in minimizing any cut, fill, or paving intended as the existing setting and topography.
12. *The applicant must be found to have adequate financial and technical capacity to satisfy the criteria in this section and to develop and thereafter maintain the proposed project or use in accordance with all applicable requirements.*  
The applicant has completed comparable projects in the neighborhood that support the adequate financial and technical capacity to satisfy the criteria in this section and to develop and thereafter maintain the proposed project or use in accordance with all applicable requirements.

**RECOMMENDATIONS:**

Planning Staff recommends the PB answer the two questions regarding the shared entrance: Is a garage considered "access" and is a breezeway considered "living area."

If the PB can determine that the ADU:

1. Is accessed through the breezeway of the primary structure which is interpreted to be living area and
2. That the garage is not considered "access" for this purpose

Then the layout appears to be in good shape. If not, we would recommend the PB discuss with the Applicant how the layout can be improved. For example, could it be a one car garage with no access from the garage into the ADU?

*Recommended Motion (If PB is in favor of shared entrance as shown): I will make a motion to approve the ADU at 206 Portland Avenue, MBL: 103-1-432.*

**BACKGROUND (FEBRUARY):**

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

Accessory Dwelling Units are permissible in the Rural District as long as they meet the Conditional Use Accessory Dwelling standards and Conditional Use Review Criteria.

Regarding this proposals conformance with the 5 Accessory Dwelling Unit (ADU) Standards:

**Sec. 78-1272. - Accessory dwelling unit.**

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

1. The accessory dwelling unit shall be accessed via the living area of the primary structure, and all other entrances to the accessory dwelling unit shall appear subordinate to the main entrance. Any proposed additions to the main structure or accessory structures shall be designed to be subordinate in scale and mass to that of the main structure and compatible with the architectural style and quality of the main structure.  
*The application shows the main entrance as through the front of the building facing Portland Avenue. Where there are other entrances proposed, Planning Staff recommends the Applicant show how Occupants will walk through the existing living space to get to the ADU.*
2. The accessory dwelling unit shall have at least 500 square feet of floor area but shall not exceed 50 percent of the floor area of the main dwelling unit. Floor area measurements shall not include unfinished attic, basement or cellar spaces nor public hallways or other common areas.  
*The square footage of the main home is 2,128 and the ADU is 864 sq. ft. It meets this standard.*
3. The dwelling shall be served by a single electrical service.  
*This is not shown on the plan, however, the home will only have 1 meter per the responses to the ADU criteria.*
4. Only one accessory apartment shall be permitted per lot. It shall be made part of the main residence.  
*Only 1 ADU is proposed for the lot.*
5. Accessory apartments shall not be permitted for any nonconforming structure or use, where nonconformity is due to the use of the premises, as opposed to nonconforming dimensional requirements.

*N/A*

**RECOMMENDATIONS:**

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

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

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

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

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

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

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

**ITEM 5**

**Proposal:** Subdivision Amendment (Eastern Trail Estates): Adjust shared property line for lots 17 & 18  
**Action:** Ruling on Amendment  
**Owner:** Ross Road LLC  
**Location:** Mary’s Way, MBL: 107-1-417 & 418; Zoning RD

Subdivision Amendment: ET Estates	Project Status
<i>Sketch Plan</i>	N/A
<i>Application Complete</i>	Pending
<i>Site Walk</i>	Pending
<i>Public Hearing</i>	Pending
<i>Final Ruling</i>	Pending

At the March meeting, the PB decided to table a decision on this proposal until the applicant addressed the items identified at the March meeting (below). The applicant provided this response via email on 26 April (in packets too):

Erosion control that was missing was taken care of on lots 18,19 and 20 in December 2018 .  
 Lot 19 driveway site distance to the property line toward the cascade rd is 384 feet .  
 Lot 20 has an even greater site distance then lot 19 . We will also remove 1 shrub to increase the line of site .  
 As far as the green strip issue , I am not clear on what the board is looking for . Lot 17 and 18 had no green strip between the 2 lots and all of the other lots have more than 20’ of wooded area between them .We will be planting grass to the lot lines between lot 17 and 18 . Trees were cut for the road and right of ways . We are planning to leave more than 20’ of green strip on the sides and rear all of the lots .  
 Outstanding Documents ;  
 I am working will Bill Thompson to send you what you are missing . I spoke to Stephanie at Wright Pierce and I told her that I will be sending over the Type A compaction test results and the water Co. inspection results . I have not chosen my site lighting yet but as soon as I do I will send you the cut sheets for approval . I will send you any information as I receive it from BH2M . Thank you .

Wright-Pierce, Assistant Planner Mike Foster and Kevin Beaulieu of Ross Road LLC conducted a site inspection on 29 April (in your packet). Highlights from inspection as related to the items identified at the Mard meeting:

- Erosion control measures not installed on lots 18, 19, 20.
- Sedimentation around 12 inch culvert from lot 20 has not been addressed.
- Confirmation of lot 19 and 20 driveway site distance is recommended.
- 20’ green strip cleared in front of lots 5, 16, 17, and 18. Recommend a restoration plan and restoration scheduled be prepared for each lot.

Regarding staff’s thoughts on the applicant’s response to the outstanding items and Wright-Pierce findings, we feel some items should be addressed before we can recommend approval. These items include:

- Erosion control measures must be installed on lots 18,19, 20 and field verified.
- 12 inch culver: Sedimentation be addressed immediately and erosion and sedimentation controls installed. This must be field verified.
- Restoration plan and schedule for lots 5, 16, 17, 18 be submitted to planning staff.
- Copy of post-construction management plan, signed maintenance agreement and list of post-construction BMPs in accordance with Chapter 71 requirements shall be submitted to staff.

The other items identified during March are in the process of being addressed or can be addressed as this project progresses.

## **RECOMMENDATIONS:**

It was staff's hope the items identified above would have been addressed to a standard that we could recommend approval. Unfortunately, based on Wright-Pierce inspection and the documentation we received, it appears we're not quite there. We recommend the PB table this proposal.

## **BACKGROUND (MARCH):**

This subdivision amendment application is proposing to change the property boundary shared by lot 17 and lot 18. The reason for this change is to correct a side setback building encroachment on lot 17. During construction of the building on lot 17, it was discovered that the building was encroaching on the side setback common with lot 18.

The applicant can request a subdivision amendment for this because the request does not involve a variance of the setback, the setback and lot size was allowed by the PB as part of the cluster subdivision standards, and it's not creating a nonconformity. The lot area and frontage of both lots will still meet the required minimum.

It's staff's opinion that this proposal may be approved. Although, before the PB approves, it's important to note there are a number of outstanding issues associated with the subdivision.

## **Items Requiring Coordination**

There were a number of items flagged in Nov 2018 during the site inspection. These were communicated to the Owner, and I believe there was some further discussion, but no resolution. Staff email on 12/6/18 noted the following:

- Erosion and Sedimentation Controls (ESC) must immediately be installed on lots 18, 19 and 20.
- Sedimentation extending to the 12 inch culvert from lot 20 must be immediately addressed, sedimentation removed and ESCs installed and maintained until the lot is stabilized.
- It appears lot 19 and 20 driveways are not located where they are shown on the approved subdivision plan. As you may recall the Planning Board identified these locations due to concerns associated with site distances. This matter shall be resolved before any occupancy permit is issued for lot 19 and 20. Resolution may require a plan amendment which means you will need to secure approvals from the Planning Board. If possible, we prefer to resolve internally which will require you to provide us with site distances in conformance with OOB ordinances for the new driveway locations. Note that staff meet with the developer on-site and the site distance looked fine; although we did not receive requested follow-up information which was documented confirmation of the revised site distances.
- The Planning Board required 20 ft green strips along each lot line, except for driveway openings. As Stephanie observed, a number of the lots have been cleared to the lot lines. Please submit a restoration plan that addresses this clearing and fulfills the Planning Board requirement. The restoration plan shall be submitted before any further permits are issued.

## **Outstanding Documentation:**

The following documents, to Wright-Pierce's knowledge, have not been submitted for review/approval by the Town or W-P and needs to be submitted. These are requested prior to construction as part of the pre-construction meeting (refer to Town of Old Orchard Beach Infrastructure Inspection Procedures).

- Copy of post-construction management plan, signed maintenance agreement and list of post-construction BMPs in accordance with Chapter 71 requirements.
- Type A compaction testing results.
- Acceptance letter from MaineWater (for installation and testing of the Water Main)
- Certification of Stormwater BMPs from Engineer of Record
- Certification of site lighting (CMP or Inspection by Codes)

**Inspections:**

- Binder pavement installation (Road currently paved). Inspection was requested the morning of pavers when pavement was going down. WP and DPW were not able to get on-site to confirm pavement. Pavement cores will be required.
- If compaction testing of Type A was not performed, compaction testing will be required.
- The following are inspections that should be scheduled as appropriate:
  - Surface pavement installation (not installed as of 2/26/19 – Inspection shall be requested).
    - Pavement mix design and surface paving weight slips will be required (not installed as of 2/26/19)
  - Loam and seed/landscaping (not installed as of 2/26/19)
  - Substantial Completion
  - Final Completion

**RECOMMENDATIONS:**

The outstanding issues should be resolved to Town staff and Wright-Pierce satisfaction before the PB approves this subdivision amendment. We understand the weather may temporarily prevent the developer from implementing some of the items identified above. In these cases a plan should be developed with deliverable dates.

*Recommended Motion:* I will motion the tabling the subdivision amendment until outstanding issues are resolved to staff satisfaction.

**ITEM 6**

**Proposal:** Conditional Use: Installation of small cell antenna on utility pole  
**Action:** Determination of Completeness; Schedule Site Walk and Public Hearing  
**Owner:** Public Right-of Way; Applicant: New Cingular Wireless PCS, LLC  
**Location:** Utility pole in public right-of-way adjacent to First Street/Depot Square; Zoning DD

Conditional Use: Install Small Cell Antenna	Project Status
<i>Sketch Plan</i>	N/A
<i>Application Complete</i>	Pending
<i>Site Walk</i>	Pending
<i>Public Hearing</i>	Pending
<i>Final Ruling</i>	Pending

This proposal is for a Small Cell Wireless Facility located on a utility pole at First St and Staples St at the edge of the parking lot behind 15 Old Orchard St (MBL: 206-32-1) located in the Downtown Business District 1 (DD-1) Zone. The reason for this proposal is to improve signal quality and capacity within AT&T’s existing wireless network.

As stated in the applicants 18 April 2019 cover letter we are operating under a “shot clock” that includes a notification of completeness date of 28 April 2019. The shot clock is associated with federal law which the applicant cites. Although we’re not completely clear how Federal Law applies to local ordinances in this particular case, staff worked under the assumption federal law trumps local. So, we determined we must respond to the applicant within the shot clock time frame and provide what our recommendations will be to the PB as they relate to a determination of completeness. Below, you’ll see staff recommendations as it relates to determination of completeness as well as Wright-Pierce comments.

In regards to local law, this proposal is review as a Conditional Use “Architectural Siting” wireless telecommunication facility. Conditional Use proposals fall under Old Orchard Beach Planning Board’s jurisdiction (see Old Orchard Beach Ordinances Sec. 78-1307 (a) Downtown districts 1 and 2, Architectural Siting and Sec. 78-1236). Sec. 78-1238 includes the Conditional Use application and review process. The Conditional Use review process identifies the PB As the municipal body who have jurisdiction over the determination of completeness.

Our response to the applicant included that Old Orchard Beach planning and code staff does not have the jurisdiction or authority to make a determination of completeness for Conditional Use applications- only the PB has the authority to make this determination and only at their regularly scheduled meeting which will be held on 9 May 2019.

Wright-Pierce Comment Summary:

- The application has noted that the pole is located within the Town ROW. Based on the plot plan (exhibit 5) and the photographs (exhibit 6) provided, the pole appears to be located within the parking lot associated with 206-32-1. I would recommend clarification be provided on the determination of the pole being located within the ROW for town files.
- Conditional Use Application:  
 We would recommend the following segments be completed - #8, #15, and #19 and the application be signed.  
 We would also recommend the standards associated with Section 78-1240 be specifically responded to.
- It is unclear whether Article VII – Div 3 would apply (based on the definitions it appears this would apply). If so, the requirements of 78-1307 should be confirmed and the documentation noted in 78-1309 submitted (it appears most information has been included in the submission with the exception of service strategy, historic and public notifications). We recommend confirmation on whether these are required.
- Design Plans – We would recommend the Meter Box location on the pole be specifically



evaluated based on surrounding site conditions. The note indicates the meter box will be 4-5 feet off the ground and “directed away from the roadway”. Given the existing parking on either side of pole, further protections may be warranted.

- Noise Study:

The study references requirements for the Commonwealth of Massachusetts and MassDEP noise ordinances. It would be helpful to understand the comparison of this ordinance to the Maine requirements and local standards.

That being said, in the DD-1 district, the noise standards are 80 dba in daytime and 70 dba in nighttime. Based on the study provided, it appears the levels based on varying configurations are below these thresholds. It would be helpful for the applicant to confirm the equipment to be used for comparison to Table 1 levels. Finally, the study is based on the installation of equipment cabinet 11’6” off the ground (this cabinet is noted as the source of noise). The plans show a different height configuration. It would be helpful to confirm these differences do not impact results significantly for this project

### **RECOMMENDATIONS:**

Once we receive a complete Conditional Use submission we will provide a more thorough review but based on our initial review of the application and associated submissions, and being mindful of the “shot clock” time frame, we recommend the PB determine the application is not complete because:

- The AT&T Small Cell Noise Analysis dated 12/15/2017 presents a noise study that could be applied to any proposed sites in Massachusetts (see 0.0 and 3.0). Staff feels the noise analysis must be based on State of Maine and town of Old Orchard Beach rules and ordinances.
- The application indicates the proposal will be on a utility pole within the public right-of-way. Based on staff review of the submissions it is not clear this is correct. In fact, it appears the utility pole is on private property owned by Edna M and Richard Smith Sr. (15 Old Orchard St., MBL: 206-32-1). Staff feels a survey should be prepared by a Maine Licensed Surveyor of the previous mentioned lot and portion of Depot Sq. ROW and include the utility poles’ specific location on the survey plan.
- The Conditional Use Application has not been signed.
- The application does not include applicant responses to the Conditional Use Standards in Sec. 78-1240.
- Comments from the Town’s consulting engineer, Wright-Pierce, include important items associated with project conformance; therefore, we feel these comments should be addressed.