

TO: Old Orchard Beach Planning Board
FROM: Planning Staff
SUBJECT: November Planning Board Meeting Summary
DATE: 10 November 2016

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

PUBLIC HEARING ITEMS

ITEM 1

**Proposal: Conditional Use and Shoreland Nonconforming Structure
Expansion/Relocation/Replacement: Replace and expand single-family dwelling
with the Residential Activity Shoreland Zone.**
Owner: Ron Sabin
Location: 129 West Grand Ave., MBL: 319-12-5, R3 & RA

REGULAR BUSINESS ITEMS

ITEM 2

**Proposal: Conditional Use and Shoreland Nonconforming Structure
Expansion/Relocation/Replacement: Replace and expand single-family dwelling
with the Residential Activity Shoreland Zone.**
Action: Site Walk Update; Final Ruling
Owner: Ron Sabin
Location: 129 West Grand Ave., MBL: 319-12-5, R3 & RA

This proposal is for the replacement and expansion of a single-family structure located with the Residential Activity Shoreland Zone. Because the structure at 129 W. Grand is within a Shoreland Zone (Residential Activity) and because the structure is nonconforming (it's within the 100' setback) expansion and/or relocation requires Planning Board (PB) review as a Conditional Use and Shoreland Nonconforming Structure Expansion/Relocation. This is a bit of an odd one because Shoreland Zoning typically applies when a property is within 250' of a waterbody. In regards to Shoreland Zoning in this area, the town took the State Shoreland Zoning rules a step further and applied their own rules to areas that fall within the Highest Annual Tide of 6.3 feet. This approach was part of the town's efforts to prepare for sea level rise. Below is the primary info you need to know to move your project forward.

Regarding permitting, the proposal falls within two ordinances, both associated with PB review of the proposal- Conditional Use (Ch. 78 Secs. 1236 – 1266) and Shoreland Nonconforming Structure Expansion/Relocation (Ch. 78 Sec. 78-1181). The principle standards the PB will use to rule on the proposal are:

- 12 Conditional Use Standards (78-1240, attached). As a Conditional Use application, your proposal must demonstrate compliance with these 12 standards.
- 30% expansion of floor area or volume (78-1181 (c) 1). Because the structure is nonconforming, the existing floor area or volume cannot increase by more than 30%. Floor area is the square footage of all floors, porches and decks. Volume is the space within a roof and fixed exterior walls. A new or replacement basement is not included in the 30% calcs if it does not extend past the exterior dimensions of the structure and does not raise the structure by more than 3 feet.
- Relocation of structure away from the "water" (Highest Annual Tide) to the greatest extent possible (78-1181 (c) 2). Shoreland standards seek to make nonconforming structures as conforming as possible so one standard requires nonconforming structures to be moved as far away from the water as possible. Quick review of the lot and location of the structure it will be

difficult to move further away from the “water” without further encroachment of other setbacks. I’m sure the PB will understand your limitations.

- Erosion Control and Sedimentation Plan (78-1215). As part of your submissions the town will require an erosion and sedimentation plan.

As we know, the ZBA approved a Miscellaneous Appeal to allow for an expansion exceeding the 30% expansion of a nonconforming structure. The decision was questioned because it was felt the ZBA did not follow ordinance procedure correctly. Staff asked our town attorney how the PB should proceed. We received the following reply:

The Planning Board does not have the authority to decide on the validity of a permit issued by another Town board or official. The only way to challenge the issuance of a permit or approval is through an appeal. I have reproduced a section of the MMA Planning Board Manual (found on page 59) below which provides some useful guidance on this issue:

Indirect Attempts to Challenge an Appeals Board Decision Without Appealing; Refusal of Other Town Official(s) to Comply With Appeals Board Order

If a decision is not appealed, it cannot be challenged indirectly at a later date by way of another appeal on a related matter. Nor can one town official or board challenge a decision by another town official or board by refusing to issue a permit or approval on the basis that the other board’s or official’s decision was wrong. For example, if a board of appeals grants a setback variance which the planning board believes is illegal, the planning board cannot refuse to grant its approval for the structure that was the subject of the variance solely on the basis that the variance should not have been granted. The planning board must “live with” the decision of the appeals board unless the planning board, municipal officers, or other “aggrieved party” successfully challenges the variance in Superior Court...

Based on the above, it appears the PB must honor the ZBA’s decision. What this means is the ZBA pretty much made the PB’s decision in regards to the Shoreland Zoning standards. The PB still must rule on the Shoreland standards but such ruling cannot void the ZBA’s decision. Note- there remains an outstanding question concerning the appeal/variance type (Miscellaneous Appeal) approved by the ZBA. We discussed with our town attorney and are waiting for a response.

The proposal is before the PB due to jurisdiction over the Shoreland Zoning standards mentioned above. These are the primary standards the PB must use to rule on this proposal. Although, it is a Conditional Use proposal, too, so conformance with the 12 CU standards does apply.

One concern associated with this proposal that is directly related to CU standards is parking. The applicant intends to discontinue use of the existing driveway and create a new driveway that leads directly to a garage. According to the application, 1 parking space exists and 1 is proposed. Single-family use requires 2 spaces. CU standards most applicable to parking are 1 (“will not result in significant hazards to pedestrians or vehicular traffic, on-site or off-site.”) and 3 (“will provide adequate off-street parking”).

Another concern is the height of the structure. The CU standards have some applicability to such concern because the language is quite broad. Standards 6 (“unreasonably restrict access of light to neighboring properties”) and 8 (“not adversely affect the value of adjacent properties”) appear to be the most applicable in regards to structure height. Standards 9 and 10 have some applicability but they appear to be related to use compatibility and the use is compatible with adjacent properties.

When thinking about the above, something to consider is the use is not changing- it currently is a single-family and will continue to be a single-family. The use is expanding, though, by adding square footage and bedrooms. I’m sure the applicant has good intentions but we have seen proposal intentions change when the property transferred.

RECOMENDATIONS: The PB should first determine if the proposal conforms to the applicable standard conditions in the Shoreland Zone:

- (1) Will maintain safe and healthful conditions;
- (2) Will not result in water pollution, erosion, or sedimentation to surface waters;
- (3) Will adequately provide for the disposal of all wastewater;
- (4) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- (5) Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
- (6) Will protect archaeological and historic resources as designated in the comprehensive plan;
- (7) Will avoid problems associated with floodplain development and use; and
- (8) Is in conformance with the provisions of all applicable shoreland zoning standards in division 17 of this chapter.

Second, the PB should determine if the proposal conforms to the 12 Conditional Use standards. Please pay particular attention to those standards related to the concerns identified above.

ITEM 3

Proposal: Conditional Use, Subdivision Amendment; Site Plan Amendment: 6 unit condominium expansion (Summerwinds II)
Action: Preliminary Plan Review
Owner: Saulnier Development
Location: 180 Saco Ave., MBL: 208-1-1, GB1 & R4

NOVEMBER MEETING UPDATE

See Memo from Town Planner Megan McLaughlin dated 3 Nov 2016.

BACKGROUND (September Meeting)

The primary purpose of the September meetings is to conduct a site walk and hear from the public. As you know, this proposal has generated quite a bit of abutter interest. Due to this interest, it is an appropriate time to gather all outstanding questions, comments, concerns so that we (staff, applicant) can provide feedback. In addition to abutter comments, PB members, staff and Wright-Pierce have questions and comments. After the September meetings it is staff's intent to consolidate comments and provide to the applicant so they may address as part of their next Preliminary Plan submission. Below are staff and Department comments.

Misc. Comments (September)

- Use of existing infrastructure (Developers Right, Title, Interest). This proposal requires use of infrastructure that is within the existing, developed portion of the Summerwinds. Summerwinds is a private development. Does the developer have the legal ability to use this infrastructure?
- Addressing existing infrastructure issues. Some of the existing infrastructure within Summerwinds may not be performing adequately now that the development is fully built and occupied. For example, a number of residents state the increase in flooding on property but especially basements. Summerwinds II, although a slightly different name, is still part of the original Summerwinds. So, a question is should the developer of Summerwinds II be responsible

for remedy of existing problems. Note- abutters not within Summerwinds have the same concerns (see letter from 176 Saco Ave. residents).

- Address snow removal.
- Wright-Pierce Comments. Wright-Pierce memo dated 30 August provides comments associated with the submission you received as part of your August packets. There are no new September submissions from the applicant included. I expect the applicant will address these comments as part of a future submission.
- Waiver requests. Based on the August submission, it appears waivers will be required if the applicant wishes to continue with what is proposed. The applicant should provide waiver requests (including justifications- see 74-34 for language) as part of the Preliminary Plan submission.
- Impacts to municipal services. Summerwinds was originally approved as a seasonal community. As such, it was shown to have few impacts to municipal services. Now that it is a year-round community with a proposed expansion, should municipal impacts to services (e.g., schools) be further evaluated?
- 36" culvert across Saco Ave. This culvert ability to adequately address stormwater from the existing and proposed development has been questioned. The applicant states that to their knowledge there have been no significant changes made to the watershed area contributing to the culver crossing and the proposal will not increase peak flow rates above the pre-development conditions. So, it appears no changes are proposed. Wright-Pierce memo recommends further review by PWD.
- Appeals from restrictions on nonconforming uses (78-180). This proposal requires review under the Conditional Use appeals from restrictions on nonconforming uses. The applicant's previous submission includes responses to the 12 Conditional Use Standards but does not directly respond to 78-180. I recommend the applicant respond to the following: The impact and effects of this enlargement, expansion, extension, resumption or conversion to another nonconforming use on existing uses in the neighborhood will not be substantially different from or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use.
- One particular concern from an abutter- has the applicant (or town) studied or taken into account the flows above this property and how they may impact stormwater and stream flow onto adjacent properties? How will the existing and proposed systems address the additional flow? In regards to the town, to our knowledge, we have not addressed this matter. Although, the town has identified the need for a comprehensive, town-wide drainage study and just this month received RFP's to perform such a study.
- Unit Count. A question has been raised if the Summerwinds property, as a whole, can exceed 53 units. Originally the project was approved as an even swap- 53 overnight cabins for 53 condo units. Thought is the applicant got a 'waiver' from the full review process due to the even swap. This original approval is the primary reason the appeals from restrictions on nonconforming uses applied to this proposal. So, as part of the PB's evaluation of the 53 unit question, 78-180 and the applicant's response to this standard should be considered. Megan researched this and provided a memo as part of September staff submissions. Staff will seek the PB's thoughts before we proceed.
- Default on other projects. As part of the Major Subdivision Final Plan standards, 74-232 (b) states: No plan shall be approved by the planning board as long as the subdivider is in default on a previously approved plan. In the case of the 6 lot proposal, the same person who is proposing this development has not secured a performance bond for another project he's responsible for. Although it is the same person, the property owners are different entities. So, this creates the question- what does 74-232 (b) mean by 'subdivider'? Is it the person? The entity? This is important because if the subdivider of this project is the same as the project in default it appears the PB cannot approve Final Plan. I believe we need legal advice on this.

MS4 Comments (September)

One of the questions is the applicability of Chapter 71, Post Construction Stormwater Ordinance, to this project- is the proposed subdivision required to meet Chapter 71 standards?

In Chapter 71 “*Construction Activity*” is defined as “construction activity including one acre or more of disturbed area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will disturb equal to or greater than one acre”

The previously approved Summerwinds development does not have an approved Post-Construction Stormwater Management Plan which is required as part of Ch. 71 standards. Because the additional 6 lots are part of the larger subdivision, the applicant will have to submit a Post-Construction Stormwater Management Plan for the entire development. Additional coordination with the applicant is needed on this issue.

In addition to the above, Wright-Pierce provides MS4 comments in their 30 August memo. I expect the applicant will address these comments in the next submission.

Department Head Comments (September)

CODES

I have some reservations that will need to be addressed with this proposal

1. Does the ownership change cause it to be a new not Phased expansion of Summer Winds. Does the new company have documentation sufficient for expansion and use of the roads in Summer Winds?
2. Will the Developer be asked to supply all necessary documents for his financial capacity? It is my understanding the Current proposal is not the same organization as the first 53 units?
3. Has all DEP docs been transferred top this developer?
4. The area where the proposed road is connecting to a private way has this or will this be addressed?
- 5 Will the road proposed infringe on the existing structures to cause issues with drainage and snow removal? Very narrow.
6. Access for emergency vehicles may be a concern with this proposal for access.
7. Drainage- are there plans for handling ground water intrusion and are they sufficient ? There have been complaints that some of these units have infiltration into the crawl spaces we inspected some and did find water in at least 1 of them . the others had active sump pumps

PUBLIC WORKS

For Summerwinds II I recommend that the designer check the truck turning at the intersection. Could a fire vehicle, moving van or trash truck make this turn?

FIRE DEPARTMENT

My concern in any project that we have is adequate hydrant coverage and that we have wide enough road to handle our fire apparatus, our largest fire truck is our tower truck at 47 feet long and 68000 pounds.

TAX ASSESSOR

Below is an email conversation between Assessor George Greene and abutter Jeanne Hackert. Jeanne Hackert had tax-related questions so I referred her to George. Her letter is included with the other abutter letters you received at the workshop. Email chain begins with George

Jean,

On the question you had regarding what the assessment and taxes are on the property that Summerwinds is proposing to add 6 more condo sites to, where the 53 units are not located;

This acreage is part of the Summerwinds Condo Association parcel. The declarant, which is the developer, has the intangible development rights to add six units per the condominium documents. These intangible rights are **not** fee simple ,real estate, tangible property which can be taxed. Intangible rights, according to Maine Case law to date, are not taxable. When you look at the Summerwinds Condo

documents you will see that the full parcel(10+ acres) is incorporated into the development. Again, the developer only has the intangible development rights, the potential, to add 6 more units should he be allowed to do so. Not taxable.

Reply from Hackert:

My question is the acreage, the entire remainder not presently occupied by any building, the entire undeveloped remainder. This intangible rights, If you say it's assessed now between the 53 condo units when they finish putting in the rest of the 150(sarcasm) down in the future will the initial 53 get lower taxes because there are more lots to divide amongst?

I am home now, re-read your response and spoke to an adviser.

1) The developer appears to have "potential" rights to add 6 more units. However, they cannot do so without the town's permission. This is the reason for the proposal & the meeting on Sept.8th, to obtain approval from the town.

2) Each cottage owner is not being taxed for just their individual house but also for the lot of land that their houses are sitting on(the latest records I show is that the land value each owner is being taxed is \$31,300.) So the building and their lot go hand in hand.

3)Condo fees paid by the condo owners are towards all common areas and expenditures such as for maintenance/upkeep of the grounds, buildings(clubhouse,etc), insurances etc. Condo fees is what each condo owner splits amounts the number of units towards these expenses.

The undeveloped land, where the 6 units are proposed to be placed, along with the remainder of the 10+ acres(yet to be developed) still need to be taxed along with all common buildings. Whether the taxes for these come from part of the condo fees or wherever, property taxes must be charged for them and someone needs to pay for them.

However, the latest property tax card 2016(Vision ID:105921, Map ID:208/1/1-0//) shows assessed value of zero?? They have not been taxed apparently since it's purchase back in 2011.

Greene reply to Hackert:

The land presently in question is owned in common with the other 53 units just like the streets, the clubhouse, the pool, etc. The valuation on each condo unit reflects those common areas, too. Again, the developer only has intangible development rights, I think until 2019, to put 6 more units on this land. These intangible rights are not taxable. I repeat, are not taxable according to Maine Case Law. The card that you are looking at 208-1-1-0 is the condo main card which is just used to identify the condominium project. All condo mains have no value. There isn't any physical land or building associated with the condo main card. Therefore, no taxes. Each condo owner has a land value as prescribed by State law. The summation of 53 land values to date comprise the land value for all 10+ acres that are common elements and limited common elements; basically the polygon parcel of land known as Summerwinds. I hope this answers all your questions.

Regarding Extra Bedrooms In Existing Units

The question of extra bedrooms may not be directly applicable to the current proposal before the PB; although, it may have some relation as some of the infrastructure (e.g. sewer) is shared. Below is staff input regarding the extra bedrooms as related to planning permitting.

Follow-up regarding the extra bedroom(s) on the planning-related permitting side. Another tricky matter. I'll try to be clear with my written thoughts.

- The Conditional Use and Site Plan FOF did not specifically address bedrooms; although, bedroom info was included by reference through the FOF's identification of submitted material (see attachment pp 7 – 8, highlighted language). The submitted material included bedroom-related info by number per cottage (p 2) and public sewer GPD estimate (pp 4 – 5). Both referenced documents show the proposal included 1 bedroom for each cottage.
- Chris White felt the applicants sewer GPD estimates were not accurate and should be based on 2 people/building @ 50 GPD/occupant (p 6). This doubled the applicants GPD estimate. The records are not clear which estimate was used as the final GPD.

- This brings two immediate questions:
 1. Which GPD estimate was used and does it allow for more than 1 bedroom? The records do not clearly show if the applicants or Chris' estimate was used. If Chris' estimate was then it appears the GPD was based on occupants and not bedrooms. But, Chris used the same GPD per occupant as the applicant did per bedroom. So, if the applicant used Chris' GPD estimate then the sewage flow was based on 2 bedroom cottages. Note that Chris states (p 6) since the cottages were preexisting the estimated daily flow should not have an adverse impact on the wastewater treatment process. This also brings up another question- does the number of bedrooms matter when Chris feels it should be based upon the number of occupants? This is probably a difficult number to arrive at unless it's based on the code approved occupant load.

Does the addition of bedrooms require further PB review? If the design sewage flow does not match the number of occupants (or number of bedrooms?) then yes, in my opinion it does require additional PB review. Remember the basis of the approval was to replace 53 overnight cabins with 53 cottages which I believe the intent was not for these to become single-family dwellings (in a traditional sense). Also, the applicant's cover letter (p 2) states "The one bedroom cottage..." So, it can be said that what was part of the record during the original Summerwinds approval was 1 bedroom cottages. The change to the proposal, through the addition of more bedrooms, could be considered a revision to what was approved; although, the revision standard appears to be related to plans and not typed documents. So, I'm not completely certain if the addition of bedrooms beyond what was approved requires further PB review. I intend to bring this up to the PB at the Sept meeting.

RECOMMENDATIONS (September): Staff sees the September meetings as an opportunity to gather all comments. Staff intends to consolidate comments and provide to applicants so they can address as part of their next submission. Please identify any particular issues the PB would like staff to focus on. Note- the Subdivision Ordinance requires the PB to take action on the Preliminary Plan within 30 days of a Public Hearing or within another mutually agreed upon time.

BACKGROUND (August Meeting)

The August proposal includes PB review of Summerwinds II Preliminary Site Plan and Major Subdivision Applications as well as a Conditional Use Application for Appeal from restrictions on non-conforming uses. Also, to schedule a Site Walk and Public Hearing. The applicants August submission includes revised plans and documentation which address PB, staff and Wright-Pierce (7.6.16 memo).

On the face of it the proposal seems rather simple as a six lot subdivision; although, this is quite complicated. This is due, in part, to the way the way it was originally reviewed and approved and as well as the fact it includes 3 separate applications (actually 4 when we add the Floodplain Application). Trying to sort through all the material has become quite a task and still requires more staff time before action is taken on the Preliminary Plan.

In addition to the above, staff received quite a few letters from residents at Summerwinds (some you have received, some not yet as we just received them this week) which include a number of concerns associated with the proposed development and problems with the existing development (not all planning-related). The level of interest in this adds another dimension to staff review as it takes more time to research. Staff finds that it is important that we schedule the Public Hearing for September because receiving and evaluating public comment is an important part of allowing us to complete Preliminary Plan review.

- Need existing and proposed building coverage calculations. Since this proposal is in the GB1 District, the 35% max building coverage calculation applies. Note- the GB1 District does not include standards for impervious surface or lot coverage calcs.
- We found a concept plan from 2011 that identifies the area associated with this proposal as housing.

- The unit count matter is still not resolved to staff's satisfaction. So far we found all approvals clearly show only 53 units. One problem is we still have not established why. We see the 53 unit count is matched to the unit count that existed when it was Jeremiah's Cabins but we've yet to find documentation stating if it must be limited to this number. A simple density calc allows 88 units (5,000 sq. ft./unit @ lot size 10.18 acres) so it certainly doesn't appear to be limited by minimum lot size. So, we think if there is a cap it must be tied to something else such as the Appeals from restrictions on non-conforming uses standard. We continue to research this and need more time to do so.
- #21. Snow Storage: Any modifications to be made to the current snow storage plan? The 6 proposed lots are in the area currently designated as snow storage. The Planning Board conditionally approved the conversion of Summer Winds cottages to year-round with the stipulation that a formal ice and snow maintenance plan be created.
- The applicant addresses the concerns associated with the 36" culvert crossing Saco Ave. Staff believes we need Wright-Pierce input on this before we move forward
- Does the developer have the exclusive rights to develop this area?
- Does the developer have the rights to use Summerwinds roads, utilities, etc. for Summerwinds II? If so, does he need written authorization to extend and use the infrastructure from the HOA? As far as I'm aware the only way Summerwinds II can come into existence is through the extension and use of Summerwinds infrastructure. Summerwinds is a private development.
- What role and rights does the Summerwinds HOA have? And is this something the town can get involved with (think of Dunegrass and our attorney's opinions).
- Need to have up to date deed and condo docs from the association that show this can be done.
- Wright-Pierce has not yet provided peer review comments for the August submission.
- Recommend adding buffering along lot line shared with Leary property.

Department Head Comments (August)

PUBLIC WORKS

I have reviewed the documents submitted by BH2M date June 2016 for this project.

The access road is proposed to be 18 feet wide. This is very narrow and a fire truck and another vehicle could have problems passing each other.

All underground utilities shall have a detectable warning tape above the utility.

Sidewalks should be handicap accessible.

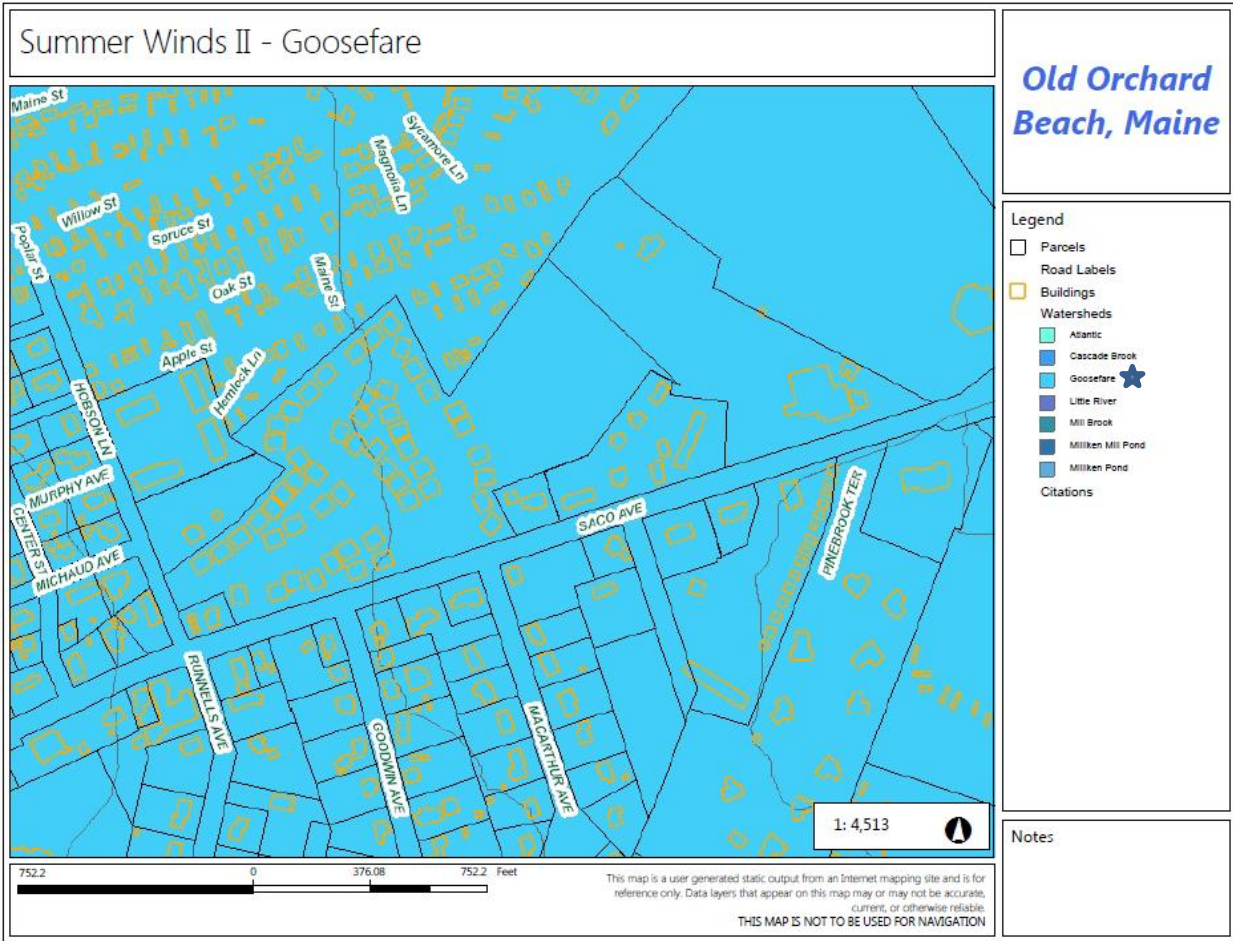
Where the proposed drive connects to the existing access road, truck turning movements should be checked. They should check for both fire vehicles and moving vans.

Sewers and drains serving Summerwinds II will be the responsibility of the developer and/or homeowners association.

Electronic copies of plans and specifications shall be provided to the Town in a format specified by the planning department. Survey markers shall be tied in to the State grid.

MS4 Comments (August)

#12. *Goosefare Brook Watershed*: While the project doesn't fall under the Ch. 500 Appendix listing of the Goosefare Watershed under the DEP, the Town has its own delineated Goosefare Brook Watershed which this project is included in (see map below). Under the Town's MS4 program this means the project will be subject to additional requirements during the inspection process including a minimum of 2 inspections annually and one completed during a rain event.



#17. *Operations & Maintenance Review*: The O&M plan currently used by the Summer Winds development needs some updates:

- "...at the time the Home Owners Association is formed the Association will be responsible for all other stormwater facilities." – This should be updated now that the HOA has been formed for Summer Winds.
- The O&M Plan should include the Annual Certification requirement for the Sediment Forebay behind buildings 32/33 that connects through a culvert to a catch basin on Saco Ave which is part of the Town's MS4. The inspection needs to be completed by a Qualified Stormwater Inspector as defined in Ch. 71 of the Town's ordinance and should be clearly outlined in the O&M Plan.

Recommendations (August)

Staff recommends that PB continue Preliminary Plan Review and schedule a Site Walk for 1 September and Public Hearing for 8 September.

BACKGROUND (July Meeting)

To get right to the point, this proposal requires a more detailed staff review than time allowed for so that we may properly prepare you for the July meeting. Not only do we need to consider the proposed development (Summerwinds II) but we also need to consider the existing development (Summerwinds II). Just some of the issues to consider:

- Unit count- can the unit count exceed 53?

- Roads- The PB have already spoke of concerns regarding road width and drainage within Summerwinds. The residents have similar concerns. How will the addition of 6 units impact this situation?
- Does the developer have the exclusive rights to develop this area?
- Does the developer have the rights to use Summerwinds roads, utilities, etc. for Summerwinds II? If so, does he need written authorization to extend and use the infrastructure from the HOA? As far as I'm aware the only way Summerwinds II can come into existence is through the extension and use of Summerwinds infrastructure. Summerwinds is a private development.
- What role and rights does the Summerwinds HOA have? And is this something the town can get involved with (think of Dunegrass and our attorney's opinions).
- Was this area required to be preserved as open space?
- Other PB related permitting may be required such as Conditional Use for the expansion of nonconforming use and floodplain.

As you know, we have already received a number of letters from residents within Summerwinds who have offered concerns associated with the proposed development as well as the existing, built development. The July meeting is not a Public Hearing but these letters offer the PB (and developer) an advance notice of the residents' concerns and will prepare you as to what you should expect at the Public Hearing, which we recommend scheduling for August.

Having said the above, the PB can continue review of the Preliminary Plan, schedule a Site Walk and Public Hearing. We do not need to determine the Preliminary Plan as complete in order to hold a Site Walk and Public Hearing. It's just that this proposal, even though only 6 units, appears to be more complicated than other subdivisions of this size; therefore, warrants a more detailed look into questions we don't normally have.

Recommendations (July)

With the summer residents here, we believe August is a good time to schedule a Site Walk and Public Hearing. Also let's continue Preliminary Plan review during August- we'll hopefully have answers to many questions by then.

ITEM 4

Proposal: **Subdivision Amendment: Relocate proposed detention basin #1; Relocate proposed sewer lines; Relocate proposed building G; Relocate and add stormwater pipes and catch basins; Proposed road retaining wall replaced with rip rap.**

Action: **Ruling on Amendment**

Owner: **KRE Properties Inc.**

Location: **Settlers Ridge Condo's, Ross Road, MBL: 103-1-5, RD**

Settler's Ridge is proposing a subdivision amendment which includes relocation of detention basin #1; relocation of Building G; side slope/road support/stabilization change from retaining wall to rip rap; relocation and addition of new stormwater piping and catch basins; changes (width and location) to walkways; addition of exterior lighting.

Originally, Settler's Ridge (formerly Pilgrim Place- PB approved the name change during 2012) was approved by the PB as what appears to be a two phase project. The first phase was buildings A-F which is built out. The second phase is buildings G, H, I which has not been constructed. The second phase is associated with this proposed amendment. Building G, H, I are towards the rear of the Settler's Ridge lot with building's A-F closer to Ross Rd. Buildings G, H, I have a total of 24 units with 8 units in each building.

During 2013, the PB approved a subdivision amendment to adjust the parking lot areas to reduce impervious surface by 4,000 sq. ft. To do this, the building locations were slightly adjusted, parking lots rearranged and sidewalk width and locations altered.

Wright-Pierce performed peer review of the new amendment and submitted a memo (included in your November packets) which identifies numerous issues. Staff feels it is important the applicant address these issues (including any follow-up plan adjustments) before the PB rule on this proposal. The WP memo was emailed to the applicant's engineer.

Dept. comments:

- WWTF (in November packets): "The additional flow will not have a significant impact downstream at the pump stations in terms of capacity. I do however advise the planning board the pump stations beyond Ross Road pump station is in need of improvements due to age and condition"
- FD (in November packets): "The only question I have at this time is who is responsible for the hydrants and if they are private see the attached Town Ordinance." Note- if they are privately owned the PB could attach the following condition: All privately owned fire hydrants shall be tested and maintained in accordance with applicable NFPA 25 standards. The developer and/or Home Owners Association shall be responsible for complying with this condition.
- Assessing (not in November packet): Assessing is questioning whether King Weinstein, as KRE Properties Inc, owns this property. According to Assessing, Gary Salamacha, who apparently was (or is?) also identified as KRE Properties Inc., claims that he owns the property. The deed attached to the subdivision amendment application is signed by King Weinstein as VP of KRE Properties Inc. The deed book and page as identified on the deed itself is the same book and page identified on the tax records. This appears to show Mr. Weinstein has right, title and interest and planning staff has not seen legal documentation to support Mr. Salamacha's claim. We have followed up on this and it appears Mr. Weinstein can apply for this amendment.

RECOMMENDATIONS: Staff believes the applicants engineer should respond to the WP memo before the PB rules on the proposal. This is because there are a number of important issues that need resolution before a vote take place.

ITEM 5

Proposal: Plenary Plan Approval 1-Year Extension: 5,910 sq. ft. building expansion (Landry's Shop n' Save)
Action: Ruling on Extension Request
Owner: BCL Cascade LLC, PRL Cascade LLC
Location: 2 Cascade Road, MBL: 205-15-1

This proposal is a request to extend Landry's Site Plan approval for 1-year. The reason why the proposal needs a 1-year extension is because it was not substantially completed within two years of the approval date and the applicant wants to resume construction. The PB originally approved this proposal on 13 March 2014. Construction began but has yet to be completed. There are no other changes to what the PB approved.

Substantial completion is not defined in Ch. 78 (Zoning). When a term is not defined in an ordinance, it is common to use a dependable resource (e.g., law dictionary) for a definition. According to Black's Law Dictionary (2nd Ed), substantial completion is "a stage or part of a construction project completed sufficiently to allow the owner to occupy or use the building." Use of "completed sufficiently" and "occupy or use the building" could be questioned in the case of this proposal, but it has been determined the construction associated with the approval is not substantially complete.

In order to for the PB to grant a 1-year extension, the applicant must present "compelling evidence that additional time is required to meet federal, state, or local permit requirements or in reaction to market changes." The PB must find the presented evidence justifies the extension request. The applicants' submitted cover letter discusses the reason for the time extension request.

The standard related to this proposal is:

Sec. 78-219. - Duration of approval.

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

Planning Board 13 March 2014 decision (from minutes):

Win Winch made a motion to approve the site plan approval of the 59 x 110 sq. ft. building addition to Landry's with conditions on the revised site plan being reworked in conjunction to the satisfaction of the Town Planner, the screening of the dumpsters indication on the site plan, the snow storage area at the rear of the building and site plan to show the revised parking per the shopping center standards and to review visual buffering in the rear of the building. Also added to the conditions is to have a report that all of the conditions will be met by the next regular meeting (April 10, 2014) of the Planning Board. Seconded by Mike Fortunato. Note: The PB waived the necessity of a boundary survey.

Original proposal description:

Landry's Shop n' Save is proposing to expand their grocery store by way of new construction and occupation of existing space. New construction includes a 5,696 sq. ft. addition, 245 sq. ft. front entrance, 170 sq. ft. canopy, façade improvements, and replacement of existing vegetation along Cascade. Occupation of existing space includes expanding into the sub shop and former bank areas. As you know, there currently are two separate primary buildings. This proposal will attach both buildings which will result in the discontinuance of the one-way access between the buildings. The purpose of the expansion is to increase retail space, increase warehousing/storage space, improve employee space, and provide an overall better shopping experience.

RECOMMENDATIONS: Staff recommends approval of the 1-year extension request. Construction shall be substantially completed on or before 11 November 2017.

ITEM 6

Proposal: Conditional Use Amendment of Approved Plan/Appeals from Restrictions on Nonconforming Uses (Overnight Cabins): Change use of 7 units from seasonal to year-round (currently 5 year-round use for a total of 12)

Action: Discussion; Schedule Site Walk; Schedule Public Hearing

Owner: SRA Varieties Inc., D.B.A. Paul's II

Location: 141 Saco Ave., MBL: 311-1-10, GB2

At our August 2016 meeting, the PB, staff reported the following (from minutes):

Nothing has changed since June of 2016. The Planning Board and Staff have requested from the owner responses to Staff comments, Department Head comments and Planning Board comments. We have not yet received responses to these comments. These comments are associated with ordinance standards that are directly related to the applicant being able to meet their burden of proof to have a successful application. Without these responses to these standards, staff would have no other choice than to deny the application. This has continued to drag on no matter what efforts we have made. Staff is recommending 2 options.

- Schedule final review and to have a formal vote on what exists at the time of final review. Whatever we received by the deadline of the September meeting.

- At the September meeting to remove this item from the agenda.

At the August meeting, the PB took the following action:

The PB voted to remove the item from the agenda so the applicants have the option of starting this process over when they are ready (as opposed to waiting for a year if the proposal was denied).

November resubmission comments:

The applicant has done a good job with the resubmission. They responded to Dept. Head concerns and provided more detailed answers to the 12 Conditional Use standards. Unfortunately, there are two problems- no submitted response to the Restriction on Nonconforming Use Section and the proposal shows 14 units.

First, the applicant did not provide a response to the Restrictions on Nonconforming Uses Section (78-180). Response to this is critical because it is this Section that allowed this proposal to resume its nonconforming use and it is this Section that allows the applicant to change the nonconforming use. Without responses to Section 78-180, the PB cannot determine if the applicant has met their burden of proof because the record is incomplete. In regards to Conditional Use review, the PB can determine an application as complete if it contains “all relevant information necessary to make a reasonable and informed decision” (78-1238 (b) (1)). It is staff’s opinion that response to 78-180 is relevant information and without it the PB cannot make a “reasonable and informed decision”; therefore, we feel the application is not complete. An incomplete record means the proposal cannot move forward (except a site walk may be scheduled) in the CU review process because the PB must formerly determine that the application is complete before a public hearing is scheduled and a final ruling is issued. Note that staff informed the applicant response to 78-180 was required.

Second, the submitted application shows 14 units. This is represented in the written portions of the application and on the submitted plan (units 2B and 4B were approved as common space). The unit count has been 12 since the original approval of the use resumption. In fact, during 2015 the applicant proposed 15 units and the PB required the application be amended to show 12. Also, the proposal shows the new units (2B and 4B) location in an area that was approved as common space. This area was required (by Code Enforcement) to be common space because both buildings had to meet occupancy square footage standards. This was pointed out to the applicants and they amended to original application by crossing out 14 and writing 12. The plan has not been amended.

RECOMMENDATIONS: Staff feels responses to 78-180 are required to make the application complete. Also, the plan should be amended by removing units 2B and 4B. It is staff’s opinion the PB cannot determine the application as complete until we receive the responses and amended plan; therefore, we recommend tabling the determination of completeness decision. The PB may schedule a site walk any time during review of the application. It may be a good idea to do this once snow is on the ground so we can see how parking, plowing, etc. is managed.

(8.11.16) UPDATE AND RECOMMENDATIONS

As you may recall, staff requested (several times) the owners submit responses to department head, PB member and staff comments. We have yet to receive a response. Staff believes it is the owner’s best interest to provide responses to these comments because we feel the submitted information does not provide enough information for the PB to find “that the impact and effects of this enlargement, expansion, extension, resumption or conversion to another nonconforming use on existing uses in the neighborhood will not be substantially different form or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use” (78-180). Basically, the owner has not met their burden of proof.

As stated above, for several months we have requested that the applicant submit further information and we continue to receive nothing in response to our request. The PB has been generous with their time and has tabled action over the course of several meetings. It is staff's opinion that we need to take the next steps to conclude this matter; therefore, we recommend the PB take some kind of action which could include removing this item from the agenda or scheduling final ruling.

Recommendations (8.11.16)

Staff recommends the PB take some kind of action which could include removing this item from the agenda or scheduling final ruling.

BACKGROUND (July)

The owner was asked to address the comments below in writing. The owner informed staff that he needs more time to do this and will not be prepared for the July meeting. Due to the number of unanswered questions staff recommends this application be tabled without prejudice until the August 2016 PB meetings.

The PB questioned if there is a limit to the number of times an application can be tabled. The only charter ordinance and procedure policy language I found regarding tabling applications is associated with the Council (Sec. 2-72). The charter, ordinances and procedure policy associated with PB review (Site Plan, Subd, Conditional Use) is silent on this but each ordinance does include a time frame related to decision making depending on where an app is in the review process (e.g., 60 days after a public hearing). These time frames would typically limit the amount of time the PB can table an application; although, this proposal is being reviewed as an 'amendment' and I find no specific time frame related to ruling on an amendment.

RECOMMENDATIONS: One thought is the PB can table without prejudice until a specific date (the August meeting dates) and at the August meeting schedule a final ruling for September. Or, the PB can schedule a final ruling in August and either rule on the application at the August meeting or table final ruling until a specific date.

BACKGROUND (May and June)

DEPARTMENT HEAD COMMENTS

CODES

While I have been a supporter of the renovations at the above property I am having some difficulty with all units becoming year round in their use.

When we first sat down with Pierre Bouthlier and the Signs it was understood that the pre existing buildings now designated building 1 and 3 would be allowed to go year round due to their existence in place for many years. This is also how the Planning Board was approached and how they won approval. This project has been a very difficult one to keep on track not only for the Codes Office but for Gee and Gagon Sign as well. It was underestimated in the costs associated with it and has a troublesome property for staff to manage. I feel the Town has gone out of its way to accommodate the owners as we have not seen the project at 100 percent completion even today. We are still working with the owners to get it up and running as it was originally designed. To allow this project to go to 100 percent year round without any history of experience with it operating as it was designed does not make sense to me.

I recommend to you and the Planning Board that the project needs to be first completed as was intended and get a year or possibly two behind it to gauge whether it will be managed properly and has the where with all to not put a burden on the Towns recourses.

With the possibility of these units becoming Year-round without any experience. The buildings were design built as stand alone structures where there are smoke and carbon detectors in the living units. There is not an annunciator system or sprinkler system Which could cause issues if the buildings are all occupied at the same time. Summer is one thing but operations in the winter months is quite another. Allowing all units to remain online after the end of the season not allow the Town to see how the property can handle snow removal, trash removal and the tenants it will bring. I urge the Planning Board to hold off and table this application until such time the property has some history of operating as was originally

agreed. I applaud the Signs for stepping up and getting the project to this stage. It just needs to get finished.

Additional Codes Comments

- Non Completed work (still in process) and conditions at site clean-up etc.
- Unpaid permitting for construction and Sewer connection fees total due is \$7400.+
- Landscaping work postponed until spring
- Called for Repeated inspections –each with finding items the owner claims are done however not to the satisfaction of the inspector.(generally the site work.)
- Number of units as proposed to Planning Board `12
Actual number on site visit was 15 per BD
- Site work elevations not submitted as required by PB they were started by Jim Fisher North East Civil Solutions ,we have not seen them as of today
- We have done two lists for them and each time they stall us

PUBLIC WORKS

It is difficult to comment on the residential expansion plans behind Red Rocket. The plan you provided at yesterday's development committee meeting is very crude and does not provide much specificity. A lot more engineering work is needed before this concept can be adequately reviewed.

1. Will vehicle access between the Red Rocket business and the residential area be blocked?
2. How will the drainage work?
3. Red Rocket has a driveway permit for their Union Avenue frontage. They have removed curb but have not completed the work.
4. What is the surface of the parking area? If it is not paved, how will parking spaces be delineated?
5. The parking appears to be angled parking. If cars back out of angled parking where will they turn around? What is required for parking?
6. Exiting the Union Avenue driveway it would be better if traffic were restricted to right turn only.
7. Will there be lighting in the parking lot? How will it impact neighbors?
8. Show all utilities.
9. What is the treatment around the perimeter of the property?
10. What is proposed for landscaping?

I have reviewed the documentation that you provided at yesterday's development committee meeting. Reference is made to a drainage report prepared by engineer Jim Fischer. I have not seen this report. I have not seen adequate engineered plans so that I cannot comment more than I did in an email to you dated April 28, 2016.

POLICE

Areas of observation/concern.

- 1- The current "unauthorized" drive way exiting onto Union Ave. This exit point is too close to the intersection creating a hazard to pedestrian and vehicular traffic. In addition, it will have an impact on the intersection movement if vehicles are attempting to enter the motel and are unable due to a traffic back up at the signal.
- 2- There is a concern with "seasonal rentals" and how that relates to the availability of "winter rentals". Being licensed for any "winter" rentals creates an environment of transient housing and the issues this can create especially if the tenants are not properly vetted. As we know, we have had a history with this type of housing for a merit of reason and in some cases suspended the license.

FIRE

I have the following concerns with the location described as 141 Saco Ave. The following are concerns or requirements we would like to see if this is a year round establishment.

- A project of this size and being a motel type property we would require a complete and monitored fire alarm system not just a hard wire residential system. This would include a fire alarm panel connected to a monitoring company and a panel showing each zone and each building. Clearly marked.
- A Knox box on the front of the “main building” usually located on the front of the building where the fire alarm panel is located.
- All doors need to be mastered so we only have to use one key to gain access to any door.
- I am concerned with the current gravel driveway as our trucks weigh up to 68,000 lbs. and I am afraid in the spring we will get stuck.
- All buildings need numbers that we can see plainly visible. Each unit would also need a number on or near the door.
- I have a concern entering or exiting on the Union Ave side as I believe we will not be able to make the swing.
- Concern over winter operations and where the snow will be piled and access for us during this time of year.
- Is there an onsite manager 24 hours a day?
- To my knowledge no Fire Inspection has been done.
- A walk through with each shift would be needed.
- Access to the rear of the buildings appear to be an issue.
- CO detectors in each unit.

SEASONAL VS YEAR ROUND AND SOME ISSUES

Summary of Primary Issues associated with Paul’s II cabins:

- A. June 2015 Planning Board Conditions of Approval (Reference: 11 June 2015 PB Minutes):
 - Any Planning Board comments during the site walk associated with the proposal before the Board shall be included as part of the improvements to the property including, but not limited to buffering, screening, buildings, drainage and overall site plan. These comments shall be shown on the plan before issuance and submitted to the Town Planner before issuance of the occupancy permit. **Status: Completed.**
 - A letter from Maine Licensed Professional Engineer or Landscape Architect certifying that there will be no post development adverse impact as associated with drainage to abutting properties. Occupying permit shall not be issued until this is received and determined acceptable by the Town of Old Orchard Beach staff. **Status: Completed.**
 - The applicant and/or their representatives shall work with the Town Planner to develop a buffering/screening plan which shall be implemented before occupancy permits are issued. **Status: Buffer/screening plan discussed but nothing finalized. Need to discuss further and have buffering/screening plan described in writing, shown on a plan or both.**
- B. Number of Units Permitted (Reference: 11 June 2015 PB Minutes). The total number of units permitted is 12. During the June 2015 PB discussions, the applicant proposed 15 units and the PB required the building design plan to be amended so it shows 12 units as this was the maximum number allowed.
- C. Seasonal vs. Year-Round Units (Reference: 11 Sept. 2015 In-Office Meeting Notes- Gee and Jeffrey H; 11 June 2015 PB Minutes). According to my information, the number of approved year-round units is 5. According to my 11 Sept. meeting notes, I outlined the next steps associated with the cabin project. Based on these notes and my memory, the owners approached me to see what they need to do to add additional year-round units. I informed them that 5 units were grandfathered and already approved for year-round occupancy. My notes indicate the owners wanted to add 4 more year-round units to bring the total to 9. I informed them that they need to go to the PB to amend their June 2015 approval. I outlined what they need to do for PB

submissions. No further action taken by the owners regarding securing PB approval to add 4 more year-round units. The 11 June PB minutes state that 5 units were grandfathered by Code Enforcement- Unit 1 (an original building adjacent to Saco Ave) and Units 4,5,6,7 (an original building parallel to rear property line). In addition the above, the minutes state: "Mr. Bouthiller stated that part of the season these cabins will be used for the J-1 students and the rest of the year they will use them for tourist and longer stay winter rentals and also use some of the % for year round rentals." Although the quote mentions 'longer winter stay' and '% for year round rentals' the only specific statement concerning grandfathering was for Units 1,4,5,6,7. Based on my 11 Sept. meeting notes, I feel my comments continue to recognize that 5 of the 12 units are allowed for year-round use.

In summary:

1. Before occupancy permits are issued, town staff must receive a letter from a Maine Licensed Professional Engineer or Landscape Architect certifying that there will be no post development adverse impacts as associated with drainage to abutting properties. Occupancy permits can be issued after town staff finds the statements in the letter are acceptable.
2. The applicant and/or their representatives shall work with the Town Planner to develop a buffering/screening plan which shall be implemented before occupancy permits are issued.
3. 12 units are allowed on-site.
4. 5 units are permitted for year-round use.

14 year license history (pls. note license are valid for 2 years)

- 16 July 2002: 11 seasonal cabins (Cabins 10 & 11 are not to be used)
- 16 Feb. 2016: 5 year-round rentals (Buildings 1 & 3 only)
- 19 April 2016: 6 seasonal rentals (Buildings 2 & 4)

ITEM 7

Proposal: Conditional Use: Accessory Dwelling Unit
Action: Determination of Completeness; Schedule Site Walk; Schedule Public Hearing
Owner: Mark and Catherine Andrews
Location: 98 Ross Rd., MBL: 105-4-4, RD

This proposal is for the conversion of existing space (top floor of attached garage) into an Accessory Dwelling Unit. Accessory Dwelling Units are permissible as long as they meet the Accessory Dwelling standards and Conditional Use Review Criteria. The purpose of Accessory Dwelling Units is to provide a diversity of housing for residents while protecting the single-family character of residential neighborhoods.

The most important standards associated with Accessory Dwelling Unit (ADU) compliance are the 5 ADU standards (78-1272). Regarding this proposals conformance with the 5 Accessory Dwelling Unit (ADU) Standards:

1. Standard: ADU accessed via the living area of the primary structure and any proposed additions designed to be subordinate in scale and mass and compatible with style of main structure. The applicant's submission identifies the existing breezeway as the shared main entrance. Review of the 2015 aerial and assessor cards show that the breezeway does appear to be one of the primary access points to the main structure. The assessing cards identify the breezeway as living area.
2. Standard: ADU to have at least 500 sq. ft. but cannot exceed 50% of the floor area of the main dwelling unit. The assessing card states 1,882 sq. ft. of living area (a bit more than the applicant's submission identifies) and there may be even a bit more. The applicant can add up to 941 sq. ft. for the ADU and conform to the 50% standard. According to the applicant's proposal, the ADU will be approx. 700 sq. ft.
3. Standard: ADU and main dwelling unit to share single electrical service. The applicant's submission states one electrical service will be shared and upgraded to avoid overloading
4. Standard: One ADU per lot. No ADU exists and only one is proposed.

5. Standard: ADU not permitted for any nonconforming structure or use. The existing structure and use is conforming.

Regarding the proposals conformance with the 12 Conditional Use Review Criteria, the applicant does a good job responding to each. A few additional items we typically consider are parking (criteria 3) and waste water (criteria 7). Regarding parking, the applicant states there is plenty of room in the driveway and dooryard for the 4 spaces required. The 2015 aerial shows this to be true. Staff sees no issue with off-street parking.

Regarding waste water, the single-family is serviced by an existing private septic system. The ADU will use the same system. The single-family has 3 bedrooms and the ADU will add 1 more for a total of 4 bedrooms. Single-family septic systems are typically designed based on the number of bedrooms. The septic system plan was not found. The applicant states the system is well maintained and even with the ADU there will be far less usage than past years. The septic may be ok now but with the addition of the bedroom and an ownership happens to change and they introduce more use to the system, will it function properly? It does appear it will be fine for this proposal. Just something to consider.

RECOMMENDATIONS: Staff finds this is a well put together application. We recommend the PB determine the application as complete and schedule Site Walk, Public Hearing and Final Ruling for December.

Design Review Certificates

ITEM 1

Proposal: Building expansion and rehabilitation
Action: Certificate of Appropriateness Decision
Owner: Harrisburg H&P & Harrisburg Group Gen Partnership
Location: 9 East Grand Ave., MBL: 306-2-6, DD1

This proposal is for new construction and rehabilitation of an existing retail building (“Expressly Trends-Foot Traffic”) located at 9 East Grand Ave. New construction includes a 2,833 sq. ft. 2nd floor addition and rehab to the first floor building exterior. This proposal was reviewed by the DRC on 3 October and 7 November 2016. On 7 November, the DRC recommended the PB grant approval of the Certificate of Appropriateness with the following conditions:

1. A 1x6 piece of freezeboard shall be placed at the top of the shed overhang and shall follow the bottom line of the balcony just above the first floor to divide the back of the building facing the ocean.
2. No excessive lights (internal and external), neon or otherwise shall be placed on the second floor of the building.

In addition to Design Review, this proposal requires Site Plan Review. During DRC’s review of the proposal a number of questions and concerns came up that were determined to be related to Site Plan Review and fall under the PB’s jurisdiction as part of the Site Plan process. Some of these questions and concerns have been brought to your attention (see Dept. comments in November packets). We’ll cover these issues once a Site Plan Application comes to the PB.

RECOMMENDATIONS: Staff recommends the PB approve the Certificate of Appropriateness with the following conditions:

1. A 1x6 piece of freezeboard shall be placed at the top of the shed overhang and shall follow the bottom line of the balcony just above the first floor to divide the back of the building facing the ocean.

2. No excessive lights (internal and external), neon or otherwise shall be placed on the second floor of the building