

Planning and Development

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Minutes

Planning Board

Tuesday, September 3, 2019

People's Choice Credit Union

Community Room (Third Floor)

23 Industrial Park Road, Saco, ME 04072

5:00 – 6:30 PM: Workshop

6:30 PM: Meeting

Present for Board: Chair Neil Schuster; Vice Chair Don Girouard; Jeff Brochu; Alyssa Bouthot; Matthew Provencal; Joyce Leary Clark

Absent: Peter Scontras

Also Present: Emily Cole-Prescott, City Planner; Isabelle Oechsle, Program Coordinator; Denise Clavette, Planning & Development Director; Joe Laverriere, City Engineer; Dick Lambert, Code Enforcement Director; Dave Pendleton, Deputy Fire Chief; Tim Murphy, City Attorney

Note: Regular meeting is audio recorded. These audio records will be posted on the City's website and available for public review.

5:30 PM – Workshop

1. Zoning Ordinance Revision – Draft Two Review

Denise Clavette, Director of Planning & Development; Jessa Berna, Business Development Specialist; Emily Cole-Prescott, City Planner; and Jim Katsiaficas, Consulting Attorney, were present for this discussion.

The Planning Board was given the opportunity to ask questions of City staff and provide input regarding ongoing Zoning Ordinance Revision.

The following items were discussed and will be followed up on:

- further consolidation of zones.
- There was discussion of zone lines for proposed Portland Road District, and it was explained that zone lines followed property boundaries.

Matt Provencal asked about the potential of expanding the downtown district to nearby streets.

Don Girouard mentioned that draft 2 does not do enough to address non-conformities. There was also discussion about front setback requirement on Route One and in proposed Portland Road Node. There was also discussion about having enough room to develop future sidewalks. There was discussion about shoreland zoning and potential of adding overlays as required by State minimum shoreland zoning standards per DEP Chapter 1,000 Guidelines updated in 2015. There was discussion about adding additional overlay areas to existing zoning districts.

On Permitted & Conditional Use Table within the Revised Zoning Ordinance, uses have been consolidated, organized and coordinated with new district names. Commercial solar arrays will be conditional uses in the Rural Residential and Portland Road Districts. The purpose of this would be to put solar arrays through a conditional use review and a site plan review.

Expirations of approvals: Don Girouard wondered how the increase to two years would compare to other permitting (NRPA, etc). Jessa Berna said that the Department did not yet have data on that but would conduct comparative research.

Alyssa Bouthot asked about whether ADUs are permitted in the downtown district because it is currently denoted that way in Table 3-3. They would be permitted in the revised ordinance. Don Girouard said that either a tiny house or an ADU is allowed on the property, but not both. He also mentioned “tiny homes” terminology should be removed or at least no distinction between “tiny homes” and “ADUs.” The Board agreed.

Jeff Brochu highlighted specific edits to the second draft of the ordinance, which are described below:

- Article 4 2E: exemption for height structures: question about verbiage which, in the old ordinance exempted silos and amusement parks and the like;
- Packet page 51: Exterior lighting: JB thinks is too restrictive. Also, eliminate reference to certain lighting fixtures (lamps versus light sources);
- Section 604B6: eliminate specificity that can be put in a separate document;
- Section 606: good neighbor policy about offensive smells (add “*offensive to a reasonable person*”);
- Article 707, pg 63 of digital packet: high voltage lines being buried within 200 feet of any residence, school building, playground...should there be an exemption for those that are already in place;
- 709: Is connection to sewer required for an ADU?
- 711: marijuana grow facilities, check on federal boundary designation (500 ft. vs. 1000 ft.)
 - C6: if a building intends to be leased, owner of a building must get a business license before they sign a lease to grow facilities (not clearly specified as required for other types of businesses);
- D6: Lattice towers are prohibited for small wind towers; does not appear to be for anything larger;
- 905D: holiday lighting vs. site lighting;
- 905E: time limits on a business vehicle parking in a subdivision driveway;
- 907: definition of protruding and wall-mounted sign

6:30 PM – Meeting

1. Call to Order: Chair Schuster called the meeting to order at 6:52 PM.
2. Review Minutes of Previous Meetings:
 - a. August 6, 2019: *August 6th draft minutes will be available for review at the next meeting.*
 - b. August 20, 2019: **Jeff Brochu moved to accept the August 20th draft minutes as presented. Joyce Leary Clark seconded the motion, and it carried unanimously.**
3. New Business, Tabled Items & Public Hearings –
 - a. Continued Application Review & Public Hearing: 60 Bay View Road (Map 9 Lot 1): Site Plan & Design Review – 6-unit residential condominium project (4 seasonal dwelling units and 2 year-round dwelling units) with associated site improvements
 - Applicant: Estates at Bay View LLC
 - Zone: R-1A

Chair Neil Schuster recused himself from this application review and public hearing. Don Girouard served as Chair for this application review and public hearing.

Overview: Emily Cole-Prescott provided an overview of this project. The application was first heard at the Planning Board's May 7th meeting. At that meeting, the Board denied a waiver request for the lighting plan submission requirement and did not find the application complete. In Saco's normal process, the Board received public comment about the application. A number of property owners spoke about the application. The Board tabled the application, providing the applicant with several items on which to follow up.

On June 10th, the applicant hosted a neighborhood meeting to discuss the proposed project. A summary of that meeting is available in tonight's meeting packet. In mid-June, Code Enforcement Director Richard Lambert, Planning & Development Director Denise Clavette, and City Planner met with Kathleen Dziadzio, an area resident who submitted several correspondence items. There is correspondence in tonight's meeting packet with some of the questions Richard Lambert checked in with City Attorney Tim Murphy about from that meeting. As a result of further review, existing conditions plan included square footage that had been removed before the non-conforming window. Therefore, Code Enforcement Director Richard Lambert requested that the applicant reduce overall habitable square footage calculated to 7,093 square feet.

To address reduced habitable square footage for, the applicant submitted revisions to reduce the number of total units from originally proposed 8 units down to 6 units. Revisions calls for four of these units to be six-month seasonal units, and two units to be year-round dwelling units. The applicant now plans to construct one, single-story structure each with three bedrooms. The structures resemble single-family homes. The applicant has also provided a lighting plan and an updated landscaping plan. The updated landscaping plan has been prepared by a landscape architect. The applicant has updated the Condo Declaration to indicate the seasonal period on site is six months, to designate which units are seasonal units, and to add requirements of the future homeowner's association to require proof of water and gas shut-off to the Code Enforcement Department by November 1st of each year.

In the City Planner's opinion, the applicant has met submission requirements to file this application. However, based on peer and staff review, there are several revisions still to be made. Additionally,

Staff recommends the Board discuss the plan, and receive public comment to gain any additional feedback on revisions that should be incorporated. Below is a list of those items the City Planner has indicated that need revision:

- Landscaping Plan: The City Planner recommended in the plan review the landscaping plan be updated per peer review comments. The applicant has responded after packet distribution with an additional update to the landscaping plan. The City Planner recommends the updated plan be sent back to Milone and MacBroom for another peer review.
- Lighting Plan: The applicant emailed an updated lighting plan this morning. This update will be sent back for peer review.
- Turning Movements: The applicant emailed updated turning movements this morning to reflect movements for 6-units. The movements were already provided for the 8-unit plan. These will be reviewed by City Staff.
- Condominium Declaration: Requested revisions were provided to the applicant, and the applicant's attorney has since spoken with the City Attorney. There were updates being made to the Declaration within the past few days.
- Existing Conditions Plan: The applicant has provided an existing conditions plan that shows structures on the site. Understanding this plan has been updated per landscaping peer review comments, it should be updated to show current conditions of the site. The structures themselves should be shown on a different plan indicating they were existing as of a certain date. The purpose of this detail is to document what was existing as of Planning Board review.

Revised plans were received on August 22nd and scheduled for this Planning Board meeting according to ordinance requirements. Letters to property owners were sent in conformance with ordinance requirements, and copies of the letters have been included in the meeting packet, for reference. The agenda was also posted in *The Journal Tribune* following ordinance requirements and in Saco's normal process.

The applicant submitted additional supplemental documentation, which was not included in the official packet for this meeting but was included in packets disseminated at the meeting.

Application Completeness: Jeff Brochu noted a concern with late submittals. Emily Cole-Prescott noted that late submittals referenced are revisions from previously submitted application materials dated August 22, 2019, and these late revisions are not considered in her recommendation of application completeness. The Board can request any revisions to materials received as part of an application to ensure compliance with ordinance standards. Joyce Leary Clark and Alyssa Bouthot both agreed that based on the checklist, the application is complete. Matt Provencal agreed, the material is submitted according to the checklist. Whether the material meets the ordinance requirements will need to be decided through the Board's review process. Jeff Brochu asked if the rear doors of the proposed units exit to ground level, and Mr. Blake replied in the affirmative. Jeff Brochu noted that a light would need to be outside that door, which is not currently included on the submitted lighting plan. The applicant said that it would be added.

Applicant Tim Swenson's attorney David Ordway; and engineer of the project, Steve Blake of BH2M, were present for this discussion.

Joyce Leary Clark moved to find the application for site plan and design review complete. Alyssa Bouthot seconded, and the motion passed 4-1, with Jeff Brochu opposed.

Applicant's Presentation: Steve Blake spoke about plan revisions and additional submitted documentation.

Public Hearing: **Jeff Brochu moved to open the public hearing. Alyssa Bouthot seconded the motion, and it carried unanimously.**

Acting Chair Don Girouard asked that each member of the public who would like to speak about the application write their name on the public hearing sign-up sheet. The following members of the public chose to speak. *Please note: The list here indicates those who spoke in favor of and in opposition to the application. Please refer to the meeting audio recording for full details.*

- *Cathy Stackpole, 7 Christopher Terrace*, spoke in opposition to the proposal: concerns about non-conforming use, seasonality, and receipt of the hearing notification.
- *Mike Roy, 28 Plymouth Drive*, spoke in opposition to the proposal: concerns about seasonality and lighting for emergency purposes.
- *Robin Roy, 28 Plymouth Drive*, spoke in opposition to the proposal: concern about how seasonality will be enforced.
- *Susan Pecora, 54 Plymouth Drive*, asked whether structures will have full basements or be built on slabs.
- *Mary Nasy, 2 Anthony Estates*, spoke in opposition to the proposal: concerns of density, parking, and seasonality.
- *Bart Wellborn, 57 Bay View Road*, spoke in opposition to the proposal.
- *Paul Trahan, representing his father-in-law, who resides at 1 Christopher Terrace*, spoke in opposition to the proposal: concerns of construction debris, and compatibility with existing neighborhood, and proximity of proposed units to his father-in-law's house.
- *Kathleen Dziadzio, 15 Plymouth Drive*, spoke in opposition to the proposal, noting concerns that this project is out of line with zoning, noting concerns of asbestos abatement, and proposed landscaping plan.
- *Bob Dziadzio, 15 Plymouth Drive*, spoke in opposition to the application: concern that proposal application is similar to a clustered subdivision.
- *PJ Lasek, 7 Christopher Terrace*, spoke in opposition, indicating there is a current structure on site and condition of this structure considered habitable space and non-conformance.
- *Kevin Roche, 18 Vines Road*, spoke in opposition to the application, noting concerns with non-conforming use as the cottages have already been removed, wants to ensure all information is considered through this review process, and noted concern about the timing of the notification.
- *Anne Cook, 6 Sherri Lane*, spoke in opposition to the application, noting concerns with zoning compliance in the R-1A district, noting concerns about potential impacts to the neighborhood, and lighting on the site.
- *Bernard Gaines, 90 Bay View Road*, spoke in favor of the application and the tax benefits it would bring to the city; believes that what is being proposed is better than what is on the parcel now and what has been there previously.
- *Neil Schuster, 433 Ferry Road*, spoke as a resident in opposition to the application, noting various concerns about the proposal that are documented in a letter he submitted for the file.

At this time in the hearing, Emily Cole-Prescott read letters submitted from property owners after the meeting packet had been posted online. Copies of these letters were available for everyone at the

meeting. Here is a list of the letters and email correspondence that was read into the record, and can be heard in full detail on the audio recording:

- Email from Kathleen Dziadzio to Councilor Copeland and a list of residents, dated 09/02/19 at 8:18 PM
- Email from Councilor Copeland to a list of residents, dated 09/02/19 at 6:59 PM
- Email from Kathleen Dziadzio to Emily Cole-Prescott, Denise Clavette, and Councilor Copeland dated 09/02/19 at 8:02 PM
- Letter (unsigned) from Kathleen Dziadzio and a list of residents to Emily Cole-Prescott with no date (attached to email indicated directly above)
- Email from Cornelia Sawyer to a list of residents, dated 09/02/19 at 8:15 PM
- Email from Cathy Stackpole to Emily Cole-Prescott, Councilor Copeland, and Kathleen Dziadzio dated 09/03/19 at 11:57
- Attachment to email indicated directly above with no date and no signature
- Email from Mary Turgeon to Emily Cole-Prescott, Councilor Copeland, and Kathleen Dziadzio dated 09/03/19 at 1:45 PM
- Letter from Mary Turgeon to Emily Cole-Prescott, Board Chairman and Planning Board members dated 09/03/19
- Peer Review Memo dated 08/26/19 from Regina Leonard, Milone and MacBroom
- Memo from Ryan Russell, Land Plans, Inc., dated 09/03/19
- Sheet 1 of 1 – Landscape & Planting Plan by Land Plans, Inc. revised through 09/03/19 with plant schedule
- Sheet 7 – Lighting Plan by BH2M revised through 08/27/19
- Turning Movement Document with no date, submitted by the applicant

Acting Chair Girouard suspended public comment at this time to receive input from Staff and Board members. He noted items that are in the Code Enforcement Department's jurisdiction and items which are in the Planning Board's purview. He then provided City staff and the applicant the opportunity to address the stormwater plan information, proximity of buildings, concerns with traffic and parking, concerns with continuation of blasting, concerns with site work near adjacent properties.

Regarding the enforcement of seasonal rental provisions, Tim Swenson, developer, indicated that there will be no daily rentals, only weekly rentals. Alyssa Bouthot asked about putting a provision about a percentage of the cottages that can be rented at any given time. Mr. Swenson replied that he had not looked into that. Don Girouard asked about provisions for subleases within the condo documents. Attorney David Ordway mentioned that the two year-round homes will add a layer of governance to the condo association. Furthermore, he mentioned that subleases will not be permitted within the condo documents. Upon inquiry about whether all 100% of the property could be rented to different parties at one time, Attorney Ordway replied that the reasonable expectation would be for year-round homes to be owned but seasonal units to be rented. Alyssa Bouthot mentioned concern that people "self-policing" the condos would be people who may not be present year-round. Don Girouard asked about providing monthly rental reports to the City of Saco about how units are being rented.

Attorney Ordway indicated there are provisions in the proposed condominium documents that require owners to provide information to the City about water and heat shut off based on seasonal restrictions. Attorney Ordway and City Attorney Tim Murphy have discussed that it would be appropriate for electricity to stay on because it will serve sump pumps, security systems, fire alarms, and the like.

Acting Chair Girouard asked Deputy Fire Chief Dave Pendleton about whether the density of the buildings is a fire hazard. Deputy Chief Pendleton responded that a building itself is not a fire hazard. Dave Pendleton recommended residential sprinklers, though acknowledges that single-family and two-family residences are not required to have sprinklers per ordinance requirement. Tim Swenson replied the proposal does not include residential sprinklers.

Jeff Brochu asked about heating and cooling plans for the units. Tim Swenson replied that his plan currently is to have mini-splits and boilers for each unit. Matt Provencal asked about the location of heating and cooling units. Tim Swenson showed the general location on the plan, near bedroom 1 on each unit. Matt Provencal asked about the noise of these units and suggested Mr. Swenson complete a decibel impact study to assess the noise levels of the heating and cooling units and the impact the noise could have on neighbors.

Regarding traffic concerns, Emily Cole-Prescott explained that the applicant had submitted traffic estimates for the originally proposed 8 dwelling units. The traffic peer reviewing engineer, who reviewed the site plans and information submitted, did not have concerns with existing traffic information provided.

To address concerns about parking, 16 parking spots total would be provided on location (though only 12 are required per ordinance), and 4 parking spots in the drive would be lined and marked as visitor parking only.

The blasting at the site is currently half complete. A pre-blast survey was conducted prior to blasting which is valid for a year from issuance. Dick Lambert, Code Enforcement Director, indicated that Tim Swenson would need to re-apply for a blasting permit, as per ordinance, blasting permits are only valid for 90 days.

Jeff Brochu asked about the reason for deep basements in seasonal homes. Tim Swenson replied that this is for mechanical storage. Jeff Brochu expressed concerns with the updated landscaping plan, revised today, which has not been peer-reviewed; and concerns about light trespass onto buffering properties, which the landscaping plan is unable to address without peer review.

Emily Cole-Prescott reiterated that the application was complete, and that the applicant has also presented revisions. These revisions do not affect completeness of the application, and it is her intention to send these last-minute revised plans back to each peer reviewer. The Department's normal process is to forward any correspondence received for the application after the meeting packet distribution, to ensure the Board has all information. This is consistent with established normal process, that has been conducted over the years.

In addition, Matt Provencal suggested that the lighting plan needs to be updated prior to the Board confirming that fixtures are acceptable, and that light pollution does not affect neighbors.

Acting Chair Girouard noted the public's concern about the proposed basement space. Dick Lambert was asked to provide information on this question.

Dick Lambert, Code Enforcement Department Director, said that the Department is trying to prevent basement space from being converted into habitable space (under the current building code, habitable

space must be under 6'8"). Number 25 in the proposed conditions of approval attempts to address further expansion of the basement or any part of the units, by stating that no expansion of habitable space is permitted (width, height, etc.)

The following people addressed the Board:

- *Paul Trahan, member of the public representing his father-in-law who lives at 1 Christopher Terrace*, said that the site is not cleaned up currently and has not been touched for months. Furthermore, there is concern that trees belonging to other properties were taken down in the clearing of this property. Mr. Trahan also expressed further concern with blasting near his father-in-law's home.
- *Ms. Cathy Stackpole* spoke, asking how the City can make the decision that this site plan continues with the non-conforming use of the property.
- *Mary Nasse, 2 Anthony Estate*, cited the memo from Dick Lambert to Emily Cole-Prescott which states the blasting will occur within "inches of the property line."
- *Dick Lambert* responded to this concern through the Acting Chair, stating that he misspoke, he meant to write "inches of the setback line," which is approximately 20 feet from the property line according to the plans submitted by the applicant.
- *Ms. Nasse* also expressed concerns with the city "bending over backwards to help the developer." Also expressed concerns with the attic and why that would be a necessity in a seasonal home. She expressed her opinion that the burden is being put on the abutters to monitor this process and feels that a decision has already been made by the Planning Board and City staff.
- *Neil Schuster*, speaking as a member of the public, expressed that the biggest concern here should be helping the abutters and that a non-conforming use should have non-conforming conditions of approval, meaning that the Planning Board should use their discretion and jurisdiction in conditioning this review for this property. Expressed that the last-minute submissions are out-of-order. Expressed concern with electricity staying on through the off-season, as that can provide heating and the like, potentially leading to use outside of the season. The Planning Board has the authority to condition additional parking, and Mr. Schuster hopes the Board will take into consideration that these are seasonal rentals. This should not be a gated community similar to Mr. Swenson's development at the other end of the beach, nor should it have the ability to become one, and that should be an added condition.

Jeff Brochu moved to suspend the public hearing to continue to a future meeting date. Alyssa Bouthot seconded the motion. Jeff Brochu withdrew the motion, and Alyssa Bouthot withdrew the second.

Discussion: The Board discussed several concerns that had been raised. One of the concerns is the "self-policing" nature of the proposal, which will need to be addressed when the applicant returns. Jeff Brochu suggested that the Board put a condition on the approval that states that the units will be for seasonal use but cannot be rentals.

City Attorney Tim Murphy was asked to speak to the Board, to clarify questions of the non-conforming habitable space square footage. City Attorney Tim Murphy addressed the Board, answering questions about how the non-conformance question was considered by the Code Enforcement Director with City Attorney Tim Murphy's legal opinion(s). City Attorney Tim Murphy reviewed with the Planning Board that there are various items which the Board can condition, which appropriately fall under their authority within the site plan review standards.

Emily Cole-Prescott explained that items which can be conditioned will be based on those ordinances for which the applicant is under application review – site plan and design review. Other ordinances relative to other types of applications are not applicable.

Alyssa Bouthot suggested that there are varying ways that the Board could condition the units in terms of how they are rented, such as a monthly or weekly minimum for rentals. Ms. Bouthot pointed out that the way that the application is written currently suggests that all six units could be potentially non-owner occupied all at once. She wants the rental and “self-policing” aspect of the condo association to be more regulated. Matt Provencal suggested having one entity (such as a property management company) to control all of the rental aspects of the units.

To further ensure seasonality, Matt Provencal suggested that the basements be non-insulated so that they are only for storing gear and cannot be used as habitable space. Parking and lighting details also need to be revised. Joyce Leary Clark said that she was leaning toward conditioning that no basement be allowed.

Jeff Brochu suggested a potential condition that boiler and mini-splits not be permitted. The Board also briefly discussed having electricity turned off in the units as well. Attorney Ordway, representing the applicant, responded through the Chair that this is a safety concern relative to outdoor lighting.

Alyssa Bouthot suggested a site walk. The site walk was scheduled for Tuesday, September 17th at 5 PM at 60 Bay View Road. Emily Cole-Prescott reviewed the rules of a site walk for the Board and the public. Notification is not sent to property owners for a site walk, and public comment is not received during site walks.

Joyce Leary Clark moved to continue this hearing to a later meeting date. Alyssa Bouthot seconded the motion, and it carried unanimously.

- b. Continued Application Review & Public Hearing: 4 Cascade Road (Map 62 Lot 1-4): Site Plan & Design Review – 6,000 square ft. commercial structure with associated site improvements
 - Applicant: Amari Holdings LLC
 - Zone: MU-3 & Cascade Contract Zone

Tabled until the September 17, 2019 meeting.