

Minutes
Planning Board Meeting
April 5, 2016

Members Present: Neil Schuster, Chairperson, Don Girouard, Donna Bailey, Marty Devlin. Absent: Rene Ittenbach, Michael O'Toole, and Peter Scontras.

Workshop 5:00 p.m.

Neal Campbell, Dan Bisson of CDM Smith gave an overview of the report they did for the draft Utilities Expansion plan for Saco. The report will be reviewed by the City Council in the near future.

Regular Meeting 6:30 p.m.

1. Minutes of March 15, 2016

Don: I move to accept the minutes as written, seconded by Donna. Motion passes. 4-0

2. Public Hearing: Conditional use and Site plan review, and review under Sections 504-4 and 713 of the Zoning Ordinance, of a proposed Office and Residential use at 42 Fairfield Street. Applicant is Thornton Academy. Tax Map 39, Lot 199. Zoned R-1b.

Hamblen: Applicant Thornton Academy proposes to demolish the house and barn at 42 Fairfield Street and construct a new house and attached garage. The first floor would be office space; the second, an apartment for school staff. The review process includes a few steps:

- Site plan review will be necessary due to Sec. 713(6): offices in residential districts are subject to site plan review.
- Offices which fall under Sec. 713 in the R-1b zone are a conditional use.
- Sec. 713 also requires the new building to be subject to design review.
- Finally, the building is a nonconforming structure on a nonconforming lot. The new building can, under Sec. 504-2, be built but must reduce the setback nonconformities to the greatest extent practical, as determined by the Board;

Board members may be aware that the property was acquired by the City in 2015 due to the non-payment of taxes, and purchased by T.A. in December of last year. The building has been evaluated, and the decision made to demolish and replace with a new structure. The building is circa 1900 according to tax records, and has been allowed to deteriorate.

Lyndon Keck of the Portland Design Team is the project manager. Re: completeness of the conditional use application, a few items are not applicable. Otherwise the application is complete.

Don: I move that the Board find the application for conditional use review to be complete, seconded by Donna. Motion passes 4-0.

Site plan review: the applicant has not submitted a few items, none of which are critical to arriving at a determination on the application. Waivers requested are as follows:

1104-1. 2(e) zoning classification of the property
18. Lighting plan

Don: Move to waive submission requirements 1104-1.2(e) and 1104-1.18 due to the nature of the project being such as to make the information unnecessary, seconded by Marty. Motion passes 4-0.

Don: Motion to find the application for site plan review complete, seconded by Donna. Motion passes 4-0.

Section 713 of the Zoning Ordinance allows offices to be established in residential zones, but only in converted residential structures so as to maintain residential character.

The HPC reviewed the project on March 23. They met on site, but decided not to enter the building due to its deteriorated condition. Photos were provided of the interior. The HPC "... voted to recommend that the proposed demolition and replacement project be allowed to move forward based on the application submitted, the standards found in Section 713 and 413.11(5) of the Zoning Ordinance, and the finding that the existing house and barn are not contributing structures in the historic district, nor are they an historic landmark or a historic site."

Code Enforcement Officer Richard Lambert's input on the building's condition was provided to the HPC prior to its meeting as noted:

"I read Lyndon's letter and fully agree with his analysis of the present building. The barn is in very poor condition and appears to be in danger of collapse. The remainder of the building lacks maintenance and has been vacant for some time. The building's plumbing was not winterized and will need to be completely redone. The status of the central heating system is questionable as the former residents heated the home with an improperly installed wood stove in the kitchen. The electrical system is outdated and requires replacement. I am not an expert in architecture but there doesn't seem to be any distinguishing features on the structure that would indicate that it is contributing to the historical character of the neighborhood."

On June 7, 1994 the Planning Board approved the construction of a 41,000 s.f. Arts Center providing space for an auditorium, library, cafeteria and classrooms. Due to the scope of the addition and the amount of impervious surface that had been created since 1970, with that project the campus became subject to the DEP Site Location of Development Law. The approval granted by the City encompassed both site plan review and Site Location review, one of the early projects approved by the City under its Delegated Review Authority.

In 2001, T.A. proposed replacement of the field house adjacent to the football field. That was reviewed as an amendment to the earlier approvals, as was the middle school project and Clark Street parking lot expansion in 2006, the science building parking lot in 2007, the Nelson and Stasio Hall dorm projects in 2008 and 2011, field house modifications in 2010, the middle school expansion in June, 2014, the Scamman science building expansion in October, 2014, and of course the third dorm building approved by the Board on March 1, 2016.

The DEP has confirmed that it regards the acquisition of the 42 Fairfield Street property as a minor revision of the development boundary, and leaves it to the City/Board to review as a minor amendment to the Site Law permit.

The applicant proposes to remove the existing buildings, house and barn, and replace with a new primary building and attached garage. The existing structures are nonconforming due to setbacks in the front and on both sides. The structures can be removed and replaced as stated in Sec. 504-2. See draft Findings for existing and proposed setbacks – the final result would be a clear improvement.

504-2. RECONSTRUCTION

Any non-conforming building or structure which is removed, damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction or removal, and provided that such reconstruction or replacement is in compliance with all dimensional requirements of this Ordinance to the greatest extent practical as determined by the Planning Board in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.

The applicant proposes to maintain the existing 'street wall' based on the front setback of existing, neighboring structures. See 'Existing' and 'Proposed' site plans showing neighboring dwellings and their consistently nonconforming front setback – but it works! It's simply how houses were situated on Fairfield Street a century ago. This is not the Board's to determine – “The Building Inspector shall be authorized to waive minimum yard requirements and to issue a building permit without a variance...” – but to address any concerns about the proposed front setback of six feet, we include this mention.

2) Along existing residential streets which were developed prior to enactment of the present front yard requirements, a single family detached dwelling, a two-family dwelling, or an addition to either, other than a garage or car port, may be permitted to be built with a front setback equal to the average front setbacks of the existing houses on the immediately adjacent lots. However, in no case shall new construction be allowed closer than 15 feet from the front lot line, without a variance.

Lyndon Keck, PDT Architects: The existing building footprint is 1,415 s.f. The new footprint with a garage will be 1,804 s.f. The height on the new building will be 30ft compared to the existing 26 ft high, although lowering the grading around the building will bring the top of the roof down to a similar height to the peak currently. We are asking that the front face of the building match the front face of the two structures on either side of 42 Fairfield. The existing building will be demolished. The existing grading around the house will be lowered approximately 3-4ft to closely match the grading of the adjacent properties.

The existing house has been covered with vinyl siding and has no distinctive architectural features, other than turned porch posts and eight period porch column brackets, which they plan to save, refinish, and use on the new building. There are 4 parking spaces, plus 2 more in the garage, plus overage parking in the large TA parking lot. The building is designed with one upstairs apartment and a small business office for TA on the lower level. The downstairs office has been designed so it can be easily converted to a second apartment on the first floor. There will be two small exterior porch roofs covering the three main entrances into the building. The porch on the Fairfield Street elevation will have new turned wood columns with eight restored brackets reinstalled on the porch roof. There is a small porch roof with two restored brackets on the east elevation of the house.

Don: Does the zoning ordinance allow for office space parking in the large parking lot? **Bob:** He read the Sec. 708-3-2 where it does allow if the parking lot is within 500ft, which it is.

Donna asked for clarification on how this new building will be less “non-conforming”. **Lyndon:** The zoning ordinance allows one to bring the front setback even with the houses on either side.

Don: I move to open the public hearing, seconded by Marty. Motion passes 4-0. No comments were made. **Donna:** I move to close the public hearing, seconded by Marty. Motion passes 4-0.

Donna: I move that the Board grant approval under the provisions of the Saco Zoning Ordinance, Article 9, Conditional Uses, for the proposed Office use which complies with the standards found in Section 713 of the Zoning Ordinance, seconded by Marty. Motion passes 4-0.

Donna: I move that the Board find the proposed replacement of the existing structures is in compliance with all dimensional requirements of this Ordinance to the greatest extent practical in accordance with the purposes of this Ordinance, seconded by Marty. Motion passes 4-0.

Donna: I move that the Board grant approval under the provisions of the Saco Zoning Ordinance, Section 713, Offices in Residential Districts, and of Article 11, Site Plan Review, and under the provisions of the Site Location of Development Law for the removal and replacement of the structures at 42 Fairfield Street, as proposed by Thornton Academy, based on the Conditions of Approval and Findings of Fact dated April 5, 2016, seconded by Marty. Motion passes, 4-0.

- 3. Public Hearing: Review of a proposed 46 space parking expansion at Prime Toyota, 783 Portland Road, which would amend the 2008 site plan and Site Location of Development approvals. Applicant is Prime Toyota-Hyundai. Tax Map 44, Lot 4. Zoned B-6.**

Hamblen: Prime Toyota proposes to add 46 parking spaces for both storing inventory and employee parking. The dealership was approved by the Board on May 1, 2007, subject to a conditional use permit for an Automobile Dealer use, site plan review, and Site Location of Development review.

The 2007 approval included a 39,627 s.f. building, 497 parking spaces, a stormwater management system, lighting, landscaping and signage. The applicant returned to the Board in November 2012 seeking an amendment to the site plan: 1,750 additional square feet of floor space and 16 additional parking spaces. The amendment resulted in approximately 0.22 acres of new impervious area, bringing the site total to 6.97 acres. As noted on the current amended plan, the additional floor space has not been built.

An N.R.P.A. Tier 1 wetlands alteration permit was issued in 2007 by the Maine DEP for the alteration of approximately 13,899 s.f. of wetlands. No wetlands were impacted by the 2012 amendment. Another 1,005 s.f. of wetlands would be impacted with the current amendment, bringing the total up to 14,894 s.f. The Tier 1 application has been submitted to the DEP.

Site Plan Review: the applicant has submitted a copy of the Tier 1 permit application for wetlands; it has yet to be issued by the DEP. The conditions of approval require this prior to site work commencing. A waiver was granted by the Board for a hydrogeologic assessment in 2007. All other items have been submitted as part of either or both the 2007 and 2012 reviews, or are part of the current amendment request.

Don: I move that the Board find the application for site plan review to be complete, seconded by Marty. Motion passes, 4-0.

Paul Ostrowski, Sebago Technics: They plan to expand the parking to add 46 parking spaces. The proposed expansion will result in approximately 11,000 s.f. of newly created non-vegetated surface for a cumulative total of 7.15 acres of non-vegetated surface, which exceeds the Maine DEP's threshold for Delegated Review. Through correspondence with the Southern Maine Regional MDEP office, the City can maintain delegated review of this project. A Tier 1 NRPA permit application will be filed with MDEP for approx. 1005 sq.ft. of wetland fill when combined with the previously approved wetland fill of 13,889 sq.ft, which will result in a cumulative total of 14,894 sq.ft., which is still categorized as a Tier 1.

Marty: I move to open the public hearing, seconded by Donna. Motion passes 4-0. No comments were made.

Marty: I move to close the public hearing, seconded by Donna. Motion passes, 4-0.

Don: I move that the Board grant approval for the proposed site plan amendment and for the minor modification of the Site Location of Development permit for the parcel at 783 Portland Road, based on the application submitted by Prime Toyota-Hyundai, and based on the Findings of Fact and Conditions of Approval dated March 5, 2016, with the added conditions that Joe Laverriere's comments of April 5 and Stantec's comments of March 29 be found acceptable to City staff, seconded by Donna. Motion passes, 4-0.

4. **Public Hearing: Proposed amendments to Articles 9, 10, and 11 of the Zoning Ordinance related to procedures and appeals. Item was tabled at the March 15 meeting.**

Hamblen: As the Board is aware, City Attorney Tim Murphy has taken on amending portions of Articles 9, 10 and 11 of the Zoning Ordinance in response to concerns generated by the appeal of the Bill Dodge Nissan site plan. The Board tabled further consideration at the March 15 meeting in order for Tim to incorporate some added suggestions provided by Don Girouard.

The updated amendments are noted. See in particular the Feb. 26 e-mail from Dick Lambert, where he discusses the length of the appeal period – he opts for thirty (30) days. And, would like to see the appeal period consistent for each of the situations: conditional use, variance, and site plan. To some extent, it's a matter of fairness to the applicant. Must he/she wait 30 days, or 45 days until he/she can regard the Board's action as final, and proceed with a project? I, too, would recommend the 30 day period as being adequate for both applicant and parties with standing. The 30 day period has worked for several years for all three actions, and staff is not aware of any instances where a longer appeal period would have made a significant difference.

Article 9 Conditional Uses and Variances

(Amended 6/18/87)

Section 901. Conditional Uses

901-1. CONDITIONAL USE PERMIT REQUIRED (Amended 11/6/89; 10/4/93)

A building, structure or parcel of land may be employed for a conditional use, as defined in Article 3, if the Planning Office finds the use meets the application standards of Section 901-12 below, or if the Planning Board finds that the use meets the standards of Section 901-4, that it meets any special standards of the zoning ordinance, and is of one of the following four types of conditional uses:

- a. All existing physical features on the site and within two hundred (200) feet of the site, including streams, watercourses and existing woodlands. Soil conditions as reflected by a medium intensity survey (such as wetlands, rock ledge, and areas of high water table) shall be shown, and the Planning Office or Planning Board may require a high intensity soils survey where necessary. The applicant shall provide, as part of the application, a narrative and sketch sufficient to describe trees and other vegetation located on the site. The Planning Office or Planning Board may require mapping of trees proposed to be preserved as part of site and landscaping plans presented for approval.
 - b. Topography showing existing and proposed contours at five (5) foot intervals for slopes averaging five percent (5%) or greater and at two (2) foot intervals for land of lesser slope. A reference benchmark shall be clearly designated. Where variations in the topography may affect the layout of buildings and roads, the Planning Office or Planning Board may require that the topographic maps be based on an on-site survey.
2. Where the Planning Board (or the Planning Office in case of minor conditional uses as provided below in Section 901-12) finds that, due to special circumstances of a particular plan, the submission of required exhibits is not necessary or is inappropriate because of the nature of the proposed development, it may waive such requirements subject to appropriate conditions. The Planning Board or Planning Office may require submission of such additional information as it deems necessary for proper review. A written request for such a waiver shall accompany the application.
 3. The purpose of these provisions is to ensure that all required information is presented to the Planning

Board or Planning Office when it initially reviews an application. However, an application is not deemed to be complete until declared to be so by decision of the Planning Office in the case of minor conditional use applications as provided below in Section 901-12, or by vote of the Planning Board, which may, in any case, request additional information and materials beyond those described in subsection 1.

901-3. HEARING REQUIRED (Amended 10/4/93)

1. For each application for a conditional use permit, except those reviewed pursuant to Section 901-12 the Planning Board shall conduct a public hearing.

901-5. ADDITIONAL STANDARDS IN RESOURCE PROTECTION, SACO RIVER AND SHORELAND AREAS

901-6. CONDITIONS OF APPROVAL

The Planning Board, and in the case of minor conditional uses the Planning Office, may attach such conditions, in addition to those required elsewhere in this Ordinance, that it finds necessary to further the purposes of this Ordinance. Violation of any of these conditions shall be a violation of this Ordinance. Such conditions may include, but are not limited to, specifications for: type of vegetation, specified sewage disposal and water supply facilities, landscaping and planting screens, period of operation, operational controls, professional inspection and maintenance, sureties, deed restrictions, restrictive covenants, type of construction, or any other reasonable conditions necessary to fulfill the purposes of this Ordinance.

901-7. LIMITS ON CONDITIONAL USE PERMITS

Work or construction, or occupancy if no construction is involved shall commence within twelve (12) months of the ~~Planning Board's~~ issuance of a conditional use permit. If work or occupancy is not commenced within this period, the conditional use permit shall be null and void. The deadline may be extended for one additional six (6) month period by the Planning Board, or the Planning Office in the case of minor conditional uses, upon the written request of the applicant. The written request for an extension must be submitted before the date of expiration of the conditional use permit. After the conditional use permit has expired or an extension is denied by the Planning Board, the applicant may reapply for a conditional use permit at any time without prejudice.

~~Requests for extensions shall be approved unless one or more of the following occurs. The Planning Board shall approve the request for an extension unless the Board has become aware of one of the following:~~

901-8. REAPPLICATION

If ~~the Planning Board shall deny~~ a conditional use permit is denied, a second request of a similar nature shall not be ~~resubmitted~~ ~~brought before the Board~~ within two years from the date of the first request, unless in the opinion of the majority of the Planning Board, (or by the Planning Office in the case of minor conditional use) substantial new evidence can be brought forward, or unless the Board or the Planning Office finds, in its sole judgment, that an error of law or misunderstanding of facts has been made, or unless amendment has been made to the Zoning Ordinance which changes the status, circumstances, or conditions of the application which was originally submitted. ~~matter which was brought before the Board.~~

901-9. ~~EXPIRATION~~ DURATION OF CONDITIONAL USE PERMIT

Provided all conditions and standards of approval are met, including Section 901-7 and/or Section 901-12, a conditional use permit issued under this Article authorizes only the particular activity for which it was issued and based upon a plan for such activity which was approved ~~by the Planning Board.~~

permit shall automatically expire and cease to be of any force or effect if such use is discontinued for a period of 12 consecutive months. (Amended 9/18/89; 10/4/93)

901-10. APPEALS

~~Decisions on minor conditional uses made by the Planning Office may be appealed by an aggrieved party to the Planning Board within 30 days of the date of the decision. This review by the Planning Board shall be de novo and may include new evidence and testimony. A~~ Decisions by the Planning Board regarding a minor conditional use application or regarding an application for a conditional use permit may be appealed by an aggrieved party, in writing to the Zoning Board of Appeals, within 30 days of the Planning Board's decision. The Zoning Board of Appeals may reverse the Planning Board's decision only upon a finding that there has been an abuse of discretion, an error of law or that there are not substantial facts leading to the record to support the decision of the Planning Board ~~were erroneous~~. The review shall not be de novo.

~~Appeals of decisions on minor conditional uses shall be made to the Planning Board within 30 days of the date of the decision. This appeal may include new evidence and testimony.~~

901-11. NON-CONFORMANCE

Conditional uses are permitted in buildings which are legally non-conforming in respect to the standards of Table 412-1 of this ordinance upon a decision of the Planning Office, or finding by the Planning Board that this non-conformance does not cause the use to violate any of the conditional use standards or special standards of Article 7 for certain conditional uses. (Amended 10/4/93)

901-12. MINOR CONDITIONAL USES

In order to process applications more efficiently, certain conditional uses, due to the limited nature of the proposed use, may be reviewed by the Planning Office, as authorized in M.R.S.A. Title 30-A § 4353. The Planning Office may, however, decline review an application requesting approval for a minor conditional use, and forward such application to the Planning Board. Only uses that meet all of the following applicability standards may be reviewed as minor conditional uses:

1. Criteria for Approval

Minor Conditional Use applications shall be approved, or approved with conditions, by the Planning Office unless the proposed use does not satisfy the approval criteria in Section 901-4, or other relevant sections of the Zoning Ordinance, or other local, State and federal laws. Notice of decisions by the Planning Office shall be provided to those parties detailed above in Section 901-12 (2). If in the opinion of the Planning Office, an application does not meet the ~~approval-applicability~~ criteria set out in Section 901-12 (1), then the application shall be referred to the Planning Board for a full conditional use review

Article 10 - Board of Appeals

Section 1002. Terms of Office; Vacancies

1002-2 VACANCIES

1. Vacancies on the Board shall be created under any of the following circumstances:
 - a.) A member submits ~~his~~ their resignation in writing to the Mayor
 - d.) A member fails to attend three or more consecutive ~~hearings-meetings~~ of the Board, without being excused by the Board
2. In the case of vacancies occurring in the manner described in paragraph (d) above, the Chairman of the Zoning Board of Appeals shall first contract the absent member

to determine ~~his~~ their ability to attend future hearings on a regular basis, and the Board shall then recommend appropriate action to the City Council.

Section 1003. Powers and Duties

The Zoning Board of Appeals, ~~after public hearing and by a majority vote of its members, shall have the following powers and duties~~ shall hear the following matters:

1003-1. ADMINISTRATIVE APPEALS.

~~To affirm, modify, or set aside the action of the Building Inspector in issuing or denying building permits or certificates of occupancy when it is alleged that the action is based on an erroneous interpretation of this Ordinance.~~

An aggrieved party may appeal a decision of the Code Enforcement Officer regarding a zoning violation, a building permit or a certificate of occupancy in those cases where it is alleged the Code Enforcement Officer has made an error of law, or has abused their discretion, or the evidence of record compelled a different decision. An aggrieved party may ~~directly appeal~~ also appeal to the Board if a permit holder has meaningfully exceeded the authority contained in their building permit or their certificate of occupancy. Any appeal filed hereunder must be, ~~provided such appeal is brought within 4530 days of the alleged act, or action~~ or failure to act. This provision is intended to effectuate process set out by the Legislature in Title 30-A, Section 2691 (4). The appeal review shall be de novo as set out below in Section 1004-6. ~~A decision made by the Code Enforcement Officer~~

~~not to commence or file a land use enforcement action is a non-appealable exercise of the Code Enforcement Officer's prosecutorial discretion.~~

1003-2. PLANNING BOARD APPEALS.

To hear appeals of decisions by the Planning Board on applications for conditional use permits, subject to the limitations of Section 901 of this Ordinance, Pursuant to Section 901-10, the appeal review shall not be de novo. The Zoning Board shall not, however, have jurisdiction or authority to hear appeals from site plan decisions made by either the Planning Board or the City Planner. Pursuant to Section 901-10, the appeal review shall not be de novo.

1003-3. IN GENERAL; VARIANCES FROM DECISIONS BY CODE ENFORCEMENT.

The Board shall have authority to ~~To~~ approve, approve with conditions, or ~~deny~~ approve applicationseals for variances from decisions made by the Code Enforcement Officer regarding standards of this Ordinance as allowed under Section 902. ~~the strict enforcement of the provisions of this Ordinance as they relate to the space and bulk requirements of the district regulations, according to the standards set forth in Article IX~~

of this Ordinance. The review conducted by the Board on such variances shall be de novo as set out below in Section 1004-6.

All variances, including those described here, and in Sections 1003-4 and 1003-6 below, shall meet the requirements and conditions set out in Section 902, ~~and to approve, approve with conditions or disapprove~~ appeals for variances under Section 413-13. (Amended 3/2/87)

1003-4. (Reserved) VARIANCES FROM HISTORIC PRESERVATION CONDITIONS.

The Board shall have authority to approve, approve with conditions, or deny applications for variances as further detailed in Section 413-13 of this Ordinance. The review conducted by the Board shall be de novo as set out below in Section 1004-6 below

1003-6. SHORELAND AND NATURAL RESOURCE DISTRICT VARIANCES

The Board shall have authority to approve, approve with conditions, or deny applications for a variance from Shoreland and Natural Resource standards set out in Section 7.1-1 of this Ordinance. The review conducted by the Board shall be de novo as set out in Section 1004-6 below.

1. Appeal Procedure

a. Making an Appeal from a decision of the Code Enforcement Officer (1)

An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from.

- (2) Such appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes:
 - (i) A concise written statement indicating what relief is requested and why it should be granted.
 - (ii) A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
 - (iii) A demarcation on the sketch showing low tide and mean high tide and designating the 100-year flood area.
- (3) Upon being notified of an appeal, the Code Enforcement Officer shall transmit to the Board of Appeals all of the papers constituting the record of the decision
- (4) The Board of Appeals shall hold a public hearing on the appeal within thirty five (35) days of its receipt of an appeal request.

b. Making an Appeal from the Planning Board.

An appeal of a decision by the Planning Board shall be to Superior Court within thirty (30) days of the date of decision appealed from.

c. Standing and Time for an Appeal to Superior Court

Any aggrieved party who participated as a party during the proceedings before

~~the Board of Appeals or the Planning Board may take an appeal to Superior Court in accordance with State laws within thirty (30) days from the date of issuance of a written decision of the Board of Appeals or Planning Board as appropriate. (Amended 4-21-92)~~

Section 1004. Procedures

1004-1. DENIAL OF BUILDING PERMIT.

All applicants for building permits denied for any reason shall be advised in writing of the right of appeal.

1004-2. APPLICATION FOR A VARIANCE AND FILING OF AN APPEAL.

- (1) An appeal or application for a variance shall be commenced as set forth below in Section 1004-4.
- (2) Such appeal or application for a variance shall include the following information:
 - (i) A concise written statement indicating what relief is requested and why it should be granted.
 - (ii) A description of the regulation, ordinance provision, or permit that is subject to review or from which relief is requested.
 - (iii) A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
 - (iv) If applicable, a demarcation on the sketch showing low tide and mean high tide and designating the 100 year flood area, any applicable wetlands, shorelines, or other pertinent natural features.
 - (v) If applicable, color pictures of the exterior features at issue if the appeal or variance is of, or concerns, a structure found in the Historic District.
- (3) Upon being notified of an appeal or of an application for a variance, the Code Enforcement Officer and the Board Clerk shall arrange to secure and transmit to the Board all of the papers and evidence constituting the record of the decision that is to be reviewed.

1004-~~31~~32. PUBLIC HEARING REQUIRED

Article 10 - Board of Appeals

1. For all appeals from decisions of the Building Inspector, for all requests for any variance, and for for consideration of application for permits authorized by the Zoning Ordinance, or from review of the decisions of the Planning Board on applications for conditional use permits, the Board of Appeals shall hold a public hearing, but the Board shall only take and hear new evidence or testimony in those matters where de novo review is expressly permitted.- The Hearing shall be held within 35 days of the receipt of an appeal or application for variance.
2. The Board ~~of Appeals~~ shall cause public notice to be posted and published in both the city building and at least one newspaper of circulation in the area, of any public hearing which the Board shall conduct, indicating the property involved, the nature of the appeal, and the time and place of the public hearing.
3. The Board shall also cause to have notified all property owners of within six hundred (600) feet of the property when the applicant's property is located in the Conservation District, and Industrial District or R-1, R-2, and R-4 Districts and within 200 feet when the applicant's property is located in the R-3 District or any business district. The Board shall cause a list of such property owners to be drawn off from the Assessor's records, and such notices to property owners shall be sent by mail at least seven (7) days prior to the date set for the public hearing.
4. The Board ~~of Appeals~~ shall not continue hearings to a future date except for good cause. Written notice of the decision of the Board shall be sent to the appellant and the Building Inspector.

1004-43. TIME FOR APPEAL, FORMS AND FEES.

When a person is aggrieved by a decision of the Building Inspector, by a decision of the Historic Preservation Commission, or by a decision of the Planning Board, if an appeal or variance application is authorized elsewhere under this Ordinance, ~~the aggrieved~~ person must file their appeal or variance application within thirty (30) days of the day the decision was rendered. Appeals and applications for variance must be filed with the Clerk of the ~~Zoning Board of Appeals~~ on those application forms provided for that purpose by the Clerk of the ~~Zoning Board of Appeals~~. The Clerk of the ~~Zoning Board of Appeals~~, after receiving the application and stamping the date of receipt shall transmit the application to the Board of Appeals.

Any appeal or application for variance to the Board of Appeals shall be accompanied by a fee as established by the City Council. (Amended 4-3-86)

1004-65. SUBMISSION OF EVIDENCE.

Provided the Board's review is not otherwise limited by this Ordinance including Section 1003-2 and 1003-5, ~~¶~~the Board may receive any oral or documentary evidence including new evidence and testimony, but shall provide as a matter of policy for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. Every party shall have the right to present his own case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

1004-76. ~~1004-4~~ PRESENCE OF ~~BUILDING INSPECTOR~~ CODE ENFORCEMENT OFFICER.

The ~~Building Inspector~~ Code Enforcement Officer, unless prevented by illness or absence from the state, shall attend all hearings and shall present to the Board of Appeals all plans, photographs or other factual material that is appropriate to an understanding of the appeal.

1004-87. CONFLICT OF INTEREST.

No member of the Board shall vote on a matter in which ~~he has~~ they have a direct or indirect financial or personal interest. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is either requesting a decision, or who is being challenged.

1004-98. RECORDS AND DECISIONS

1.

Article 11 Site Plan Review

Section 1102: Administration

1. The Planning Board shall act to approve, approve with modifications or conditions, or disapprove the site plan within thirty (30) days of the close of the public hearing, or by a date mutually agreeable with the applicant.

The City Planner shall approve, approve with modifications or conditions, or deny the site plan within fifteen (15) working days of receiving a complete plan. The City Planner shall consider comments from all applicable City departments during the course of plan review. If the City Planner has not acted within fifteen (15) working days the applicant may seek approval from the Planning Board, rather than the City Planner. Inaction by the City Planner does not constitute approval or disapproval of the plan. If ~~the applicant~~ a party is not satisfied with the determination of the City Planner, ~~the applicant shall be permitted to have the entire application reviewed by~~ the aggrieved party may appeal the decision to the Planning Board. The City Planner can decline review, for any reason, and forward ~~any~~ minor site plan to the Planning Board for site plan review. Any minor plan that also requires conditional use, subdivision, or any other review by the Planning Board, shall be reviewed by the Planning Board. The City Planner shall, within 30 days, inform the Planning Board and abutters after making a determination on a minor site plan. Any appeal from a determination of the City Planner to the Planning Board shall be governed by Section 1114 hereinbelow.

Section 1109. Changes in Plan

Any proposed significant change to a major site plan must be reviewed and approved by the Planning Board at public hearing, and no action may be taken without all parties having notice and opportunity to present evidence and argument. Any proposed minor change to a major site plan, and any proposed changes of any nature in minor site plans, and any other decisions expressly delegated to the City Planner as part of a plan approval, may be reviewed and approved by the City Planner without further public hearing but notice of decisions by the City Planner shall be sent within 30 days to all previously noticed parties, including abutters, to assure appeal rights under Section 1114 below. Examples of minor changes include but not limited to: changes in the record owner, altering phases of development, the addition or alteration of minor site features such as lighting, signs or other similar amenities, the timing or scheduling of building or site work if necessitated by cold weather. The decision as to what constitutes a minor change shall be made by the City Planner, and the decision is presumed to be reasonable until established otherwise.

~~Article 11 Site Plan Review~~
~~Construction not performed according to the approved plan or in violation of any approved conditions placed on a plan shall be a violation of this ordinance. Any changes in the plan after approval must be approved by the Planning Board, or in the case of a minor site plan, the City Planner. Minor changes during construction can be approved by the City Planner. Construction not performed according to the approved plan or the violation of any conditions placed on the plan shall be a violation of this Ordinance.~~

Section 1111. Time Limits on Site Plan Approvals

If substantial construction is not commenced within twelve (12) ~~months~~ months of the Planning Board's approval of a site plan, the site plan approval shall be null and void. Substantial construction shall mean the completion of a foundation, addition, or other evidence satisfactory to the Planning Department. The deadline may be extended for two additional twelve (12) month periods by the City Planner upon the written request of the applicant. The written request for an extension must be submitted before the date of expiration of the site plan approval. After the site plan approval has expired or an extension denied by the City Planner, the applicant may reapply for site plan review at any time without prejudice. (Amended 7/16/12)

Section 1114. Appeals

The exclusive remedy from decisions of the Planning Board on site plans ~~applications and revocations (both major and minor)~~ is an appeal to Superior Court under Rule 80B of the Maine Rules of Civil Procedure, ~~or any successor rule or statute~~. Appeals of decisions ~~on minor site plans by the City Planner as to major or minor site plans, including plan changes proposed during construction pursuant to Section 1109,~~ shall be made to the Planning Board within 30 days of the date of the decision. ~~This~~ The review and appeal from decisions of the City Planner shall be conducted as a de novo matter, and the Board parties may include hear and take new evidence and testimony. (Amended 2/19/02)

Donna: Will Tim Murphy's table be added to the zoning ordinance? I think it would be very helpful and informative. Maybe it could be added to the existing table? **Don:** Did Tim add ZBA to remand to the planning board to reconsider? **Bob:** Sec. 901-10. It doesn't look like he added it. **Don:** It's not that critical. **Donna:** I think they should have that option to remand.

Marty: I move to open the public hearing, seconded by Donna. Motion passes 4-0.

Elizabeth DeSimone, 220 Ferry Road: Will notices to affected parties be sent first class mail? **Bob:** Discretion is given to the Planner. He can make minor changes, but affected parties would be notified under the proposed amendments.

Donna: I move to close the public hearing, seconded by Marty. Motion passes 4-0.

Article 11 - Site Plan Review

Don: I move to forward a positive recommendation to the City Council, with changes to Sec. 901-10, that Tim Murphy develop language for remand, also to Sec. 1003-1 that the appeal period be dropped back to 30 days, seconded by Donna. Motion passes. 4-0

Meeting adjourned at 7:30pm

Respectfully submitted by,

Maggie Edwards
Board Secretary