



CITY OF SACO, MAINE

Planning
Saco City Hall
300 Main Street
Saco, Maine 04072-1538

Robert Hamblen, City Planner
Telephone: (207) 282-3487
Email: BHamblen@sacomaine.org
Facebook: [/sacomaine](https://www.facebook.com/sacomaine)
Twitter: [@sacomaine](https://twitter.com/sacomaine)

Minutes
Planning Board
October 17, 2017
City Hall Conference Room

Attendance Record

✓ = Present / A = Absent / E = Excused

- | | |
|----------------------------|--------------------------------|
| ✓ Neil Schuster, Chair | |
| ✓ Don Girouard, Vice-Chair | |
| E Michael O'Toole | ✓ Vangel Cotsis (arrived 5:10) |
| ✓ Rene Ittenbach | E Marty Devlin |
| | ✓ Peter Scontras |

NOTE: Meeting is audio recorded. These audio records will be posted on the City's website and available for public review within one week of the meeting.

5:00 p.m.
Regular Meeting

1. Minutes of September 19, 2017 – no minutes were available.
2. Public Hearing: proposed amendment of the Mill Brook Business Park subdivision plan. Applicant is City of Saco. Tax Map 45. Zoned I-3.

Hamblen: The Mill Brook Business Park was approved on August 3, 2004, and construction of Mill Brook Road was completed over the next year. The City Council voted on Feb. 22, 2011 to accept Mill Brook Road as a City street. The 70 foot wide strip of land between lots 3 and 4 was not part of that acceptance. It has come to light that the City Council did not sign the "Acceptance of Town Way" document, and so the acceptance was not recorded at the Registry of Deeds. This has held up the conveyance of Lot 6 to a firm that is proposing a new building on the parcel.

City Attorney Tim Murphy takes it from here: *"Council voted in Feb 2011 to accept. The Clerk has record of that vote being taken, and passed, but not sure if the Council vote was signed after the meeting. I suspect it was but if I recall Michele could not locate the executed Council vote. Since we have the record of the vote (Council Minutes), and as the vote described the road, I think it (Mill Brook Road) has been "accepted" even if we cannot find the actual signed Council vote.*

What is missing would be a revised/amended subdivision plan that reflects the vote. The current amended plan shows the large parcel out at US 1 end of Mill Brook as not having any road over it. Correcting that issue, by having an additional amended plan recorded, will allow a title searcher to match up the road acceptance with what's shown on the to be recorded second amended plan. Think the recording of the second amended plan, with proper notations thereon, will solve the issue."

C:\Program Files (x86)\PDFConverter\temp\NVDC\CBA15F48-A4B9-4B68-B49A-D4E91D3ACEB7\091d42a3-0812-4b6c-ada2-6fd234aebde7file.docx

The City Attorney had prepared a deed in 2011 based on a legal description provided by Dow and Coulombe, which is attached. See copy of the 2nd amended plan of Mill Brook Business Park – it is this which the Board is asked to act upon. See Note 9, and the “boxed” note on the plan for further background.

Rene: I move that the Board grant approval for the “Second Amended Subdivision Plan” of the Mill Brook Business Park dated September 2017, seconded by Don, and so voted, 4-0.

3. Public Hearing: site plan and final subdivision review of a proposed five unit warehouse condominium. Applicant is Industrial Park B.C., LLC. Tax Map 69, Lot 7. Zoned I-2.

Hamblen: board members will recall initiating review of this project on Sept. 19, holding a public hearing, and granting preliminary subdivision review prior to tabling. It is back for site plan and final subdivision review. Since that meeting the missing elements of the applications have been submitted -- a stormwater plan, a landscaping and photometrics plan, a traffic estimate has been provided, and a waste disposal plan.

As previously reported: Applicant Industrial Park B.C., LLC is represented by Paul Deshaies, who developed a similar project on Ocean Park Road, approved in August, 2015. He proposes five buildings totaling a 14,088 s.f. footprint that would be offered as commercial condominiums, with uses limited to those allowed in the I-2 zone. This project triggers the need for site plan review due to proposed new construction of a nonresidential building in excess of 1,000 s.f. The buildings are subject to design review. Bill Thompson of BH2M is the project manager.

Don: I move to find the application for site plan review submitted on behalf of Industrial Park B.C., LLC to be complete, seconded by Rene, and so voted, 5-0.

Don: I move to find the application for final subdivision plan review submitted on behalf of Industrial Park B.C., LLC to be complete, seconded by Peter, and so voted, 5-0.

Don: I move to open the public hearing, seconded by Rene, and so voted, 5-0. No comments. Rene: I move to close the public hearing, seconded by Peter, and so voted, 5-0.

Don: I move that the Board grant approval for the site plan and for the final subdivision plan for the proposed Industrial Business Park at 24 Industrial Park Road based on the Conditions of Approval and Findings of Fact dated October 17, 2017, with the added condition that the lighting plan be amended to the satisfaction of City staff, seconded by Peter, and so voted, 5-0.

4. Public Hearing: proposed amendments to the existing site plan and Site Location of Development permit, and review under Section 230-504-E of the Zoning Ordinance of a proposed building demolition and relocation at 10 Fairfield Street. Applicant is Thornton Academy. Tax Map 39, Lot 199. Zoned R-1b.

Hamblen: applicant Thornton Academy proposes to demolish the house at 10 Fairfield Street and construct a new building intended for office use. The property was acquired by TA as part of the purchase of the multi-family dwelling at 424 Main Street several years ago, and has been used occasionally as housing for staff. The building is a nonconforming structure on a nonconforming lot. The circa 1890 building has been evaluated, and the decision made to demolish and replace with a new structure. Code Enforcement Officer Richard Lambert has inspected the building and agreed that demolition is the best course of action.

The new building can, under Sec. 230-504-2, be built but must reduce the setback nonconformities to the greatest extent practical, as determined by the Board. The review process includes a few steps, and is much the same as was employed in 2016 with the existing house at 42 Fairfield Street, also proposed for replacement and conversion to office use:

- Amendment of the existing site plan for the TA campus will be necessary.
- Amendment of the existing Site Location of Development permit for the TA campus will be necessary.
- 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.
- As noted, the building is a nonconforming structure on a nonconforming lot. The new building can, under Sec. 230-504-2, be built but must reduce the setback nonconformities to the greatest extent practical, as determined by the Board.
- Demolition of the existing house is addressed by Sec. 230-713(5), and includes the need for a recommendation by the Historic Preservation Commission. This is scheduled for consideration by the HPC on Oct. 16.

Peter -- I move that the Board find the application for conditional use review to be complete, seconded by Don, and so voted, 5-0.

Peter: I move to waive submission requirements 230-1104-1.7, -1.9, -1.10, -1.12, -1.13, -1.15 and 1.18 due to the nature of the project being such as to make the information unnecessary, seconded by Don, and so voted, 5-0.

Peter: I move to find the application for site plan review complete, seconded by Don, and so voted, 5-0.

Peter: I move that the Board find the application for design review to be complete, seconded by Don, and so voted, 5-0.

Hamblen: Section 230-713 of the Zoning Ordinance allows offices to be established in residential zones, but only in converted residential structures so as to maintain residential character. Given the condition of the building, the applicant does not propose to convert the existing building, but to demolish the house and garage and replace with a new structure with a residential appearance. The project is subject to:

230.713(5) In special situations where a building is extremely dilapidated and structurally unsound and where re-use is therefore not practicable or economically feasible or where a building is not judged to be a significant component of the neighborhood's overall architectural and historic character, the Planning Board may approve plans to replace an existing residential building with a proposed new office building whose scale and design would be appropriate to the site and to the neighborhood. ***The Board shall obtain the recommendation of the Saco Historic Preservation Commission before granting permission to demolish. The Commission and the Planning Board shall utilize the standards of this paragraph and those in Section 413 relative to demolition in determining whether to permit the demolition.*** In the historic district and on historic sites the decision on demolition shall rest entirely with the Historic Preservation Commission.

The HPC reviewed the project on Oct. 16, and forwarded a recommendation that the building is not of historical significance and that demolition of the house and outbuildings may proceed. Code Enforcement Officer Richard Lambert's input on the building's condition is also provided as a 10/13/17 memo.

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 fieldhouse 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, fieldhouse modifications in 2010, the middle school expansion in June, 2014, the Scamman science building expansion in October, 2014, and the third dorm building approved by the Board on March 1, 2016.

The DEP has confirmed that it regards the acquisition of the 10 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 existing structures are nonconforming due to setbacks in the front, sides and rear. 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.

Rene: I move to hope the public hearing, seconded by Vangel, and so voted, 5-0. Barbara Colman: is this one lot or two? Is this combining projects? No. Peter: I move to close the public hearing, seconded by Rene, and so voted, 5-0.

Don: I move that the Board grant approval under the provisions of the Saco Zoning Ordinance, Article 10, Conditional Uses, for the proposed Office use which complies with the standards found in Section 713 of the Zoning Ordinance, seconded by Rene, and so voted, 5-0.

Don: 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 Peter, and so voted, 5-0.

Don: 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 10 Fairfield Street, as proposed by Thornton Academy, based on the Conditions of Approval and Findings of Fact dated October 17, 2017, seconded by Rene who also proposed that the motion be subject to “pending review by the City Engineer,” which Don incorporated into this motion, and so voted, 5-0.

5. Public Hearing: contract zone review of a request to allow a single family residential building permit to be issued for Lot 202, Oceanside Drive. Applicants are J. George and Nancy S. Driscoll. Tax Map 11, Lot 116. Zoned R-1c and Shoreland Overlay.

Don recused his participation in this item, and sat out this discussion.

Hamblen: applicants Nancy and George Driscoll sought a contract zone in 2015, the subject of a Sept. 1 public hearing with the Board. Their objective: to split their existing parcel into two, thereby returning to conditions as they were in 1980, when they purchased two small lots as originally configured on the 1914 “Plan of Land of M.H. Kinney, Saco, Maine called Kinney Shores.”

The Driscolls’ proposal generated considerable discussion, and eventually a negative recommendation being forwarded from Board to City Council. Much discussion occurred at that level, too, before the Council denied the application some weeks later.

The Driscolls have persuaded at least some members of the City Council that their case should be re-heard. Ordinance guidelines for contract zone applications state that a contract zone applicant starts with the Planning Board. As is usual, the Board’s recommendation is sought, which will be passed on to the Council, which will make the final determination.

The applicants have once again submitted a contract zone application that would allow them to split the 0.26 acre parcel at 15 Oceanside Drive into two lots, one of which is developed and includes their residence, the other of which would be a vacant (save for a utility shed) and developable lot.

Attached materials include: Completeness of application checklist, Draft, updated contract zone agreement, “Sequence of Conveyances” of the property in question, and Pp. 3-63 of the City Council Sept. 11 workshop, at which this item was discussed. City Administrator Kevin Sutherland compiled a “History” of the Driscoll CZ and attachments, which provide all the necessary background on the matter.

Rene: I move that the Board find the application for a contract zone submitted by applicants George and Nancy Driscoll to be complete, seconded by Vangel, and so voted, 5-0.

Hamblen: turn the clock back to 1914, and the two lots existed per the “Plan of Land for M.H. Kinney, Saco, ME called Kinney Shores”, labeled as 201 (Driscoll residence) and 202. Lots with 50 feet of frontage on both street and the beach were par for the times.

Fast forward several decades and Saco had decided that larger minimum lot sizes make for a better overall environment. Also, the state’s shoreland zoning regulations established in the early 1970s now identify minimum shoreline requirements. Plenty of 5,000+/- s.f. lots still exist and are grandfathered. However, today the City requires a 7,500 s.f. minimum lot size and both the City and the DEP require 100 foot minimum shore frontage and 100 foot minimum lot width for shore front lots.

The Driscolls acquired the property in question in 1980, then nine months later deeded to a Celeste Murray, then deeded back from Murray to the Driscolls on the same day. Then, in 1981, this occurred:

June 18, 1981 – Lots 201 and 202 are conveyed by George and Nancy Driscoll to Celeste Murray, per warranty deed, Book 2811 Page 262-263.

June 18, 1981 – Lots 201 and 202 are conveyed by Celeste Murray to George and Nancy Driscoll, per warranty deed, Book 2811 Pages 264-265.

The property was held in joint tenancy until Feb. 28, 1986, which George and Nancy deeded the vacant portion of the property to Nancy only.

In 2009 the Driscolls submitted a building permit application to the Code Enforcement Office, seeking to construct a single family dwelling on the vacant portion of the property. Dick Lambert denied the application, pointing to Section 502-1(2) and the language that states as follows:

“If two or more vacant, contiguous lots or parcels are in single or joint ownership of record at the time of adoption or amendment of this Ordinance, if these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendment, the lots shall be combined to the extent necessary to meet the dimensional standards, except where the contiguous lots front onto different streets or where the lots were legally created and recorded as part of an approved subdivision after March 22, 1972, the date of adoption of Saco's subdivision standards.”

The Ordinance subsection above resulted in the combining of the two lots. After Mr. Lambert's denial of their building permit application, the Driscolls filed an Administrative Appeal and Variance Request with the City, and hearings were held by the ZBA in September and October, 2009. The ZBA voted to deny the appeal on Oct. 26, then to deny the variances requested on Nov. 30.

The Driscolls appealed to Superior Court, which denied the appeal on Oct. 5, 2010. The matter was then appealed to the Maine Supreme Court, which decided against the appeal on Sept. 22, 2011. Having exhausted that process, the applicants have rightly recognized that an avenue remains open for them: contract zoning. See input from City Attorney Tim Murphy, and also from Natalie Burns. Ms. Burns invited DEP Assistant Shoreland Zoning Coordinator Mike Morse into the discussion, and his input is reflected in the attached e-mail correspondence.

See page 2 of the draft agreement, section II, for actions that would result if the contract zone is approved, including the standards that would be relaxed. See p. 3 of the agreement, Section III, (also below) for the standards from Section 1403 that must be met, and upon which the Board must base its decision as to a positive or negative recommendation.

F.

Recommendation. Before forwarding a recommendation on a contract zoning amendment to the City Council, the Planning Board shall make a finding on each of the four standards in this subsection. A favorable recommendation to the Council requires a positive finding on all four standards. If the Planning Board makes a negative finding on any of the standards, its recommendation shall be negative. The Planning Board shall base its recommendation on whether:

(1)

The rezoning is for land with an unusual nature or location;

(2)

The rezoning is consistent with the Comprehensive Plan;

(3)

The rezoning is consistent with, but not limited to, the existing uses and permitted uses within the original zone; and

(4)

The conditions proposed are sufficient to meet the intent of this section.

Rene: I move to open the public hearing, seconded by Vangel, and so voted, 4-0. Much discussion, refer to recording. **Rene: I move to close the public hearing, seconded by Peter, and so voted, 4-0.**

Standard 1. **Peter: I move that the Board find that the land with an unusual nature or location, seconded by Vangel.** Peter: this is protected beachfront property, never built on. Vangel: prior to voting, I want to say I

think this stinks. This is a series of unfortunate events. We're seeking solid, defensible reasoning to support the Board's decision. Here I'm struggling with reading the rules as they are. My hands are tied, I'm stuck with the law. **Vote was taken, and failed, 1-3 (Neil, Rene, Vangel).**

Standard 2. Peter: **I move that the Board make a positive recommendation based on the reasoning offered in the draft contract zone agreement, seconded by Vangel. Vangel then withdrew his second. Vangel then seconded the motion a second time. Vote was taken, and failed, 1-3 (Rene, Neil, Vangel).**

Standard 3. **Rene: I move that the Board make a negative finding that the proposal is consistent, seconded by Vangel.** Vangel: why? Why isn't it consistent? Rene: we're not changing a zone, we're splitting a lot. Vangel: does it contradict the purpose of the original zone? Neil: the contract zone would change the lot to two nonconforming lots. Peter: how can this ever pass? **Vote was taken, and failed, 2-2 (Vangel, Peter).**

Standard 4. **Vangel: I vote that the Board make a negative finding that the conditions proposed meet the intent of this section, seconded by Rene, and so voted, 3-1 (Peter).**

Vangel: I move that the Board forward a negative recommendation to the City Council for the contract zone proposed by J. George and Nancy S. Driscoll for the property at 15 Oceanside Drive, seconded by Rene, and so voted, 3-1 (Peter).

6. Public Hearing: review of a proposed amendment to the subdivision and site plan for Saco Island West, Building 3. Applicant is Saco Island West, LLC. Tax map 37, Lot 1. Zoned B-4.

Hamblen: Board members last saw this application on August 8; by meeting's end the Board had agreed on a few changes to the draft Conditions of Approval, and agreed to approve the preliminary subdivision plan. There has been some activity since the August meeting:

- A draft Memorandum of Understanding is now going back and forth between City and applicant so as to agree on relocating the sewer line that exists in Building 3.
- Tim Murphy has reviewed the draft conditions of approval, and asked that items addressing mezzanine easement (#7), sewer line in Bldg 3 (#9), and mezzanine repair (#12) remain in the document, though each is at some stage of being addressed. The attached draft COA retains these items.
- Applicant Mattson has messaged this office that Building 7 (to rear of Building 3), the "promenade" (mezzanine), and the HVAC system that services Buildings 1 and 2 are in the process of being conveyed to Meredith Richardson, the owner of Building 2. We have no written confirmation at this time.
- An agreement between the applicant and Knowles Industrial to repair the mezzanine, dated 9/15/17 has been submitted. With that, we will retain the condition of approval that specifies repair and completion prior to Certificates of Occupancy being issued.

Building 3 on Saco Island houses the Run of the Mill brew pub and restaurant. The current proposal would amend the 2007 approval by allowing more (22), smaller residential units on the 3rd and 4th floors, while calling for 2 residential units on the 2nd floor, which back in 2007 was proposed for use as professional office space. The two proposed units would use only about a quarter of the space on Floor 2.

As longer serving members will recall, site plan and subdivision approvals were granted for the SI Development, LLC project on Saco Island on July 17, 2007. The project included perhaps 2/3 of the island: portions of Building 1, Buildings 3, 4, and 7 on the west side of the island, and a proposal for thirty condominium units on the easterly side of the island/Main Street. The DEP reviewed and approved the Site Location of Development

permits for the project – one for the east side, one for the west -- the Saco River Corridor Commission also issued an approval, as did the U.S. Army Corps of Engineers.

The DEP has confirmed that it is satisfied with City review of the proposed Minor Revision to the Site Law permit. The application was included in the July 19 submission, and has been reviewed per Site Law standards. A draft motion is found below.

Just as the number of lots in a subdivision is approved only by the Board (not staff), it was the feeling of staff that with the proposed change in the number of dwelling units, this merits review by the Board. There will be no exterior changes to Building 3. Access to the proposed units is proposed as the same as for the Run of the Mill – the front entrance facing Main Street.

From Article 7 of the Subdivision Regulations:

REVISIONS TO APPROVED PLANS

7.1 PROCEDURE

An applicant for a revision to a previously approved plan shall, at least three weeks prior to a scheduled meeting of the Board, request to be placed on the Board's agenda and submit a written statement explaining the proposed revisions. *If the revision involves the creation of additional lots or dwelling units, the procedures for preliminary plan and final plan approval shall be followed.* If the revision involves only minor modifications of the approved plan, without the creation of additional lots or dwelling units, the procedures for final plan approval shall be followed.

In addition, see item 17 from the July 17, 2007 Conditions of Approval for the SI Development, LLC project on Saco Island:

17. The applicant has stated that, on the West Parcel, forty-two (42) new residential units are proposed within Building No. 4, in the easterly half of the building, on floors 1, 2 and 3; that five (5) new residential units are proposed within Building No. 3 on floors 3 and 4; and that, on the East Parcel, thirty (30) new residential units are proposed as new construction. The applicant shall adhere to this total of seventy-seven (77) proposed residential units, in buildings and on specific floors as proposed. A change to the number of proposed units or the location of said units shall be regarded as a major change to the plan, and shall be subject to review by the Planning Board.

So, this will be a two (now up to three) meeting sequence, at a minimum: review of a preliminary plan, and review of a final plan, concurrent with the amendment process for the site plan approval.

The applications for site plan review and for preliminary subdivision review were found to be complete during the 2007 review. The applicant has submitted adequate additional information relevant to the current proposed amendment that will allow both staff and Board to make a determination on the application. The applicant has also submitted an application for a minor amendment to the 2007 Site Law permit, which will be reviewed by staff and be part of the Board's review.

In response to the issue of financial capacity (Sec. 5.2.3(10)) discussed at length at the April meeting, City Attorney Tim Murphy has been in communication with the applicant's attorney, and provided the following on July 31:

“I've attached a Commitment Letter from Eastern Bank (sent by Saco Island West's legal counsel) in which the Bank proposes to finance the new project proposed by SIW (so called “Micro-units” in Mill Building 3).

It is my opinion that the Commitment of Eastern Bank, as set out, establishes adequate financial capacity of the borrower (Saco Island West, LLC) to complete the project.”

With that, the applications for both site plan and preliminary subdivision review are complete, which the Board agreed with by vote at the August 8 meeting.

Vangel: I move to open the public hearing, seconded by Rene, and so voted, 5-0. Lani Campbell, ITOA resident, asked about Meredith Richardson and the possible sale of Unit 91. **Vangel: I move to close the public hearing, seconded by Rene, and so voted, 5-0.**

After further discussion, the following motions were made:

Don: I move that the Board grant approval for the site plan and the final subdivision plan submitted by Saco Island West, LLC for a proposed amendment to the 2007 approval for Mill Building No. 3, Saco Island, based on the Findings of Fact and Conditions of Approval dated October 17, 2017 as amended during the meeting, seconded by Vangel, and so voted, 5-0. Amendments to COA include: 12. Repairs to mezzanine to be completed no later than Jan. 31, 2018, and to be inspected by an agent for the City.

Don: I move that the Board grant approval for the proposed Minor Revision to the Site Location of Development permit L-23633-87-A-N granted by the DEP in 2007 for SI Development LLC, seconded by Rene, and so voted, 5-0.

7. Public Hearing: conditional use, site plan and preliminary subdivision review of a proposed six unit residential condominium at 64 Ocean Park Road. Applicant is Plowman Development Group, LLC. Tax Map 34, Lot 18. Zoned B-2c.

This item was not heard prior to the 9:00 p.m. deadline, and is re-scheduled to next meeting, 11/7.

Meeting was adjourned at approximately 9:30 p.m.

Submitted by,

Bob Hamblen, City Planner