

Town of Old Orchard Beach  
 Planning Board Public Hearing  
 Town Council Chambers  
 Meeting Minutes  
 December 10, 2015

<b>Call to Order: 7:02 pm</b>	<b>Call to Order</b>
<b>Pledge of Allegiance</b>	<b>Pledge of Allegiance</b>
<b>Roll Call:</b> Chair Eber Weinstein, Mark Koenigs, Win Winch, Mike Fortunato. Staff Present: Jeffrey Hinderliter; Planner, Valdine Camire; Administrative Assistant, Megan McLaughlan; Assistant Planner.	<b>Roll Call</b>
<p><b><u>Public Hearings</u></b></p> <p><b>ITEM 1</b></p> <p><b>Proposal:</b> To provide a recommendation to Town Council concerning the proposal to allow Cafes as a Conditional Use within the General Business District 2 (GB 2). Amendments: Chapter 78 – ZONING, Article VI – DISTRICTS, Division 9 – GENERAL BUSINESS DISTRICT 2 (GB-2), Section 78-833. – CONDITIONAL USES.</p> <p><b>Applicant:</b> Toni Maestre</p> <p>Toni Maestre introduced herself to the Board Members and read the following letter:</p> <p><i>Back in 1991 I purchased property at 64 Saco Avenue, Old Orchard Beach, Maine. At that time it was a 36 seating capacity restaurant known as the “Clam Shell”. At this time according to our local clientele it was known as somewhat of a land mark. It had been a busy neighborhood establishment where all the locals would gather year round and a busy tourist spot during the summer season. In 1994 I decided to convert the restaurant into a salon. Most recently known as, “Curl up &amp; Dye”. This was more of my area of expertise at the time. One year ago I decided to close my doors and put the property up for sale. I am now seeking the option to convert the business back to its original roots in the food industry. Preferably to a Café/Deli as it worked beautifully for over thirty years in the food industry, serving our community and generating income and revenue for the town. I believe it to be one of the best year round business locations in Old Orchard. Offering easy access, great visibility and ample on-site parking. I base this opinion on my own personal experience at this location for over twenty years.</i></p> <p><i>Thank you, Toni Maestre</i></p> <p>There being no one else speaking for or against this item, the public hearing closed at 7:04 pm.</p>	<p style="text-align: center;"><b><u>ITEM 1</u></b></p>

Town of Old Orchard Beach  
Planning Board Public Hearing  
Town Council Chambers  
Meeting Minutes  
December 10, 2015

**ITEM 2**

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**Proposal: Major Subdivision: 8 Lot Residential Subdivision**  
**Owner: Dominator Golf LLC**  
**Location: Various locations along Wild Dunes Way (Dunegrass),  
MBL: 105A-1-100 & 200, PMUD**

Ed McCall, here on behalf of Barbara Boutet and her family, introduced himself. Mr. McCall stated that he was just aware about the application in the last couple of days in regards to the applicant's right title and interest. A deed was submitted that covers the area including all 8 lots, but he hasn't yet determined whether there has been any resolution with respect with the lessee of the land. His understanding is that this lease includes an option to buy. There is also a question whether this will be on public water and sewer. We believe that this is not true. They believe that the water and sewer is owned by the Boutet family entities. The principal problem is whether any further development at the golf course is consistent with the density requirements of our current ordinance. And there is no attempt to show that there can be these lots developed in Dunegrass. The applicant says that it can do so under the original 1980's approval for Dunegrass under the appeals zoning ordinance which allows up to 589 units and these approvals are still owned by the Boutet family. There is no way that the golf course can have grandfathered rights for housing approvals granted in the late 1980's when all of the golf course in the original subdivision was earmarked as the dedicated open space. So as a matter of law that they contend, anyone applicant trying to develop in the open space of the subdivision would have to show that density requirements would have to satisfy zoning (not the repealed zoning from back in the 1980's).

Mr. McCall submitted tables that shows that the total unit count at Dunegrass right now is 599 units.

There were changes in section P which was initially approved for 10 units. There are currently 22 taxed units. The amended plan for section P has 21 lots. Mrs. Boutet owns the 22<sup>nd</sup> parcel in section P, but it wasn't on the approved amended plan for section P.

Changes in Section A weren't considered. So the last time, around the time when "The Turn" was approved the Planning Board came to a mistaken conclusion of how many homes actually exist or are approved in their original location at Dunegrass.

There is one change that is in process that the Boutet family requested back in October, is it a reduction in density in Sawgrass. But that was on the condition that those units would be moved into C, D or E and would not be available for some other landowner to develop.

The 599 units is above the limit for the systems at Dunegrass which were only designed for 589 units. This would not be fair to existing homeowners.

**ITEM 2**

Town of Old Orchard Beach  
Planning Board Public Hearing  
Town Council Chambers  
Meeting Minutes  
December 10, 2015

Linda Mailhot asked if sections J & Q are developed lots.

Mr. McColl stated that he was not certain, but that he will come back with the answer.

Chair Weinstein asked if there was a change in the ownership.

Mr. McColl stated that there is an existing lease and a recorded memorandum of lease. His understanding is that the lease includes an option to purchase. If you have land that has been leased to someone else for an integrated use (golf course) you don't have sufficient right title and interest to create house lots on the land. The lessee has the right to occupy the land, the owner does not.

Domenic Pugliares, owner of the golf course at Dominator Golf introduced himself to the Board Members.

Dan Hourihan does not have an option to buy the golf course, it is not in his lease.

Mr. Pugliares was made aware that Mr. McCall contacted Dan Hourihan's attorney. It is Mr. Pugliares' understanding that Mr. Hourihan doesn't want to get involved in this and that he is in favor of it. Mr. Pugliares then passed out an email from Mr. Hourihan and was read for the record:

***To Whom It May Concern,***

***I am aware of a subdivision that is being submitted for approval by Dom Pugliares at Dunegrass. I understand that it may impact land that we presently lease. At this time I support the application.***

***Dan Hourihan***

Mr. Pugliares also read the finding of facts.

"The current subdivision amendment of March 2015, there are 24 units to The Turn at Dunegrass Subdivision, leaving 8 units originally approved for section B that can be developed in other locations within the subdivision in the future. Since then there have been 18 more that have been put into the pool when Sawgrass was reduced from 40 to 22."

There being no one else speaking for or against this proposal.

This public hearing closed to the public at 7:28 pm.

Town of Old Orchard Beach  
 Planning Board Public Hearing  
 Town Council Chambers  
 Meeting Minutes  
 December 10, 2015

<b><u>Regular Meeting</u></b>	
<b>APPROVAL OF MINUTES</b>	
<u>APPROVAL OF MINUTES: 1/8/15, 2/12/15, 4/22/15, 5/14/15, 6/11/15, 7/9/15</u>	
<p>Mark Koenigs made a motion to approve the January 8, 2015 meeting minutes as amended. Seconded by Mike Fortunato.</p> <p><b><i>Jeffrey Hinderliter called for the vote:</i></b></p> <p>Mike Fortunato – Yes          Mark Koenigs – Yes          Linda Mailhot – Abstained          Chair Weinstein – Yes</p> <p>Mark Koenigs made a motion to approve the May 14, 2015 meeting minutes as amended. Seconded by Mike Fortunato.</p> <p><b><i>Jeffrey Hinderliter called for the vote:</i></b></p> <p>Mike Fortunato – Yes          Mark Koenigs – Yes          Linda Mailhot – Abstained          Chair Weinstein – Yes</p> <p>Mark Koenigs made a motion to approve the June 11, 2015 meeting minutes as amended. Seconded by Mike Fortunato.</p> <p><b><i>Jeffrey Hinderliter called for the vote:</i></b></p> <p>Mike Fortunato – Yes          Mark Koenigs – Yes          Linda Mailhot – Abstained          Chair Weinstein – Yes</p> <p>The meeting minutes could not be approved for February 12, 2015, April 22, 2015 and July 9, 2015 as there were not enough members to approve.</p>	<p><b>MOTION</b></p> <p><b>VOTE:</b></p> <p><b>(3-0-1)</b></p> <p><b>MOTION</b></p> <p><b>VOTE:</b></p> <p><b>(3-0-1)</b></p> <p><b>MOTION</b></p> <p><b>VOTE:</b></p> <p><b>(3-0-1)</b></p>



Town of Old Orchard Beach  
Planning Board Public Hearing  
Town Council Chambers  
Meeting Minutes  
December 10, 2015

Bill Thompson, Project Manager at BH2M introduced himself. Requesting a preliminary approval for the 8 lots at Wild Dunes Way. Met with the town a number of times and had a site walk and also completed the engineering plans. The next submission will include everything that the DEP is looking for. The 8 lots vary in size but they abutt the existing golf hole which meets the requirements of the ordinance. Will submit this to DEP. Managing the storm water on each lot individually. They came up with an update on the open space summary which will be in the next submission. The open space has been recalculated and with this approval for the 8 lots, it will leave an open space of 49% of the entire project. (What is required is not to go below 35%) They will continue with the grading, showed the connections for the utilities that are required.

Chair Weinstein stated that 2 of the main questions that was brought up at the public hearing was:

1. Question on the lots.

Chair Weinstein stated that this has nothing to do with the Planning Board, it has more to do with the legal ramifications of the court. This court case is a legal decision and it is still in court.

2. The ownership of the water and sewer.

Dom Pugliares stated that this is a public road, and therefore it when the town takes it over they take over the utilities.

Bill Thompson stated that he spoke to the water company and they are in the process of accepting the entire water system in Dunegrass. He is anticipating this to be resolved.

Mark Koenigs asked if the application was accepted as complete at the last meeting.

Jeffrey Hinderliter stated that it was not accepted because it still needed more plan sets, storm drainage and more details that we needed. We had the initial public hearing so we could get comment early on. The application was only up for discussion and to plan a public hearing.

Linda Mailhot understood that this was not up for determination of completeness and not advertised as such. Ms. Mailhot asked Mr. Hinderliter if he could give her some information about the unit counts when he has time.

Mr. Hinderliter will see what was submitted and get back to her.

Chair Weinstein said that the unit 1 building looked kind of small and it looks like there is a gully. He wants to make sure that there is no problem with drainage.

Mr. Thompson requested copies of the information that was submitted tonight.



Town of Old Orchard Beach  
 Planning Board Public Hearing  
 Town Council Chambers  
 Meeting Minutes  
 December 10, 2015

<p><b>ITEM 6</b></p> <p><b>Proposal: Conditional Use (Home Occupation): Establish off-site delivery catering business within existing accessory structure</b></p> <p><b>Action: Discussion; Determination of Completeness; Schedule Site Walk and Public Hearing</b></p> <p><b>Owner: Bryan Murphy</b></p> <p><b>Location: 165 Portland Ave., MBL: 103-6-4, RD</b></p> <p>Planner Jeffrey Hinderliter did not receive any new information on this. At the last board meeting, the Board accepted the withdrawal so the next step is to submit an amended application reflecting something that does not have on site retail sales.</p> <p>Linda Mailhot made a motion to table this item without prejudice. Seconded by Mike Fortunato.</p> <p><i>Jeffrey Hinderliter called for the vote:</i></p> <p>Mike Fortunato - Yes        Mark Koenigs - Yes        Linda Mailhot - Yes        Chair Weinstein - Yes</p>	<p style="text-align: center;"><b><u>MOTION</u></b></p> <p style="text-align: center;"><b><u>VOTE</u></b></p> <p style="text-align: center;"><b><u>(4-0)</u></b></p>
<p><b>ITEM 7</b></p> <p><b>Proposal: Site Plan: Dunkin Donuts- Construct 2080 sq. ft. building and associated parking</b></p> <p><b>Action: Discussion; Determination of Completeness; Schedule Site Walk and Public Hearing</b></p> <p><b>Applicant: JFJ Holdings, LLC</b></p> <p><b>Location: 14 Ocean Park Rd, MBL: 210-1-6, GB1</b></p> <p>Scott E. Braley, PE, CPESC President, Project Manager of Plymouth Engineering, Inc. along with Diane W. Morabito, Professional Engineer who is doing the traffic engineering for the project is here representing the applicant.</p> <p>Mr. Braley gave an overview of the project:        This is a 1.19 acre lot and they are proposing to erect a 2,080 sq. Dunkin Donut building with 30 seats with a drive-thru. It will have a concrete pad and will house the enclosure for dumpsters and can access the loading zone. The primary entrance and exit will be off Smithwheel Road with a right turn</p>	



Town of Old Orchard Beach  
Planning Board Public Hearing  
Town Council Chambers  
Meeting Minutes  
December 10, 2015

only exit onto Ocean Park for drive-thru traffic and any of the parked traffic that chooses to go that way. Will have a separate by-pass lane around the drive-thru lane. The project will be served by all public utilities (sewer, water, electric). Met with town department heads at the site to get their input, ideas and concerns. This does need a DOT traffic movement permit for an excess of a 200 passenger car equivalent which is currently pending. DOT has received parts 1—6, scheduled a scoping meeting and part 7 with the required studies was submitted and they are still in discussion with the regional traffic engineer. Hoping to have that traffic permit in January. At the site meeting it was noted that there will not be an increase in run-off. The applicant was also asked by Fire Chief if some of the existing buildings could be used for training. The applicant is fully in favor of this. In regards to buffering, they will have fencing and trees. As part of the initial review by staff and DOT, one of the off-site improvements that was requested was to improve the crossing of Ocean Park. They have added a cross walk at the throat of Smithwheel Road which comes across Ocean Park and also a walkway and crosswalk going to the site which includes the solar powered flashing pedestrian beakers.

Chair Weinstein sees that the biggest problem is the traffic.

Diane Morabito stated that this is in the proper location for a Dunkin Donuts, being that there will be right hand turns in and right hand turns out. The 65/35 distribution count that they have was from the summer data.

Linda Mailhot asked about the design of the building.

Mr. Braley stated that unless it is required by a local design standard for the town, it will be the typical commercial design.

Mike Fortunato's concern is with the heavy traffic in the summer months.

Mark Koenigs went through the application and had a few questions for the applicant.

The lot coverage number is not the same in the storm water report. He would like that clarified for the next meeting.

For public record Mr. Koenigs asked if the utilities are going to connect onto public sewer on Smithwheel Road.

Mr. Braley stated that the utilities are going to connect public sewer on Smithwheel Road and also that the proposed utilities will be underground.

Mr. Koenigs questioned the trash pickup which states once a week pick up.

Town of Old Orchard Beach  
Planning Board Public Hearing  
Town Council Chambers  
Meeting Minutes  
December 10, 2015

Mr. Braley said that the trash pickup will vary, it depends on the site. The dumpster(s) will be enclosed and will be located on concrete and will be fenced in on three sides with a gate. Mr. Koenigs would like to see a fence detail as well as a litter management and recycling plan?

In the report they state that this is not a cooking site, so they will have no grease, fumes or odors.

Mr. Braley stated that they do finishing so they will have a grease trap.

Hours of operation: 5:00 am. – 11:00 pm. Mr. Koenigs noted that they need to be aware of the things that create noise and to be considerate of the neighbors around this area.

Design Review was checked off in the application inappropriately.

Discrepancy with the plan and the number of parking spaces needs correcting.

Trip generation: total of 978 on a daily basis, the peak is 289 and the busiest hours are between 7:00 am – 8:00 am.

Ms. Morabito stated that the 289 Maine traffic study (formula) is developed based on the size of the store and the amount of traffic that is going by the site in the morning on a daily basis. This was factored to peak summer hours. DOT was very comfortable with the numbers.

Needs to be corrected in application 22 parking spaces instead of 24 spaces and also the size of the spaces needs to be corrected. It will have 2 handicapped spaces.

Mr. Braley stated that it is 24 entry and 24 exit as measured at the R.O.W. line.

DOT only allows a 42' curb cut so if it is more you have to separate the two, therefore there is a concrete island. Mr. Koenigs asked that the plan be detailed and for consideration for traffic paint for visibility on the concrete island.

Mark Koenigs questioned the responses for the 9 criteria for the site plan review stating that he couldn't follow it clearly. Suggested to ask the applicants engineer to propose something stating that the criteria is applicable to the project so they can review it and approve it as a whole plan.

Mr. Koenigs asked if there was a stormwater discharge permit by rule?

Mr. Braley stated no because they are less than an acre disturbed area. Total disturbed area including the demolition of the cabins?

Town of Old Orchard Beach  
Planning Board Public Hearing  
Town Council Chambers  
Meeting Minutes  
December 10, 2015

Mark Koenigs asked if they are going to divert the stormwater?

The stormwater will flow in the same general direction.

Mark Koenigs also questioned that they didn't follow the numbering system.

On D2, the one going out to Ocean Park is mislabeled and should be W3.

Mr. Koenigs is Interested in how the water gets to the West side?

Mr. Braley explained that they are allowing the water to pond and infiltrate and on the West side there is no curb however he will get the edge pavement better labeled.

Mark Koenigs stated that at the site walk he wants to see that the water is going down the catch basin and not going onto someone else's property.

Mark suggested that it would be an asset that when they do traffic striping for vehicles, pedestrians and cyclists to look at those areas where some additional traffic painting/stripping could be added to keep the traffic flowing and also to protect cyclists and walkers that have to cross the intersection.

Mark Koenigs suggested that the concrete sidewalk on Smithwheel should be connected to the crosswalk that crosses Smithwheel at the stop sign and not have that diagonal crosswalk that the town put in about three years ago. Ms. Morabito stated that in her traffic study she recommended eliminating that diagonal crosswalk and proposing the new one on Ocean Park Road. Mark Koenigs also recommended that the sidewalk be extended.

Mark also had a concern with merging traffic with the cyclists.

Ms. Morabito recommendation in her traffic study is that they take the two lanes on Ocean Park Road and re-configure it. They will move that merge much further back so that it will be away from the Smithwheel intersection. Mark suggested that on the D-2 plan, to make sure that they have the North arrow.

Mark Koenigs suggested for the applicant improve the statement in the application and mention preserving trees so that the public knows that and to say what they are doing in the plans.

Mark Koenigs stated that they didn't mention anything that is going to be improving the town. They need to say that they are going to have an impact. They also need to note that they have a management plan for the sweeping of the parking lot so there isn't dust on top of the parking lot that can go into the catch basin. Litter should also be addressed.

Town of Old Orchard Beach  
Planning Board Public Hearing  
Town Council Chambers  
Meeting Minutes  
December 10, 2015

Mark suggested that they elaborate #8 criteria which states whether they have an impact on the municipality. Mr. Koenigs would also like to know if Dunkin Donuts has a local hire program for creating jobs for construction and operation?

#9 of the criteria: surrounding property values. The answers that Mark Koenigs is looking for in this question is if this being done right and in the right location.

Mark Koenigs moved that they amend the application and not accept as complete yet and needs to be submitted as complete. There was no discussion on his motion so there was no second.

Mark Koenigs withdrew his motion.

Chair Weinstein stated that they are also looking at getting the traffic report back.

Jeffrey Hinderliter stated that we do have the traffic study (not the peer review) and all of the Department Heads have been involved. Mr. Hinderliter also mentioned that one thing to add upon is that the Planning Board has often accepted applications as complete contingent upon receiving amended applications to make the appropriate amendments. The Planning Board can do this as well as the results of the traffic study.

Mark Koenigs stated that he doesn't need the entire traffic study but he would like to have the engineer's recommendations, executive summary and conclusions. And would also like to get the peer reviews comments and suggestions that the town should follow.

Linda Mailhot asked if we have a time frame on getting a peer review? Planner Hinderliter stated that they are looking to have that done by the January meeting and that our traffic engineer will be at the January meeting.

Chair Weinstein suggested that if the applicant would say that they have met the criteria required by the town it makes it a lot easier as opposed to just siting it.

Jeffrey stated that they have addressed everything, they just need to expand upon the information that was submitted.

**MOTION**

Town of Old Orchard Beach  
 Planning Board Public Hearing  
 Town Council Chambers  
 Meeting Minutes  
 December 10, 2015

<p>Mark Koenigs made a motion to accept this application as complete. Seconded by Linda Mailhot with discussion.</p> <p>Mark Koenigs wants it noted that when a complete application is submitted to the Planning Department, the Board Members should get a complete application.</p> <p>Mike Fortunato asked if we should be getting the recommendations from the Department Heads on the traffic study?        Chair Weinstein stated that he would like to see approvals from every Department Head.</p> <p>Mark Koenigs stated that he does not want the public to speak at the site walk. If they have any issues that they want to bring up they need to schedule a time with the Planner. Property corners need to be marked, the entrances need to be marked and the trees should be marked.        The site walk was set for 3:00 pm on January 4, 2016.</p> <p><b><i>Jeffrey Hinderliter called for the vote:</i></b></p> <p>Mike Fortunato - Yes        Linda Mailhot - Yes        Mark Koenigs - Yes        Chair Weinstein – Yes</p>	<p style="text-align: center;"><b><u>VOTE</u></b></p> <p style="text-align: center;"><b><u>(4-0)</u></b></p>
<p><b>ITEM 8</b></p> <p><b>Proposal: Conditional Use (Home Occupation): Establish off-site delivery catering business within existing accessory structure</b></p> <p><b>Action: Withdrawal</b></p> <p><b>Owner: Kathi Russman</b></p> <p><b>Location: 163 Portland Ave., MBL: 103-6-604, RD</b></p> <p>Planner Jeffrey Hinderliter stated that he received an email from the applicant saying that she is formally withdrawing her application because she is moving to an area right down town.</p> <p>Mark Koenigs made a motion to accept the withdrawal. Seconded by Mike Fortunato.</p> <p><b><i>Jeffrey Hinderliter called for the vote:</i></b></p>	<p style="text-align: center;"><b><u>MOTION</u></b></p> <p style="text-align: center;"><b><u>VOTE</u></b></p>

Town of Old Orchard Beach  
 Planning Board Public Hearing  
 Town Council Chambers  
 Meeting Minutes  
 December 10, 2015

Mike Fortunato - Yes Mark Koenigs - Yes Linda Mailhot - Yes Chair Weinstein - Yes	<b><u>(4-0)</u></b>
John Bird, member of the Conservation Commission would like to have the applicants consider if any pollutants are going from the driveway into the storm water system.  Jeffrey Hinderliter will look into this and ask the applicant.	<b>Other Business</b>
	<b>Good &amp; Welfare</b>
<b>Adjournment at 10:17 pm</b>	<b>Adjournment</b>

*I, Valdine Camire, Administrative Assistant to the Planning Board of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of FOURTEEN (14) pages is a true copy of the original minutes of the Planning Board Meeting of December 10, 2015.*

