

**WESTBROOK PLANNING BOARD**  
**TUESDAY, SEPTEMBER 18, 2018, 7:00 P.M.**  
**MINUTES**

**PUBLIC HEARING**

Present: Ed Reidman, (Chair) (Ward 5), Rene Daniel (Vice-Chair) (At Large), Rebecca Dillon (Ward 1), Dennis Isherwood (Ward 2), Joseph Marden (Ward 3), John Turcotte (At Large)

Absent: Robyn Tannenbaum (Ward 4), Kim Fickett (Alternate) Nancy Litrocapes (Alternate)

Staff: Jennie Franceschi, Rebecca Spitella, David Finocchietti

MINUTES MAY NOT BE TRANSCRIBED VERBATIM. SECTIONS MAY BE PARAPHRASED FOR CLARITY. A COMPLETE RECORDING MAY BE OBTAINED BY CONTACTING PLANNING AND CODE ENFORCEMENT at 207-854-0638 ext. 1220 and [lgain@westbrook.me.us](mailto:lgain@westbrook.me.us).

**Ed Reidman** explained the procedure for a Public Hearing.

1. **2018.34 – Amended Site Plan, Subdivision & Special Exception – Rock Row (previously called “Dirigo Plaza”) – 58 & 80 Main Street – Waterstone Properties Group: Jones & Beach, Inc. on behalf of Waterstone Properties Group, is proposing an amendment to a previously approved site plan to reconfigure building layouts and internal traffic circulation. The amendment is for Phase 1 of a 495,915 +/- square foot regional retail shopping center. Tax Map: 42B Lots: 9, 10, 11 & 14 Zone: Gateway Commercial.**

**Project Description:**

The applicant is proposing an amendment to a previously approved site plan to reconfigure building layouts and internal traffic circulation. This application and requested approval are specific to the Phase I area ONLY.

**Project History:**

November 17, 2015	Workshop: Introduction of the development
March 1, 2016	Workshop: General overview of the project and focused on architecture and landscaping.
March 15, 2016	Workshop: Discussion on site circulation and layout
April 5, 2016	Workshop: Reviewed updates to architecturals, site layout, site amenities and provided information related to natural resources and utilities.
May 3, 2016	Workshop: Reviewed the stormwater report, landscaping and other related topics.
May 17, 2016	Joint Meeting with Portland: Recap of overall stormwater report and reviewed the Traffic report.
July 19, 2016	Public Hearing: Entire application discussion open to the public and Board. a) The Board granted a waiver from the parking standards from 1,753 spaces to 1,414 spaces b) The Board granted a waiver from Section 502.4 to permit all required subdivision plan information to be submitted in the plan set instead of on one subdivision.

September 20, 2016	Workshop: Recap of MDOT's traffic mitigation permit.
October 18, 2016	Old Business: The Board voted unanimous in favor 7-0
January 3, 2017	Site Plan Amendment: Amendment to construction phasing plan
March 21, 2017	Site Plan Amendment: Amendment to construction phasing plan
June 6, 2017	Site Plan Amendment: Amendment to construction phasing plan
September 5, 2017	Site Plan Amendment: Amendment to construction phasing plan
July 17, 2018	Workshop: Introduction to a revised master plan for the site
August 21, 2018	Workshop – Site Plan Amendment; Phase 1
September 18, 2018	Public Hearing – Site Plan Amendment; Phase 1

**Jim Katsiaticas** I am an Attorney from Perkins and Thompson representing Dirigo Center Developers LLC. Since the time of the original approval of this, the majority member has become Water Stone Retail which is a national real estate development company with extensive experience with retail projects.

This Board approved Dirigo Plaza for Site Plan Subdivision and Special Exception back in 2016. Since that time, Waterstone has taken a step back and has looked at this as a mixed-use development and has developed a master plan. You have heard some of that back in August and a little last month when we were talking about the overall vision on how the site will be developed.

We are here tonight to talk about a small portion of it. The corner of it at Larrabee and Main Street which is what we call Phase One. The rest of the development stays as is, but we are seeking an amendment for a portion of it known as phase one. We are asking this Board to grant Subdivision Amendment approval as we are amending lot lines on lot two (2). We are asking for Site Plan approval on a different orientation and set layout of buildings, parking and asking for Special Exception re-approval, since the City has gone to Conditional Use from Special Exception and we are simply adopting the same language the City has.

We are also asking for the Board to waive joint review. This parcel, the overall tract of parcels of which this project is located also goes to the City of Portland. Under State Law unless both Boards waive it then there is to be joint review and approval. So, we are asking for a waiver of the joint approval requirement.

We appeared before the Planning Board on August 21<sup>st</sup> and presented an application regarding phase one (1) and went through it in great detail. We listened to the Planning Board comments, listened to the suggestions of improvements and I think you will see we have adopted those in our updated plan.

We have also filed an application, a major amendment of our DEP approval, site location of development act, ground storm water permits. DEP has received that application and will be reviewing this promptly and had a positive meeting with Staff yesterday. We have applied to the Maine Department of Transportation for a modification of the traffic movement permit and those changes have been recommended by the cities of Westbrook and Portland. A draft permit is before the State Engineer for a signature. We have undertaken steps to undergo this for phase one.

We know we have some other applications in the fire for an Amphitheater for another portion of this project and are talking about possible changes of Zoning for other portions but that is at another date and time, tonight we are simply before you for phase one (1), asking this Board for an amended subdivision, site plan and special exception/conditional use approval. We are asking for a waiver of the joint meeting and we are asking for an approval of the phasing plan.

So, with that I would like to turn this over to our Engineer, Wayne Morrill who can talk about ways this has changed.

But before Wayne gets up, I want to mention one thing. I understand that a communication was received this afternoon about 4:30, afterhours, so I can only see it online and read it on my cell phone a few minutes ago. I understand that an Attorney on behalf of an LLC has filed objections against this application. One of the applications sited from a legal perspective that the use is not permitted, grocery use is not permitted.

First of all, it is not a great tactic to file something in the last minute. We have deadlines to meet to present items to this Board, so we do not condone that exercise. The argument is that you define grocery store in the ordinance and grocery store is permitted in other districts and not in the Gate Way Commercial Zone. Therefore, this grocery store is not permitted. Which is Market Basket the prime tenant for this project.

If you take a look at the Zoning Ordinance, retail one talks about consumer goods and I cannot think of a more basic consumer good than food. If Market Basket, or any grocery store is not permitted in Gateway We believe that was a Hannaford before that.

We object to the late filing after hours of objections. If you have a comment this is a Public Hearing and it is the time to say it, but the late letters are not appropriate. There are also arguments with regard to design in that memo and I will leave that for Wayne to address.

Thank you very much and we are here to answer any questions the board may have.

**Ed Reidman** Thank you Mr. Katsiaficas.

**Wayne Morrill** with Jones and Beach Engineers we went through the plans with the Board last time and wanted to go through the plans with the Board one last time, so the Board can see exactly the plans before you tonight.

I want to go over the Amended Subdivision Plat. On the Amended Subdivision Plat shows the only lot line that is being modified is the one-off Main Street and is for the building 1B, on the side of the access road. Our original application had that as a fast food restaurant as approved in Dirigo Plaza. We did come back on a previous submission for a retail spot. This lot is now back to a fast food restaurant. The lot lines go around that building to make sure that it is compliant with Zoning.

The second one is the overall Phase One Plan and as you can see, Phase One is everything from the Larrabee corner to Main Street. It comprises of eight buildings, 1,414 parking spaces and we are utilizing a portion of the waiver granted as part of the Dirigo Plaza on a reduction of parking, so there is no waiver before the Board for reduced parking as we already have that approved. We are utilizing 200 already waived parking spots for this phase one to allow this to go forward.

The entrance itself comes off Main Street, goes into a roundabout and we are doing the connection out to Larrabee. The remainder of the project is what you saw and already approved as part of Dirigo Plaza.

The old buildings going over to the Westbrook Arterial across Nasson Brook, nothing is changed, that is exactly what was approved. So, if we go to the Site Plan itself, the eight buildings which three will be on Main Street, one larger building and one up along the Quarry. The plans that we showed the last time, you had a different version where the bank was not located out on Main Street and it was a decision to move the bank in front that actually breaks up the Main Street portion. We have two buildings out there, we have a small corridor for visibility corridor coming to the larger building but a lot of that is large landscape plan that we will show the Board.

Building 1A on the northeast corner has not changed since the original approval. The portions of the buildings along Main Street, your original approval had one large street scape building and now you have two separate buildings up front there.

We still show on the Larrabee Road intersection, all the services for this larger building are out behind that building and have a large dash line on the plans that is the limit for phase one work. We are also putting up a security fence along the Quarry and along the back of this phase one, so it is a clear depiction that no one is going into the other phases other than what we are showing on phase one.

Pedestrian access as we went through the original bus stop was in front of Building 1A on the old plans. We have worked with DOT and a couple of the busing companies and have relocated that bus stop back where we originally wanted to put it, down on Main Street so it is right in the center of the development. With that it allows us to have one sidewalk that takes you from Main Street, pedestrian access ways throughout the project which you can get to any building as a pedestrian on walkways through this project.

One of the big things with Staff we have right in at the front of this Building 1A coming off Main Street. We originally had a crosswalk going across that with our sidewalks. Working with Staff what we did moved that sidewalk along the side of Building 1A, that allow the free flow pedestrians walking the site and did not interrupt that traffic flow coming into that right in. It allows better circulation for the pedestrians and allows the cars to come down and hit this traffic circle and go to the parking lots in the front. The whole reason for the right in is to be able to filter this larger building to be able to filter the pedestrians to the upper side and the front of the building so we do not concentrate everyone in front of the building as they come into the site.

Drainage is exactly the way it was, but we actually simplified it on this design. We are going with centralized drainage facilities, large detention areas in the parking lot and then you still have the pre-treatment along the quarry edge where we filter media and make sure we clean it one last time before it goes into the quarry. The quarry itself is our last point hold of water and once it fills up it goes across to Nasson Brook. Larrabee Road still has that large treatment of grassed area along Larrabee Road, just on the sides of the buildings. Everything is focused from the parking lots and the buildings into these underground detentions systems and then into the treatment, so we get detention, treatment before it gets discharged.

As Jim said, we brought this in front of DEP to make sure what we are presenting to the Board that way they wanted to see it and we have submitted that to them for final review.

Utilities are very similar to what you approved to the original. Water lines are coming in off Main Street, going around the buildings servicing buildings, fire hydrants and the location were approved by the Fire

Department. This section of phase 1A will be serviced by power off Main Street and Larrabee Road. We will not have to build the Substation for this phase. Any future phases the power substation off the Terminal line will have to be built.

Sewer we have been working with City Wastewater Department. Phase One Sewer will be going across Larrabee Road and tying into Terminal Street. Terminal Street has the capacity for the 20,000 gallons from Phase One. Working with the Wastewater Department, we will line all sewer man holes and sewer lines and replace approximately 250 feet of sewer line that is currently not functioning correctly going to the Pump Station. We have submitted plans to the Wastewater Department and are in final negotiations with them but Phase One will go down Terminal Street.

Landscaping is exactly what we showed you last time. Lots of street trees along the front, buffer plantings around the Quarry edge, concentrated landscape trees in through the parking lot to help break up the parking lot areas.

All the islands have trees, shrubs, multiple types of grasses, perennials. As you work your way across same line of street trees along Main Street, so it has the boulevard feel to it and still provide areas that you can look under the trees to see the buildings to give that visual aspect but also gives that nice line of landscape along the front and all our lines and buffers to abutting property.

You can see the bus stop and meanders through the island and goes back and forth so it is not one straight line of trees, it is a meandering type of trees through that and each one of the islands you can see trees while trying to enhance the parking lot. It looks like it has trees and shrubs throughout the parking lot.

Along Larrabee you see our detention feature, shrubs, grasses and trees along the whole front and we shade the loading area, behind the big buildings with another row of trees and shrubs. So, everything in Phase One is landscaped all around it.

Traffic Circle, you can see inside the traffic circle is landscaped. Around the circle is a raised surface, so if a tractor trailer has to get around that they can go on top of that and it helps with the circulation, it allows the customer to enter and exit freely and keep that circle moving. As we go to the building along the quarry landscaping in the parking lot, around the sidewalk helps create a tight feel with parallel parking along the buildings. As we go past that cul-de-sac it makes it look like a different type of development.

Buildings - Building 1B this is the same architecture plan that the Board saw. Same building, same architecture, should be the same use.

Building 1A, Staff comments were making the back of the building look like the front of the building. The tall picture is what you see inside the parking lot, using a lot of different materials. The lower section is what you see from the road, so it has the same type of architectural feel that makes it look like the front of the building.

This is a free-standing bank that has a New England type style to it and has not changes since we submitted it to you the first time.

Smaller buildings that are adjacent to the larger user. If the Board remembers, the first time we brought this to you it was a big green wall, went to more of a brick metal panel, something sustainable for this type of area for year-round.

The next building has lots of glass, lots of hardy plank, a lot of metal panels, something that will sustain Maine winters.

This is the building along the quarry, a lot of different textures, no green walls, with signage that complies with the regulations.

Last one is the Market Basket elevation. That comment on this plan was on the adjacent retail space had efface next to the signage and changed that to a metal panel. This is a very New England style large building and have reduced signage up on top of the cornice down to meet the City regulation.

These plans have been submitted to the Board, everything we showed you at the last meeting. The landscaping, I think we had a lot of good responses about the landscape. I believe there are none (9) Magnolia Trees in through the parking lot and are all scattered around.

One big thing are all the large walkways, sitting areas, more of a project that wants you to sit and walk around and stay for a period of time. It is a lot different than what the Board saw the first time. This is almost like we want you to stay and enjoy it.

In response to the letter that came earlier today that Jim talked about, the comments that we saw from that are technical things that are going on the final mylar and did not see anything that changes the final design that we have done, and we believe that everything you have in front of you meets the City regulations.

If there are any questions from the Board, I will answer them.

**Ed Reidman** before I open to the Public are there any questions from the Board?

**Rene Daniel** Wayne, your Landscaper?

**Wayne Morrill** we had such a response from the Board that last time, we told him he did not have to come but if there is a question or something that you do not like, we can try to change it for you.

**Rene Daniel** if we can go back to the landscaping in the parking lot, directly in front of the Market Basket, walk me through getting off the bus in front on the same side of the Market Basket and explain to me the major landscaping that you have in that parking lot.

**Wayne Morrill** this section here is where the bus stop is, along the side of Main Street. You can see the sidewalk that runs along Main Street that connects you to our driveway entrance, also Building 1A. As you get off the bus you will go through the middle of these street trees that has street trees and undergrowth along Main Street that will break up the view of the parking lot.

As you come in, you come in to a textured sidewalk right down through as you stagger down along here and brings you to the front of Market Basket. These larger walkways as shown on the site plan that are

painted walkways that allows you to get from the parking lot into the store itself. When you come out of the building, it is a very gentle slope and on the reveal of the curb is three inches (3"). What we do is bring the pavement up in that area three inches (3") to bevel up so it is a nice level area coming out of the store. It is at a grade that is not steep, so it is gentle coming into the parking lot. You can see the landscape trees and shrubs on each of the areas that we stepped the areas around, so you can stop there and see the trees, shrubs all the way down and is staggered so it does not appear monotonous.

**Rene Daniel** ballpark, how many total shrubs, trees and plantings?

**Wayne Morrill** on the plants, I say about two hundred (200) trees, around two thousand (2000) different shrubs, four (4) different types of grasses, almost eight thousand (8000) different flowers in Phase One. I can tell you when the landscape budget came to the developer it was a choker, the amount of money we will have in this parking lot with trees and stuff to make this look right and as we told you the caliper of trees that we will be planting so it looks like it has been there all along, those trees do not come cheaply. We are spending a large amount of money to make sure day one looks like the project we have presented to this Board.

**Rene Daniel** I am pleased with the Ginkgo tree and the American Elm

**Wayne Morrill** our Landscape Architect is passionate about having different types of trees.

**Rene Daniel** I have no complaints about the landscaping. I had a concern about the parking lot near Market Basket as you turn facing towards the pit to Main Street, I was fearful that people driving by would see a bare parking lot. You have proved me 100% wrong. Because of that I am very much in favor of Phase One. I think you have all done your homework, I think your crew has listened and have tried to make this a green spot. I like towards the end when you said you wanted to make the area able to sit and enjoy. That is very different, and I want to thank you for this project and for choosing Westbrook.

**Wayne Morrill** as you know we brought our landscaper from a distance to bring some uniqueness to this development and I think it really shows and I appreciate your comments.

**Ed Reidman** Staff comments?

**Jennie Franceschi** in the memo there is a component in the motion to include waiver of joint review with Portland, so that is all inclusive, so you do not have to do two motions to that effect.

The comments that were outstanding the applicant has either addressed or will address the minor comments on the mylar. The Findings of Fact and Conclusions as well as the Conditions are listed to the end of your memo for your consideration this evening.

**Staff Comments:**

**The workshop was conducted in topic format to group comments by topic. We have kept that format going into the Public Hearing. The applicant will provide a summarized presentation in the same format.**

- 1) Internal circulation/parking lots
  - a. Staff comments:
    - i. Access road will need to be named and businesses addressed appropriately. (Condition of approval)
- 2) Pedestrian circulation/amenities
  - a. Staff Comments:
    - i. Containment of lake must be part of the phase 1 amendment (Condition of approval).
    - ii. Provide a barrier along the limits of Phase 1 and the remainder of the site. (Condition of approval)
- 3) Building Elevations/Architecture
  - a. Staff Comments:
    - i. All signage shown on elevations, including Market Basket signage above the cornice line, will need independent review and permitting to ensure compliance with ordinance requirements. (Condition of approval)
    - ii. Screening required for all dumpsters (Condition of Approval)
- 4) Landscaping
  - a. Staff Comments:
    - i. Board provided favorable comments on the design and specifications of the plan.
- 5) Utilities (Stormwater, Power, Sewer, water)
  - a. Staff Comments:
    - i. Applicant is working with the Sewer Department on the appropriate upgrades to the sewer main that the Phase I buildings will connect into which travels down Terminal Street to the pump station.
    - ii. Updated ability to serve/connect documents from the Westbrook Sewer Dept detailing connection to Terminal Street sewer system (Phase 1 approved structures only) and Main Street sewer main (building 1-C only).
    - iii. Provide differential in the approval of impervious cover for this area if different from first approval. (see sheet c2)
- 6) Update on permitting MDEP-Army Corp (Status provided by applicant)
- 7) Misc. Comments:
  - a. Knox boxes required at all lake gates
  - b. Free standing sign on sheet D3 needs to be updated.
  - c. Fill in all zoning district standards (proposed) on the site plans. Plan must state how the entire site plan, with the amended Phase 1 improvements, meets the district requirements (impervious cover, etc.)
  - d. Provide updated performance guarantee estimate
  - e. GIS Plans in compliance with the Ordinance State Plain requirements will need to be provided

**Ed Reidman opened Public Hearing** and explained the Public Hearing procedure.

**Mike Vallencourt** with Westbrook Property Holding LLC a Company that has interest at 25 Brown Street in Westbrook. We do have concerns with the Rock Row proposal and have been following quite closely.

Our submission is somewhat late, that is part in parcel the Planning Review process and the fact that materials get submitted at different times. Obviously, this has been an evolution, all that being said, I want to commend Staff. They have been great about forwarding us materials and providing information to us, so my apologies for the lateness of this submission but we did e-mail it earlier today and with the Chairs' permission I will hand these documents out.

**Ed Reidman** please go ahead.

**Mike Vallencourt** this is a cover letter from my Firm identifying what I think are some bright line issues with this particular review. I was an English major in college and quickly was a recovering Politics major so rest assured you do not want to rely upon my technical review of these issues and that is why we went with Gorrill Palmer Engineers to take a look at and to do a peer review, to dive deeper in this situation and determine whether there was some additional steps that might need to be taken with this application. That is exactly what we did.

You can see the correspondence dated today does include a City application peer review which is prepared by Gorrill Palmer which is a local Engineering firm based out of South Portland and you most are familiar with that, a very reputable firm.

There are a number of concerns that are outlined here. They are outlined in my letter on page one (1), sub a through k. I would say most of these issues are quite technical. There is no question about that. I think most of these issues can be addressed by the applicant with some additional filings and additional follow-up. That is fine, we want to make sure that the integrity of the process is withheld. That being said, I think the elephant in the room is what Attorney Katsiaticas identified earlier when he spoke which is an important Zoning issue in my estimation, that is the City of Westbrook's Gateway Commercial District which of course is the District at issue, the permitted uses that are identified do not include a Grocery Store. A Grocery Store is clearly defined within the Ordinance. Therefore, that is a definition that is a use that should be included within the Gateway Commercial District permitted uses.

In fact, pursuant to City's Ordinance section 300.1

**300.1 Prohibited Uses. In all zoning districts in the City of Westbrook, if a use is not expressly enumerated herein as either a permitted use or a conditional use, said use is prohibited. (Amend 9/11/17 Order 2017-110)**

This is neither a permitted use or a conditional use listed under the strict plain language of the Ordinance and that is clear, it is black and white, written in paper, written on the web. We can review it all day long, but that is the fact of the matter, that is despite the fact that grocery store is very clearly and explicitly defined within the Ordinance as a particular use.

Interesting enough, within the Gate Way Commercial Zone a neighborhood grocery is permitted, however that use is limited to a grocery store have no more than 3,000 square feet of total floor space. We know that is about one half of a Market Basket produce section. This is not a use that is permitted under the Ordinance.

Given the plain language of the Ordinance, the Board cannot approve this, the language is clear. As I said, it is black and white. My letter also identified a number of other issues as I said these are probably easily resolved or resolvable by the applicant and I will run through the list. We did have some concerns based on Gorrill Palmer's analysis, not on my own, because I am an Attorney and not an Engineer. Based on Gorrill Palmers analysis we do have some concerns about the view shed, landscaping and vegetative cover. I think it is going to look like a big old parking lot, I do not know how you get around that, I think that needs additional planning. There should be additional depiction of pedestrian pathways. There should be a designation Restaurants of Class I or Class 2 because there is a distinction and the same with the Banking Class 1 or Class 2, there should be a distinction there, that basically relates to drive thru operations verses MacDonald's that you go through the drive thru and a restaurant that you go and sit down in and the same is true with traffic issues. The right turn slip lane, at the drive to Building 1A, our Engineers identified as being potentially problematic. The extension of the Larrabee Road entrance, there should be adjustments to the Main Street and Larrabee Road entrance and provisions of larger scaled plans relative to the stability of the proposed storm water facilities, we were not comfortable that was adequately addressed.

That is the outline of our concerns. As I say I think the major issues, the main issue relates to Zoning Definitions. I think that is a critical issue. I think the way that is properly dealt with is to probably send that back to City Council for some additional drafting. My understanding is that Planning has interpreted Retail 1 as appropriate for Grocery Store Zoning. That is not what Retail 1 is defined as, Grocery Store is defined as one thing and Retail 1 is defined as another. It is plain clear language and therefore this issue needs to be cleared up before this is approved. Thank you.

# Ainsworth, Thelin & Raftice, P.A.

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September 18, 2018

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Westbrook Planning Board  
c/o Westbrook Planning Department  
2 York Street  
Westbrook, ME 04092

RE: Rock Row Development Proposal

Dear Members of the Westbrook Planning Board:

I write in my capacity as attorney for Westbrook Property Holding, LLC, of 25 Brown Street, Westbrook. My client has concerns with the Rock Row development proposal, the approval of which you are currently considering; as such, please consider the issues outlined here as my client's formal objection to the Rock Row Development Site Plan Review Request for Amendment. Enclosed please find a "City Applications Peer Review" dated September 17, 2018, ("Review") as prepared by Gonill Palmer, an engineering firm located in South Portland.

You will note that the Review sets forth a number of issues, including:

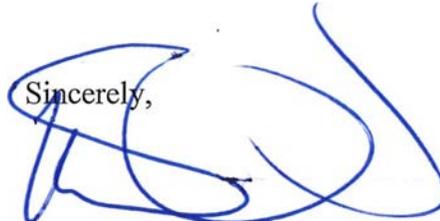
- a.) Increase of pavement viewshed/insufficient landscaping and vegetative cover;
- b.) Depiction of pedestrian pathways;
- c.) Lack of parking study relative to shared parking;
- d.) Designation of restaurants as "Class 1" or "Class 2", so as to comply with Westbrook Ordinance (Ordinance Section 309.I);
- e.) Designation of banks as "Class 1" or "Class 2";
- f.) Inclusion of additional measures to screen loading bays and delivery truck parking;
- g.) Elimination of right-turn slip lane at the driveway to Building I-A;
- h.) Extension of Lanabee Road entrance;
- i.) Adjustments to Main Street Entrance and Lan-abee Road Entrance;
- j.) Provision of larger scale plans relative to stability of proposed stormwater facilities;
- k.) Maine Department of Transportation considerations.

We believe that all of the above-captioned issues must be further addressed by the applicant prior to the City granting approval for the pending amendment.

Of particular concern is the fact that the City of Westbrook's Gateway Commercial District's "Permitted Uses" do not include a "Grocery Store". Pursuant to City Ordinance Section 300.I, "In all zoning districts in the City of Westbrook, if a use is not expressly enumerated herein as either a permitted use or a conditional use, said use is prohibited." Ordinance Section 309.1 clearly sets forth Permitted Uses; Conditional Uses are listed within Section 309.2. Despite the fact that the term "Grocery Store" is clearly defined within the City's ordinances, this use is not actually listed as either a Permitted or Conditional Use for the Gateway Commercial District. To be clear, the Ordinance does permit a "Neighborhood Grocery"; however, such a use is limited to "a grocery store having not more than 3,00 S.F. of total floor space."

Given this issue, the City must first proceed with the process of amending its ordinance before a grocery store exceeding Three Thousand (3,000) square feet can be approved.

For all of the above-referenced reasons, as more fully discussed within the enclosed Review, we respectfully request that the Planning Board: (i) Solicit additional information and documentation from the Applicant; and (ii) Address the "Grocery Store" zoning issue with City Staff and the City Council.

Sincerely,  


Michael F. Vaillancourt, Esq.

MFV/kb  
Enclosure



## **CITY APPLICATIONS PEER REVIEW (9-17-18)**

**Project:** Rock Row Site Plan Amendment – **North Campus**, Westbrook ME  
**GP Job Number:** 3471  
**Date:** 9-17-18  
**Prepared By:** Al Palmer, PE  
**Distribution:** Michael Vaillancourt

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Gorrill Palmer has completed our initial review of the City Applications associated with the above referenced project. This memorandum presents our observations and comments.

### **Material Reviewed:**

Site Plan Application, prepared by Jones & Beach, July 12, 2018  
Cover Letter, prepared by Jones & Beach, July 12, 2018, with various attachments  
Cover letter, prepared by Jones & Beach, September 6, 2018  
Site Plan Drawing Set dated September 6, 2018, "Issued for Review", consisting of 35 drawings  
Landscape Plan dated September 6, 2018, with various attachments

### **Criteria for Review:**

Land Use Ordinances of the City of Westbrook, Last Updated August 21, 2018:

### **Observations &**

#### **Comments: Site Plan**

#### **Application**

It is noted that the Westbrook Ordinance differentiates between Retail (four classes), Neighborhood Grocery and Grocery Stores. Retail Class 1, 2 & 4 are Permitted Uses within the Gateway Commercial District as is Neighborhood Grocery. It is noted that Neighborhood Grocery stores are limited to less than 3,000 sf. A Grocery Store is neither a Permitted Use nor a Special Exception/Conditional Use within the Gateway Commercial District, therefore it would be a prohibited use in this District. The definition of a Grocery Store, per Section 201, is presented below:

***Grocery Store.** A commercial enterprise engaged in the production, preparation and sale of staple foodstuffs, household supplies and usually meats, produce and dairy products.*

**It appears that a Market Basket (a grocery store as defined in the ordinance) is a prohibited use in the Gateway Commercial District pursuant to Ordinance Section 300.1 Prohibited Uses which states "In all zoning districts in the City of Westbrook, if a use is not expressly enumerated herein as either a permitted use or a conditional use, said use is prohibited."**

The description for the Gateway Commercial District notes that "the 2012 Comprehensive Plan encourages a mix of uses on consolidated lots and a uniform building line along Main Street" (emphasis added).



The approved Site Plan proposed three buildings (Retail A, Restaurant B & Retail C) to be constructed parallel to and immediately adjacent to Main Street, with apparent front setbacks ranging from 30' to 40'. The approved Site Plan provided a consistent streetscape along Main Street with these three buildings with approximately 64% of the Main Street frontage occupied by buildings (65% west of the site driveway and 62% east of the site driveway) thereby minimizing the view of the parking lots to the rear of these structures. In addition, the large parking field to the rear of these buildings was oriented parallel to Main Street allowing the use of divider landscape islands to further reduce the visual impact of the parking lots as viewed from Main Street between the proposed buildings.

The proposed amendment includes three buildings (Mixed-Use Bldg 1-A, Restaurant Bldg 1-B, and Bank Bldg 1-C) parallel to and adjacent to Main Street, with apparent front setbacks ranging from 46' to 85'. The length of these three buildings (parallel to Main Street) has been significantly reduced, such that only 41% of the Main Street frontage will be occupied by buildings (29% west of the site driveway and 62% east of the site driveway). As the building occupied frontage west of the site driveway has been reduced from 65% to 29%, and the parking to the rear of these structures has been rotated to be perpendicular to Main Street, the viewshed from Main Street will be significantly changed, with the predominant view being the parking field for Bldg 1-E.

**It does not appear that the proposed amendment will provide a uniform building line along Main Street and will increase the pavement viewshed which is contrary to the gateway provisions of the ordinance.**

**A 2000 Study entitled the Brighton Avenue/Main Street Corridor Traffic and Streetscape Study emphasized the City's desire to improve gateways into Westbrook particularly on Main and Larrabee Streets to improve the City's physical image.**

The approved site plan and proposed amendment contains a large parking lot adjacent to Main St. with little landscaping or vegetative cover. In contrast, the renderings from the 2000 study portray pedestrian walkways, lush landscaping and attractive building facades and lighting for these gateway areas.

**It appears that the proposed parking lot directly adjacent to Main St. is not consistent with the City's long-term goal of providing an attractive gateway into this area of the City.**

Section 309.3.0 (I), Landscaping, requires that "25% of the entire site shall be landscaped, leaving 75% for building and paved areas". It appears that the Landscape Plans that were provided with the September 6, 2018 Plan Set doesn't include the percentage of landscape coverage of the site and that a good majority of the landscaping is grass covering the stormwater treatment infrastructure and doesn't meet the spirit of this requirement.

**We recommend that Landscape Plans be provided that depicts the "landscaped area" with calculations documenting compliance with the 25% standard and that the stormwater grassy areas not be included in this calculation**

Section 309.3 O. 2. Pedestrian Movement requires "a system of pedestrian ways that are protected and safe from vehicular movement. The system must connect with existing sidewalks in the area, bus stops, and with any other area amenities."

The Site Plans submitted on September 6, 2018 portray a visible pedestrian pathway around the proposed quarry/amphi theater area, but it is less clear where the pedestrian connections to the retail buildings and parking lots are located on the other side of the project.



We recommend that pedestrian pathways be depicted on the site plans for a clearer understanding of whether this requirement is being met by the proposed project.

Section 505.1.A, Parking and Circulation, sets minimum parking requirements for the Gateway Commercial District. The applicant has requested a waiver of this section of the Ordinance to allow 606 parking spaces in Phase I of the North Campus rather than the 846 minimum required parking spaces. We were unable to locate a parking study as required under Ordinance Section 505.1.D, Parking Required for Each Use. This section requires that "where multiple uses occur, on-site parking facilities...must be provided in accordance with the standards above and below, respectively, except where the applicant can show through a parking study that each use has different operating hours, so that the peak period parking demand is non-conflicting". This section states that "Where the applicant can demonstrate non-conflicting periods of use, the Planning Board may grant approval for shared use of parking spaces".

We recommend that a parking study be provided as required by the Ordinance if the applicant is considering shared parking as a means of reducing the required number of parking spaces.

Section 309.I of the Land Use Ordinance presents the Permitted Uses in the Gateway Commercial District as a matter of right, which includes Retail, Restaurants and Banks as separate uses. The Applicant has not disclosed the potential tenants for the development which is not uncommon at this stage of the project. It is noted that the Westbrook Ordinance differentiates between Restaurants with Drive Thru facilities (Restaurant Class 1) and those without Drive Thru facilities (Restaurant Class 2). Class 1 Restaurants require Special Exception Review. Class 2 Restaurants are a permitted use.

We recommend that all Restaurants be labeled as either Class 1 or 2 in compliance with the Ordinance.

It is noted that the Westbrook Ordinance differentiates between Banks with Drive Thru facilities (Bank Class 1) and those without Drive Thru facilities (Bank Class 2). Class 1 Banks require a Special Exception/Conditional Use Permit. Class 2 Banks are a permitted use.

We recommend that all Banks be labeled as either Class 1 or 2 in compliance with the Ordinance.

Section 505.1.H – This section requires that "all loading bays must be screened, with areas for trucks to park while waiting for loading activities". It does not appear that the loading bays for Building 1-E are screened from Larrabee Road.

We recommend that the application indicate whether parking areas are needed for trucks waiting for loading activities, and if so, show these areas on the plans. We recommend that additional measures be taken to screen the loading bays as viewed from Larrabee Road in accordance with Section **505.1.H**.



### Special Exception (Conditional Use) Application

- The applicant requests a Special Exception/Conditional Use to allow Bank Class I and Restaurant Class I in the proposed development within the Gateway Commercial District. Both uses are permitted as a Special Exception/Conditional Use under the Standards for this District. Application Part A Certain Requirements Met –The application must prove "that the requested use meets the dimension, parking, loading and sign requirements of this Ordinance". The locations of the proposed Bank Class I and Restaurant Class I uses are not clearly labeled on the plans; however, they appear to be located within the proposed retail and restaurant buildings along Main Street. Parking requirements assigned to these uses have not been delineated on the plans or in the application. Loading requirements specific to these uses have not been identified on the plans.

We recommend the following information be provided – label proposed location of these uses; and delineate parking spaces and loading requirements for these uses.

- The application states that the applicant "must present detailed information in the form of diagrams, photographs and drawings and such engineering data as deemed necessary by the Board".

We recommend that the applicant provide a narrative describing how each of the criteria in the Special Exception/Conditional Use Application have been addressed.

### Site Plans

- C2-1, C2-2, and C2-3, Site Plans – North Campus –Two elements of the site circulation appear to have the potential for significant conflict between vehicles. At the Main Street intersection and the entrance to the facility, a right-turn slip lane is in close proximity to Main Street. Vehicles slowing to enter the slip lane may result in rear end collision with vehicles attempting to enter the facility but are not anticipating a slowing or stopped vehicle. At the Larrabee Road intersection, there is a sharp turn required for all vehicles entering and exiting the facility. Based on the traffic study, the queue for vehicles exiting this driveway will back up past the truck service drive, which could result in conflicts between vehicles.

To comply with Section 512.3 of the Ordinance which requires vehicle access to be safe and convenient as well as Section 512.4, we recommend that consideration be given to the following:

- Elimination of the right-turn slip lane at its current location and replace with a four-way intersection at the driveway to Building 1-A.
  - Extension of the entrance at Larrabee Road to the southeast corner of Building 1-E and connection to the third leg of the roundabout with an appropriate radii.
- C2-1, C2-2, and C2-3, Site Plans – North Campus – While we recognize that the proposed amendment is intended to only address Phase I, we are concerned that future phases may require modifications to the entrance / exits that will be difficult if not impossible to implement in the future.

To comply with Section 512.3 of the Ordinance which requires vehicle access to be safe and convenient as well as Section 512.4, we recommend that consideration be given to the following:

- Main Street Entrance – Incorporation of 2 entrance lanes for the entire length of the driveway and 3 exit lanes (allowing for 1 dedicated left turn lane, 1 left-thru lane and 1 right turn lane). Currently the median island appears to be less than



- 4' in width. Incorporation of a wider island at this time that could be narrowed in the future for the additional exit lane would appear to be warranted.
- o Larrabee Road Entrance – Incorporation of at least 2 entrance and 2 exit lanes.

C3-1, C3-2, and C3-3, Grading and Drainage Plans – North Campus – These plans show proposed construction of Building H, underdrained soil filters, and storm drain pipe outfalls directly adjacent to the existing quarry pit on the site. The contour elevations on the plans are difficult to read but appear to show a near-vertical drop of more than 75' within 5' to 20' from the proposed improvements. Existing ground underlying some of the proposed basin locations appear to be steeper than 2:1 (horizontal:vertical) in places. Constructing fill embankments, structures and impounding stormwater on existing sloped areas near the quarry raise questions of slope stability and stability of adjacent roadways and walkways.

To demonstrate compliance with Ordinance Section S 12.1 which requires that the plan reflect the natural capabilities of the site to support the development, we recommend that the applicant provide larger scale grading plans, cross sections, and a geotechnical analysis to determine the stability of the proposed stormwater facilities and adjacent roadway and sidewalk areas accessible to the public.

#### Traffic Letter to MaineDOT

It is our understanding that a Third-Party Peer Review was conducted of the initial traffic study. Has the Peer Reviewer been retained to conduct a review of this Amendment?

The Traffic Letter submitted by Sebago Technics to the Maine Department of Transportation (MaineDOT) does not provide the forecast Level of Service by intersection which is required to demonstrate compliance with Ordinance Section 512.2 which requires that intersections near the site must be maintained at Level of Service D.

To comply with Section S 12.2, the Applicant should submit the intersection (not approach) levels of service.

The Traffic Letter references the prior VAI Study for trip distribution. Only 1/3 of the entering traffic for Phase I is predicted to use the Main Street Entrance. This appears counter-intuitive based on the proximity to Portland and the level of traffic on Main Street.

To comply with Ordinance Sections S 12.2 the Applicant should submit an updated gravity model for only Phase I to support the trip distribution.

The Traffic Letter indicates that the Main Street westbound approach left turn lane to Larrabee Road will operate at a LOS E with just Phase I of the development constructed, and that the available queue (220') will be exceeded as the 95% queue is predicted to be 295'. Has the Applicant explored construction of a dual left turn lane at this location?

To demonstrate compliance with Ordinance Section S 12.2 which requires that the roads have adequate capacity to accommodate the additional traffic, the Applicant should address incorporation of a dual left turn lane at this location.

The Traffic Letter indicates that a proposed left turn storage length of 180' will be provided for the Main Street entrance. The 95% queue is 183' for just Phase I of the project.

To comply with Ordinance Sections S 12.3 and S 12.4, the Applicant should address incorporation of a dual left turn lane into the site at this location.

**Ed Reidman** would anyone else wish to speak?

No Comments

### **Public Hearing closed**

**Ed Reidman** I did not hear any questions. I think it is a tragedy that you just came out of the woodwork after we have been working on this for a very, very long time. If you look at the memo we have been working on this development since November 2015 and we are here in 2018.

The Public Hearing is closed, and I will call the meeting to order.

### **REGULAR MEETING**

**2. Call to Order.**

**3. Approval of Minutes.**

**4. 2018.34 – Amended Site Plan, Subdivision & Special Exception – Rock Row (previously called “Dirigo Plaza”) – 58 & 80 Main Street – Waterstone Properties Group: Jones & Beach, Inc. on behalf of Waterstone Properties Group, is proposing an amendment to a previously approved site plan to reconfigure building layouts and internal traffic circulation. The amendment is for Phase 1 of a 495,915 +/- square foot regional retail shopping center. Tax Map: 42B Lots: 9, 10, 11 & 14 Zone: Gateway Commercial.**

**Ed Reidman** before the meeting started, the Board was handed a copy of an e-mail that will be in the record that had to deal with traffic.

\*\*see copy of e-mail below\*\*

Hi Jim,

I have received your email and will pass your concerns on to the Planning Board this evening. Thank you for your input.

-Rebecca

**Rebecca Spitella**

Assistant City Planner

City of Westbrook

2 York Street, Westbrook, ME 04092

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1-866-559-0642 (fax)

**From:** Jim Hiltonsmith [<mailto:JHiltonsmith@rockingham.com>]

**Sent:** Tuesday, September 18, 2018 11:05 AM

**To:** Rebecca Spitella

**Subject:** Planning board meeting 9-18-2018

I am a resident of Forest Street in Westbrook where I have lived for the past forty years. I've recently expressed my concerns to city employees about the increased traffic flow on our street as well as excessive speed by some motorists that neighbors have encountered. In my meeting with city officials, I asked for some consideration to address these problems with several ideas, including speed bumps, intermittent patrol by city policeman, or highlighting speed limit signs with led lights.

The impending development by Waterstone concerns me because of the negative impact it may have with the already increased traffic flow on Main Street and Forest Street as well. I support the idea of expansion of businesses in the area but do not feel confident, even though traffic studies are complete, that our streets are capable of handling it. (i.e. traffic flow in and out of Westbrook during workday commutes are becoming worse).

I appreciate the opportunity to express my views. I would hope that the board has taken all of these things into consideration. Forest Street has increasingly become a "bypass" or "cut through" for more and more motorists.

Thanks

James Hiltonsmith

194 Forest Street

Westbrook, Maine

207-332-0677

**Ed Reidman** we have had a traffic permit from ME DOT that is now being modified and that addressed the effective area where the person lives. As I recall the Traffic Study covered all the way to Forest Street.

**John Turcotte** my firm has a client with interest in the outcome of this matter and in fact Attorney Vallencourt is my Law Partner, so I respectfully request to recuse myself from this matter.

**Ed Reidman** no one has any objection to that?

No objections

**Ed Reidman** you can sit through the meeting or if you would like to leave that is acceptable also.

Questions from the Board? As I said, we have seen this since 2016 and we have had proposals, details, explanations of everything that is going on from drainage to sewerage and buildings, etc., etc.

**Joe Marden** MR. Chair, through you to the City Planner; this is unfair to you, but did you have a chance to review the memo from the gentleman that spoke? Any concerns or comments?

**Jennie Franceschi** what I can tell you is that this was sent to a City e-mail at 4:30 this afternoon. I did not actually see the letter until 6:20 this evening. So, I have briefly gone over it. What I can tell you specifically as it relates to the use category; we have already talked to our City Solicitor and our City Solicitor agrees with our classification of this use as Retail Class One. The definition says:

***Retail Class 1. A business whose principal use is the retail sale of consumer goods, except for those listed in Retail Class 2 and Retail Class 3. (Amended by Ord. of 11/17/14)***

Retail Class 2 has to do with agriculture and Retail Class 3 is wholesale and building materials. Retail Class 1 we have considered any sort of grocery store, the same as Shaw's or consumer goods which as Kohl's has always been since the Ordinance and definitions have been written has been called Retail Class One.

**Joe Marden** just some overlap between those two?

**Jennie Franceschi** and to be clear there is no use of the term grocery store in any other Zone in the City.

**Joe Marden** I did have a question to the engineer and I apologize because I missed the last meeting. Building H that is on the Quarry, there is not a ton of parking spaces adjacent to that, is that not highest retail or are they thinking that there is shared parking?

**Wayne Morrill** that is why we moved the bank to that far corner because the parking is down near the cul-de-sac that would be a lot of the parking for that use.

**Joe Marden** it was not clear if the parking spaces were adequate for that area.

**Wayne Morrill** that is why a lot of the pedestrian walkways are enhanced so we can share the parking for those uses.

**Joe Marden** do you know how many separate uses will be in that building or is that to be determined?

**Wayne Morrill** it is to be determined, but I believe our plans show four or five small uses along that Quarry edge.

**Dennis Isherwood** Mr. Chair, through you to MR. Morrill, sorry I also missed that last meeting. I would like to have you walk me down Main Street here in front and tell me what I am looking at.

**Wayne Morrill** right out here is the Midas, there is no driveway cut as you come along. The only driveway cut is across from the Kohl's Plaza. As you come along, you have a sidewalk that runs along this edge, we have a bus stop, on this front corner, and you have street trees that line the entire edge all the way the entire front of Main Street. You have low shrubs, so what you see as you drive along are shrubs and flowers and those are low with the trees we have picked have higher branches, so you have a view corridor with multi-staged landscaping with low shrubs and flowers then the higher trees. The caliper of the trees are three (3) and four (4) inches along that edge, so it is a mature tree with high branches. To Building 1A you have a sidewalk, a crosswalk, you have a sidewalk that goes around the Quarry with large sitting areas around the cul-de-sac with crosswalks to different uses along that entry road.

**Dennis Isherwood** these sidewalks are well defined, and the foliage is well defined, so I am not going to see a parking lot as I drive down Main Street.

**Wayne Morrill** that was one of the biggest things, you will see landscaping. As you are driving through you will see the parking lot with landscaping and landscaping along the entire front along Main Street. You will have a landscape buffer that goes along the front with a view corridor to see the building.

**Rebecca Dillon** I have a couple of questions for Staff through you Mr. Chair. On some of the items in this memo we received this afternoon it is mostly talking about the traffic items. Will those be reviewed based on the changes to this plan we are potentially approving tonight? I guess, Gorrill Palmer knows what they are talking about with traffic. Gorrill Palmer is the best there is and if any of these items that they mentioned are found to be an issue, would they then have to make changes and come back before us, if there are any amendments to the plan based on these third-party reviews?

**Jennie Franceschi** this third-party review was not something that the City has requested. This was done by another entity. Just because a third party has provided their opinion does not mean that the engineer of record is Sebago Technics has done anything that is not appropriate. Two engineers can disagree how to move traffic through a center. In this case that is what we have; however, that does not mean that Sebago Technics is wrong. They have provided what they feel is an appropriate solution, stamped by a professional engineer and that is what they have provided to the Board tonight. Another engineer can disagree but that does not make all the assertions are in fact valid.

**Ed Reidman** I would tag on to that statement that the Maine Department of Transportation has issued a Traffic Permit and is modifying it at this time.

**Rebecca Dillon** a lot of these comments are subjective. The Comprehensive Plan encourages certain things, it is not requiring certain things. Thank You.

**Rene Daniel move** that the Planning Board approve Dirigo Center Developers LLC's application for an amendment to the Final Site Plan, Subdivision, and Special Exception approvals granted by the Planning Board on October 18, 2016 and amended January 3, 2017, March 21, 2017, June 6, 2017 and September 5, 2017 for property located at 58 and 80 Main Street, Tax Map: 42B Lots: 9, 10, 11, & 14 Zone: Gateway Commercial, including, without limitation, approval of the amended

phased commencement and completion schedule attached to the application; reapprove the Special Exception approval as a Conditional Use approval and the Subdivision waivers for Rock Row; waive joint meetings and hearings with the City of Portland reviewing authority to review the application; and the following findings of fact, conclusions and conditions as stated on pages 3 through 8 of this Staff Memo dated September 14, 2018, which are adopted in support of that approval.

**Site Plan – Finding of Fact:**

*Utilization of the Site - Adequate. Site features meet dimensional requirements of the ordinance with the exception of the Parking requirement in Phase 1 (North Campus) whereby the Planning Board granted a waiver on July 19, 2016. The Board granted a waiver from the parking standards of the Westbrook Land Use Ordinance section 505.1A to reduce the parking requirement from 1,753 spaces to 1,414 spaces.*

*Adequacy of Road System - Adequate. Applicant has received their MDOT traffic movement permit. They have submitted for an amendment to phase the components of those improvements.*

*Access to the Site - Adequate. Applicant has provided 2 access points, in Phase I and are looking for 4 with the final build out which allow for multiple points of diffusion of traffic.*

*Internal Vehicular Circulation - Adequate. Applicant has shown that the site will function from a circulation standpoint.*

*Pedestrian and Other Modes of Transportation - Adequate. A bus stop pull out is being constructed as well as improvements to the pedestrian sidewalk system in the greater area.*

*Stormwater Management - Adequate. Applicant has received a MDEP site location permit and a Stormwater Permit/approval. Applicant has met the treatment criteria for MDEP and will contribute towards the Urban Impaired Stream fund for Nasons Brook. MDEP has issued its Site Location of Development Act Natural Resources Protection Act Freshwater Wetland Alteration and Water Quality Certification Finding of Fact and Order for this project. Applicant will receive an amendment to this permit based upon the changes proposed in Phase I.*

*Erosion Control - Adequate. Plans provided show the site will have sufficient erosion control measures installed during construction.*

*Utilities - Adequate. Site is serviced by CMP, Portland Water District, Public Sewer and natural gas.*

*Hazardous, Special and Radioactive Materials – N/A*

*Technical and Financial Capacity - Adequate. Waterstone Properties, Ltd has provided a consolidated interim financial statement for the fiscal year ending June 30, 2018 as evidence of financial capacity.*

*Solid Waste - Adequate. Applicant will be responsible for disposal of all solid waste for the Center.*

*Historic, Archaeological and Botanical Resources – None Known*

Landscape Plan - Adequate – Applicant has provided a plan for enhancement of the Main Street and Larrabee Rd corridors and screening as applicable. Additionally, internal landscaping is included in the plan to beautify the Center.

**Subdivision – Finding of Fact:**

Pollution and Sewer Disposal - Adequate. – Disposal of the Sewage from the project will be via the City Public Sewer system, and therefore will not cause a pollution issue.

Water - Adequate. – Applicant has received an ability to serve from the Portland Water District.

Soil Erosion - Adequate. – Site has shown on the plans appropriate BMPs to address erosion.

Traffic - Adequate. - Applicant has been reviewed by MDOT for the amendment to their traffic movement permit to ensure that the applicant will mitigate traffic issues in the region.

Sewage - Adequate. – Application is conditioned upon the receipt of an ability to serve from the Westbrook Sewer Department.

Solid Waste - Adequate. Applicant will be responsible for disposal of all solid waste for the Center.

**Aesthetics**

1. Project to Site – Adequate.
2. Project to Surrounding Property – Adequate.
3. Landscape Design – Adequate.
4. Lighting – Adequate.
5. Signs - Adequate.

**Conformity with Local Plans and Ordinances – Adequate.**

1. The proposal is in conformance with the Comprehensive Plan.
2. Subdivision Plan meets requirements of the Land Use Ordinance with the exception of the submission requirement of Section 502.4 that states the Subdivision Final Plan must contain all of the information required by Section 502.4. The Planning Board granted a waiver on July 19, 2016 to this requirement such that the Applicant is not required to show all of the required information on the Final Subdivision Plan, but instead may provide all of that required information in the Dirigo Plaza Plan Sets as submitted.

Financial and Technical Capacity - Adequate. Waterstone Properties, Ltd has provided a consolidated interim financial statement for the fiscal year ending June 30, 2018 as evidence of financial capacity.

River, Stream or Brook Impacts - Adequate – Applicant has received a MDEP site location permit and a Stormwater Permit/approval. Applicant has met the treatment criteria for MDEP and will contribute towards the Urban Impaired Stream fund for Nasons Brook. MDEP has issued its Site Location of Development Act Natural Resources Protection Act Freshwater Wetland Alteration and Water Quality Certification Finding of Fact and Order for this project. Applicant will receive an amendment to this permit based upon the changes proposed in Phase I.

The applicant will be reconstructing an old stream crossing of Nasons Brook to restore it to a natural flow channel. MDEP and the US Army Corps of Engineers have issued Freshwater Wetland Alteration and wetlands permits for the stream culvert and crossing.

**Special Exception (Conditional Use) – Finding of Fact:**

Uses specific to this section are: Restaurant Class 1 (Drive thru), Bank Class 1 (Drive thru)

The Board adopts as its Finding of Fact on the Applicant's application for Special Exception the Jones & Beach letter to the Planning Board dated February 29, 2016 supplementing that application, as amended by the Subdivision Plan and other proposals and plans submitted to the City, and determines the following:

- A). Certain Requirements Met. That the use requested meets the dimension, parking, loading, and sign requirements of this Ordinance. - *Adequate*.
- B). Value. That the use requested will not significantly devalue abutting property or property across public or private way. - *Adequate*.
- C). Effects of Land Use. That the use granted will:
  - (1) Maintain safe and healthful conditions.
  - (2) Not cause water pollution, erosion, or sedimentation.
  - (3) Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat.
  - (4) Conserve shared tree cover and visual, as well as actual, access to water bodies.
  - (5) Not burden on-site septic or off-site waste disposal.
  - (6) Not burden existing public ways. – *Adequate as to C) (1) through (6)*.
- D). Performance Standards. That the use granted is compatible with adjacent land uses and that it meets the following performance standards:
  - 1. Landscape Environment and Enhancement. The landscape must be preserved in its natural state insofar as practicable. It must be designed so as to stabilize the slopes and buffer the site, where necessary.
  - 2. Surface Water Drainage. Surface water drainage must not have an adverse effect on surrounding properties, downstream water quality, soil stability, or the storm drainage system.
  - 3. Water, Air, Soil Pollution. The development will not cause unreasonable water, air, or soil pollution.
  - 4. Soil Integrity. The development will not cause unreasonable soil erosion or reduction in the capacity of the soil to hold water.
  - 5. Natural Environment. The development must not have an unreasonably adverse effect on a historic site or irreplaceable natural areas.
  - 6. Nuisance Factor. The development must not cause unreasonable noise, odors, dust, gas, fumes, smoke, light or other annoying or dangerous emissions.
  - 7. Special Features. Exposed storage areas, machinery installation, service and loading areas, and similar facilities must be set back, screened, or buffered so as to minimize any possible adverse effect on the surrounding uses.
  - 8. Vehicular Access. The site layout must provide for safe vehicular access and egress, including that for emergency vehicles.
  - 9. Parking and Circulation. The layout of vehicular and pedestrian traffic patterns must provide for safe interior circulation, separation of pedestrian and vehicular traffic, and storage of plowed snow and the parking shall comply with the parking requirements set forth in Section 505.1 A-D, regardless of whether the special exception requires site plan review.
  - 10. Public Services. The development must not impose an unreasonable burden on the water supply and sewage disposal systems, fire or police services, public ways, schools, recreational facilities, and other public services or facilities.

- Adequate as to D) (1) through (10)

**Conclusions:**

1. The proposed site plan **will not** result in undue water or air pollution.
2. The proposed site plan **has** sufficient water available for the reasonably foreseeable needs of the site plan.
3. The proposed site plan **will not** cause an unreasonable burden on an existing water supply.
4. The proposed site plan **will not** cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
5. The proposed site plan **will not** cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.
6. The proposed site plan **will** provide for adequate sewage waste disposal.
7. The proposed site plan **will not** cause an unreasonable burden on the municipality's ability to dispose of solid waste.
8. The proposed site plan **will not** have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
9. The proposed site plan **conforms** to the duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.
10. The developer **has** adequate financial and technical capacity to meet the standards of this section.
11. The proposed site plan **is not** situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, subchapter I, article 2-B M.R.S.A.
12. The proposed site plan **will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
13. The proposed site **is not** situated entirely or partially within a floodplain.
14. All freshwater wetlands **have** been shown on the site plan.
15. Any river, stream, or brook within or abutting the site plan **has** been identified on any maps submitted as part of the application.
16. The proposed site plan **will** provide for adequate storm water management.
17. The proposed plan **will not** negatively impact the ability of the City to provide public safety services.

**Conditions:**

1. Approval is dependent upon, and limited to, the proposals and plans contained in the application dated September 13, 2016 and amended July 12, 2018 and all supporting/subsequent documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board, and any variation from such plans, proposals and supporting documents and representations are subject to review and approval by the City Planner or the Planning Board.
2. Consistent with Section 504.3, the Code Enforcement Officer shall not issue any permits until a site plan has been approved by the Planning Board and a Mylar signed by the Planning Board. Mylars must be submitted to the City within 90 days of Planning Board approval or the approval shall be null and void.
3. Prior to any permits being issued for Phase I only (as delineated on approved Site Plan):
  - a. All outstanding Staff comments must be addressed.

- b. Copy of updated Maine Department of Transportation Traffic Movement permit
  - c. Copy of updated MDEP Permits
  - d. Updated site plan set based upon all State permits if necessary (Mylar & Paper form)
  - e. Copy of the recorded amended subdivision plan.
  - f. Copy of SWPPP shall be provided to Planning Office
  - g. Copy of Maine Construction General Permit to Planning Office
  - h. The applicant shall provide the digital data as required by Section 504.5.B.12 and 13. – verification with GIS coordinator
  - i. Copy of all recorded easements between the leased portions of the site and the main parcel for access, drainage and snow storage.
  - j. A pre-construction meeting must be held with City Staff and the site work contractor. Contact the Planning Office to coordinate.
  - k. Final Sewer Plans (including the upgrades to the main lines servicing Phase I along Terminal Street all the way to the pump station) reviewed and approved of by City of Westbrook Sewer Department. Additionally, connection of Building 1-C to the Main Street sewer is only permitted as the use is a bank with low flows and there is an existing lateral into the site, however the applicant will replace the existing lateral all the way to the main line in Main Street to the satisfaction of the sewer department.
  - l. An inspection fee shall be made payable to the City of Westbrook for inspection of site improvements made by the Code Enforcement Officer and/or other appropriate City staff. This fee is required per Section 500.8 of the Land Use Ordinances in order to cover the costs of inspection of site improvements. Previously paid - \$168,744.00, this inspection fee will be recalculated, and payment adjusted, as appropriate.
  - m. The applicant shall file a performance guarantee with the City of Westbrook. The amount of the guarantee shall be agreed upon in advance with the City of Westbrook and shall be of an amount to ensure completion of all on- and off-site improvements necessary to support the proposed project. (Current guarantee amount: \$8,437,220.00) The performance guarantee will be recalculated, and the amount of the current performance guarantee will be adjusted, as appropriate.
  - n. Stormwater components:
    - i. All Grassed Underdrained Soil filters will have cleanouts.
    - ii. All sediment forebays will have concrete pad in base of forebay
    - iii. Best management practices shall be adhered to during all ground disturbance operations. All Street Catch basins in the vicinity of earthwork operations shall have silt sacks installed & maintained for the duration of the work.
  - o. Site Components:
    - i. Verification that all truncated domes in City ROW will be cast iron type.
    - ii. All dumpsters, compactors and storage of recycling or waste materials must be fully screened. Screening method shall be approved of by Planning Department.
4. Prior to any sign permits, a site signage package meeting the district requirements must be reviewed and approved of by the City.
5. Prior to any building permit issuance beyond the “Phase 1 Limit of Work Line” as shown on the approved site plans:

- a. Applicant will reapply to the Planning Board for approval of all site improvements and building elevations. (Parking layouts revised, pedestrian systems addressed, internal signage directing traffic to Exit 47, etc.)
  - b. Provide an easement along the Arterial side of the site for potential future sidewalks/pedestrian amenities.
6. Prior to commencing any work in the City Right-of-Way, the applicant must obtain a road-opening permit from the Public Works Department.
7. Prior to the first Occupancy Permit issuance,
  - a. An internal signage plan shall be approved by the City and installed per plan.
  - b. Businesses addressed to the satisfaction of the E911 coordinator
  - c. Provide documentation of maintenance contractor for the project to keep site maintained.
  - d. Lake must be contained from public access.
  - e. Barrier along Limit of Phase I work line to separate the active site from the under-construction site.
8. Prior to release of the performance guarantee, the site will be in compliance with the approved plan and as-built plan provided.
9. The applicant shall comply with Chapter 37, the local Post Construction Stormwater Management Ordinance. On January 15th every year, a copy of the maintenance log for the previous year for the stormwater treatment features associated with this project needs to be provided to the Planning Office.
10. The applicant shall comply with the requirements of local and state authorities for life and safety requirements.
11. Traffic Conditions:
  - a. On all turning movements where skip lines are shown on the road to delineate lanes, those skip lines should be recessed into the pavement.
  - b. Construction of the traffic improvements will be phased based on the amended MDOT Traffic movement permit and will be a coordination effort with the City of Westbrook, Portland, MDOT and MTA.
  - c. ROW drawings will need to be completed to verify work limits.
  - d. In future phases, provide an easement along the Arterial side of the site for potential future sidewalks/pedestrian amenities.
  - e. Piano Key sidewalk striping will be acceptable to Westbrook.
  - f. In public ROW islands or along roads, any vegetation needs to be salt tolerant plantings. NO grassed areas will be allowed.
  - g. A monitoring program for traffic system will be required if not part of the MDOT TMP.
  - h. Left turn pockets on Larrabee Road will need to be evaluated once final plans are provided.
12. Project letters with conditions to be part of the approval (as modified by this approval):
  - a. Westbrook Fire Department – letter from Andrew Turcotte, Fire Chief dated September 7, 2016
  - b. Westbrook Sewer Department – letter from Eric Dudley, P.E. dated September 22, 2016
  - c. Portland Water District ability to serve letter – dated January 19, 2016
  - d. Westbrook Police Department – letter from Chief Janine Roberts dated September 13, 2016
13. Conditioned on the Responses provided by the applicant (as modified by this approval):
  - a. Letter from Wayne Morrill of September 27, 2016 to Jennie Franceschi

b. Letter from Wayne Morrill of October 10, 2016 to Jennie Franceschi

**2<sup>nd</sup> by Dennis Isherwood**

**Ed Reidman** questions or comments from the Board?

**Joe Marden** through you Mr. Chair to the City Planner, just for my information, if this motion does pass, if anyone has or wants to file an appeal process, it is a 30-day appeal process, correct?

**Jennie Franceschi** yes

**Ed Reidman** everyone understands the motion?

**The vote is 5-0 in favor (John Turcotte recused)**

**Adjourn**

*THANK YOU, respectfully submitted by Linda Gain [lgain@westbrook.me.us](mailto:lgain@westbrook.me.us)*