



## Planning & Code Enforcement

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### PLANNING & CODE ENFORCEMENT

## WESTBROOK PLANNING BOARD

Tuesday, March 7, 2023, 7:00 P.M.

### MINUTES

#### 1. Call to Order

**Rebecca Dillon** this meeting will be offered as a hybrid meeting, accommodating both in-person and remote participation. The link and phone number to join the meeting via Zoom is located on the Planning Board agenda, which can be found on the City of Westbrook website [westbrookmaine.com/agenda](http://westbrookmaine.com/agenda) center.

**Zoom Link:** <https://us02web.zoom.us/j/81700741385>

**Dial-in (audio only):** 1-646-558-8656

**Webinar ID:** 817 0074 1385

Where public comment is permitted, members of the public attending remotely will have the opportunity to provide remote testimony. If you wish to speak during a Public Hearing or Public Comment, use the "Raise Hand" function through Zoom (or dial \*9 on your phone) when instructed by the Planning Board chair. Comments will only be accepted during a Public Hearing or Public Comment period and should remain specific to the application that is being discussed.

#### Roll Call – Attendance

<b>Karen Axelsen</b>	<b>Present</b>
<b>Robin Tannenbaum</b>	<b>Present</b>
<b>Vice Chair - Larry McWilliams</b>	<b>Present</b>
<b>Nancy Litrocapes</b>	<b>Present</b>
<b>John Turcotte</b>	<b>Present</b>
<b>Jason Frazier</b>	<b>Present</b>
<b>Kevin Price</b>	<b>Present</b>
<b>Susan Roma</b>	<b>Present</b>
<b>Chair - Rebecca Dillon</b>	<b>Present</b>

**Staff:** Jennie Franceschi, Planning & Code Director, Rebecca Spitella, Associate Planner; Linda Gain, Office Coordinator

#### 2. Approval of Minutes September 6, 2022 & February 7, 2023

**Susan Roma** move to approve corrected minutes as discussed with the reporting secretary.

**2<sup>nd</sup>** by **John Turcotte**

**Roll Call Vote**

<b>Karen Axelsen</b>	<b>Yes</b>
<b>Robin Tannenbaum</b>	<b>Yes</b>
<b>Nancy Litrocapes</b>	<b>Yes</b>
<b>John Turcotte</b>	<b>Yes</b>
<b>Jason Frazier</b>	<b>Yes</b>
<b>Kevin Price</b>	<b>Yes</b>
<b>Susan Roma</b>	<b>Yes</b>
<b>Chair - Rebecca Dillon</b>	<b>Yes</b>

**The vote is unanimous in favor 7-0**

**3. 2022 Chair Report**

**Rebecca Dillon** If I could have a motion to approve the Annual Chair Report so that they can be moved on to the council.

**Larry McWilliams** move to accept the **2022 Planning Chair Report** and send to City Council

**2<sup>nd</sup> by Robin Tannenbaum**

**Roll Call Vote**

<b>Karen Axelsen</b>	<b>Yes</b>
<b>Robin Tannenbaum</b>	<b>Yes</b>
<b>Nancy Litrocapes</b>	<b>Yes</b>
<b>John Turcotte</b>	<b>Yes</b>
<b>Jason Frazier</b>	<b>Yes</b>
<b>Kevin Price</b>	<b>Yes</b>
<b>Susan Roma</b>	<b>Yes</b>
<b>Chair - Rebecca Dillon</b>	<b>Yes</b>

**The vote is unanimous in favor 7-0**

**4. Election of Officers**

**(Following Robert’s Rules of Order - If more than one person is nominated, you can take the votes in order of nominations, or the vote can be consolidated into one vote with each member stating the name of the person they are voting for. A majority vote is needed for the vote to be valid.)**

**Rebecca Dillon** called for nominations from the floor for the position of Chair of the Planning Board

**List of nominees Rebecca Dillon**

**(NO SECOND IS NEEDED FOR THE NOMINEES)**

**“Motion to elect Rebecca Dillon to the position of Chair.”**

**Roll Call vote on Nominee for Chair:**

<b>Karen Axelsen</b>	<b>Yes</b>
<b>Robin Tannenbaum</b>	<b>Yes</b>
<b>Larry McWilliams</b>	<b>Yes</b>
<b>Nancy Litrocapes</b>	<b>Yes</b>
<b>John Turcotte</b>	<b>Yes</b>
<b>Jason Frazier</b>	<b>Yes</b>
<b>Kevin Price</b>	<b>Yes</b>
<b>Susan Roma</b>	<b>Yes</b>
<b>Chair - Rebecca Dillon</b>	<b>Yes</b>

**Unanimous in favor 7-0**

Rebecca Dillon elected as Planning Board Chair

**Rebecca Dillon** to call for nominations from the floor for the position of Vice Chair of the Planning Board

List of nominees     Larry McWilliams      
**(NO SECOND IS NEEDED FOR THE NOMINEES)**

**Roll Call vote on Nominee for Vice Chair:**

<b>Karen Axelsen</b>	<b>Yes</b>
<b>Robin Tannenbaum</b>	<b>Yes</b>
<b>Larry McWilliams</b>	<b>Yes</b>
<b>Nancy Litrocapes</b>	<b>Yes</b>
<b>John Turcotte</b>	<b>Yes</b>
<b>Jason Frazier</b>	<b>Yes</b>
<b>Kevin Price</b>	<b>Yes</b>
<b>Susan Roma</b>	<b>Yes</b>
<b>Chair - Rebecca Dillon</b>	<b>Yes</b>

**Unanimous in favor 7-0**

Larry McWilliams elected as Planning Board Vice Chair

**REGULAR BUSINESS**

**Rebecca Dillon** Rebecca, please read the next item into the record.

- 5. Rebecca Spitella reads item into the record 2022.32 – Site Plan, Subdivision, Conditional Use, Private Way, Paper Street – 40 Bell Stret - MTR Development: The applicant is proposing improvements to an existing paper street/private way, Christie Way, to provide access and frontage for a 10-unit subdivision comprising of an 8-unit multi-family structure and a duplex. Tax Map: 010 Lot: 001 Zone: Residential Growth Area 1 Use: Dwelling, Multiple-Family, Dwelling, Two-Family**

**Rebecca Dillon** The first thing we're going to do is I'm going to provide a statement that I was not present here for the February seventh meeting. But I did watch the video actually twice and I am prepared to continue the discussion on this application.

Can I have Natalie talk a little bit about who will be participating in the vote on that tonight?

**Natalie Burns City Solicitor** Thank you. My name is Natalie Burns. I am the city solicitor and I was asked to come tonight to assist the Board with some of the procedural issues in this particular application because there were members of the Board who were not present at the last meeting. The two alternates were made voting members and they will continue to be voting members tonight.

It's my understanding that the practice of the Planning Board, although I don't think this comes up very often, is that the people who are not there the most senior member would participate, in this particular case that just happens to be the chair is the next senior member of the of the Board who is not here last time.

If you would like and perhaps you are not ready for this right now, I can talk about what the Board will be doing now, because as you know, the last vote ended in a tie vote and then there was a motion for reconsideration. Now we are here tonight on the reconsideration.

Would you like me to address that as well right now? Yes, so at the last meeting the Board voted to reconsider its vote on the 40 Bell Street application which resulted in a tie vote. The legal result of a motion or a vote to reconsider is to place the application back to where it was immediately before the vote on the merits of the motion. It's up to this board to decide exactly what it wants to do next.

But in this particular case, there was some information that was requested particularly. The vice chair asked for some information some additional information. There were questions that were raised about right title and interest and I believe the applicant is ready to address those. So, at a minimum my recommendation would be that the Board except those materials and the Board will discuss those and that the Board would then reopen the public comment period so that the public can then respond to those additional items as well.

After the board closes the public comment period you would then proceed to Board discussions and deliberations on the merits of the application.

If anybody has questions, I am happy to answer them for you.

**Rebecca Dillon** Thank you, Natalie. With that, I think we can have the applicant presentation.

**Applicant Presentation – Dustin Roma, DM Roma Consulting Engineers, and Attorney Broadus Try to address unresolved or in question of items from the last item**

**Presentation on file at the Westbrook Planning Department and on the Westbrook Website link shown below:**

<https://vimeo.com/showcase/3075539/video/778681994>

**Dustin Roma** DM Roma Consulting Engineers presented aspects of the – Site Plan, Subdivision, Conditional Use, Private Way, Paper Street – 40 Bell Street application.

Thank you for having us here again tonight. My name is Dustin Roma civil engineer with DM Roma Consulting Engineers. Also, in attendance with me here tonight is attorney Andy Broadus representing MTR development.

We took up quite a bit of time with the board at the last meeting through our presentation and hearing from testimony from the public. So, I'll try to be concise here tonight and just try to address those few items that we left the board at the last meeting as being either unresolved or in question and just kind of bring you up to speed and what we've been working on since this last meeting.

The first item has to do with the ability of the project to connect into the sewer system. There was some question about just the mechanics of how that would happen that was unresolved at the last meeting. We have worked closely with the engineering department here at the city on the details of how that sewer connection will take place as well as a design of all the infrastructure. We were able to get through that with the additional time that we were granted.

We have provided a copy of the approval letter from the City Engineer indicating that the design that we have provided is acceptable and that they can accept the sewer flow from this project in the infrastructure that's being built in Nicholas Drive.

The second item that we had worked on there was continuing to be discussions about the landscaping and buffering for the project concerns raised by the neighbors and items that we have been trying to address along the way, but we had seemed to kind of fall short of expectations in a few areas again with given the extra time between the last meeting. Now we were able to have some dialogue with a couple of the neighbors, really the two most affected ones with the existing driveways on Christy Way. We were able to exchange some emails with Justina Magno the first owner of the property as you come in on Christy Way. She expressed some of her desires as far as screening fencing and kind of use of her driveway. We have taken that information and proposed some fencing along her property line.

There is currently an existing wooden stockade fence along this property line here. We are proposing to tie into that fence here in the corner and extend that wooden stockade fence up to the driveway location here that will help provide some screening from view in this direction with the addition of that fence.

We were actually able to have a sit-down meeting with Chris Pettit Lane. Who's the one of the two owners of this property at City Hall and went through some of the items that they had raised as some concerns and potential remedies. One of the items had to do with the representation of existing tree lines on their property.

We had previously shown some that some the continuation of these existing tree lines as extending in various portions of their property. They really were not large stands of trees in those areas. It really was a where grass has transitioned into basically unmaintained scrub area. So there just was some concern about that not being accurately represented. So, we have revised the existing tree line on the plans to just indicate that really there are no substantial trees along that property line.

You may recall previously that we had fairly robust Landscaping along this property line here, which kind of acted as a like an evergreen wall. It was just some concerns about maintenance and just the kind of the appearance of that over time.

The other item was the use of this existing gravel area for a parking spot. We were aware of as that well. This is the current end of Christy Way it encroaches on the Pettit Lane property and basically ends inside of their property limits. We were unaware that was a necessity for them to or that a desire to have additional marking in that area. So we have basically designed the landscaping and some fencing in that area to you know landscape up to that spot, but then have that gravel area remain so that they have got a parking space in this front area as well as on the side.

The landscaping that had been proposed here has been removed and replaced with a wooden stockade fence that will begin at the end of the parking space and will run to the corner of the property and then we will run along the sideline here in line with the back corner of the building. Our hopes is that with the wooden stockade fence in through there that will afford them some privacy on the inside and help shield the view of both the building and these parking lot areas.

The other item that this evergreen tree area here and what we had proposed here really was not accomplishing was a good buffering of the actual parking lot area since there is a substantial elevation difference between the Pettit Lane property and down below where those cars are sitting.

We were now proposing our combination of fencing at the top of the hill here. Then we have moved the landscaping that was proposed at the top and brought it down here to the parking lot. We feel that will be a more effective way to screen those properties or to screen the parking area from the adjacent properties.

We've also been able to add one additional Street Tree in this location. So that helps to kind of just mirror the street tree entrances as we're coming in.

So those are the significant changes that we had made to the landscaping plan. We have provided those to the neighbors and as well as to the city. We appreciated the opportunity to get feedback and to meet with them. We are really hopeful that this plan will address the concerns to the greatest extent that we can.

The third item that was discussed at length at the last meeting as well was the access to the property and the legal rights of access over Christy Way and Bell Street. I'm not going to get into all the details. I trust that the board members hopefully have had a chance to at least read through the opinion letter that Mr. Broadus has presented as part of the application package here. And he is here with us here tonight. If there are any questions specifically he is happy to answer those and I just the main item that we just wanted to reiterate from the letters just that you know that the ownership of the roadway was conveyed to this applicant and it is our opinion that there is sufficient right title and interest to be able to utilize that road both for access and it is actually owned in possession by the applicant and nothing that we are doing in the roadway is going to further inhibit anybody else that has access over that roadway to be able to utilize their property. We are building the road in the center of the right-of-way as it was intended and not inhibiting anybody else in their ability to use that road.

The fourth item that was discussed at the last meeting had to do with just the aesthetics of the proposed duplex building what we had proposed previously. It was the gable end of the roof was rotated from what is shown here on the screen. So, the appearance from the roadway was essentially a box looking at the slope of asphalt shingles of a roof and a doorway entry. We have added and doubled up the windows to create wider windows along the street side and just made those transparencies bigger to break up the wall massing by rotating the building having the gable face the road. It creates an opportunity to have both color differentiation on the gable and lower parts of the building as well as texture variation with traditional vinyl clapboard style on the lower section and then vinyl shakes on the upper. The visual color and texture differences between the two we have also added the front porch along the entire frontage of the building and done a hip roof transition on either end of that porch to again just kind of bring the massing down a little bit.

This is what you see in front of you here is what the appearance will be from the road which we think is a big improvement over what we had put in front of you last time. So, we just wanted to call attention to that.

Thank is a summary of the four items that I think we left here last time as needing some clarification and resolution on we hope what we have brought to you here today answers those questions understanding we are going to hear from the public now, and if there's any questions that come up during that we are happy to answer those from them or from the board. So, thank you.

**Rebecca Dillon** thank you Dustin. Staff Comments?

**Jennie Franceschi** presented Staff Comments:

The applicant I believe has walked through the four areas of information that has been provided by the board is discussed in the previous meeting based upon the feedback of the applicant. Staff feels that the application is ready for the board for their deliberation and approval again. We have provided a motion on page three of your memo along with the findings of facts conclusions and conditions thereafter.

### **REGULAR BUSINESS – CONTINUANCE OF BOARD DISCUSSION**

Tax Map: 010 Lot: 001  
Zone: Residential Growth Area 1  
Use: Dwelling, Multiple-Family, Dwelling, Two-Family

#### **Project Description**

The applicant is proposing improvements to an existing paper street/private way, Christie Way, to provide access and frontage for a 10-unit subdivision comprised of an 8-unit multi-family structure and a duplex on a separate lot.

#### **Project History**

September 27, 2022 – Neighborhood Meeting  
October 4, 2022 – Planning Board Workshop  
October 15, 2022 – Site Walk  
December 6, 2022 – Public Hearing (8-unit multi-family)  
February 7, 2023 – Public Hearing (8-unit multi-family & duplex)  
March 7, 2023 – Regular Business (Continued from 2/7 meeting)

#### **Remaining Staff Comments on project:**

##### Site Plan/Subdivision/Conditional Use Review

1. Noticing Fees for 3/7 meeting: \$226.24
2. Open Space Subdivision Fee-in-lieu: \$5,028.00 (10 units); Fee due prior to site commencement
3. Provide draft easement language for utility and drainage easements over lot 2 to benefit lot 1.
  - (a) Show drainage easement on SB-1 (utility easement shown)
4. Ability to serve from Wastewater Services has been provided.
5. Lot 1 – driveway-Christie Way – provide radii at intersection with paved road edge.

##### Private Way/Paper St review

1. Open Space fee for Paper Street review: \$4,500 (300' private way; \$1,500/50' of private way constructed, excluding the first 150')
2. Waiver required for Private Way standard to provide 1' gravel shoulder on non-curbed side.  
State waiver on Private Way Plan PP-1
  - a. §335-13.3.G(3) Private Way Road Standards

#### **Comments provided by the Planning Board during the February 7, 2023, meeting:**

### *Elevations for Duplex*

In response to comments provided by the Planning Board the applicant has provided revised elevations for the duplex that include the following enhancements:

1. Addition of gable roof on front façade provide a more ‘forward facing’ look.
2. Variation of front façade
  - a. Color variation provided with a darker gable and lighter base.
  - b. Variation of materials; horizontal siding panels on base with shingle siding at gable
3. Front covered porch expanded to extend the full length of the building façade conducive with the appearance of a single-family residence by the single staircase design.
4. Additional windows provided on both side facades.

Staff finds the changes provided adequately address the concerns brought forward by the Planning Board at the previous meeting, in enhancing the visual interest of the structure and providing the look of a single-family building style while maintain the functionality of a duplex structure.

### *Right, Title & Interest in Christie Way*

Part of the responsibility of the Planning Board is to ensure all submission materials have been provided as required by the Ordinance. To demonstrate right, title and interest, the applicant provided the Planning Board with a recorded deed and boundary survey, and later with a corrective deed by the previous landowner. Although it is not typical for the City to engage with deed disputes as that is a civil matter between property owners, in response to concerns over the documentation that was provided, City Staff requested a legal review of the documentation provided by the applicant prior to the December 6, 2022, public hearing.

Staff was previously advised by the City’s legal counsel that the deed and survey provided by the applicant met the threshold required by the Ordinance to demonstrate right, title and interest in both the property and the Christie Way right of way. A copy of the recorded corrective deed and survey is included with the Final Subdivision Plan Application that was provided to the Planning Board with their packet materials for the February 7<sup>th</sup> Planning Board meeting.

Included in your current packet, the applicant has provided a detailed legal opinion from their attorney, Andrew Broaddus, on the applicant’s rights to develop on the parcel and the ownership of the Christie Way right of way and in response to other concerns raised during the February 7<sup>th</sup> public hearing.

Therefore, Staff finds that right, title, and interest by MTR Development has been provided in both the property and the Christie Way right of way to the standard required by the Ordinance. As requested by the Planning Board, the City Solicitor will be in attendance at the March 7<sup>th</sup> Planning Board meeting for review of this item and to answer any further questions the Planning Board may have.

### *Landscape Buffer for Abutters Along Southerly Side of Christie Way*

On February 16<sup>th</sup>, City Staff met with the project engineer and the 10 Christie Way abutter to discuss the proposed landscaping. During that meeting it was identified that the abutter’s preference for the site is to (1) maintain the gravel area currently utilized as part of Christie Way that is located on their property as a parking space; (2) have a fence installed along the portion of the property line beyond the limits of the gravel parking area southerly as an additional buffer to the multi-family dwelling; (3) relocate the proposed vegetation along Christie Way to the edge of the parking lot.



Through email communications with the 40 Emery Street abutter, it was identified that the proposed additional vegetation along their property line was not desired as it could result in required leaf clearing maintenance on their property and potentially create issues with pests. Because of these concerns, a fence was requested along the 40 Emery Street property line as well.

It was communicated to both abutters that a fence, considered a structure, would be required to be located on private property (along the property line) rather than within the right of way and all maintenance would be the responsibility of the private property owner in perpetuity. It was discussed with Staff that all fencing be installed prior to the construction of the multi-family so buffering can be provided during construction. However, Staff is recommending the installation be contingent on the occupancy permit to ensure all site grading is completed which could otherwise have the potential to compromise the integrity of the fence.

The applicant has revised the landscaping plan to reflect the requested changes and provided the plan to the two abutters via email on February 28<sup>th</sup> for review and comment. At the time of this memo, no further comment has been provided from the abutters.

In summary, Staff find the application is compliant with the City of Westbrook Land Use Ordinance and is in order for consideration of approval by the Planning Board with the conditions as stated in this memo.

### **Rebecca Dillon Introduction of Public Comment**

- I just want to remind folks that we have a three-minute timer per person.
- Public Comment specific to the new information that was provided following the February 7<sup>th</sup> public hearing:
  - Revised landscape design
  - Building elevations for the duplex structure
  - Sewer design & connection
  - Additional information provided by applicant's counsel on the right, title, and interest in the development of Christie Way
- Speak into the microphone. Remember to state your name and address.
- Public has one opportunity to provide comment.
- All comments should be addressed to the Planning Board, who will address the applicant/Staff following the public hearing.

### **Open Public Comment**

- In-person

**Justina Magno** 40 Emery Street. My name is Justina Magno and I live at 40 Emery Street.

Rebecca did you hand out the stuff please? Thank you.

Thank you planning Board Members for your time listening to me. I am here opposing the subdivision proposal the site plan review and the private way review. Please let me possibly go a little bit over three minutes, since there are three items here and this is the fourth meeting for these items and there is a lot of issues to address.

My neighbors and I have demonstrated how these three proposals have not met the ordinance performance standards and designed standards. The subdivision Paper Street Improvement will devalue the abutters properties in the developer has not proven otherwise, nor can he guarantee that it won't?

The development will cause unreasonable noise traffic by having cars pass through our side yards, a reminder 66 trips daily. He cannot guarantee it will not create noise. Heightened scale of this project is way off the mark of not only the existing neighborhood but the new neighborhood on Nicholas Way. No impact analysis has been done, per site plan review 505.13 number three.

Lastly I again state MTR Development has not met the minimum requirement of proof of ownership of a Paper Street. The deed would have a specific reference in the margin with volume and page number in which a copy of said notice may be found.

Andrew Broadus entered into record MRSA Title 23 and stated he had attached a copy in his letter, which I could not find so I graciously printed that for the Planning Board and because it references another title MSR Title 33, I also did that. I did also another state law on the fact that the burden of proof relies on the person claiming ownership. If we could just possibly look at the laws. I've been studying them for over four months. Now, they are quite complex. I've kind of did it in steps so that you can make sense of it, and I think once you read that after Consulting with Land Use Lawyers and lawyer specific to the paper streets, I was able to understand where this situation falls into that title.

If you go to title twin in 23, and if you put them right next to each other if you read down on two private rights, the one that I have as two; it says unless title has been reserved to and then it gives that title 33 section 469 so if we can go to 469 just towards the end. Let me back up here. Let me do one four sixty-one proposed unaccepted ways with respect to proposed unaccepted ways laid out on a subdivision plan recording the registry of deeds. Those rights provided to owners of other lots in the subdivision title 23 Section 3 0 3 1 brings us to that. So, then we go to 469 a reservation a title any conveyance made before September 29, 1987, that conveyed land abutting upon a proposed unaccepted way laid out on a subdivision plan recorded in the registry of deeds is deemed to a conveyed all of the granters' interest in the portion of the way that abuts the land conveyed unless the grant or expressly reserved the grantor's title to the way by specific reference in this reservation in the conveyance of the land.

I have the Deeds with me right here. There was no conveyance, and I can share those with the board if they want to see. My six Deeds Mr. Federico's deeds and all the other Deeds that were on Bell Street, intend to reserve Amy Grant a who before September 29 1987 conveyed land abutting a proposed unaccepted way laid out in some division plan recorded in the registry of deeds with the intent to reserve title to the way but who did not expressly reserve it as required in subsection one or any person who claims title to the way by through or under the grantor may preserve the granters claim by recording the notice set forth in subsection 3 in the registry of deeds where they are processing some division plan that is recorded within two years after September 29 1987.

That is going to bring you to the following the previous page, legal construction the subchapter shall be liberally construed to affect the legislative purpose for clarifying the title to the land underlying roads and ways by eliminating the possibility of ancient claims.

And then if you go back one, it talks about the notices required under subsection, two. Those have not been done.

Furthermore, my last thing, I would also like to add I found the Maine Municipal Association Manual for Planning Boards right here. I want to read a few things from what I read after the last meeting.

So that I could but I understand how these meetings are progress and how you guys are supposed to do your jobs.

Number one substantial evidence substantial means such relevant evidence as a reasonable mind might meet, might accept as adequate to support a conclusion.

I could go on, two relevance of deed restrictions title disputes constitutional issues other code violations and related lawsuits, the board cannot deny an application because the proposed use would violate a private deed restriction if the use otherwise would be in compliance with applicable ordinances or statutes.

The board has no legal authority to resolve boundary or title disputes as part of its decision on an application. If the board is presented with credible written evidence by both applicant and opponent, which is in direct conflict in which involves a title boundary issue the boundary problem that the board probably has three options, one, tabling action pending the resolution of the title boundary dispute by the parties either voluntarily or by court order. Number two approving it providing that it gets resolved or number three denying approval on the basis that the board is unable to find. The applicant has met the required burden of proof.

Overlap State Law and Federal Law the planning board may be required by a local ordinance or State Law to determine whether any state or Federal laws apply to any applicant's project. Expert versus non-expert testimony the board may base its decision on non-expert testimony in the record if it finds that the testimony is more credible than expert testimony presented at the same issue.

Thank you for your time.

**Rebecca Dillon** Thank you. Who has any questions or comments?

**Michal Shaughnessy** 89 Conant Street and I'm not here as a City Councilor here is a citizen. My concern is with the new designs and the inclusions that it really exacerbates the problem of a wetlands at the base of that hill. It is saturated, it is inundated. It has been obviously filled with water on the beginning of November of December and at the end of January and I think it needs to have more research done as to if this was a wetland. A forested wetlands in fact and it leads obviously to a stream behind there.

Is it caused by runoff possibly, but wetlands are caused by runoff and I think that there is still a lot of unanswered questions and that regard and I feel like we cannot continue to build things over wetlands that end up becoming part of the watershed that feeds into the streams and rivers and so by our own definition and I'll read of our own ordinances of the City of Westbrook.

That are freshwater wetland means freshwater swamps, marshes, bogs, and similar areas which are inundated and saturated by surface and groundwater at a frequency for a duration sufficient to support and which under normal circumstances do support a prevalence of wetland vegetation typically adapted for life and saturated soils.

And not considered part of a Great Pond Coastal Wetland, River, stream, or brook. Although these areas may contain small streams channels and inclusions of land that do not conform to the criteria of the subsection.

The plot the area has been clear-cut before this has come to the board as a proposal. I would like to know if there was moss in there was their ferns and there was the wildlife that was associated with a wetland. Certainly, it is saturated with water. And so, I think there's a lot of questions that need to be answered in this regard. Thank you very much.

**Rebecca Dillon** thank you. Anyone else?

**Chris Pettit Lane** 10 Christy Way. First off, I just want to say that if it feels like we're presenting almost a shotgun approach of different things, it is because we know that you have to make a conclusion based off of something concrete and real that applies either to your role as the planning board or a specific ordinance. I think there are many compelling reasons to not approve this project. Take your pick.

I also want to emphasize that both Justina and ourselves did not set out to oppose this project in its entirety from the beginning. We literally set out to do some research on what was happening and over the course of our research basically realized that one we think this is an illegal access. They don't actually have a right to do it along with several other fairly clear (to us) problems. So again, we're not just blindly opposing the development we came to this conclusion as a result of just doing cursory due diligence of our own so really quick, I just want to say happens to tie in with the wetlands thing. But if you use a flood factor report, which is a NOAA developed system. It's nonprofit the government puts it out and supports it. But for specifically the 40 Bell Street lot the risk of any flood water reaching the building or center of this property in 30 years or in five years is 61% in 15 years. It's 96% by 20 years.

So that's just flood water reaching the middle of the lot whether or not this has been adequately described as a wetland or a flood zone doesn't change the fact that it is and people seem to think that it is.

I also want to point out from reading off some numbers here. I apologize. It's three five Dash 13.3 G. Subsection 3 subsection and this is verbatim quotation.

*A dead-end street either public or private may not begin from any point along another existing or proposed dead-end street.*

Christy Way is a dead-end street sort of, it's a dead-end driveway private way off of a dead-end street. So aside from the fact that we don't believe that there is legal access there's also that. So just their full stop. Why are we going any farther?

I know previously it had come up whether or not harmonious was an acceptable sort of reason to go off of, but it is just laid out pretty clearly. Early on in the roles of the planning board that a project should be harmonious. I have of course looked up harmonious or the purpose is minimizing the adverse impacts on adjacent properties and fitting the project harmoniously into the fabric of the community. It is unclear how-to developer has done anything to incorporate these harmoniously into the community.

Harmonious is defined in the way that we're supposed to define it with the Webster's Dictionary as having parts agreeably related congruous and just for fun congruous means marked or enhanced by harmonious agreement among constituent elements.

So that's more than my time, but that's my several things that I wanted to present. Thank you.

**Rebecca Dillon** Thank you. Anyone else?

No further in person comments

**Rebecca Dillon** any participants on Zoom?

- Zoom participation.

**Rebecca Spitella** Yes, we have Arthur Gilbert Arthur. I'm going to allow you to speak please unmute your microphone state your name address and provide comments.

Arthur if your speaking, we're not able to hear you right now. Can you try unmuting your microphone again?

I think you're there. So go ahead and state your name.

**Arthur Gilbert** 52 Emery Street. I actually owned and built both 51 and 52 Emery. Both properties which were placed in a flood zone with according to the US government flood maps.

I had to prove my problem my buildings were existed outside that floodplain before I could waive any flood insurance that I was being required to place on the property. The reason my properties were in a flood zone was because of all the runoff from the properties above me actually and not that this has anything to do with it, but it most of the runoff comes above the railroad tracks off River Road, and Cumberland Street that flows down to the Presumpscot and for me to be able to put my driveway in I had to cross that said brook in question that that runs towards the this lot being developed and I know it was said this before at a prior meeting, but I think it bares mentioning again that I had to have an engineer design a box culvert that withstand a 50-year flood so nothing would ever wash away.

That was required by the city engineer and so I had that done and that's the only way I was able to build my properties which are approximately the same elevation as the subject property. But actually, I have to have a higher elevation than that lot where the proposed building is going. So, I know that this is going to be much more property that is going to be in the shaded flood zone area than mine, which I again had to prove to FEMA that I was out of the flood zone to be able to waive the insurance.

Also, I actually sold that property to Mr. Wilson and me also I bought it from Mr. Emery. I owned it approximately 20 years before I sold it and I never registered any interest of the of the ownership of the lot, excuse me of the road at any time prior to or after the street was vacated by the town.

So, I just wanted to bring those points up.

Thank you for your time.

**Rebecca Spitella** Please unmute your microphone and provide comments, somebody on Zoom registered under the name Michael Fitzgibbons. You have permission to speak if you'd like to provide comment, please unmute your microphone now.

No comments

**Rebecca Spitella** is there anybody else participating via Zoom who would like to provide comment?

No comments

**Rebecca Dillon Close Public Comment**

We will go to the applicant and staff to respond to the questions that we did get in comments. We got I guess we'll just start at the beginning, devaluation of the existing properties.

**Jennie Franceschi** There is no evidence behind the statement that because multifamily is placed besides single families that it is going to devalue the property. And in fact, we have seen instances where we have mixed neighborhoods constructed and the value of the single-family homes only increase in the same rate in which the remainder of the single-family homes increase in the city.

**Rebecca Dillon** I have a question in regard to that Jennie, and in regards to the Board. How do we; is there any sort of burden on the applicant to find information saying that devaluation or is that not required in our ordinance to do so they would have to be a compelling incompatibility with the two uses

**Jennie Franceschi** you'd have to again if an abutter brought forward documentation to demonstrate how this is actually devaluing their property. They would have to be demonstrated proof provided. And in this case, we're talking about residential up against residential which would not meet that type of an incompatibility.

**Rebecca Dillon** the next comment that was given was traffic and the number 66 trips was mentioned I don't know if you want to respond to that Dustin.

**Dustin Roma** that was a daily vehicle trip count. So, it's not a peak hour count. So, it's just the number of trips that are estimated to enter and leave the site over a 24-hour period based on what the Institute of Transportation Engineers estimates based on their studies.

What we look at is kind of the condition of the road and the ability of roads to handle traffic. 66 trips over a day and that's on a peak hour for a ten-unit building. It's around six trips in the peak hour so over a one-hour period you might have six Vehicles either exiting or entering depending on the time of the day and each way is one trip.

That is what the Studies have shown for traffic generation doesn't seem to be out of character for a residential neighborhood with the number of homes that are already on the property to talk about six additional trips and a peak hour or the 66 trips in a day.

**Rebecca Dillon** noise was another comment.

**Jennie Franceschi** again we're talking about what is deemed to be ambient noise that is created through normal activity that occurs within a neighborhood. So having cars pass by one's house, somebody's mowing their lawn. These are deemed to be noises that are assumed in a residential environment in which that you live in a neighborhood. So, we're not talking about noise that is otherwise not incompatible.

**Rebecca Dillon** I think the next one's the big one the proof of ownership of the land, I don't know if we want to have Natalie Burns explain.

**Natalie Burns** I'll start, and then you may have questions for the applicant's attorney as well as to the factual predicates. But as to the law, the Paper Street law, I know this board is familiar with it and is very complicated. It was something that was initially passed by the legislature in 1987, and it gave municipalities 10 years to decide what it wanted to do with paper streets and subdivisions over a certain age and this is one of those subdivisions.

So, what municipalities could do to preserve their rights, the public rights and the public right was only the right to accept the street as it as a city street. There were certain things a municipality had to do but the statute also addressed private rights in it. The treatment of what happened with these roads as of 1997, which is when it first took effect unless the municipality extended its right to accept the road for an additional 20 years is different from what happened with private rights in it.

So, at this point there's no question that the city has not retained the right to accept this as a public road. However, that does not mean that the private rights do not still exist, and the private rights are the rights of all the owners in the subdivision to utilize those paper streets for the purpose for which they were created which is for access purposes. There are ways that people could stop those rights from being able to be exercised, but it would have required people to record something in the registry of deeds and then to pursue an action in Court to declare the title of it. And as far as I know that that has never been done and so as a result of that the private rights to utilize the private street still exists.

Now there is a fair question here as to who owns the underlying fee interest in the street. So, in other words when you if you own your own property you own what's called the fee interest in the property. Somebody else doesn't own that that's not necessarily true with the street. A street doesn't have to be created through the interest. It can be created with an easement interest. And so in this particular case, I believe there was a deed that said that whatever interest the prior owner had in the street was being conveyed to this property owner, but that would include easement rights as well as fee interest and the easement rights would be sufficient for the purpose of improving the road to serve one of the lots along the road and in fact any owner of a lot along that road would have the right to do so as long as they went through the processes that are set forth in the cities ordinances.

Are there questions on that? I know that's a really complicated issue. Oh, and I did also want to say that under Maine Law in order to show that you have sufficient right title or interest and there's actually a legal term for that which is Administrative Standing. So, in order to come before this board, somebody has to show they have sufficient administrative standing to pursue their application there is case law. There's a case from 1995 South Ridge Corporation versus the Board of Environmental Protection where the Law Court said that the threshold for showing administrative standing is not a particularly high threshold. And in that case the applicant was before the board of Environmental Protection for an expansion of an existing business. The abutter said Well, you don't have sufficient right title or interest in the area in which you're showing your septic system because it's my property and it was that person's property. But the abutting property owner the applicant had filed a claim of adverse possession and was pursuing that in court and the Law Court said that's enough, that's sufficient for Administrative Standing.

So here what we have is somebody who has at least an easement right to pass over something whether they have the fee interest I think is I'm not sure anybody quite knows who has the fee interest in it. It may be the abutting property owners have it. But the if the abutting property owners have it they have it subject to the rights of everybody else to pass over it.

**Rebecca Dillon** Thank you. Mr. Broadus did you want to add to anything to that?

**Andrew Broadus** thank you, Natalie for trying to educate us on the finer points of the Paper Street Act which is the subject of many a seminar. I want to point out, I'm not going to get very detailed here. The Paper Street Act essentially allowed public rights, private rights, public roads rights in this particular portion of Bell Street has been vacated the small section of Bell Street that goes on to Mayberry was accepted by the City.

Christy Way here is a couple things to understand the original developer here was Franklin Emery and his brother Lewis Emery and when they sold to Arthur Gilbert they sold and in the deed and specifically says any fee interest that they had in Emery Street and also in Bell Street, which is now a portion of what is known as Christy Way. So, it's clear to me that fee was conveyed. They acquired the property they had the fee to it.

There was no record evidence that they conveyed the fee to anybody else and as Natalie's indicated, you don't need fee you need at least an easement. They have they have the right to go over this. It's clear. They also own the fee. So, it's clear that satisfies the standing here in order to qualify. The other thing to keep in mind is on the construction when you interpret the Paper Street Act in section 23 3035, it says nothing in this that the Paper Street, maybe construed to affect the nature of any right or interest which may be claimed in property to which those sections apply. So, in other words, if you have the fee to the road, if you own the road that nothing in this Paper Street will affect it.

So, it's clear that the applicant here has fee as well as easement rights over this property. There's also been no indication that anybody has moved to vacate those private rights and none of the owners in the subdivision have filed anything to try to vacate.

There is a procedure to vacate private rights by other property owners, and we're not here today to deny any of them rights of access over this they continue to have access over Christy Way, and they will continue that's clear and we're not here to infringe on anyone else's rights. We're simply here to assert ours.

I will answer any questions you might have.

**Rebecca Dillon** Thank you, I think the next item that came up and was the municipal review outline? I don't know if we want to have any comments in regard to what was given to us before the meeting.

**Jennie Franceschi** I believe that the city solicitor has provided the point and point of contact as far as where we are at in this application and that this the Board has proceeded on an avenue that they have the jurisdiction which to move forward with, so I don't think that there's much really to discuss as it relates to Municipal procedure.

**Rebecca Dillon** I think the next item is in regard to the wetlands and the watershed in the streams and rivers.

**Dustin Roma** that's been kind of an ongoing discussion point with this property from the beginning as you know. The drainage runs through the property. The pooling of water that occurs on the property at certain times of the year. We had the property surveyed early on and the drainage is one of the things that they look at. They also look at the nature of the soils the type of vegetation that grows there. There's a number of qualifying different factors that goes into whether something is a jurisdictional wetland, which means you have to get permits to alter it and then there's a second area of just areas that are prone to drainage concerns that we have to engineer solution.



We've got certain portions of the site that fall in the first category, which are the jurisdictional wetlands, which we've mapped and that are adjacent to the stream. We have other areas of the site which are you prone to you know, temporary flooding. Sometimes for prolonged periods of time. And those are the areas that we've heard the testimony from the neighborhood as being problem areas. So, we've, you know Engineering Solutions just as you know, Arthur Gilbert talked about when he bought land on the other side of the brook he had to put in a culvert that was a box culvert a certain size. He had to elevate his house above a floodplain. So that was an essentially the mirror image of this property on the other side of the brook and they were a number of steps that had to be done in order to make that property able to be developed in close coordination with all those agencies that you know have jurisdiction over it and they're watching it. So that's what we're here to do is to propose a development plan on this property which takes into account the drainage characteristics of the lot which receives drainage from the abutting properties and we're incorporating, water treatment devices that is going to provide enhanced water quality treatment of the water that leaves the developed areas of the site. We've also incorporated ditches and culverts and bypass channels and so conveyance infrastructure which will adequately move the drainage through the site and direct it towards the stream areas and the drainage channel that runs along the property line.

So we've engineered solutions to address these drainage concerns that are being brought up. Also carefully stayed away from those areas which are in fact the jurisdictional wetland areas as well as buffer areas to that stream. We filed permits with the Maine DEP for the land activities that are happening adjacent to that stream in the floodplain and those permits were approved. So we have very carefully considered all of those things that have been brought up to us as far as drainage concerns and designed appropriately the questions about elevation of the building and Mr. Gilbert's home on the other side of the brook compared to our site his home may have a basement. I'm not sure if it does but that would impact elevations where our buildings are being built on a slab. The height restrictions are not as much because they're looking at that finished floor elevation and structures with basements have different requirements for flood elevation and buildings that are built on slabs. So that may be a reason why the elevations are not the same.

So, I'm confident in the design that we've put forth to handle the drainage on the site and certainly not impact any neighbors with you know drainage issues.

**Rebecca Dillon** Our city engineer has reviewed all of that as well.

**Jennie Franceschi** Just to place on the record Dustin. Can you please state who conducted the Wetland Delineation for you?

**Dustin Roma** Mark Hampton, he is a certified soil scientist. He's a Wetland License Site Evaluator Wetland Scientists. So, he holds multiple credentials in both wetlands and soils evaluation.

**Rebecca Dillon** I think the next item was having a dead-end street off of another dead end street.

**Jennie Franceschi** So that provision applies to newly created streets and right-of-ways we're talking about a paper street. So, this right-of-way already preexists and we have the paper street ordinance that allows for the construction of roads within those already approved rights of way.

So that provision it does not apply.

Just one other comment that was brought up. I just want to clarify there was a discussion about an impact analysis. The impact analysis does not apply. Is that only applies to those Gateway Commercial Parcels that are up against residential areas, so that that's not applicable.

**Rebecca Dillion** I think the last thing that was mentioned a couple of times is the word harmonious?

I don't know if we want to go into Board discussion to talk about that or if we want to if there's something in our ordinance that gives us direction on what harmonious means or the intent of that.

**Jennie Franceschi** it comes up a lot and it's such a subjective thing, but the definition is the way I look at it as when it's a fabric of a community, it doesn't mean it's a fabric of two streets or three streets, it's a pretty large radius. So, from the board's perspective, that's what we have to look at it from because that's what a community is. It's not just a couple of streets.

**Rebecca Dillion** I wish it was better to find so it could help guide us in these situations because these are two-story buildings. There's two story buildings all around this area.

So, there was only one other comment we wanted to just touch on was again the cutting of trees in advance of the project.

**Jennie Franceschi** that action occurs on any private parcel that there is no provision that prohibits a property owner from going to cut trees on their parcel. And so, there is nothing that we can hold an applicant to that would go on to their personal property and initially cut trees outside. If there was a shoreline zoning issue where somebody was cutting in a shoreline zoning area, which is not the case on this parcel.

**Rebecca Dillon** I forgot about that one. I guess with that. I'd like to open it up to the Board for comments and discussions.

### **Board Comment/Discussion**

- In-Person

**Larry McWilliams** thank you, Rebecca. I want to definitely commend you Dustin for trying to make sure that what we are doing is in line and I do appreciate the fact with I know I specifically said let's talk to the neighbors, get their impact even though they're still not for this project because of where it is as the ordinance goes with you working with the abutters to help with the tree situation, with the tree line such or the fencing situation to block it.

I definitely want to commend you for that, so I know it's been a tough battle with this project and it's been you know, definitely highly contentious as well. But as far as you know, some of the layouts that I saw, you were flexible, and I appreciate you trying to straighten the lines out. It's definitely going to be a better improvement from what it was originally. So, I see you guys are working with it together.

What I'm seeing and what I'm hearing so far with the ordinances the way things are in line, you definitely tackled the hard questions to answer for us. So, I appreciate that.  
Thank you.

**Rebecca Dillon** any other Board questions or comments?

**Nancy Litrocapes** I have a question about the landscaping plan. So, as you explain Dustin, in the whole land update and it's great that you in this project went forward to speak with the community. So, the proposed changes there. Those are something that Mr. Pettit and you met with Mr. Pettit, and he agreed with the Landscaping adjustments that were made or was that made without him?

**Dustin Roma** I really don't want to speak for them. All I can say is that we did have a meeting and we discussed changes to the plans. It was done at City Hall with staff so that we could all have a discussion about it in the open. We took notes. We all kind of went away with markups on a plan saying that this is what we're going to revise it to give feedback from the neighbors and that's the plan that we've presented here, I believe addresses those but I don't want to necessarily speak for them to say that whether they're, because we haven't received, anything formal saying that's been the case and I haven't heard anything tonight, but that's been my understanding is that we work with them on it and this is what we agreed to.

**Robin Tannenbaum** what will the speed limit be on Christy Way?

**Dustin Roma** roads of this nature I would imagine or 25 mile an hour.

**Robin Tannenbaum** It wasn't obviously posted that. I think I'm following about public and private if it were discovered that if people in the apartment complex were going fast going up the hill and taking it fast. And this might be question for you or for Natalie, can residents of this road or this applicant put in say a speed bump or traffic calming measures to try to control the speed of traffic?

**Jennie Franceschi** If this would be under an association, so that would be a discussion within the association if they were going to do any physical improvements in the right of way. So, if that was a discussion that the association wanted to take on then that is that is something that that they could discuss. The city doesn't maintain this so that we wouldn't have a say in telling an applicant to put traffic control measures on a very short section of road, but that's something that if the association wanted to look into in the future that's within their rights to do so as an association being created.

**Robin Tannenbaum** Yes by this and the members of the association are all of the owners.

**Jennie Franceschi** the association at this time is going to be the eight-unit lot and the duplex lot if the other lot owners along the right-of-way wished to participate in the association, then they could make a request to the applicant to be a party to it. The reason that they may not is they may not want to financially participate in which that the association is responsible for all the maintenance of the road system. So, if there's discussion points at a later date the property owners can talk amongst themselves about you know, what they're seeing for issues out there.

Again, this is a very short section of road and that we wouldn't necessarily see high rates of speed occurring along such a short section.

**Rebecca Dillon** any additional comments or questions?

**Jason Frazier** thank you Madam Chair. So last month, I just heard a couple comments here so last month, or the last meeting, Roberta Mentor according to our minutes here from the founder of the Maine roadways. She called in through Zoom and mentioned several of the Maine Statutes title 23 and 33 the attorneys here of discussed.

I kind of looked them up and its great interesting read but I guess if you're an attorney, but it seems pretty clear that there's definitely some fuzziness here on the right who has access to the right way here.

I also looked there's been quite a few court cases on these exact same stat sheets, and there was a 2009 Supreme Court case here in Maine for near versus Elliot really similar, where they did not file title and they ruled that they didn't have access.

So, there's definitely I don't think it's crystal clear on if there's access or not. So, I'm hoping we can make a motion to table this until there is clarity.

That is my comments.

**Natalie Burns** Well, it's always up to the Board to determine if it feels it needs more evidence on something. I would note that you have received a title opinion from the applicant's attorney who actually as he just noted determined that there is a fee interest in the applicant as well as the easement rights. I will say that while there are cases on this.

I've not looked at the case that you talked about. But generally speaking people within subdivisions did not lose their rights to access their properties along paper streets just because of the Paper Street Law that would have been a taking of their property. The State tries to avoid doing that one in an access statute. So as a result of that unless other steps have been gone through usually those private rights of access do continue on and in fact in recognition of that the City adopted several years ago. It's Paper Street Ordinance or the provisions in the Land Use Ordinance that regulate paper streets because at that point in time there was development going on paper streets and people who lived along the more quite surprised to find out that anybody could build the street. And so that's why that process was established but all of these lots that are located upon paper streets have not necessarily lost their right of access because of those statutes. And in fact that was not the intent of those statutes the intent of those statutes was to do away with Municipal rights in them because those caused a problem concerning the title of it. Also there were two aspects of it one was the municipal rights and the other was to clarify who had the title to the underlying fee because the title attorneys said, this is a problem for us. It has been forever. We don't know who owns the underlying fee in these roads. And so, the legislature said great we're going to create these presumptions. They can be overridden but these are going to be the presumption, and this is how this is going to work and if somebody wants to change it they have to take affirmative action to do so.

So, I agree with you those statutes are not easy to read they're not easy to apply but they were not intended to take away private rights unless and less people were given due process before that happened. They didn't just go away.

**Jennie Franceschi** post meeting staff researched the lands of this area when all the way back to when the parcel was one large parcel before Emery Street was created or even Mayberry was created and tracing back through those deeds. There is the statement within the transfer from Emery to Gilbert that the rights in the fee interest of Bell Street as depicted on said plan accepting only those portions that have been taken or accepted by the City of Westbrook as a public way that language then also was put into the corrective Deed from Gilbert to MTR which again transferred the fee interest.

Okay, the date of which was 12-14-22, which we have a recorded deed to that effect, which again speaks to the fee interest in the right of way. But even in the worst-case scenario as has been stated by our attorney, the private rights of those folks that have lots along this which there is land along this that is owned by the developer. They still have rights in those paper street right of ways.

**Rebecca Dillon** yes, John

**John Turcotte** So I won't be voting because I'm not the most senior member who was absent at the prior meeting, but I did want to comment that the board doesn't have to as I understand it. Just you rule on who owns the fee or make a decision as to what their rights are. We just need to establish or confirm that they have administrative standing. The right total interest. So, if the city solicitor who's the solicitor for Westbrook has deemed that they do then I would just suggest respectfully that the Board should follow the advice of the City's Attorney.

**Karen Axelsen** Hi, thank you. I just wanted to say I know how much work is gone into this project for you as well. As for the neighbors, it's been, commendable of all the work that people have put into this.

I just had a question in regard to obtain additional financing in regards to that other lot. Has the attorney or excuse me, has the financier where they're doing the financing have they done any kind of title search on the property? To confirm that they can in fact obtain title insurance if they need.

**Dustin Roma** we haven't gone to the point. I mean, I don't believe there's a mortgage on the land, so I don't know if it's gotten to that point yet.

**Karen Axelsen** You know ensuring the land for the builds for the actual construction that would be the next step in underwriting.

**Dustin Roma** Yes. I know they've done a survey and you've done the time flood and all of that. I didn't know if they took it any further and did any kind of title search or I mean that that work was done when the property was conveyed and that's you know part of you know, when it was brought up about the access rights and that was reviewed again, and we provided the corrective Deeds to remedy that so that that title work has been kind of ongoing through the project.

**Rebecca Dillon** Thank you any other questions or comments? If not then we have a motion on page three of the staff memo. Is there anyone who would like to make a motion?

**Kevin Price move** That the Planning Board approve the Site Plan/Subdivision/Conditional Use/Private Way/Paper Street application for MTR Development, LLC's for improvements to an existing paper street/private way, Christie Way, to provide access and frontage for a 10-unit subdivision comprised of an 8-unit multi-family structure and a duplex on a separated lot. Tax Map: 010 Lot: 001 Zone: Residential Growth Area 1 and the following findings of fact, conclusions, and conditions as stated on pages **3 through 11** of this Staff Memo dated March 3, 2023, which are adopted in support of this approval. Included with this approval is a waiver of §335-13-.3G(3) Private Way Road Standards to allow 1' gravel shoulder on the southerly side of Christie Way.

**Site Plan – Finding of Fact**

<b>Standard</b>	<b>Finding</b>
Utilization of the site	The proposed development is located within the allowable setbacks and within the allowable building footprints and gross density as permitted in the RGA1 District. Adequate on-site parking is provided for both lots in excess of the minimum ordinance requirements. Stormwater management is provided on site with improvements in the Emery Street right of way to collect the runoff from the easterly portion of the improved Christie Way to the public system. A landscape

	<p>plan is provided to demonstrate additional landscaping along Christie Way in compliance with Ordinance standards. Fencing is provided along the property lines of 10 Christie Way and 48 Emery Street as additional buffering. The building height of both structures is within the allowable limits of the RGA 1 District.</p> <p>The project meets the intent of the Ordinance.</p>
Handicap Access	<p>The site provides one ADA accessible parking space at a location that is accessible to the entrance. Tipdowns are provided to access the walkway to the structure. Site is compliant with ADA standards.</p>
Appearance Assessment	<ul style="list-style-type: none"> <li>(b) Lot 1 and Lot 2 site ingress/egress is provided at locations that have been reviewed and approved by the City Engineer. The intersection of Christie Way and Emery St. is aligned with the centerline of the existing Christie Way right-of-way. The building height of both structures is within the allowable limits of the RGA 1 District.</li> <li>(c) The multi-family structure is located to the rear of the site to provide a greater distance from existing structures to minimize scale. Landscaping is provided along the property lines of 10 Christie Way and 48 Emery Street to provide additional buffering between the proposed development and existing structures.</li> <li>(d) A landscape plan is provided to demonstrate additional landscaping along Christie Way in compliance with Ordinance standards. Fencing is provided along the property lines of 10 Christie Way and 48 Emery Street as additional buffering.</li> <li>(e) Two light poles are provided for safety within the Lot 2 parking area. A cutsheet and photometric spread has been provided to demonstrate light is contained within the site and does not trespass over a property line. Wall packs are provided on the multi-family residential unit along the pedestrian path for safety. The duplex will have typical front door residential style lighting.</li> <li>(f) No signage is proposed</li> </ul>
Landscape Plan	<p>A landscape plan is provided to demonstrate additional landscaping along Christie Way in compliance with Ordinance standards. Fencing is provided along the property lines of 10 Christie Way and 48 Emery Street as additional buffering.</p>
Odors	<p>The residential use is consistent with the abutting residential uses. A dumpster is located on the 40 Bell Street parcel Lot 2 to service both structures and will be emptied on a sufficient schedule to avoid overflowing onto the property. No adverse impact is known or anticipated.</p>
Noise	<p>The residential use is consistent with the abutting residential uses. No adverse impact is known or anticipated.</p>
Technical and Financial Capacity	<p>The applicant has provided a letter from Biddeford Savings</p>

	dated October 5, 2022, to demonstrate financial capacity. The applicant has retained the services of DM Roma Consulting Engineers which demonstrates technical capacity.
Solid Waste	The residential use is consistent with the abutting residential uses. A dumpster is located on the 40 Bell Street parcel Lot 2 to service both structures and will be emptied on a sufficient schedule to avoid overflowing onto the property.
Historic, Archaeological and Botanical Resources or Unique Features	No historic, archaeological/botanical resources have been identified on the site.
Hazardous Matter	Project does not propose the handling, storage, or use of hazardous materials. No adverse impact known or anticipated.
Vibrations	The proposed residential use is compatible with the abutting residential use. No adverse impact known or anticipated.
Parking & Loading Design and Site Circulation	Two individual driveways provide access and parking for 2 cars associated with the duplex structure. One driveway off of Christie Way and 16 parking spaces are provided adjacent to the multi-family structure which is in excess of Ordinance requirements. Adequate on-site parking has been provided as part of the project.
Adequacy of Road System	With consideration of the improvements to Christie Way, Christie Way and Emery Street have adequate capacity to accept the additional traffic generated by the development.
Vehicular Access	Lot 1 and Lot 2 site ingress/egress is provided at locations that have been reviewed and approved by the City Engineer. The intersection of Christie Way and Emery St. is aligned with the centerline of the existing Christie Way right-of-way.
Pedestrian and Other Modes of Transportation	A stabilized path provides access to each residential structure from their respective designated parking areas.
Utility Capacity	Water services are available within the Emery Street right of way. An ability to serve letter from PWD has been provided in support of the design to provide individual lateral and fire services from the Emery Street water main to serve the residential structures. Sewer services are available within the Nicklaus Lane right of way. The applicant has provided a P&S for Lot 9 of the Rivermeadow Residential Subdivision which provides frontage on Nicklaus Lane to access sewer. An ability to serve letter from wastewater services has been provided.
Stormwater Management, Groundwater Pollution	Stormwater management is provided on site with improvements in the Emery Street right of way to collect the runoff from the easterly portion of the improved Christie Way to the public system.
Erosion and sedimentation Control	Adequate erosion and control measures are provided on the plan. Double erosion/control measures are shown in areas adjacent to the natural resource.

## 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** with a 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 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.

**Subdivision – Finding of Fact**

<b>Standard</b>	<b>Finding</b>
Pollution	Sewer services are available within the Nicklaus Lane right of way. The applicant has provided a P&S for Lot 9 of the Rivermeadow Residential Subdivision which provides frontage on Nicklaus Lane to access sewer. An ability to serve letter from wastewater services has been provided.
Sufficient Water	Water services are available within the Emery Street right of way. An ability to serve letter from PWD has been provided in support of the design to provide individual lateral and fire services from the Emery Street water main to serve the residential structures.
Municipal Water Supply	Water services are available within the Emery Street right of way. An ability to serve letter from PWD has been provided in support of the design to provide individual lateral and fire services from the Emery Street water main to serve the residential structures.
Erosion	Adequate erosion and control measures are provided on the plan. Double erosion/control measures are shown in areas adjacent to the natural resource.



Traffic	With consideration of the improvements to Christie Way, Christie Way and Emery Street have adequate capacity to accept the additional traffic generated by the development.
Sewage Disposal	Sewer services are available within the Nicklaus Lane right of way. The applicant has provided a P&S for Lot 9 of the Rivermeadow Residential Subdivision which provides frontage on Nicklaus Lane to access sewer. An ability to serve letter from wastewater services has been provided.
Municipal Solid Waste Disposal	The residential use is consistent with the abutting residential uses. A dumpster is located on the 40 Bell Street parcel Lot 2 to service both structures and will be emptied on a sufficient schedule to avoid overflowing onto the property.
Aesthetic, Cultural and Natural Values	The proposed development is located within a growth area as identified in the City's comprehensive plan and is not encumbered by any easements or restrictions on tree removal or development. The project meets the standards of the district in which it is located. Site disturbance is limited to what is required for the construction and the project provides a landscape plan to provide buffering for directly abutting parcels. The project does not have an undue adverse impact on the aesthetic, cultural and natural values of the site.
Conformity with City Ordinances and Plans	The proposed development conforms with City Ordinances and the Comprehensive Plan.
Financial and Technical Capacity	The applicant has provided a letter from Biddeford Savings dated October 5, 2022, to demonstrate financial capacity. The applicant has retained the services of DM Roma Consulting Engineers which demonstrates technical capacity.
Surface Waters; Outstanding River Segments	The project site is not located within the watershed of any pond or lake, or within 250' of a protected resource. The 75' MDEP NRPA Stream Setback is identified on the plan and the application has obtained a permit-by-rule from MDEP for the grading/drainage work within the NPRA setback.
Ground Water	Groundwater is not anticipated to be negatively impacted by the development.
Flood Areas	All flood zones
Freshwater Wetlands	All wetlands have been identified on the subdivision plan.
Farmland	No farmlands have been identified on the site.
River, Stream, or Brook	The 75' MDEP NRPA Stream Setback is identified on the plan and the application has obtained a permit-by-rule from MDEP for the grading/drainage work within the setback.
Stormwater	Stormwater management is provided on site with improvements in the Emery Street right of way to collect the runoff from the easterly portion of the improved Christie Way to the public system.
Spaghetti Lots Prohibited	The lot does not have shore frontage.
Lake Phosphorus Concentration	The subdivision is not located near or along a great pond.
Impact on Adjoining Municipality	The subdivision does not cross a municipal boundary.

Lands subject to Liquidation Harvesting	Not applicable.
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**Conclusions:**

1. The proposed subdivision **will not** result in undue water or air pollution.
2. The proposed subdivision **has** sufficient water available for the reasonably foreseeable needs of the subdivision.
3. The proposed subdivision **will not** cause an unreasonable burden on an existing water supply.
4. The proposed subdivision **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 subdivision **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 subdivision **will** provide for adequate sewage waste disposal and **will not** cause an unreasonable burden on municipal services.
7. The proposed subdivision **will not** cause an unreasonable burden on the City’s ability to dispose of solid waste.
8. The proposed subdivision **will not** have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
9. The proposed subdivision **conforms** with a duly adopted subdivision regulation or Ordinance, comprehensive plan, development plan or land use plan.
10. The subdivider **has** adequate financial and technical capacity to meet the standards of this section.
11. The proposed subdivision **will not** adversely affect the quality of any pond, lake, wetland, great pond, or river, or unreasonably affect the shoreline of that body of water.
12. The proposed subdivision **will not**, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
13. The subdivision **is not** located in a flood-prone area, as determined by the Federal Emergency Management Agency’s Flood Boundary and Floodway Maps and Flood Insurance Rate Maps.
14. All freshwater wetlands within the proposed subdivision **have** been identified.
15. All farmland within the proposed subdivision **has not** been identified. – Not applicable
16. Any river, stream, or brook within or abutting the proposed subdivision **has** been identified.
17. The proposed subdivision **will** provide for adequate stormwater management.
18. Lots in the proposed subdivision **do not have** shore frontage on a river, stream, brook, great pond, or coastal wetland as defined in 38 M.R.S.A. Section 480-B.
19. The long-term cumulative effects of the proposed subdivision **will not** unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.
20. The proposed subdivision **will not** cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.
21. Timber on the parcel being subdivided **has not** been harvested in violation of rules adopted pursuant to 12 M.R.S.A. Section 8869, subsection 14.

**Conditional Use – Finding of Fact**

<b>Standard</b>	<b>Finding</b>
Landscape Environment and Enhancement	Site disturbance is limited to what is required for the construction and the project provides a landscape plan to provide buffering for directly abutting parcels. The 75’ MDEP NRPA Stream Setback is identified on the plan and the application has

	obtained a permit-by-rule from MDEP for the grading/drainage work within the setback.
Surface Water Drainage	Stormwater management is provided on site with improvements in the Emery Street right of way to collect the runoff from the easterly portion of the improved Christie Way to the public system. A stormwater analysis demonstrates no impact is known or anticipated to the drainage of abutting properties.
Water, Air, Soil Pollution	The development is a residential development within the RGA1 district and will not cause unreasonable water, air, or soil pollution.
Soil Integrity	Adequate erosion and control measures are provided on the plan. Double erosion/control measures are shown in areas adjacent to the natural resource. The development will not cause unreasonable soil erosion or reduction in the capacity of the soil to hold water.
Natural Environment	The proposed development is located within a growth area as identified in the City's comprehensive plan and is not encumbered by any easements or restrictions on tree removal or development. The project meets the standards of the district in which it is located. Site disturbance is limited to what is required for the construction and the project provides a landscape plan to provide buffering for directly abutting parcels. The project does not have an undue adverse impact on the aesthetic, cultural and natural values of the site.
Nuisance Factor	The proposed residential use is compatible with the abutting residential uses. No adverse impact is known or anticipated.
Special Features	No exposed storage areas, machinery installation or loading areas are included with the proposed development.
Vehicular Access	Lot 1 and Lot 2 site ingress/egress is provided at locations that have been reviewed and approved by the City Engineer. The intersection of Christie Way and Emery St. is aligned with the centerline of the existing Christie Way right-of-way.
Parking and Circulation	Two individual driveways each provide parking for 2 cars associated with the duplex structure. One driveway off of Christie Way and 16 parking spaces are provided adjacent to the multi-family structure which is in excess of Ordinance requirements. Adequate on-site parking has been provided as part of the project.
Public Services	The proposed development will not create an unreasonable burden on public services.

## Conclusions

1. The landscape **is** preserved in its natural state insofar as practicable and **is** designed so as to stabilize the slopes and buffer the site, where necessary.
2. Surface water drainage **does not** have an adverse effect on surrounding properties, downstream water quality, soil stability or the storm drainage system.
3. The development **will not** cause unreasonable water, air, or soil pollution.
4. The development **will not** cause unreasonable soil erosion or reduction in the capacity of the soil to hold water.

5. The development **does not** have an unreasonably adverse effect on a historic site or irreplaceable natural areas.
6. The development **does not** cause unreasonable noise, odors, dust, gas, fumes, smoke, light, or other annoying or dangerous emissions.
7. Exposed storage areas, machinery installation, service and loading areas and similar facilities **are** set back, screened, or buffered so as to minimize any possible adverse effect on the surrounding uses.
8. The site layout **does** provide for safe vehicular access and egress, including that for emergency vehicles.
9. The layout of vehicular and pedestrian traffic patterns **does** provide for safe interior circulation, separation of pedestrian and vehicular traffic and storage of plowed snow. Parking **does** comply with the parking requirements set forth in the Ordinance.
10. The development **does 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.

**Conditions:**

1. Approval is dependent upon, and limited to, the proposals and plans contained in the application packet dated January 30, 2023 and supporting 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 §335-13.5.D, the Code Enforcement Officer shall not issue any permits until a site-subdivision plan has been approved by the Planning Board and a Mylar signed by the Planning Board. *The signed Subdivision Plan must be recorded within 90 days of Planning Board approval, or the approval shall be null and void.*
3. **Prior to any site disturbance or building permits being issued for the project:**
  - a. All Staff comments must be addressed.
  - b. Copy of Recorded subdivision plan must be provided to the Planning Office.
  - c. Provide draft deeds for Lot 1 and Lot 2 including the trash arrangement/access easements between Lot 1 and Lot 2. (Condition #8)
  - d. Field Verification of building corner locations per plan by surveyor. Mark property perimeter to ensure contractors stay on project land. Mark/flag limits of disturbance around property to be in compliance with approved plan.
  - e. A pre-construction meeting must be held with City Staff and the site work contractor. Contact the Planning Office to coordinate. Additional Pre-construction meetings may be necessary if phased construction is not continuous.
  - f. Review of building elevations to be consistent with submitted documentation or testimony.
  - g. The applicant shall provide the digital data as required by §335-13 – verification with GIS coordinator.
  - h. Payment of Open Space Fee: **\$5,028.00 + \$4,500.00** (Subdivision & Paper Street)
  - i. 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. Inspection fee shall be 2% of the total amount of performance guarantee. **\$5,229.38**
  - j. 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. Performance guarantees may be provided together or individually.

- i. Christie Way: \$95,454.00
  - ii. Reece Commons Apartments: \$166,014.81
- k. Documentation of recorded utility easements over lot 9 of the Rivermeadow Residential subdivision to benefit Christie Way Lots 1 and 2.
  - i. Easements need to be separated for each lot's services.
  - ii. Easements need to clearly provide access and maintenance, but also requirement to for Christie Way lot owners 1 & 2 to address land condition of Lot 9 to return to a state incompatible with the premise at the time of disturbance.
- l. Coordinate with the E911 Coordinator on addressing the building/units.
- 4. **Prior to commencing any work in the City Right-of-Way**, the applicant must obtain a road-opening permit from the Public Services Department.
- 5. **Prior to the issuance of the First Occupancy Permit:**
  - a. A site inspection of the required improvements by the City to ensure public health & safety is addressed and compliance with the approval (to include but not limited to lighting (installed & lit), base paving, sidewalks, striping, dumpster, signage, stormwater features, etc.)
  - b. All Sewer & Water lines fully tested and approved.
  - c. All other site improvements, as shown or stated on plans or in conditions, must be installed unless a performance guarantee amount is held for the full amount of any remaining improvements to be completed after issuance of an Occupancy Permit.
  - d. Documentation (signed contracts), for private trash removal & snow plowing provided to the Planning Department. Provide recorded documents on trash arrangement between Lot 1 and Lot 2.
  - e. Copy of recorded Christie Way road association documents provided to the Planning Department.
  - f. Verify final USPS locations for mailbox for 8 Unit and Duplex.
  - g. Fence installed along the 10 Christie Way and 40 Emery Street properties as per approved plan.
- 6. **Prior to the issuance of the Final Certificate of Occupancy:**
  - a. All areas shown as pavement shall be final paved & striped, as necessary.
- 7. **Prior to release of the performance guarantee:**
  - a. The site will be inspected and deemed by City staff to be in compliance with the approved plans, monuments placed, and as-built plan provided in City approved format for the GIS system. Applicant to provide as-builts to City in paper copy, dwg file and pdf.
  - b. Documentation of maintenance contractor for Stormwater Best Management Practices.
  - c. BDA testing required for both the duplex and multi-family structures.
- 8. If Duplex Lot is sold, owner needs to be a member of the road association.
- 9. The owner of Lot 1 (duplex) shall have their trash disposal addressed by the owner of Lot 2 (multifamily structure). Lot 1 residents are permitted to cross Lot 2 to access the trash receptacle on Lot 2 for the purposes of trash disposal. All trash/solid waste, from Lot 1 that is brought onto the Lot 2 site, must be placed inside the trash receptacle provided by Lot 2 owner and not on the ground of Lot 2. This arrangement is to be included in the deeds for both lots.
- 10. Christie Way shall remain a private way and shall not be accepted by the City of Westbrook as a public street, unless the road is brought into compliance with the Local Street standards which include but are not limited to sidewalks, water main infrastructure, and road width.
- 11. 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. Additional BMPs may be required to address erosion

and sediment control during construction. Determination of the need for additional measures are at the sole discretion of City Staff.

12. Access to the existing residences must be maintained to the greatest extent practical with access disruption are limited to deep utility installation and paving. Coordination with property owners on any disruptions to access must be conveyed at least 24 hours in advance.
13. The applicant shall comply with the requirements of local and state authorities for life and safety requirements.
14. The applicant shall comply with Chapter 37, the local Post Construction Stormwater Management Ordinance and maintain the Maintenance Log for the stormwater feature on the premise.

**2<sup>nd</sup> by Susan Roma**

**Roll Call Vote**

<b>Karen Axelsen</b>	<b>No</b>
<b>Robin Tannenbaum</b>	<b>Yes</b>
<b>Larry McWilliams</b>	<b>Yes</b>
<b>Jason Frazier</b>	<b>No</b>
<b>Kevin Price</b>	<b>Yes</b>
<b>Susan Roma</b>	<b>Yes</b>
<b>Chair - Rebecca Dillon</b>	<b>Yes</b>

**5-2 in favor (Karen Axelsen and Jason Frazier Opposed)**

**Motion passes**

**Dustin Roma** Thank you Board Members. I appreciate all your time on this.

**Rebecca Dillon** Our next item on the agenda is we're going into new business.

**NEW BUSINESS**

**Rebecca Dillon** Rebecca, please read the next item into the record.

6. **Rebecca Spitella reads item into the record** 2023.01 – Site Plan, Subdivision – 185 Park Road - Landbank, LLC: The applicant is requesting an 11-unit subdivision located on Park Road. Tax Map: 048 Lot: 083 Zone: Highway Services Use: Dwelling, Multiple-Family

**Applicant Presentation – Aaron Hunter, Sebago Technics**

**Presentation on file at the Westbrook Planning Department and on the Westbrook Website link shown below:**

<https://vimeo.com/showcase/3075539/video/778681994>

**Aaron Hunter**

Good evening. My name is Aaron Hunter. I'm a civil engineer with Sebago Technics here on presenting on behalf of the applicant Land Bank LLC here for the applicant is also with me is Mike Perry and

David Shea here help answer any questions that I can't. Presented aspects of Site Plan, Subdivision – 185 Park Road.

We were last year before you in January to present sketch plan. Now we've moved on to final plan for site plan and subdivision approval.

I will give a brief background for anyone who wasn't here about the proposed development. The site's located at 185 Park Road, the sites currently vacant and undeveloped. Then to give a little bit of a recap of the process and where we started from. Initially looking at this site the density allowed for 20 units. We were proposing more of a square building, a single building with three stories after talking with staff.

We decided to make it more in scale with the existing residential uses along the neighborhood and I've come up with a plan that is proposing to be 11-unit condominium development. Re-buildings to quad plexus in one triplex. There'll be a private driveway to serve the proposed buildings each unit will have an individual garage and we'll have an either individual driveway or shared driveway to provide parking within the garage and also parking in the driveway.

We are providing a sidewalk to provide pedestrian access to the Park Road sidewalk across the street for trash you'll see that we're not showing any dumpster enclosure. We are planning to have the site have trash pickup by individual bins for each unit that will be stored within the units until trash pickup day and then they'll be brought out to the in front of each unit along the private road.

Then also since the last plan we've provided some additional detailed landscaping. I know that was one of the bigger items that you guys were interested in. So, we are providing a buffering in landscaping along the right side of the property where there's the commercial business and then we've added some street trees along the Park Roadside of the property.

Then we've also added some additional plantings and trees along the foundations of the buildings. Some of the comments that we received from staff we have addressed and there's really not really many remaining at this point. Just some minor, minor comments.

We did add a sidewalk pathway to the utility rooms. There's the utility room for each building to provide access for the fire department for the sprinkler room. We also added a fence along the portion of the property line that we share with the commercial business that was at the request of that adjacent property owner.

In regard to utilities, we have received our capacity letters from water from sewer. We have worked with Central Maine Power and the other utility agencies to ensure that we're able to provide service to the buildings.

And then in regard to stormwater, we're proposing to under drained soil filters one in the back left corner of the site looking at the plan here and then one in the front right corner of the site or else also proposing some stone drip edges along the rear of the building to capture roof runoff. Then we also have submitted a stormwater permit by rule to Maine DEP as we're going to be disturbing over an acre of land.

Let's get a little bit more into the building design. I'll go to the next slide here. So, this is a this is an elevation view of the Park Roadside of units four through seven. This was one of the initial points of interest for the public and the Board to see how this would look. So, we've added some coloring to the to the rendering here. We've also shown the proposed landscape along this view from the recommendation

of Staff. We think that this provides a better picture and shows more like what this would look from Park Road.

As you can see we have some street trees, some smaller flowering trees that will be closer to the building along with some shrubs. These will be provided adjacent to the patios that will be accessed from the rear of the units.

The front side of the buildings will be gable ended with a covered porch and then they'll have the garages that's not shown on this elevation here. One of the other things is that in this particular building units four through seven that fronts along Park Road we are providing the option of or we're providing that the end units will be one in three quarter story with the dormer and then the middle units will be the single story without the dormer.

I guess with that we feel that we've adequately addressed staff comments, and we're hoping that you can grant us approval tonight, and we're happy to answer any questions that you might have.

Happy you answer any questions.  
Thank you.

**Rebecca Dillon** Thank you any staff comments?

**Jennie Franceschi** presented Staff Comments:

Just to kind of reiterate a few of the points raised on the architecture in looking at the elevations that were provided in your initial submission. When compared to now the elevations that are before the board tonight, there's substantive improvement in those elevations and from a staff's perspective we just want to express our appreciation for the comments taken also fixing this particular building to be what you're showing to the board that there's an expectation as to what this is going to look like understanding there's flexibility with the other buildings that are not as visible to the passerby or the adjacent neighborhood. The utilization of landscaping and enhancing the side of the building along Park Road again, I think there's a substantive amount of landscaping that is being provided and really has I think created a front door that is much more appealing than I believe what we were being shown in that first submission.

The outstanding items that are in the list have been addressed or included in conditions of approval. Specifically, there are two driveways that are included now Apex and Viking will be the names of the two driveways going into the complex.

We have provided a motion on page 12 along with the findings of fact conclusions and conditions associated with this approval.

## **PUBLIC HEARING**

Tax Map: 048 Lot: 083  
Zone: Highway Services District

### **Project Description**

The applicant is requesting an 11-unit subdivision in 3 buildings, located on Park Road.

### **Project History**

December 21, 2022 – Neighborhood Meeting



**Staff Comments:**

1. Noticing Fees: \$254.72
2. Open space fee-in-lieu: \$5,530.30 required to be paid prior to project commencement.
3. Signage
  - a. Driveways to be named.
    - i. Two driveway names required – proposed driveway names currently under E-911 review.
4. Elevations provide additional elements to rear facade – Understanding the application is requesting a variable roof (maintaining the building footprint and site grading) dependent on end user preference, recommend the Park Road elevations maintain the style that will be shown to the Planning Board with dormered units as end caps.
5. Fire Comments
  - a. No parking to be permitted along driveway to maintain emergency access.
  - b. Fire alarm system to monitor sprinkler system. House panel to control fire alarm.
  - c. All buildings are required to be fully sprinkled with full fire alarm system.
6. Surface treatments – 2’ strips in front of porches are not feasible for grass strips – please review an alternative permeable treatment that is maintainable.
7. Surface under trash totes needs to be a stable surface – grass is not acceptable.

**Rebecca Dillon Open Public Hearing**

- Speak into the microphone. Remember to state your name and address.
- Public has one opportunity to provide comment.
- All comments should be addressed to the Planning Board, who will address the applicant/Staff following the public hearing.
- In-person

No Comments

- Zoom participation.

**Rebecca Spitella** if you would like to provide a comment, please raise your hand now and we will call you in one at a time.

Once you come in, please state your name and property address before providing your comment. Yes. We have an attendee into the name Mark Drouin.

I'm going to allow you to speak now, please unmute your microphone and state your name address and provide your comment.

**Mark Drouin** 548 East Bridge Street, I just wanted to speak up since I spoke against the design during the workshop that I echo Jenny's comments that this is a vast improvement design. I still think there's a lot of roofs there facing Park Road, but this is much better than what was presented previously. I don't know if it's too late to add any changes, but that roofline if it was a little more varied would be nice to see just from the neighborhood's perspective. Otherwise, I think this is a great project. Thank you.

**Rebecca Spitella** if you would like to provide a comment, please raise your hand now.

No further comments

## **Rebecca Dillon Close Public Hearing**

### **Board Comment/Discussion**

- In-Person

**Rebecca Dillon** do we want to have any response to that one comment from the applicant?

Any board comment or discussion?

**Robin Tannenbaum** I wish we could see prior - #4 variable roof – preference.

**Jennie Franceschi** yes

**Robin Tannenbaum** thank you. I Echo the comments it's times like this. Sometimes I wish we actually had a copy of the last version of what we saw. It's fine. Again, I'm okay, but sometimes I separate conversation because I couldn't quite remember but I felt good about what I saw. So, thank you for confirming that I do have a question on the staff comments number four elevations provides additional elements to rear façade understanding the application is requesting a variable roof, maintaining building footprint and site grading dependent on end user preference recommend Park Road elevations maintain the style that will be shown to Planning Board with dormer units is end cap. So, what I want to confirm is that we're locked in with that. Then somebody can't come along and say I don't want that version we're locked in with the dormers on the two ends of the Park Road. Yes, so that front that front building is that stated? Yes, okay.

What I've said, I think it's also a tough. It's I mean we see this more and more. What's the front? What's the back? I think part of it is the nature of urban development that comes up more and so we're starting to see that with our infill development. So, it's a tough one.

Thank you for going the extra mile for us.

**Rebecca Dillon** Any other board questions or comments?

**Nancy Litrocapes** just a brief comment that I really like this design much better than the last design. So, thank you.

**Rebecca Dillon** Thank you, any other questions?

**Larry McWilliams** I want to echo the design with the roof line looks much better, especially the landscaping design both front and back because it's going to buffer the back on you're looking at the Sappi Mill.

So just putting more trees in and more landscaping is definitely going to just enhance that neighborhood as well from the front and the back portion of it.

Thank you.

**Rebecca Dillon** Thank you any other questions or comments?

I had one question on the landscape that you're showing in the elevation of Park Street sorry, can we pull up that elevation they have with the landscaping on it? Right there.

Are those the trees and landscaping you're showing are those the size they'll be day one or is that a two-year growth five-year growth?

**Aaron Hunter** I don't believe that's the size of when they'll be installed. So that will be the full mature size I believe that's my understanding. Okay.

Thank you.

**Rebecca Dillon** any other Board comments and questions. If not, then there is a motion on the memo on page 12.

**John Turcotte move** That the Planning Board approve the Site Plan/Subdivision application for Landbank, LLC for a n 11-unit subdivision located at 185 Park Road Tax Map: 048 Lot: 083 Zone: Highway Services District and the following findings of fact, conclusions, and conditions as stated on pages **12 through 17** of this Staff Memo dated March 3, 2023, which are adopted in support of this approval.

**Site Plan – Finding of Fact**

<b>Standard</b>	<b>Finding</b>
Utilization of the site	The proposed development complies with the district standards for Highway Services District which include but are not limited to building footprint, gross density, residential density and lot setbacks. The development provides 2 on-site parking spaces per unit which meets the Ordinance standard. Adequate stormwater management is provided on site. A landscape plan has been provided which demonstrates additional landscaping along Park Road as well as buffering along the northerly property line and residential landscaping along each individual unit. The project meets the intent of the Ordinance.
Handicap Access	The site is compliant with the ADA requirements for a new residential development. Review by the State Fire Marshall is required prior to building permit issuance.
Appearance Assessment	<ul style="list-style-type: none"> <li>(a) The location for site ingress/egress has been reviewed and approved by the City Engineer. The proposed structures are 1-2 stories high which is compliant with the district standard (maximum 40' or three stories). This standard has been met.</li> <li>(b) All proposed structures are within the building envelope and do not intrude on any front, side, or rear setbacks. Landscaping and a fence is proposed along the northerly property line as buffering/screening to the direct abutter. This standard has been met.</li> <li>(c) A landscape plan has been provided which demonstrates additional landscaping along Park Road as well as buffering along the northerly property line and residential landscaping along each individual unit. This standard has been met.</li> <li>(d) Lighting is provided along the building entrances consistent with residential units. Due to the</li> </ul>

	<p>closeness of the structures additional light poles are not necessary for the safety of the site. This standard has been met.</p> <p>(e) All signage is identified on the plan. This standard has been met.</p> <p>(f) The site is not located within the Village Review Overlay District. This standard does not apply.</p>
Landscape Plan	A landscape plan has been provided which demonstrates additional landscaping along Park Road as well as buffering along the northerly property line and residential landscaping along each individual unit.
Odors	The residential use is consistent with surrounding residential structures. No adverse impact is known or anticipated.
Noise	The residential use is consistent with surrounding residential structures. No adverse impact is known or anticipated.
Technical and Financial Capacity	The applicant has provided a letter from Gorham Savings Bank dated February 17, 2022 to demonstrate financial capacity. The applicant has retained the services of Sebago Technics which demonstrates technical capacity.
Solid Waste	Solid waste will be privately managed via internal collection of individual toters. No toter storage or collection is permitted along the Park Road right of way.
Historic, Archaeological and Botanical Resources or Unique Features	No historic, archaeological/botanical resources have been identified on the site.
Hazardous Matter	Project does not propose the handling, storage, or use of hazardous materials. No adverse impact known or anticipated.
Vibrations	The proposed residential use is compatible with the abutting residential use. No adverse impact known or anticipated.
Parking & Loading Design and Site Circulation	The development provides 2 on-site parking spaces per unit which meets the Ordinance standard. A turning template has been provided to demonstrate adequate access for emergency vehicles.
Adequacy of Road System	Park Road has adequate capacity to accept the traffic generated by this project.
Vehicular Access	The location for site ingress/egress has been reviewed and approved by the City Engineer.
Pedestrian and Other Modes of Transportation	A pedestrian walkway is provided internal to the site and along the project frontage to provide a connection to the residents to the public infrastructure on Park Road. Additionally, the project is responsible for the installation of a crosswalk and two pedestrian crossing signs on Park Road.
Utility Capacity	Utility services are available within the Park Road right of way.

Stormwater Management, Groundwater Pollution	Stormwater management is provided on site.
Erosion and sedimentation Control	Adequate erosion control measures are shown on the plan.

**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** with a 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 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.

**Subdivision – Finding of Fact**

<b>Standard</b>	<b>Finding</b>
Pollution	Sewer services are available within the Park Road right of way. An ability to serve letter has been provided by Wastewater Services
Sufficient Water	Water services are available within the Park Road right of way. An ability to serve letter has been provided by PWD
Municipal Water Supply	Water services are available within the Park Road right of way. An ability to serve letter has been provided by PWD
Erosion	Adequate erosion control measures are provided on the plan.
Traffic	Park Road has adequate capacity to accept the additional traffic generated by the project.

Sewage Disposal	Sewer services are available within the Park Road right of way. An ability to serve letter has been provided by Wastewater Services
Municipal Solid Waste Disposal	Solid waste will be privately managed via internal collection of individual toters. No totor storage or collection is permitted along the Park Road right of way.
Aesthetic, Cultural and Natural Values	None known
Conformity with City Ordinances and Plans	The proposed development complies with the district standards for Highway Services District which include but are not limited to building footprint, gross density, residential density, and lot setbacks. The plan is in conformance with City ordinances and the comprehensive plan.
Financial and Technical Capacity	The applicant has provided a letter from Gorham Savings Bank dated February 17, 2022, to demonstrate financial capacity. The applicant has retained the services of Sebago Technics which demonstrates technical capacity.
Surface Waters; Outstanding River Segments	Standard is not applicable
Ground Water	Groundwater is not anticipated to be negatively impacted by the development.
Flood Areas	No flood zones have been identified on the site.
Freshwater Wetlands	No wetlands have been identified on the site.
Farmland	No farmlands have been identified on the site.
River, Stream, or Brook	No rivers, streams or brooks have been identified on the site.
Stormwater	Stormwater management is provided on site.
Spaghetti Lots Prohibited	The lot does not have shore frontage.
Lake Phosphorus Concentration	The subdivision is not located near or along a great pond.
Impact on Adjoining Municipality	The subdivision does not cross a municipal boundary.
Lands subject to Liquidation Harvesting	This standard is not applicable.

### Conclusions:

1. The proposed subdivision **will not** result in undue water or air pollution.
2. The proposed subdivision **has** sufficient water available for the reasonably foreseeable needs of the subdivision.
3. The proposed subdivision **will not** cause an unreasonable burden on an existing water supply.
4. The proposed subdivision **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 subdivision **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 subdivision **will** provide for adequate sewage waste disposal and **will not** cause an unreasonable burden on municipal services.
7. The proposed subdivision **will not** cause an unreasonable burden on the City's ability to dispose of solid waste.
8. The proposed subdivision **will not** have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

9. The proposed subdivision **conforms** with a duly adopted subdivision regulation or Ordinance, comprehensive plan, development plan or land use plan.
10. The subdivider **has** adequate financial and technical capacity to meet the standards of this section.
11. The proposed subdivision **will not** adversely affect the quality of any pond, lake, wetland, great pond, or river, or unreasonably affect the shoreline of that body of water.
12. The proposed subdivision **will not**, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
13. The subdivision **is not** located in a flood-prone area, as determined by the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps.
14. All freshwater wetlands within the proposed subdivision **have** been identified.
15. All farmland within the proposed subdivision **has not** been identified. – Not applicable
16. Any river, stream, or brook within or abutting the proposed subdivision **has** been identified.
17. The proposed subdivision **will** provide for adequate stormwater management.
18. Lots in the proposed subdivision **do not have** shore frontage on a river, stream, brook, great pond, or coastal wetland as defined in 38 M.R.S.A. Section 480-B.
19. The long-term cumulative effects of the proposed subdivision **will not** unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.
20. The proposed subdivision **will not** cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.
21. Timber on the parcel being subdivided **has not** been harvested in violation of rules adopted pursuant to 12 M.R.S.A. Section 8869, subsection 14.

#### Conditions:

1. Approval is dependent upon, and limited to, the proposals and plans contained in the application dated February 8, 2023, and supporting 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 §335-13.5.D, the Code Enforcement Officer shall not issue any permits until a site-subdivision plan has been approved by the Planning Board and a Mylar signed by the Planning Board. *The signed Subdivision Plan must be recorded within 90 days of Planning Board approval, or the approval shall be null and void.*
3. **Prior to the sale of any units for the project:**
  - a. Provide a copy to Planning Office of recorded Homeowners association by laws & Declaration of Covenants and Restrictions for the lot included in that association.
  - b. Copy of the recorded subdivision plan must be provided to the Planning Office.
4. **Prior to any site disturbance or building permits being issued for the project:**
  - a. All Staff comments must be addressed.
  - b. Copy of Recorded subdivision plan must be provided to the Planning Office.
  - c. A pre-construction meeting must be held with City Staff and the site work contractor. Contact the Planning Office to coordinate. Additional Pre-construction meetings may be necessary if phased construction is not continuous.
  - d. Review of building elevations to be consistent with submitted documentation or testimony.
  - e. The applicant shall provide the digital data as required by §335-13 – verification with GIS coordinator.

- f. Payment of Open Space Fee: **\$5,530.30**
- g. 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. Inspection fee shall be 2% of the total amount of performance guarantee. **\$5,172.00**
- h. 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. **\$258,600.000**
- i. Coordinate with the E911 Coordinator on addressing the buildings/units.
- 5. **Prior to commencing any work in the City Right-of-Way**, the applicant must obtain a road-opening permit from the Public Works Department.
- 6. **Prior to the issuance of the first Occupancy Permit:**
  - a. A site inspection of the required improvements by the City to ensure public health & safety is addressed and compliance with the approval (to include but not limited to base paving, signage, etc.)
  - b. All water lines fully tested and approved.
  - c. All other site improvements must be installed unless a performance guarantee amount is held for the full amount of any remaining improvements to be completed after issuance of an Occupancy Permit.
  - d. Documentation (signed contracts), for private curbside trash removal & snow plowing for the Homeowners Association, provided to the Planning Department.
  - e. Copy of recorded Condo Association Docs provided to Planning Department, if not already provided.
  - f. Verify final USPS locations for mailbox.
- 7. **Prior to the issuance of the final certificate of occupancy:**
  - a. All areas shown as pavement shall be final coat paved.
  - b. Documentation of maintenance contractor for Stormwater Best Management Practices.
- 8. **Prior to release of the performance guarantee:**
  - a. The site will be inspected and deemed by City staff to be in compliance with the approved plans, and as-built plan provided in City approved format for the GIS system. Applicant to provide as-builts to City in paper copy, dwg file and pdf.
- 9. Waste management shall be internal to the site (curbside to the units) – Toter storage and collection is prohibited along Park Road.
- 10. Best management practices shall be adhered to during all ground disturbance operations.
- 11. The applicant shall comply with the requirements of local and state authorities for life and safety requirements.
- 12. The applicant shall comply with Chapter 37, the local Post Construction Stormwater Management Ordinance and maintain the Maintenance Log for the stormwater feature on the premise.

**2<sup>nd</sup> by Robin Tannenbaum**

**Roll Call Vote**

<b>Karen Axelsen</b>	<b>Yes</b>
<b>Robin Tannenbaum</b>	<b>Yes</b>
<b>Larry McWilliams</b>	<b>Yes</b>
<b>Nancy Litrocapes</b>	<b>Yes</b>
<b>John Turcotte</b>	<b>Yes</b>
<b>Jason Frazier</b>	<b>Yes</b>



Kevin Price Yes  
Susan Roma Yes  
Chair - Rebecca Dillon Yes

Unanimous in favor 7-0  
Motion passes

Rebecca Dillon may I have a motion to go to workshop?

Robin Tannenbaum move to go to workshop.

2<sup>nd</sup> by Kevin Price

Roll Call

Karen Axelsen Yes  
Robin Tannenbaum Yes  
Larry McWilliams Yes  
Nancy Litrocapes Yes  
John Turcotte Yes  
Jason Frazier Yes  
Kevin Price Yes  
Susan Roma Yes  
Chair - Rebecca Dillon Yes

Unanimous in favor 7-0

### WORKSHOP

Rebecca Dillon Rebecca, please read the next item into the record.

7. **Rebecca Spitella reads item into the record** 2023.07 – Site Plan, Conditional Use - Rock Row – Dirigo Center Developers, LLC c/o Waterstone Properties Group: The applicant is requesting a Restaurant Class 3 use located within the gravel parking area of the Rock Row North Campus. Tax Map: 042B Lot: 011 Zone: Contract Zone 12 – Rock Row Contract Zone Use: Restaurant Class 3

Applicant Presentation – Jim Katsiaficas/Wayne Morrill (Perkins Thompson/Jones & Beach)

Presentation on file at the Westbrook Planning Department and on the Westbrook Website link shown below:

<https://vimeo.com/showcase/3075539/video/778681994>

**James Katsiaficas presented application:**

Good evening. My name is Jim Katsiaficas with the Law firm Perkins Thompson here representing Dirigo Center developers and Waterstone properties. We are here for the present this application for a beer garden at the Rock Row development.

And with me here tonight also is Lynda Adams from Waterstone and Wayne Morrill from Jones & Beach and they'll be here to answer questions as appropriate to present this plan. We're here really for two components one is site plan this a use for a beer garden sort of operation was granted approval last year by this Planning Board. We're back because the use is no longer going to be a Class 2 restaurant's

Class three and last evening the City Council approved Class 3 restaurants in the Gateway Commercial and also therefore in the Rock Row contract zone. So, we are back to have that redone as a site plan approval for the class three restaurant and also for conditional use approval because the Class three restaurant is a conditional use, so we've submitted plans.

We have submitted narratives and supportive site plan approval and also the conditional use criteria and so, we're here to present that this evening we here to answer any questions the Board might have. Wayne Morrill can walk you through the plans and also through the comments that are responses to the comments and if there are any additional questions, we'll be prepared to try and answer them for you.

**Wayne Morrill** Jones and Beach presented plans for the beer garden.

Good evening for the record Wayne Morrill from Jones Beach Engineers. As Jim said we were here last year with what we had for a beer garden. We have increased our beer garden a little bit from the last time you saw that it is still in the same position as where it was previously.

So, what we're showing on the screen is the Market Basket the Cowbell Burger that's coming in. You can see the roundabout on Rock Row that comes up in Main Street. So, there's a paved parking lot. 100 space parking lot behind the Market Basket and then the beer garden would be up along the actual.

So, this beer garden that will be accessed by the gate that is closest to Larrabee Road that goes into the gravel parking lot on that used to be for the amphitheater. They will be no earth movement for this beer garden itself. It'll be resting on the existing gravel. There will be 125 parking spaces that will be located for this beer garden. They'll be directly adjacent to the paved parking spaces for the Market Basket overflow, and you can see there.

So, I'm pointing at the paved parking lot. The gravel parking lot will be emergency access gates that will allow emergency vehicles to come in through this way and then we'll also have a location along the edge of the parking lot where we will have Jersey barriers so that there won't be any vehicles coming off the gravel parking lot into the Beer Garden area and also give us a location for a few food trucks when we have special events. Those will be lined up along that gravel parking lot.

From staff comments we've added a paved walkway to get to the Beer Garden itself from the ADA spaces and we've moved the beer garden away from the edge of the fence. If anybody's gone out there and you've seen the fence on the edge of the Quarry, we have a six-foot-high fence with a two-foot attachment on it. The beer garden will be located 25 feet off of that fence. So, there'll be no ability for anybody to be on the beer garden and have the ability to get over that fence.

This will be connected by Municipal Utilities. We will be connecting to Portland Water District water. We've been working with the Wastewater Department to have a small Pump Station that would then force that into the existing source system and they'll be on the ground power going to this unit.

There will be lighting that's existed on the gravel parking lot that will be used for the lighting of the parking spaces and then on the deck itself and lighting for the actual venue.

So, this is our aerial view so you can actually see Market Basket. You can see the circle you can actually see the Quarry down inside. So, the beer garden will be set right there on that edge.

The beer garden itself is comprised of storage containers. So, we're going to be taking storage containers that will allow us to have storage for all the tables whatever we need to within those storage units. The

actual beer garden itself is going to be elevated on a deck platform on top of those storage units and you can see that will be a covered area. They'll allow patrons to be under the cover be able to access you can see in the corner here. You can see the actual pickup area from a beer distributor. So, they'll be beer that will be available up on the box. But what we wanted to do is elevate this beer garden so that you would actually get high enough up so you could actually experience the quarry on this part of this beer garden and this area itself is going to be is designed to have up to 299 people on the deck itself.

We have 125 parking spaces which 90 would be required for that many people.

Then our last photo you can see on my left-hand side here you can see the paved parking lot. You can see the ramp system that allows ADA accessibility up onto the deck and then another set of stairs that we're actually get you in the beer garden and we'll have temporary fence around it, so when the beer garden is shut down, there won't be any access into this beer garden area.

That's pretty much the presentation if there's any questions one of us we will have the answer for you.

### **Rebecca Dillon Staff Comments?**

### **Jennie Franceschi presented Staff Comments:**

The staff Review Committee has met and has provided the applicant with a series of comments that the applicant is working through those various departments on the application at hand. So, at this time staff doesn't have anything further to add and would just like to hear the board's feedback on the application.

## **WORKSHOP**

Tax Map: 042B Lot: 011

Zone: Contract Zone 12 – Rock Row Contract Zone

Use: Restaurant Class 3

### **Project Description**

The applicant is requesting a Restaurant Class 3 use located within the gravel parking area of the Rock Row North Campus as shown on the application plans. A delineated & fenced off parking lot will be created adjacent to the use for customers.

### **Project History**

March 7, 2023 – Planning Board Workshop

### **Staff Comments**

1. Stabilized path does not lead to location of ramp entrance, based on project renderings, or bathroom area.
2. Type in note 20 – construction should be consumption.
3. Adequate wayfinding signage will be required (for directional purposes – cannot be utilized as additional advertising along Larrabee)
4. Further review of lighting the platform and gravel parking area will be required. Provide a photometric of the area.
5. All food trucks will be required to be licensed by the City.
6. Fire Comments:
  - a. Knox box required at emergency entrance gate.
  - b. Final occupant load dependent on FD review – occupant load cannot exceed 2x capacity of main entrance to the platform.

- c. FD to review locations for extinguishers ensure compliance fire code.
- d. Additional measures may be required and are dependent on what is stored within boxes.
- 7. Final plan to provide detail for dumpster enclosure.
- 8. More information needed on electrical connections to Conex boxes.
- 9. Sewer connection pending review by Wastewater Services
- 10. Code Requirements with/prior to building permits
  - a. State fire marshal permit approval
  - b. Engineered stamped plan,
    - i. Review for frost protection, anchoring and structural capability.
  - c. Stamped engineered electrical plan.

### **Rebecca Dillon Introduction of Public Comment**

- d. Speak into the microphone. Remember to state your name and address.
- e. Public has one opportunity to provide comment.
- f. All comments should be addressed to the Planning Board, who will address the applicant/Staff following the public hearing.

### **Open Public Comment**

- o In-person

No comments

- o Zoom participation.

**Rebecca Spittella** if you would like to provide a comment, please raise your hand now and we will call you in one at a time.

Once you come in, please state your name and property address before providing your comment.

No comments

### **Rebecca Dillon Close Public Comment**

Do we have any Board Comments or Discussions?

- o In-Person

**Larry McWilliams** thank you, Madam Chair. I have a question, regarding the food trucks coming in. If it's elevated, obviously the food trucks are not going to be parked on top of the deck. So is that going to create people downstairs buying food where they have to come up and eat it there or is it going to be congregations in the parking area where people are going to be eating because they're not going to be able to drink down there when they're getting food obviously because the alcohol basically is going to be contained to the deck.

I understand. That's correct. Okay. So, with a food truck coming in are those participants going to go downstairs receive food and go upstairs to eat?

Are they going to be able to eat downstairs as well? Or how's that going to be with regular events there?

**Wayne Morrill** Maybe the opportunity that we would have like cornhole tournaments down below on the on the gravel surface or different events that happen. But for the most on a day-to-day operation there may only be one food truck there. They may be no food trucks there day to day. It all depends on what kind of event that we're trying to have. It depends on how many food trucks and then that may be just picking up the food and bringing it back up to the top. So, but there may be occasions, that's why

you see the parking area is separated away from the beer garden itself. It gives us enough space there to do different events down below, with that other fence in area.

**Larry McWilliams** So alcohol will be allowed down where the food trucks are? So, if you're going to have an event like a cornhole somebody can't bring their beer down to play cornhole.

**Wayne Morrill** that would be a different type of event. Different type so, 99% of the time every call will be on the deck itself.

So, it's still a percentage. I'm curious if what it is going to be. Lynda Adams may want to answer that.

**Lynda Adams** so what we're going to do is basically on a day-to-day operation the bar will be on the deck level and we are going Long Pine Brewery is the company that we're working with that will operate this. They are going to submit an application for their State Liquor License to be approved through the City Council and they probably will designate a certain area at the ground level that will encompass the bar area.

We've already spoken with the State, and they have no problem with that that if people want to consume their beverage up on the deck they can but as long as they can keep their eyes on the people and it's roped off and there's a designated area at the ground level that they consume their beverage in they are allowed to do that per the license once that's approved. So, we probably will do that. That way they could play cornhole or kind of these little things that they'll do on an ongoing basis.

But if we're having like a larger event where we're going to come to this City with the Mass Gathering permit to request to do that like other events we've done before. There might be 500 people at, and we would come to the City and request to have like an extension of services and we would probably have another bar that Lone Pine would do down at the ground level as well. That way people aren't going up and down the stairs for a larger event.

**Larry McWilliams** thank you as long as it's roped off. That's what my comment my concerns were if somebody's downstairs to grab food. How's that going to be regulated that it's not going to be blocked off with alcohol as well.

**Lynda Adams** absolutely. It will definitely be sectioned off and it will have signs up. No alcohol consumed to be on this point. As far as the food goes we are working with trying to create a system where we could have people ordering food from the tenants that are at Rock Row already like Cowbell or Big Fin Poke and we'll have some sort of like a QR code where they could order the food and would be delivered to them. So, we're still working the details out on that, but we would like to have the option to have food trucks come in periodically.

Thank you.

**Jason Frazier** So I just have a few questions here. So is this going to be 24 or 20 or 21 and over or all ages?

**Lynda Adams** a strong class three does allow people under 21 to be there, but they have to be with a guardian or an adult. It's going to be very family friendly. That's our goal. We do plan on having some special events where dogs are also allowed. It won't be an ongoing thing, but we would like to do that as well. So very family friendly great to hear family friendly and dog friendly. Everybody likes that definitely more of that also food trucks.

**Jason Frazier** So I know there's kind of a shortage in the area of places to park food trucks. The City of Portland did the Western prom. Sorry, the Eastern prom area. They did a lottery and it sold. I mean it was the overwhelmed people got turned away.

So, have you thought of maybe doing this like food trucks more often like daily option because I know there will definitely be interest in that.

**Lynda Adams** So we are we are talking to numerous food trucks about that, and we would like to have kind of like Wells does with their after dark where they have like every couple of days or something. The big thing is that with the restaurant class three, it doesn't require us to meet a minimum food sale amount. So, we are working with Lone Pine because they do have to offer some food. So, we're working with them to figure out what do they want to offer from menu items and then we'd like to bring in some food trucks that would complement what they're already going to offer. But if we're able to offer something for the food trucks to come there in a continuous basis every week. We would love to do that. We are just going to also be sensitive to our tenants on site as well and try not to compete with them because we also want them to do well with food sales.

**Jason Frazier** That's great offering the purchase food to the to the other tenants there. That sounds great. So, thank you that looks like a great idea.

Thanks.

**Karen Axelsen** I remember last time when this was approved it had hours that it would be closing by nine during the week and there was music potential.

**Lynda Adams** we would like to do some smaller performance acts so maybe acoustic or up to a three-piece band that would be located up on the deck, and we were proposing to go no later than 10 o'clock during the week and on the weekends. Okay, so it'd be 10 each. That's what we're looking at. That's at 11 on the weekends.

**Karen Axelsen** in regard to food trucks. I know that the Community Center was doing food truck Fridays, but if they didn't have the people they would close up the trucks.

So just a word of caution. If you are going to have a food truck like at least commit to the timeline that you're open Would be helpful definitely.

Thank you.

**Jennie Franceschi** I just wanted to clarify on just hours of operation for a restaurant class three in our ordinance. The provision is that the hours that they cannot be serving alcohol are 1 am to nine am so that is the absolute Provisions within restaurant class three if the applicants self-imposes restrictions more so than that would really be their restrictions. But the ordinance affords at least that is being sort of our parameters.

**Rebecca Dillon** Any other questions or comments?

**Nancy Litrocapes** just a quick comment. You know when I saw this, what are these containers I don't think the picture here represents how really incredible this can look I saw something very similar in Detroit and it was just wonderful, and it was the entire beer garden are the entire Brewery area beer garden was all made of these kinds of containers and it just wonderful.

It's a great vibe and it just was a really interesting element for the city. So, I wanted to comment on that, but I don't think the picture does it justice.

**Lynda Adams** We are working with a new company called Groundswell Design which is known for creating pretty unique venues. So, we just brought them on board. That is one of the things we're working on with them is how can we make this really attractive? So, it isn't just a bunch of contained decks sitting on top of containers and it won't be just people walking from through like a dirt gravel lot to get to the duck that we're actually going to have some landscaping and so hopefully next time you guys see this a rendition of this it'll have those elements to it.

**Nancy Litrocapes** This has potential to have really incredible lighting, you know, so as you're really thinking about the lighting plan just because it's a little bit further away from some of the other elements right now in Rock Row and just what it is standalone like this it I don't know what you have for lighting plan, but I am encouraging something that is quite interesting.

**Jennie Franceschi** I just did want to mention that staff has lovingly called this project the pier at Rock Row, so we're not sure if that will stick or whether the applicant has any desire to take that on as a name, but would interest we're in taking that as an internal name.  
Thank you.

**Rebecca Dillon** Rebecca, please read the next item into the record.

8. **Rebecca Spitella reads item into the record 2023.08 – Site Plan, Subdivision, Village Review - 16 Spring St – Greg Boulette: The applicant is requesting a 7-unit townhouse style multifamily structure located at the corner of Spring Street and William Clarke Drive. Tax Map: 033 Lot: 114 Zone: City Center District – Downtown District, Village Review Overlay Zone Use: Dwelling, Multiple-Family**

**Applicant Presentation – Peter Biegel, Land Design Solutions**

**Presentation on file at the Westbrook Planning Department and on the Westbrook Website link shown below:**

<https://vimeo.com/showcase/3075539/video/778681994>

**Greg Boulette** Greg Boulette here with my wife Jody. We are the owners and developers of the project. We bought the property in 2003 the existing two unit. That's there lived there till about 2007 when we bought our house on Stroudwater Street, and we've owned it since .

We've had tenants in there ever since and we've been talking about this for a little while now. We've looked at possibly putting another two unit on the property or rehabbing the one that's there. We met with the City a couple different times to discuss it and through meeting with the city and we decided that the best route to go would be a new building.

The existing building would be quite a bit of money to rehab. It's got the Old Stone foundations. There's a little bit of water issue in the basement. So really with all the new development going on in Westbrook, we thought this would be a much better fit a better use of the property.

This was a kind of a tough decision, but the timing just seemed right with all the development that's going on the change in the ordinances. Really the timing worked out well for us to try to move forward with this, so I brought with me our team. I've got James who is our architect and then Peter who's doing the site layout so I'll kind of hand it over to them to go over the site and the layout and in the building. Thanks.

**Peter Biegel** presented aspects of the Site Plan, Subdivision, Village Review for 16 Spring Street showed google map current location.

Good evening. My name's Peter Biegel and I'm a landscape architect site planner with Land Design Solutions. The parcel is approximately 13,649 square feet and it's located at the intersection of Spring Street and William Clark Drive.

(Showed location on the screen)

We have William Clark Drive right along here. We have Spring Street right along here. And there's our parcel right there. Here is a Google Maps image of the site from William Clark Drive, you can see the existing older structure right there. There are a few street trees newly planted along William Clark Drive and some older trees within the site.

We're in the Downtown District and the City Center District in the Downtown Village Review District Overlay. As Greg said we've kind of gone back and forth for a while with just the possibilities of rehabbing that building. Getting rid of that building putting a new building on the other side of the property and where we landed after.

A lot of different concepts and pros and cons was placing the building along the William Clarke boundary. The existing building you can see the driveway came in here a couple of brick patios. The space was totally developed. This was the plan that you all saw in your package of the seven unit multifamily along William Clarke Drive

We have the entrance coming off Spring Street. We had to adjust the existing entrance slightly. So, when you come in the drive we have some parking spaces in the rear here, every unit has a garage space and these first couple units just because of the geometry of the site actually has a parking space as well in the driveway and then we have this striped space is reserved as a turnaround aisle or just you know, once you get in there to make sure there's some maneuvering space be able to turn your vehicle around and get out and then we have three other spaces along here.

Topography of the site is pretty flat up in this area and it all then it slopes down to towards Spring Street. In looking at our grading and stormwater concepts this is really the ideal the lower part of the site for some sort of stormwater management. The city has its catch basin system right in here, so there's a logical tie-in. There's also the opportunity along the rear of the site to have some sort of roof drip line filter to help catch some runoff from the roof and infiltrate that.

I'm trying to create a little green space to soften things along the front. So I show green because that's where we are at that stage right now. We really haven't gotten into looking at plants or light posts or other things that could help dress that up. There are a number of trees inside the parcel that would need to come down. This is a small site and it's really the domino effect when you start putting in utilities and shaping the ground to guide your drainage.

So, we're really touching most every part of that of that site.



working with Greg we have James Gauthier the architect. We've been working with Great Falls Construction. They've been on board from the beginning helping to talk with utility companies and just working with different materials and sizes and how this can all come together.

We did get a little bit of a schedule shock when we heard that Spring Street is going to be paved and there's a good chance it's on the spring list. So, we went from kind of a leisure working around pace, too trying to figure out how to get this all done, but we're working on that.

After we made our submission, we had our staff meeting. I think everybody probably got a copy of staff's comments. There were no comments in there that were problematic for us. You know, the way any utility needs to be connected. We can connect that we can make that all happen.

We need to have a mailbox location. We're working on that. We need to come up with a name for our access drive for emergency purposes 911 purposes. I just started putting some of those comments on paper here and we show a little you know our street sign here.

A comment was getting some sort of guardrail along the back you can see this is our abutting neighbors building, you know, right along the face of our building right along our property line. So, getting a guardrail in there we talked about these lighter colored trees are existing trees that would remain and those are in the William Clarke right-of-way.

We talked about continuing that planting line along the rest of William Clarke Drive, trying to use some similar spacing but we have some utilities in the way. That's a little light pole there. So, I've skipped that and left a little space. But trying to make sure that we continue that street tree streetscape along William Clark Drive. There are a couple trees here, which I believe we can keep and supplement those with some taller shrub plantings and a planting bed to screen the parking from William Clarke Drive.

Another comment was replacing the sections of the sidewalk and curb that comes along Spring Street up to the handicap access ramp right there. So, replacing things up to that ramp. So, we're happy to do all those things.

One of the other points was this blue line that I show along here. We had originally showed a fence in our discussion with staff. It's like well, do you really want that? You know how? Set off. Do you want that to be from William Clarke Drive? It might be nice if people come out of the patio door. You could get on the sidewalk. Also, aesthetics from William Clarke Drive needs to have something barricaded. So, we've been hashing that around be nice to have some delineation. It seems like between public and private space and maybe that's a split fence. So, we're just in the discussion realm. So, we're interested in whatever comments the Board has for that. I think we're glad to go in know any direction, but I think we would prefer having something there just give the hint that's where public stops and where private starts it could even be, alternating fence sections or something that allows folks that live there to get to the sidewalk, but letting people on the sidewalk know you probably shouldn't be coming up here.

I think waste removal would be a toter collection things that we would need to have a private service come in and pick up. So, we know that's the way that would need to happen.

Then I'm going to turn this over to James and he can go through the Architectural Components and the meeting that with the development review folks

Thank you.

**James Saucier** Hi, excuse me, James Saucier here architect for the project. I'm usually not involved with the site plan review, but because we're in the overlay zone, I guess you get some attention.

So, we have seven townhouse units of vertically stacked here. We have a typical floor plan. So, on the bottom of the of the slide is the William Clarke Drive side, and the north side on the top of the view is the driveway side on the right-hand side the first floor typical floor plan just a simple garage laundry space stairs.

Going up the utility space, the second-floor cantilevers' over on that north side two feet and I don't think over here the doors resets the foot. So, we have a sort of a built-in canopy. The second floor has a patio door balcony on the driveway side living space and the third floor two bedrooms.

We have seven units all identical. What do we do to differentiate them a little bit? Along the top is unit 1 through 7. First thing we did and the second row from the top is we flipped. Mirror the units instead of all being "a" we went a b a b a b to create some so a diversity and interest in the facade. Then on the bottom row, the next thing we did is offset even the limited amount of room, we had set back each unit. each pair of units two feet. So, the units on the right A B step back two feet the middle units set back two feet to add some interest and I'll take place to the facade. So, it's not just a big flat wall.

So, this is the presentation we had for the design Review Committee

On February 24th, I think I lost my date down on the corner where the highlight is. It's the same floor plans with one thing we did we have this unit as the sprinkler room. In this presentation down here on the William Clarke side. And this unit the other thing we flipped this unit and made it a b from an "a".

In response to their comments that they wanted more penetration on the Spring Street elevation. So, this is one represented for that design review, and this is the modification we made where we flipped. This unit number one and put the mechanical room sprinkler room on the Spring Street elevation. This is the elevation we presented to the Overlay District Review Board. They were content with this North elevation the driveway side. It 's very symmetrical things are stacked garage doors patio doors and large windows in the bedrooms. So, the only change in that is now the sprinkler room is on this right-hand side as we face it from the driveway.

The William Clark Drive South elevation the comments from the Board were that the base level we had some lack of continuity lack of connection to the upper levels. There's a comment on that and they were not in favor of having as in your notes the sprinkler room, mechanical room, basically a sprinkler room with fire alarm control panel in there on the William Clarke Drive elevation.

So, we looked at that and basically just kind of stacked up the doors here made it a little more. Symmetrical and we show on the heat pumps which would be in behind where the with the stairs are and the laundry room and then we move this is recessed again these each step back to a foot right? This is forward. This goes back to a feet two feet and then the sprinkler room is set back yet again. So, these elevations on the left-hand side is a Spring Street elevation. We presented the work at the design Review Committee and on the right-hand side as it reads the neighbors on the east, and we weren't looking at these as primary elevations and they were with them that it needed some work. It needs the elevations on too much blank wall as they put it, so we revisited those mostly on the Spring Street side of the concern. We looked at a few different options. We put; I'm calling a mechanical room here but a sprinkler room.

On this elevation by flipping the unit and putting the stairwell on the inside enables us to put more windows. This is the kitchen behind here. So, this window over the countertop. There's a living room two bedrooms. So, we're able to squeeze the tall window in and then the higher windows above the beds. So, this is showing the sprinkler room with a flat roof, center door, and a couple windows and this is showing the same sprinkler room with the gable roof.

My preference is for the flat roof. I think the other one looks like a vestibule on a lumber yard or something.

So, another thing with that one issue that that created having the door on that side. Was it really encroached on our detention basin for stormwater? Because we have to have a path so that's maintained. So, we looked at putting the door on the North side. So, this is the sprinkler room here with an interest now on this side was a cantilevered roof over it and just windows on this elevation and on the east elevation. We make these windows taller at the top of the stair and I think we added one excuse me, added one here.

This is the analysis we did because we're in the zone that requires it. I think it's 70% of they call it articulation. So trim, which we need a waiver for so this is just a study, showing all that stuff and the percentages because we're still in the commercial zone, but because it's not residential, we should be able to get a waiver, but we had to demonstrate what we have done to articulate the building.

This is our colors and material selections. So, on the bottom base of the building, which we're showing both would have this LP smart side prefinished man-made composite wood siding in this quarry gray. The trim colors would be a charcoal and then the windows maybe the garage door should be a darker charcoal. I'm showing that is I had some rendering stone and they tend to look a little blue. So, these are the actual colors not the ones in the renderings.

Here is a rendering looking from the southeast down toward William Clarke Drive as your approaching it. Again, the landscape is not an entirely determined yet. These are the street trees and supposed to add some more and we naturally have a little bit of landscaping that would help shield the mechanical units, the heat pumps. Further down, excuse me, William Clark Drive from the southwest looking back one of these is recessed here. He says here mechanical unit and then this sprinkler room you can see this again. This would get more landscape, but you can see where the intent is for the for the detention pond over here.

If we did have the door on the end, which we can still do but they might maintain while something like that where the pathway be maintained over here if you are from Spring Street looking from the north a little bit.

So here we have in this case the sprinkler room here and the fire alarm control panel with a flat roof to carry this sort of line around and this canopy coming over that sort of mimics the same recessed doors that are on the remainder of the building.

So, I went really quickly so, that's what I have.

**Rebecca Dillon** with that, we will go to Staff Comments.

**Jennie Franceschi** presented Staff Comments:

I want to first recognize the fact that due to the changes that the Planning Board and ultimately the City Council put into effect to allow for essentially density to not be a stumbling block in creating more units in the downtown. We're seeing projects like this that take two units and make them into seven units.

If you actually did the density on this parcel, it would be 29 units which you can't park. But again, like what we've stated previously parking is actually the limiting factor that we're finding on the parcels, but density is not the limiting factor anymore which affords these parcels to now reinvest and create more units in our Heart District where we have our services and where we really want our density. So, these are these are the projects that we've been hoping for, and we're excited to see these projects moving forward and just a comment on the waiver provision for the VROZ. The VROZ group hasn't seen on the final product of the adjustments that the applicant has made. Those will go back to the VROZ.

In looking at properties that are strictly residential the 70% criteria is not achievable to do 70% in windows and signage and details that otherwise, if you had a commercial space on the bottom with commercial windows that you would be able to hit those parameters. So staff sees no issues with granting of the waiver provision along the Spring Street side and the William Clarke Drive side. But we would like to see that the VROZ Committee have the opportunity to have their input to provide that recommendation back to the Planning Board just to kind of give a comment to that.

Other than that, we have provided the applicant with feedback through our staff departments and we're here for any other questions or comments that the board may have.

## **WORKSHOP**

Tax Map: 033 Lot: 114

Zone: City Center District – Downtown District, village Review Overlay Zone

Use: Dwelling, Multiple-Family

### **Project Description**

The applicant is requesting a 7-unit townhouse style multifamily structure located at the corner of Spring Street and William Clarke Drive, to replace an existing Two-family structure and provide additional dwelling units in the Downtown area.

### **Project History**

March 2, 2023 – Neighborhood Meeting

March 7, 2023 – Planning Board Workshop

### **Village Review**

James Gauthier, project architect, presented the architectural design to the VROZ committee on March 2, 2023.

- Contemporary building design
- Siding Material: LP Smart Siding with 8” panels on the first floor and 6” panels on the upper floors for variation
- Noted the William Clarke Drive elevation does not show the heat pumps or the proposed fence.
- Colors shown in the renderings do not accurately represent the chosen colors.
  - o Door color has not been chosen.
  - o Building colors
    - Siding: Sea Foam Gray

- Trim: Light Charcoal
- Accents: Dark Charcoal

The applicant is requesting a waiver of §335-7.1.G(1)(k) to provide less than 70% of the façade facing streets be articulated with windows, transoms, signs, cornices, and other coordinated architectural features. The applicant noted this standard is applied primarily to structures that also require a commercial presence on the first floor. Where this structure does not require a commercial element, this standard would not be appropriate for this project with the contemporary design of the building. Further, the project provides a stepped façade along William Clarke Drive to break up the massing and provide a townhouse style look to the structure.

*Comments from the VROZ Committee:*

**Southerly (William Clarke Drive) Façade**

- Discussion on the location of the mechanical room along the William Clarke Drive façade: The VROZ Committee felt the mechanical room was out of place on the WCD façade and discussed the possibility of relocating it. The applicant noted that the mechanical room would not be feasible on the easterly façade due to lack of access by the fire department.
- Rhythm of windows: VROZ Committee commented that the mirroring of the windows results in a lack of variation for the structure. The architect responded the oversized windows were utilized to allow more light into the units where windows are only on the northerly and southerly façades. The VROZ Committee acknowledged this, but noted the offset of the first-floor doorway creates an imbalance in the structure, unlike the northerly façade where the mirroring/balance carries through from the garage – 3<sup>rd</sup> floor. The architect did express the blank portion shown of the first-floor wall would have a heat pump attached to that area. The VROZ committee requested the architect examine opportunities to create more of a relationship between the first and upper floors where this façade is visible from William Clarke Drive but understood the practical constraints of needing the heating system components.
- Fence: The VROZ Committee was initially not in favor of the fence along William Clarke Drive and noted that the William Clarke Drive façade gives the appearance of a front-facing building, and that the fence detracts from this experience. The applicant clarified that the fence was not intended as a complete privacy fence for full screening, but rather a visual delineation of private vs. public land (ex. split rail fence). The VROZ Committee was more in favor of this proposal and requested a building elevation that showed this for accurate representation of the façade from the right of way.

**Easterly (Spring Street) Façade**

- Waiver Request: The VROZ Committee was not in favor of the waiver request for the Spring Street façade based on the initially proposed elevations. The committee expressed concerns with the visibility of the façade and felt the intent of that ordinance was to reduce/eliminate large blank walls, as is currently showing. The Committee/applicant held a discussion on possible additions to the façade, including additional windows and/or relocation of the mechanical room to the easterly façade with a mirrored roofline to create a “front door” look. The applicant agreed to work with their design team to address concerns raised.
- Waste Removal: Clarification was made that the totter storage will be internal to the garages and will not be visible from either the William Clake Drive or Spring Street rights-of-way.

*Summary*

The VROZ Committee noted this will be a highly visible structure at a prominent intersection. While the Committee spoke generally positively about the direction of the architecture, concerns were raised regarding the balance of the 1<sup>st</sup> floor of the William Clarke Drive façade with the upper floors as well as the Spring Street façade. The VROZ Committee stated they were not in favor of supporting the waiver requested by the applicant for the Spring St side design as currently presented. The architect agreed to work on revised elevations in response to the comments provided by the Committee in advance of a final application submission.

### **Staff Comments**

1. Noticing Fees: \$84.36
2. Open Space: 2,100sf (Fee-in-lieu: \$3,519.28)
3. VROZ Review scheduled for February 22
  - a. Review standards for VROZ in the Downtown District – Will need to present elevations to Committee and review any required waivers of the standards. Building material and colors will need to be specified with the VROZ review.
4. Spring St DOT moratorium scheduled for late spring/early summer. Any work within the Spring St ROW will need to be completed prior to enactment of moratorium.
5. Show mailbox location on plan – Final mailbox location subject to review/approval by USPS.
6. Project is planned as a condominium complex – final application will require draft association docs.
7. Named driveway required for addressing to meet E-911 standards.
  - a. Provide 2-3 proposed driveway names for E-911 review.
  - b. Final plan to show location of driveway “street” sign at intersection with Spring Street. Blue signage required to comply with private roadway standards.
8. P.E. stamp on final site plan required.
9. Plan show fence along WCD property line – consider leaving open to allow access from units to public sidewalk system.
10. Plan is showing 4’ separation between end of driveway and abutting 13 Pleasant St. property. Provide protection (ex: wooden guardrail) at end of driveway and show on plan.
11. Parking requirement for Downtown District is 1 space/unit. Revise on plan to show appropriate standard.
12. Spring Street sidewalk repair/restoration along project frontage as part of the relocated curb cut.
  - a. Granite curbing required.
13. Fire Comments
  - a. Building required sprinkler and full fire alarm systems
  - b. Provide a turning template to demonstrate adequate access to the site is provided for emergency vehicles (pumper truck template only. Ladder truck will access via WCD).
  - c. No parking permitted along driveway to maintain emergency access.
  - d. Provide stabilized path to mechanical room from driveway. Winter maintenance of pathway required.
14. Recommend early coordination with CMP re: utility design – projects are seeing a significant delay in obtaining pad mounted transformers. Site design may want to explore alternative designs (i.e., pole mounted transformers) where feasible.
15. Sewer
  - a. Recommend lateral connection at top half of pipe. Spring Street sewer is a large pipe and runs full.
  - b. All disconnected services to be capped at main.
16. Street Trees:

- a. Project includes the removal of several trees that, while are private property, add to the tree line of William Clarke Drive. Staff is supportive of project proposal to install trees within the right of way to continue tree line. Recommend the project be consistent with the tree spacing of existing easterly street trees. Final location and species of trees to be approved by the City Arborist.
  - b. Deep root control barrier required on sidewalk side of all street trees. Provide detail with final plan.
  - c. Based on current design, it does not appear 48” tree will be maintained
17. Waste removal – private toter collection internal to the site. No toter storage or collection is permitted within the Spring Street or William Clarke Drive rights-of-way.

**Rebecca Dillon Introduction of Public Comment**

Okay, thank you with that. We will open up to public comment.

- o Speak into the microphone. Remember to state your name and address.
- o Public has one opportunity to provide comment.
- o All comments should be addressed to the Planning Board, who will address the applicant/Staff following the public hearing.

**Open Public Comment**

- o In-person

No Comments

**Rebecca Dillon** Do we have anyone via Zoom?

- o Zoom participation.
- o

**Rebecca Spitezza** if you would like to provide a comment, please raise your hand now and we will call you in one at a time.

Once you come in, please state your name and property address before providing your comment.

No Comments

**Rebecca Dillon Close Public Comment**

**Rebecca Dillon Board Comment/Discussion**

- o In-Person

**Robin Tannenbaum** I think this is really exciting. Thank you for the reinvestment. I drove past here this afternoon. We haven't mentioned this is right across from our library. So, I mean we're there all the time that I have some concerns about this access on Spring Street, which I know you already have for two units, and I don't basically all I would say is it's very hard. This left turn looks like a tricky thing to do just like it's hard to come out of that library and make a left turn. So, I leave that to you guys. I'm excited.

I think James did a great job responding to all the comments. This really excites me. I agree with your opinion about the flat roof on that side, and I didn't maybe follow everything but with the door, I think you're saying the door to that little sprinkler room would be facing was an internal to the exactly. Yes, I think that's smart and not put it on the end.

So, I think just it's really tight. I'm looking at how you don't even have parking in front of some of these garages. You guys have done a lot with a really tight spot given the parking that's needed. So, I

appreciate that. It's a shame. I'm guessing some of those big trees we're going to lose and can't do anything about that? And I also appreciate the comment if I followed about the fencing?

You your comments to the VROZ was you're looking like a split rail not a stockade. There's a big red stockade fence there now, right?

**Greg Boulette** that would be gone.

**Robin Tanenbaum** This is outside of me. My personal comment, you might look at it seems that the project that's going up on Cumberland Mills the triangle where the shoe building just has a very similar color palette very, very dark. Okay. Just saying go take a look.

**Greg Boulette** We will. I will say that the driveway we are addressing it further away from Spring Street. As far as we can. We're putting it basically right on the abutter's property line. So that would have as much space as we can get from that that corner.

**Kevin Price** couple things and Robin said on both of them, the fence caught my eye because I know if you go further on the eastbound side towards Stroudwater all those residential have like white vinyl wood stockade events. So, it would strike me is odd to have that beat this part that it's just walk right up to the back door. So I think some sort of fence makes sense there and then traffic I know someone who turns left on to Spring Street around 5 o'clock from William Clarke Drive, maybe it's been made worse by construction further down, but I don't know if this is enough to trigger something being looked at there, but I wouldn't want to be trying to get out of there at five o'clock at least the way things are now, but I know that's not this project's concern but I would be frustrated.

But this is exciting. I think this is this is great. I'm excited to see more of this type of development downtown.

Great. Thank you.

**Jason Frazier** Thank you Madam Chair.

So, this looks like a great project and yes, the library is across the street. This is a good location. one question the doors facing William Clarke Drive, are they needed are they required?

**Greg Boulette** they're not required. I don't believe there it's the garage space and we were thinking it might be good for someone to have access out the back and have a little patio there if they wanted. I don't believe it's required.

**Jason Frazier** I think it would look better without the doors and more landscaping.

**Greg Boulette** Okay, we'll take a look at it.

**Jason Frazier** it's great you got garages in there. There's just not that for especially in downtown area there is not enough garages.

**Greg Boulette** So yes that was one way to get the one space per unit because it's such a tight site so it would be a lot of sense.



**Jason Frazier** then the abutter towards Main Street. Are you going to be doing some screening there to kind of soften?

**Greg Boulette** There's an existing row of trees. I guess you can't see if I can pull up different, I mean we can definitely put something there, but there is an existing row of fairly large trees that hopefully we won't lose but we may, but we can do a row of plantings there. We can make note and put some in.

**Jason Frazier** You might want to consider just little screening just that's a I don't know a lot of asphalt there if looking out their kitchen window or whatever window.

**Greg Boulette** see if I can find it. Actually, that photo I think might show it. I guess it's yeah, you can't really tell there's a row of trees back there. But yes, we can definitely put something a little maybe some arhbarite or something like some Evergreens that can kind of shade that off.

**Jason Frazier**, other than the doors it looks great.

**Rebecca Dillon** John

**John Turcotte** Just an echo what others have said, you know, I think that what struck me first of all the elevation. What you showed tonight are fantastic.

You know that I think the first rendition really didn't do it just were the second one does when you see what it would look like from William Clarke Drive.

And we've talked about you get the back facing the street, but it looks pretty good. The only thing that's struck me was if you were to have a stockade fence and we've just got a tunnel going down right drive agree to the side has two. I mean you can do that.

But I'm torn because you do have your back doors facing William Clark Drive as well and people just walking back and forth on the sidewalk. So, I don't have an answer for you. I think split rail is I'd like to see that looked like but that has that demarcation good. Here's where the public way ends, and the private property begins something there. I think would be nice. I obviously I think you'd like to avoid the stockade fence if you could as long as you had something there because it is I'm going to say odd. It's I'm looking at a back door where the public is walking by day-to-day right day every day. So that's my only concern on that.

Other than that. I think it looks fantastic.

**Greg Boulette** thank you.

**Rebecca Dillon** Nancy

**Nancy Litrocapes** thank you for bringing this project forward. I love it. And I think it's going to be a great addition to the downtown, so I don't have additions to add for you. I just wanted to comment that I really I like this quite a bit and well, actually I do have a thought so with Jason's comment about the doors on the front is that I guess this would be through the chair to the planner, right? Is that because it's on a city street, well it's part of our downtown area and there has to be street doors on William Clark Drive. Is there a reason why there has to be doors?

**Jennie Franceschi** what we wanted to just verify when the comment was just raised is whether or not they're actually needs to be two means of egress for each unit for them. So, we'll go back to the Code Enforcement Officer and verify if those doors are necessary. I think initially it might have been. There was no requirement for the ordinance that they have to show like a front door presence on William Clarke Drive, I think from the applicant standpoint. They were thinking folks might just want to have a little patio area sitting out there even though they do have a deck out on the front, and they have some space that they might want to have. Some area out to the back that is theirs.

So, but we can verify with the Code Enforcement Officer on the necessity of it and the applicant can make decisions from there.

**Nancy Litrocapes** because I like Jason's suggestion that if it's not needed if the doors aren't needed that more landscaping media a nice addition back there. Just thinking how busy William Clarke Drive is and how close this looks to be too William Clarke Drive and it wouldn't be very relaxing probably to sit out there on a patio. Probably not. Just that's my take on it. So anyway, I really I really like it. Great.

Thank you.

**Greg Boulette** we originally showed the patios. We had them flipped. We actually had them along William Clarke Drive originally and then we talked amongst ourselves like no one's going to want to sit out there during traffic. So, we flipped it back over. So, I understand what you're saying as far as wanting to sit along that but again, we'll look at if the door is required per code or not and we'll go from there.

Well, I forgot to say that I like the flat roof on the little that's good to hear because that's when we look better too.

**Rebecca Dillon** Any other members? Larry?

**Larry McWilliams** Thank you Madam Chair. Yes, obviously we need to have the buildings and more accessible to people living in the downtown. It's a townhouse style. So, it's not going to be sold. Obviously these are rental units. Are they going to be controlled by the same owner now who owns the property? Is this an association?

**Greg Boulette** We my wife and I are going to own them. We're doing condominium documents that the plan is to probably sell four and keep three, at this point in time again if that works out that way but we're going to create them all separate condominiums so that if we want to sell them we can or we can rent them out.

**Larry McWilliams** Okay, so that's where I was getting at versus apartments whether they're going to be a town home condo. Yep, and then you'll be in charge of the association or rentals and all the correct other products that go with it.

**Greg Boulette** Yeah, actually working with Mr. Broadus on those documents.

**Larry McWilliams** So one question or comment that I like on not like a split fence, but how about an almost like a rock sitting wall. But something as the border but it's only going to be maybe waste high something that you still see but you can sit on it. If somebody's sit either one side or the other can enjoy sitting on that bench type of area and it would still deviate the blockage that it was a private area versus public. So just a comment on that, right?

**Greg Boulette** Yes, understood. I know some of you have driven by there's a pretty good grade change between the sidewalk and the property. There's a pretty good slope up to where the building will be so maybe a small little fence right at the top of that slope on the property right at the property line would fit pretty well definitely take a look at that.

**Rebecca Dillon** any other questions or comments?

**Jason Frazier** so the flat roof there that's on the ends for the mechanical rooms underneath.

**Greg Boulette** correct.

**Jason Frazier** would be possible to do like a second deck for the end unit.

**Greg Boulette** It's funny. I told those guys the same thing because I'm like what I'll keep that unit for us a little deck on the top of that building as well.

**Jason Frazier** yes, that's the one everybody would want.

Question for staff large window count if it does require you two egresses does a large window on the ground floor count. Because I've heard that, but I don't know.

**Jennie Franceschi** It's possible so that that would be sort of or could be sufficient egress windows of a certain height above the ground because I believe isn't it. What's the dimension above ground that you can jump out of a window?

**Rebecca Spitella** 20 feet

**Jennie Franceschi** 20 feet. Not that I would suggest that anybody jumps out of a 20-foot-high window, but you can. There are certain parameters that egress windows do provide that second means of egress the balcony might actually suffice for that on that second story, but we just want to clarify with Code that that door isn't a necessity and then that can allow the applicant to make their decisions.

**Jason Frazier** thank you.

**Jennie Franceschi** I know that there was discussion about trying to remove it from William Clarke Drive, that would further reduce down the percentages of articulation on that side. Just so people understand what we're doing to the percentages would end up changing that you would be granting a waiver potentially of a height of a lower percentage with the removal of the doors. Just to make sure that is clear.

**Rebecca Spitella** there is another standard for highly visible rears of buildings be designed not to be front facing necessarily, but it taken elements to incorporate a front-facing type, which I think that that doors working to achieve. So that would be another just standard that we need we need to be waived of the village review.

**Rebecca Dillon** Good point, thank you very much. I think it will be nice to see an urban response to housing in downtown like this rather than seeing the suburban looking buildings that we have there, so and I think really nice adjustments to the comments from the VROZ Committee as well.

**Greg Boulette** Thank you all very much, I appreciate it.

**\*Editor's Note** no further comments

**Rebecca Dillon** Rebecca, please read the next item into the record.

9. **Rebecca Spitella reads item into the record 2023.09 – Amendment to the Land Use Ordinance - §335-5.7 Highway Services District, §335-Attachment 1, Table 1 Land Use Table – Milestone Recovery: The applicant is requesting and amendment to the Land Use Ordinance to allow a Nursing Home Use as a permitted use within the Highway Services District.**

**Applicant Presentation – Sam Heck & Tom Doherty, Milestone Recovery**

**Presentation on file at the Westbrook Planning Department and on the Westbrook Website link shown below:**

<https://vimeo.com/showcase/3075539/video/778681994>

**Sam Heck & Tom Doherty** presented aspects of the Amendment to the Land Use Ordinance - §335-5.7 Highway Services District, §335-Attachment 1, Table 1 Land Use Table – Milestone Recovery, to allow a Nursing Home Use as a permitted use within the Highway Services District.

Thank you. Good evening. My name is Sam Heck. I'm the Development Director at Milestone recovery with me also tonight our Thomas Doherty Executive Director of Milestone to recovery and the president of our board Mark Foster.

I'm going to accept this license agreement if that's okay. So, we've been working with Planning Department Staff for a while on the proposed amendment that you should have in front of you. But before we kind of ask department staff to address the content of the amendment, I wanted to speak a little bit about what Milestone is and what we're attempting to do what the program that we're attempting to relocate here in Portland and in Westbrook.

Milestone is a non-profit organization that for the last 55 years has been working to help manners find recovery from substance use and homelessness before I go any further. I will say our proposal would not relocate any of our homelessness services to Westbrook. Our homelessness services will remain located on India Street in in Portland. But we're seeking to relocate our detox program medically monitored withdrawal program here in Westbrook.

The program is a 16-bed voluntary detox program where clients withdraw from addictive substances under a physician's supervision last about three to seven days depending on the client's needs. We treat withdrawal from alcohol opioids cocaine and benzodiazepines. The symptoms of this withdrawal can be fairly serious for the person experiencing them, but don't rise to the level that requires hospitalization.

Our clients work with counselors while they're all so that we can transition them out to aftercare to longer term programs in the community. Our program is unique among detox programs in that we are a nonprofit and our program serves primarily low income and uninsured Mainers. In fact, 97% of the clients who come through our program are low income or very low income. It serves about 900 individuals each year.

To demonstrate the need for the program. There are about 430,000 Mainers who are either uninsured or relying on Maine Care right now. I've divided by 15 because the substance of Abuse and Mental Health Services Administration the Federal Administration that oversees substance use services estimates that one in 15 Americans has a substance use disorder. So, the estimated need for withdrawal programs within the State of Maine. It's about 29,000 people and to service those there are currently 26 detox withdrawal beds within the entire State that are willing to serve people who are uninsured or underinsured. Those are Milestones current 16 beds and Ten beds at Wellstone in Bangor with this drastic need for services this mismatch between the demand and the supply of beds Westbrook is among the communities that are certainly seeing the effects of this. Westbrook Police reports that within the last five years. They've reported they've dispatched to 304 overdose events in the last five years 26 of those fatal. This tracks with what we're seeing across the State of Maine over the last 10 years fatal overdoses in the State are up from a little under 200 per year to what we said a pretty grim record in 2022 with 716 fatal overdoses in the State and really within that system. It's detox. It's that initial step of recovery that presents the bottleneck.

That's where people are not able to access treatment when they when they want and need it within our program with the 16 beds that we have among clients who screen positive for the service meaning that they need the service, and we have the ability to treat them. Excuse me, about 30% were able to admit the other 70% we have to turn away for lack of capacity. So, these are people who you know are really struggling with their substance use and are looking for help asking for help, and they can't get it and we have to say no because there's nowhere for them to go.

So, our proposal for Westbrook, we have a purchase and sale agreement on 290 Bridgeton Road. Our proposal is to expand our program from the 16 beds that are currently in India Street to 32 beds all of them located here in Westbrook. So, we'll be moving those 16 beds from Portland to Westbrook.

We've actually done a study with the University of Southern Maine Math Department that shows that by increasing to this capacity. We'd be able to reduce the percentage of clients. We turn away from 70% to 3%. We nearly double our medical staff. Our medical staff we have the program is overseen by a physician and we have registered nurses and a few LPNs licensed practical nurses as well. We'd be nearly doubling that staff.

Updating client bedrooms and facilities to improve the care and the privacy the clients have our current facility has two six-person bedrooms and two person bedrooms. The proposed facility in Westbrook would be entirely double in single occupancy rooms.

As well as you can imagine from the great need, there's been a lot of buy-in from both even from the Federal level from States and Communities. We have to date nearly three million to make the project happen that's from State sources Federal sources, and the local sources are Cumberland County.

So, to address why we've come to this amendment based on how the program operates we came to Planning Board Staff asking whether this program, whether the land use that covers this program would be a nursing home. That's what we viewed as the closest definition within the City Code and Planning Department Staff really take a look at it and found that while it's very similar in a lot of ways to nursing home. There are few important differences that I think they'll address that serve prompt a need for a little bit more clarity as could be provided through the amendment.

So, with that I'm happy to turn it over to Planning Department Staff to review the text of the amendment and any of us are happy to answer any questions you might have.

Thank you very much.

### **Rebecca Dillon** Staff Comments?

**Jennie Franceschi** presented Staff Comments:

When we were initially looking at the nursing home definition based upon the letter of intent provided by Milestone. The one piece that did not fit in our current definition is that our nursing home definition is specific to the licensing for skilled nursing facilities, which is not the same licensing that the medically monitored withdrawal program would fall underneath.

So, we looked at changing the nursing home definition? Do we look at long-term short-term care?

Ultimately, what we are recommending at this time is to create a term of short-term care facility which affords not just this particular use, but any type of short-term program the ability to have that use within the district that we are proposing.

So even somebody that has physical rehabilitation on a short-term basis that that this definition would also afford them that ability. What we've shown in the actual text amendments are just some minor adjustments to the nursing home definition more. So just updating some language and also addressing some incomplete sentences that currently exist within the definition, but the definition of nursing home is not changing.

We have provided a definition of short-term care facility that we use the basis of our nursing home definition as sort of how we framed it, but then left the actual licensing component to be not prescriptive which then affords a variety of various care facilities to reside within that use to not be so specific.

The other piece that we started looking at was also where our nursing homes afforded in our community and maybe we need to look at whether that those should actually be expanded based upon the fact that we actually have them in districts, but don't list them as a permitted use their in districts that multifamily is permitted which a nursing home by its very nature is very similar to multifamily and its long-term residential residing folks.

So, our RGA One District does not currently have it as a permitted use yet. We have multiple facilities in the RGA One. So, we are recommending that we put that use in the RGA One. We are recommending we remove it from the RGA 3 District as that currently is a non-Sewered area does not allow for multifamily. We do not think that that's actually where you want to locate a dense type of residential use, so we are recommending to remove it from our RGA 3 recommending putting it into the Prides Corner Smart Growth Area the Highway Services District and the Gateway Commercial District. We're currently multifamily are permitted in those districts as well.

Under the short-term Care Facility. We are only at this time recommending the Highway Services District, which is the specific location that the applicants location resides within and we're also further restricting it to those areas in which we have sewer again thinking about if we're going to have a more multifamily type of structure. We want it to be on the sewer versus on septic system those vicinity that are open to this under the Highway Services area are really only that southerly section of 302 from Pride Street south and also the outer portion of Spring Street, and there is there is the one lot on Park Road that we currently saw tonight that is having the residential use. That's a Highway Services District.

But those are the three areas that would comply with the criteria that you have to be on sewer and be a Highway Services District. One of the main thoughts on Highway Services is that it's along our major corridors. It's highly accessible. So that that you'd want to be able to have these services in a location

where you'd be able to have traffic coming in and out of the site fairly easily versus embedding them into neighborhoods into less dense road systems.

So, we are supportive of the applicants request to bring this use into our community. We know that there is a significant need for this not just in our region but our State and see that this is a bit of our civic obligation that to take a portion of this on not everybody's portion. But I think this is a good opportunity for Westbrook to participate.

## **WORKSHOP**

**Ordinance Description – Please read applicant summary letter (attached) first for background information and a more detailed explanation of the request. (Proposed Ordinance Document Attached)**

Milestone Recovery is a nonprofit organization based in Portland which provides treatment for substance abuse disorder and support services for the homeless. Among the programs provided by the agency, Milestone Recovery is currently operating a Medically Monitored Withdrawal Program (MMWP) and an overnight shelter within a single building on India Street. The existing MMWP facility provides 3–7-day care for individuals who have voluntarily entered the program to safely withdraw from a substance with a maximum capacity of 16 beds. Due to the extensive need for both these services, the agency is seeking a new location for just the MMWP (the overnight shelter to remain at its current location on India Street, Portland) to allow both programs the ability to expand operations. Milestone Recovery has identified a property at 290 Bridgton Road as a potential site and has held several meetings with City Staff to discuss code requirements and building upgrades to utilize this building in this manner.

During these meetings, it was identified that the closest definition within the City’s Land Use Ordinance for this type of use is a “Nursing Home” which is currently only permitted within the Residential Growth Area 2 and Residential Growth Area 3 Districts. Further, the Nursing Home definition specifically states that it only applies to facilities that are licensed as a Skilled Nursing Facility or an Intermediate Care Facility, where Milestone Recovery is licensed as a Substance Use Treatment Facility. Therefore, Milestone Recovery provided the City with a request to:

1. Amend the Highway Services district to allow Nursing Home as a permitted use; and
2. Amend the definition of Nursing Home to allow facilities beyond a Skilled Nursing Facility or Intermediate Care Facility.

A purchase and sale agreement has been provided by Milestone Recovery to demonstrate Right Title & Interest in the property which demonstrates standing for the agency to submit a request to the City to amend the Highway Services Zoning District.

### **Ordinance History**

March 7, 2023 – Planning Board Workshop

### **Staff Comments**

In researching other communities for definitions of nursing homes, communities have created a distinction in these types of care facilities. Most communities define these care facilities based on either (1) the size of the facility or (2) the length of service. Staff initially looked at the applicant’s request to amend the Nursing Home definition to accommodate not only the proposed Substance Use Treatment Facility, but also any type of facility where care/rehabilitation with boarding is provided and where care may be provided for any length of time. Staff struggled to identify appropriate zoning

districts to permit both a short- and long-care facilities due to the needs of each use and the nature of the districts we were looking to include the use in.

Through much research, Staff felt that our current nursing home definition should remain essentially as is to avoid any unintended consequences to our existing nursing homes, which would continue to provide the long-term Skilled Nursing/Intermediate Care services. Therefore, Staff proposes to add a new definition to allow for a “Short-Term Care Facility” that would address the needs of the applicant but also the future needs of our community in a variety of patient care-related fields.

Before we started looking into the addition of the Short-Term Care Facility as a new use, Staff took a step back and reviewed our overall zoning districts to see if “Nursing Home” as a use was missing in other districts that either already have these uses or it makes sense to allow into the future.

#### Nursing Homes:

To start, Nursing Homes are currently permitted within the RGA 2 and RGA 3 districts, which are two lower intensity districts, based on density requirements and land use, where the allowable uses in these districts are primarily residential with limited commercial uses permitted. Staff would find it to be appropriate to allow a facility providing long-term residential care, which effectively is providing a longer-term residency for patients, within residential districts. Additionally, Staff considered those districts that allowed for multifamily as a basis of comparison, as a Nursing Home could be comparable to a multifamily structure. Staff sees Nursing Home use within the RGA 3 District as actually being non-compatible to the district where the district does not currently have sewer services available and does not support other similar uses like multifamily.

A. Based on the reasoning stated above, Staff would recommend the following amendments related to Nursing Homes to be incorporated into this amendment:

1. Remove Nursing Home from the RGA3 District
2. Insert the Nursing Home use as a permitted use within the RGA1 (where we have many facilities already), Prides Corner Smart Growth Area, Highway Services District (\*\*where sewer services are available) and Gateway Commercial District.
3. Staff is recommending a minor adjustment to the definition of Nursing home to update language and correct grammatical errors.

#### Short Term Care Facility:

Staff then turned our attention to the request at hand to incorporate Short-Term Care Facility in the Highway Services District. The Highway Services Districts run along portions of our major corridors where high traffic is expected and will not overly burden the local street system. The expectation of a facility providing short-term care could include a higher rate of patient turnover and/or higher staff to patient ratio, which would be conducive to these primarily commercial districts, along with providing improved access to these uses by being on major roads. We would not be proposing to add this use to any other district at this time.

Staff is proposing a Short-Term Care Facility be defined in a manner that is consistent with the existing Nursing Home definition with the following distinctions:

1. A short-term care facility shall be licensed with the State of Maine, however the definition as proposed does not prescribe which licensed facility is/is not permitted. The intent of this is to ensure all facilities are professionally licensed and staffed without unintentionally limiting a facility from operating within the community.
2. Short-term care facilities shall be limited to a 45-day consecutive day care.

Based upon the rationale stated above, Staff are supportive of the applicant’s request to add the Short-Term Care Facility use as a permitted use within the Highway Services District. The Highway Services



District is primarily located along the corridors where access is high and is a use that is compatible with the other commercial uses permitted within the district.

**B. Staff would recommend the following amendments related to Short-Term Care Facilities:**

1. Add a new definition Short-Term Care Facility to the Definition section of the LUO
2. Add the use Short-Term Care Facility to the Highway Services District.

**Rebecca Dillon Introduction of Public Comment**

Okay, thank you with that. I will Open the meeting up for public comment.

- b. Speak into the microphone. Remember to state your name and address.
- c. Public has one opportunity to provide comment.
- d. All comments should be addressed to the Planning Board, who will address the applicant/Staff following the public hearing.

**Rebecca Dillon Open Public Comment**

- e. In-person

**David Morse** 30 Deer Hill Avenue I just wanted to remark on. Usually, the things that come to top of mind when it comes to crisis this year as the housing crisis. And now you have something that has to do with you know, the opioid and substance abuse crisis and just what an amazing opportunity you who serve on this board have to contribute to facilitating solutions to some of these huge crises that are coming. This sounds like a great thing that's coming to Westbrook and Westbrook has the opportunity to be a host to helping solve this really challenging problem.

So it sounds great and thank you all for staying up late and talking about it

**Rebecca Dillon** Any other public comment? If not, we will see if there's anyone that would like to Make a comment on Zoom.

- o Zoom participation.

**Rebecca Spitella** if you would like to provide a comment, please raise your hand now and we will call you in one at a time.

Once you come in, please state your name and property address before providing your comment.

No comments

**Rebecca Dillon Close Public Comment** no questions to respond to now I will turn to the Board for any comments or questions.

**John Turcotte** Madam chair to the planner Jennie are nursing home still conditional uses in RGA Two?

**Jennie Franceschi** No, they are outright permitted.

**John Turcotte** so they were just conditional uses in our RGA 3 Zone, okay, thank you.

**Rebecca Dillon** any other Board members? Larry

**Larry McWilliams** thank you madam, chair, definitely there is a need I lived it with family members who found crisis and are alive today because they found them. There's a lot of things that I don't agree with on how they come about with the opioid crisis. I got my share of comments on that, but I'll keep them reserved the property that's located on Bridgton Road.

Is there an existing building or is it something that you're proposing to build? Is it an existing building? It'll stay the same as right around a corner of where I am. So, I don't even know where it's at.

**Sam Heck** I'm sure I see past a million times, and can I say that can I name the tenants? It's the existing Chase Custom Homes building.

**Larry McWilliams** Okay, perfect. So, yes, so that's okay, so there's plenty access for that area for a need for this ability to work. And I'm all for it. I really am.

It's a voluntary clinic, so people aren't going to be subject to have to be forced to go to a place like this. Is this something that these patients come to you?

**Sam Heck** it's fully voluntary.

**Larry McWilliams** when they come to you to get started in a program like this. How do you basically go about interviewing them to find out that if they are criteria that there's going to meet to fit in, that maybe they have hope to be changed or you do you make that decision that no, this guy is not going to be able to change or how do you come up with who's going to stay in these rooms?

**Sam Heck** our process begins with a phone conversation with one of our registered nurses. So, they're really making the medical evaluation. They're speaking with people about what their medical history is with different substances and primarily what we're looking to determine from those conversations is that their substance of primary use is one that we're equipped to treat the vast majority. We make sure that we have a medical protocol that meets their primary substance abuse, and the secondary thing is to speak with them about secondary or underlying conditions.

They may have some people who may have complicating conditions that when you when you combine them withdrawal there may be some folks who would require a hospital level of care. So, because we don't offer that hospital level of care we would refer them to a hospital provider so that we make sure we're not getting them in a situation where we can't help.

**Larry McWilliams** Okay. So, your average client basically is going to be up to seven days. So, it could be a minimum of three days to detox somebody on a certain different substances.

**Sam Heck** I can hand that over to Tom if you like but it does depend a lot on their substance and their medical history.

**Tom Doherty** It depends on the substance that they're coming down off of and that kind of thing. But typically, someone is that sometimes they'll be extended to for instance. We have a patient today that was extended by one day so that they can continue the detox process. It depends on the length of what they've been using substances and the amount and that kind of thing. So, they're evaluated on probably every four hours by our nurses so it's definitely something that's well controlled.

**Larry McWilliams** what if they volunteer, can they just walk out and say I don't want to be here anymore.

**Tom Doherty** they can leave but they can't come back. So, once they leave they're out for at least 24 hours, so they need to go away and you know, if they decide this recovery is not for me because everyone has ambivalence about recovery. I mean that's it's a difficult road to start for sure, but we try to

try to hold them as much as we can encourage them to do the right thing. But ultimately it's the clients choice whether they stay or not but they can't come back if they leave so usually there's a long line of people waiting to get in anyways.

**Larry McWilliams** Oh awesome. I'm looking forward to hopefully seeing something progress with us. Thank you.

**Sam Heck** We're hoping to and just to clarify Tom's point. We do allow people to readmit, but they'd have to begin the process over just because someone doesn't stay for the entire duration. It doesn't mean we blacklist them, and they can never come back. But once they leave they would have to reapply and get a fresh admission.

Thank you.

**Rebecca Dillon** anyone else? Jason

**Jason Frazier** Thank you madam Chair. I just got a couple questions about just the program. So, I assume this is just inpatient only not outpatient.

**Tom Doherty** no right now, I mean there's a possibility that we could add some outpatient later. But right now, we're really focused right now is inpatient stuff. There's lots of outpatient programs around the area and some of them are full and so as it charitable nonprofit, we're really focused on what's the primary need in the community but as Sam described detoxes that choke point into recovery,

Most everyone has to come through our doors to get to recovery.  
So that's our primary focus right now.

**Jason Frazier** so if it does become outpatient with a future offering it would be like a methadone clinic?

**Tom Doherty** No, it would be probably a Sober House or something like that. So, mostly counseling and that kind of thing.

**Jason Frazier** Okay, and then just also kind of so once people are done with the program. What assistance do you provide for them to get to the next steps here?

**Sam Heck** We have two and probably will be going up to four peer navigators and they work with the counseling staff to do a warm hand.

To wherever the next person whether they're going to a treatment program a sober house. Whatever that person happens to be out another intensive outpatient program. So, they actually physically drive them to those locations if they can we have contracts so that we can drive up to 50 miles to the next thing.

If I can add to that for a lot of people coming out of our program their goal is to enter into Milestones Residential Treatment Program, which is located in Old Orchard Beach. It was established in 1978 and that's a six to nine month program for people who really have struggled with lifelong substance use the goal is to work with them both on the physical symptoms the physical withdrawal but also to do some really deep counseling and group work there so that we can support people in the long term and that program is all so currently looking to expand from 16 beds to 21.

So, we're looking to really expand capacity across the whole continuum of care that we offer.

**Jason Frazier** it sounds like a great program and definitely needed. So good location for you

**Rebecca Dillon** any other Board comments?

**Nancy Litrocapes** I have a question. How many people can you serve in a year?

**Sam Heck** On average we serve about 900 people per year. That number is from the last year before the pandemic we are we had to restrict our capacity during the pandemic, but 2019. It was about 900 people.

Now we average about 3.4 admissions per day. We're looking to bring that up to 4.7 per day. So, when we talk about the number of people who come and go it is pretty minimally impact on that on that end.

**Rebecca Dillon** I don't have any issues with the proposed changes to the ordinance. I think it's a great program and thank you for all that you do. Substance abuse is really tough and it's nice for people to have options.

I thought of something in regard to striking nursing homes from the RGA 3 District. I got thinking another need in our state is and it's going to just keep growing is replacing our existing old antiquated, outdated nursing homes, and we have people that are starting to do that finding pieces of property that are large enough to support that type of a program are getting harder and harder.

I'm just thinking are we totally cutting off any option for like a piece of property that might be on the edge of the RGA Three District that could possibly get sewer connection somehow through another site. Are we just by completely striking it? Losing out on an opportunity for a project like that to happen.

**Jennie Franceschi** So the RGA 3 is non sewerred currently. If we were in the future to go down the road of expanding sewer and bringing it up towards it, there's nothing that precludes us from revisiting the RGA3 District and we might at that point decide. Let's bring both multifamily and nursing home into that District because now we're expanding sewer.

What we have seen for projects as far as what's going along 302 we're not seeing probably the financial investment that's going to get the main up 302. There's a significant amount of ledge. That is right underneath that roadbed that would require blasting to put any type of infrastructure up 302 which is why that Windham is not in any rush to try to grab sewer from us in that vicinity. Although we would love it if they did but it would be very, very expensive.

So, the thought process is that if we did evolve and change over the course of time and we and we did bring sewer up there that most certainly should be a conversation that we would have in the future on changing uses in that District. If we're going to if achieve sewer, we have some districts in that vicinity right now that never achieved their full goal, which is the Pride's Corner Smart Growth Area that is part of the comp plan to remove that District because it was all based upon the fact that we're going to put sewer up through that area and we're looking at maybe doing some sort of Residential Commercial Zoning along there, but not the level of intensity that was anticipated for a true Sewered District.

So, our ordinances are flexible and can change over the course of time. And once we, you know, get to that next level of pushing sewer out that should most certainly be a conversation about looking at uses.

**Rebecca Dillon** Any final board comments or questions?

If not, I think we're in

good shape. Thank you very much for your presentation. Thank you.

Can I have, ok check with Jennie. Planner's items.

### **Discussion with Jennie for Planning Items**

**Jennie Franceschi** in discussions with our City Solicitor, she was looking at providing what we've typically done in the past is sort of an annual training and we were looking at dates with her that would work.

### **\*\*Editors Board Members Discussion of availabilities**

**Jennie Franceschi** May 16<sup>th</sup> for the scheduled training for the members that cannot attend the meeting will be recorded.

**Rebecca Dillon** may I have a motion to Adjourn?

**Robin Tannenbaum** move to adjourn.

**2<sup>nd</sup> by John Turcotte**

### **Roll Call Vote**

<b>Karen Axelsen</b>	<b>Yes</b>
<b>Robin Tannenbaum</b>	<b>Yes</b>
<b>Larry McWilliams</b>	<b>Yes</b>
<b>Nancy Litrocapes</b>	<b>Yes</b>
<b>John Turcotte</b>	<b>Yes</b>
<b>Jason Frazier</b>	<b>Yes</b>
<b>Kevin Price</b>	<b>Yes</b>
<b>Susan Roma</b>	<b>Yes</b>
<b>Chair - Rebecca Dillon</b>	<b>Yes</b>

**Unanimous in favor 7-0**

### **10. ADJOURN**

*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 and [lgain@westbrook.me.us](mailto:lgain@westbrook.me.us)*