

A regular meeting of the Bath Planning Board was called on 4-20-04 for the purpose of conducting regular business.

MEMBERS PRESENT

Bob Oxtan, Chair
Jim Harper, Vice Chair
Marjorie Hawkes
Robin Haynes
Richard Klingaman
Gordon Reed
Jim Hopkinson
Brandon Shaw, non-voting student member
Jonathan Dolloff, non-voting student member

STAFF PRESENT

Jim Upham, Planning Director
Gail Spath, Recording Secretary

Bob Oxtan, Chair, called the regular meeting to order in the third floor Council Chambers at 6:00 p.m. on Tuesday, April 20, 2004.

Minutes of April 6, 2004, meeting

GORDON REED MOVED, SECONDED BY MARGE HAWKES, TO ACCEPT THE MINUTES OF THE APRIL 6, 2004, MEETING AS WRITTEN.

UNANIMOUS APPROVAL**Old Business:****Item 1**

Subdivision Final Plan Review – 9-lot Subdivision, 1524 Washington Street, (Map 13, Lot 44-1); ICS Realty, LLC-Robert Leblanc, applicant. (Continued from April 6, 2004, meeting.)

Jim Upham told the Board that although Jim Hopkinson was not present at the previous meeting when this item was discussed, he has watched the video tape of the meeting and read the minutes and is able to knowledgeably participate at this meeting. The Board members agreed as did Chris Belanger, representing the applicant.

Chris Belanger, of Sitelines, reported on the remaining issues. He began with a letter-report he had submitted to the Planning Board regarding blasting near wells, the DEP's site visit to determine if the swale on the property met the state law definition of "stream," and the impact on the quality of the Kennebec River water.

He said that pre- and post-blast water quality tests would be made of the well. If the blasting should effect either quality or quantity, the blaster will be responsible to correct the problem. He reported that William Cook, the DEP person who visited the site, indicated that the swale does not meet the definition of "stream." He also reported that the watershed of the Kennebec River is 3.7 million acres in size and that the watershed of the proposed development is 26 acres, which is .0007% of the size of the Kennebec's. He said that flows entering the river from the watershed of the proposed development would be 16 cfs for a two-year storm, which is .2% of the annual flow of the river. He said an erosion plan has been developed by appropriate professionals and he felt there would be no measurable impact to the Kennebec River.

Mr. Belanger also told the Board that the deed covenants and driveway maintenance agreements were changed reflecting the City's requirement that the maintenance of the driveway culverts not be the responsibility of the City. And, he said that the plan for road construction was changed and that the blasted ledge would not be crushed on-site.

Robin Haynes asked for more information on impact on Washington Street road, culverts, the driveway maintenance agreements, number of truck trips, and chemical pesticides.

Jim Hopkinson asked about the number of truck trips, and the amount of material hauled away, which Mr. Belanger agreed could be about 4,000 cubic yards. He asked how it had been determined that there would be no impact on the Kennebec.

Chris Belanger said that the design of the development has a proper erosion and sedimentation control plan and stormwater management plan, that there would be no chemical pesticides and/or herbicides used, and that the water running off the road would run in grassed swales to collect oils and other hydrocarbons.

Mr. Hopkinson also asked how the system would work in the winter.

Mr. Belanger said that stone check dams every 50 feet in the roadside ditch, 2 feet below the road elevation, would still work.

Robin Haynes asked about the road side slopes and ledge cuts. Dr. Haynes said she was concerned about children falling down the slope into the street and that runoff (as there is along Route 95) could cause icing problems. Gordon Reed stated that possibly a fence should be placed along this area.

Robin Haynes asked how far vibrations could travel during blasting. Shawn McGoldrick, from McGoldrick Brothers Blasting Services, stated that vibrations could travel 500 to 1500 feet. He said they were bound by US Bureau of Mines standards and that they would do a test blast, analyzing the blast with seismographs at a single point, to make sure they are within these standards.

Dick Klingaman asked if one company will do all of the blasting and if there was well damage, would the company take responsibility? Mr. McGoldrick said that they would

do a pre-blast test of the water quality in the well and again post-blasting. He said he is insured and that if there is a claim it would go to the insurance company.

Robin Haynes asked what time the blasting equipment would start each day. Mr. McGoldrick said the equipment would start at 7:00 a.m. but no blasting would start until 9:00 a.m. He said the project of blasting should take approximately 4 weeks. If the project is approved work should start around the first of June.

Jim Harper commented that moving 4,000 yards of earth should require a Site Plan Approval, which is another review process by the Planning Board.

Jim Hopkinson asked what the plans were for utility channels going onto the lots. Mr. Belanger stated that there would be service stubs at the edge of the roadway.

Bob Oxtan opened the floor to members of the public who wished to comment. He said that there would be three issues for discussion: the effect of blasting on the drilled well, the DEP's report as to whether the swale on the site is a stream, and whether the development will have an adverse effect on the quality of the river.

Arnold Clay, 3 Mast Landing, asked what the effects of blasting would do to the trees. He said he was not interested in being served by the public water system if the blasting damaged his well.

Dale Clay, 3 Mast Landing, asked what would happen if her home was without water.

Ms. Antoinette Mercadante, 1530 Washington St. stated there was a big difference between a test blast and the first blast. She said that she is still concerned about the blasting.

Attorney David King commented that runoff into the river was another issue and wanted to open that up to the public. He also requested that his letter dated April 16, 2004, to Bob Oxtan and members of the Planning Board be part of the record. He said that the change that no stone crushing will be on-site was a big improvement. He said that 400 10 ton dump trucks going in and out was too much traffic. He said that the project was no simple construction and the road on upper Washington Street would take lots of beating. He said this would be a severe burden to taxpayers with this impact on a public roadway and pollution. He said it was obvious that the erosion control system would not work in the winter.

Attorney King went on to say there was an erosion issue with woods on the top of the ledge going over during blasting. Foundations in old homes such as Hector Jaeger's could be damaged. He said that this is a \$700,000 home and that a few homes like this being damaged would be more than the insurance the blasting company has. He said people will be outdoors during the summer months and will be subject to noise, odor and vibration. He said there are people who work 2nd and 3rd shifts and will be trying to sleep. He reminded the Board that OSHA requires warning sirens, which will be

disruptive. He cautioned the Board to listen to everyone and take all comments into consideration since this would be a serious impact to the people.

Katherine Hansen, 1510 Washington Street, asked how the school bus will get in to pick up her children during the work. Said she has a half of foundation now, is concerned about her home's foundation, the pollution this project will cause, the pipes, toilet and how this will impact every day of her life.

Joe Seigh, 1505 Washington Street, stated that he is concerned about 400 trucks driving in and out and said the UPS truck can barely make a u-turn without pulling right up to his front door since the street is so narrow.

Bob Westlake, 1484 Washington St., said the pollution, dust, blasting, noise would be very aggravating. He said no one had talked about how many times holes would have to be drilled.

Tom Watson, 1565 Washington St. said that blasting was his biggest concern. He said that 4,000 cubic yards of rock removal would create cliffs, ice problems and it was just not a good fit. He said that \$2,000,000 insurance policy was peanuts compared to what could happen in this project.

Bob Oxtan asked if there would any other comments from the public. There were none he closed the public portion of the meeting.

Gordon Reed then asked if lots on the east side of the road would all require blasting for foundations. He asked how many holes would have to be drilled. Mr. Belanger said that the homes on the east side of the roadway would require blasting for foundations and that according to Mr. McGoldrick the average foundation would have 30 to 80 holes drilled.

Robin Haynes asked about the effects of blasting on trees. Mr. McGoldrick said the root system would not be damaged if blasting is 20 feet from a tree. Tom Hoerth, City Arborist, agreed with that comment.

Jim Hopkinson stated that the blasting company should agree to take responsibility for any public water or sewer damage.

Bob Oxtan talked about the use of a seismograph and issues with the ledge structure. Mr. McGoldrick said they do 10 - 15 subdivisions a year and have never damaged a well. He said they will send out pre-blast surveys and would set up times to talk with the residents.

Jim Hopkinson asked where blasting would start. Mr. Belanger said the first 300 feet of roadway is where the majority of the blasting is located and that this is where the blasting would begin.

Jim Hopkinson stated that he is concerned about the effect of the development on Washington Street and the effectiveness of the erosion and sedimentation control plan in the winter.

Gordon Reed asked Mr. McGoldrick to evaluate this project's difficulty on a scale of 1 – 10. Mr. McGoldrick said he thought it would be a 5.

Jim Harper asked Chris Belanger questions regarding the report from DEP's William Cook and whether the project needs Maine Construction General Permit. Mr. Belanger said his understanding is that this is simply a filing with DEP, that a permit from DEP is not required. Jim Harper felt there should be a separate Site Plan Application for earth removal.

Bob Oxtan asked to have Jim Upham read the draft Findings of Fact and Conclusions.

Jim Upham stated that in addition to the submissions indicated in the Findings there was a letter-report from Chris Belanger dated April 16, 2004, a letter to the Planning Board from Attorney David King dated April 16, 2004, and a letter to the Planning Board from Attorney Moncure dated April 20, 2004. He then read the Conclusions from draft notice of Planning Board Decision addressed to ICS Reality, LLC, dated April 6, 2004.

(Additions made in the original by the Board are underlined.)

CONCLUSIONS

ARTICLE 13

SECTION 13.24 SUBMISSION OF PLAN; TIME LIMIT

This Section requires that the application for final approval be submitted within 6 months of the Planning Board granting Preliminary Plan Approval. The approval of the Preliminary Plan was on January 20, 2004, and the submission of the Final Plan Application was February 10, 2004.

The Board finds that this has been complied with. The Board agreed with this.

SECTION 13.25 APPLICATION FEE

This Section requires applications for Final Plan approval for Major Subdivisions be accompanied by a fee of \$200.00 payable by check to the City. The fee has been paid.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.26 STATE APPROVAL REQUIRED UNDER CERTAIN CIRCUMSTANCES

This Section requires the applicant to get DEP approval prior to official submission to the Planning Board, if DEP approval is required. DEP approval is not required.

DEP approval of this subdivision is not required.

The Planning Board decided that DEP approval of a Maine Construction General Permit might be required. This Section has not been complied with. It could be dealt with as a condition of approval, but had not been complied with.

SECTION 13.27 WATER SUPPLY SYSTEMS; APPROVAL

This Section requires the water supply system be approved by the Bath Water District. In a letter dated February 20, 2004, the Bath Water District approved the water supply system.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.28 SEWAGE DISPOSAL SYSTEM; APPROVAL

This Section requires the sewage disposal system be endorsed and approved in writing by the Public Works Director and the Superintendent of the Waste Water Treatment Plant. In a memo to the Bath Planning Board from Peter Owen, Bath Public Works Director, dated February 19, 2004, and an email message to Jim Upham, Bath Planning Director, from Scott Wilhelm, Superintendent of the Waste Water Treatment Plant, dated January 2, 2004, the sewage disposal system for this subdivision has been approved.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.29 HEARING

This section allows the Board to hold a public hearing. The Board has decided not to hold a public hearing because the public meetings, allowing the public to testify and ask questions, meets the intent of the public hearing. The Board agreed with this.

SECTION 13.30 BOND OR CERTIFIED CHECK REQUIRED

This Section requires the applicant to post a performance bond covering the cost of improvements. This has not been done.

The Board finds that this should be required as a condition of approval. The Board agreed with this.

SECTION 13.31 INSPECTION OF SITE; FEE; NOTIFICATION OF CITY PRIOR TO START OF WORK

This Section requires the applicant to pay an inspection fee and notify the Board of the time when he/she proposes to commence construction of the improvements. This has not been done.

The Board finds that this should be required as a condition of approval. The Board agreed with this.

SECTION 13.35 MAINTENANCE OF IMPROVEMENTS BEFORE ACCEPTANCE BY CITY

This Section requires the applicant to maintain improvements until they are accepted by the City. A note on the plan indicates that the applicant or the lot owners are required to maintain improvements until they are accepted by the City.

The Board finds that Section this has been complied with. The Board agreed with this.

SECTION 13.40 CONFORMITY WITH COMPREHENSIVE PLAN REQUIRED

This Section requires the subdivision be in conformity with the Comprehensive Plan and with the provisions of all pertinent State and local codes and ordinances. The land is in the Medium-density Residential Zone. The lots meet the Space and Bulk Regulations of this zone. There are no other pertinent state or local codes that are applicable.

The Board finds that this Section has been complied with.

Jim Harper raised questions on size and scale and a possible traffic study in conformity with the Comprehensive Plan. He said that DEP should comment on this and earth moving should be evaluated. Jim Hopkinson stated he felt this had not been complied with, with regard to Comprehensive Plan Section 6.4.3 on page 6-18.

SECTION 13.41 RELATIONSHIP OF SUBDIVISION TO COMMUNITY SERVICES

This Section requires the subdivision be reviewed by the Board with respect to its effect upon existing services and facilities. The requirement that a subdivision not place an unreasonable burden on the ability of the local government to provide services was eliminated from the State Law in the early 1970s. The authority of the City to base a denial of a subdivision application on this criterion is questionable.

The Board finds that this Section should be waived. The Board agreed with this.

SECTION 13.42 PUBLIC RECREATION AREAS AND PARKLANDS REQUIRED

This Section allows the Board, depending on the size and location of the subdivision, to require the applicant either to set aside land equal to 10% of the total area of the development for recreation purposes or make a payment of \$50.00 per lot to the City for to land acquisition. This Section recommends that the land set aside for recreation be at least 5 acres in size. Based on recommendation from Staff the Board has decided

that requiring the applicant to set aside land for recreation or requiring the applicant to pay \$450 for the purchase of land is not appropriate.

The Board finds that this Section should be waived. The Board agreed with this.

SECTION 13.43 PRESERVATION OF NATURAL AND HISTORIC FEATURES

This Section allows the Board to require the submission of a plan that will show the preservation of existing trees 10 inches or more, the replacement of trees and vegetation, streams, and the preservation of scenic, historic or environmentally desirable areas. A tree preservation plan is part of the submissions (submitted on March 30, 2004.) A letter from the Maine Historic Preservation Commission, dated February 12, 2004, indicates that the development will have no effect on architectural or archaeological resources. A letter from the Maine Department of Inland Fisheries and Wildlife, dated October 21, 2003, indicates that there are no significant wildlife habitats associated directly with this development. The Board, based on recommendations from Staff, believes that a lot-specific Tree Preservation Plan should be required before building permits for building on the individual lots is issued.

With a condition of approval requiring lot-specific Tree Preservation Plans prior to the issuance of building permits, the Board finds that this Section has been complied with.

The Board discussed whether Subsection B, the requirement that the street and lot layout be adapted to the topography and that extensive grading and filling be avoided as far as possible, had been complied with. Robin Haynes said she was concerned about the extensive grading and filling and that there were too many lots for the area. There was discussion as to whether there was another road layout that could adapt to the topography and could avoid extensive grading and filling. The Board decided that this Section had not been complied with.

SECTION 13.44 LAND NOT SUITABLE FOR DEVELOPMENT

This Section prohibits the Board from approving a subdivision with land below sea level, land located in the 100-year frequency flood plain unless the provisions of Article 15 are complied with, or is located in filled or drained land or land that has been created by diverting a watercourse unless a central sewage collection treatment system is provided. There is no land below sea level and no land located in the 100-year frequency flood plain. And a central sewage collection treatment system is provided.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.45 BLOCKS

This Section sets standards for the length of blocks. There are no blocks proposed.

The Boards finds that this Section is not applicable. The Board agreed with this.

SECTION 13.46 LAYOUT OF LOTS

This Section requires the lot sizes, width, depth, and orientation, and the setbacks be appropriate for the location; that the layout be adequate for off-street parking, and for service vehicles; and that if the lots are substantially larger than the minimum lot size the street and lots be laid out to allow for re-subdivision. The lots meet the Space and Bulk Regulations of the Medium-density Residential District. The lots are large enough to allow for off-street parking—a requirement of the Land Use Code, Article 10—and large enough for service vehicles. The lots are not substantially larger than the minimum lot size.

The Board finds that this Section has been complied with. The Board felt that deed covenants should prevent division of the lots and that this could be a condition of approval.

SECTION 13.47 LOT FRONTAGE

This Section requires the lots to have a minimum frontage that complies with the requirements of the zoning district in which it is located. And it discourages double frontage lots. The lots meet the lot width of the Medium-density Residential District and there are no double frontage lots.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.48 SIDE-LOT LINES

This Section requires the lots to have side-lot lines substantially at right angles or radial to street lines. The lot lines are substantially at right angles street lines.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.49 EASEMENT FOR NATURAL DRAINAGE WAYS

This Section requires that when a subdivision is traversed by a natural water course, drainage way, channel, or stream, there must be a stormwater easement or drainage right-of-way conforming substantially with the lines of such water course so as to assure that no flooding occurs and all stormwater can be disposed of properly. Appropriate easements are included and the stormwater management plan has been approved by Peter Owen, P.E., Bath Public Works Director.

The Board finds that this Section has been complied with. The Board decided that the stormwater drainage easement needs to be in a document granting this easement to the City and that the document needs to be approved by the City Solicitor. And that this could be a condition of approval.

SECTION 13.50 UTILITIES

This Section requires public utilities, such as street lights, electricity, telephone service, and fire hydrants, be installed in accordance with local practice and that utilities be installed underground except as otherwise approved by the Board. Utilities are to be installed underground, the fire hydrant locations have been approved by the Fire Chief and streetlights' locations have been approved by the Police Chief.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.51 STREET TREES AND OPEN GREEN SPACES

This Section allows the Board to require street trees, esplanades, and open green spaces. The applicant has requested a waiver. Given the ledge conditions along the proposed street City Staff has recommended that street trees, esplanades, and open green space areas along the street not be required.

The Board finds that street trees, esplanades, and open green spaces are not required. The Board agreed with this.

SECTION 13.52 USE OF GREEN STRIP FOR NOISE CONTROL

This Section allows the Board to require the use of green strips to control noise.

Due to the location of the development the Board finds that green strips to control noise are not required. The Board agreed with this.

SECTION 13.53 MONUMENTS

This Section requires that permanent monuments be set at all corners of the perimeter of the subdivision and at all street intersections and points of curvature. And it requires monuments must be stone or concrete or drill holes in ledge. The applicant is requesting a waiver to allow reinforcing bar (rebar) where possible at the rear of the lots with granite or drill holes in the front of the lots. Due to the ease of locating rebar with a metal detector, Staff is recommending approval of this monumentation proposal.

The Board finds that this waiver request meets the requirements of Section 13.04. The Board agreed with this.

SECTION 13.54 STREETS SIGNS AND NAMES

This Section requires street signs be installed by the applicant and that street names not duplicate existing street names. The applicant will install street name signs. The street name does not duplicate an existing street name and it has been approved by the City's street addressing officer.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.55 SIDEWALKS

This Section requires sidewalks be installed at the expense of the applicant where the subdivision abuts or fronts onto a major street, and at such locations as the Board may deem necessary. The City Staff is recommending that sidewalks not be installed because the street to which this new street connects has no sidewalks.

Board finds that sidewalks are not required. There was discussion about whether sidewalks should be required. This was left undecided.

SECTION 13.56 PLANTING STRIP AREAS

This Section sets out the planting requirement for planting strips along the proposed street. Due to the ledge conditions planting strips are not proposed.

The Board finds that they are not required in Section 13.51, and, thus, this Section is not applicable. The Board agreed with this.

SECTION 13.57 WATER SUPPLY REQUIRED

This Section requires a public water supply system with fire hydrants be installed at the expense of the applicant. A public water supply system with fire hydrants is being proposed.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.58 MINIMUM WATER SUPPLY REQUIRED; STORAGE

This Section requires the applicant demonstrate that water meeting Public Health Service, Drinking Water Standards, 1962, can be supplied to the subdivision at the rate of at least 350 gallons per day per dwelling unit and at an adequate pressure for fire fighting purposes and that there is adequate pressure to meet peak domestic demands and fire protection needs. The Bath Water District has indicated that this requirement has been met.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.59 UNDUE BURDEN ON TREATMENT OR DISTRIBUTION FACILITIES

This Section requires the applicant demonstrate that the subdivision will not have an undue burden on the water district's source, distribution, or treatment facilities. The Water District has indicated that the 9-lot subdivision will not have an undue burden on the water district's source, distribution, or treatment facilities.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.60 WATER MAIN

This Section requires a minimum water main size of 6 inches and the water main must meet the standards of the Bath Water District.

The water main is proposed to be 8-inch and it has been approved by the Bath Water District.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.61 COMPLIANCE WITH STATE REQUIREMENTS

This Section requires the water supply system be designed and installed in accordance with requirements of the Maine Department of Human Services. This requirement is only applicable to community water systems.

The Board finds that this Section is not applicable. The Board agreed with this.

SECTION 13.62 SEWAGE DISPOSAL SYSTEM

This Section requires a sanitary sewer be installed or the lots be served by septic systems. The applicant is proposing an 8-inch sanitary sewer line.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.63 SURFACE DRAINAGE

This Section requires a stormwater management plan approved by the City Engineer (the Public Works Director) and the Planning Board. The stormwater management plan has been approved by Peter Owen, P.E., Public Works Director.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.64 REMOVAL OF TOPSOIL

This Section states that the topsoil is part of the development and except for surplus topsoil where roads are to be constructed; it may not be removed from the site unless a permit has been issued in accordance with Article 14. No permit has been applied for.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.65 PREVENTION OF SOIL EROSION

This Section requires that except for normal thinning and landscaping existing vegetation must be left intact and requires an erosion control plan. The plan calls for buffers that will be left intact and the plan includes an erosion control plan. The erosion control plan has been approved by Peter Owen, P.E., Public Works Director.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.66 COMPLIANCE WITH SPECIFICATIONS

This Section requires streets in the subdivision to be constructed according to the street design standards of Article 13 and overseen by the Public Works Director. The design of the street has been approved by Peter Owen, P.E., Public Works Director. Mr. Owen recommends that the applicant pay for an inspector, who would report to him during the construction of the street.

The Board finds that this should be required as a condition of approval. The Board agreed with this.

SECTION 13.67 STREET CLASSIFICATIONS

This Section explains that the street will be classified as a minor street. The Board agreed with this.

SECTION 13.68 STREET ARRANGEMENT AND LAYOUT

This Section requires that the proposed street conform, as far as practical, to the Comprehensive Plan. It requires the street provide for safe vehicular travel, while discouraging through-traffic, that the street layout consider the existing topography, that a dead-end street allow for a continuation of pedestrian traffic or utilities, and it prohibits reserve strips. The Comprehensive Plan is silent with respect to new streets. The proposed street does not allow through-traffic but does allow for a connection to the abutting lot for future continuation of the utilities or traffic. The street has been approved by the police and fire chiefs and the public works director.

The Board finds that this Section has been complied with. Robin Haynes stated that she believed subsection C, which requires that the grades of the street conform as closely as possible to the original topography, had not been complied with.

SECTION 13.69 COMMERCIAL AREAS; STREET WIDTH; OFF-STREET LOADING SPACES

This Section pertains to streets in commercially zoned areas.

The Board finds that this Section is not applicable. The Board agreed with this.

SECTION 13.70 RAILROAD RIGHT-OF-WAY IN SUBDIVISION; PARALLEL STREETS

This Section applies to subdivisions that abut the railroad.

The Board finds that this Section is not applicable. The Board agreed with this.

SECTION 13.71 SUBDIVISIONS ABUTTING NARROW STREET OR ARTERIAL STREET

This Section requires a subdivision that borders on a street that is below standards as far as width and where the use of some of the subdivision land for widening could be needed, then land in the subdivision be set aside for that possible widening. This Section pertains to subdivisions where lots are along an existing road.

The Board finds that this Section is not applicable. The Board agreed with this.

SECTION 13.72 MINIMUM NUMBER OF ENTRANCES TO SUBDIVISION

This Section requires subdivisions containing 15 lots or more have at least 2 street connections with existing public streets. This subdivision contains only 9 lots.

The Board finds that this Section is not applicable. The Board agreed with this.

SECTION 13.73 ENTRANCES TO SUBDIVISION RESTRICTED

This Section regulates the subdivision's entrances onto arterial or collector streets. Washington Street is neither.

The Board finds that this Section is not applicable. The Board agreed with this.

SECTION 13.74 LAYOUT OF MINOR STREETS

This Section requires the layout of minor streets discourage through-traffic. The street is a dead-end street.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.75 STREETS; DESIGN AND CONSTRUCTION STANDARDS

This Section establishes certain design and construction standards for the proposed street. The proposed street has been designed by a registered professional engineer and has been approved by Peter Owen, P.E., Public Works Director. Construction is proposed to meet these standards and will be overseen by Mr. Owen. The standards are being met except minimum width of the right-of way, minimum width of pavement, and maximum grade within 50 feet of the intersection with Washington Street. The design of the street has been recommended by the Planning Director as it is more appropriate for the traffic needs of a minor residential street and the design has been approved by Peter Owen, P.E., Public Works Director.

The Board finds that waiving Section 13.75, A, 1, 2, 4, and 5 meets the requirements for waivers in Section 13.04 and that with this waiver this Section has been complied with. The Board added number 4. The Board agreed with this.

SECTION 13.76 STREET GRADES

This Section requires certain grades for the street and at the intersection with Washington Street. The standards are being met except maximum grade within 50 feet of the intersection with Washington Street. The design of the street has been recommended by the Planning Director as it will require less of a cut and less blasting, and the design has been approved by Peter Owen, P.E., Public Works Director.

The Board finds that waiving a portion of Section 13.76, meets the requirements for waivers in Section 13.04 and that with this waiver this Section has been complied with.

The Board felt that the wording "but in no case [may the grades be] more that 3% within 50 feet of any intersection" means that a waiver may not be granted. The Board also felt that the proposed street was not rough-graded to the full width of the right-of-way as required in subsection C. The Board decided that this Section had not been complied with.

SECTION 13.77 INTERSECTIONS

This Section requires a certain design of intersections: 90 degree angles, 25-foot radius, adequate sight-distance. The proposed intersection is designed to meet this Section.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.78 DEAD END STREETS

This Section requires that dead-end streets not exceed 1,000 feet in length and must be provided with a suitable turn-around at the closed end. The proposed street is less than 1,000 and has a turn-around that has been approved by the Fire Chief and the Public Works Director.

The Board finds that this Section has been complied with. The Board agreed with this.

SECTION 13.79 DRAINAGE FACILITIES; SIDE SLOPES

This Section requires that streets have adequate drainage facilities. The Section also requires that side slopes be no steeper than 3 feet horizontal to 1 foot vertical. The side slopes comply with this design standard except the side slopes that are ledge. The design of the street and its drainage facilities have been approved by Peter Owen, P.E., Public Works Director.

The Board finds that waiving Section 13.79, B, meets the requirements for waivers in Section 13.04 and that with this waiver this Section has been complied with. The Board agreed with this.

SECTION 13.80 CURBS AND GUTTERS

This Section requires that streets have curbs. Peter Owen, P.E., Public Works has requested a street design without curbs so that the drainage system is improved.

The Board finds that waiving Section 13.80, A, meets the requirements for waivers in Section 13.04 and that with this waiver this Section has been complied with. The Board agreed with this.

TITLE 30-A, M.R.S.A., SECTION 4404

1. POLLUTION. The Board must find that the proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:

- A. The elevation of land above sea level and its relation to the flood plains;
- B. The nature of soils and subsoils and their ability to adequately support waste disposal;
- C. The slope of the land and its effect on effluents;
- D. The availability of streams for disposal of effluents; and
- E. The applicable state and local health and water resource rules and regulations.

The subdivision is above sea level, is not in a flood plain, is serviced by the public sewer system, meets all applicable state and local health and water resource rules and regulations.

The Board finds that this criterion has been complied with. The Board agreed with this.

2. SUFFICIENT WATER. The Board must find that there is sufficient water available for the reasonably foreseeable needs of the subdivision. The Bath Water District Superintendent has stated that there is sufficient water available for the reasonably foreseeable needs of the subdivision.

The Board finds that this criterion has been complied with. The Board agreed with this.

3. MUNICIPAL WATER SUPPLY. The Board must find that proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used. The Bath Water District Superintendent has stated that subdivision will not cause an unreasonable burden on an existing water supply.

The Board finds that this criterion has been complied with. The Board agreed with this.

4. EROSION. The Board must find that 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. The erosion control plan has been approved by Peter Owen, P.E., Public Works Director.

The Board finds that this criterion has been complied with. The Board agreed with this.

5. TRAFFIC. The Board must find that 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. While there is a place on Upper Washington Street where the roadway is only 18 feet wide, a report from William Eaton, P.E. Traffic Engineer and statements from Pete Lizanecz, Bath Police Chief; Steve Hinds, Bath Fire Chief; and Peter Owen, P.E., Public Works Director indicate that this does not cause unreasonable public road congestion and is not an unsafe condition.

The Board finds that this criterion has been complied with. The Board was unable to make this finding and asked for a qualified, professional traffic engineer to review the work of the applicant's traffic engineer.

6. SEWAGE DISPOSAL. The Board must find that the proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized. The 9 single-family homes will add about 3,150 gallons of wastewater to the municipal system per day. Statements from Peter Owen, P.E., Public Works Director, and Scott Wilhelm, Superintendent of the Bath Wastewater Treatment Plant indicate that there is adequate capacity in the sewer pipe system and at the sewage treatment plant to accommodate 3,150 gallons of additional flow per day. The Harward Street sewage pumping station, which would service the proposed subdivision, does, during major rain events, have flows that exceed its capacity. At these times there are overflows into the Kennebec River. If the subdivider were to remove 3,150 gallons of storm water from the storm sewer system that goes through this pump station the subdivision would cause no increase in flows through the Harward Street station.

The Board finds that with the condition that the subdivider pays to have 3,150 gallons of stormwater per rainstorm removed from the sanitary sewer system that goes through the Harward Street Station, this criterion will be complied with. The Board agreed with this.

7. MUNICIPAL SOLID WASTE DISPOSAL. The Board must find that the proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized. A statement from Peter Owen, P.E., Public Works Director, indicated that the Bath Land Fill has capacity for the solid waste from the 9 additional homes.

The Board finds that this criterion has been complied with. The Board agreed with this.

8. AESTHETIC, CULTURAL AND NATURAL VALUES. The Board must find that proposed subdivision 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. The subdivider has established buffer areas on each lot where the cutting of vegetation will be prohibited. The subdivider is proposing that tree preservation plans be required for each lot before building permits are issued. The subdivider has submitted letters from the Maine Historic Preservation Commission and the Maine Department of Inland Fisheries and Wildlife, which state that the proposed subdivision will not have an undue adverse impact on historic and significant wildlife habitat, respectively. The proposed subdivision will have no impact on public rights for physical or visual access to the shoreline.

The Board finds that this criterion has been complied with. The Board agreed that the prerequisite to have lot-specific tree preservation plans needs to be required as deed covenants and should be a condition of approval.

9. CONFORMITY WITH LOCAL ORDINANCES AND PLANS. The Board must find that the proposed subdivision conforms to a duly adopted subdivision regulation or ordinance, comprehensive plan, and any development plan or land use plan. The Space and Bulk Regulations of the zone have been met and with certain conditions it will conform to the subdivision ordinance—Article 13 of the Bath Land Use Code.

The Board finds that with certain conditions and waivers this criterion will be complied with. The Board could not find that this criterion had been complied with and asked that a qualified professional review the application to determine whether there will be an adverse effect on the quality of the Kennebec River as recommended by Comprehensive Plan Section 6.4.3.

10. FINANCIAL AND TECHNICAL CAPACITY. The Board must find that the subdivider has adequate financial and technical capacity to meet the standards of this section. A letter from Bath Savings Institution indicate that they are committing a loan to the subdivider to cover the cost of the improvements. The subdivider has employed SiteLines, an engineering firm with extensive experience in subdivision development. The Board finds that this criterion has been complied with. The Board agreed with this.

11. SURFACE WATERS; OUTSTANDING RIVER SEGMENTS. The Board must find that whenever 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 (Sections 435 through 449), the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of

that body of water. The proposed subdivision is not in the watershed of any pond or lake. The subdivision is not within 250 feet of a river, as so defined. The proposed subdivision is within 250 of a wetland. The State's Natural Resource Protection Act allows up to 4300 square feet of wetland impact. The proposed subdivision will impact only 2,875 square feet of wetland.

The Board finds that this criterion has been complied with. There was discussion whether meeting the standard of not adversely affecting the quality of the nearby body of water pertained to any river or only to "outstanding river segments." The Board could not find that this criterion had been complied with and asked that a qualified professional review the application to determine whether there will be an adverse effect on the quality of the Kennebec River

12. GROUND WATER. The Board must find that the proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water. The most serious impact that a subdivision can have on ground water quality is nitrates from septic tank effluent. This subdivision will be connected to the public sewer system. The impact of any subdivision on the quantity of ground water is from large wells providing drinking water. This subdivision will be served by the public water system.

The Board finds that this criterion has been complied with. The Board agreed with this.

13. FLOOD AREAS. The Board must find that if the proposed subdivision is in a flood-prone area, based upon maps from the Federal Emergency Management Agency, the first floor of structures is elevated 1 foot above base flood elevation. The proposed subdivision is not in a flood-prone area.

The Board finds that this criterion is not applicable. The Board agreed with this.

14. FRESHWATER WETLANDS. The Board must find that all freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Wetlands have been identified by Woodlot Alternatives and shown on the subdivision plans.

The Board finds that this criterion has been complied with. The Board agreed with this.

15. RIVER, STREAM OR BROOK. The Board must find that any river, stream or brook, as defined by Title 38, Section 480, B, 9, within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. Based upon a letter/report from Woodlot Alternatives and the report of the DEP site visit there are no rivers, streams, or brooks, as defined, on or abutting the subdivision.

The Board finds that this criterion has been complied with. The Board agreed with this.

16. STORM WATER. The Board must find that the proposed subdivision will provide for adequate storm water management. The application includes a stormwater management plan designed by Chris Belanger, P.E., of SiteLines and has been approved by Peter Owen, P.E., Public Works Director.

The Board finds that this criterion has been complied with. The Board could not find that this criterion had been complied with and asked that a qualified professional review the stormwater management plan to determine if the development's stormwater management is adequate.

17. SPAGHETTI–LOTS PROHIBITED. This pertains to subdivisions that have shore frontage on a river, stream, brook, great pond, or coastal wetland. This proposed subdivision does not have frontage on a river, stream, brook, great pond, or coastal wetland.

The Board finds that this criterion is not applicable. The Board agreed with this.

18. LAKE PHOSPHORUS CONCENTRATION. The Board must find that the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration. There are no great ponds in Bath.

The Board finds that this criterion is not applicable. The Board agreed with this.

19. IMPACT ON ADJOINING MUNICIPALITY. This pertains to proposed subdivisions that cross municipal boundaries. This proposed subdivision does not cross municipal boundaries.

The Board finds that this criterion is not applicable. The Board agreed with this.

The Board asked that an independent review be undertaken on the traffic report, the stormwater management plan, and whether the development will have an adverse impact on the quality of water in the Kennebec River.

To obtain these reviews, **ON A MOTION MADE AND SECONDED THE BOARD VOTED TO CONTINUE THE REVIEW OF THE APPLICATION TO THE NEXT REGULAR MEETING OF THE BOARD, MAY 4, 2004.**

The applicant agreed to this continuance.

ON A MOTION BY MARGE HAWKES, SECONDED BY ROBIN HAYNES, THE BOARD VOTED TO TAKE UP THE REMAINING AGENDA ITEMS.

UNAMIOUS APPROVAL.

New Business:

Item 1

Request for 6-month extension of the Site Plan Approval- 150 Leeman Highway, (Map 28, Lot 49); C.N. Brown Company, applicant.

ROBIN HAYNES MADE A MOTION SECONDED BY GORDON REED TO GRANT THIS REQUEST.

UNANIMIOUS APPROVAL.

Item 2

Request Historic District Approval, Site Plan Approval, and Setback Reduction in the C2 Zone – Bed & Breakfast; 44 Summer Street (Map 26, Lot 221); Shadi Towfighi, applicant.

ON A MOTION BY GORDON REED, SECONDED BY MARGE HAWKES, THE BOARD VOTED TO FIND THE APPLICATION TO BE COMPLETE.

UNANIMIOUS APPROVAL.

Susan Carlson, architect representing Shadi Towfighi, stated that she is proposing a 5 guest-room Bed & Breakfast. She would be building an addition on the rear (south) side of the existing building, making parking lot improvements and paving the parking lot, and doing landscaping. She said the landscape plan was prepared by Tony Muench, registered landscape architect. She spoke about the exterior stairs and said that she was still working with Scott Davis, Codes Enforcement Officer, to determine if the stairs were necessary. She also explained that in recalculating and reconfiguring the light fixtures on the poles by the parking lot, she had determined that there will be only 0.07 footcandles at the property lines.

Robin Haynes asked that the arborvitae on the southwest side of the house be moved to the north to better screen the exterior stairs. Dick Klingaman asked about shutters on the house and Ms. Carlson said they would not be placed on the ell. Brandon Shaw, student member, asked what section of the house would be blocked by the arborvitae. Ms. Carlson said that she did not want the house screen but would do her best to screen the exterior stairs, if the stairs are required.

ON A MOTION BY ROBIN HAYNES, SECONDED BY DICK KLINGAMAN, THE BOARD VOTED TO APPROVE THE REQUEST FOR HISTORIC DISTRICT APPROVAL, SITE PLAN APPROVAL, AND SETBACK REDUCTION IN THE C2 ZONE FOR A BED & BREAKFAST; 44 SUMMER STREET, SHADI TOWFIGHI, APPLICANT, WITH THE CONDITION THAT A REVISED PLAN BE SUBMITTED TO THE PLANNING OFFICE. THE REVISED PLAN MUST INCLUDE A PLANT LIST WITH THE HEIGHTS AND NUMBER OF PLANTS, AND MUST INDICATE THAT THE

ARBORVITAE WILL BE MOVED TO THE NORTH TO BETTER SCREEN THE PROPOSED EXTERIOR STAIRCASE. IF THE EXTERIOR STAIRCASE IS DETERMINED BY THE BATH CODES ENFORCEMENT OFFICER NOT TO BE REQUIRED, MOVING OF THE ARBORVITAE IS NOT REQUIRED.

Item 3

Discussion of the Front Setback standard for other than single- and two-family residential uses in the R1 Zone.

Michelle Dulany discussed her plan to build an addition to the building at 785 High Street. She said the addition would be to accommodate another means of egress. She told the Board that she could not do this and meet the 20-foot non-residential front Setback.

Jim Upham told the Board that there was valid reasoning behind the requirement to have a 20-foot Setback for multi-family and non-residential uses in the R1 Zone, but this reasoning might not be as valid for front Setbacks.

After some discussion the Board asked that wording for possible amendments to the text of the Land Use Code be prepared for additional Board discussion.

There being no further business to come before the Board, **ON A MOTION MADE AND SECONDED, THE BOARD VOTED THAT THE MEETING BE ADJOURNED.**

UNANIMOUS APPROVAL

The meeting was adjourned at 10:35 p.m.

Minutes prepared by Gail Spath, Recording Secretary