

## Palmyra Town Office

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**From:** Billy Boulier <billygboulier@msn.com>  
**Sent:** Friday, August 20, 2021 6:49 PM  
**To:** Dave Leavitt  
**Cc:** Palmyra Town Office; Gary Beem; Mo Temple; Corey Dow  
**Subject:** RE: Next weeks PB meeting .  
**Attachments:** PB - PALMYRA LAND USE ORDINANCE REVIEW - BOULIER 1.17.21.docx

Dave,

I have seen no follow up by the Town of Palmyra/ Select Board/ or CEO with questions we raised at our last meeting with concern over how the conditions we have added at our Planning Board meetings are monitored.

Since I have received no information that monitoring is being done, I have provided a spreadsheet listing the conditions that I have researched from our minutes starting 9/22/20 and the documents in my BD Solar file in a format that I would use.

I would assume that our CEO has the same type of format for monitoring our permits but just in case I am providing my work product.

You will notice that for BD Solar there are 3 pages of conditions that must be monitored. It seems evident that BD Solar is not in compliance with the permit conditions but I don't know since we have no report from the CEO. In my opinion, this is a serious matter.

I understand he does not report to the Planning Board but the Select Board. Perhaps the Select Board has this information.

I raise this issue because my volunteer efforts to assist the Town of Palmyra as a member of the Planning Board in doing my best to review land use applications, etc. for the benefits of the citizens of Palmyra is made assuming that conditions we may place on a permit are being followed.

Bill

Sent from Mail for Windows

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**From:** Dave Leavitt  
**Sent:** Friday, August 20, 2021 11:06 AM  
**To:** Billy Boulier  
**Cc:** Palmyra Town Office; Gary Beem; Mo Temple; Corey Dow  
**Subject:** Next weeks PB meeting .

Thanks for the heads-up , have a great evening with April . Please wish her Happy Birthday from Joan & I !

By the way , I spoke with Travis this past Tuesday afternoon , and he said that he has met with the Solar Farm people at the job site . He says that they were very agreeable and that they are working on item # 1 on our list ( copy of their Deed Covenants ) . He also said that he saw no sign of monitoring wells . He also said that he left a copy of the list that we made for him , with the Solar Farm people , so they would know what we will be looking for .

He did not update me on your request for full size IFC Electrical drawings nor did he mention anything about progress with U. S. Cellular or Trundy Real Estate , but to be fair , I didn't ask either . I will seek an update from Travis , next Tuesday ,on the open issues and update the board that night .

Sent from my iPhone

On Aug 18, 2021, at 10:52 AM, Billy Boulter <[billygboulter@msn.com](mailto:billygboulter@msn.com)> wrote:

Wife's birthday is next Tuesday so will not be attending the meeting.

I agree with the revisions that were made on the minutes.

As of now, I have had no correspondence from Hometown Healthcare.

Billy

Sent from Mail for Windows

# **REVIEW OF THE PALMYRA LAND USE ORDINANCES – May 2020**

**Billy Boulier – Planning Board 1/17/21 [I have put my comments in italics and bold]**

## **ABBREVIATIONS USED:**

**CDRO = COMMERCIAL DEVELOPMENT REVIEW ORDINANCE – July 29, 2020**

**PB = Planning Board**

**ZOFPM = ZONING ORDINANCE FOR PALMYRA, MAINE**

## **PLANNING BOARD RESPONSIBILITY**

### **PLANNING BOARD ORDINANCE FOR THE TOWN OF PALMYRA – IV.B.:**

The Board shall perform such duties and exercise such powers as are provided by Town ordinance and the laws of the State of Maine.

#### **CDRO – Article 4: Administration and Enforcement – Section 1. Planning Board [pg. 5]**

The Planning Board shall have the following powers and duties:

- A. To administer this Ordinance.
- B. To hear and decide upon applications according to this Ordinance.
- C. To develop site review applications forms.
- D. To provide the Code Enforcement Officer with a written decision of each application.
- E. To issue permits.
- F. To charge impact fees when applicable and in accordance with the Town of Palmyra Fee Schedule.

## **PLANNING BOARD SECRETARY**

*In the PLANNING BOARD ORDINANCE FOR THE TOWN OF PALMYRA it establishes the board with five members and two associate members and in IIIA it states the Secretary is among those members. Since the Planning Board uses the assistance of a town employee as the Secretary, I suggest this subsection be amended to state that reality. Diane does a remarkable job in performing that service and much better than a member of the Planning Board could perform.*

## **BASIS FOR PERMITS TO BE REQUIRED IN THE TOWN OF PALMYRA**

### **ZOFPM - ARTICLE III – ESTABLISHMENT OF DISTRICTS AND DISTRICT REGULATIONS [my pg. 1,2]:**

- 1) **Section 3-1 The Zoning Map:** *All land in Palmyra has been divided into Districts.*
- 2) **Section 3-5 Permitted and Allowed Uses and Activities in Zones** “The following classifications of uses and activities have been set forth to delineate which uses and activities are not permitted[,] and which ones are allowed with a Planning Board permit in each district”.

**CDRO – ARTICLE 4: Administration and Enforcement – Section 3. Commercial Development Review Permits [pg. 6]:** “The Planning Board shall review and decide upon all applications and shall submit their written decision on each application to the Code Enforcement Officer and the applicant. No development activity, as defined, shall occur until the Planning Board has issued a permit.”

## **ORDINANCE LANGUAGE THAT DEALS WITH ORDINANCE CONFLICT**

### **CDRO – Article 1: General Provisions – Section 4. Relationship with Other Ordinances [pg. 3]:**

“Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or any other ordinance, regulation or statute the more restrictive provision shall control. All site review applications are required to conform to all other applicable ordinances and regulations of the Town of Palmyra.”

## **MEANING OF THE WORD “DEVELOPMENT” IN THE CDRO**

*This word has been defined in **CDRO - Article 10 – Definitions [pg. 40]:***

**Development:** Any man-made changes to improved or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, or drill operations.

**Development Activity:** Any physical activity involved in the process of the construction, reconstruction, conversion, renovation, alteration, relocation, or enlargement of any structure; or any physical activity involved in any mining, excavation, landfill [,] or land disturbance process.

*The above would indicate “DEVELOPMENT” in the title of this ordinance does not reference the size or complexity of a proposed use.*

## **PB DISCRETION WHEN REVIEWING COMMERCIAL, INDUSTRIAL, AND MULTIPLE FAMILY HOUSING**

*This guidance is found in ZOFPM – Section 3-7 Application Form and Fee [my pg. 5] - in the third paragraph it references previous requirements for Commercial and Industrial Districts. “In addition to the preceding requirements [which must reference 3-6 Dimensional Requirements – A and B] for Commercial and Industrial Districts, the following additional requirements are discretionary by the Planning Board. Any or all may be required depending upon the circumstances and type of application and information the Planning Board needs to arrive at a decision.”*

### **Discretionary Requirement for Planning Board Permits – Commercial, Industrial, and Multiple Family Housing.**

1. Contour maps at reasonable scale and interval
2. Erosion Control Plan
3. Drainage Control Plan
4. Traffic and Parking Plan
5. Roadway Plans and Specifications

*#1, 2, 3 and 4 above are found in CDRO - Article 5, 6 and 8 so this general ordinance sections refers to that ordinance. I recommend this be amended to move to the CDRO.*

## **WHICH APPLICATION IS REQUIRED FOR A PERMIT?**

**CDRO – Article 2. Purpose – Section 1. Purpose –A [pg. 4]** - *this ordinance establishes what uses require review by this ordinance:* “To establish a procedure whereby the Planning Board may review, new proposals to use or develop land and buildings for:

- a) Commercial
- b) Industrial
- c) Office
- d) Community and service uses
- e) Municipal
- f) Institutional
- g) Utility
- h) Recreational uses
- i) Other non-residential uses [clarification refers to cemeteries, golf courses, commercial recreational facilities [,] and other similar nonresidential uses]

**and Article 3: Applicability – Section 1. Applicability** further qualifies use of this review process by size of building – all in reference to a footprint over 2,500 sq. ft..

*If a building is less than 2,500 sq. ft., compliance with the review criteria of CDRO does not apply and the applicant needs to use our current Land Use Permit Application.*

***I believe this should be amended to delete all reference to size of building for the following reason: with this limitation of 2,500 square footage, the Planning Board is unable to protect the Town of Palmyra for the building uses as stated in a through i above for the purposes as listed in CDRO – Article 2: Purpose – Section 1. Purpose [pg. 4]:***

- A. To mitigate potential nuisances associated with development from having a negative impact upon the community.
- B. To address a wide range of environmental and planning issues associated with development including, but not limited to, noise, odors, storm water, erosion, phosphorus, waterbody protection, traffic, parking, light and glare, scenic resources, groundwater, historic and archeological resource[d]s, significant wildlife and aquatic resources and other natural resources.
- C. To reduce off-site impacts from development from negatively affecting municipal services and infrastructure.
- D. To insure [***ensure***] that adequate water and sewer or subsurface waste water [***wastewater***] disposal are available to serve the development.
- E. To protect the water quality of all lakes, ponds, streams, brooks, and wetlands within the community.

## **REFERENCE TO COMMERCIAL ACTIVITY BUILDING AREA IN ZOFPM**

***I note that in the ZOFPM - Section 3-5 Permitted and Allowed Uses and Activities in Zones [my pg. 2]– for the AGRICULTURAL/RESIDENTIAL DISTRICTS it allows commercial activity less than 5,000 square feet. Is this the intent for the Town of Palmyra in this district?***

## **ESCROW ACCOUNT**

### **TOWN OF PALMYRA FEE SCHEDULE – Effective 2/12/20 - \*Amended 11/11/20**

***2<sup>nd</sup> paragraph on page 2:*** “Prior to acceptance of the Application, the Applicant will issue a check payable to the Town of Palmyra in an amount of ¼% (one quarter percent) of the Project’s estimated cost with a minimum of \$2,500”

***In my opinion, “acceptance of the application” refers to the application being determined complete. I don’t believe “acceptance of the application” would refer to the final review because this would be after the escrow account would possibly have been used. This requirement leaves the applicant with no leeway in not providing the escrow amount but this conflicts with CRDO – Article 6 – Section 8 as listed below which requires the escrow account to be submitted with the application.***

**CDRO - ARTICLE 6 – SECTION 2D Submission Requirements [pg. 11]** “As deemed appropriate by the Planning Board, a fully funded escrow account who’s [***whose***] funds can be used to finance additional impact studies by independent agencies. See: Article 6 Section 8 of this Ordinance.”

***In my opinion, this “deemed appropriate” does not mean the PB has the authority to not require an escrow account but only to determine if it is to be used which is clear based upon the next article referenced above.***

**CDRO - ARTICLE 6 – SECTION 8 “Additional Information and Studies” [pg. 14]:** “The Planning Board may at its discretion retain independent expert assistance to supplement the evidence presented by the applicant and received during the public hearing. The cost of such expertise shall be borne by the applicant according *[to]* the terms of an escrow account set-up at the time the application is submitted as listed in the Application Fee Schedule established by the Planning Board.”

***In my opinion, this Section in the ordinance is clear that the escrow account must be set-up at the time of the application. If one believes that Article 6 – Section 2D “deemed appropriate” gives the PB leeway in requiring the applicant to post an escrow account, the reference article below would require that we must agree with the more restrictive requirement of having the escrow account funded at the time of the application.***

**CDRO – Article 1: General Provisions – Section 4. Relationship with Other Ordinances [pg. 3]:**

“Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or any other ordinance, regulation or statute the more restrictive provision shall control. All site review applications are required to conform to all other applicable ordinances and regulations of the Town of Palmyra.”

***One additional ordinance section may be the basis for not requiring an escrow account:***

**CDRO – Article 6: Application Procedure – Section 9. Waivers [pg. 14]**

- A. The Planning Board may vote to waive any of the submission requirements in this Ordinance when it finds one of the following:
  - 1. One of more of the submission requirements are not applicable to the proposal due to the size of the project, circumstances of the site, design of the project, type of project, or unique features of the proposed use.
  - 2. The applicant may submit alternative designs, which meet or exceed performance standards required under this Ordinance. Such submissions shall not be waived but may replace standard submissions.
- B. The applicant shall submit information to support the waiver request with the application.
- C. The Planning Board may only consider a waiver request when the applicant has submitted a written waiver request with the application. The first item of the application review shall be a consideration of the waiver request. The Planning Board shall review the waiver request and if it meets the appropriate criteria may approve the request. If the Planning Board finds that the waiver request does not meet the criteria, it shall deny the waiver and require the applicant to revise the application *[,]* as necessary. The Planning Board may vote to suspend review of the application until the applicant supply *[supplies]* all the necessary information. The applicant shall submit all required information to the Planning Board within sixty (60) calendar days of the denial of the waiver request. Failure to submit the information within this time will require that a new application be submitted for review. In no case shall the Planning Board make a final decision on the application until the applicant supplies additional information to the satisfaction of the Board.
- D. All waivers approved by the Planning Board shall be documented during the review process.

***In my opinion, it is the intent of the above ordinance to allow the PB to waive some of the submission requirements and C above indicates this represents the various criteria for review and not the application.***

*By the technical word, since A above references "waving of the submission requirements" and CDRO – Article 6: Application Procedure – Section 2. Submission Requirements with D references the escrow account, technically the PB could use this to allow a waiver. For this to happen, the applicant must submit a waiver request with the application and provide documentation as to why it should not comply with the escrow account. In my opinion, the applicant should not be in a position to state their application will not require independent expert assistance – the PB is in that position of determination.*

*Section 9C requires the waiver request to be the first item of application review.*

*Based upon all the above information, I suggest we clarify the requirement of an escrow account.*

## **AMENDMENTS TO THE ZONING ORDINANCE**

### **ZOFPM – ARTICLE IX Amendments [my pg. 8]:**

Upon a recommendation of the Planning Board received in writing by the Selectmen and/or receipt of a petition by the Selectmen (said petition signed by 10% of the legal voters of the town who voted in the last gubernatorial election), the Selectmen shall call a special town meeting within 50 days to consider proposed amendment to this ordinance. An amendment to this ordinance may be enacted only with majority vote at a regular or special town meeting. No amendment to the map shall become effective until any required change on the official map has been made and attested to by the Town Clerk."

### **CDRO – Article 1: General Provisions – Section 6. Amendments [pg. 3]:**

"An amendment to this Ordinance may be initiated by a majority vote of the Selectmen, Planning Board, or by a written petition by a number of voters equal to at least 10% of the number of votes cast in the municipality in the last gubernatorial election.

All proposed amendments shall be referred to the Planning Board for their recommendation. The Planning Board will hold a public hearing on all proposed amendments.

An amendment may only be adopted by a majority vote of the voters at a Town Meeting."

*I note the following conflicts of these two ordinance sections addressing the same topic: there is a difference for how the Selectmen can initiate amendments, the Planning Board reviewing all proposed amendments, who calls the special town meeting, note of a special town meeting, and the time frame for that meeting.*



## Palmyra Town Office

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**From:** Billy Boulier <billygboulier@msn.com>  
**Sent:** Saturday, August 28, 2021 7:23 PM  
**To:** Palmyra Town Office; Gary Beem; Dave Leavitt; Mo Temple; Corey Dow; Ivan Bates; Travis Gould  
**Subject:** 8/20/21 email with attachment

I attached the wrong file in my e-mail of 8/20 sent at 6:49 PM. Please disregard. The file attached is being revised and will be provided at a future date to list proposed changes to our Ordinance.

The file I meant to attach has been resent this evening.

Thanks,  
Bill

Sent from Mail for Windows