

Christina Silberman

From: Carla Nixon
Sent: Tuesday, August 21, 2018 3:13 PM
To: Planning Board
Subject: Town Attorney Legal Opinion re: DEP approval

Good Afternoon,

As you know, there are two projects on the agenda tonight that are awaiting written approval from MDEP: OceanView at Cumberland and the amended Village Green subdivision.

I have received an email from Mark Bergeron at MDEP that his department could not commit to getting the written approvals out prior to September 15, 2018.

The Town Attorney has reviewed Section 250-19 (Waiver and Modification) of the our subdivision ordinance and has written the email message below which would enable the Planning Board to grant final approval with conditions to both projects tonight, assuming that all other issues have been resolved.

Carla

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From: Natalie L. Burns
Sent: Tuesday, August 21, 2018 2:42 PM
To: 'cnixon@cumberlandmaine.com'; 'William Shane (wshane@cumberlandmaine.com)'
Subject: Condition of Approval

Section 250-19 requires the submission of approvals from any other governmental agency in writing prior to the submission of the final plan. The Board finds that strict compliance provision will result in an unnecessary hardship because it will delay the applicant's ability to commence work in this construction season [since work on the stream crossing is limited to between July 15 and September 30](#). If this period is missed, the applicant will have to wait until [next July](#) to commence construction on the project. This places a substantial burden on the subdivider that will affect its ability to achieve a reasonable economic return on the project due to the need to commence construction on the project this year. Based upon this, the Board grants a waiver of the requirement of the submission of all agency permits prior to the submission and review of the final plan. However, the Board requires as a condition of approval that the applicant [cannot perform any work on the stream crossing prior to acquiring the final agency approvals for this work](#). The applicant may perform work on either side of the stream prior to final satisfaction of this condition of approval.

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