



## Planning & Code Enforcement

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### PLANNING & CODE ENFORCEMENT

#### WESTBROOK PLANNING BOARD

Tuesday, April 4, 2023, 7:00 P.M.

Westbrook High School – Room 114

125 Stroudwater Street

**This meeting will be offered as a hybrid meeting, accommodating both in-person and remote participation.**

Where public comment is permitted, members of the public attending remotely will have the opportunity to provide remote oral 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.

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

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

**Webinar ID:** 817 0074 1385

#### AGENDA

1. **Call to Order**
2. **Approval of Minutes**

#### NEW BUSINESS

3. **2023.09 – Amendment to the Land Use Ordinance - §335-1.8 – Definitions, §335-Article V – Zoning Districts, §335-Attachment 1, Table 1 Land Use Table – Milestone Recovery:** The applicant is requesting an amendment to the Land Use Ordinance to create and define a new use, Short-Term Care Facility, to allow as a permitted use within the Highway Services District. The amendment also revises the definition of Nursing Home to correct grammatical errors and update terminology, allows Nursing Homes as a permitted use in the Residential Growth Area 1, Prides Corner Smart Growth Area, Highway Services and Gateway Commercial Districts and removes Nursing Homes from the Residential Growth Area 3 District.
4. **2023.10 – Site Plan – 740 County Road – BD Solar Properties, LLC:** The applicant is requesting a 40,000sf gravel laydown area to be utilized for the duration of construction of a solar array located on the abutting parcel. Tax Map: 001 Lot: 006 Zone: Industrial Park District

#### WORKSHOP

5. **2023.11 – Conditional Use – 587 Spring Street – Widad Zige:** The applicant is requesting a Child Care Center located within an existing structure at 587 Spring Street: Tax Map: 005B Lot: 019 Zone: Manufacturing District Use: Child Care Center



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### PLANNING & CODE ENFORCEMENT

DATE: March 30, 2023

TO: Planning Board  
FROM: Jennie P. Franceschi, City Planner & Rebecca Spitella, Senior Planner  
Cc: Plan Review Team

RE: April 4, 2023, Planning Board Meeting

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1. **2023.09 - Amendment to the Land Use Ordinance - §335-1.8 – Definitions, §335-Article V – Zoning Districts, §335-Attachment 1, Table 1 Land Use Table – Milestone Recovery**
  2. **2023.10 – Site Plan – 740 County Road – BD Solar Properties, LLC – Construction Laydown Yard**
  3. **2023.11 – Conditional Use – 587 Spring Street – Widad Zige – Child Care Center**

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1. **2023.09 - Amendment to the Land Use Ordinance - §335-1.8 – Definitions, §335-Article V – Zoning Districts, §335-Attachment 1, Table 1 Land Use Table – Milestone Recovery**

### **PUBLIC HEARING**

#### **Ordinance Description**

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

April 4, 2023 – Public Hearing

**Staff Comments**

No changes have been made to the proposed Ordinance since the March 7<sup>th</sup> workshop, except for added clarifying wording for districts where use is contingent upon water and sewer access, and administrative notes to the Ordinance Revisor. The following are the comments that were provided to the Planning Board in the March 3<sup>rd</sup> Staff Memo outlining the rationale for the proposed language and Zoning Districts for the record.

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 provides 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.

**Motion**

Motion to recommend the Land Use Ordinance amendment submitted to the Planning Board in the document titled "Land Use Ordinance Amendment Chapter 335" for specifically §335-1.8 – Definitions, §335-Article V – Zoning Districts, §335-Attachment 1, Table 1 Land Use Table to the City Council to create and define a new use, Short-Term Care Facility, and allow such use as a permitted use within the Highway Services District; and revise the definition of Nursing Home and allow this use as a permitted use in the Residential Growth Area 1, Prides Corner Smart Growth Area, Highway Services District and Gateway Commercial District while removing the Nursing Home use from the Residential Growth Area 3 District.

**2. 2023.10 – Site Plan – 740 County Road – BD Solar Properties, LLC – Contractor laydown yard**

**PUBLIC HEARING**

Tax Map: 001 Lot: 006  
Zone: Industrial Park District

**Project Description**

The applicant is requesting a site plan approval for a 40,000sf gravel laydown area to be utilized for the duration of construction for the solar array project located on the abutting parcel in Scarborough (52 Larson Way). Following construction of the solar array, all gravel shall be removed from the site and all disturbed areas shall be regraded and stabilized with loam and seed.

Although the work is temporary in nature, site plan review and Planning Board approval is required as the area of disturbance/new impervious cover is greater than 3,000 sf.

**Project History**

April 4, 2023 – Public Hearing

**Staff Comments:**

1. No solid waste or recycling to be stored on the laydown area (with the exception of screen dumpsters associated with construction trailer for office based wastes. No large scale waste/packing materials/etc. is permitted. All construction waste to be hauled from site. If any changes to this procedure, the solid waste must be contained on the property/within a stabilized area and a plan will be required from the applicant for waste removal for the City to approve of and be filed with the application documentation.)
2. County Rd driveway culvert will need to be replaced if damaged during construction.
3. A performance guarantee shall be required to ensure the temporary parking area and laydown area is fully stabilized and returned to its original vegetative state following the construction of the solar array.
  - a. Pictures of the site prior to any soil disturbance will be required to use as comparison in post-conditions. Provide photos to City for file.

**Motion:**

That the Planning Board approves the Site Plan application for BD Solar Properties, LLC for a 40,000sf gravel laydown area to be utilized for the duration of construction related to the solar array project located in Scarborough (52 Larson Way) on the abutting parcel. Project is located at 740 County Road Tax Map: 001 Lot: 006 Zone: Industrial Park District. Approval includes the following findings of fact, conclusions, and conditions as stated on pages 4 through 6 of this Staff Memo dated March 31, 2023, which are adopted in support of this approval.

**Site Plan – Finding of Fact**

<b>Standard</b>	<b>Finding</b>
Utilization of the site	Meets the intent of the ordinance
Handicap Access	Site plan does not provide for public access and is not required to meet ADA standards.
Appearance Assessment	No new structures are proposed as part of the project. Site ingress/egress is provided at the existing point of access to the site. Following construction of the abutting solar array the site will be regraded and stabilized with loam and seed.

Landscape Plan	Following construction of the abutting solar array project, the site will be regraded and stabilized with loam and seed.
Odors	Laydown area will not be utilized for solid waste collection. No adverse impact is known or anticipated.
Noise	Construction work will following the permitted hours of construction for the Town of Scarborough. No residential uses are located within ~750' of the construction laydown area. No adverse impact is known or anticipated
Technical and Financial Capacity	No permanent structures or site improvements are included as part of this approval. Not applicable.
Solid Waste	The construction laydown area shall not be utilized for the storage of solid waste. A small waste receptacle is located next to the construction trailer for waste collection, as needed.
Historic, Archaeological and Botanical Resources or Unique Features	None known
Hazardous Matter	Not applicable
Vibrations	No adverse impact anticipated by the installation/removal of laydown area.
Parking & Loading Design and Site Circulation	Site ingress/egress is via the existing curb cut on the site. A temporary construction trailer and parking area is located on the northerly portion of the site at a location that will not impede on access by construction equipment to the rear of the site.
Adequacy of Road System	Project will not cause an unreasonable increase of traffic demand to County Road. Additional signage is included on County Rd related to truck traffic utilization of 740 County Rd.
Vehicular Access	Site ingress/egress is via the existing curb cut on the site.
Pedestrian and Other Modes of Transportation	Not applicable
Utility Capacity	No utilities are required for the project.
Stormwater Management, Groundwater Pollution	Following construction of the abutting solar array project, the site will be regraded and stabilized with loam and seed.
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.

**Conditions:**

1. Approval is dependent upon, and limited to, the proposals and plans contained in the application packet dated March 9, 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. No work shall occur on site or associated with the affiliated solar project until:
  - a. A performance guarantee is provided to the City of Westbrook in an amount agreed upon by the City - **\$120,500.00**
  - b. Larson Way Private Road sign needs to be installed at the intersection of County Rd (Blue Background with white lettering – Permaline vendor)
  - c. Preconstruction meeting (in conjunction with the Town of Scarborough)
3. Construction laydown shall not be utilized for the storage of construction waste. All solid waste shall be stored appropriately and contained.
4. Prior to the release of the performance guarantee
  - a. Temporary parking and construction laydown area shall be disassembled, with gravel removed from site and site stabilized with topsoil and seed & vegetation growth sufficient.
  - b. Driveway culvert at County Road inspected by City Staff. Performance guarantee may be utilized by the City of Westbrook for the repair or replacement of culvert if damage occurred during the construction.



### 3. 2023.11 – Conditional Use – 587 Spring Street – Widad Zige – Child Care Center

#### **WORKSHOP**

Tax Map: 005B Lot: 019  
Zone: Manufacturing District  
Use: Child Care Center

#### **Project Description**

The applicant is requesting a conditional use permit for a Child Care Center located within an existing structure at 587 Spring Street that was previously utilized as an engineering soils laboratory/office space.

#### **Project History**

March 7, 2023 – Planning Board Workshop

#### **Staff Comments**

1. Noticing Fees: \$22.20
2. Requirements of operations which must be installed prior to CO:
  - a. Full sprinkler and fire alarm system.
    - i. Work with Code Enforcement and State licensing to verify all internal requirements for Child Care Centers are met (adequate egress, toilet facilities on each floor, etc.)
  - b. Verify exterior lighting of parking lot – may need to supplement based on existing conditions with wall packs or single pole lights.
  - c. Current sewer connection is not legal and site has NOD for correction. Conditional use could not be approved until the a fix has been provided for the sewer which could include either a plan to install the sewer underground or a request for a waiver of the requirement to connect to public sewer and installation of a septic system on the site. As discussed during the staff review, the applicant is working with the property owner on identifying an appropriate solution
  - d. Stabilized base (concrete) and screening required for dumpster.
  - e. Fencing for play yard
  - f. Sweeping/Striping of parking lot per striping plan
3. Verify number of parking spaces that will be required based on utilization.
  - a. Parking striping layout plan will need to be provided showing the spaces that will be striped on the premise to function as parking and accessways.
  - b. Handicap parking spaces will need to be signed and striped.
  - c. No parking permitted in Fire Lane

#### **Board Action**

1. Provide feedback to applicant and Staff.