



ITEM 1 - ROLL CALL

Present: Steve Beckert – Chairman, Jeff Duncan, Larry Bouchard, Greg Whalen, Dennis Lentz, and Christine Bennett – Alternate.

Also present: Kate Pelletier, Planning Assistant.

Absent: Melissa Horner – Alternate (excused)

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – REVIEW AND APPROVE MINUTES, AS NEEDED

Mr. Lentz moved, second by Mr. Bouchard to approve the minutes of August 4, 2015, as amended.

VOTE
4-0
Chair concurs

ITEM 5 – REVIEW “NOTICE OF DECISION” LETTERS, AS NEEDED

Modernist Pantry SPR (PB15-06)

This was accepted as written.

ITEM 6 – PUBLIC APPLICATIONS OR PLANNING BOARD BUSINESS TO BE CONSIDERED

A. 10-minut public input session

Ms. (Michelle) Meyer, 58 Odiorne Lane, welcomed Ms. Bennett to the Planning Board. She said that she has been coming since just after the November 2014 Growth Ordinance Referendum failed and then, since then, and listening to the effort moving towards June when the second Growth Ordinance Referendum failed; that she recalled after the first referendum failed that there was talk among the Board that you felt the public didn't trust the PB and the Planning Office, and you wondered why. She added that it has become increasingly clear to her why. She said that there appears to be a failure on the part of Planning to recognize what the public wants and doesn't want in our Town; that there has been an obvious concerted effort to change ordinances. She said that she's watched the Board wonder why certain ordinances are in place and she would opine that there were some forward-thinking folks in those seats that well-predated you and Ms. Pelletier who had the foresight to put ordinances in place to make sure that, should the perfect storm of folks in influential positions here find themselves together making influential decisions, there were ordinances in place that kept you from building this Town up to within an inch of every available lot, and those that aren't, by changing ordinances and handing out

waivers. She added that, to her, the waiver issue is disturbing and if you think that the people of this Town are going to grow to trust this PB and the Planning Assistant (PA) in making decisions that impact us, now and in the future, handing out waivers to developers is not the way to develop that kind of trust. She said that she doesn't pretend to understand your waiver process but, what she and other people sitting here saw at the last PB session, handing out waivers to someone who wants to build in an area where the ordinances don't support and knowing that you are moving towards changing ordinances in that regard, is unsettling and disturbing. She added that it's her hope that you listen to what the people have to say; it's important. She said that if you want the trust of the people of this Town, she would ask that you listen to the people of this Town, and not hand this Town over; that we have ordinances in place; there's a reason; that they were making sure this Town remained the rural place the people who lived here wanted to remain. She thanked the Board for letting her speak.

Mr. Beckert thanked her for her opinion. He added that he would say that, as politely as he can, if Ms. Meyer doesn't understand anything about this ordinance then you might want to come up with a copy of it and read it cover to cover to see what this Board and every PB prior to us and every PB after us will have to deal with. He said that this is the law; that if an application meets the requirements of the law, the PB is very hard-pressed not to approve it. He said that he has lived here his entire life so he knows exactly who was on the PB and know pretty much what the mind-set was when the ordinances were written; that until you've delved into them and have to apply them...and you have sat here since 2014 by your own admission and you have seen us wrestle with some of the ordinances and the way they were written, because they were written very vaguely, reiterating that until she learns the book.

Ms. Meyer commented that until she learns the book she doesn't have an opinion on what you folks are doing.

Mr. Beckert said that she certainly can have an opinion, reiterating that he appreciated her opinion but that is her opinion.

Ms. Meyer said that this is the forum where the public gets to speak.

Mr. Beckert reiterated that the PB has to go by the law; that it's not a question of what we administer because we like it or we don't like it, we have to administer it because it's in 'this' book and how it applies to each individual application; that the courts will tell you that each application is based on its own merits, not what you've done with past and not what you might do future ones.

B. Application for a Home Business permit to establish a chiropractic office at 1382 State Road. Applicant/owner is: Dr. Ferida Khanjani (mailing address: 1382 State Road, Eliot, Maine 03903). Property can be identified as Map 20/Lot 11 and is located in the Suburban Zoning District. (PB15-11)

Dr. Khanjani said that she is a chiropractic doctor and has been practicing since 1985; that she practiced in York for ten years, as a home office; that then, after that, she has been in China for nineteen years practicing in the International Hospital in Beijing until she adopted her child. She added that she is a special needs child so Dr. Khanjani decided to come back for her education and she decided that Eliot Elementary would be appropriate for her. She said that she decided to sell her property in York and buy something here and she was successful to buy the property at 1382 State Road. She added that she loved it because it is part of the community; that she loved the fact that it was a dairy farm and she would love to keep it that way, if it would be possible, because it is a very good landmark for Eliot and she would love to be part of that; that she would like to continue with a small practice as she came back and has to start from zero, again; that she doesn't have a big practice so she decided to continue with a home office. She said that two of the rooms in this house would be allocated for the office, one for reception and one for treatment, with a door to the outside, to start her practice.

Mr. Beckert said that, for those not familiar with this property, it is just up the road on the right just before the library and next to Douglass Woods Park. He asked if there was anything that Ms. Pelletier would like to add.

Ms. Pelletier said that we've gone through the application many times; that she didn't see any issues with it and meets all the requirements as far as she can tell.

Mr. Duncan discussed that there was a reception area and a service area and asked if she would be performing both functions or will you have someone be your receptionist.

Dr. Khanjani said, at this point, no; that she would like to have the flexibility to have one person as a receptionist, if it is permissible; that she doesn't have one at this point and it is not part of her plan immediately; that if her practice became bigger she would like to have someone help her part-time.

Mr. Duncan asked, if that happens, is three parking spaces enough; does the three include your personal or is that just for customers.

Dr. Khanjani said that that would just be for the customers; that she would be using her driveway for her personal vehicle; that she would only have two patients at a time, probably, coming and going; that it would not be more than that.

Ms. Pelletier pointed out the aerial photo showing a car parked in the driveway.

Mr. Duncan said that his question to Ms. Pelletier was are the three spaces the applicant is noting satisfactory for the applicant's proposal.

Ms. Pelletier said yes; that she and the applicant have talked about it and she told Dr. Khanjani that she could have up to four.

Mr. Duncan asked about if she had to hire a receptionist and that receptionist had to park there, as well.

Ms. Pelletier asked Dr. Khanjani if she thought she would ever have more than two patients waiting.

Dr. Khanjani said no.

Mr. Duncan said that he just wanted to make sure we're not back here for an amendment because we added a second person to your business. He was concerned about the parking allotment requirement.

Ms. Pelletier said that we normally don't apply that to a home business; that for a professional office it is one space for each 200 square feet of floor area (3 spaces) but if you call it a medical or dental office then it's seven spaces for each physician.

Dr. Khanjani said that the fourth space would be more complicated and more expensive for her to do at this point.

Mr. Duncan said to just recognize that, if this is approved with only your space plus three, if you need to have more vehicles in the future you will need to come back and ask for an amendment.

Mr. Whalen asked if, regarding the parking, if it is subject to the stipulation that the parking shall not exceed four additional spaces per lot.

Ms. Pelletier agreed; that a home business can have up to four spaces.

Mr. Whalen asked if there would be any on-site sale of merchandise.

Dr. Khanjani asked for clarification.

Mr. Whalen said that it might mean any supplements that you might sell, or oils, or anything of that nature you would do in conjuncture with your practice.

Dr. Khanjani said that she doesn't have any plans right now but it could be; that she would like to have that as part of it, in case; that she would like that if it would be permitted.

Mr. Duncan said that the question is would you like to plan for it today so you don't have to be back here to amend this.

Dr. Khanjani said, if it is not complicated, yes.

Mr. Duncan said that he would think a modification of the application reflecting massage oils or...

Dr. Khanjani said nothing like that; that it would maybe be vitamin supplements because it would be a holistic practice and she would like to have the permission if that happens.

Ms. Pelletier said that she could put her holistic practice would do dietary and nutritional types of supplements.

Dr. Khanjani said yes, supplements.

Ms. Pelletier said that she just added the amendment to the application to include on-site sales of dietary supplements.

Ms. Bennett said that the property seems to straddle both the suburban and village districts and asked why it was deemed to be in the suburban district.

Ms. Pelletier explained that the line of that zone was placed, at one point, probably following the property lines, but that was in the early '70's; that since then it has been a straight number of feet back from the road is when that zone starts – 175 feet back from the road; that it is allowed in either zone.

Ms. Bennett asked if there were going to be any structural alterations to the building.

Dr. Khanjani said that there would be for the door to the outside, with a ramp, for the office; that there would only be an additional bathroom on the inside.

Ms. Bennett said that your deed does require that you get the permission of the mortgagee to do any structural alterations to the building.

Ms. Pelletier explained what that meant and that a phone call to the bank would be the best first step regarding this.

Dr. Khanjani said that she would do this.

Ms. Pelletier said that she would have input back from fire, etc. by the public hearing.

The Public Hearing was scheduled for September 15th.

It was the **consensus of the Board** that no site walk was necessary, due to their familiarity with the pertinent property.

C. Continued discussion on clarifying ordinance provisions related to development on private, nonconforming roads and 1,000' maximum dead-end road length.

Ms. Pelletier said that the Board was asking for what other towns did for dead-end road lengths and gave a handout to the Board. She said that some of our surrounding neighbors don't address maximum road lengths and don't address non-conforming situations; that the hand-out is just a sampling of communities around the State; that the majority seems to be 1,500 to 2,000 across the State; that some allow the PB to waive that requirement. She said that Maine DOT came out with something a long time ago (not sure still current) with what they call 'nodes', which is the end of any dead-end road, or any intersection – an intersecting road is a node – and they suggest a ratio of one connection (street) for every three or four nodes; that it's tough finding anything modern from DOT in that regard; that she would keep looking.

Mr. Duncan said that it looks like Windham was the only one that Ms. Pelletier was able to ascertain any rationale for their number, in that it appears to be a connection to fire protection; that all the others we just see numbers and there is no rationale.

Ms. Pelletier said that we would never recommend enacting an ordinance that had waiver provisions that had no criteria; that if you were going to waive something you would have to have criteria to do that. She added that she didn't particularly like doing anything by average daily trips (ADT) because she thinks that's too hard to keep track of; that that standard changes all the time – what an average house has for ADT.

Mr. Duncan said that he found it interesting that, regardless of the daily trips; they are all the same length.

Mr. Beckert asked if we had contacted SMRPC.

Ms. Pelletier said that SMRPC is the one who wrote our road ordinance; that the person who wrote it is no longer there but we can certainly see if they have something for guidance.

Mr. Duncan said that the current restriction in our ordinance came from a previous restriction into JT Locke's wording.

Ms. Pelletier agreed, saying that she thought it was specifically asked of the Board if this was something you want to look at changing and the answer at the time was no. She said that she was sure they would have something to say about it and she could get in touch with them and have something for the next time.

Mr. Beckert said that it might be worth asking the question to see what the current pulse is in the planning community.

Ms. Pelletier said that she and Ms. Ross had time, now, to take a crack at a rough draft for the non-conforming road issue.

Mr. Duncan said that he liked the summary and appreciated the effort; that it gives us something to think about.

Ms. Pelletier asked the PB if they wanted her to add more towns to it or just the input from SMRPC.

Mr. Duncan said that he didn't think she needed to add more towns unless she finds a significant outlier, one way or the other.

Mr. Lentz added if she finds some rationale. He said that the only thing he does see on here is that there is a difference in some of them between private roads and town roads; that they do distinguish that there is a difference

Ms. Pelletier said that some of them clearly state that there is no maximum for a private road; that if you say you are never going to turn that road over to the town then it can be as long as you want.

Mr. Lentz asked what would be wrong with that logic on a private road.

Ms. Pelletier said that she didn't think there was anything wrong with that logic; that if the fire and safety people are okay with that and if you want to live on a road that long, then it is certainly your prerogative; understanding that it will never be turned over to the town; that it would not be an expense the town would have to take over later and it's maintained by the homeowner's association.

Mr. Beckert said that we have those situations that exist.

Ms. Pelletier agreed; that we have many of these.

Ms. Bennett said that she is familiar with Kittery's ordinance and they do have an entire chart of road standards.

Ms. Pelletier said that they don't actually have anything on dead-end roads, though.

Ms. Bennett said that within the all the dimensional requirements for roads they do have that.

Ms. Pelletier said that she had asked Ms. Ross that and she said that they didn't have anything on that.

Ms. Bennett said that she would be happy to give Ms. Pelletier a copy; that it's a couple pages in the second section, discussing some of the specifics included.

Mr. Lentz said that he would think that, if you are the owner of that property and it's your house that that private road is servicing, there is of course a risk of fire damage or any other service risk; that that's the risk the homeowner takes.

Mr. Duncan said that the problem with private roads is that there are going to be seven, ten, twenty homes on it; that it's not just an individual.

Mr. Lentz clarified that he was thinking more of an individual home on a private lot.

Mr. Beckert said that that would be a driveway and that's been an issue because driveway maximums are 500 feet; that a contiguous piece of property by one owner wanting to put their house 2,000 feet off the road – so be it.

Ms. Pelletier said that we have good standards that require homeowner associations; having documents in place when it's a subdivision coming through the PB and you guys get a chance to see those and make sure that something is in place before people start buying homes. She added that there are situations in Town where that is not the case, though, and it's a nightmare with no one knowing whose responsibility it is to plow or maintain the road and trying to get one of these things organized after the fact is really difficult; that the PB might want to consider that because , even if you only have one house on it now and it's 2,000 feet long, that that doesn't mean that twenty years from now there won't be more homes on there; maybe thinking of a mechanism to {prevent that}.

Mr. Beckert asked how the Town enforces a homeowner's association.

Ms. Pelletier said that you don't enforce it; that you just make sure it is formed before anyone does anything in there. She added that it's not a requirement that you do it; we see this problem a lot, just talking from experience; that to this day there are many examples in Town of that situation happening, so just a word of caution.

Mr. Duncan said that, in the same way, how do you prevent that road from being applied to the Town to be public at some point.

Ms. Pelletier said that the standards to apply to make it a public road are already very specific.

Mr. Duncan said that we are now saying that a private road has to be built to the same standard as a to-be public road, anyway.

Ms. Pelletier agreed.

Mr. Duncan said that a future road, let's say a private road built to an unlimited length, as an example, asking what's to prevent some future residents on that road from applying for it becoming a public road.

Ms. Pelletier said that you can't apply to make something a public road that's more than 1,000 feet today, suggesting they leave that in place for any road that intends to become public. She added that, in the case of a subdivision, you could have a note right on the face of the recorded plan that says this road will never become public.

Mr. Lentz asked if we could build a subdivision in that situation where you had a private road on private land and, all of a sudden, they decide to sub it out.

Ms. Pelletier said yes, Old Farm Lane is an example; that that is a perfect example; that it is a family subdivision that is longer than 1,000 feet and was one of those situations that had difficulty with maintenance and associations and all that. She added that that is not a Town road.

Mr. Whalen asked if we knew of the origin of the 1,000 feet limitation.

Ms. Pelletier said that she thought it had something to do with fire apparatus at the time not being able to go beyond that; that today Chief Muzeroll will say that that is not a limiting factor for them.

Mr. Beckert said that we even went back and asked people who were on the PB at the time and nobody remembers.

Mr. Whalen said that the reason why that requirement is still on the books in many communities because there is nothing left to develop so, therefore, it's of no consequence. He added that the question for him would be, for those communities that still have that on the books, what is the consequence, what is the net impact to this community. He said that it ranges from lot size and frontage and setback requirements to road distances. He said that he noticed the memorandum in our packet tonight talking about the current wait list for growth permits; that there is an unintended consequence, here, one way or the other; that depending on which side you're on, that could be good and, on the other hand, it could be something very worse to the negative and destructive side of property rights and the benefit, or the lack thereof, to our community, as a whole. He said to Ms. Pelletier if, in your travels with these other towns, you had an opportunity to chat with the Planning Director, or whoever the case may be, as to where that issue fits into their planning culture at the present time and whether or not it is having any adverse consequences to the ability of the property owner to, in fact, fulfill their rights as property owners.

Mr. Duncan said that, in looking at this list, and not to say that Rockland or Scarborough doesn't have a basis for it, or something of that sort; that it would seem that Beginning with Habitat has a broader planning-type organization and wondered if they would have a rationale or basis for the number they have; that it may be just the average of what's in the State; that he thought it might be helpful to get some input from SMRPC to see if they have a basis for these numbers.

Mr. Lentz asked how many different situations can we find this 1,000-foot restriction in and is it possible to put that on paper (real life examples); that he thought it would help him to think through the document.

Ms. Pelletier said that she could and that she thought that was a great idea.

Mr. Duncan asked to briefly discuss non-conforming lots. He gave Ms. Pelletier something he had written regarding his conceptual thoughts on this. He said that right now we have a definition for a non-conforming lot and it seemed more logical to him to establish the positive – what is a conforming lot – because that’s the starting point of the conversation; that then a non-conforming lot would be a lot that doesn’t conform to the definition of conforming; that that was his first thought. He added that ‘back lot’, by definition because it doesn’t have sufficient road frontage, is a non-conforming lot, but it is kind of a special non-conforming lot and how to word that needs to be thought about; that basically using the same thoughts that are in the current definition you really have two potential ‘back lot’ scenarios; that one is that it conforms otherwise or it doesn’t. He said that, theoretically, a non-conforming back lot is kind of a redundancy in terms but we need to somehow distinguish between one that doesn’t need special dispensation to build on versus one that maybe can’t be built on at all. He added that he thinks this legally non-conforming back lot is bogus; that he thinks we should get rid of that term altogether; that, basically, what he thinks that term was trying to say is it’s a back lot that legally exists.

Ms. Pelletier said that that is the terminology; that it is non-conforming but it’s legally non-conforming; that most non-conforming situations are illegal but, if it was that way on the date the ordinance was enacted, then it is legally non-conforming.

Mr. Duncan said that, really, what she is trying to get to is this conforming, non-conforming back lot scenario; that she’s saying the conforming back lot, if you will, is the legally non-conforming back lot.

Ms. Pelletier said no; that you can have a new back lot and that’s still a non-conforming lot but it’s not a legally non-conforming back lot; that it is conforming to today’s back lot standards, which, in and of themselves, are non-conforming.

Mr. Duncan said that what she is trying to distinguish is the June 14th, or whatever it was, pre and post by saying legally non-conforming.

Ms. Pelletier said that was correct.

Mr. Duncan said that it is a pre-existing, prior to June 14th, or whatever the date was. He reiterated that he would give her his written thoughts as she is thinking about trying to write up something for us to look at; that he just thought, conceptually, he would bring it up and say he has been thinking about this little bit.

Ms. Pelletier agreed that it’s hard to get your mind around; that she appreciated you all thinking about it.

ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS

There were no outstanding action items to discuss.

ITEM 8 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED

- **August 25, 2015 letter from Paul & Helen Goransson**
Mr. Beckert said that this was informational, at this point, because it does relate to an active PB case and requested we don't discuss it tonight.

Mr. Duncan said that there was one from Jennifer Fox, as well.

Mr. Beckert said that that didn't come in on time for the agenda and did not come in properly.

Ms. Pelletier will have that on the next agenda.

- **August 27, 2015 memo from Heather Ross, CEO re: growth permits**

Mr. Beckert said that the current wait list for growth permits is 48; that 39 are for subdivisions, 8 are for non-subdivision, and 1 is for affordable housing.

Ms. Pelletier said that, if you are a subdivision, it is basically going to be three years, at this point, before you can build.

Mr. Lentz said that there is such a thing as managing growth and, then, there's such a thing as subduing it; that he doesn't know where the line is, asking if the State drew the line.

Ms. Pelletier said that the State doesn't; that it would have to be challenged; that the court could and only a court could.

Mr. Beckert agreed; that they have before. He added that the high court upheld Eliot's previous growth ordinance when it was challenged by the Maine Homebuilder's Association; that he believed they unanimously upheld it.

Ms. Pelletier said that that was at 48.

Mr. Beckert said that that only hit its high point seven times in 34 years.

ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for September 15, 2015 at 7PM.

ITEM 10 – ADJOURN

There was a motion and a second to adjourn the meeting at 7:55 PM.

VOTE

4-0

Chair concurs



Steve Beckert, Chairman
Date approved: 10/20/15

Respectfully submitted,

Ellen Lemire, Recording Secretary