



ITEM 1 - ROLL CALL

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

Also present: Kate Pelletier, Planning Assistant.

Absent: Larry Bouchard (excused).

Voting members: Jeff Duncan, Greg Whalen, Dennis Lentz, and Melissa Horner – Alternate.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – REVIEW AND APPROVE MINUTES, AS NEEDED

Minutes were not reviewed at this meeting.

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

Notice of Decision letters were put on hold until the next regular meeting.

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

A. 10-minute public input session.

There was no public input tonight.

B. Public Hearing – and continued review of an Application for a Shoreland Zoning Permit to expand an existing non-conforming structure located at 15 King’s Highway South. Applicants/owners are: Michael & Julie Pomeroy (mailing address: 374 Main Street, Eliot, Maine 03903). Property can be identified as Map 1, Lot 161 and is located in the Village Zoning District and Limited Commercial Shoreland Zoning District. (PB15-13).

The applicants, Mr. Ken Markley (Northeasterly Surveying) and Scott Fiorentino (Architect) were present for this application.

Mr. Markley summarized the application by saying that this is an 8,560 square-foot non-conforming lot, the house was built prior to zoning, and they want to basically replace the house in its current location. He added that they want to raise the height of the structure, not to exceed 35 feet; that existing lot coverage is 19.2% and the proposed lot coverage is 18.8%; that the current parking area will be moved from the road to an area adjacent to the house, with some parking underneath the house. He said that they will

remove the existing bulkhead and side steps, as well as the storage shed, just for coverage purposes. He added that it is well-designed and the architect is present for any questions.

Mr. Beckert explained the rules of the Public Hearing.

7:06 PM The Public Hearing was opened.

Ms. Lori Howell, 13 King's Highway South, said that she wanted to commend the applicants for redesigning the plan; that she thought it was a much better plan with much better engineering behind it. She asked if the applicant could put up some shrubbery on the side with the 'carport' where the cars are parked under the house just to give some view improvement, perhaps.

7:07 PM The Public Hearing was closed.

Mr. Duncan asked for his memory to be refreshed regarding the volume change of the proposed structure compared to the existing structure.

Mr. Fiorentino said that the original volume of the project was 10,360 cubic feet; that what they are doing now is actually lifting the house, keeping it on the same footprint within the same lot. He added that we are taking a house that was approved in 2013 and lifting it so that the Pomeroy's can drive underneath the house because the lot coverage doesn't allow a garage. He said that they would enter into the house from underneath into a covered entry to stairs up to the first and second floors. He clarified that that increases the volume by raising the house up because of the stairs, and they are taking advantage of the slopes to put some solar panels on the roof. He said that the house is 1,836 square feet and brings the volume up to 23.8%.

Mr. Whalen asked that the parking situation be addressed with regard to the site elevation. He asked if the garage area was not enclosed on all four sides.

Mr. Fiorentino said no, that it is open on all three sides; that in our square footage coverage we did include the covered lattice exposure and the stair tower.

Ms. Bennett said that, from her notes of the last meeting, she had written that the piers for this structure needed a test of the soils capacity.

Mr. Fiorentino said that we actually did that today; that a significant portion of the house will be sitting on these two piers and those pilings are going to be very important; that there will probably be very large footings, reinforced and built underground, and set down to probably five or six feet.

Mr. Duncan asked, based on the public comment this evening and recognizing there was no ordinance requirement regarding screening between residential lots, if there was

anything the applicants recognized based on the comment received or any willingness to accommodate that.

Mr. Markley agreed there was no requirement but he thought the Pomeroy's wanted to be good neighbors. He added that he thought that, once construction begins and they see how things are going to be, that they might come up with some sort of agreement; that views are important in this area so the type of shrubbery is important; that he didn't see any problem there and thought they would work that out.

Mr. Whalen asked what elevation that would occur on if shrubbery were added.

Mr. Markley said that that would have to be something they would have to agree on. He pointed out which side of the house the neighbor lived on for clarification.

Ms. Howell clarified where her house was located, the shrubbery currently in place (arborvitaes part of the way down), and the area of concern ('under' parking area).

Mr. Duncan moved, second by Mr. Lentz, that the Planning Board approve PB15-13 be accepted, as presented, with the following standard conditions of approval:

1. The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board.
2. The permit is approved on the basis of information provided by the applicant in the record regarding the ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.
3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.

VOTE

4-0

Chair concurs

Mr. Beckert said that there is a 30-day period by which the PB decision can be appealed by an aggrieved person or parties – move forward but move forward cautiously.

C. Continued review of an application for Subdivision/Site Plan Review to construct a 21-unit elderly housing development off State Road. Applicant is Joseph Falzone (mailing address: 7B Emery Ln., Stratham, NH 03885). Owner is Barbara Libbey (mailing address: 1372 State Rd., Eliot, ME 03903). Property can be identified as Map 20/Lot 13 and is located in the Village and Suburban zoning districts. (PB15-03)

Matt Randall (applicant representative), Ken Wood (Attar Engineering), Scott Gove, and Mr. Libbey were present for this application.

Mr. Randall summarized the proposal – 21 elderly housing units, a 1,000-foot cul-de-sac, 20.9 acres will be developed from a 78-acre parcel; four lots will be created, each driveway will have two individual units off of it, there are a couple of wetlands that they will not be impacting; there will be some screening from some of the existing properties, topography on the site are two very large, open meadows; that on one the tree line will be pushed back slightly to make room for a couple of units; that they are meeting the Town stormwater requirements for a 50-year storm, DEP requirements for stormwater treatment that 2-, 10-, and 25-year storms don't increase, and provide treatment for all impervious areas; they will be able to capture the required 90% for new impervious and 80% landscaped with retention ponds, a soil filter pond, and a wet pond; there is an existing catch-basin at the front entrance that will capture excess stormwater there; a 50-foot setback will be maintained all around the parcel; an easement would be maintained for current residents and there will be some snow storage.

Mr. Duncan said that this is a modification to the previously submitted plan and your application appears to include new information, as well, particularly the high-intensity soils survey. He asked Mr. Randall to review the waivers that were being requested originally and what is currently still being requested.

Mr. Randall said that there are four waivers and a few temporary waivers; that we are only requesting two waivers at this point – the size of the units, from 1,200 square feet that the ordinance requires to 1,500 square feet, and a waiver from public sewer (not available) to septic systems/tanks. He added that the two waivers they aren't requesting right now are the high-intensity soils survey, which we went out and got and submitted to the Board, and from requirements in Streets & Sidewalks. He explained that we had a little bump-out street that was a little circle with five units on it; that we changed that because we didn't want to have to get a waiver from the allowed two units or turning radii, etc.; that we took that out and re-did the layout of those units. He added that the wet pond has moved from the previous application, as well. He said that the temporary waivers we requested were pretty much for the submission requirements to have time to get the pertinent information in to the Board; that there are no temporary waivers requested now.

Mr. Lentz said that he thought we were waiting for a report back from DEP on vernal pools and significant wildlife.

Mr. Randall said that there are two vernal pools located at the far back of this property; that he might have mentioned that we had gone out there and DEP looked at them; that we haven't actually gotten a report from DEP and we are getting ready, right now, to submit our stormwater request to the DEP.

Mr. Wood clarified that DEP will sometimes make a cursory visit but they usually leave it up to the applicant's soil scientist to determine if a vernal pool is of special significance, which requires 40 or more wood frogs, 20 or more salamanders, etc. and, then, even if you have a pool with special significance, you are allowed 25% development within 250 feet and the rest of it should remain as an un-fragmented buffer area; that because these vernal pools are more than 250 feet away they wouldn't impact this portion of the property.

Mr. Lentz asked if there was any kind of a DOT permit in the works.

Mr. Randall said yes, for the collector street cul-de-sac.

Mr. Lentz asked if the units were going on slabs or have basements.

Mr. Randall said they were all going to have basements.

Mr. Whalen asked if they could review the access and egress issue with regards to the 1,000-foot cul-de-sac and, specifically, the two means of potential access and egress onto State Road, as it relates to the ordinance.

Ms. Pelletier said that the spacing requirement doesn't apply to this road because it is a State road; that they have their own requirements for spacing and will require an entrance permit. She added that we have no jurisdiction in this situation over the frequency of entrances. She said that she didn't think there were any other issues.

Mr. Lentz asked if they were still proposing underground utilities.

Mr. Randall said yes. He added that we will have about four street lights; that we do have a five-foot sidewalk and three-foot shoulders on either side, bituminous curb. He added that the Fire Department did request two hydrants, with one at Station 800 and one at Station 300. He said that the Kittery Water Department has enough capacity.

Mr. Whalen said that we have the response in from Mr. Moulton and asked if we had the other department reports in.

Ms. Pelletier said no, that he was the only one. She added that they have been requested.

Ms. Bennett asked if Mr. Moulton received the stormwater management plan.

Ms. Pelletier said yes.

Ms. Bennett asked if he had no comments.

Ms. Pelletier said no.

Ms. Bennett said that the stormwater plan calls for reduced salting around the wetlands and stormwater and, as this road was being proposed to be accepted by the Town, she wondered if Mr. Moulton was comfortable with minimum salt applications on this road.

Ms. Pelletier said that she didn't know but could ask that question, specifically.

Mr. Whalen asked Ms. Pelletier, with regard to the two waivers, to review our authority, per statute, to grant those waivers.

Ms. Pelletier said that, in §41-67, it talks about the PB's ability to waive any of the requirements in the ordinance "*due to special documented circumstances of a particular plan, the provision of certain required improvements is not requisite in the interest of public health, safety and general welfare, or is inappropriate because of inadequacy or lack of connecting facilities adjacent in proximity to the proposed subdivision, it may waive such requirements, subject to appropriate conditions.*"

Mr. Lentz said that he read Joel Noel's soils report with great interest but all those numbers don't mean a lot to him. He asked if Mr. Randall would tell the Board what the conditions were for septic systems.

Mr. Randall said that he was not a soil scientist but, from Mr. Noel's report, they are very good soils for septic test pits. He added that, on the plans, pretty much every septic system that is shown does have an existing test pit and shows that they are passing.

Mr. Lentz said that there was one tank per house.

Mr. Randall said yes; that they are shown on the plans as Eljen In-Drains; that there might be a little more space in between them to allow each house to have their own.

Mr. Lentz asked about multiple house drain fields.

Mr. Randall said that they are shown that way but we are still working with the developer on that.

Mr. Falzone said that we may do individual on some.

Mr. Randall said that the proposed Eljen In-Drains reduced the size and footprint required.

Mr. Wood said to remember that in Maine septic systems are designed in accordance with the sub-surface plumbing code; that when you look at Mr. Noel's logs, you need nine inches of natural soil to the restrictive layer of bedrock or estimated seasonal high

water table to allow for a septic system, fifteen inches if they are inside the Shoreland zone. He added that, in addition, the system is designed on both the number of bedrooms at 100 gallons per day per bedroom and the classification of the soils as medium, medium-large, and large waste water fields, depending on how he classifies the soils.

Ms. Bennett said that she had a concern for the distance of some of these units and the wetlands; that it looks like they are much closer to the wetlands than 75 feet.

Mr. Wood said that by our ordinances they are probably not considered wetlands; that in Eliot wetlands are considered 10 acres or greater and non-forested so they're not wetlands under the Town's ordinance.

Ms. Bennett asked if they didn't fall into the Shoreland Zoning.

Mr. Wood said that no, they don't; that under the State ordinance and Army Corps they are wetlands but under DEP's ordinance, vernal pools aside, you can build directly up to a wetland unless you are a site location of development permit, which this is not; that then they would like a 25-foot buffer.

Mr. Randall said that the Shoreland Zoning is a small piece at the back of the property and about 1,500 feet to the back.

Mr. Wood said that one of the permits mentioned that we are applying for is a Stormwater Law Permit with DEP, not a site permit; that under the Stormwater Law Permit guidelines we have to address water quality and quantity and that's why the stormwater management plan is a little involved. He added that, under the State's requirements, you have to treat 95% of the impervious area and 70% of the developed area in one of four methods – wet ponds, infiltration ponds, higher retention undrained soil filters, or wooded buffers. He said that, while Mr. Moulton reviews the stormwater management plan, the State will also get a review on that and, when they review that, they address water quality.

Mr. Randall said that the State's review is a lot more vigorous and stringent and we have to do a 2-, 10-, and 25-year.

Mr. Duncan said that he was concerned about the two waivers being requested; that he thought that in order for this application to be considered complete, we need to determine whether or not we are going to grant those waivers. He added that, personally, he believed this application requesting these two waivers was inappropriate; that he would request this Board to deny this application based on the waivers being requested.

Mr. Beckert asked for the feelings of the rest of the PB.

Mr. Whalen said that, perhaps, the applicant could give an explanation as to the request for a waiver on the square footage size of the units.

Mr. Wood said that, maybe, Mr. Gove would be in the best position to do that; that, of course, a few years ago the BOS granted a similar waiver for the Villages at Great Brook; that that was 150 units off of Bolt Hill Road. He added that that project is actually going forward; that new owners purchased it and they are planning to build that; that there were 100 units of independent living, 40 units of assisted living, and 10 units of dementia care. He said that he thought that Mr. Gove could talk to the marketability of the units and why we're requesting the area.

Mr. Gove said that the 1,200 or 1,250 that the ordinance speaks to is much more indicative of large buildings, like what we did at Shephard's Cove in Kittery. He added that, on single-family detached homes, 1,500 square feet is fairly small; that Fitz Farm in Durham start at 1,600 square feet and go up to 2,200 square feet; the same with The Cottages, which go up to 2,200 – 2,400 square feet in Durham. He said that, if you go down to Shephard's Cove, some of those duplexes are 2,400 square feet per side; that 1,500 square feet in a single-family dwelling is fairly modest in size for two people. He added that they are all deed-restricted to two bedrooms so they can never be more than that. He said that we felt that, if you look at any of the surrounding projects, 55 and older, this is probably on the lower end of things, 1,500 square feet. He said that we know, partly, how the 1,200 square-foot number came to pass.

Mr. Wood said that he didn't know if it was written around Baran Place, or something similar to that.

Mr. Beckert said that we have had requests come before this Board to increase that number, anyway.

Ms. Pelletier said that, just so you know, that waiver that was granted was for up to 1,750 square feet for The Villages.

Mr. Duncan said that, according to the ordinance, these restrictions, and they are both under the same section (1,200 square feet is paragraph d and public sewer is paragraph f), were passed as recently, by Town Meeting, in 2001 so it's not like it's a real outdated restriction, if you will.

Mr. Whalen said that he sees the sewer and the square footage issues as two...

Mr. Duncan said two separate issues; that he didn't disagree with that; that he is just saying that they both seem to have been passed in the 2001 Town Meeting.

Mr. Whalen asked, if this Board were not to grant either, or both, of the waivers, what would be the recourse to the applicant; would it be the Board of Appeals.

Mr. Wood said probably; that when thinking of sewer, we don't have a lot of sewer in Eliot and the sewer on Rt. 236 is mostly private at Bolt Hill Road so, unless we're thinking elderly housing on Bolt Hill Road and Main Street...that he didn't know how

the ordinance was written but it doesn't really allow for elderly housing in many areas of Town, if any.

Mr. Whalen said that he found it rather interesting, regarding square footage, why there is a restriction at all, asking why we would care whether or not somebody wanted an 800 square-foot unit, especially under an elderly housing, age-restricted project to begin with, or they wanted 2,500 or 3,000 square feet; that he didn't know how that negatively impacts either the project, itself, or the Town or any infrastructure or the adequacy of life safety issues to deal with. He added that his position with regards to the size of the unit is that, even though...and, again, referring to the waiver section...he finds a disparity, here, between the definition of our ability to grant a waiver more applicable to the sewer than he does to the square footage and, yet, he thinks the square footage, of the two, is the easier to consider. He said that we have somewhat of a dilemma, here, that we need to work our way through.

Mr. Lentz asked Mr. Gove how he envisioned this extra space being used.

Mr. Gove said that 1,500 square feet is pretty small, if you think about the homes you are currently living in; that by the time you have your kitchen, dining room, living area, and two bedrooms...1,500 square feet is the gross, not the net, area. He added that you take the exterior foundation size when you're figuring that out; that he thinks you would be hard-pressed to find '55-and-older' detached, single-families that would be under that; that as a matter of fact almost all the ones that we are involved with start over that square footage. He said that most 55+ people are downsizing from much larger homes; that he thought that 1,200 square feet really envisioned a larger, congregate building and that's how he thinks that came about. He added that, if you think back to 2001, that was just when 55+ started coming, our density bonuses, all the projects, and things like that; that he thinks we've learned a lot in the fourteen years since then.

Ms. Horner said that she sort of agreed with Mr. Whalen that the gross floor area isn't necessarily...that it is a point of contention for the public to pick on for using against this project; that as a PB member she thinks we should grant that particular waiver; that her parent were living in a more up-to-date space with more range of motion and they had to use a wheelchair, which her dad does; that they live in a 1,550 square-foot house and his wheelchair barely fits around the corners, reiterating that she doesn't see any reason why we can't grant that waiver.

Mr. Beckert asked Ms. Pelletier if the PB had to grant the waiver tonight.

Ms. Pelletier said that she doesn't think it ties it to the ordinance in terms of where in the process you have to do it but, in order to move ahead with the final plan she thought the PB was getting to that point that they (applicant) need to know.

Mr. Lentz asked if we were going to have a site walk and when would that be.

After discussion, it was agreed what would be staked out and that the site walk would be held October 20 at 4:30 PM; that our next meeting will be on the 20th at 7 PM.

Ms. Pelletier said that they won't be able to attend because they've missed the submission deadline; that the applicant would have had to submit materials (new) today to get on that agenda.

There was discussion regarding the completeness of the application regarding the next agenda.

Ms. Horner asked if we were done talking about the waivers.

At this time, several members of the audience interrupted the discussion and the Chairman called the meeting back to order.

Mr. Whalen said that, regarding the waivers, the definition of our ability to grant waivers states, specifically, because of the inadequacy or "*lack of connecting facilities adjacent in proximity to the proposed subdivision*"; that that's an easy one for him in that sewer is obviously not only inadequate but it is not within any close, adjacent proximity so he would support the waiver.

Mr. Lentz moved, second by Mr. Duncan, that the Planning Board accept the waiver to go from 1,200 to 1,500 square feet on the size of the unit.

DISCUSSION

Mr. Duncan said that he did not see this as public health, safety, or general welfare, which are the criteria by which a waiver can be granted; that he doesn't think we have the authority.

Ms. Horner said that she thought that general welfare is exactly what it is; that given her comments about her father, she thinks that's exactly what general welfare is.

Ms. Bennett said that she would argue that, not knowing the genesis of that number, that 1,200 square feet was put forward to keep housing affordable for the elderly, and that would be the public good that it was achieving. She added that, for the record, she lives in a 1,000 square-foot house and she gets around just fine.

DISCUSSION ENDED

VOTE

3-1

Chair concurs in the affirmative

Mr. Whalen moved that the Planning Board grant the waiver for §41-310 (f), wastewater disposal will be provided by on-site wastewater disposal.

Ms. Horner asked if there was any feedback from any members who wished to speak as to, maybe, why they feel that that doesn't fit within the ordinance we are trying to review.

There was no response.

There was no second and the motion fails.

Mr. Beckert said that the PB has granted one waiver on the size; that the other waiver is still outstanding, at this point, asking what the pleasure of the PB was on the application as far as considering the application as complete.

Mr. Duncan asked Ms. Pelletier if there was a specific requirement as to what needs to be in possession to be considered complete.

Ms. Pelletier said yes; that the checklist was in the most recent submission; that she has gone through and checked off the boxes in her review, and you guys should be doing this, too, to just make sure that the applicant has addressed every one of those requirements; that as far as she can tell, they have, but, that's for the PB to decide.

Mr. Lentz said that he reviewed that checklist this afternoon and saw nothing that was missing.

Ms. Bennett asked if a DOT has issued a driveway permit.

Ms. Pelletier said that that can be a condition of approval.

Mr. Whalen moved, second by Mr. Lentz, that the application is complete, per the Planning Board checklist.

VOTE
3-1 (Mr. Duncan opposed)
Chair concurs in the affirmative

Mr. Beckert said that the PB considers this application complete, at this point in time, and we will move forward with the site walk on October 20th. He asked Ms. Pelletier about scheduling the public hearing.

Ms. Pelletier said that they could do that that night, as well; that if they don't have anything new to submit, then they don't have to meet the 14-day requirement.

Mr. Wood said that we kind of have a waiver hanging out there so he didn't know if the PB would like to give us some guidance on whether you might want more information to evaluate that waiver; that maybe the PB would like the project soil scientist to meet us at the site walk or explain the adequacy of the wastewater disposal system. He said that, if there's anything we can give you to help you decide one way or the other on the waiver, then he might have something more to submit for the next meeting.

Mr. Beckert asked the PB's pleasure regarding having any discussions with the soil scientist and if they wanted him there for the site walk.

The PB agreed that it would be helpful to have the soil scientist at the site walk.

Mr. Wood said that they would have him at the site walk and, if the PB so sees fit, we'll agree to the public hearing on the 20th and won't submit any additional information prior to the meeting.

D. Request for Planning Board Action to amend a previously approved conditional use permit by constructing a 12'x20' addition to the existing building located at 958 Harold L. Dow Highway. Applicant/owner is Jonathan Payne (mailing address: 8 Friend Street, Kittery, Maine 03904). Property can be identified as Map 94/Lot3 and is located in the Rural Zoning District. (PB15-14)

Jonathan Payne was present for this application.

Mr. Payne said that he bought that building eight or nine years ago and would like to now add a 12'x20' addition on the back. He explained that he has had his storage up on Route 236 for the last ten ten years and thought it was time to move his storage down behind his building. He added that he has plenty of room back there; that it would not be seen from the street; that he has a back door on the building and will be building the addition over that back door; that he will be using it for storage but didn't think he would be using it for workspace.

Mr. Lentz asked if that was a non-conforming lot.

Ms. Pelletier said yes, adding that you can still expand and that, typically, the percentages come into play in the Shoreland Zone. She added that that is not an issue, here, and what you want to look at is the total percent of lot coverage, saying that he is way under.

Mr. Whalen asked if there was a residential use in that building or is it strictly commercial.

Mr. Payne said that he has an apartment in that building.

Mr. Whalen asked that this was in no way related to your expansion.

Mr. Payne said no.

Mr. Duncan asked what he was planning to store.

Mr. Payne said that it was a combination of things; table saws, staging, extra lumber; that he will probably also try to move some things out of his workshop, such as hardware, to try to free up a little space inside.

Mr. Beckert said that, if he remembered right, the applicant was doing cabinetry work, and the like.

Mr. Payne agreed.

Mr. Lentz read, "Request for Planning Board Action to amend a previously approved conditional use permit" and asked why we used that terminology.

Ms. Pelletier said that this site, when it was developed, received what we used to call 'conditional use approval'; that the whole site was reviewed before it was developed and that happened in 1998. She added that he came back later, new owner, and you decided it was not a change of use so that permit is still in effect. She said that, rather than go back and start all over again, it has already been reviewed, so all we can do is review the change. She added that the PB can still have a public hearing and/or site walk, if you want to, and deciding whether it is more impact or not is entirely the PB's decision.

Mr. Beckert asked the PB what their pleasure was on this.

The PB agreed that this application did not need a public hearing.

Mr. Beckert asked Ms. Pelletier where we are, at the minimum, on this application.

Ms. Pelletier said that the PB could do an administrative change and approve it tonight.

Mr. Beckert said that the PB can consider it an administrative change because there is little to no impact to the site and asked the PB for their input.

Mr. Whalen asked, if we were to consider that, what would be the proper wording.

Ms. Pelletier said a revision to a previously approved conditional use permit by constructing a 12'x20' addition on the existing structure, something like that.

Mr. Whalen moved, second by Ms. Horner, to consider this request as an administrative change and amend the previously approved conditional use permit by allowing construction of a 12'x20' addition on the existing structure, known as PB15-14.

VOTE

4-0

Chair concurs

Mr. Beckert said that there is a 30-day period by which the PB decision can be appealed by an aggrieved person or parties – move forward but move forward cautiously.

E. Application for a Home Business Permit to establish a custom cabinetry and furniture business at 804 Goodwin Road. Applicant/owner is Caleb Dietrich (mailing address: 804 Goodwin Road, Eliot, Maine 03903). Property can be identified as Map 80/Lot 21 and is located in the Rural Zoning District. (PB15-15)

The applicant was present for this application.

Mr. Dietrich said that his plan is to put a workshop out back of the house that he and his family live in; that he is a cabinet maker and wants to have a home business.

It was confirmed that it is the 32'x56' building that is proposed to be used and meets the setbacks.

Ms. Pelletier, directing herself to Mr. Dietrich, said that we have talked a little about this concept and she and Ms. Ross have been talking about it so, just to be clear, what he is building – the footprint – appears to be bigger on the site plan than the actual house.

Mr. Dietrich agreed that was correct, footage-wise.

Ms. Pelletier said that we went back and forth on this and she and Ms. Ross both agree that an accessory structure has to be smaller in footprint because an accessory structure doesn't have living area; that you aren't calculating it the same way. She added that, in order to be an accessory structure, by definition, it has to be smaller than the principal structure; that it appeared that way on his site plan but she just wanted to bring that up and see if he has any ideas for an alternate design.

Mr. Dietrich said no; that that's the first he is hearing of it.

Ms. Pelletier said that, otherwise, that building then becomes the principal structure of the property so it would have to be a commercial operation with an accessory house, which he can't do. She added that he can make it one square foot smaller than the house and, like we talked about, it can be bigger than the 1,500 square feet allowed by the Home Business Ordinance but you just can't use all of it for the home business. She said that we just came to this conclusion today; that it has come in from other people, too; that that is how it is typically looked at – the footprint.

Mr. Beckert asked what the square footage of the house is.

Mr. Dietrich said that it was 1,730.

Mr. Whalen asked if we were talking about the footprint of the house or the square footage in the house.

Ms. Pelletier said that, if you are comparing the two, it's not fair to take living area in the house and compare it to the footprint of the accessory building; that an accessory building doesn't have living area so you have the two floors in the house and that's

going to double your footprint, basically; that looking at it on an aerial view, and she thinks the intent of the definition of an accessory structure is that it's smaller in size than the principal structure; that the accessory structure doesn't have the benefit of counting two floors like a single family does; that it's apples and oranges in our eyes. She clarified that the PB is not permitting this; that what the PB is looking at is whether the home business can meet the requirements in the structure. She added that it's not the PB's job to determine if he's in violation of that part of the ordinance; that this hasn't even been built yet.

Mr. Whalen asked, if he is to understand, if the footprint of the house were 800 square feet, and it's two stories, for 1,600 square feet, does the footprint of the accessory building have to be 800 square feet, too.

Ms. Pelletier said that that is the only way to measure.

Mr. Whalen asked if it could be 1,600 square feet.

Ms. Pelletier said that an accessory structure doesn't have living area.

Mr. Whalen said that what he is trying to understand is what the benchmark is to determine the size of the accessory structure; is it the total square footage in the dwelling unit or is it just the footprint of the first floor, irrespective of how many floors it is.

Ms. Pelletier said that she would read the definition, "Accessory structure or use means a use or detached structure that is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure." She added that you could attach the two and that barn could be 500'x500', if you wanted it to be, and then it wouldn't be an accessory structure but part of the principal. She said that, unfortunately, it's not her call or the PB's call but Ms. Ross' call; that she was sorry she had to deliver this at the last minute.

Mr. Dietrich said that he has so many meetings over this.

Ms. Pelletier agreed, saying they aren't perfect.

Mr. Beckert confirmed that if the building was connected to the house, then it's not an issue.

Ms. Pelletier said yes.

Mr. Lentz said that that was crazy.

Mr. Dietrich said that that can't happen.

There was discussion on barn size and agricultural use versus using that same barn for a home business to have a wood shop.

Mr. Beckert asked what the applicant had to do, reduce the size of the building.

Ms. Pelletier said yes.

Mr. Beckert asked by how much.

Ms. Pelletier said until it is smaller than the footprint of the house.

Mr. Whalen said that that was what he was trying to get at; that if the footprint of the house was 800 square feet on the first floor, then the accessory building has to be no greater than 799 square feet.

Ms. Pelletier said yes; that it can be one square foot less.

Mr. Whalen asked if Ms. Ross' interpretation is based upon our definition of accessory structure.

Ms. Pelletier said yes; that she agrees with her; that they had talked about this for hours and it doesn't seem to make sense to do it that way – to look at the two floors of living area in one but only looking at the footprint of the other; that it's not a fair comparison in our eyes.

Ms. Horner asked what the footprint of the house is.

Ms. Pelletier said that it is 34'x20' on the first floor and 34'x22' on the second (garrison-style).

Mr. Dietrich said that there is a 620-foot bump-out on the back of the house.

Ms. Horner asked if that counted.

Ms. Pelletier said that that would be up to Ms. Ross, as she would have to decide.

Mr. Whalen said that his house is 3,400 square feet, asking if he wanted to build a 4,000 square-foot barn on his property and didn't want to operate a business out of it, could he do it.

Ms. Pelletier said that, if he didn't want to use it for agriculture, he could not.

Mr. Whalen commented that that was extraordinary. He asked how his neighbor got to build a barn, an accessory structure, that was half again the size of his house.

Ms. Pelletier said that she didn't know; that every situation is different.

Mr. Lentz asked what we could do with this application.

Ms. Pelletier said that the PB could table it; that they could approve it the way it is because they don't have any ability to deny it over this; that that is a completely separate issue, reiterating that all they are looking at are the home business requirements but Ms. Ross is the one who is going to have to give it a building permit. She added that he may come back and amend it later, and that's fine, and is an easy process; that she didn't want the lines to get blurred.

Mr. Beckert agreed the PB was approving the home business but it kind of goes hand-in-hand, though; that you are approving the home business but, then, he goes to get the permit for what's on the application and he can't get it; that that's where the confusion comes.

Ms. Pelletier agreed, saying that, to not hold up the process, he can come back next time with an amended plan; that people do that all the time. She added that the PB could keep going, pretend she said nothing, and he may come back with a slightly different plan.

Mr. Duncan said that, if the issue is the footprint of the building and we're not considering that and we're approving or denying this application for the home business, then what difference would it make to us if he comes in with a smaller building that complies; that we've already, assuming we do, approved the business, then, the size of the building really isn't our concern.

Ms. Pelletier said that the PB could only approve up to 1,500 square feet of any home of any building on any person's lot for the purpose of a home business and you don't have to worry about the rest of the area; that that's not what is being reviewed here. She added that he has the ability to use 1,500 square feet of this building, whatever configuration it might be; that it may change next time but, is the use okay with the PB or are you okay with this type of operation going on here.

Mr. Duncan said that so, the fact that right now his building is almost 1,800 square feet, our approval would say only 1,500 of it could be used for business purposes and the other 300 could be for his lawnmower, etc.

Ms. Pelletier said yes and he would be found to be in violation if he were ever found to be using more.

Mr. Whalen said that, based upon the sketch in the application, is it premature for this request to be before this Board.

Ms. Pelletier agreed that it was not ideal; that because it's an internal thing and it is not the applicant's fault; that he's sent everything and done everything he's been required to do. She added that there are so many things to consider; that sometimes people change their minds in the interpretation, or something, because something else comes to light;

that that does happen and we do our best; that she happens to agree with Ms. Ross in this case.

Mr. Whalen said that, if he were to come in and chat with Ms. Pelletier and Ms. Ross about putting up a barn on his property that's bigger than his home, he doesn't know which format gets filled out first. Using a particular scenario, he discussed coming in to fill out an application for a building permit and Ms. Ross makes a judgement call that that building is too big for his zone that he's in and it's an accessory building and it can't be bigger than his home; that he would have two choices at that point, he guessed – down-size his building to conform or seek relief through the Board of Appeals (BOA) and, after that if he was to receive relief, then he would be back here applying for his home business.

Ms. Pelletier said that, if he wants to seek relief, he certainly can; that if that were the case, she would say to pause and then have him come back; that in any other situation the structure is never there, first, when you review the use and is always to be built, such as Dollar General and NAPA, so it is not out of the ordinary to review something in that manner.

Mr. Whalen said that he thought the PB needed some direction from the applicant, at this point.

Mr. Duncan said that, using Dollar General as an example, we are doing a site plan review that shows a building that's 3,000 square feet, or whatever it is, and where it is located; that he understands this is not site plan but it is, however, land use.

Ms. Pelletier said that what the ordinance says is does the proposed structure meet the setbacks... yes, he has an application in front of you that meets those requirements; that if you denied him because of what she just said, that would be overturned in a heartbeat in a court of law because there's no criteria in the home business ordinance by which you deny him based on what she just said - the footprint issue; that that's a building permit and Ms. Ross' arena. She added that she is just trying to find a way to not hold him up because it's not his fault and try to work with him so that he doesn't have to miss another two weeks meeting; a public hearing next time with a slightly different plan that happens with almost every application we see; that they do change from submission to submission.

Mr. Duncan said that, since we're not doing site plan but home business use review, if he elects to change the size of the building, he does not have to be here again.

Ms. Pelletier said that, if it's after approval, yes, because you have a condition of approval that says that any change has to come back before this Board.

Mr. Duncan said that it is not a change to what we've approved, which would be the home business.

Ms. Pelletier agreed. She said that if he changed the footprint before approval, he would never have to come back but, if he changed it one inch, after approval, he would.

Mr. Duncan said even though we're not doing site plan.

Ms. Pelletier said yes; that you attach that condition on everything that says any change to what you approved has to come back before this Board. She added that it is an element of the application that you factored in, you reviewed, and made a decision on; that decreasing the size of a building could change everything, as requirements could go away, as an example. She added that, if you don't want to attach that condition, you don't have to but, it's just standard.

Mr. Beckert said that he thought the PB could move forward with the concept of the home business and that it would take up to 1,500 square feet in whatever the structure ends up being before final approval. He asked what the PB's pleasure was, at this point.

Mr. Lentz was all for continuing this.

Ms. Pelletier said to Mr. Dietrich that he could push the PB to make a decision and, if he didn't agree, he could always take it to the BOA; that it's entirely up to him and he doesn't have to decide tonight.

Mr. Dietrich said that this is the first time he has been doing this; that he has been working off of information he's been getting since before he purchased the property; that all that information has just been flipped upside-down tonight.

Ms. Pelletier said only one aspect and she was sorry; that we try our best.

Mr. Beckert asked what the pleasure of the Board was regarding the application they had before them for a home business permit to establish a custom cabinetry and furniture at 804 Goodwin Road.

Mr. Whalen asked if we could just approve the use.

Ms. Pelletier said that that was what you were approving; that you are looking at the land use and somebody else is looking at does the actual structure meet building codes, the plumbing codes, the foundation.

Mr. Whalen asked, for the applicant's purpose tonight, if the applicant would like us to proceed to grant him the approval for his ability to have that home business, that specific use, at that location.

Mr. Dietrich said yes, he thinks so; that that's the normal process. He added that he was told to come in here and apply for this before the building permit; that that's the information he is working under.

Mr. Beckert said that, tonight, the PB needed to agree to move forward with the application, schedule a public hearing for the next meeting, and focus on approval, or not, of the concept of a home business of up to 1,500 square feet to do woodworking, period, on that property.

It was the **consensus of the Board** to move forward with a public hearing on October 20th.

Mr. Duncan said that the application talked about some small quantities of hazardous materials and asked the applicant to explain 'small' and what types of materials.

Mr. Dietrich said that he finishes cabinets, etc., such as varnishes and thinners; that a standard kitchen would use, maybe, three or four gallons of finish; that it is usually job-specific and, sometimes, he has some stuffed stored. He added that he talked with the Fire Chief and, if it seemed like he needed a fire cabinet, he would be willing to do that.

Mr. Duncan asked about electric and heat.

Mr. Dietrich said that he planned to do radiant heat in the slab, which would be fueled by propane, he believed; that that is what we are setting up in our house, now.

Mr. Duncan asked about water and sewer.

Mr. Dietrich said that there is the potential to have a half-bath out there but he isn't sure he'd do it right away but just sort of have the pipes in place underground. He added that he was planning electrical underground from the road.

The PB agreed there would be no site walk.

ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS

There were no outstanding action items.

ITEM 8 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED

September 15, 2015 letter from Orland McPherson

This was regarding the Libbey property questioning the 1,000 feet entrance-to-entrance on State Road, which doesn't apply.

October 2, 2015 budget memo from Kate Pelletier

Ms. Pelletier said that she would have something for them next time.

ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for October 20, 2015 at 7PM.

ITEM 10 – ADJOURN

There was a motion and a second to adjourn the meeting at 8:53 PM.



Steve Beckert, Chairman
Date approved: 12/1/15

Respectfully submitted,

Ellen Lemire, Recording Secretary

