

**TOWN OF ELIOT
BOARD OF APPEALS REGULAR MEETING
NOVEMBER 16, 2017
APPROVED MINUTES**

1. Roll Call:

Present: Chairman Bill Hamilton; Vice-Chair Peter Billipp; Secretary Ellen Lemire; Charles Rankie; Jeffrey Cutting; John Marshall, Alternate and Kate Hanson, Alternate

Chairman Hamilton called the meeting to order at 7:00 p.m. and introduced the Board members. He asked everyone to silence their cell phones. He said hopefully the livestream is working, but the Board does take accurate notes and they have a Recording Secretary as well.

Chairman Hamilton said there is a public hearing and he will briefly read the request, and then outline how the meeting will operate. He read: *Request for Dimensional Waiver from Hughes and Kristin Pope, 43 Creek Crossing, Eliot, Maine, for property located at 495 Harold L. Dow Highway, Map 53, Lot 6, regarding Section 33-189, involving reduction of setback from 500 ft. to 250 ft.*

Chairman Hamilton said he would determine if they have a quorum, which they do, and that the voting members for tonight's hearing would be the five regular members.

Chairman Hamilton noted that the light is on, so they do have live streaming tonight.

Chairman Hamilton asked if there were any conflicts of interest.

Ms. Lemire said she has been the Recording Secretary for the Planning Board on this application and has heard it, but the Planning Board is not finished with it.

Mr. Rankie said if it has been before the Planning Board, our by-laws are clear, then Ms. Lemire would have to step down.

Chairman Hamilton said the Board is not ruling against the Planning Board and that this is not an administrative appeal.

Mr. Rankie said it is his understanding that if she has had exposure, and discussion, nothing personal, that it is his understanding she would have to step down. He said that is why he cannot go to the Planning Board meetings or watch the Planning Board meetings.

Chairman Hamilton said the Board's decision tonight is essentially to determine, through oral testimony, that they can grant a waiver on dimensional standards and send back to the Planning Board to decide the nature of the request to the Planning Board. He said we are another step in the line. He said what the Planning Board has decided or not decided, other than to send the applicants to us... personally, he does not feel there is a conflict of interest with Ms. Lemire's position with the Planning Board.

Mr. Rankie asked if the Chairman could read the by-laws.

Chairman Hamilton said they are part of unfinished business tonight.

Mr. Rankie said that they voted that any project that went before the Planning Board...

Ms. Lemire corrected him, saying it was any decision appealed by the Planning Board.

Chairman Hamilton said it was his feeling it applied to the decision of the Planning Board. He said they are another judicial body.

Mr. Billipp said there was discussion that Ms. Lemire, as Recording Secretary on the situation, should have recused herself, but he does not remember what the case was without having the document in front of him.

Mr. Billipp said that Ms. Lemire has heard the testimony, and they have not.

Mr. Rankie said this has been discussed and Chairman Hamilton asked for the attorney's opinion. He believed the result was, if nothing else, the exposure during the meeting would be an appearance of a conflict of interest from members of the public.

Ms. Hanson said they discussed when the decision of the Planning Board was appealed and that additional information could be viewed as problematic. She said she agreed, and that we are being asked to be a step in the process.

Chairman Hamilton said he did not think it is relevant.

Mr. Rankie said he does not have any strong feelings about it but he felt it was necessary to bring it up.

Chairman Hamilton said he appreciated Mr. Rankie bringing it up because of the issue of transparency.

Mr. Billipp said it was because of Ms. Lemire's participation as the Recording Secretary for the Planning Board.

Chairman Hamilton said this application has nothing to do with what the Planning Board decided.

Chairman Hamilton said he wished that the Code Enforcement Officer was here because if it did not come through the Planning Board, it might have come from the CEO.

Ms. Lemire said that it came from the Planning Board.

Chairman Hamilton asked if any Board member had strong feelings that Ms. Lemire should recuse herself at this point.

Hearing none, Chairman Hamilton said the Board's jurisdiction in reviewing this request for a waiver to dimensional standards, comes through the town's ordinances, citation Sec. 45-194, c, (2), Non-conforming lots of record and read:

"The code enforcement officer is authorized to permit a 25 percent reduction in frontage, setback and yard requirements only. Any other deviation in frontage, setback or yard requirements to a maximum 50 percent reduction may be permitted as a waiver after public hearing by the board of appeals. Any further reduction in frontage, setback or yard

requirements shall be considered a variance. This section shall not apply to setbacks from the high water mark which is provided in section 45-195 (c). In the shoreland zone the code enforcement officer shall not authorize reductions in frontage, setback or yard requirements. Such reduction can only be granted through the board of appeals."

Chairman Hamilton asked if there was any discussion on that.

Ms. Hanson said she has a concern that this part of the ordinance refers to non-conforming lots of record. She said they are given jurisdiction if it is a grandfathered lot and she did not see any other sections in the ordinance that gave them permission for commercial or private properties unless they were a non-conforming lot. She wanted to know if it is not a non-conforming lot, how do people go about appealing this, and would they need to get a variance.

Chairman Hamilton replied that is correct, they would need to get a variance.

Mr. Billipp said the Board is hearing this because of the frontage.

Ms. Hanson said it is a non-conforming lot and if it is grandfathered, it is treated differently in the code, but this property is not a grandfathered property.

Mr. Cutting said the Planning Board could not reduce the setback enough because of the 500 feet difference from the side property line.

Ms. Hanson said the ordinance only relates to properties that are non-conforming lots of record and asked why are they different.

Mr. Billipp said that Ms. Hanson was adding the word "grandfathered."

Ms. Lemire said it is a non-conforming lot of record because it does not meet the current dimensions.

Mr. Cutting said that is the reason why the request was sent to the Board of Appeals, because the Planning Board could not reduce it enough as their business has to be 500 ft. from the dump.

Chairman Hamilton said he thought it was a non-conforming lot, and the second part is under Sec. 33-189 in the ordinance, and read: *"Non-profit medical marijuana dispensaries, (c) A dispensary may not be located within 500 feet of the property line of an existing public or private school, residential property, childcare facility, place of worship or public facility."*

Chairman Hamilton said any other usage would not be a non-conforming lot, but the second part is mentioned in Sec. 33-189, but for any other usage, it would not be a non-conforming lot. He said because of the ordinance change, it becomes a non-conforming lot for this particular use.

Mr. Billipp said this lot does not have 300 ft. in front, which is required. He said he did not know why the Code Enforcement Officer suggested a waiver, but it does not have adequate frontage.

Chairman Hamilton said the Code Enforcement Officer recommended the waiver because she can only grant 25%, but the Board of Appeals can grant a waiver up to 50 percent.

Mr. Rankie said it is not peculiar due to the usage, but to the setback because it is a non-conforming lot. He said it is not that the building does not fit, the building fits, but the usage does not because the ordinance requires a 500 ft. setback.

Ms. Hanson said if it was a non-conforming lot, it would be helpful for the Board to know.

Mr. Billipp said he asked himself what makes this a non-conforming lot since the acreage is fine, and the setbacks seem to be okay, but then he looked at the frontage, which is 200 ft. and they need 300 ft.

Chairman Hamilton asked if the Board was all set and agreed that this is a non-conforming lot.

Mr. Billipp explained that, when he looks at the plan where one inch equals 30 ft., and there is no dimension for the front of the lot, but if he puts the ruler on the front and uses that scale, he comes up with 270 ft.

Chairman Hamilton said part of the requirement is from Sec. 33-189 of the ordinance, Non-profit Medical Marijuana Dispensaries, {c} which reads: *A dispensary may not be located within 500 feet of the property line of an existing public or private school, residential property, childcare facility, place of worship or public facility.*"

Chairman Hamilton said the applicants are here because the Town Transfer Station is 347 ft. from their property line.

Ms. Lemire said the Transfer Station is a public facility.

Chairman Hamilton said and that this does not meet the 500 ft. as required in the ordinance.

Chairman Hamilton reviewed how the public hearing will work. He said the applicant has the floor and he will need to address the criteria in the application and give his testimony. He said that Mr. Pope should be thorough as this would be part of the findings of fact. He said the Board may have questions. He said there are no other parties to the action, in other words, this Board is not making a decision based on the action of another board.

Chairman Hamilton said that this request is a "de novo" review and that after the appellant's testimony and questions, they will hear from the abutters, and next any interested parties will be able to speak. He said the last part of the testimony is that the appellant will be given a chance to bring up any other comments or arguments.

Chairman Hamilton said he will close the hearing and the Board will deliberate and the two alternate members will also be able to offer their opinion.

Chairman Hamilton opened the public hearing at 7:21 p.m. and asked those wishing to speak to state their name and address.

2. Public Hearing:

Request for Dimensional Waiver from Hughes and Kristin Pope, 43 Creek Crossing, Eliot, Maine, for property located at 495 Harold L. Dow Highway, Map 53, Lot 6, regarding Section 33-189, involving reduction of setback from 500 ft. to 250 ft.

Hughes Pope, 43 Creek Crossing, Eliot, said he is here tonight because he, and his wife, Kristin have gone through the Planning Board to get approval to use Jacquelyn Nooney's property, and they will be leasing the facility. He said the reason they ended up here is because there are two entrances to the Public Works building, and their building is 502 ft. from the public entrance. He said on the other side there appears to be work going on, but it seems like there is a pile of rubble. He said there are no entrances there.

Mr. Pope said he is asking the Board to grant them relief in the form of a dimensional waiver because it is their understanding that the Board of Appeals can provide a 50% reduction for them to make it possible to run their business. He said they have looked at other properties but it is difficult to find a property set back far enough off the road that offers privacy. He said it is also difficult to find a landlord willing to support their business. He said this property is close to their home and their children's school.

Chairman Hamilton asked the appellant if he would address the criteria for the dimensional waiver.

Mr. Pope said the desire for a waiver is due to the unique circumstances of the property because one end is in front of the Public Works property. He said the essential character of the property will not be affected as it is behind trees, and one can drive by and not be looking for it. He said that the hardship is a result of the action taken by himself, and that Sec. 33-189 does make it difficult for them to find a suitable property for them to run their business.

Mr. Pope said the granting of a waiver is based on the demonstrated, and hopefully, articulated need and is not a matter of convenience. He said they have not found a reasonable alternative or property in other towns.

Mr. Pope said they recently got their certification from the Maine Organic Farming & Gardening Association (MOFGA). He said it is not uncommon for us to care about this. He said they focus on quality not quantity. He said the property seems well suited to make soil indoors as well.

Mr. Billipp wanted to know what about criteria number 4.

Mr. Pope replied the waiver will not substantially reduce or impair the abutting property. He said that Kim Marble, the daughter of Galen Marble, had caused a conflict, as she is in charge now that he is older. He said that Jacquelyn Nooney spoke with Kim and Galen Marble personally and they have given their approval.

Mr. Pope said he spoke to the town at a previous meeting and it was determined it would be all right to have their business there. He said Mr. Marble's property is not used solely for his residence and there is no definition of what is needed to be in place so he and his wife would be permitted to use that space.

Chairman Hamilton asked the Board if they had any questions.

Mr. Cutting said to walk him through and asked if they are planning on being open to the public and how will they be using the property.

Mr. Pope replied that they have a verbal agreement with Ms. Nooney and the way the laws are written, no one is coming there to purchase plants. He said they are using the building specifically as a growing facility, and anything associated with that: growing the plants, nurturing

the plants, processing the plants and inspections will be done often by MOFGA. He said they will come down to inspect the soil and a soil analysis will be done. He said they want to make sure they will not be using pesticides or anything harmful.

Mr. Cutting asked if Mr. Pope will ship the plants or are the clients picking up the plants.

Mr. Pope answered that no clients will be coming to their business, all the plants will be delivered. He said it is much like a therapist's office, you don't let the patients come in your home.

Mr. Cutting wanted to know if Mr. Pope will be utilizing the two buildings in the back.

Mr. Pope replied yes, essentially not in the front.

Mr. Cutting asked how far back are you going? He said it looks like Mr. Pope is measuring from the corner of the property line to the corner of the property line or are you measuring from the back of the building.

Mr. Billipp said he assumed he was measuring corner to corner.

Mr. Cutting asked if Mr. Pope is measuring from the back of the building to the top corner.

Mr. Pope replied that is correct, the proximity of the front corner to the nearest corner of the Transfer Station. He said that is what is making it difficult for us to use the property.

Chairman Hamilton asked if he was utilizing three of the buildings and not two.

Mr. Pope responded yes, that is correct.

Mr. Cutting said judging from the lot, it is another 300 ft. back, and that the side line is 631 ft., right?

Ms. Nooney interrupted and said only one building is 150 ft. long.

Mr. Cutting said that is the existing warehouse, so what he is looking at is the one long building, in the back and that is 150 ft.

Mr. Billipp asked his most important question, hasn't Mr. Pope's neighbor, Mr. Marble, who also has Commercial/Industrial property, lived there for many years.

Mr. Pope said, to his knowledge, that is his primary residence.

Mr. Billipp said that Mr. Marble's property line is roughly 110 ft. from Mr. Pope's building and if the Board grants him a 50% waiver, to 250 ft., wouldn't he still be way too close to Mr. Marble's property line.

Mr. Pope said that is not why they are here. He said the Planning Board has given them permission to void that.

Mr. Billipp asked to discount the fact that this is Mr. Marble's residence.

Mr. Pope replied that is correct.

Mr. Billipp said Mr. Pope does not have any evidence of that from the Planning Board in his application.

Mr. Pope said he did not mention it in his application because he is under the presumption they were here to discuss the distance from the front corner to the dump. He said they already had permission on the other side.

Mr. Billipp said he is not aware of any conversation Mr. Pope had with the Planning Board.

Mr. Pope said that based on the definition of a dwelling unit, that made Mr. Marble's property not his exclusive residence, which is one of the determining factors. He said the auto body sign has come down.

Mr. Billipp said he knows that Mr. Marble has not operated his business there for quite some time. He said he just wanted to raise that point as Mr. Pope is well under 250 ft.

Mr. Billipp said looking at it, he wanted to know from Mr. Pope who prepared his site plan because it is not stamped by an engineer.

Mr. Pope replied no, but he had assistance from Jacquelyn Nooney's company.

Chairman Hamilton said, according to 45-290, Table of Permitted Uses, single family dwellings are not allowed in the Commercial/Industrial district.

Mr. Billipp said that Mr. Marble's property has been grandfathered.

Chairman Hamilton said he is trying to understand the rationale. He said his question under that section, the Commercial/Industrial zone, it says no for single family dwellings.

Mr. Billipp said they do not have any written evidence of this.

Ms. Lemire asked why should they care? She said it is not part of what Mr. Pope is requesting. She said he is requesting a waiver and they should focus on what is being presented to them. She said the Board of Appeals does not have authority over that.

Mr. Billipp said that the Planning Board should worry about that.

Chairman Hamilton said he is trying to understand that and he had not entertained Single Family Dwellings residence at all because the ordinance does not allow single family dwellings and medical marijuana facilities are not allowed within 500 ft. of a residence. He said, again, without the advice of the Code Enforcement Officer or the Planning Board, he is not sure.

Mr. Rankie said it is a residential property which happens to be in a commercial district, and he doesn't have an issue with that. He said he would like to see a definition of a public facility, because, in his mind, what they are looking at is not a public facility, it is a stump dump. He said this piece of land in question, this horseshoe, is the former stump dump which has been getting filled up quite a bit. He said the Public Works Dept. has chosen to grind up asphalt and basically produce an aggregate material on that site.

Mr. Rankie said in his mind it is not a public facility because the only people who go there are Public Works employees. He said it is unfortunate that the Code Enforcement Officer is not here. He said he did not know why she categorized that as a public facility.

Chairman Hamilton said he would tell him why, and read her definition, "a public facility means any facility, including but not limited to, buildings, property, recreation areas and roads which are owned, leased or otherwise operated or funded by a government body or public utility."

Mr. Marshall asked if Chairman Hamilton said roads.

Chairman Hamilton replied roads as well.

Mr. Marshall asked so if the applicant is too close to the road, the Board cannot allow it.

Chairman Hamilton replied yes, Rte. 236 is a State road.

Mr. Marshall said then it is a public facility.

Chairman Hamilton read again: "... owned, leased or otherwise operated or funded by a government body or public utility."

Mr. Marshall said he thinks they are falling into the waters of unintended circumstances.

Chairman Hamilton asked if there were any other questions of the applicant.

Mr. Marshall asked if Mr. Pope was growing the plants in this facility.

Mr. Pope responded that is correct.

Mr. Marshall asked if the plants were being grown indoors or outdoors.

Mr. Pope answered strictly indoors.

Mr. Marshall said he is concerned about what the method of security would be.

Chairman Hamilton said that issue is not what the board is interested in. He said the Planning Board will look at that.

Mr. Marshall said he wanted to know what the impact is in that area.

Chairman Hamilton replied they are looking at the criteria.

Mr. Marshall said as it relates to criteria.

Ms. Lemire said it is part of the criteria, "will the granting of a waiver alter the essential character of the locality."

Mr. Marshall addressed Mr. Pope and said "unless someone goes in your building, no one is going to know if anyone is there."

Mrs. Pope said there would not be any signs in front.

Mr. Pope said he does have e-mails from Kate Pelletier giving us permission, if it is an issue.

Ms. Lemire said the Board has them.

Mr. Marshall said it appears that Mr. Marble's property has been a discontinued use any way. He said it's been more than a year and it does not look like anyone is there.

Mr. Billipp said it never does, but he is living there.

Ms. Lemire said he is living there.

Chairman Hamilton said he thinks that point has been resolved since the property is part of the Commercial/Industrial district.

Mr. Marshall said from the definition that Chairman Hamilton just read, you would have to be in the middle of a large tract of land to make it work. He said they have some unintended circumstances.

Chairman Hamilton asked if there were any other questions for the applicants.

Ms. Lemire asked the applicant what kind of an economic impact would he have if the Board did not grant them this waiver.

Mr. Pope said as they might know, it would make it difficult for him to run his business.

Mrs. Pope replied it would have a negative impact if they were not granted the waiver. She said they are operating out of the basement of their house, which is very small. She said they have been living there about three years, but would like to move out of that space, and they want to expand and grow.

Mrs. Pope said they would be able to provide more medicine for more people and this would not only benefit their business, but also their patients, and they would provide help for more people.

Ms. Lemire wanted to know if it would have a significant impact on the business that they currently have.

Mr. Pope responded it is getting difficult to maintain what they have now, over time, as nature always seems to win. He said they are growing one crop, which is difficult as it is in such a small space and to keep the bugs out. He says he wears the same shoes and clothes inside and out, so he changes clothes five times a day. He said he has to change his clothes every time he goes into his facility and changes back when he comes out, so he is doing a lot of laundry.

Mr. Pope said it is tough to keep the plants from pollinating each other and they are trying to grow non-fertilized cannabis plants. He said he sprays the walls and if the pollen gets wet, it becomes a problem.

Ms. Lemire said it sounds like the business is growing out of the space they started with.

Mr. Pope said he is concerned about keeping the humidity down. He has 30 gal. industrial dehumidifiers, but with winter coming and keeping the hoses inside, it will be challenging.

He said if he had 1500 ft. of space to pot plants and make the soil, he could have a desk for his computer, which would equate to a comfortable, green work space. He said despite what the Board may know, or not know about the plants, he has an inter-connected relationship with them and he knows if he is stressed, it would seem to be reflected on how the plants are doing.

Ms. Lemire said that at this point, in order for Mr. Pope's business to survive he would have to cut back. She said the system is beginning to be too large for the environment it is in. She said they would have to make it compact and it would affect the business too.

Mr. Pope replied that is correct and if they do cut back, it would impact us negatively.

Ms. Hanson said she is trying to calculate the width, since the idea of the road way has come up, but she does not see anything on this plan that tells her the distance.

Mr. Billipp said one inch equals 30 ft.

Ms. Hanson said the highway looks like it would be 60 ft.

Chairman Hamilton said the road is roughly 45 ft. wide.

Mr. Rankie wanted to know if they are being asked to look at this.

Ms. Lemire said it already includes the road so it does not make a difference.

Ms. Hanson said she just wanted to make sure, but she sees it does not make a difference.

Chairman Hamilton asked if there were any other questions from the Board members.

Hearing none, he asked if there were any abutters who would like to speak.

Jacquelyn Nooney, 493 Harold L. Dow Highway, Eliot said she operates a landscape business and is the owner of the property, 495 Harold L. Dow Highway and Hughes and Kristin Pope want to lease this building from me for their operation. She said it is important work what these small growers are doing and patients are really helped by this thing.

Ms. Nooney said she will speak to her education which she has gotten, as she knew nothing about the medical marijuana business, ways in which people provide medical marijuana to the community of patients. She said, subsequently, she learned from a variety of sources how important this work is. She said she has spoken with people who have been patients and have had their lives changed having access to marijuana as a medicine.

She said she was a completely ambivalent landlord to an operation like that and she did not want to be part of it; however, the more she read about it, and the more research she did, and spoke with people in the industry, the more she came to understand the important work and she is willing to be a landlord to this operation.

Ms. Nooney said as they proceeded down the path to Planning and all of that, and being a small business owner in Eliot, she did not know they had voted to allow this use in the Commercial/Industrial zone. She said the voters made it a point to allow this use and it seems like an ideal spot for this specific kind of business.

Ms. Nooney said then to see all these obstacles presented by the town, which sort of says "we want to allow this" but it becomes so difficult for a small business owner such as Hughes Pope that they cannot find a place to do that. She said she knows the Board has rules and regulations that they have to conform to, and she appreciated that, but wanted to know if there is something the Board can do to allow this so Mr. and Mrs. Pope won't get bogged down and a small, local business, who lives in the community, can't happen because of all the technicalities.

Chairman Hamilton asked if there were any more questions for Ms. Nooney. Hearing none, he asked if there were any interested parties who would like to testify.

Hearing none, Chairman Hamilton said before he closes the public hearing, he would like to hear from the alternate members.

Mr. Rankie said he had one question – as he looked at what Mr. Pope has asked for and he says 340 ft. is the existing setback from the stump dump.

Mr. Pope replied that is not accurate, it is 347 ft. on the map, but it's not the true setback.

Mr. Rankie said the question is not based on inches and he wanted to know why would Mr. Pope not ask for relief of 160 ft., which is pretty much what he needs. He asked Mr. Pope why he is asking for 250 ft. which is more than what he needs. He said if the Board okays 250 ft. and Mr. Pope only needs 160 ft., maybe Ms. Nooney will add on to her building.

Mr. Pope replied he is asking for more – not knowing what he will need in the future. He said as he understands, if he asks for a variance, he cannot expand in the future. He said depending on how the set-up goes, he is hoping to make more of a business with his soil which requires more than what he has put in so far.

Mr. Pope said in addition to that, if the ordinance states 500 ft., then 50% is 250 ft., and regardless of whether or not he stays in the soil business, it was well within the range.

Chairman Hamilton asked the applicant if he would like to say anything else.

Mr. Pope said this has been a fairly long process and he had no idea what it would entail, trying to do this the right way. He said he appreciates the Board's time and consideration.

Chairman Hamilton said he would like to hear from the alternate members.

Ms. Hanson said she would support what the applicants are requesting, and she is trusting Mr. Billipp, based on the fact that the property is a non-conforming lot.

Mr. Billipp said it is 270 ft. in the front.

Mr. Cutting said it is 13.6 if it made Ms. Hanson feel better.

Ms. Hanson said as she reads this, she does not know what 250' is unless you are adding to 502 ft.

Mr. Billipp said the applicant does not need any reduction there.

Mr. Rankie showed Ms. Hanson what the applicant was looking for on the site plan.

Ms. Lemire said the setback is 150 ft.

Ms. Hanson said if the applicant needs frontage and the Board can grant 250 ft., she would support it.

Mr. Marshall said since it is an allowed business, and it does appear, whether it was intentional or not, the regulation created a path where there is no place to put in the business. He said they have something reasonable can build on, and he very happily met the criteria the Board looked at, and he has no problem with it.

Chairman Hamilton closed the public hearing at 8:02 p.m.

Mr. Rankie said by way of discussion, he could support this, but not the total 250 ft. He said within the constraints of the existing buildings, he concurs with what Mr. Marshall expressed. He said the Board should look at it someplace in the neighborhood of 160 ft., or 35% relief, to provide for a margin of error. He said he did not feel it is the Board's position to expand what is already there.

Ms. Lemire asked if that would be accurate.

Mr. Billipp said the first criteria, the unique circumstances of the property, the property they are talking about, 495 Harold L. Dow Highway, the property is the one across the street and that is not what they are talking about.

Chairman Hamilton pointed out that if the applicant had applied for a variance, he would have had to meet four very strict requirements and by applying for a waiver, the five criteria are advisory to the Board, to simply guide them, they are not requirements, but things the Board needs to look at. He said the applicant needs to meet all four criteria for a variance or it would not be granted.

Mr. Billipp said he was glad that Chairman Hamilton refreshed his memory, so maybe the Board could over look #1. He said the definition of a public facility talks about the road, and Rte. 236 is right in front. He said as he measured the edge of the building to the right-of-way, is about 240 ft., which looks like they would need to look at the rear side of the right-of-way.

Mr. Cutting said which physically means someone cannot put anything in.

Mr. Billipp said even if the Board gives him the reduction according to his measurement, it would be 10 ft. shy.

Mr. Rankie said that they defined public facility as simply being town property. He said the Planning Board sent the applicants here to see the Board of Appeals. He said it is too bad that the Code Enforcement Officer isn't here.

Chairman Hamilton said that the last meeting they had, he had heard from Ms. Ross and he knew she would not be present. She called me specifically and asked if it would be okay if she did not attend.

Ms. Lemire said she is guessing it is because it is a Planning Board issue, even though the local ordinance did state the Board has flexibility.

Chairman Hamilton said not necessarily.

Ms. Lemire said it is a local government body and is in the ordinance – the town approved medical marijuana dispensaries.

Mr. Rankie said it reeks of unintentional consequences.

Chairman Hamilton said he wasn't sure it reeks of it.

Ms. Lemire said she did her research of Maine Statutes and found a variance from dimensional standards is similar to a waiver. She said they mentioned the term practical difficulty, and these standards for the variance of this type are more relaxed. She said the State has developed new criteria for this type of variance.

Chairman Hamilton said a waiver is a type of variance – a loosely-constructed variance – which does not require extreme hardship.

Ms. Lemire said that the term used is "practical difficulty" which means "the strict application of the ordinance to the property precludes the ability of the petitioner to pursue the use permitted in the zoning district in which the property is located and results in significant, economic injury to the petitioner" and she thought that Mr. Pope has established that. She said the town approved the ordinance overwhelmingly. She asked how many of the Board members know to look at every ordinance to see what happens after it passes.

Mr. Cutting said the applicants were sent to us to hear their request because the Code Enforcement Officer is not authorized to grant this waiver. He said that is the problem.

Chairman Hamilton said they are requesting a waiver from that part of the dimension and the Board is asked to focus on the dimensional standard.

Mr. Cutting said he wanted to clear that hurdle.

Chairman Hamilton asked if they were done.

Chairman Hamilton echoed what Ms. Lemire had read, and said he also was doing research on State standards for waivers, and both MMA and the Maine Statutes are fussy, but this has been put in our laps and we have to figure out what to do with it. He said it does not require very strict guidelines as in variances. He said waivers are more advisory. He said the questions have been answered and he would also be in favor of granting this request for a waiver to dimensional standards. He said this would allow the applicants to go forward with the Planning Board.

Mr. Rankie asked Chairman Hamilton what is his feeling about the actual distance.

Chairman Hamilton said personally, he thought the Board should grant the very minimum to meet the standards, not 250 ft., in the motion if that is the Board's wish. He said 250 ft. is the maximum, but the Board of Appeals usually tries to meet the minimum, and that footage could be in the motion.

Mr. Rankie asked if Mr. Billipp looked what the 325 ft. does.

Mr. Billipp said it is 347 ft. to the corner, but take 22 ft. off, so it would be 325 ft. but wanted to know what are they trying to achieve.

Mr. Rankie replied granting the applicants the minimum with a safety net to work within the existing footprint.

Mr. Billipp said measuring from the end of the building 325 ft. puts the applicants in the middle of the roadway. He asked Mr. Rankie to tell him the measurements again as he is confused.

Mr. Rankie responded 175 ft. is basically what they need.

Mr. Billipp said 175 ft. is from the edge of the building.

Chairman Hamilton asked if Mr. Billipp was measuring along the property line

Mr. Billipp said he did not know about the building at all.

Mr. Cutting said he was still confused at what they are trying to do.

Ms. Nooney interrupted and said "take the distance, what it is, 347 ft. and subtract from 500 ft. gives you 153 ft.

Mr. Cutting said that is what he thought.

Mr. Pope said it was 347 ft.

Chairman Hamilton said he assumed the 175 ft. would cover that.

Mr. Rankie said 175 ft. from 500 ft.

Chairman Hamilton said he guesses that would give the applicant a little extra.

Mr. Cutting said the applicant already testified the space may be too small for him and he wants to grow the business later on. He asked if the Board could give him more footage?

Mr. Rankie replied it is unintentional consequences, technically. He said they took the ordinance from some other town and put it in the town ordinance. He said the applicant would have plenty of time to get a warrant article to put this before the people rather than us change this. He said this is what the people wanted as an ordinance and he is hesitant to go beyond that figure.

Mr. Cutting said they would like to work with the small business owners in town.

Chairman Hamilton said the Board should do what the ordinance allows.

Mr. Billipp moved to approve the application from Hughes and Kristin Pope for a request for a waiver to dimensional standards for a 50% reduction to the setback requirement, from 500 ft. to 250 ft. on property located at 495 Harold L. Dow Highway, seconded by Ms. Lemire, and voted 4-1 by a show of hands. Four in favor, one opposed (Charles Rankie), motion passes.

Chairman Hamilton said that the applicant will be receiving a Notice of Decision letter within seven days and that Mr. Pope will need to record this at the Registry of Deeds within 90 days and a copy given to the Code Enforcement Officer.

Ms. Lemire said the applicants should have plenty of time.

Chairman Hamilton declared the Board will take a break for a couple of minutes at 8:22 p.m. before they proceed.

Chairman Hamilton reconvened the meeting at 8:27 p.m. and said he would like to re-open the case to state the Findings of Fact:

- The application is a request for a waiver to dimensional standards for a reduction of setback from 500 ft. to 250 ft.
- The applicants are Hughes and Kristin Pope, 43 Creek Crossing, Eliot, Maine
- The property is in the Commercial/Industrial zone
- The property is located at 495 Harold L. Dow Highway and is identified as Tax Map 56, Lot 6
- The property is owned by Jacquelyn Nooney, Flower Properties Inc.
- Sec. 33-189 of the town ordinance provides for non-profit medical marijuana dispensaries
- Sec. 45-194, c, (2) of the ordinance states the Board of Appeals has the authority to grant a waiver of up to 50% reduction of dimensional standards
- The property is 347 ft. from a public facility, the Town of Eliot Transfer Station, where 500 ft. is required by the ordinance
- The property is a non-conforming lot of record
- There is 213 ft. of the lot frontage, where 300 ft. is required
- The property is to operate as a non-profit medical marijuana dispensary with consent by the property owner

Chairman Hamilton asked if there were any other findings of fact. Hearing none, he closed the hearing on the case at 8:30 p.m.

3. Review and approve minutes:

Chairman Hamilton said the Board has the minutes of September 21, 2017 before them and reviewed each page, asking if there are any corrections, additions or deletions.

Mr. Marshall said that he had come in to check if the Board was having a meeting. He said he asked Kate Pelletier if the Board had an appeal and that he assumed there was no meeting. He said he was not notified.

Chairman Hamilton said that Mr. Marshall has to check with him.

Mr. Marshall said he is normally notified by the town office.

Mr. Rankie said this is a volunteer board.

Mr. Marshall said no one called him.

Mr. Rankie said if Mr. Marshall checked the town's website there is a calendar and he should click on "Board of Appeals" and it is generally posted before the Board gets notified.

Mr. Cutting said it seemed that, as he remembered it was late.

Mr. Marshall said even this agenda was late.

Ms. Lemire said there is a lot of transition going on in the town office.

Chairman Hamilton said by the end of the month, he contacts the Town Manager or Mr. Lee contacts him. He said if he does not hear from Mr. Lee, he makes sure he gets in touch. He thought that this month the agenda was posted immediately after it left his computer. He said he sent it to the Town Manager on November 4th. He said he tries to do it within 10 days.

Mr. Rankie said the problem is the notification came from a stranger and he almost deleted the e-mail. He said it usually comes from another e-mail address.

Chairman Hamilton said there is a new person and he spoke with her. He said he creates the agenda but there was no agenda attached when Rebecca sent this information out. He said the Town Manager never got back to him. He said no meeting was advertised properly within the time limits.

Chairman Hamilton said given what Mr. Marshall told us, "unexcused" should be changed to "excused" absence in both cases.

The Board made other corrections.

Ms. Lemire moved to accept the minutes of September 21st, 2017, as amended, seconded by Mr. Cutting. All were in favor by a show of hands and motion passed 5-0.

4. Other Business:

Chairman Hamilton reviewed revisions he had made to the by-laws with Ms. Lemire.

Mr. Rankie asked once Chairman Hamilton signs the by-laws could a copy be made for the Board members.

Chairman Hamilton replied he would do that.

Mr. Rankie asked when does the agenda get approved.

Chairman Hamilton said that he and the Town Manager approves it and it is sent to be published.

Mr. Rankie said he has two items under new business.

Mr. Rankie asked Chairman Hamilton if he personally reviewed and was satisfied that the public hearing notice was posted.

Chairman Hamilton said he was told that it was.

Mr. Rankie said it was not in the Board's packets and he would like proof that the public hearing notice was presented properly.

Chairman Hamilton asked what sort of proof.

Mr. Rankie replied he wants to make sure that a copy is attached to the minutes so the residents find out about their meeting.

Chairman Hamilton said not for this board.

Mr. Rankie said they should have that as part of their packets, going forward. He said that should be established we get a copy of that and a copy of the public hearing notification should go to the Chair.

Chairman Hamilton thought that Mr. Rankie was on to something. He said maybe someone sent it to the paper, and someone at the paper lost it.

Mr. Rankie said this way, if there is a problem, the Board would have a receipt and would have a copy of the actual posting of the meeting. He assumed the Chair would be watching what is going on.

Chairman Hamilton said he will talk with the Town Manager to figure out how he would like to resolve this issue.

Mr. Rankie said Chairman Hamilton should get a clipping of the public hearing notice, what is published in the newspaper.

Mr. Marshall said it should be the actual clipping.

Mr. Cutting said or get a copy from the website.

Chairman Hamilton said he will speak with the Town Manager to make sure a copy of the notice is sent to the Board.

Ms. Lemire said as long as it is part of the file.

Mr. Marshall said that someone would have to actually do it.

Mr. Rankie said he received complaints from two residents who told him there is no way for them to appeal, or to see if there are any Building Permits posted within the past 30 days.

Ms. Lemire said there is a posting of building permits at the Town Hall, or there used to be, in the small meeting room.

Mr. Rankie said when Mr. Lee first came here, he asked why aren't the building permits posted at the end of the week. He said there haven't been any building permits posted in the past three months, so if someone wanted to appeal, it would be too late.

Mr. Cutting wanted to know why aren't they posted on the town's website.

Chairman Hamilton thought there isn't anything they could do.

Mr. Rankie said he told the residents he would bring up this issue.

Chairman Hamilton said that is a big concern.

Mr. Rankie said it seems easy to post them and asked if Chairman Hamilton could ask the Town Manager when he spoke with him.

Chairman Hamilton said we should not be telling him what to do.

Ms. Lemire said Chairman Hamilton could mention that a board member said that "a resident of the town expressed their concern."

Mr. Rankie said that is a good idea.

Chairman Hamilton said that is an excellent point and he would speak with the Town Manager.

5. Adjournment:

Mr. Billipp moved to adjourn the meeting, seconded by Ms. Lemire. All were in favor by a voice vote, aye. Motion passes. The meeting was adjourned at 8:59 p.m.

Respectfully submitted,

Barbara Boggiano
Recording Secretary

Approved by: 

William Hamilton, Chairman, BOA

Date approved: April 19, 2018