

ITEM 1 - ROLL CALL

Present: Dennis Lentz - Chairman, Ed Cieleuszko, Christine Bennett, Casey Snyder – Alternate.

Also Present: Doug Greene, Planner.

Absent: Melissa Horner (excused).

Voting members: Dennis Lentz, Ed Cieleuszko, Melissa Horner and Casey Snyder (appointed).

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION

There was no public input.

ITEM 5 – REVIEW AND APPROVE MINUTES

Mr. Cieleuszko moved, second by Ms. Bennett, to approve the minutes of March 5, 2019, as written.

VOTE

4-0

Motion approved

Ms. Bennett moved, second by Mr. Snyder, to approve the minutes of March 19, 2019, as amended.

VOTE

3-0-1 (Mr. Cieleuszko)

Motion approved

ITEM 5 – OLD BUSINESS

A. 66 Indian Rivers Road (M100/L3), PB18-4, Barry & Gail Phillips – Soaring Eagle Properties: Notice of Decision Draft Review.

Mr. Cieleuszko recused himself from this review.

Mr. (Barry) Phillips, applicant, was present for this review.

Mr. Lentz said that there was a question of whether the public hearing fee was paid; that there was also a question of whether this was approved as a multi-family dwelling or not, which is against the ordinance.

Ms. Bennett said that Ms. Lemire did a good job of redacting out the minutes that pertained to this application; so, going back in time was useful to clarify this situation. She added that the application was to continue a multi-family residential and there was a conversation about whether it was a structure or residential property. She said that, from the beginning when we first heard this on February 16th, the then Town Planner (Ms. Prescott) said that the applicant would be required to submit information to show that this non-conforming use had been in existence and had continued up to within the last year - within a year of the application; that there should be some sort of evidence submitted, i.e. a utility bill or something that indicated that there were three discrete units in this building. She added that we heard it again in May of 2018 and the Town Planner indicated that the applicant had provided a letter indicating who had been living there historically; that she did not supply that to the PB because it was personal information but continued to indicate to the PB that she still had some concerns about the non-conforming use and the evidence to support that. She said that we then seemed to have dropped that as a topic until it came right to the end, here. She asked the Planner what existed in his office, or in the Town files, as supporting evidence.

The Town Planner said that Mr. Phillips provided a rent roll with the names of people who have rented the house, historically; that he thinks that the understanding at the last meeting was that that use could continue – could continue to have lodgers – but it is not a legal multi-family; that those aren't discrete units. He added that it could continue to be a single-family, used in that fashion or he could legally have a two-family there; so, if he was happy with that, he could do that.

Mr. Lentz said that that was his read, also.

Ms. Bennett said that there was no decision as to which course...

Mr. Lentz said that it wasn't stated clearly.

Ms. Bennett asked if we have really made a decision.

Mr. Lentz said that the applicant was here and asked him if he thought the PB was, or was not, on the right track.

Mr. Phillips said that, as he recalled and as it was said, as he proposed his original conception, it was approved in that manner; that we read through everything to confirm that and it was confirmed that it would be a three-unit at that time; 7,000 square feet.

Mr. Cieleuszko said that that's the way he remembers it, too.

Mr. Phillips said that that's the way it happened; that he's sure we have evidence somewhere; that he thinks the cameras were working that night.

The Planner said that the two-family is permitted in that zone, the three-family isn't, and there's no record of discrete units in the house; that it's a rent roll.

Mr. Phillips said that that could be provided. He added that there were separate utility bills; that the electric is one bill but there are separate gas bills and heating bills and, you know, tv...whatever.

Mr. Lentz said that what he remembers is that he and the applicant were back and forth and differences of opinion of what a multi-family dwelling is. He added that the way he saw it, the applicant didn't have three or four complete units in there; that there weren't three kitchens and three bathrooms; that there was one unit and multiple people using those.

Mr. Phillips said that that's not true; that there were three kitchens and three baths and that's what he proposed to re-do; three kitchens and five baths, actually, and seven bedrooms; that that was his original proposal and that was what was granted. He added that the one exception was that he had to provide landscaping on the site plan.

Mr. Lentz agreed; that we additionally said that along the bank would not be touched.

Mr. Phillips agreed, saying that we couldn't.

Ms. Bennett said that she was looking at her notes from our January 15th meeting where we had a discussion about the applicant's prior discussions with the CEO and how the applicant had made a decision to change to a duplex; that her note says replace multi-family with duplex, at that time.

The Planner said that he hasn't seen anything to substantiate that there are distinct units in there, suggesting that we might do a walk-through; that maybe that would be the way to handle it.

Ms. Bennett said that she didn't think that actually visualizing separate kitchens throughout a building would be, in her mind, substantiating multi-family; that he could have boarders in one single-family home.

Mr. Phillips asked with three kitchens, saying that he guessed we could do that but he didn't know where.

Ms. Bennett said that she thought utility bills; that with a utility bill, a renter would have a separate utility bill.

Mr. Phillips said that that was not true; that he didn't want to go down that road.

Ms. Lemire asked if there were any meters, any kind, on that building.

Mr. Phillips said of course.

Ms. Lemire asked if they would prove separation between the units.

Mr. Phillips said that there are some for gas; that he mentioned there's gas, oil, and electric and the electric is incorporated; that the other bills are somewhat separate. He added that there are letters from tenants and a dozen people in Town will tell you that it's been like that forever.

Ms. Bennett said that she was just wondering why you...in January the record has stated that you were actually proposing a duplex, at that time.

Mr. Phillips said that what he stated then was that that's what Ms. Prescott and Ms. Ross recommended - that he should put in three lots with three duplexes - or four lots with duplexes on each lot was what he was allowed and he was suggesting that one three-family is better than two duplexes or three more duplexes, certainly for impervious cover.

Ms. Bennett said right; that the applicant wasn't proposing to subdivide his site at this point.

Mr. Phillips said no, but he could still build four buildings on his lot; that he has 12 acres and doesn't have to subdivide; that subdividing is for conveyance and he's keeping it. He is concerned.

Mr. Lentz said that he thinks we're to appoint where, based on ordinance, if this is the way the applicant is insisting on going, he doesn't see how we can go through with this; that he thinks we were trying to ease the pain.

Mr. Phillips said that he would look at the ordinance, again, but as he remembers, it said that a duplex was allowed, now, in the new zone, as well.

Ms. Bennett said that you are insisting that you don't want a duplex, you want a multi-family.

Mr. Phillips said that it didn't say anything about PB discretion but he thinks if we go down the Notes (attached to ordinance), here, you'll find that it says that PB discretion allows anything; that he remembers reading it but he doesn't have the Notes and book in front of him; that it would be a shame not to look at that.

The Planner said that that is citing the non-conformance clause in which a non-conforming use could continue; that it's just the fact that we don't have substantial evidence of the three-family, distinct units.

Mr. Phillips said that he doesn't believe that to be true; that everybody that's asked him for what he can bring, he brings it; that Ms. Prescott said that it was too personal; that you took that and, then, there are Town records that show, well, that there were boarders there and everything; that it doesn't necessarily show that there were units.

The Planner said that 'this' is the list that the applicant gave him, which is fine, but it shows them as lodgers, not as individual tenants; that the Assessor has no record of it.

Mr. Phillips said that he thinks that even if you look at the...the Town will show that...well; that he knows that, when it was marketed, the papers showed from the campground that there was a garage apartment, a basement apartment, and the rooming house; that that was from years ago and he provided a letter that said it's continued from a tenant that's still there.

Mr. Lentz asked if those were separate buildings.

Mr. Phillips said that they are add-on buildings; that some of them are connected by a wood shed or a hallway or something but it was built in 1850 and added on until 1984, or something like that; that it's unique.

Mr. Snyder said that he doesn't understand what we're looking for, specifically then, to justify being a three-family right now, asking what will we need.

The Planner said utility bills that show they are distinct units.

Ms. Bennett said that a lease would be great.

The Planner said that the leases show it as individuals not so much as distinct units; so, it's hard to distinguish it as...

Mr. Phillips said that there are three separate entrances, three separate exits, three separate kitchens, three separate bathrooms, separate bedrooms in each unit. He invited the PB to come down and look, saying that that's the best way that it's been there; that you can see that he hasn't changed anything for quite a while.

Ms. Bennett said that the applicant removed a kitchen and made a duplex; that the record states that he did that.

Mr. Phillips disagreed, saying that when the question was asked about where was the new application because it's changed – it went from a tri-plex to a duplex, where's the new application because all these figures must be changed; that he said no, what has changed is that he removed the kitchen; that that's what makes it a three-family rather than a two-family. He added that, if he takes out a kitchen, then it's the same – a single-family, seven bedrooms, five baths, one kitchen; a duplex – four bedrooms, three baths, two bedrooms – two bedrooms, two baths in each one and two kitchens; that if you divide it up it ends up being kitchens.

Ms. Bennett asked how many kitchens the applicant has.

Mr. Phillips said three in that building.

Ms. Bennett said that the record said that he took out a kitchen, asking if he put one back in.

Mr. Phillips said that the record is wrong, then, because he didn't take out a kitchen; that the record is wrong.

Mr. Cieleuszko said that his recollection was that he was talking, when the PB said it should be a duplex, and said that he would just rip out a kitchen; that the applicant wasn't talking about the current condition; that the gist of it was that he was going to take a kitchen out and make it a duplex in his plans because he has a three-family; that this discussion is weird because the PB already made the decision, as existing

Mr. Phillips agreed that the PB had already made a decision; that it's crazy to do this.

Mr. Cieleuszko said that all the PB has to do is go down there; that he really does have three apartments there.

Mr. Lentz clarified that that's not the decision we're trying to make; that we are trying to make a decision on whether this Notice of Decision is accurate, and that's the question.

Ms. Bennett said that we made a decision to allow an illegal use of the applicant's property.

Mr. Cieleuszko said non-conforming.

The Planner said that the applicant is asking for a continuing non-conforming use; that we just haven't seen substantiation of it so, if we need to do a site visit to confirm it, then maybe that's...

Mr. Lentz asked what we would see on a site visit, what are we looking for.

The Planner said three distinct units as opposed to rooms within one facility.

Ms. Bennett added evidence that it's been continued up through the last year because, if it's discontinued for a year, you lose the non-conformance.

Mr. Phillips said right and he's made the point, at every single meeting he's brought it to your attention that you're the reason he keeps tenants in there.

Ms. Bennett said that she understands that but it's a dotting of the I's and crossing T's; that we have no record in this Town Hall that indicate, that substantiate, that the applicant's non-conforming use has been in existence and continues up to a year, from now; that we don't have that evidence. She added that if we could get the record straight, then yes; that she knows it's an odd property and it's an odd use for a long time but, if we could get something.

Mr. Phillips asked what the evidence would be.

Ms. Bennett said a utility bill.

Mr. Phillips said that we provided those before so they weren't good enough then.

Ms. Bennett said that they never reached the PB; that if you provided them at Town Hall, they never reached this Body, which makes the decision; so, provide them to this Body and she thinks this Body would feel comfortable with that decision.

Mr. Phillips said okay.

Ms. Bennett asked if she was speaking out-of-turn for anyone else on the PB.

Mr. Lentz said no.

Mr. Phillips said that one of the documents that you might see in other cases, maybe, is that there is a government form that shows income properties and shows utility bills and how much income you make, etc. He added that you know the building and you can probably see that one person, or a couple of people, owe him \$60,000 for the rent of it; so, he can provide those for the years and they were provided to him by the previous owners, when there was a campground, for 12 years and, before that, the father owned the property; that he knows that there are Town records that showed indigents were living there, at the time; that it could have been the 'green place', the 'brown place', or whatever, but he's sure it was the rooming house, plus. He also added that his plumber lived there for 18 years in the apartment above the garage, the game room. He asked if the PB wanted to interview them; that if it's just a utility bill...if they were really separate, they wouldn't even come in his name, he wouldn't even have them.

Mr. Lentz said that this has been going on for over a year; that we just want to see this over, done, you're happy, we meet the ordinances; that's what we're trying to accomplish. He added that there's no battle here.

Mr. Phillips said that we did that last meeting; that you made a decision and, now, we don't have one and he doesn't understand it, himself.

Mr. Lentz said that we didn't say we didn't have a decision, you had a decision; that there are documents required on the Notice of Decision letter – Findings of Fact; that we didn't have a statement on there about is it going to be multi-family or isn't it; that that's why we're here, again, tonight, with the question of what it is we are going to put on there.

Ms. Bennett said that it is written as 'continued multi-family residential use' and we do not have any substantiation that it's been a multi-family use so we can't back it up.

Mr. Phillips said that he would again ask then what they want him to bring; that he'll bring it all, he has it; that he's shown it to Ms. Prescott, when she was here; he's seen

some and there must be more in the file that hasn't been brought because he knows that those bills were brought in, he knows some leases were brought in and other personal information that he got back.

The Planner said to bring whatever the applicant has.

Mr. Cieleuszko said that it sounds like you guys are re-opening the case, really.

Ms. Bennett says that it does but it also feels like, if we go forward without any substantiation of the use of this property, we're really also putting our necks out for an appeal.

Mr. Cieleuszko said that he heard it approved at the meeting two meetings ago.

Mr. Lentz said that it was approved; that the question is whether it was approved as a multi-family, or not, and that's what we're trying to correct.

Ms. Bennett said that, if the applicant can bring in some proof of this being, historically, a multi-family up until a year ago, just something to be able to populate our...

Mr. Phillips said that he won't even agree to that because it's already been approved but, should we go to court or whatever it takes, he'll bring everything the PB needs then.

Mr. Lentz said that that sounds like a threat.

Mr. Phillips said that it is not; that it's actually a plea; that you were all very nice to him, before, and it was all very congenial, and he doesn't understand the change of heart.

Mr. Lentz said that there is no change of heart; that we're trying get one line accurate on the document. He asked the Planner for his input on where we go with this.

The Planner said that he thinks we just need substantiation that it's a three-family.

Mr. Phillips said that that would be everything that he's got, okay.

Mr. Lentz said that, right now, the Notice of Decision says it is a multi-family.

Ms. Bennett said that she would be comfortable if the applicant brought in some substantiation that satisfies the Town Planner; that she would be happy to say we go forward with this Notice of Decision, as written, tonight.

Mr. Lentz said that he's okay with that, too.

Mr. Phillips asked if they had not seen the campground papers or...

The PB agreed that they had seen nothing.

Mr. Phillips said that it's all in the folder.

Ms. Bennett said that it was a little too personal, whatever was given.

Mr. Snyder agreed that he would love to button this up and move forward; so, as long as we can substantiate, let's button it up and move forward. He added that he feels like we need to provide the applicant with some clarity in terms of not just saying 'anything' but is it a walk-through, is it a bill; what do we need so that we can know and rap this up.

Mr. Phillips said thank-you.

Mr. Lentz asked Mr. Phillips if he knew what the Planner was asking for.

Mr. Phillips said no; that he provided information when Ms. Prescott was here, when Ms. Pelletier was here, and he's provided more information, and the PB has seen none of it; that if he provides more, you still might not see it.

The Planner asked if seeing it...we didn't go inside; would that be better than...he didn't know what they would do, at this point.

Ms. Bennett said that she is more comfortable with some sort of documentation that can be put into a file that has a date on it that indicates who was where so we know it's a continuing use.

Mr. Phillips said that he and the Planner could sit down tomorrow and go through the file to see what's there to substantiate. He added that it's been asked for every single time and, every time, he provides something; that the last time he brought something the Planner said that we don't need it and he replied that they had asked for it so here it is.

Mr. Lentz asked if the PB wanted to approve the Notice of Decision letter, as it is written.

Ms. Bennett moved that the Planning Board accept the Notice of Decision Letter, as written, asking if she could add 'subject to getting documentation in Town Hall to substantiate the approved use as a continued multi-family residence.'

Mr. Lentz said that he would say no; that it's a separate issue, adding that we should keep the condition of approval over on 'that' table. He added that, right now, we have a document that says what we believe it should say and he thinks we need to go along with the Planner's word that he does receive that information and it gets put in the file. He asked if Ms. Bennett would be satisfied with that.

Ms. Bennett said that, if it doesn't, we've learned a hard lesson; that going forward we will have learned a hard lesson as a Planning Board. She said okay.

Mr. Lentz said that he has confidence that the applicant and Planner will do that.

Ms. Bennett moved. Second by Mr. Snyder, that the Planning Board accept the Notice of Decision Letter, as written, for PB18-4.

VOTE
3-0
Motion approved

Mr. Phillips thanked the PB for their time and patience.

B. Continued Review of 28 Levesque Drive, Unit 10 (PB19-2), Map 29/Lot 27-1A: Determination of completeness by Planning Board and Site Plan Review of the following: Change of Use Retail to Medical Marijuana Dispensary in Commercial/Industrial District – Amendment to a previously-approved site plan.

Received: March 1, 2019 (March 15, 2019)

1st Heard: March 19, 2019

2nd Hearing: April 2, 2019

Site Walk: N/A

Public Hearing: No

Disapproved: April 2, 2019

Mr. (Ian) Shaw, applicant, and Mr. (Chris) McCabe, attorney, were present for this application.

Mr. Lentz said that it is a 3,993 sq. ft. commercial tenant space, proposed medical marijuana storefront by licensed caregiver, no change of use or existing site, application received on March 19 and sketch plan, application sent to staff reviewers no response. He asked if there was no response from those folks.

The Planner said that he had a lengthy discussion with the Police Chief, today, and he did not have any concerns; that there was nothing from the Fire Chief at this time.

Mr. Lentz said that it appears, tonight, that our work is to make sure that the application, site plan, is complete. He invited the applicant to speak.

Attorney McCabe said that he is the attorney for the Holistic Wellness Company; that coming out of the last meeting he thinks there were two major things that the Chair briefly reviewed – one was the need for a parking analysis and the second was to figure out what we were referring to as ‘public facility’ issue. He added that, to the parking analysis, you’ll see a breakdown of parking numbers on the first page of the memo and also cited and pasted there is the requirement for a non-profit medical marijuana dispensary, which is 1 parking space for every 200 square feet; that the overall building is 42,240 square feet; that the parking spaces total, which are shared amongst all 11 units, seven of which are currently occupied, makes the parking ratio of 1:103, which is roughly twice as much as is required. He said that Unit #10’s size is 3,993 square feet; that roughly 41 spaces would be allotted to Unit #10, being that Unit #10 is 10% of the

overall 410 spaces; that given the square footage, it would be required to have 20 spaces. He added that the spaces in the parking lot are not designated but the 410 are shared amongst all the units, reiterating that there is roughly the amount that's required by the ordinance.

Mr. Lentz said that he thought, last time, we said four or five employees and 10-20 customers/day.

Mr. Shaw said that parking for employees are at the back of the building so we wouldn't even use any of those 40 that are allotted for the actual business.

Mr. Lentz said that, on the application, it says lot size is 3,933 square feet and the checklist says 3,993 square feet.

At this time, the applicant handed out a document to the PB.

Attorney McCabe clarified that the entire building has 42,000 sq. ft. He said that, while we are thinking and talking about the outside, and not the use specifically, the front page of this document (hand out) is the logo and is the same design that will be used for the sign, which would be applied for with a signed permit application; that the second page is a number of photos showing the front and rear of Unit #10, one zoomed out to show the relationship with the entire building. He clarified that Unit #10 is just to the right of the pet store.

Attorney McCabe said that, regarding the use issue, he provided a rather lengthy memorandum, more of a bullet list and one way to think about the various issues, here. He explained that the issue at play, here, is whether the dimensional setback requirements of §33-189(c) of Eliot's ordinances are valid and whether the requirements are a permitted land use. He said that the definition of public facility states: "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 governmental body or public entity."; that with that definition and in your package, you should see a rendering of all the commercial and industrial districts and that there would be nowhere, just based on the public road portion of that definition, a marijuana facility could possibly set up shop, which is in direct conflict with the other aspects of the ordinance that name it as a permitted, approved use; that it frustrates the purpose of the core land use ordinance that sets out approved use and that satisfying the site plan review requirements would be what's required. He added that when you have a legal conflict between your ordinances, the PB, in this situation, has the authority to make the determination that one of those provisions is invalid, that the legislative intent was otherwise, and you could approve this application, as it stands, or with exceptions, or with conditions, perhaps. He said that, as a quasi-judicial board, which is foundationally what you are, per the Eliot Charter, you can determine and approve and, with conditions, mitigate any adverse effects on any adjoining properties. He said that we talked last time about the Post Office, and aside from the public road issue, which the public road is completely surrounding; so, if we set aside that portion of the definition, we have the Post Office issue that we talked about

being close and, then, also there being potential residential property behind. He added that the Post Office is a federal building but because he thinks the definition, in and of itself, is problematic and conflicts with the other aspects of the code, that you could, in this case, ignore...well, just to say we're walking down the road – the Post Office is separated by a major public road that has major traffic; that it's not frequented, generally, by younger folks but frequented, generally, by adults. He said that the applicant's site is going to be highly secure; that the location, as far as if you were to pick it out in Eliot, would roughly be where you would want a sensitive use shop; that, here, we have an issue with the ordinance but we have four sides that buffer; that those are public roads, the sensitive uses aren't frequented by children, the professional, non-descript exterior, ample parking, and the ability of the PB to do what's called 'severing', or the severability of one section of your ordinance and then approve the package as it stands or with conditions or exceptions. He said that he would be happy to answer any questions or go into further detail on these legal items.

Mr. Cieleszko asked if Attorney McCabe was saying that it's within our power to use the severability of an illegal ordinance because of the road; that that's not determined by a court.

Attorney McCabe said yes, to invalidate and make that determination because it can't exist as it stands.

Mr. Cieleszko said that he's not sure he agrees with that; that that would have to be taken up elsewhere, he believes, as a legal...

Attorney McCabe said that you are a quasi-judicial board.

Mr. Cieleszko said that, actually, we are not in this Town.

Attorney McCabe said that he was very familiar with the Charter – 2.1 – that says that you are a quasi-judicial board; that that's your underlying document.

Mr. Cieleszko said that that's a little error in the Charter.

Attorney McCabe said that it is not an error.

Mr. Cieleszko said, okay, he would bear with that. He clarified that what Attorney McCabe was talking about was, if we severed the road as an improper characteristic of the thing or is he talking about severing the 500 feet of any public facility.

Attorney McCabe said no; that he's saying the part that does make the ordinance an effective taking by the municipality; that the municipality is naming it as an approved or permitted use, laying out guidance as to how to do it in one area but, then, effectively making it impossible. He added that there are a few different legal claims, there; so, he was trying to lay out what he believes your powers to be, how you could take care of the issue right now. He said that the appeals, or possible claims, from our side would be a

regulatory taking of property, potentially, which is when there are regulations that are written such that they effectuate the inability to use what has been granted to you as a right; or, procedural due process, which is a claim that would be centered on a lack of fair process for a right that is guaranteed; or void for vagueness.

Mr. Ciesleszko said that he's not really worried about how Attorney McCabe is going to appeal anything we do; that he's just talking about us tonight. He added that he would take it for granted that we have the authority to sever a bad part of the ordinance; that he's not sure if he agrees with that but he would go along; that the road is a great point that was brought up, calling the road a public road as a 500-foot requirement; that it never entered his mind; that it's there and...

Mr. Lentz said since 2016.

Mr. Ciesleszko said right and, so, a great point; that the Post Office is another thing and he believes that Ms. Horner, at the last meeting looking through the minutes, mentioned that he thinks there's still a childcare near.

Ms. Bennett said that she thinks it's been abandoned.

Mr. Ciesleszko said okay; that the Post Office is it and that's well-within the 500 feet.

Mr. Lentz said that there were also the residences behind – Baran Place.

Attorney McCabe said that, with the Post Office, he would ask the PB to look at what the potential purpose would be to set a post office back, or a public building back, with the underlying purpose of the ordinance; that it doesn't make sense from that perspective. He added that, then, the property that's behind, the business, is a residential care facility and has more than 40 units, which would disqualify it under the definition of residential property in your ordinance; that that property doesn't count as a residential property by the definition. He said that the entire definition of what a public facility is in counter to what the rest of your ordinance says; that you can choose to go with either the majority of the ordinance or what was a legislative error in being overbroad.

The Planner asked why Attorney McCabe thought the definition of a public facility is...the Post Office runs counter to how it's defined elsewhere.

Attorney McCabe said that it would be where the land use ordinances, in general, and he does have some quotes here under your page 2 regarding the purpose of Chapter 33, which is the Site Plan Review chapter, says "the purpose of this article is to establish review procedures and standards for specific types of development in the town as listed as SPR in the zoning table of uses in section 44-34." He added that when a use is proposed and permitted, it must be allowed somehow.

The Planner said that he is simply calling into question this inherent conflict.

Attorney McCabe said yes. He added that he knows it's a lot in here and he thinks it would deserve a thorough reading, which is why we provided it.

The PB agreed that they appreciated the memo.

Mr. Lentz said that he read it a couple of times; that some of those things we are aware of and some we are not; that he thinks bringing up the roads was an important point; that he researched that all over the internet and everyone defines 'public facility' a little differently. He said that, back to Mr. Cieleuszko's point, this Board does not have authority; that those ordinances are done by the legislative body and they are the people who change it, even a variance; that we cannot waive a dimensional standard.

Attorney McCabe said that, if they are a paradox or counter to one another, they both can't possibly stand; that that's the issue that we will be appealing.

Mr. Cieleuszko said that he doesn't see the dilemma between the public facility of the Post Office being within the bounds of the setback as a conflict with anything else; that we have many standards for every business so Attorney McCabe needs to prove to him that it's unnecessary. He added that we have appeals and waivers procedure through our Board of Appeals (BOA) and his recommendation on just this point is that you get the waiver for that dimensional standard before we can approve anything further.

Mr. Lentz said that he thought we'd get to that in a little bit, saying that, if there's anything else that the applicant needs to show us for us to say the site plan is complete, that would be his first choice.

Attorney McCabe said that we could approach this from another angle, too, in that a definition of public facility relies on, potentially, the use and not the ownership of the building.

Mr. Lentz said that it's public use as opposed to who owns the building.

Attorney McCabe said that, arguably, where the entity, itself, controls the Post Office and the federal government control only doors in; that they don't necessarily own the rest of the property, they are using that at the permission of others; so, the property line could be right there and, then, on the other side of it the CEO does have the authority to reduce by 25%, within their discretion, any setback down to 375 feet.

Mr. Cieleuszko said not in regard to a conforming use; that that only works on non-conforming dimensional standards and is a unique part of Chapter 45.

Mr. Lentz pulled the discussion back and asked the PB members what they saw regarding completeness of the application; that he has some questions. He asked what kind of waste there would be from the business, itself.

Mr. Shaw said that it was comparable to any regular business; that there's going to be no disposing of product on site, there's no cultivation, here.

Mr. Lentz asked if there would be any fumes or vapors outside that building.

Mr. Shaw said that there would be no consumption, at all, just physical product that is in sealed packages and there is no way that any smell would emanate from it.

Mr. Lentz asked about trash.

Mr. Shaw said there would be to the consumer once they brought it home.

Mr. Lentz asked if there would be any trash outside the building.

Mr. Shaw said no, not anything that we will be disposing of; that everything will be packaged.

Ms. Bennett said that he will receive it packaged; that he's a re-seller.

Mr. Shaw said exactly; that the idea of this is re-selling, more or less not only providing a service to the people in the area who need it but also caregivers of people in the community who need a place where they can put it and legally do business instead of now, where a lot of caregivers are turning to black market avenues. He added that, at the State level, the State is trying to legitimize this program as much as possible because they've come to the realization that a lot of people are abusing it; so, that's part of the whole intent, here, to be part of that program, taking those steps forward, and taking that initiative in the right direction.

Attorney McCabe said that usually where the transactions take place, currently, is in a car somewhere in some parking lot, which is completely legal; that that's the alternative.

Mr. Lentz asked how long the applicant thought it would be before he would be up and running.

Mr. Shaw said that, theoretically, if you approved this tonight and they went directly to the CEO, he would say within 6 weeks.

Mr. Lentz asked the Planner if there were construction drawings on file of Unit #10 from Mr. Forsley.

The Planner said that he wasn't sure about that.

Mr. Shaw asked if he was talking about just the unit or the whole building.

Mr. Lentz said the whole building, as long as we can see the unit isolated.

Mr. Shaw said that the pet store, the unit he is looking at, and the unit next to it (yoga studio), those three, he does believe we originally submitted a floor plan of all of that; that that used to be one unit that held the call center.

Mr. Lentz asked that that be checked to make sure we have something on file.

The Planner said that that's a completely separate issue for the CEO when they get approval to go for that – to get a building permit for those renovations.

Ms. Bennett said that, looking through the checklist, in her reading it looks like the application is complete; that we had a good number of items that just weren't applicable to this application and a lot of them to do with the actual building of Eliot Commons, not necessarily pertaining to the applicant; that she doesn't see anything additional needed for the application.

Mr. Lentz said to the Planner that one thing that disturbs him, and it falls in our court, is it says at the bottom of the checklist that "no application will be scheduled to go before the Planning Board until staff has reviewed the application package and signed the form.", and we haven't had any response back from those people.

The Planner reiterated that he met with the Police Chief today and he had no problems with them going in there; that the CEO doesn't have any issues and his work doesn't come into play until they apply for a building permit.

Mr. Lentz said that it wasn't that he didn't trust them but, maybe, he doesn't trust too much; that we have a form that we used to send to them and we relied on that form coming back with their comments and signature in the packet; that he thinks that has to happen, asking for PB input on that.

Ms. Bennett said that she liked having that piece.

Mr. Ciesleszko said that he wasn't sure if that would hold up the site plan review, the application list.

Mr. Lentz said that he was just saying that there is a note on this saying we're not satisfied, the note we have written to ourselves. He asked if there was anything else. He asked the applicant if there was any additional illumination outside.

Mr. Shaw said that there could be but, as of this moment, there's no intended plan; that he thinks we would only use it if it became necessary due to either safety or security. He added that, under those pretenses, we might illuminate outside the building, towards the building; that that would be contingent on the security analysis of that.

Attorney Rines asked if the company was licensed to operate as a medical dispensary by the State.

Mr. Shaw said that it was as a caregiver store, not a dispensary; that they are different. He added that it is licensed and he does believe that everybody has received copies of that.

Ms. Bennett said that we did with the initial submission.

Attorney Rines asked if the applicant was applying as a medical dispensary or caregiver.

Mr. Shaw said that we are applying as a caregiver to open a caregiver store; that it operates in a very similar fashion as a dispensary; that they are two different entities and do run a little differently; that it's a little complex.

A member of the audience asked if the applicant could give an overview of how they operate differently.

Mr. Shaw said, with dispensaries, there are different rules and regulations regarding cultivation, where they can be, the actual sales; that he thought his attorney could answer this a little more eloquently.

Attorney McCabe said that it's a quirk of the Maine statute, which identifies two different entities that can cultivate and sell marijuana; that one is a dispensary, specifically, and the other is a caregiver, specifically. He added that they have slightly different rules around registration; that dispensaries generally have to report more to the State; that in the way of testing and in terms of patient privacy and security, it's all the same in those ways. He said that, in Maine, statute limits us to 8 dispensaries, which is kind of why the caregiver model has developed to kind of fill that void; whereas, in other states it's different, depending on the state.

The same audience member said that they operate the same, by definition, they're different because the State allowed dispensaries and this is more a caregiving store.

Mr. Shaw said that he thinks it simply has to do with recognition of the type of entity, and not that this is the best reference but, similarly, perhaps to a C Corp versus an S Corp, suddenly different in operations but rather essentially the same thing.

Mr. Cieleuszko said that he did not see the lighting schedule; that he knows they just said that there's none but does that mean the checkmark means that they weren't going to put any illumination up.

Mr. Lentz said right; that as the applicant said, if it needs it, they would but there is underroof lighting on the outside.

Mr. Cieleuszko asked if this was a change of use that did not require a public hearing.

Mr. Lentz said that this would not require a public hearing.

Mr. (Hughes) Pope said that he noticed on the application that it said medical dispensary, not a medical caregiver, and he was wondering if that was an oversight or if the intended purpose was to specifically apply for a medical dispensary.

Attorney McCabe said that the Eliot ordinance defines medical marijuana dispensary and also defines caregiver; that the provision states that all provisions in this ordinance that apply to non-profit dispensaries also apply to caregiver. He added that, in the Table of Land Uses, the actual cited use is non-profit medical marijuana dispensary so that's why he used that as the specific thing we were applying for.

Attorney Rines said that that relates to medical marijuana dispensary as defined under State law, which is a totally different entity requirement, totally different license.

Mr. Lentz pulled the discussion back to the PB. He said that, as he sees it at this point, we are going to rely on §33-189; that the applicant may not like it but it is the ordinance that we have to abide by; that there is no way of changing it right now and, so, because of that he doesn't see this going through but it is up to the PB.

Mr. Shaw said that he does believe that, when we were talking about the definition of a public facility, he thinks we're talking about the ordinance and not specifically the road aspect but rather, as a whole, because of what it represents, just how vague and ambiguous it is; that he understands the PB is trying to do their due diligence and he appreciates everybody's time in this whole process but the issue, right here, seems to be a problem with a small technicality with the ordinance, not with the business itself. He added that it seems to him, and this is him being forward, kind of like undue hardship and, because of that, he asked them to keep that in mind that there are so many hurdles that a business in this industry is up against at this point and time because of all the different legalities; that you do have an entity in front of yourselves that the people in your Town are looking to have, in their Town, that is very stand-up, very forthright, and tries to move in the best direction possible as this industry evolves. He added that he would also ask the PB to keep in mind that, 5 to 10 years from now, when everything evolves out, when this plays out, he thinks that this is going to be common culture and he thinks what we're talking about here is a discrepancy of about 20 to 30 feet.

The Planner asked if it would make sense to schedule a site walk, would that help inform this process.

The PB agreed that they didn't see any need.

Mr. Lentz said that he thinks the maps the applicant supplied were excellent. He added that the Chair would accept a motion.

Ms. Bennet moved, second by Mr. Casey, that the Planning Board accept the application for PB19-2 as complete.

DISCUSSION

Mr. Cieleuszko said that, on page 2 §33-127(18)(b), it says, "Construction drawings sufficient to enable the Code Enforcement Officer to verify the following information: All existing and proposed setback dimensions." He added that we clearly see that it doesn't meet the setback and asked if this is a complete application.

Mr. Lentz said that we are not approving the application, just accepting it as complete.

Mr. Cieleuszko said that he didn't want to lead the applicant astray thinking we were moving ahead really quick on this.

Mr. Lentz said that he didn't either. He added that we have a motion and a second and asked if there was any more discussion.

DISCUSSION ENDED

VOTE

4-0

Motion approved

Mr. Lentz asked for a motion for the application to be approved.

Ms. Bennett moved that the Planning Board approve PB19-2.

There was no second and the motion fails. The application is not approved.

Mr. Lentz said to the applicant that he could file an appeal; that you have a process to do that. He reiterated that we are living with the ordinances and we're trying to change them, as time goes on.

Ms. Bennett said that the BOA will hear your arguments about hardship and, also, any conflicts with the ordinance.

Mr. Shaw said that, for clarity, the big concern, here, is over that distance between the "public facility" and the unit itself.

Mr. Lentz said yes, the Post Office and the residential.

Mr. Cieleuszko said that the road issue has never come up, until somebody goes crazy over it, it's not going to come up again, until we rewrite it again.

Mr. Shaw asked if there was anything in the ordinance that specified as to how these measurements are to be determined, whether it's corner of the facility to corner of the facility; that he's looking for clarification because we did discuss earlier that it could, perhaps, be viewed that because the Post Office does not own that property, just as you can't say that they own the parking lot but using the parking lot, just in his instance, you'd be measuring from corner of the unit to corner of the unit; that he believes we have

actually submitted documents showing the PB that, under that condition, we actually exceed that 500 feet, door-to-door, and it's out of the line of sight, as well.

Mr. Lentz suggested that the applicant's next step might take care of it.

ITEM 6 – NEW BUSINESS

Mr. Lentz said that he and the Planner were asked today if the PB would meet with the SB; that on May 7th we will go over the marijuana ordinance with them; that it will be a SB workshop.

Ms. Bennett said that she is assuming, from this, that it won't be on the June ballot.

The Planner said that that was correct; that the small ordinance changes passed through and is just the marijuana ordinance.

The Planner asked, regarding the process going forward, if the decision is made at the time or does it hinge on the Notice, the language and its issuing, what's final and what becomes the starting point of the 30-day appeal. He asked if it is when the decision is made.

Mr. Lentz said that it is when the decision is made.

The Planner asked, if you are still having to tweak things in the language such as this, then how does that get translated into that.

Mr. Cieleszko said not very well.

Ms. Bennett said that this was a really unusual situation; that she's never seen it before.

Ms. Lemire said that she hadn't either.

The Planner asked what the point was, then, of going back and checking the NOD.

Mr. Cieleszko said that it's only supposed to be for clerical.

Ms. Lemire said that the Notice becomes incorporated into court documents.

Ms. Bennett agreed, saying it becomes the record.

Ms. Lemire agreed, saying that it is the final record of the minutes and the meetings.

Ms. Bennett said that there were so many conflicts in the minutes with the discussion.

Mr. Cieleszko said that, in general, you can't change a Notice of Decision after it's been approved.

Ms. Bennett added unless there is an error.

Ms. Lemire said that that's what the review is for and it would have been good if this had been brought up at the first meeting this Notice was reviewed; that that would have given the PB more time.

The Planner said that he didn't catch it on the first pass but, as it was ready for the PB's signature, it occurred to him then.

Mr. Lentz said that that's why he was cautioning Ms. Goodwin, today, when she was talking about posting the NOD's; that it's hard for them to catch up once you miss the _____ (you didn't finish your sentence).

ITEM 8 – CORRESPONDENCE

There was no correspondence.

ITEM 9 – UPDATES

There were no updates.


ITEM 10 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for April 16, 2019 at 7PM.

The Planner said that Mr. Pope would be on the agenda as well as an application for a pier.

ITEM 11 – ADJOURN

There was a motion and a second to adjourn the meeting at 8:26 PM.



Dennis Lentz, Chair
Date approved: 4/16/19

Respectfully submitted,

Ellen Lemire, Recording Secretary