

ITEM 1 - ROLL CALL

Present: Christine Bennett – Acting Chair, Ed Cieleszko, Melissa Horner, Carmela Braun, Bill Olsen – Alternate.

Also Present: Abbie Sherwin, Planner, Kristina Goodwin – Land Use Administrative Assistant.

Absent: Dennis Lentz - Chairman (excused).

Voting members: Ed Cieleszko, Christine Bennett, Melissa Horner, Carmela Braun and Bill Olsen - Alternative.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION

Ms. (Michelle) Duvall, Brixham Road, spoke to the issue of safety and traffic on Brixham Road regarding future development. It is one of the narrowest, most winding roads on the Seacoast and very difficult to navigate without constant focus and a low speed yet drivers traverse it high speeds just because it's a "country road". She has lived on that road since 1985 and witnessed much change; large truck traffic and other traffic going too fast; that she was rear-ended as she was leaving her driveway by a car coming too fast. There are many blind spots on that road and she was greatly concerned with the traffic impact with any new development. In addition, Brixham Road connects two State roads – Route 101 and Route 91 – and people use Brixham Road to avoid Route 236 and heavy traffic. She said that she would like the PB to consider this, with more school buses, more vehicles, more construction that goes with more development on that road that is already a danger.

Ms. (Sarah) Plocharczyk, Brixham Road, asked, regarding ordinances, if they are only allowed to exist in the municipal code or are there other places they exist.

Ms. Bennett explained that there is a delay in publishing (into the code) approved ordinances at Town Hall but that they are available at Town Hall as soon as they are approved; that what you see online may not be the codified version.

Ms. Sherwin said that it is usually the Town Clerk that submits any ordinance amendments or new ordinances approved at Town Meeting to the company called MuniCode for integration into the online code of ordinances; that MuniCode does publish them online as soon as they receive them.

Ms. Plocharczyk said that her question was with the Noise Control Ordinance, specifically, that it's not clear if that ties to land use, specifically, and we have some

pretty wild animal control ordinances, especially in regards to noise and being affected by being in the rural agricultural area of Eliot; that she was going to propose at least to start a conversation, and she doesn't know if this would necessarily be with the PB because it does tie into land use only because it involves zoning and rural agricultural; that rural agricultural does allow for animal husbandry but it does seem to be in direct conflict with these ordinances that appear to only exist on the Eliot Police website. She submitted some information to the PB.

Mr. Cieleuszko added that the Mass Gathering Ordinance is not in our book; that there are ordinances that are not in our book that are valid, legal ordinances.

NOTE: At this time, Ms. Bennett appointed Mr. Olsen as a voting member for tonight's meeting.

ITEM 5 – REVIEW AND APPROVE MINUTES

Ms. Braun moved, second by Mr. Cieleuszko, to approve the minutes of September 3, 2019, as written.

VOTE

5-0

Motion approved

ITEM 6 – PUBLIC HEARING

A. Citizen Petition: Agricultural Tourism Ordinance

Ms. Bennett explained that this proposed ordinance resulted from a citizen's petition; that it has been submitted to the SB, who has chosen to move it forward because it is a citizen's petition to go to the ballot; that this public hearing is part of the due process to be put on the ballot. She invited Mr. (Bill) Widi to speak on this citizen's petition.

Mr. Widi discussed developing this draft ordinance because he is one the last few farmers in Eliot, with the purpose to create additional revenue for farms. He talked about the higher cost for him to grow produce locally than it is to ship it across the country; that his costs start higher than you can buy it for at the grocery store so it is somewhat hard to compete. He explained that one of the things that has been happening in New England is that people will come to a farm for events and those are different avenues for farms to make some money. He said that you have to be a farmer for at least three years and it includes a specific list of things that are allowed – crop art and mazes, farm tours, maple syrup events, temporary petting zoos, pick-your-own operations, but not limited to edible crops, which the current code limits you to; seasonal harvest festivals, wine tours and wine tasting, and educational events with a focus on farm or forest. He added that we do have some prohibitions to be good neighbors – no on-street parking, a limit on seasonal harvest festival days to 21 per year, and seasonal harvest must end at 10 PM and not start until 8 AM.

7:14 PM Public Hearing opened.

Ms. Duvall asked for a definition of 'festival'.

Mr. Widi read the draft definition: "a periodic celebration of a harvest, season, or holiday."

Ms. Plocharczyk asked if there was anything in this that he could not do before.

Mr. Widi said that the reason this is needed is that there was a case in New Hampshire (Forster v. Town of Henniker) where a farm wanted to do weddings. They went to the CEO to put up a wedding barn and the CEO said no, the PB said no. They ended up at the NH Supreme Court and they lost. He explained that, after that happened, the NH Legislature passed an agritourism ordinance. He read from the legal opinion – "To the extent that communities want to allow agritourism, the way to achieve that goal is to specifically incorporate agritourism into their land use regulations. They should not assume that it is subsumed in the definition of agriculture." Knowing that that is going to be coming to Maine, at some point, he figured he would be proactive.

Ms. Plocharczyk said that he wanted to limit his risk.

Mr. Widi agreed, saying that if you want to put money into something, you have to do that, as well.

Mr. Olsen said that Mr. Widi specifically mentioned weddings from the NH case; that there is nothing in the prohibitions about weddings, here, and he is vague on the word 'events'.

Mr. Widi explained that, when he first talked with the PB about this proposed ordinance, that seemed to be the big hang-up, so he chose not to put that in; that Ms. Sherwin suggested he put in some definitions so he did that. He gave out copies of ordinances to the PB from NH that addressed the level of vagueness in those ordinances. He read language from the different ordinances, such as 'listed activities including, but not limited to'; 'related to the marketing of', and other language similarly vague; that his version is much stricter, with limits on number of days of festivals, limits on hours of operation, who can do this, and even where people can park and none of those other ordinances address any of that. He added that, even with those relaxed ordinances, there haven't been any problems.

Mr. Cieleuszko commented that that didn't alleviate his concerns; that he would rather have it strict in terms of a real ordinance.

Chief Muzeroll said that, as we move forward with this, there's a couple things on the back burner that also may, or may not, work in tandem with this; that we're all working on a mass gathering ordinance and there may be some components to that that may affect any operation there. From a public safety point-of-view, he just wanted to make people

aware that the crop art and maze portion of that has some big fire safety restrictions already in law; that certain parameters have to be established for safety. He added that he doesn't know how this is going to tie into any permit process for a festival; that there may be people thresholds that are hard to predict and, again, that may tie into the mass gathering ordinance and what can actually happen during those events.

Mr. Widi said that for him, personally, he wants to do timed tickets; that you would have to buy a ticket for a set time and tickets would only be available online. In that way, people would trickle in and out, without the huge influx that can happen.

Chief Muzeroll understood that Mr. Widi is speaking from his business point-of-view but this is an ordinance that we're looking at for the whole Town; that he applauded Mr. Widi's idea but not everyone might want to do that; that fire emergency, police and DMS are components that have to tie into this. His concern is how people are going to be aware of what really needs to happen, or the process, in order for you to do this.

Mr. Widi agreed that, with the mass gathering, there should be a permitting process and he would be happy to work with you guys on that. He clarified that, if this passes, once the Town Clerk signs it, this would only apply to farmers that have been continuously operating for three years; that that would mean we would have three years to sort it out. He added that that was done intentionally to give time to strengthen the ordinance against any loopholes.

Ms. Plocharczyk asked, regarding classification of farms, is Mr. Widi going by the Maine State definition of farms, which is different from farmland.

Mr. Widi clarified that you have to meet the Maine definition of farm as well as the definition in this ordinance; that you have to engage in agriculture or agriculture education and it does not mean to just register your land as farmland, and you have to specifically cultivate the soil, produce crops, and/or raise livestock.

Ms. Plocharczyk said that, if you look at the definition of farm on the State level, it's way more open than just using the three people in Town.

Mr. Widi agreed, saying that was why he add restrictions so that it's actually farms, not people gardening in their back yards.

After further discussion, Ms. Bennett asked Mr. Widi if he saw this ordinance crafted for the farm or the farmer.

Mr. Widi said that this is for the farmer because, when we get to the purpose, it's all about the viability of farms producing additional revenue sources; that you have to be an active farmer.

There was discussion trying to clarify farms from farmland and what would be allowed or excluded.

Ms. Plocharczyk asked why we needed an ordinance that allows us to do things, and she knows he's trying to mitigate risk.

Mr. Widi said that it's not mitigating risk; that it is, if it's not in the code, it's not allowed.

Ms. Plocharczyk said that nothing we currently have would prevent him doing any one of these things.

Mr. Widi said that that is incorrect because some of these things don't tie directly to your agricultural operation; that the legal opinion he read says that you can't just assume because there's not a law that it's allowed; that there has to specifically be an agritourism law. The one they put in NH switches that in that their state definition says that it's allowed and then it allows local municipalities to restrict it even further. The way Maine is now we are at a disadvantage. Every Maine farm is at a disadvantage to every NH farm because they have that and we don't; specifically, the border towns.

Ms. Bennett commented that Mr. Widi just said that there were specific activities that don't tie in to agriculture and asked if he could illustrate one or more of those.

Mr. Widi used, as an example, a seasonal harvest festival and wanting to have a bluegrass band, making it an entertainment event, and you are charging for hayrides. He asked where in the Eliot code...it talks about crops, etc., but it doesn't say that you can do...riding in a hayride is an entertainment venture and is not directly tied to agriculture.

Ms. Bennett said that, to her mind, it sounds like we need a mass gathering ordinance.

Mr. Widi agreed we needed that, as well.

Ms. Bennett said that maybe we just need that to achieve the idea he just discussed.

Mr. Widi said that, if it's less than 1,000 people, the mass gathering ordinance still wouldn't allow you to do it. That is one of its thresholds.

Ms. Bennett asked Ms. Sherwin if it was correct that Mr. Widi would be not allowed to have 900 people come to his farm and hear bluegrass while enjoying a seasonal festival.

Ms. Sherwin said, without taking that specific example, that the current ordinances do sort of allow accessory uses to agricultural uses to occur. It would be the interpretation of the CEO as to exactly what those uses were; so, it would really be on a case-by-case basis. There is nothing that expressly prohibits that activity from occurring, currently.

Mr. Widi commented that you are then at the mercy of the current CEO; that we have had five in the last six years, he thinks; that that's five different opinions. It is hard to run a business that way.

Ms. Bennett said that this will go on to another public hearing (SB) and the November ballot; that she offered up that, if this doesn't land where Mr. Widi wants it to land with this ordinance as it is drafted, we are currently working on definitions; and, if we were to add accessory uses for agriculture on the list of definitions to take a look at, we could certainly use Mr. Widi's input in terms of what would help in broadening that definition or making it more explicit.

Mr. Widi discussed his confusion on focusing on definitions because there would then be no limit to on-street parking or a whole bunch of other stuff that he thinks is reasonable and actually good for the neighbors.

Ms. Horner said that she was encouraged and would like something like this in Eliot because she thinks it's good for everybody; that she would unfortunately advise not to vote for this because there are too many holes and it's not tight-enough of an ordinance. The whole reason why this conversation got started was because weddings got brought up; that until that came up there was no problem with any of the things listed happening in Eliot. There is still nothing prohibit anybody from having a farm tour, a petting zoo, a harvest festival, or a wine tour; but the word 'event' in here is open to a lot of interpretation and she doesn't think that is safe for everyone in Town to protect citizens that Mr. Widi is wanting to protect about the parking. The other thing she said was that she doesn't think the definitions are up to par with what we're trying to accomplish in the Town, here. There's no language referencing needing a mass gathering permit, so, unless she is misunderstanding this ordinance, there is nothing in this ordinance saying that, if she were to have an event, she would just be looking at this particular ordinance; that this noise restriction doesn't even meet our current performance standards. There are some holes in this ordinance and she's sad that we couldn't all work on this together because she thinks it could have been a lot more successful. She added that, while she thinks Mr. Widi is trying to do the right thing, she doesn't think it's in the right place to become part of our infrastructure, as a Town. This is her comment.

Mr. Widi commented that nowhere in this ordinance does it say that you can ignore any other ordinance. At the bottom, it says, "To the extent any provision of this article is deemed invalid by a court of competent jurisdiction, such provision shall be removed from the article, and the balance of the article shall remain valid." We can still make changes and he asked that the PB just read the other ordinances he submitted tonight to compare to the one he wrote; that it might help.

7:47 PM Public Hearing closed.

Ms. Bennett thanked everyone for their input.

B. 16 Island Cove Drive (Map 14/Lot 17) #PB19-11: Tidal Docking Structure – 4'X16' Wooden Accessway, 4'X105' Fixed Pier, 3'X40' Aluminum Gangway, 10'X20' Float.

Received: July 12, 2019

1st Heard: August 20, 2019
Public Hearing: September 17, 2019
2nd Hearing: September 17, 2019
Site Walk: N/A
Approval: September 17, 2019

Mr. (Steve) Riker, Ambit Engineering, and Mr. Fugaruzzo, applicant/owner, were present for this application.

Mr. Riker discussed the proposed project:

- Existing current structure
- Replacing with permanent pier structure
- Provide recreational boating access
- Received ACE and ME DEP NRPA approval

7:49 PM Public Hearing opened.

There were no comments from the public.

7:50 PM Public Hearing closed.

Ms. Bennett said that she would like a discussion as to why this was relocated.

Mr. Riker clarified that this was not relocated; that the configuration is a little bit different.

Ms. Bennett said that it is noted in the Planner's memo that "due to the proposed structure extending beyond the 25-foot riparian line setback and onto the abutting property, Map 14/Lot 16, the agreement between the applicant and abutting property owner regarding the allowed reduced setback must be a condition of approval, She asked if we had that agreement in hand.

Ms. Sherwin said yes, it is in the file.

Ms. Bennett asked what the pleasure of the PB was for this application.

Mr. Cielezsko moved, second by Ms. Horner, that the Planning Board accept and approve the plan for PB19-11 for a dock and related material, with the following conditions of approval:

- 1. The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board. Copies of approved**

- permits from Maine DEP, Army Corps of Engineers, if applicable, and State shall be provided to the CEO before construction on this project may begin.
2. The permit is approved on the basis of information provided by the applicant in the record regarding the ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.
 3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.
 4. Applicant will file the agreement between the applicant and abutting owners of Map 14/Lot 16 at the York County Registry of Deeds and submit a copy to the Planning Department.

VOTE

5-0

Motion approved

Ms. Bennett said that the application stands approved and there is a 30-day period from which the PB decision can be appealed by an aggrieved person or parties – move forward but move forward cautiously.

C. 495 Harold L. Dow Highway (Map 53/Lot 6) PB19-8: Site Plan Amendment – Applicant is proposing to increase the size of a medical marijuana cultivation facility by proposing to construct a 32,832 sq. ft. facility in place of an existing 4,500 sq. ft. building lost to fire. Applicant: Sweet Dirt, LLC. Owner: The Flower Company Properties.

Received: July 2, 2019

1st Heard: August 6, 2019

Public Hearing: September 17, 2019

2nd Hearing: August 20, 2019

3rd Hearing: September 17, 2019

Site Walk: _____

Approval: _____, 2019

Attorney Rines, Mr. (Brian) Nielson (Attar Engineering), and Mr. Hughes Pope were present for this application.

Mr. Nielson said that he was recently brought into the project through the Site Plan Review process; that there were no expectations on documents received today. He explained that the new documents were an attempt to clarify the plans and bring them

more in line with what he read and discussed with the client in regard to the PB comments last meeting. He explained that we are looking to remove some of the existing infrastructure, demolish one of the existing fire-damaged buildings and replace it with an approximate 32,000-foot greenhouse, as well as a retail caregiver facility towards the front of the property to go in line with what was discussed at the last PB meeting. He said that we've added a lighting plan that is in line with all of the ordinances, as well as State requirements for marijuana facilities; added language regarding security; waste removal, and updated stormwater infrastructure to be in line with Eliot ordinance; that we will also be submitting a permit-by-rule with ME DEP.

Ms. Bennett asked if these were the new changes to the site plan that we have not seen.

Mr. Nielsen said yes.

Ms. Horner asked if we would need to have another public hearing.

Ms. Sherwin said that she would recommend that because there is a lot of new information that has been submitted that she hasn't had a chance to review, yet; that it came in this afternoon and she is not in the Eliot Town Office on Tuesdays. She added that she doesn't think what's being proposed is substantial but is just a lot of information and detail.

7:58 PM Public Hearing opened.

There was no public comment.

7:59 PM Public Hearing closed.

Ms. Horner asked, in an effort to be more efficient, if the applicant was trying to do this this year.

Mr. Nielsen said yes.

Ms. Horner said that the issue she sees is that the applicant is here to have a public hearing and not present new information, so, she almost feels like we need to push it to the next meeting to be presented; that she doesn't know if it makes sense to have a public hearing that night, too.

Mr. Cieleuszko said that we have an approved site plan (approved the application) so it's ready for a public hearing; that they are presenting new information that we can add to that, so, he thinks we can have it at the next meeting – another public hearing, with hopefully all the information within the next week to go over and, then, question the applicant at that time. Have it within the public hearing. He doesn't want to ask anything, now, because he doesn't know where we're at.

Mr. Nielsen said that there are more plans to just clarify; that it's the same site plan that was there before but just kind of tightening up the details and make sure to hit all the comments from the last meeting.

Ms. Bennett asked if he was requesting any additional waivers.

Mr. Nielsen said no.

Ms. Bennett said that we had addressed waivers at the last meeting and approved the plan as complete. She asked if it was feasible to schedule this for a public hearing at the next working meeting, discussing the application with the applicant before the public hearing regarding the new information.

Ms. Sherwin said yes.

The PB agreed to schedule this application for October 15, 2019.

Mr. (Dan) Stout said that he is helping out Sweet Dirt with Construction Management; that he would like to mention, again, is that what you see is simply clarification of what you requested from the last meeting – waste storage, a lighting plan, security, submitted a stormwater management plan, and construction drawings. Obviously, we're pushing it with winter conditions if we continue to have these meetings with no solution. He doesn't want to change the process but what he would like to propose is that you review the new information and, if you have any comments, to please let them know within the next two weeks so that we can have revisions and time for the next PB meeting/public hearing so that we don't have to wait yet another month.

Ms. Bennett said that we have seen no materials because they were submitted today so we would have to, at a minimum, consider this at the next Board meeting, which typically we reserve for administrative work. She asked for the sentiment of the PB to fast-track this to the next meeting.

Mr. Cieleuszko said that, tentatively, we are going to discuss the new pieces to this before the public hearing; that if the applicant has answered the questions we had from the last meeting, then it shouldn't be more than some technical strike that can be done right there, a public hearing and, then, get it done. If it's going to work, we can make it work at the next meeting. He doesn't think we can make any references to this application before that next meeting, and the workshop is chaotic enough, so we should go, as-is, and then, hopefully, we'll take that up, run through it, get the public hearing done where the public will be able to hear the deliberations on these new things, and get it done.

Ms. Bennett said that she appreciated the applicant's anxiety and desire to move forward quickly. In the meantime, you can take a meeting with our Planner (who hasn't seen the materials) to discuss that and, if the Town Planner sees anything she has concerns about, you could make adjustments between now and that second meeting for what we consider. It sounds like what you are doing is exactly what we were asking for, the last pieces of

the site plan that we needed but just haven't seen. We will move forward with scheduling you for October 15th for another consideration of the applicant's site plan application, to be followed by a public hearing.

ITEM 7 – OLD BUSINESS

A. Potential ordinance amendments for 2020.

This was tabled until the next administrative meeting.

ITEM 7 – NEW BUSINESS

A. 160 Pleasant Street (Map 1/Lot 70) PB12-12: Home Business and Change of Use – An application for a yoga and Reiki studio at a residential property.

Received: August 19, 2019

1st Heard: September 17, 2019

Public Hearing: _____

2nd Hearing: _____

Site Walk: _____

Approval: _____, 2019

The applicant, Ms. (Andrea) Bristol, was present for this application.

Ms. Bristol discussed her application. They have a barn/garage and they would like to open up the second floor as a Reiki/yoga studio.

Ms. Bennett confirmed that this was just an internal change to the accessory structure and there was no expansion of the structure.

Ms. Bristol agreed.

Ms. Horner asked about the GIS map that shows setbacks written in.

Ms. Bristol said that this was when we had applied to build a new barn to replace the old barn on the property and the writing on the map to show the then existing barn setbacks and new barn setbacks. The new built barn is 22'X25'.

Ms. Bennett said that this application meets the minimum yard dimensions for an accessory structure.

Ms. Horner said that this needs a variance from the BOA and, in her tenure here traditionally, that needs to happen first; that she's not sure we should talk about this application tonight without that.

Ms. Sherwin said that, when Ms. Bristol came in to talk with Ms. Bishop and herself, we decided that the best course of action was to have those two processes occurring on parallel tracks, concurrently; so, this first step would be to find the application complete and any future decision would be contingent on the BOA granting that waiver.

Mr. Olsen asked the applicant an overview of how she was going to park people who would come.

Ms. Bristol said that she can fit four cars, side-by-side, in her driveway and two on either side of her driveway on her lawn. She would probably have six parking spots. She would probably have eight people, at a maximum, she thinks, per class. She would use a mini-split for heating.

No sketch plan has been included.

Waiver requests:

Perimeter survey discussion:

Mr. Cieleuszko said that that can't be waived, if the applicant is going to the BOA, because they are going to need proper dimensions to decide what the applicant's relief would be; that they will not go by pictures, nor can we. He believes that the home business has to have the same setbacks as a primary residence on the property; so, if the barn doesn't have it in that district, it's impossible.

There was discussion regarding whether the GIS map would be adequate as a perimeter survey. The dimensions on the GIS map were placed on it in 2015, when the new barn was built.

The applicant needs to provide a list of all abutters.

Mr. Cieleuszko said that applicant is envisioning a maximum of eight and she has six parking spaces on the 'sample sketch plan'; so, is it a maximum of six, now.

Ms. Bristol said that it was her understanding that she needed at least six parking spaces, and she has that; that she lives in a residential area where people have told her that they would walk over to take a class.

Mr. Olsen said that in her application, the applicant said that hours will vary depending on demand and asked if she could get a little more specific.

Ms. Bristol said that she's envisioning a Tuesday, Thursday, Sunday evening class; that she teaches at different studios, so this isn't going to be a full schedule; that she would hold classes between the hours of 8AM and 6:30PM; that she would have pre-sign up for classes so people wouldn't just show up.

Construction drawings:

Ms. Horner moved, second by Mr. Olsen, that the Planning Board waive §33-127(18) Construction drawings for this application.

DISCUSSION

Ms. Horner said her rationale was a little overkill for a yoga studio and the construction drawings should already be on file with the CEO because the barn has already been built.

The applicant said that the contractor submitted a plan when he came in for permits to build the barn.

Mr. Olsen said that this would have to be verified by the CEO.

DISCUSSION ENDED

VOTE

5-0

Motion approved

Estimated progress schedule:

Mr. Cieleuszko moved, second by Ms. Horner, that the Planning Board accept the waiver for §33-127(17).

VOTE

5-0

Motion approved

High-Intensity soils report:

Mr. Cieleuszko moved, second by Ms. Braun, that the Planning Board waive §33-127(12).

VOTE

5-0

Motion approved

Soil Erosion & Sediment Control Plan:

Mr. Cieleuszko moved, second by Mr. Olsen, that the Planning Board waive §33-127(11).

VOTE

5-0

Motion approved

Drainage plan:

Mr. Cieleuszko moved, second by Mr. Olsen, that the Planning Board waive §33-127(8).

VOTE

5-0
Motion approved

Chapter 45:

Mr. Cieleuszko asked the Planner what were the ramifications of waiving §33-127(7) – Provisions of Chapter 45 of this Code applicable to the area to be developed and any zoning district boundaries affecting the development. If he is reading it right, this is just a zoning map, with a shoreland overlay. He doesn't think we should wave this. It doesn't require cost, it only requires one business in the Town, so he's not waiving it. It will come in handy when the BOA handles this case because Pleasant Street is getting close to the water. This would just be a map of the zone with any overlays that the applicant could get at the Town Hall.

Ms. Bennett said that we have a note from the Planner that it is not in the Shoreland Zone.

Ms. Sherwin said that the waiver was requested but all of the information that would be submitted to her in that provision is already addressed within the application. The waiver has been requested and that is why it is listed.

Mr. Cieleuszko moved, second by Ms. Horner, that the Planning Board not wave §33-127(7).

VOTE
5-0
Motion approved

Contour lines:

Mr. Cieleuszko moved, second by Ms. Horner, that the Planning Board waive §33-127(6), based on the USGS geological survey.

VOTE
5-0
Motion approved

Temporary markers:

Mr. Cieleuszko moved, second by Mr. Olsen, that the Planning Board waive §33-127(5), as there are no changes.

VOTE
5-0
Motion approved

Perimeter survey:

Mr. Cieleuszko moved that the Planning Board not waive §33-127(4).

DISCUSSION

Ms. Horner spoke on that, as a small business owner. Those surveys can be \$3,500 to \$5,000. She personally came before this Board to get her home business application done and submitted pretty much the exact same information as she gave us showing the setbacks. She's seen maps like this before being presented to this PB. She would waive §33-127(4), in light of the fact that we have the information that the Planner helped the applicant work on, it provides up-to-date measurements using our GIS system that everyone uses in Town, and not put the burden on the applicant, for financial reasons, to provide us with something we already have.

Mr. Olsen added that it's not new construction; that if we were going to do it, that is when we would do it.

Ms. Horner showed a perimeter survey certified by a State-registered Land Surveyor and the GIS maps that we have provided by the applicant come from a State-certified Land Surveyor through the GIS mapping we currently have.

Mr. Cieleuszko disagreed with that analysis because, when you are looking at an aerial photo, you aren't even looking directly down on the place; that a foot is a mile when you are looking from an aerial. No one, no court, nobody, would look at that and call that good for marks for a variance or waiver.

Ms. Horner said that that's not what the applicant is asking us for; that on the other map the lot lines are all measured out and those lot lines come from our GIS Mapping System.

Ms. Bennett said that she agreed with Mr. Cieleuszko that there are some limitations to the GIS System because it could be skewed; that an actual perimeter survey will actually show the buildings are in relationship to the actual, legal boundaries of the property. That said, we're not really taking up this setback issue, the BOA will take up the rear setback issue about converting to a home business. For our purposes, she thinks there is merit to what Ms. Horner has outlined for this. She added that the applicant should be aware that she could be treading into deep water because there could be easements on her property that she doesn't know about; that these things happen and part of the survey is doing a deep dive into the deeds to see if someone may have a ROW through her barn; that that has happened, as we are an old Town. She said that this is an onerous-type of document to provide and would agree, for this type of application, it doesn't rise to that but just a note of caution that the BOA may require that she get some professional surveying done.

Mr. Cieleuszko withdrew his motion with a comment. It would be in the applicant's best interest to go out on her property, with her deed and a tape measure, and measure that property as best as she can, including pictures, and go to the BOA with that; that that would help her out immensely compared to what 'this' is showing.

Ms. Horner moved, second by Mr. Cieleuszko, that the Planning Board waive §33-127(4).

VOTE
5-0

Motion approved

Ms. Horner said that Mr. Cieleuszko's suggestion was perfect; that that is what she did for the BOA. She wasn't saying that it would work because they take every appeal as individual but a tape measure with pictures, and a witness there was satisfactory; that it was good information to have.

Ms. Bennett said that we have gone through all the waivers and can take up the question of whether this application is complete.

Mr. Cieleuszko said that he needs to see the parking dimensions, a hand-drawn plan for where the parking is and the dimensions of it; that this is much too loose. An important aspect of our job is to know what you are going to be doing and he can't tell from that picture, in terms of parking.

Ms. Bennett said that she thought that was reasonable; that the applicant's materials showed that 180 square feet would be allocated for each parking space.

Mr. Olsen said that he thought the hours of operation should be defined, whatever that might be, and give yourself some wiggle room; that that should be in the application.

Ms. Horner clarified that the applicant could say 7AM to 7PM, as an example, but give yourself room because, if someone was to make a complaint in the future because you are having a crazy yoga class at 9PM, technically, there could be action against you for not following what you said you would do.

Mr. Cieleuszko said that he believed that cars shouldn't be stacked so that some cars can't get out, at all.

Ms. Horner reminded that the PB needed a list of abutters.

Ms. Braun said that we need signage information, dimensions and where it's going to be placed.

The PB agreed that they needed to see this information before deeming this application complete.

Ms. Bennett said that we need to decide what use this is going to be regarding 'use'; that it could be something 'similar to' our list of permitted uses

The Planner had suggested it could be 'similar to' a school and/or a non-intensive recreational facility.

Chief Muzeroll said that you would be heading into trouble if we had another studio called a school on Beech Road that has just turned into a huge, and it's going to continue to turn into a huge, fiasco because that's how it was approved. It's not a similar situation

in his mind, as far as codes go but the word 'school', even though it may provide an educational process in whatever they do, he thinks the PB is just setting themselves up, in future, setting precedence for anything else that goes on. He's not sure how the yoga place at the Commons was...not even sure it was given a use but he would advise the PB not to deem it as a school.

Ms. Sherwin clarified that the PB is not electing a use to define for the property; that it's just that the PB is establishing that the use is permitted because it's similar to something that's already permitted for the home business purpose, not for establishing a separate use on the property.

Mr. Olsen said that a non-intensive recreational facility seems a pretty close description of what the applicant is wanting to do. He said that he didn't think it was a school, adding that Chief Muzeroll had a great point in that, if you use the word 'school', you add a whole lot of stuff to it.

Ms. Braun agreed it was more exercise/recreational than it is a school.

Mr. Cieleuszko said that he could support 'recreational facility, non-intensive'.

Ms. Sherwin again clarified that the PB is not assigning a use for this home business; that it's really just taking a look at the permitted uses, based on the Land Use Table, in the Village District saying that, per the applicant's justification of an explanation as to what the use is proposed to be, it is similar to businesses that are permitted in the district. The PB just has to select a use that the PB thinks it's similar to in order to justify approving a home business application; so, the PB wouldn't be assigning the use of a school to the property or a non-intensive recreational facility to the property.

Ms. Bennett asked for the PB's pleasure.

Mr. Olsen moved, second by Mr. Cieleuszko, that the Planning Board determine that recreational facility, non-intensive is the use 'similar to' the applicant's proposal.

VOTE

5-0

Motion approved

The PB agreed that they could not approve this application as complete and scheduled this application to be reviewed at the October 15th meeting.

B. 149 Beech Road (Map29/Lot5) PB19-13: Site Plan Amendment – An application for a change of use to truck terminals and storage.

Received: August 20, 2019

1st Heard: September 17, 2019

Public Hearing: _____

2nd Hearing: _____
Site Walk: _____
Approval: _____, 2019

Mr. (Brian) Nielsen, E.I.T. (Attar Engineering), representative, was present for this application.

Mr. Nielsen said that the proposal is to change the use to 'truck terminals and storage'. There is no change proposed to the existing site and he received the Planner's memo but hasn't had a chance to review it, yet. He could answer any questions the PB had tonight and anything else he could make sure to put into the site plan review as we go along.

Ms. Bennett asked the Planner what the existing use was for this property.

Ms. Sherwin said that, in looking through the files, it looks like the use was a boat storage facility, which is not in the current land use table.

Ms. Bennett recollected that this came to us for a site plan to create a boat storage facility and never completed that site plan application; that, instead, went to Code Enforcement. She asked if the CEO could issue a change in use.

Ms. Sherwin said no. It always has to go through the PB.

Ms. Bennett said that she would like to know what we're changing from; that historically it has been used as auto repair facility or Grover Construction.

Mr. Nielsen said that he believed it was Grover Construction from looking through the previous deeds.

Ms. Bennett said that it may, or may not, have changed to a boat storage facility. She asked if the truck terminal was in existence already.

Mr. Nielsen said that it is. It is being leased by H.O. Bouchard.

Ms. Braun said that the request was to change the use to truck terminals and storage and auto repair.

Mr. Nielsen said that that was his error and clarified. They do some small amount of maintenance on the trucks they bring in and use because they are a hauling business. He's not sure that needs to be included in the site use or if that's just part of 'truck terminal and storage' and, once he clarifies that with the PB, he will put the same throughout the application. They are not having any external customers come in. They will be performing basic maintenance on their company vehicles.

Ms. Sherwin said that the memo requested additional information about what the use will be.

Ms. Bennett asked when it stopped being a boat storage facility.

Mr. Nielsen said that he would have to get back to them on that one; that he knows, in the past few years, H.O. Bouchard has been leasing the property but he can't give them an exact date right now. He will include that information in the next submission.

Mr. Olsen asked what H.O. Bouchard hauled.

Mr. Nielsen said that it's primarily fuel – propane, wood pellets, and that sort of thing.

Mr. Olsen asked if they are storing fully-loaded propane tankers and fuel trucks for another driver to pick up.

Mr. Nielsen said that he would have to check if they are fully loaded at this facility. He does know that there are tankers there parked but he doesn't know if they are empty or not.

Ms. Braun asked what they were storing, asking if it was fuel.

Mr. Nielsen said that he believes it's the trucks, themselves. He hasn't seen any fuel stored on-site but he will clarify that.

Ms. Braun asked if they had a specific number of trucks.

Mr. Nielsen said that they are a state-wide business so they are swapping them in and out. He will get an approximate number for the PB.

Mr. Cieleszko asked if there was any freight being stored.

Mr. Nielsen said that he would clarify both freight and fuel. He added that this property is currently owned by Independent Boat Haulers and, until recently when H.O. Bouchard moved in, they were using the property for that.

Mr. Cieleszko discussed his concern regarding the title because the deed shows two separate lots; that he sees Lot 4 and Lot 5 but, with Lot 4, Mr. Bouchard already owns that.

Mr. Nielsen said that that was correct and that's not being changed.

Mr. Cieleszko asked what were the two parts of the deed.

Mr. Nielsen said that the reason we included that deed is because the facility, even back when it was owned by the construction company, makes use of the well on Lot 4 and we wanted to make sure that was clear.

Mr. Cieleszko said that, in Schedule A, it references Parcel 1 and Parcel 2, and he doesn't know if there is another property somewhere.

Mr. Nielsen said that John Pollard, who owns Independent Boat Haulers, does have a second parcel but is not part of this project. He believes they are adjoining properties, clarifying the different properties on the site plan.

Mr. Cieleszko asked if that next lot was landlocked.

Mr. Nielsen said that he believes so. We don't use that as part of this. That exhibit was primarily included to show H.O. Bouchard's interest in the property; that they had legal reason to come before the PB.

Mr. Cieleszko asked if the driveway for that property was on Beech Road or Ruth Lane.

Mr. Nielsen said that Ruth Lane is the private way that comes off of Beech Road but the technical address for the property is on Beech Road. You can't physically get there without going through Ruth Lane.

Ms. Bennett said that the matter before us is a request for a change in use, asking what the pieces are that we need to consider, as this is a lot of information to consider.

Ms. Sherwin suggested that the first step would be to review the requested waivers to determine the application's completeness and, then, have a discussion of the relevant topics in the memo.

Waivers:

Perimeter Survey:

The site plan is based upon the perimeter survey done in November 2016 and, so, there is no need to submit additional information.

Mr. Cieleszko moved, second by Mr. Olsen, that the Planning Board not waive §33-127(4) because it has already been met.

VOTE

5-0

Motion approved

Temporary Markers:

Mr. Cieleszko asked if we were planning to do a site walk.

The PB agreed that they would do a site walk.

Mr. Nielsen said that nothing is changing so the site will be as-is when the PB arrives and that was the reason for this request.

Mr. Cieleszko said that trucking is a lot different than boat storage and he has reservations on whether this is just an even swap. He's having trouble with these waivers because it's not a minor change but a big change in use; that he would like to see fuel storage, is there going to be oil storage for oil changes, antifreeze, etc. next to the wetlands. He doesn't know what's there, now, but probably not much.

Mr. Nielsen said that, as part of the application, we did address at least storage for lubricants and oil for the trucks; that they would all be taken care of under ME DEP regulations. He could go into more detail on the application plan.

Mr. Cieleszko said yes; that the last trucking facility we discussed supplied plans for any loss of fluids that might get into the wetlands and protections around stored stuff – cement protections – and those things should be addressed regarding this.

Ms. Bennett said that she would like to see temporary markers for the Resource Protection Zone so that, on the ground, we know where that lies; that we also have Limited Commercial so showing Shoreland Zoning, approximately, on the land; that this includes truck storage and we don't know, right now, whether they will be full or empty of material.

Mr. Cieleszko moved, second by Ms. Braun, that the Planning Board not waive §33-127(5).

VOTE

5-0

Motion approved

Ms. Horner said that we haven't done this, yet, but we are moving toward 'truck terminal and storage', which isn't allowed in the Suburban District.

Mr. Cieleszko said that we wanted to take up these waivers, first.

Mr. Nielsen said that, for clarification, the PB would like to see Shoreland Zoning on the site and asked if there was anything additional.

Mr. Cieleszko said any new outside storage and any parking of these trucks, how many, how full, and where.

Mr. Olsen asked if there was going to be housing of drivers.

Mr. Nielsen said no.

Perimeter Survey revisited:

Ms. Sherwin said that she thinks that the waiver for §33-127(4) should be revisited, as she was just reviewing the site plan and she didn't see that it was certified by a State-registered land surveyor. It's stamped by an engineer for the site plan but the perimeter

survey, which the site plan is based on, is not indicate that it was done by a State-registered land surveyor based on the documentation that was submitted.

Mr. Cieleszko said that we can come back to that but, as it stands, he would like to see it.

Mr. Nielsen agreed to provide a perimeter survey stamped by a State-registered land surveyor.

Ms. Horner asked if the note on the site plan saying that it was created by Kimball Survey & Design and dated November 2016 not suffice.

Ms. Sherwin said that that doesn't satisfy it just because it doesn't say, and it's not stamped, with their registration number.

Ms. Horner moved, second by Mr. Olsen, that the Planning Board waive their previous waiver determination to §33-127(4) to require a stamped, certified Perimeter Survey.

Discussion regarding the reason for this motion was to clarify that, with new information, the rationale for the original motion was no longer valid and an amended motion to require a stamped, certified perimeter survey was necessary to meet this requirement of the ordinance.

VOTE

5-0

Motion approved

Drainage Plan:

Ms. Braun asked if the applicant had to go to the DEP for any permits in relation to this.

Mr. Nielsen said that he doesn't believe so.

Ms. Braun asked if it had gone to the DEP before for this issue of stormwater drainage and collection.

Mr. Nielsen said that he was not aware; that it would have been with the previous owner, who is not his client.

Ms. Horner said that she realizes that there are no proposed changes to storm drainage on-site but that storm drainage is based on a boat facility and, if we change the use, that completely changes her opinion of that need.

Ms. Bennett agreed.

Ms. Horner moved, second by Ms. Braun, that the Planning Board not waive §33-127(8).

VOTE

5-0
Motion approved

Mr. Nielsen asked what would be on that plan because what he would present with the standard stormwater drainage plan would be the difference between the previous and post construction and what changes occurred; that he would basically be giving the PB the same exact plan twice.

Ms. Horner said that, if there's going to be truck storage on-site, she would like to see where those are.

Mr. Nielsen said that those are not considered permanent structures and would not be required to incorporate those in his stormwater drainage plan because they would be leaving and not adding to the impervious load on-site. Additionally, they would be parked on impervious pavement or gravel so they would be null to the stormwater.

Ms. Horner said it sounds like the applicant has the information he needs to submit a stormwater drainage plan.

Mr. Nielsen said that the PB has it. It is basically that nothing has changed and he would be going through a bunch of math and analysis and costing his client money to tell the PB that nothing is changing. There are no new structures, no new impervious, no new adjustment to the pre-construction condition and the post-construction condition, which is normally how we present the stormwater drainage plan.

Ms. Horner asked about the future secondary access to Route 236.

Mr. Nielsen said that that is off of the property so it wouldn't involve this property. He agrees with the Planner's note on that one to probably strike that from the plans for clarification unless we provide more information about that.

Ms. Horner asked if any extension of the gravel parking area doesn't influence drainage.

Mr. Nielsen said that that was also a typo error and was meant to say the 'extent of the gravel parking area that exists and will not be changing'.

Ms. Bennett asked if there was a drainage plan for this property.

Mr. Nielsen said that he didn't know; that if he were to provide one, it would not tell the PB anything is what he is trying to say. He clarified that, when an engineer provides a drainage plan to the Town for a construction project, it's usually just to prove that the post-construction stormwater flows will match the pre-construction stormwater flows, just like he did for Sweet Dirt; that structures have been added, therefore, he needs to update the stormwater infrastructure to make sure all the flows are the same at the new analysis points. There are no new analysis points, here, and would just be the same before-and-after because there is no before-and-after.

Ms. Horner said that you should then be able to provide us a drainage plan.

Mr. Nielsen said that he could do it on the back of a napkin right now and it would be the same value as if he went and did it in AutoCAD, it's zero change because there's no construction proposed.

Ms. Horner asked if any of that would trigger a need for permitting from DEP because it's in the Shoreland.

Mr. Nielsen said that DEP triggers stormwater permitting when you have more than one acre of disturbed, a different set of criteria when you have more than one acre of impervious, or more than 10 acres of disturbed. Off the top of his head, those are the three big ones we typically go by. If you are looking for more information, as far as what the use will do as far as quality of run-off and things like that, he thinks that's probably what the PB is getting after but a drainage plan usually speaks to just where the water goes and the water is going to be going to the same place. He can provide more clarification as to what sort of contaminants are on the site and what sort of waste materials; that he thinks that's what's really being asked for. He asked if he was reading the room correctly on that one.

Ms. Bennett said that she thinks that's part of it; that she's getting hung up on the fact that, as he keeps saying over and over, again, that nothing has changed. Essentially, the applicant is asking for a change of use where nothing has changed.

Mr. Nielsen said that it's kind of like the yoga studio – it was a barn and, now, they're going to be doing yoga in it.

Ms. Bennett said that that's a change in use but you are saying that nothing has changed so why is he here.

Mr. Nielsen said that there is a change in use but he guessed that they are looking to get codified that they are allowed to do 'truck terminal and storage' because that's not the current codified use there, but it is what's being performed there. They aren't storing boats there, anymore, because H.O. Bouchard does truck hauling.

Ms. Horner said that she disagreed with how they went about this application because the change of use was before us; that she has been going along with it because that's what we're doing but it does seem like we should be talking about this change of use, first. If we get through all these waivers and then decide we can't change the use we just all sat here for an hour.

Ms. Sherwin said that because the application was submitted the PB would still have to make a determination on these.

Ms. Horner said that what she keeps getting hung up on is that 'truck terminal and storage' isn't even allowed in the Suburban Zone.

Ms. Bennett said that it is her understanding that the trucks are being stored in the Commercial Zone because this property gets bifurcated Suburban and, then, Commercial. From what she recalls from the last time she was on this site, there were approximately 6 trucks and there are about 30 of them now; that there would only be a couple of trucks when it would be a boat storage facility and there would not be anything in them, is what she heard, and they would stay on the edge of the Resource Protection Zone. Where we had boat storage happening, we had a structure that they were putting boats into that they added on to and, now, they are going to do a truck terminal and will service said trucks and bring them in there. She asked if the applicant was intending to store trucks in that Suburban Zone District-portion of the property.

Mr. Nielsen said that where it says 'extend' and is supposed to say 'extent' is primarily where he's witnessed parking on the site and that is in the C/I District.

Ms. Bennett said that over 'there' are those fragile resources where all the trucks are stored on an area that was completely defoliated and churned up and created the gravel so that it is completely pervious because there's not a single piece of vegetation on it except in that Resource Protection Zone. That is the existing site, as it has been for a while, and now it's going to house a lot more trucks but then we have them here in the Suburban Zone the truck terminal, asking if is that correct.

Mr. Nielsen said right.

Ms. Bennett said that that is a change of use. Over 'here' on the gravel in the C/I Zone hasn't changed, per se, except to maybe get more intensive and the boat storage that was over in the Suburban Zone is now truck terminal.

Ms. Sherwin said that it is all considered a change in use because 'truck terminal and storage' is an identified use in the land use table and what it's currently being used as is not.

Ms. Horner asked how to grapple with throwing that into the Suburban Zone.

Ms. Sherwin said that it's very complicated; that a portion of the property is in the Suburban Zone and a portion in the C/I Zone. More information has been requested from the applicant about where exactly the trucks will be located, how many of them there will be, and just additional information about what the use, or uses, will be on the parcel. On page 2 of her memo, there is a section in the ordinance that allows for the expansion of, or change, a non-conforming use if the PB determines it will be no more impactful than the existing use. That would be something to discuss once the application is found complete and once more information submitted by the applicant.

Ms. Horner said okay.

Mr. Olsen said that he thinks we need to understand, fully, not only where the trucks are going to park and how many but, from his understanding of truck terminals and this a

24/7 operation then, if you need to bring a truck in because drivers can only drive so many hours and this is a drop-off point because you need to go to New Jersey, for example, this is still a pretty residential area. The Grover operation that was here prior to the boat-hauler thing was a construction company that started at 6 AM and was back at 3PM or 4PM and all of the abutters were owners of it, or employees, in every one of those spots; so, it's just a completely different use of this property.

Ms. Horner said that it seems like we need to know what's happening here before we can do more, in her opinion; that she's happy to go along with what the PB wants to do.

Ms. Bennett said that we are going down the road of this not being a complete application.

Ms. Horner said that she would just hate to waive something that.....not that we can't change it, but, if we were to amend a waiver because we learned something new then we're potentially bumping it out further for the applicant, which of course we can do, but she also likes to be on the applicant's side regarding the timeline and not delaying if we can help ourselves. On the applicant's behalf, it makes more sense to have a more complete picture of this so you're not going back, again and again, if we learn something new the next time the applicant shows us where the trucks are going to be parked; that he might have to amend his whole plan, again.

Mr. Nielsen said to correct him if he's wrong with the process but finding an application complete does not necessarily accept the application.

Ms. Sherwin said that that was correct providing that the completeness determination has nothing to do with the content of what's submitted but whether, or not, the material was submitted.

Ms. Horner said that she didn't think that was going to happen tonight.

Mr. Nielsen said that the problem with the timeline would be that he would have to come back and find it complete, unless the PB was to find it complete and approve it in the same night, which he's not sure is allowed; that that would extend the timeline, and the PB can find it complete and still ask him to provide additional information, as more information is presented, and he thinks that would reduce the timeline as opposed to not finding it complete tonight on the basis of a certain lack of information.

Ms. Sherwin said that she thinks the finding of completeness really has to do with all of those §33-127 sub-numbers and whether, or not, that information has been submitted, regardless of what the substance of the information is. Just whether that has been submitted or a waiver requested and granted; that it has everything to do with the submission requirements.

The PB agreed to continue through §33-127.

Soil Erosion & Sediment Control Plan:

The justification for this request is that the existing site is stabilized in regard to erosion and sedimentation control and no new soil disturbance is proposed.

Mr. Olsen said that, even though it's all gravel, if you are running a boatload of trucks across gravel in the rain, then you are changing.

Mr. Nielsen said that that is what gravel is designed to do, to take, and not adding any additional erosion per design regulations for the site; that you would have to justify, somehow, through the ordinance that there is more movement now than there ever was prior and how that effects silt run-off and that sort of thing.

Mr. Olsen said four trucks being parked on that gravel and thirty trucks moving on that gravel is a clear change.

Mr. Nielsen said that that would be fair except that it's a small lot and it's not like a demolition derby, they are going to go and they are going to park. To be clear, a Soil & Erosion Control Plan is typically provided for use during construction; so, they don't have anything to do with the way the site is designed during the use; that that is where he puts silt fences, and things like that.

Mr. Cieleuszko moved, second by Mr. Olsen, that the Planning Board grant the waiver for §33-127(11).

VOTE
4-1 (Braun)
Motion approved

High-Intensity Soils Report

Mr. Olsen moved, second by Ms. Horner, that the Planning Board waive §33-127(12).

VOTE
4-1 (Braun)
Motion approved

Water Supply:

Mr. Cieleuszko asked if there were any employee changes because he thinks the boat storage was a pretty much employee-less entity, also asking what's down there for septic.

Mr. Nielsen said that it is subsurface wastewater; that it's relatively new and the HHE-200 is included in the application; that it outlines the size and location.

Ms. Horner moved, second by Mr. Olsen, that the Planning Board grant the waiver to §33-127(14).

VOTE
5-0

Motion approved

Estimated Progress Schedule:

Mr. Cieleszko moved, second by Ms. Horner, that the Planning Board waive §33-127(17).

VOTE

5-0

Motion approved

Sewer Connection:

Mr. Cieleszko moved, second by Mr. Olsen, that the Planning Board waive §33-127(15).

VOTE

5-0

Motion approved

Construction Drawings:

Mr. Cieleszko moved, second by Mr. Olsen, that the Planning Board waive §33-127(18).

VOTE

5-0

Motion approved

Ms. Horner apologized for getting hung up on the change of use; that it just feels like we're doing this backward from the way she's been doing it for the last 10 years.

Mr. Cieleszko said that we may never do it this way again.

Ms. Bennett said that we have granted all but two of the waivers; that the two we did not grant were the location of temporary markers and drainage plan.

Mr. Nielsen added that the PB didn't waive Perimeter Survey.

Mr. Cieleszko said that he thinks we rushed to a vote on the drainage plan and asked if the PB wanted to go back to that.

PB members did not want to go back.

Mr. Nielsen commented even though the PB knows it's not going to provide the Town with any additional information or ME DEP requirements and it's honestly just a cost increase for the client with no information.

Mr. Cieleszko said that the answer to this that we're looking for is that, when he comes back with that, he will say nothing's changed.

Ms. Horner said that she thinks it would be different if he had submitted that from the boat-hauler application but we don't even have that; that we have nothing.

Mr. Cieleuszko said that he thinks the bottom line is that the applicant isn't changing anything.

Ms. Horner said that her rationale is that there is nothing in the file for storm drainage. If there was something in the file from the previous applicant and he used that document to present to us that nothing is changing but we don't even have that.

Mr. Nielsen said that he did get the existing survey out of the Town's file, so that does exist, and there's been re-vegetation of the site since then; that he could base it off of that that would say there is significantly less impervious area now and will simply be an improvement; that, again, it will not be anything more than anecdotal information he's giving them right now.

Ms. Horner said that we can't put that in the file.

Ms. Bennett said that we don't have a calculation of stormwater.

Mr. Nielsen said that stormwater drainage is usually a before-and-after picture and he doesn't have the before. He said that it's really up to the PB, asking if you are going to take what's existing now on the site as the existing condition that he has to go by or does he have to find some historical document and consider that his existing conditions retroactively; that that would be the only way he could get a before-and-after picture.

Ms. Bennett asked how long do these trucks park themselves.

Mr. Nielsen said that he didn't know but could find out; that as far as stormwater is concerned, that has no bearing on the calculation.

Ms. Bennett asked if they weren't a kind of impervious structure just sitting there.

Mr. Nielsen clarified that they are standing on an impervious surface and, whether the truck is there or not, the water is going to hit that impervious surface and go towards the catch basin.

Ms. Horner said that we don't even know that.

Mr. Nielsen explained that it is gravel and, by the DEP regulations, it's considered an impervious surface and we have the topography of the site and the topography of the site is not changing; so, the drainage patterns will not be changing. The point he is trying to make is that a drainage plan is a before-and-after and, if the before-and-after doesn't change, you will gain no knowledge by him providing a drainage plan.

Mr. Olsen asked if that would change if the gravel area was paved.

Mr. Nielsen said that both of those surfaces are considered impervious so you really still wouldn't be required to provide a drainage plan.

Ms. Horner said that she totally appreciates you going to bat for your client and trying to save some money. She has made her decision and is not going to change her mind.

Mr. Nielsen said that he kind of gets where she's coming from but he is letting them know that this will provide the PB with no new information and it's going to cost his client over \$1,000.

Ms. Horner asked if we would at least see where the water is going and how much.

Mr. Nielsen said that the grading plan can already tell you that, you have existing topography. He can do it right now; we can make lines on the paper and that will show you where it drains currently. Unless that changes before and after construction, the drainage plan will not provide the PB with any new information.

Ms. Horner said that she would like to see the arrows but it's not going to happen tonight.

Ms. Sherwin said that Mr. Nielsen is correct. There is no new construction, there's no new impervious surface that's being proposed based on the information submitted thus far; that, again, she thinks we need additional information about the use and what that entails for the property. The plan does include an existing catch basin on the property and it includes topography of the property so we can clearly see where the drainage is heading. The memo has asked the applicant to provide additional information about maintenance and responsibility for that existing catch basin; that we can certainly go back and look for any stormwater management plan or drainage plan that has been submitted previously. She really didn't know that, because there's no new construction being proposed, that the drainage plan would provide much more information, other than what's already been submitted.

Ms. Horner said that Ms. Sherwin could go back to find any stormwater management plan or drainage plan and she thinks that's what we want.

Mr. Nielsen said that that may be where he is concerned; that that's not part of a drainage plan but would be part of a stormwater operations and maintenance manual, or that sort of thing. A drainage plan is usually a full-on stormwater analysis.

Ms. Braun said that she was looking for a stormwater management plan. The use now was a boat storage unit, they would bring the boats and the boats would sit there and not move until the owner came to tow it away; that now you're talking about trucks that are coming and going and moving, and a great many trucks. She asked how that affected the stormwater management.

Mr. Nielsen said that, in terms of stormwater, it really wouldn't because the stormwater is projected over a very long period of time. You are being asked to protect against 2-year

storm events, 10-year storm events, and 25-year storm events and those really don't have any bearing on the snapshots of the activities on the site as long as they are not affecting the impervious area or the topography of the area or anything else that might affect the way that stormwater flows. Aside from having new contaminants, or something like that, then quality might come into question.

Ms. Braun said that he is close to the wetlands so she is concerned about what is going into the wetlands, asking if it is being filtered before that happens or just flow into the wetlands.

Mr. Nielsen said that he thinks that's what the PB is after and what the Planner has included in her memo as part of all the additional information that would be required along with the next submittal.

Ms. Bennett echoed the sentiment of the PB that we would like to know how the protected resource adjacent to this property is going to be affected by this proposed use. We do have contours on the property and a catch basin and we can look at this plan a little more deeply to see how the water is going to run off. The big question is what (water) is going to be running off and how much of it is going to be running off; that we can't answer that now in determining what sort of potential adverse effect on the resource there are until we get from the applicant what's going to be stored on the property and what's going to be happening with maintenance.

Mr. Olsen said that §33-127(8) is not going to provide that; so, what we do want we will get through Ms. Sherwin's recommendations so we can waive.

Ms. Bennett agreed, adding that we can dive deeper into that consideration of what the impact on the resource is.

Ms. Sherwin added that because there are other requested waivers that have not been approved, application completeness is not contingent on approval of this waiver; so, the PB does not have to take action on granting or denying the requested waiver for this section tonight; that you could always do that at the next meeting when this is discussed based on the additional information that is submitted.

Mr. Cieleuszko said that he would like to rescind the motion or override it.

Ms. Lemire said that Ms. Horner made the motion and Ms. Braun was the second; that Ms. Horner has to amend or make a new motion.

Ms. Horner said that she was not going to. She wants to see the arrows, that it's not going into the (wetlands), and she has nothing to look at.

Ms. Bennett said that we have gone through all the waivers and made some determinations. She asked the PB how they felt about completeness of the application.

Mr. Cielszko moved, second by Ms. Braun, that the Planning Board find the application not complete because of the waivers that were not granted and not fulfilled.

VOTE

5-0

Motion approved

A site walk was scheduled for October 1st at 4:30PM.

C. 29 Addison Lane (Map 41/Lot 6) PB19-14): Shoreland Zoning Permit Application – Proposal for a 6’X20’ accessway, a 6’X100’ fixed pier, a 6’X24’ landing float, and an 8’X24’ main float.

Received: August 22, 2019

1st Heard: September 17, 2019

Public Hearing: _____

2nd Hearing: _____

Site Walk: _____

Approval: _____, 2019

Mr. (Steve) Riker, Ambit Engineering, was present for this application.

Mr. Riker said that this was to construct a tidal docking structure on the lot:

- 6’X20’ accessway, a 6’X100’ fixed pier, a 3’X5’ seasonal gangway, a 6’X24” seasonal landing float, and an 8’X24’ seasonal main float.
- Provide recreational boating access to the Piscataqua River
- ACE permit has been granted
- DEP permit accepted for processing September 10th and currently under review
- C-1, existing conditions plan:
 - Shows proposed docking structure
 - On mean low, low water datum (zero on plan)

He added that, typically, the goal with a tidal docking structure is to get water for the duration of the tide so the structure will have water under the float the entire tide. This structure is somewhat unique in that we are proposing a landing float, as well as a main float. The purpose of the landing float is to get to a depth of water without constructing a fixed pier that is a permanent structure; so, essentially just gauge of distance but it is seasonal and will be removed during the non-boating season. The same thing with the main float; that that will be removed during the non-boating season. What most people do is store the gangway and store it on the pier, itself, and then there’s a couple local marine services that actually tow floats and store them for the winter then re-install them for the boating season for property owners who own docking structures. The D-1 sheet shows the docking structure in profile view, as well as plan view. You can see what the docking structure would look like and what it would do at mean low, low water during the fluctuation of the tide. Maine DEP rules, as well as ACE rules, require that the bottom of a fixed pier be at least four feet off the mud so we have that distance at the beginning of the pier where it meets upland. That four feet is required so we don’t have complete

shading underneath the structure and there is lots of sunlight to get to those areas underneath to protect any vegetation or organisms in the mud. The profile view also shows the distance of the pile sets, which is fifteen feet. Piles will be driven to refusal by a crane barge. All the work for the fixed pier will be achieved via a crane barge. The work for the accessway is done by hand on land. The accessway is essentially a ramp-like structure and is located over the upland, providing safe foot access to the start of the pier. He listed the documents included in the submitted packet. He said that he is in receipt of a staff memo. He can revise plans to show the three trees that will need to be removed to construct the dock. The next paragraph is about the reflectors and there is no issue there. In the third paragraph regarding the measurements of the float, we have a typo on the main float on Sheet D-1; that the dimensions on the plan are correct, it is just the labelling and he will fix that. The fourth paragraph talked about the permits he discussed earlier.

Mr. Cieleuszko asked if the moorings stayed year-round.

Mr. Riker said that they do and the chains come off.

Ms. Bennett asked for the feelings of the PB regarding completeness of this application.

Ms. Horner moved, second by Mr. Olsen, that the Planning Board find PB19-14 complete.

VOTE

5-0

Motion approved

Mr. Riker said that, regarding the labelling of the plan, we would be happy to title it whatever the PB would like us to title it.

The applicant will show the actual three district boundaries on the plan. The title will be Town of Eliot Permit Plan.

The Public Hearing is scheduled for October 15, 2019.

ITEM 8 – CORRESPONDENCE

Ms. Sherwin said that at the last meeting we discussed how to handle the standard conditions of approval. She spoke with the Town attorney about it and there are two standard options – either adopting, by reference, the standard conditions or including them as she did tonight in the memo just so that it is written and then reference the standard conditions of approval, as listed in the memo.

The PB agreed that referencing the memo was a good idea.

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 October 1, 2019 at 7PM.

ITEM 11 – ADJOURN

There was a motion and a second to adjourn the meeting at 10:29 PM.


Christine Bennett, Acting Chair
Date approved: 10/01/2019

Respectfully submitted,

Ellen Lemire, Recording Secretary