ITEM 1 - ROLL CALL

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

Also present: Kate Pelletier, Planning Assistant.

Absent: Greg Whalen (excused), Melissa Horner – Alternate (excused)

Voting members: Jeff Duncan, Larry Bouchard, Dennis Lentz, and Christine Bennett – Alternate.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – REVIEW AND APPROVE MINUTES, AS NEEDED

Mr. Lentz moved, second by Mr. Duncan, to approve the minutes of November 3, 2015, as amended.

VOTE
4-0
Chair concurs

Mr. Duncan moved, second by Mr. Lentz, to approve the minutes of December 1, 2015, as amended.

VOTE
4-0
Chair concurs

ITEM 5 – REVIEW "NOTICE OF DECISION" LETTERS, AS NEEDED

- **PB15-15: Dietrich**

  This stands approved.

- **PB15-16: Apsey**
- **PB15-17: Beland**

  Apsey and Beland were not reviewed tonight.

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

A. 10-minute public input session

There was no public comment.

B. PUBLIC HEARING – Proposed ordinance amendment entitled, *"Amendments to Chapter 45, Zoning, and Chapter 1, General Provisions, of the Municipal Code of Ordinances of the Town of Eliot, Maine, to allow accessory structures meeting minimum setback requirements in the front yard."* (Draft #2)

Ms. Pelletier said that, over the years at the Planning Board (PB) meetings, we've gotten several requests for this, now, and we receive it all the time at the staff level and, now, the Board of Appeals (BOA) has also requested that the PB re-examine this ordinance regarding accessory structures. She explained that the issue is that we do not allow accessory structures, such as sheds and garages, in what's termed the 'front' yard, and the front yard is defined as "*the area of land between the front lot line and the nearest part of the principal building.*"; that if you have a home that is 1,000 feet back on your lot, you've pretty much lost the ability to put any accessory building in the entire area between the front of the house and the front property line the way the ordinance is written. She added that what we have proposed is to keep everything else the same, setback-wise, but require that an accessory building meet the front yard setback, which would be, instead of the whole front yard, just 30 feet from the front property line for any accessory building; that that would still provide a visual buffer and it would still be required to be located 30 feet from a neighboring principal building, too. She said that she and the CEO worked on this together and we feel that this is a fair solution that still keeps the ordinance intact but frees up a little bit of land for people who want to do things like sheds and garages.

Mr. Beckert asked if we have forwarded this to the BOA.

Ms. Pelletier said that she was going to but she decided to wait until after this public hearing, just in case we made any changes; that she will do it first thing tomorrow.

Mr. Duncan asked where 'footnote c' applied.

Ms. Pelletier said that, looking at the dimensional standards, it's gone and it's usually right next to the words 'accessory building'; that it was there at one point and thanked him for pointing that out.

7:18 PM Public Hearing opened.

Mr. (Bob) Fisher, Frost Hill Road, looking at the diagrams on the front page, said that there looked like three structures in Diagram #1 (corner lot), asking how he would get into his driveway if he owned that property.

Ms. Pelletier clarified that those areas are not structures; that anything that encompasses the term 'front yard' she highlighted in red; that she didn't mean to imply those were structures and she did not put driveways, or anything, on here. She apologized if that isn't clear; that that red is just meant to represent what the front yard is.

Mr. Fisher said that, using the same diagram, he would have plenty of room on the 'other' side of the house to put up an accessory structure, and not have to fool with any of it (front yard side).

Ms. Pelletier said that he's certainly entitled to that opinion. She said that we're just proposing a solution to something that people have brought to us as an issue for them; that some people find it too limiting that they can't put in a shed in some situations; that it might be wet over there or any number of reasons.

Mr. Fisher asked, in Ms. Pelletier's professional opinion, why they would want to change this from the existing one. He said that, years ago when we put the guidance on how to build a house and where to put it, we always put it in the middle of the lot. He added that we did that for a reason; that we don't want somebody putting a house out 'here'.

Ms. Pelletier said that, since 1982, the setback, even in the Rural Zone for a principal building, is 30 feet; that it doesn't need to be in the middle of the lot and hasn't needed to be since 1982.

Ms. (Rosanne) Adams said that her concern was that this is a blanket statement that, now, anyone can build in the front yard, that she doesn't have a problem with the setbacks, but they can build on the side; that wouldn't it be better to say, for those when they can't build on either the side or the back, that they can build in the front; so that we start out with people not putting it in the front unless they really have no other choice; that it may be wet, etc. She added that she understood about the corner lot because that is pretty straightforward.

Ms. Pelletier said that she was not opposed to that idea; that whatever the town wants to do she will put into this ordinance, if that's the will of the Town; that she would just add on to that, if that is the direction you would go, you would need to clearly define what would make that area; so, if that if we say that you can only build somewhere…if you can't put it in the side yard, what are the reasons that we would not allow to not put it there; that that would be her only comment to that, reiterating that she was not opposed to that.

Ms. Adams said that, to her, it would be that the land is unbuildable in the side yard, for whatever reason. She added that she didn't know why someone would want something in the front yard unless they had a problem with the lot; that, on her lot, her house sits way back and she considers looking south the front of the house, not the road; that she can't put a garage on either side of her house because she doesn't have enough room; that, if she goes back, she has to go down over the slope of the septic system and go down the hill; so, in that case, it's reasonable that you'd want to be able to put the garage out in what she would consider the back but you consider the front. She reiterated that, to her, it's unbuildable and she shouldn't have to go 100 feet, 200 feet, or half a mile down the back of her property to build.

Ms. Pelletier said that she certainly thought that was reasonable; that she is not opposed to that.

Mr. Beckert gave an example. He said that we had some people who came in and brought this to our attention a few years back; that their house sits 300 feet to 400 feet off the road and he was sure they had buildable land on the sides and the back, as it was a good-size lot, and they wanted to put in a gazebo in the front yard; that they couldn't do it the way the ordinance is written.

Ms. Adams asked if that was an accessory structure, as it didn't have a foundation.

Ms. Pelletier said that it didn't need to.

Mr. Beckert agreed.

Mr. (Jay) Meyer, Odiorne Lane, asked if they would need a building permit for that gazebo.

Mr. Beckert said yes.

Ms. Pelletier said that any building over 180 square feet would need a building permit.

Mr. (Bob) Pomerleau, Cedar Road, said that for the life of him he was trying to understand why it makes any difference what somebody puts in their front yard to start with. He asked what the point was behind it to begin with.

Ms. Pelletier said that she thinks it was probably just visual impact; trying to avoid having all these little rinky-dink buildings in the front of your home.

Mr. Pomerleau said that that was one of those areas where he stood firmly on individual ownership of property rights without some compelling reason; that someone else's version of what looks nice is probably not compelling. He added that you started out trying to fix a corner lot problem and expanded this to someone who has a house way back on their property, which is exactly what applies to his; that his house is 450 feet back off the road, sitting right on the creek, and there's no other place for an accessory building except in front of it. He said that the only question he had was that, on page 3, under the definition of 'accessory structure' it says *"a detached structure (other than an agricultural building)..."* and asked what change would that make if it was an agricultural building, would it be less restrictive or more restrictive.

Ms. Pelletier said that, if it's just an out building that looks like an agricultural building, but isn't used as such, then it's not; that, if it's used commercially, it is then considered a principal structure because agriculture is a principal use; that if you have a farming operation, for example, what would just be a barn to you and your house, would be part of a business, a commercial enterprise.

Mr. Pomerleau asked if it had to be a business.

Ms. Pelletier said not your own backyard farming.

Mr. Pomerleau asked if someone had a greenhouse in front of their yard for the purpose of growing flowers would meet the definition of agricultural; that the definition of agricultural was a little vague in that it says "*shelter of plants...associated with the production, keeping or maintenance of plants...associated with agricultural activity*"; that that certainly doesn't make it commercial.

Ms. Pelletier said that, perhaps, that was too strong of a word but it's no longer residential; that it's an impact to abutters visually, to the environment, not just residential. She added that, with that said, agriculture is pretty much a 'yes' across the board; that we have very few restrictions on what you can do there, so, whether you are a larger operation or smaller operation, we are not trying to hinder anybody.

Mr. Duncan said, to expand on that commercial/non-commercial operation, he asked if you could put a greenhouse in a front yard under the current ordinance if all you did in that greenhouse was your spring seed-blossoming so you could put them out in your garden around the house.

Ms. Pelletier said no. She added, to be clear, no one has ever said, or is saying now, that an agricultural building doesn't have to meet the same setbacks that any other building does.

Mr. Duncan said that he understood that but it can go in the front yard, an agricultural building.

Ms. Pelletier said that no building can go in the front yard at the present time, whether they are accessory or principal for agriculture.

Mr. Duncan asked, under the revised ordinance, could you put a greenhouse in a front yard if the only purpose is to get your plants started before you put them in the ground on your property.

Ms. Pelletier said yes because, whether it's a greenhouse or a single-family home, they just need to be 30 feet back from the road in all zones; that that's how it exists today and that's how it will continue to exist with this amendment.

Mr. Duncan clarified that you couldn't put the greenhouse in the 30-foot setback but you could put it in a front yard beyond the setback.

Ms. Pelletier said yes.

Mr. Pomerleau said that, if that was the case, why would you have that language 'other than agricultural building'; that 'agricultural building' for commercial purposes is what he thinks she's driving at.

Ms. Pelletier said that, by definition, if it's an agricultural building, then it's associated with an agricultural use; that, otherwise, it's not an agricultural building.

Mr. Pomerleau said that, by definition, that doesn't mean it's retail or commercial.

Ms. Pelletier said that the key words were 'for sale or lease'.

Mr. Pomerleau said that that isn't in there.

Ms. Pelletier clarified that it is in the definition of 'agriculture'.

Ms. Bennett asked if this definition of 'agricultural building' was to amend the current definition.

Ms. Pelletier explained that we don't have a definition of 'agricultural building', so, that's the point – to have a new definition based on the existing.

Mr. Duncan clarified that she was saying that 'agricultural activities', as used in #3, is already defined.

Ms. Pelletier said yes – 'agriculture'.

Ms. Adams asked, under the proposed ordinance, if she kept chickens or wanted a horse at home, she could put that building in the front yard.

Ms. Pelletier said that, with the amendment, she could, as long as it was 30 feet back; that, with that said with that building, if it's a chicken breeding operation, then the building has to be 100 feet back, and that's always been the case.

Ms. Bennett asked if that building would be deemed accessory or agriculture.

Ms. Pelletier said that it would be for her own use and that would be an accessory building.

Ms. Bennett clarified that her chicken coop would be an accessory structure.

Ms. Pelletier agreed.

Ms. Adams said that, if she's reading it right, the aggregate of any accessory building put in that front yard cannot exceed the square footage, or footprint, of the principal structure.

Ms. Pelletier agreed, saying it has to be the same height or less, as well.

Ms. Adams said that she could put 10 things in the front yard, if she had the room, as long as she didn't go over the principal square footage.

Ms. Pelletier said yes, adding that we have lot coverage requirements, too.

Ms. Bennett said that, as she reads this, it means accessory structures throughout your property, not just in the front yard – in the aggregate.

Ms. Pelletier said yes.

Mr. Duncan asked for clarification, saying that 'accessory building' means all this 'other than an agricultural building'; that, then, we define 'agricultural building' but we're not giving 'agricultural building' anything different.

Ms. Pelletier said that, if it's an 'agricultural building', then the setbacks are a little bit more than they would be for just an accessory building and that's why she did that; that, with an accessory building, you only have to be set back 10 feet from all the other property lines; that she thought, for an 'agricultural building', you may want that to be set back a bit more than your standard shed or garage.

Mr. Duncan asked what is that difference.

Ms. Pelletier said 30 feet, front and rear, for any principal structure, and 20 feet from the sides; that accessory is just 10 feet everywhere but the front.

Mr. Duncan asked where can the 'agricultural building' be.

Ms. Pelletier said that basically anywhere a single-family dwelling can be is where an 'agricultural building' can be.

Mr. Duncan asked how do we get to that.

Ms. Pelletier said that, looking at the dimensional standards table, that wasn't something we covered in the table; that that's a good point and suggested it could have its own or be lumped in with another one in there, such as 'dwelling units and agricultural buildings'.

Mr. Fisher said that his house sits about 25 feet to 30 feet from Frost Hill Road, itself, and he would like to put an agricultural building in the front of his house so he can grow plants, asking how he could do that.

Ms. Pelletier said that the way the ordinances are currently written, and we're not proposing to change at all, is that when you have a non-conforming lot where something may not be conforming in some way, whether it be a setback or a lot size or road

frontage, etc., the CEO has the ability to waiver the dimensions up to 25% and anything beyond that goes to the BOA for relief; that the CEO has always had the ability, by ordinance, on a non-conforming lot.

Mr. Fisher asked if we were going to have another reading before we wrapped this whole thing up.

Ms. Pelletier said that we can, yes.

Mr. Meyer asked if it didn't make sense, at this point, to try to work out the ordinance so that we don't have to have a waiver involved.

Ms. Pelletier asked if he meant in situations that were non-conforming or conforming.

Mr. Meyer said non-conforming.

Ms. Pelletier asked if he was saying, instead of going to the BOA, allow the CEO…

Mr. Meyer clarified that we're now looking to amend the ordinance, to change the ordinance, so that it's clearer language than what's there then why not take that opportunity to draft that in.

Mr. Duncan said if you only have 25 feet as a front yard and the setback is 30 feet, you are non-conforming; so, how would you propose to write general language that says you can build in that 25-foot but the neighbor who has 40 feet can't build in the front 30 feet.

Mr. Meyer said that he understood.

Mr. Duncan said that we can't spot zone; that we can't define one lot specially.

Ms. Pelletier said that we deal with these ordinances every day and she thinks that's never been an issue; that she thinks that the BOA has to exist there, legally speaking, because the Town body (voters) sets the dimensional standards in the ordinance and, really, only a BOA should be waiving these standards in this table (dimensional). She added that the CEO can do it up to 25% is unique; that she hasn't seen that language anywhere else but it does provide a good amount of leeway for the CEO; that it's never been an issue that she can recall

7:40 PM Public Hearing closed.

Mr. Beckert said that we need to tweak the chart (table). He asked if Mr. Pomerleau had his question answered.

Mr. Pomerleau said that because, apparently, there's a definition that's not here on agricultural use, which defines it as retail or commercial…

Mr. Beckert said that we could put a sub-note in.

Ms. Pelletier agreed that we could add it in just as a reference.

Mr. Pomerleau said that he would not know 'that' reading 'this'.

Ms. Pelletier said that that's why these hearings exist.

Mr. Duncan suggested that, instead of saying, "…associated with agricultural activities…", we could substitute the word 'agriculture', since that's the defined term.

Ms. Pelletier agreed.

Mr. Duncan agreed with Mr. Beckert with his sub-note suggestion.

Mr. Bouchard, discussing the CEO 25% relief, asked what would cause the CEO not to issue that.

Ms. Pelletier said really nothing; that there are no criteria to apply to those situations; that it just gives her that ability.

Mr. Bouchard said that, if the CEO grants one, the CEO grants all.

Ms. Pelletier said that it gives somebody the ability to check it.

Mr. Duncan said that, if there is a 25-foot existing non-conforming front yard, the CEO's 25% is 6 feet of 25 feet or 7 feet of 30 feet.

Ms. Pelletier said that, if the front yard setback is 30 feet, then it's 25% of that.

Mr. Duncan confirmed that the CEO can grant up to 7 feet away from the front of the house into the front yard.

Ms. Pelletier agreed that that was the CEO's wiggle room. She added that, sometimes, that isn't enough and you can see how that could happen; that in those situations, and rightfully so, they go to the next level, which is the BOA; that the BOA is not only variances, they also have the ability to do waivers up to 50%.

Mr. Duncan said that Mr. Fisher could build a 6-foot wide, half a foot away from his house and half a foot away from his relief and a 100-foot long structure to grow whatever he wants.

Ms. Pelletier said yes.

Ms. Bennett said that she would love to see a little more clarity in the definitions; that when she was reading the first definition she wondered what the definition was for 'clearly incidental and subordinate'.

Ms. Pelletier said that it's a judgement call, asking how would she define that.

Ms. Bennett said that she thought that, if we're going to make it part of the definition, we should make it very clear so that anyone reading it would know what incidental and subordinate actually means; that it was in the next definition of accessory use, as well, which made her wonder if her chicken coop was 'customary and incidental' to the principal use of her home, or not.

Ms. Pelletier said that it's not really debatable in that situation; that where it is debatable is in a commercial situation.

Ms. Bennett asked, if she wanted to build a detached garage, is that 'customary and incidental'.

Ms. Pelletier said absolutely. She added that you have to have some wiggle room, there, because not every situation is the same, such as commercial situations, which is what she is thinking. She added that if the gas station wanted to sell a couple cars, along with their gas station and repair shop, would most likely be 'customary and incidental' to those uses; that selling chickens would not.

Ms. Bennett said that she wondered if we couldn't take the opportunity to elaborate a little more about the language we are putting in to the definitions so that there's some clarification so that there's no room for interpretation, or less room for interpretation, because she, herself, who has a pretty decent command of the English language was wondering what is and how is this going to apply, asking if 'customary' related to the existing use as a residential structure.

Ms. Pelletier said that it has to be clearly; that she always asks if it passes the straight-face test.

Ms. Bennett said to put some words around straight-faced.

Ms. Pelletier asked if Ms. Bennett had some suggestions.

Ms. Bennett suggested that 'incidental' could be related to the existing use of a residential structure, or 'customary'. She added that she just got this last night; that she could probably work through key definitions that would give this less opportunity for interpretation and more clarity.

Mr. Duncan said that he could envision somebody coming in who wanted a detached garage and he thinks we could all agree that that is 'incidental' and 'customary' to a

private residence but, if that same building is going to be used to repair non-owned vehicles, is that 'customary', 'incidental', and 'subordinate'.

Ms. Pelletier said no because then they would meet the definition of a 'home business' and that has a whole other set of rules.

Mr. Duncan asked, if the applicant says that he thinks it is and he takes it to court, what is the court going to say.

Ms. Pelletier said that the court would say the same thing – be reasonable; that that's what they always say, asking if it's a ridiculous argument; that it's pretty clear to tell when people are trying to cram something into a definition that doesn't fit; that it's ;painfully obvious most of the time.

Mr. Duncan said that we see that, occasionally, when we have 'substantially similar to'.

Ms. Pelletier said that those words are used throughout zoning; that they are very common, even in our own ordinances, so it didn't trigger anything to her but she is certainly open to suggestions as to how we could improve it. She added that, if the PB wished, she could investigate to see how other towns have defined that.

Mr. Duncan said that he doesn't have a problem with the words because he thinks they mean what he thinks they mean but that may not say that someone else thinks they mean the same thing, and that's the only concern; that if you can convince me, otherwise, he has no problem with the words as they are; that maybe there could be something that's a little less indecisive.

Ms. Bennett said that, if we just made a definition of what 'incidental' and 'subordinate' are, then we could easily substitute those into this definition.

Ms. Pelletier said that we can look into that.

Mr. Bouchard asked if that didn't pin us harder into one spot.

Ms. Pelletier said that that's what it does; that that can be good and bad.

Mr. Bouchard agreed, saying that the words are left to common sense, he thinks, and that's where it's common practice; that if you specify it or make it…it may help you, sometimes, but it could hurt you, too.

Mr. Beckert said to take a look at it, as we still have time and it's in draft form.

Mr. Fisher said that the law says that all laws that are written should be able to be interpreted by everyone and you need to write it not only so that you understand but so that everyone understands; that that's by law.

ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS

Ms. Pelletier said that we have a new action item coming up. She explained that there is a new State Supreme Court case regarding signs and sign ordinances, and what is and what isn't free speech, and all that; that we're going to have to take a look because she doesn't believe that our sign ordinance is in compliance, anymore, with that decision. She added that there is a hand-out she can get for them so that they can start talking about it next time.

ITEM 8 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED

- **Board of Appeals Notice of Decision Letter: Libbey Commons Subdivision appeal**

Mr. Beckert said that this was informational; that it is an active appeal and not for discussion at this point.

Ms. Bennett said that she would be away for the next meeting.

Mr. Duncan said that he may not be at the next meeting because my fourth grandchild is going to be born soon.

ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for February 16, 2016 at 7PM.

ITEM 10 – ADJOURN

There was a motion and a second to adjourn the meeting at 7:53 PM.

Steve Beckert, Chairman
Date approved: 3.1.16

Respectfully submitted,

Ellen Lemire, Recording Secretary