

March 1, 2016  
7:00 PM

**ITEM 1 - ROLL CALL**

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

Also present: Kate Pelletier, Planning Assistant.

Voting members: Jeff Duncan, Larry Bouchard, Dennis Lentz, and Greg Whalen.

**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 August 5, 2014, as written.

**VOTE**  
**4-0**  
**Chair concurs**

Mr. Duncan moved, second by Mr. Lentz, to approve the minutes of December 15, 2015, as amended.

**VOTE**  
**4-0**  
**Chair concurs**

Mr. Duncan moved, second by Mr. Whalen, to approve the minutes of January 5, 2016, as amended.

**VOTE**  
**3-1 (Mr. Bouchard abstained)**  
**Chair concurs**

Mr. Lentz moved, second by Mr. Duncan, to approve the minutes of January 19, 2016, as written.

**VOTE**  
**4-0**  
**Chair abstained**

Mr. Duncan moved, second by Mr. Lentz, to approve the minutes of February 2, 2016, as amended.

**VOTE**  
**3-1 (Mr. Whalen abstained)**  
**Chair concurs**

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

**PB15-16: Apsey**

This stands as written.

**PB15-17: Beland**

This was not reviewed.

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

**A. 10-minute public input session**

There was no public input.

**B. Request for Planning Board Action to amend a previously-approved Shoreland Zoning Permit (PB15-13) to expand an existing non-conforming structure located at 15 Kings Highway South. Applicants/owners are: Michael & Julie Pomeroy (mailing address: 374 Main Street, Eliot, Maine 03903). Property can be identified as Map 1/Lot 161 and is located in the Village District and Limited Commercial Zoning District. (PB16-1)**

Ms. Julie Pomeroy and Mr. Scott Fiorentino (architect) were present for this application.

Mr. Fiorentino said that they have the first and second floors on the previously-approved plan, with parking underneath the building, that, unfortunately, the cost to put the home on the required steel piers because of the wind loads was becoming too cost-prohibitive. He added that they are proposing to drop the house back to where it is now on top of the foundation, two floors, and walk in two steps into the house instead of a full staircase; that there will be a full basement. He said they are proposing to keep the existing steps coming off the back, keep the existing bulkhead but shifting it over 1' 8", and keep the storage shed. He explained that it drops the house 7 feet.

Mr. Beckert said that he thinks the PB needs to determine whether this is more or less intrusive than the original plan. He added that, in the Chair's opinion, it is less.

Mr. Whalen asked Mr. Fiorentino to walk them through the site plan to let us know what's different from the previous plan.

Mr. Fiorentino said that we shrunk the neck (driveway entrance) down a little, with still the two curbs with grass in between, and we shrunk the driveway a little bit further down and held it back from the house about 2 ½ feet because there is a window well there and allows us the square footage to keep the existing storage.

Mr. Lentz asked about a garage.

Mr. Fiorentino said that there is no garage there now; that it's just a basement and they will park in front of the house.

Mr. Duncan said that the size of the structure is the same as it is now and as it was; that it's just that it's shrunk height-wise.

Mr. Fiorentino said yes; that it's 28.6 feet by 22 feet and 7 feet shorter. He added that we eliminated the master second-floor deck; that the first-floor deck remains the same – 16.3' by 8.2'; that we would keep the existing steps in their current location so we can get the grade, a little over 30" of drop.

Mr. Duncan asked if the current proposed ground contours on this site plan are basically the same as they were in the original proposal.

Mr. Fiorentino said yes, adding that the only thing they did do was, just before the house, we put a little swale in the front of the house so that any water coming down will go around the house; that the existing grades around the house remain the same. He described the new window wells – that they would be made with stones and would be about 2 ½ feet deep.

Mr. Whalen asked if there were any issues in terms of setbacks, especially on the west side.

Mr. Fiorentino said no, that it isn't considered a structure because we're using stones.

Mr. Lentz asked if there wasn't a request by the abutter for some shrubs.

Mr. Fiorentino said yes, that she didn't want to look over and see the cars parked on the side; that, now, the cars are going to be parked in the front of the house.

After some discussion, it was recommended that he check with the neighbor regarding the need for that buffer.

Mr. Whalen asked where the bulkhead was being relocated to.

Mr. Fiorentino said that it was still in the same area of the house but just shifting it up from the corner so that the access isn't right at the corner but maybe leaving a wall for storage; that it's being moved over 1.8 feet.

Mr. Whalen asked for a comparison of the square footage/cubic footage of this plan versus the approved plan.

Mr. Fiorentino said that it was 12,833 cubic feet and is now 11,809 cubic feet; that the reason for that is that you have to count the square footage but you don't count the cubic feet of the basement and 1,009 cubic feet with the staircase/stairwell was removed. He added that the square footage is increased because we have to include the basement back

into the square footage calculation; that it's less square footage than the existing house by about 30 square feet because we now have a covered deck and worked out to just under 40 square feet when you factor in that covered deck.

Mr. Bouchard asked if moving the bulkhead moves it closer to the property line.

Mr. Fiorentino said that it pulls it away from the water. He added that it doesn't run exactly parallel with the house and property line and will probably encroach a few inches. He said that if we did have to put it at the corner we could leave it at the corner where it is right now.

Ms. Pelletier said that if it's already closer than the 20 feet, then it would not be able to extend beyond the closest point that it's at now.

After some discussion, Mr. Fiorentino said that he would get the setback line to make sure it did not encroach beyond that setback.

Ms. Horner said that, regarding the shrubbery request, she doesn't feel it's our place, as a PB, to request something that someone from the public requested on a plan that's now changed. She added that the applicant was nice enough to comply before but shrubs are expensive and the plans are different so they might not need to be there.

After some discussion, it was determined that the applicant had committed to talking with the neighbor to see what could be worked out but it was not part of the approval process; that they can still pursue that avenue, if they wish.

Mr. Duncan suggested that we treat this as an administrative change.

Mr. Lentz agreed.

Mr. Beckert said that the Chair would entertain a motion.

Mr. Duncan moved, second by Mr. Lentz, that the Planning Board treat this as an administrative change based on the fact that it is less intrusive.

#### DISCUSSION

Mr. Bouchard asked if this was a change or a complete change of plan, and should this go to Public Hearing; that if you were an abutter to this property and presented with one thing at the Public Hearing, and now it's going to be a full basement.

Mr. Fiorentino said that there is currently a full basement in the house.

Mr. Bouchard asked if we were not now changing elevation.

Ms. Pelletier said that we were lowering it.

Mr. Duncan said that, basically, it's a rebuild of the current house and it's proposed reconstruction is 7 feet shorter than the originally approved reconstruction, which was on the same footprint but had a third story.

Mr. Fiorentino said that the first and second floors are exactly the same as the one that was presented to the PB but it's just that we lowered it down because we removed the carport underneath.

Mr. Lentz said that it's a non-conforming structure on a non-conforming lot; that it is less non-conforming now than it was so that's an improvement to him.

Mr. Bouchard said that his question is whether it what was presented to the abutters in the first application, or in the original; that it's not. He added that what was presented was no basement.

Ms. Pelletier said that instead of a basement they had the piers and the parking underneath; that it was a taller structure and a little bit more square footage. She added that this is on the existing footprint; that there's no increase to either side of any abutter and is less of an impact than the previous plan. She said that you certainly can have an additional hearing if you want to but it's definitely a lot less impactful than the previous approval.

Mr. Lentz asked if we had any objections with the last one.

Ms. Pelletier said no.

Mr. Whalen said that he would support the idea of having another public hearing; that he understands that the net effect is less than what we had before but he does believe the abutters deserve the right to be notified on the changes prior to construction beginning there so that there aren't any surprises; that the only way we are going to be able to do that is to have a public hearing. He added that, benchmarking off Mr. Bouchard's comments and concerns, he prefers we go through the process, asking if this could be rescheduled for the next PB meeting.

Ms. Pelletier said that she didn't think we would make the deadline, that it would be tight. She asked why and said that we don't normally do this in any other situation where somebody comes back to revise a site plan; that she could see it if there was more of an impact, even if it's one square foot, but where it's a lot less of an impact...we don't normally do this.

Mr. Whalen said that he thought the changes were pretty significant considering what was approved before; that the removal of the third story, alone, plus the fact that the shed is staying and plus the fact that the garage has been eliminated. He added that it seemed to him that this goes well beyond what we normally consider to be an administrative change.

Ms. Pomeroy said that this isn't affecting the abutters; that it's the existing house and nothing is being moved over on either side of the abutters' homes. She added that the only thing this is changing is the inside of the home, which is affecting us, so she doesn't understand why Mr. Whalen feels we need to have this.

Mr. Whalen responded that it was for the same reason we had a public hearing before.

Ms. Horner asked if the applicant had come to Ms. Pelletier with this plan would that have forced a public hearing.

Ms. Pelletier said yes; that the ordinance looks at this as a non-conforming structure and all the PB is tasked to do is to make sure it is moved to meet the setback to the greatest practical extent; that there's not a whole lot of review criteria here for you. She reiterated that she doesn't understand what would be gained from an additional hearing at this point where you don't do this with other applications that come back to revise their site plans; that she questioned what would be gained where it's so much less of an impact than the prior approval and no changes to the outside.

Mr. Bouchard said that he didn't think there would be anything gained and guessed he could go either way; that his concern was that what was presented at the public hearing is totally different now, acknowledging it was less but it was different. He clarified that it's a small change compared to what is sitting there, now, but it's not a small change compared to what was presented at first.

Ms. Bennett agreed, adding it's what the abutters are expecting – the public is expecting to see what was approved.

Mr. Beckert asked if the abutters were notified about this.

Ms. Pelletier said no; that they are only notified when a public hearing is scheduled.

Ms. Bennett asked if abutters could be notified that there's been an administrative change to the prior-approved plan.

Ms. Pelletier said that, if the PB wanted to, you could make a condition of approval that we notify them; that she certainly didn't mind doing that but would you then have to do that for everyone; that they can't do anything about it at that point.

Ms. Bennett said that they would be made aware of the change and that there was a 30-day window to appeal. She added that they could have the opportunity to see the changes and it might preemptively diffuse some anxiety when construction starts. She agreed the impact is less but it is very different from what they are expecting to see and it might be the neighborly thing to do.

DISCUSSION ENDED

**VOTE**

**2-2 (Mr. Whalen, Mr. Bouchard)  
Chair concurs in the affirmative**

Mr. Beckert said that it is voted that this is an administrative change and the PB will handle it as such. He said that we just read a Notice of Decision letter where we moved buildings on a piece of property that we didn't consider any more obtrusive than what was already there and the PB didn't have a public hearing for that one; that we need to be consistent.

Ms. Bennett said that that doesn't mean that the applicants can't reach out to their neighbors and make them aware.

Mr. Beckert said that that is exactly right.

Mr. Duncan said that he didn't think it was the PB's place to force that but it is certainly a recommendation just so they are aware that you've made this change.

Ms. Pomeroy said that we would definitely do that.

Mr. Beckert asked for the PB's pleasure on the application overall.

Mr. Duncan moved, second by Mr. Lentz, that PB16-1 be approved as presented, with the same terms and conditions as applied to the original application, dated October 2015.

**VOTE**

**3-1 (Mr. Whalen)  
Chair concurs in the affirmative**

Mr. Beckert 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. Application for Site Plan Review to establish a yoga studio at 88 Beech Road for up to 12 classes per week. Applicants/owners are: Jonas Zev & Amylyn Amberger (mailing address: 88 Beech Road, Eliot, Maine 03903). Property can be identified as Map 21/Lot 33 and is located in the Suburban Zoning District. (PB16-2)**

Mr. Jonas Zev and Amylyn Amberger were present for this application.

Mr. Zev said that we currently have three yoga studios in the Seacoast, one in Portsmouth, one in Dover, and one in Exeter called Zev Yoga; that we have 20+ teachers teaching for us and have been in operation for seven years. He added that we are at a place where we feel the studios are self-sufficient, which is going to give him, as primary teacher of the studios, a little more wiggle room to move away from day-to-day operations of the studios and to reside more on the property; that that would not only give

him an opportunity to teach at home but we have a growing goat dairy farm; that we have two girls that will be giving birth around June, so our needs around the property are going to increase. He said that it feels like the right time to do this farm expansion for both the yoga and the goats.

Ms. Pelletier said that this is a little bit different from applications the PB normally sees; that this would probably be a home business in most situations but this is a little more intensive than that. She added that, in that case, when you have two principal structures on one property in this Suburban Zone, you have to be able to show that you could theoretically divide the lot and have it meet all dimensional requirements should it have to be. She added that the plan is an imaginary lot division plan showing that it could be done and meet frontage and acreage (2 acre minimum), though they have no intention of actually dividing the property.

Mr. Lentz verified that there is no intention to divide that and the home is on one side and the structure the applicant is intending to build is on the other side.

Ms. Amberger said there was no intention to divide and the home and barn are the dividing line. She added that there is already a working barn there with our goats; that the expansion will have a goat pavilion area down below and the yoga space would be above. She said that it would be a post-and-timber frame structure. She clarified that one reason they opted not to do the home business was the parking limitation because that would only allow four parking spots, which would be a very small yoga class. She said that we wanted to expand that and they figured the only way to do that was to do the two primary uses. She said that our goal is to be as minimalist as possible, a small footprint; that we like our privacy and we want to respect the privacy of our neighbors. She added that the house and barn sit central on the property so you don't really see other homes. She said that, regarding the parking lot, we intend to do a fence buffer for one home just in the event of lights; that we have good relationships with the abutters and she thinks that folks are enthusiastic about having this nearby.

Mr. Duncan asked if access to the parking lot would be off the applicant's current driveway.

Ms. Amberger said yes.

Ms. Bennett asked if there were setbacks for parking lots.

Ms. Pelletier said that it does have to meet setbacks and was drawn with the intention of being 20 feet from that sideline; that it will not be non-conforming and the applicants have been actively seeking an engineer who will prepare a proper site plan for the PB; that this is just a sketch plan.

It was discussed that the location map highlighted the wrong parcel and Ms. Pelletier will have that fixed.



Mr. Whalen asked if we were talking about a school or a studio, as both descriptions are used in the application.

Mr. Zev said it is a school.

- A school is allowed in the Suburban Zone.
- There are no criteria differences to establish a school than any other site plan.

Mr. Lentz asked for clarification on why this is not a home business.

Ms. Pelletier said that it is much more intensive than a home business; that it's not going to be in their home; that it's going to be theoretically on a separate lot. She added that it's the same process as for NAPA on Route 236 but just on Beech Road; that you have to separate the fact that there is a house next door, that's just a coincidence. She said to think of it as a new undeveloped lot and you're applying the same site review standards to it as you would any other application that comes before you.

Mr. Whalen said that, if it's a school and if, in fact, it's a commercial enterprise, are there any specific requirements within the site plan that give rise to what needs to happen on that 'lot' in terms of parking.

Ms. Pelletier said that there are parking requirements for 'school' that they've met, but that is it. She added that where they are located light commercial is allowed.

Ms. Amberger emphasized that the intention is light commercial.

- They will have up to 12 classes per week.
- Class hours: M-F 9AM – 10AM; M-F 5PM – 6PM; Sat. 9AM – 10AM.
- The new structure will be attached to the existing barn.

Mr. Lentz said, regarding a home business, it does not mean you can't have two buildings as long as you are living on that property, asking if that was correct.

Ms. Pelletier said that was right; that you don't have to have them in the same structure.

Mr. Lentz said that the fact that it's separated, there's a barn and a new structure, that's not an issue as far as a home business.

Ms. Pelletier said that was correct.

Mr. Lentz said that they must reside in that dwelling the majority of the year.

Ms. Pelletier said yes.

Mr. Lentz said that he was stuck, asking if it was only the parking issue.

Ms. Pelletier said that she thought the parking and the square footage, too; that we are at a total of 2,165 square feet for the existing and new barn structure and a home business is limited to 1,500 square feet. She added that they don't want a home business and aren't applying for a home business, so we can't force them to do that; that they've applied for site plan review and you can deny or approve it, but that's what they've applied for. She said that they don't see themselves remotely fitting into the home business requirement; that they are trying to comply with requirements for a commercial business in the Suburban Zone.

Ms. Amberger said that this does become very expensive and quite different from a home business; that if it wasn't for the parking we would like to be a home business but, because of that piece, we need to be here; that we're here to learn and try to do things right.

Mr. Whalen clarified that the parking area of their property is wooded and you will have to clear that area, asking why it wasn't adjacent to the barn.

Ms. Amberger said that one reason is that that area is an existing goat pasture and, then, it's parking for our home in front. She added that we have the space between business and home rather than have traffic all up in there; that we're trying to keep that a little more contained; that the plan would be to cut selectively. She said that the green splotches are big White Pines, which have shallow roots and are falling all over the place; that she loves trees and doesn't want to clear it so it will be pretty minimal.

Mr. Whalen asked if they had met with Fire yet.

Ms. Pelletier said that we have been working with them to determine that they do not meet the threshold for Fire Marshall review; that the Fire Chief is aware and will be weighing in once they have a proper site plan.

Mr. Whalen said that he didn't want the applicants to get too far down the road with their post-and-beam construction, school, public, collection point, etc. and, then all of a sudden at the very end, we ask for life safety input because something comes up, and it alters the plan significantly to the point where you're back to square one. He suggested they assemble their team appropriately and check in with everybody.

Mr. Duncan asked about employees.

Mr. Zev said that there were none.

Mr. Duncan said that on the supplemental map you gave us it looks like the proposed sign is 2'X3' but on 'this' map it's 3'X3".

Ms. Amberger said that we went back to the 2'X3'.

Ms. Pelletier clarified that, for a commercial business in the Suburban Zone, the square footage for signs is 12 square feet.

Mr. Duncan moved, second by Mr. Bouchard, that this application be accepted as sketch plan stage, with the understanding that the location map is going to be changed.

**VOTE**

**4-0**

**Chair concurs**

The PB needs to see:

- Improved plans
- Updated septic design
- How many students expected at a given time

Mr. Zev said that he did not see us drawing more than 20 people at a time.

Ms. Amberger asked about waiving the high intensity soils report and the PB explained that those kinds of questions should be asked of the Planner and the process for putting a package together for PB presentation.

Mr. Whalen encouraged the applicants to make sure everything required was shown on the preliminary plan, giving examples of what should be included.

Mr. Beckert said that the engineer will work with the checklist and Ms. Pelletier to make sure all the requirements are on the plan.

Mr. Duncan asked, regarding parking, what schedule does Ms. Pelletier think is applying here.

Ms. Pelletier said that she advised the applicants to take the maximum number of students they expected at any given time plus instructors, if any, because there isn't a specific requirement.

## **ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS**

There were no outstanding action items.

## **ITEM 8 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED**

### **A. Draft 2015 Annual Report of the Planning Board for the Town Book.**

This was accepted as written.

**B. October 2015 Municipal Law Advisory regarding Supreme Court decision in *Reed v. Town of Gilbert* and its effect on municipal sign ordinances.**

Ms. Pelletier said that this will add to our list of things to do.


Mr. Duncan said that the Conservation Commission is currently trying to organize a lecture series with the focus on interests in Town, environmental as well as historical; that we are trying to work with the Historical Society and other organizations in Town, saying if anyone had topics they thought would be of general interest to the Town's residents, he is soliciting input.

**ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING**

The next regular Planning Board Meeting is scheduled for March 15, 2016 at 7PM.

**ITEM 10 – ADJOURN**

There was a motion and a second to adjourn the meeting at 8:22 PM.

  
Steve Beckert, Chairman  
Date approved: 4-5-2016

**Respectfully submitted,**

**Ellen Lemire, Recording Secretary**