

ITEM 1 - ROLL CALL

Present: Jeff Duncan - Acting Chairman, Larry Bouchard, Dennis Lentz, Melissa Horner - Alternate, and Christine Bennett - Alternate.

Also present: Kate Pelletier, Planning Assistant.

Absent: Greg Whalen (excused).

Voting members: Jeff Duncan, Larry Bouchard, Dennis Lentz, Melissa Horner - Alternate, 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. Bouchard, to approve the minutes of August 15, 2017, as amended.

VOTE

5-0

**Acting Chair votes in the
affirmative**

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

There was no review.

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

A. 10-minute public input session

There was no one from the public who spoke.

B. PUBLIC HEARING and continued review of an application for a Request for Planning Board Action to amend a previously-approved site plan (PB17-1) by establishing a non-profit medical marijuana caregiver operation in the existing 30' X 150' structure located at 495 Harold L. Dow Highway. Applicants are Hughes & Kristin Pope (mailing address: 43 Creek Crossing, Eliot, Maine 03903). Owner is The Flower Company Properties, Inc. (mailing address: 483 Harold L. Dow Highway, Eliot, Maine 03903) Property can be identified as Map 53/Lot 6 and is located in the Commercial/Industrial Zoning District. (PB17-9)

Received: July 1, 2017
1st Heard: July 18, 2017

RECEIVED
JAN 17 2018
BY: Wendy Rawski,
Town Clerk

Public Hearing: September 19, 2017
2nd Hearing: September 19, 2017
Site Walk: _____, 2017
Approval: _____, 2017

Hughes and Kristin Pope were present for this application.

Mr. Duncan asked the applicant to give a brief overview.

Mr. Pope said that he and his wife established a medical marijuana care-giver operation three years ago; that we have recently decided to expand and move our facility. He added that we are applying for certification from MOFGA (Maine Organic Farming and Gardening Association); that they will be overseeing our operation regularly, taking all sorts of samples to make sure we are not breaking any of their stringent organic standards. He explained that we grow organically; that we don't use any synthetic fertilizer; we build our own soil, the soil enters the plant, process the plant and dry it, which takes some time to do; that, fortunately, we've been able to survive on that and it is my passion and love. He said that the proposed location is 502 feet from the Transfer Station and 200 feet, or so, from the neighbor (Mr. Marble); that he didn't think it was going to work out with us being so close but, upon further inspection, Eliot doesn't have a definition of 'residential property' but does have a definition of a 'residential dwelling unit', which means 'a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family. The terms shall include mobile homes but not recreational vehicles. He said that, while he and his wife recognize that the PB doesn't have the ability to waive all requirements, specific provisions of §33-189 (c) regarding medical marijuana dispensary care-givers and their setbacks, he does believe the 500-foot setback from Mr. Marble's property is not applicable if you apply the above definition of a 'dwelling unit' in Eliot. He added that we will be having a lot of security - motion sensors, odor control, and there will be no visible tell-tale signs that this facility will be used for medicinal cannabis, with the exception of what is being spoken of in this room; that there won't be any leaves outside, no waste outside, and any waste that is produced will be weighed and recorded, as MOFGA will want to see that we are keeping track of that, in addition to 'seed-to-sale', which is a term used to describe the tracking of the seed as it goes through its life cycle all the way to the point of sale so that, if there was a complaint from a consumer, then the batch number could be tracked, identified, and tested to discover what, if any, problem may have occurred.

Ms. Pope said that there will also be regular visits from DHHS, which regulates the medical marijuana program in Maine.

Mr. Pope said that the caveat with MOFGA is that we are actually paying for it; that he wants it because he thinks it adds an added level of legitimacy to what we are doing, in addition to having pesticide applicator licenses that have to be renewed every year.

Ms. Pope said that all the medicine will be delivered to the patients so there will be no one actually coming to the facility to purchase the medicine. She added that it all leaves with security delivery drivers so there will be very minimal traffic.

Mr. Pope added that the landlord doesn't want to see a shop, there, but is alright with having a facility there.

Before opening the Public Hearing, Mr. Duncan explained the rules.

7:15 PM Public Hearing opened.

Mr. (Robert) Fisher, Frost Hill Road, said that he was wondering if our vote coming up was going to do anything against the applicant or for him.

Mr. Pope said that he would like to think the vote would help him; that at this point, it wouldn't do him any good in Eliot but would give him an opportunity to have a – he doesn't use this business elsewhere.

Mr. Duncan clarified that the vote coming up is recreational-related where the applicant this evening is medical; that it's two different programs; that even though there may be synergy there, somewhere, if it does pass, the vote in November doesn't affect this application.

Ms. (Michele) Meyer, Odiorne Lane, asked if Mr. Marble was here.

Mr. Pope said no; that he's very old and has a hard time getting out, as far as he knows.

Ms. Meyer asked if he received a certified letter.

Ms. Pope said yes.

Mr. Pope said that the landlord that he would be renting from has a relationship with Mr. Marble.

Ms. Pelletier confirmed that Mr. Marble was notified and that his daughter submitted an email to the PB.

7:17 PM Public Hearing closed.

Ms. Horner said that she had an interest in the 500-foot setback from a public facility and that, regarding the communications between Ms. Pelletier and the applicant, it seems the only way around that is to deal with the CEO and the Board of Appeals (BOA); that she was wondering if the PB was allowed to throw that back to the applicant that, when that's been granted, then we would move forward with the application because she didn't know what else we would be talking about tonight.

Ms. Pelletier said that it isn't black and white and that's why she said it was the PB's call to make a determination on whether it's a gray area; that if you do agree that it's a clear standard then he would need to go to the BOA or seek relief from another board prior to final action from the PB unless the applicant would want the PB to deny it based on your interpretation and then he could appeal that interpretation to the BOA.

Mr. Duncan clarified that the question on the table pertains to the 500-foot distance from a residential property line; that Chapter 33-189 says, "A dispensary may not be located within 500 feet of the property line of a residential property..."

Ms. Horner added a public facility.

Mr. Duncan agreed but said he believes this is met.

Ms. Pelletier agreed, saying it was 502 feet to the public facility and it is just the residence that would be in question.

Ms. Bennett said that she disagreed with that.

Ms. Horner said that the communication says it's 422 feet from the Transfer Station.

Ms. Pelletier said that that was her mistake; that she was measuring from the wrong building; that she checked and it is 502 feet.

Ms. Bennett said that the property wrapped around.

Ms. Pelletier said that the standard just says that the facility should be 500 feet from the closest property line of a public facility; that her take on that is from whatever the closest point of the building is that it operates out of to the closest property line.

Ms. Bennett reiterated that the property (public) wraps around so there should have been two measurements; that Map 54, Lot 8 is the Town of Eliot's property that contains Public Works and the Transfer Station but it wraps around two other properties so, really, you need to measure the distance from that building to two points.

Ms. Pelletier said that the closest point is 502 feet.

Ms. Bennett disagreed.

Mr. Duncan said that, without getting into semantics, he thinks the two of you are arguing over property lines versus building-to-building; that Ms. Pelletier is saying that, building-to-building, it is over 500 feet; that he thinks Ms. Bennett is saying that the building to Transfer Station property line...

Ms. Pelletier said that that is what the requirement says; that you should be 500 feet to the closest property line of a place of worship, childcare facility, etc.

Mr. Duncan said that the building to the nearest property line is...

Ms. Pelletier clarified the building is his building to the nearest property line...if you read it...

Mr. Duncan said yes – his building to the nearest property line...

Ms. Pelletier said that it is 502 feet.

Ms. Bennett said that there is another property line for that property that is closer.

Ms. Pelletier disagreed, saying that it is closest.

Mr. Pope said that we drew the line to the actual facility, not the property line.

Ms. Pelletier clarified that we did that because that part of it isn't public; that it's not publicly used.

Ms. Bennett said that it's the same property, though.

Ms. Pelletier agreed but said we are measuring to a property line of the...that you can read it however you want, like she said, it's just her opinion; that that's why we're here, for you to make these calls.

Mr. Duncan suggested the PB discuss the two issues separately; that they could discuss the public property first. He added that, as a group, what he thinks he's hearing is that the property, itself, which is sort of horseshoe-shaped around two other lots, is closer than the 500-foot because of the one leg of the horseshoe versus the other; that he would like to hear, as a group, from the other two participants that are here this evening as to what their opinion is.

Mr. Bouchard said that it says property line and it is around the two other properties; that it's the same lot so, in his opinion, that is the same lot so it would be closer; that you'd have to go to the closest point of that lot, the property line.

The PB members agreed.

Mr. Duncan said to talk about the residential property, which is immediately adjacent. He read the email that Ms. Pelletier referred to earlier, "I am the daughter of abutter, Gaylen Marble, 505 Dow Highway. I have spoken at length with both Ms. Nooney and Mr. Pope. I have presented all information to Mr. Marble. He has a clear understanding of the proposal. He stands firmly against the proposed cannabis facility adjacent to his residence. If you have any questions of him, please call me...I am also in need of written plans and details of the proposed facility for review by our attorney." He added that he thinks this one is a lot less open to interpretation, at least if we are looking at 500 feet from a property line of a residential property; that it doesn't necessarily say a

‘residence’, per se; that it’s talking about the property on which that residence resides and they are mutually sharing a property line. He asked the members of the PB their opinion of this requirement being met.

Ms. Bennett said that she appreciated Ms. Pelletier’s research into this, she thinks she has to agree that it is currently used as a residence and, so, doesn’t meet the 500-foot setback because of the shared property line.

Mr. Lentz said that the PB has little right or ability to waive that requirement so he would have to agree.

Ms. Horner said that the residential might not be because it is in the commercial district; that our definition says exclusively as that but it’s not because it used to be an auto place; that she guessed she was at the point where, if they could do something about the Transfer Station issue, as that seems like a pretty big, clear line versus the residential property/residential dwelling unit; that that seems a little more like a discussion.

Mr. Bouchard asked if the residential dwelling was permitted by the CEO at some point.

Ms. Pelletier said yes; that it is legally non-conforming; that it could be that forever but, if the use lapses for a year, then it would revert to a commercial use but there could be someone living there.

Mr. Bouchard asked how we would know that.

Ms. Pelletier said that if the property transfers hands – if Mr. Marble passed away, for example, and it changed hands, we would take another look at it to see who is residing there.

Mr. Bouchard said that, right now, the land is in the hands of the person living there so he would say it is the same as the Town property – too close to the property line.

Mr. Lentz asked Ms. Pelletier if, when we measured this, we measured from facility to facility, facility to property line, or property line to property line.

Ms. Pelletier said that we measured from the closest point of facility to closest property line of public facility and closest property line of residence.

Mr. Lentz said that we have a locked facility, we have no retail sales so there is nobody coming in and out of there; that we were told the last time that they would have all kinds of filters, so, no fumes; that there’s no light being emitted. He added that it seems kind of strange to him but that’s the law.

Mr. Duncan agreed that we have to enforce the existing ordinance.

Mr. Pope said that the reason we measure from the facility that he would be occupying to that diagonal side of the Town's property was that our interpretation is that that is a facility in use; that, granted, there is that other side of the horseshoe that everyone is acknowledging and is too close, but it's not in use; that it's just a buffer space, which seems like that could be up for debate since the public is physically using that other side; that his interpretation of the purpose of that ordinance was to protect the people, to give them privacy and make them feel like they had a place to go that they would feel safe at, where they weren't going to see porn shop flashing signs or canvas voters. He added that Mr. Marble's property says Auto Body Shop on it; that he believes, initially, it was an auto body shop and the residence was an afterthought; that he is, physically, in a commercial/industrial zone. He said that he wouldn't put his house, or his family, in the commercial/industrial zone specifically so he wouldn't have to be next door to somebody like himself or anybody else having a business; that he felt that, to mitigate that and overlook that, is reasonable because somebody is living there; however, by definition, it's not used exclusively as a dwelling; that otherwise he would think the auto body sign would come down.

Mr. Duncan asked if that property was being used for a home business or something like that.

Ms. Pelletier said no, but it was; that we checked with the Assessor and it was originally just auto body with no living quarters; that the living quarters came later and they are just upstairs; so you can tell it's not been exclusively designed for residential; that that is a very good point. She added that it was designed for a commercial space and the residence was an afterthought.

Mr. Pope said that, if this were an active facility, we wouldn't even be sitting here right now, but he feels like this is worth talking about because, as Ms. Pelletier initially said, it is a gray area – it is not exclusively a home and it is in the Commercial/Industrial Zone.

Mr. Duncan asked Ms. Pelletier to comment on the ability of this Board to waive or address these distances in some way.

Ms. Pelletier said that she thought the PB needed to be careful because, as Mr. Lentz said, you do not have the ability to waive these requirements but, if we have definitions for terms that are being called out in these requirements and something doesn't meet that definition, then can you apply that standard to it; that it becomes more 'is it applicable'; that you definitely can't waive anything, here, but you can determine that something doesn't meet a definition and it isn't applicable. She added that her advice is always does it pass the straight-face test; in a court of law would that be a reasonable argument.

Ms. Bennett said that, given this conversation that we've had about the fact that the property was originally an auto body shop converted to a residence, that it's in the commercial zone and, therefore, a legal non-conforming use, she wanted to re-consider her straw poll vote that we consider this a residential property and apply the 500-foot

setback from the property line. She added that, if we have the ability to interpret the definitions of or...

Ms. Pelletier said that you can determine if the standard is applicable to the situation – is it applicable to this ‘thing’ next door; that ‘thing’ – is it what the standard is calling it – a residential dwelling unit – you can say yes, you can say no; that you would look at it just like it was Cumberland Farms next door; that you would say no, that that’s not a residential dwelling unit so that does not apply to them; is it reasonable.

Ms. Bennett said that, given that it was a commercial use in the Commercial/Industrial (C/I) Zone and then got converted, she feels like there could be some sort of other situation; that it really changes the rules if somebody could arbitrarily spot zone something away from other people in the C/I Zone.

Mr. Duncan said that §33-189 (c) states that “A dispensary may not be located within 500 feet of the property line of an existing public or private school, residential property, childcare facility, place of worship or public facility.”; so, then, the question is whether this is an existing residential property; that we don’t have, as was pointed out, a definition of a residential property but, in the absence of a definition, he thinks we’re using common understanding of terms.

Ms. Pelletier clarified that the term we are actually using is ‘residential dwelling unit’.

Mr. Duncan said that he would interpret residential property to be a property with a residential dwelling unit; that that was his common interpretation of that term and, as was read earlier by the applicant, a ‘residential dwelling unit’ means “a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family.”; so, he said he guessed the question is whether the group of rooms that is currently being occupied by that family exclusively designed for that use, regardless of what’s going on, on the ground level, which is obviously set up for some sort of commercial operation; that the group of rooms that are currently occupied, seem to be in his mind, fitting the definition of ‘residential dwelling unit’; that, again, one opinion and he is open to the PB’s majority point of view here. He asked if that helper with her thought process.

Ms. Bennett said that it put her in a conundrum, unfortunately, but she can’t argue with the logic Mr. Duncan put forward.

Ms. Horner said that she wondered how everyone would feel if Mr. Marble were actually sitting here versus his daughter sending an email.

Mr. Pope said that Ms. Nooney has spoken with Mr. Marble and he said, verbatim, “Who am I to tell anyone what to do with their property?”; that he believes it’s his daughter that does not want that done.

Ms. Pope said that that’s the feeling she got.

Mr. Pope said that he specifically said he was concerned having hooligans running through the woods because he sees that now with the gas company. He added that that's his perspective, from what he's heard; is that strangers walking through the woods, checking on whatever it is they do over there, sets off an alarm; that the daughter has said something different. He said that he spoke to his daughter on the phone and she seemed very amenable to the whole thing.

Ms. Horner asked if it would help to table the application while the applicant gets relief from the BOA.

Ms. Bennett asked if we didn't have to deny the applicant in order for him to do that.

Ms. Pelletier said no, not to go for a variance; only if he wanted to appeal it.

Ms. Horner said that the BOA would have to decide that; that if we make the decision on the residential thing; it sounds like we are all on the same page about the Transfer Station; so, if he wanted to move forward on his application, he would still have to go to the BOA on the Transfer Station unless we all agreed about the residential thing being a residence or not being a residence, and might have two things for the BOA. She said that she doesn't think the residential dwelling unit is applicable to this.

Mr. Bouchard said that his opinion is the same; that he believes it does – the property line is too close.

Mr. Duncan said that we are not going to get a consensus here. He asked for a motion to either state that the residential issue applies or doesn't apply, depending on who wants to make the motion.

Mr. Bouchard asked if it applied by law, by ordinance, or are we trying to fill the gray area.

Mr. Duncan said that he thought, at this point, because there is at least some opinion on the Board that says that this does not apply because it's a non-conforming use in a commercial zone; that, for clarity, he is looking for a majority to go one way or the other so the applicant can pursue this with the BOA.

Mr. Lentz asked if we were waiving it.

Mr. Duncan said no; that what he would say is that if the Board feels in a majority vote that this does not apply, then it's not applicable; that it's not that we are waiving it.

Ms. Pelletier said that what she thought you were looking to do is determine if the property next door is a residential dwelling by the standard; is it yes or no, and if it isn't, then it doesn't apply and, if it is, it does. She added that she thought they might also want to ask the applicant how he would like to proceed – if he would want you to table it

or want you to deny it so he can appeal your interpretation; that that's another avenue for the applicant, too, before a final action is taken.

Mr. Duncan said that we can certainly do that; that, at this point, he thinks what he is asking the PB in a majority position to provide an interpretation as to whether or not this particular standard, if you will, applies. He added that, if it does apply, then his suggestion is that the applicant would go to the BOA to seek relief from those two requirements and that we would have to table the application in the interim.

Mr. Lentz moved, second by Ms. Bennett, that the property next door is not a residential property because it is in the Commercial/Industrial Zone.

VOTE

3-2 (Bouchard, Duncan)

Acting Chair votes in the negative

Mr. Duncan said that, at this point, the only incomplete is the public facility question. He added that, before we go any further, he asked Ms. Pelletier to go through the checklist, also asking her if she has reviewed with the applicant the checklist items she views as incomplete.

Ms. Pelletier said that the only things incomplete can just be answered verbally; that she has nothing outstanding that the applicant needs to submit. She asked the applicant if he was storing anything outside – soil, fertilizer, compost, etc.

Mr. Pope said that, as of now, no.

Ms. Pelletier ask for confirmation that there was no external evidence of the business.

Mr. Pope agreed there was no external evidence.

Mr. Duncan said that there were several checklist items deemed incomplete.

Ms. Pelletier said that the PB was dealing with several of them now; that anything left would either be dealt with by a condition of approval or the ones he just verbally answered or the call the PB had to make on the 500 feet.

Mr. Duncan asked if anyone on the PB had any other questions or comments at this time on this application.

Mr. Bouchard asked the applicant if he held a current dispensary certificate with the State.

Mr. Pope said that we are not a dispensary; that we have care-giver licenses.

Mr. Bouchard said that we would need clarification on that.

Ms. Pelletier reminded the PB that the ordinance was changed by a citizen's petition; that it's not been updated in the books but it was included in the first application submission; that anywhere you see the word 'dispensary', you can just add the word 'registered primary care-giver' next to it, now, and the same rules apply. She added that we have not been given the updated books because it just happened and we can only do that every so often due to budgetary constraints.

Mr. Bouchard commented that §33-189 (b) is incorrect.

Ms. Pelletier said that, at the moment, yes.

Ms. Bennett asked if we should be discussing if the potential lease is sufficient to satisfy the affidavit of ownership.

Mr. Duncan said that the language in §33-106 really is related to transfer of ownership as opposed to lease; that to his knowledge there is no recorded conveyance from a landlord to a tenant.

Ms. Pelletier explained that, when someone makes application on someone's property, the PB usually requires some sort of vested interest, such as a lease.

Mr. Duncan agreed, saying that what we have is a promise to lease if this Board approves the application.

Ms. Pelletier said that this Board has regularly honored this as sufficient many times.

Ms. Bennett said that she just wanted the PB to determine if it was sufficient with the checklist.

Mr. Duncan said that, with what the PB has heard this evening, he thinks the options are that 1), the applicant could continue to have us pursue this application with the possibility that it's not approved because of non-compliance or 2), the applicant could go to the BOA to seek relief from that ordinance requirement and, with that in hand, the applicant could then pursue continuing review of the application.

Ms. Pelletier explained the different options and what they meant to the applicant.

Mr. Pope said that he honestly hadn't given it much thought, as he didn't think it was going to go down this road.

Mr. Duncan said that the PB could defer any action, at this point, and give the applicant other than 10 seconds to come up with an answer; that even though we don't have applications on the next meeting's agenda, if the applicant would like until October 3rd to plan and let us know how he wants to pursue this, with the understanding that we

probably would not act on the application at that meeting, but at least the applicant and the PB would be prepared for the October 17th meeting.

Mr. Pope said that he appreciated that and thought that would be the best way to proceed.

Mr. Duncan asked for a motion to table this application until further input from the applicant.

Ms. Bennett moved, second by Mr. Lentz, that the Planning Board table PB17-9 until further notice.

VOTE

5-0

**Acting Chair votes in the
affirmative**

Mr. Duncan asked the applicant to let Ms. Pelletier know by October 3rd how he would like to proceed.

C. PUBLIC HEARING and continued review of a request for Planning Board Action to amend a previously-approved subdivision plan by creating (1) one additional lot on Stacy Lane. Owners/applicants are Kenneth & Susan Albert (mailing address: 9 Stacy Lane, Eliot, Maine 03903). Property can be identified as Map 78/Lot 76-1 and is located in the Rural Zoning District. (PB17-13)

First Heard: August 15, 2017

Site Walk: Not scheduled.

Public Hearing: September 19, 2017

Second Hearing: September 19, 2017

Final Approval: September 19, 2017

Mr. Ken Albert, Ms. Susan Albert, Ms. Lauren Albert, and Dominique and Steve were present for this application.

Mr. (Ken) Albert summarized his request. He said that he was looking for a re-subdivision of an approved minor subdivision; that he had a 2-lot subdivision approved in 1988, and amended in 1995. He added that one lot is a 3-acre lot with a house on it, which has been sold, and the current lot is 7 acres, with his home on it, and is looking to split that lot to create one additional lot (2 acres) with 200 feet of frontage, for the benefit of his daughter.

8:00 PM Public Hearing opened.

No one from the public spoke on this application.

8:01 PM Public Hearing closed.

Ms. Bennett said that it conforms to the zoning in the area; that you have adequate frontage; you've proven that you have the soils to do subsurface wastewater disposal, and she thinks it satisfies all the criteria.

Mr. Lentz asked about the well location.

Mr. Albert said that that is to be determined but it will be more than 100 feet from the neighbor's well; that they have the room for a well.

Mr. Duncan said that, if there are no other questions, he would entertain a motion.

Ms. Bennett moved, second by Mr. Lentz, that the Planning Board accept PB17-13, as presented, subject to 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.
2. The permit is approved since 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.

VOTE

5-0

**Acting Chair votes in the
affirmative**

Mr. Duncan 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.

D. PUBLIC HEARING and continued review of an application for Site Plan Review to establish a day nursery at 64 Harold L. Dow Highway. Applicant is Sarah Teske (mailing address: 94 Beech Ridge Road, Eliot, Maine 03903). Owner is McMullen Revocable Trust (mailing address: 371 Beech Road, Eliot, Maine 03903). Property can be identified as Map 23/Lot 16 and is located in the Commercial/Industrial Zoning District. (PB17-15)

First Heard: August 15, 2017
Site Walk: N/A
Public Hearing: September 19, 2017
Second Hearing: September 19, 2017
Final Approval: September 19, 2017

Ms. Sarah Teske and Mr. Russ and Jan McMullen were present for this application.

Mr. Duncan asked the applicant to speak to her application.

Ms. Teske said that she is a resident of Eliot, has three children, and has been working with children for over 25 years. She added that she has been working with children with special needs for over 19 years and proposing to open a daycare facility that will specifically have typical peers as well as children with special needs. She said that she is a board-certified behavior analyst as well as holding a special education teacher's license; that she feels really strongly that the community doesn't have; that if you look at any of the daycares around Town, they talk about special needs will be consider but there might need to be a placement for those children or more appropriate...if they have particular needs, they may not be suitable. She said that she is looking from the perspective of a mother and knowing how hard it is to work and have children; that she knows that this will be an opportunity for some of the members of the community to be able to work because those children will have a daycare facility that will be appropriate to suit their needs.

8:10 PM Public Hearing opened.

Mr. (Robert) Fisher, Frost Hill Road, spoke in favor of this application.

8:11 PM Public Hearing closed.

Mr. Duncan asked if the applicant has had the opportunity to receive and review the two comments, one from the Fire Marshall saying that his office will need to inspect the property.

Ms. Teske said that she did not receive those but, in terms of licensing with DHHS and the State of Maine, she is aware; that she has been working with an architect to restructure the inside of the building so that it meets fire code prior to the fire inspection; that she is aware of the zoning and what is required for each floor in terms of exits, fire sprinklers, type of structure and has also been speaking with sprinkler companies to make sure those meet code.

Mr. Duncan said that, as a condition of approval, he suggested passing inspection by the State Fire Marshall be added.

Ms. Teske said yes; that that would also be required by the State for her licensure of the daycare facility.

Mr. Duncan said that the other memo from the DPW Director commented on the possible connection of this facility to public sewer.

Ms. Pelletier clarified that that sewer is not owned by the public but by Mr. Forsley (private), so, she isn't sure we can apply that standard. She added that, usually, when a property changes hands that is within 250 feet of the sewer line, it's required to connect to the sewer, if it isn't already. She added that, because this is a privately-owned sewer line, there is nothing the PB can do; that they don't enforce that ordinance and have nothing to do with that ordinance. She added that it's just a word of caution; that he (Mr. Moulton) had admitted he had not read the terms of the ordinance and she clarified that for him that that's what it says and he backed off on that; that we can get you a written opinion on that for sure.

Mr. Duncan clarified, for all involved, that this property is not within 200 feet of a public sewer.

Ms. Pelletier said that she has not measured it so she can't say that, yet, but this Board cannot enforce the provisions of a chapter you have no authority over; that you can make them aware of it, but that's it.

Mr. Lentz said that this property is currently on a septic system and asked if she was intending to increase the bathroom facilities.

Ms. Teske said that the current facilities will stay as they are plumbed.

Mr. Duncan asked if the current use for which the septic system was designed was adequate for the intended use.

Ms. Pelletier said yes, according to the CEO; that she had no issues.

Ms. Horner moved, second by Mr. Bouchard, that the Planning Board approve PB17-15, as presented, 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.
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. Approval from the Maine State Fire Marshall Office.

VOTE

5-0

**Acting Chair votes in the
affirmative**

Mr. Duncan 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.

E. Continued review of an application for Site Plan Review to construct a commercial structure containing eight (8) commercial/retail units at 290 Harold L. Dow Highway. Applicant is Peter Paul (mailing address: PO Box 694, Eliot, Maine 03903). Owner is AMP Realty Holdings, LLC (mailing address: c/o Northern Pool & Spa, 291 Harold L. Dow Highway, Eliot, Maine 03903). Property can be identified as Map 37/Lot 20 and is located in the Suburban Zoning District. (PB17-8)

Received: July 1, 2017

1st Heard: July 18, 2017

Public Hearing: _____, 2017

2nd Hearing: September 19, 2017

Site Walk: N/A

Approval: _____, 2017

Mr. (Peter) Paul (applicant) and Mr. (Thomas) Harmon (representative, Civil Consultants) were present for this application.

Mr. Harmon said that we are here for a proposed commercial office/retail space; that he thinks we're basically complete with the application:

- Need to finish up the septic system
- Asking for two waivers
 - Scale on plan from 1" equals 20' to 1" equals 30 feet (fits whole plan on one sheet)
 - High intensity soils survey
- Turned in to DEP for Stormwater Permit – approved by staff & waiting for signature
 - Impervious area over an acre
- 8 units
 - Partially retail/partially office
- Approved DOT entrance
- Rear portion of lot available for sewer, test pits done

- Equal to approximately 2 single family residences
- No public restrooms
- Filter basins on each corner of lot
- Lowering front portion of lot for more visibility
- Added an additional 10 parking spaces from July 18 hearing
- Landscape plan will be done and presented
- Letters have gone to fire, police, public works, with no comments back, yet
- Well onsite to be built
- Wetlands located on plan.

Mr. Duncan asked if all we needed to know, at this point, was classification of use, not individual tenants.

Ms. Pelletier said that the PB could do a blanket approval, just like you do for the Eliot Business Park; that as long as they don't exceed those uses at any given time, they are interchangeable and don't need PB re-review.

Mr. Duncan said that if he understands Ms. Pelletier's comment correctly, there's another review that's triggered if either one of those goes to six or more.

Mr. Harmon said no; that that's the way we have laid this out.

Ms. Pelletier said that he was talking about the bathroom count; that the count goes way up if you exceed those four and four and you have to add public bathrooms; that if the applicant is committing to four and four to the PB that means that at no point in time can it be six and two, as an example; that it's fine to be interchanging units as long as they don't exceed those.

Ms. Bennett revisited the request for waiver of the high intensity soils survey, saying that the applicant described the property as primarily disturbed.

Mr. Harmon said yes; that this came in 4-5 years ago and has an approval for the wood-processing there; that at the time that was done, a bunch of grading was done.

She asked if there were some native soils still there that could be used for the septic system.

Mr. Harmon agreed, adding that there have been test pits done in that area to make sure it could be used; that that area has been reserved and have done nothing back there.

Ms. Bennett asked for clarification that the bases of your waiver request is that we can just use the York County Soils Survey.

Mr. Harmon said yes, instead of having someone come in to create a high intensity soils survey.

Ms. Bennett asked if Mr. Harmon believed the disturbed soils are capable of supporting the pavement and buildings; that it's more than just the septic.

Mr. Harmon said that if she drove by the site, look at it, and see what has gone on there with the wood-processing business and the elevation of this site compared to all the other sites around it, there is no reason to suspect that it wouldn't.

Ms. Bennett asked if any of the stormwater would be going off the property line.

Mr. Harmon said that it would run off just the way it does now; that it gets treated before it gets discharged so it goes through the four filter basins and filters solid and nutrient particles, which is shown on the second page of the plan.

Mr. Duncan said that the flow is just sheet flow over the property, right.

Mr. Harmon said right; that there will be discharge points because, what happens when it comes off the property line...the property line is not going to be level...so you are going to have some instances where it concentrates.

Mr. Duncan asked if he was going to create channel flow, at all, onto neighboring properties.

Mr. Harmon said no more than was there before; that there was a channel that came out through 'here' onto 'this' other property and we're coming right back into that channel with the same amount of flow.

Mr. Bouchard asked about a waste dumpster location.

Mr. Harmon said that there is not one on there; that we probably are missing one; that we have plenty of room and can do that within the truck turn-around area.

Mr. Duncan said that the applicant said that there would be a number of things available before the public hearing and the PB agreed they should be in with enough time for the public to review that information.

Mr. Lentz moved, second by Mr. Bouchard, that for PB17-8 the Planning Board waive the requirement for the High Intensity Soils Survey.

VOTE

5-0

**Acting Chair votes in the
affirmative**

Mr. Bouchard moved, second by Mr. Lentz, that for PB17-8 the Planning Board waive the requirement of 1" to 20 feet and allow 1" to 30 feet for the scale.

VOTE

5-0
Acting Chair votes in the
affirmative

Mr. Duncan said that, provided we have the additional material by October 6th, we will have you in for a public hearing October 17th.

The PB agreed no site walk was necessary.

Ms. Bennett asked if we needed a lighting plan for this property.

Ms. Pelletier said that it's not a requirement.

The PB **agreed by consensus** that the application is complete pending submittal of the additional material before the public hearing.

F. Request for Planning Board Action to establish a boarding kennel (daycare) for up to 20 dogs at 424 Harold L. Dow Highway. Applicant is Lori Shadallah (mailing address: 205 Birch Hill Road, York, Maine 03909). Owner is JP's Shellfish, Inc. (mailing address: PO Box 666, Eliot, Maine 03903). Property can be identified as Map 45/Lot12 and is located in the Commercial/Industrial Zoning District. (PB17-16)

First Heard: September 19, 2017

Site Walk:

Public Hearing:

Second Hearing:

Final Approval:

Ms. (Lori) Shadallah was present for this application.

Ms. Shadallah said that she has been in the dog-grooming business for 20+ years. She added that she was working out of Kittery for 13-15 years; that she has been looking to re-locate her business and found this property, spoke to J.P. Shellfish, who said she was good to go. She added that she did need to make a change that it is not a boarding facility; that it is grooming and daycare and she does not do boarding.

Mr. Bouchard said that the application says 'dog daycare' and does not say 'kennel'.

Ms. Pelletier said that we don't have 'dog daycare' as a land use in the table; that the closest we have is 'boarding kennel' so, we have to determine if it's as close to that to meet the ordinance, or not.

Mr. Bouchard said that he understood; that with that said, a 'boarding kennel' is allowed in the C/I, so, that will just have to be changed on the application, at some point, or will it.

Ms. Pelletier said yes, she should apply formally; that we have that table of land uses that has very specific words on it and, unfortunately, 'dog daycare' isn't one of them; that it probably should be but the closest we have is a 'boarding kennel'. She added that that is, in effect, what the applicant is applying for; that we can change her application for the official record.

Ms. Shadallah said that it would be grooming and daycare.

Ms. Pelletier said yes.

Ms. Shadallah reiterated that she has been grooming in the area for 13 to 15 years; that prior to that she was established in New Hampshire; that she is well-established with the vets in the area. She added that she wanted to be on her own so she found this establishment and here she is.

Ms. Bennett asked how many dogs the applicant took care of in a given day.

Ms. Shadallah said that she did not want any more than 20, because it is a small facility, and she likes having a small group of dogs; that her mission is to make them happy and tired and have toys; that she doesn't want a whole cattle herd of dogs.

Mr. Duncan asked that the intent was not to board any of these.

Ms. Shadallah said no; that she's there enough during the day, as it is; that she doesn't want to be there on the weekends, as well. She added that she brought photos of the outside area, if you wanted to see what it looks like.

Ms. Bennett asked if the applicant was subject to any licensing, at all, by the State.

Ms. Shadallah said that she has never had to, no, which is unfortunate because there should be licenses for groomers.

Ms. Horner said that there is licensing for daycares through the State.

Ms. Shadallah said that she was not aware of that.

Mr. Lentz asked about the number of employees, if it was just the applicant.

Ms. Shadallah said yes, for right now, just herself.

Mr. Lentz asked for her hours.

Ms. Shadallah said that her hours were 7AM to 6PM, Monday through Friday.

Mr. Duncan asked Ms. Pelletier how we would base parking requirements for this application.

Ms. Pelletier said that she thought that we used a regular daycare.

Mr. Duncan said with the idea that it's sort of a drop-off, pick-up kind of activity.

Ms. Pelletier said that for the lack of a better use to go on, that was her thought.

At this time, the applicant showed her photos to the PB, explaining what they were seeing, adding that there were 8 parking spaces and that people were there for about 10 minutes (drop-off/pick-up).

Mr. Duncan asked for clarification of what the PB was doing for this application.

Ms. Pelletier said that it was a change of use; that the most recent use was a restaurant.

Mr. Duncan said that the pictures show an existing business, so, are we here to rectify a wrong.

Ms. Pelletier said yes; that there is no enforcement action on it because she didn't know that she needed PB approval; that as long as she is going through the process of getting it, we are not going to come down on her with an enforcement action. She added that the applicant has been more than cooperative, since hearing of this, and has done everything we've asked.

Ms. Shadallah said that she honestly didn't know because she didn't purchase the building; that she is renting and she wasn't aware until she got a phone call.

Ms. Pelletier said that the parking requirements for 'day nursery' is '2 spaces for each nursery room plus 1 space for each adult instructor'; or, you could go with 'adequate spaces shall be provided to accommodate customers, patrons, and employees for permitted uses not listed above'.

Mr. Duncan asked the applicant if her customer base would be showing up at all times of the day; that you drive in and pick up.

Ms. Shadallah said that it's just like a child that they drop off before they go to work; that she opens up at 7AM so most of the dogs are dropped off between 7AM and 8AM and they go home between 3PM and 6PM.

Mr. Lentz asked if she was actually grooming these dogs.

Ms. Shadallah explained that she did not groom the daycare dogs; that, as part of the business, she has a grooming clientele in the same facility.

Mr. Duncan clarified that she was going to house up to 20 dogs a day as daycare.

Ms. Shadallah agreed, saying that we have some dogs that come every day, some that come Monday, Wednesday, and Friday, some just once a week; that basically right now, being that she is just slowly getting established and her door is still open to new customers, she is going to reach a max because she doesn't want a whole bunch of new dogs; that she hasn't reached that maximum mark, yet. She said that the daycare dogs are there strictly for daycare and grooming dogs strictly there for grooming.

Mr. Duncan asked if we are looking at this for both activities.

Ms. Pelletier said that, in her opinion, it's an incidental, customary kind of a use; for example, like selling chew toys at the dog obedience school – just part-and-parcel of the use; that she doesn't think we're going to need a whole bunch of parking for this or have a whole bunch of foot traffic coming in and out.

Mr. Bouchard asked if the waste water/wash water was going into the septic.

Ms. Shadallah said yes; that that was already established when the restaurant was there.

Ms. Pelletier said that the CEO looked at that and said that the septic design was adequate.

Mr. Duncan asked if the shampoos, etc., would go into the septic system and if those products were approved for septic disposal.

Ms. Shadallah said that that was correct.

Ms. Horner said that she was wondering where we stood with State licensing; that she knows that we have to go by what the applicant brings us but she was under the impression that you needed a license to operate a dog daycare and a grooming facility in the State of Maine.

Ms. Pelletier said that she would check into that and get an answer. She added that, if that is a requirement, you can make it a condition of approval that she show that to the CEO.

Ms. Horner said that that would be her only condition of approval.

Ms. Shadallah asked if she would need approval from the Town before she approached the State.

Mr. Duncan said that it depended on what the State's requirement is. Mr. Duncan said to Ms. Pelletier that we are looking at a change of use, so, ultimately, we're going through the whole process, he would think.

Ms. Pelletier said that you can still have an abbreviated administrative process and still have a public hearing, and all that, if you want to; that if there are any specific

requirements, over and above sketch pan that you would like her to show or submit, now would be a good time; that, otherwise, she would schedule a public hearing and she can be on her way next month.

Mr. Bouchard asked the applicant how she was dealing with waste and trash.

Ms. Shadallah said that she puts it in the dumpster at J.P.'s and she thinks it's Shipyard that comes to pick it up on a daily basis.

The PB **agreed by consensus** that the application was complete pending a public hearing and any conditions of approval necessary.

A public hearing was scheduled, unless potential State licensing needed the applicant to postpone, for October 17th.

G. Application for a Shoreland Zoning Permit to install 75 linear feet (737 sq. ft.) of riprap to stabilize the eroding shoreline at 28 Starboard Cove Road.
Owner/applicant is Cindy Camp (mailing address: 28 Starboard Cove Road, Eliot, Maine 03903). Property can be identified as Map 70/Lot 25 and is located in the Rural Zoning District and Limited Residential Shoreland Zoning District. (PB17-5)

First Heard: September 19, 2017

Site Walk: N/A

Public Hearing: N/A

Final Approval: Administrative, September 19, 2017

Mr. (Zach) Taylor (Riverside & Pickering Marine) and Ms. (Cindy) Camp (Owner) were present for this application.

Mr. Taylor said that he would like to apologize for the additional time, here, but because of a misunderstanding with the previous CEO, he thought shoreline stabilization was approvable through the CEO's action; that, otherwise, he would have included it when we did the dock project. He said that the northern section of the property is an odd shape, like a giant horseshoe with two independent shoreline sections and kind of hugging another property; that this is not where the dock is going but at the northern end of the property. He added that there is a large bluff exposed to the fetch in that part of the river and, also, from waive action from boats up and down the river. He said that it's a sandy embankment and, over the years, it has had some pretty significant erosion; that the old growth pines have made their way into the river and the goal, here, would be to prevent that; that there is a series ranging in a 3-foot diameter down to 18-inch large pines that still stand erect at the top of the embankment. He added that they wanted to stabilize that with traditional hard riprap along the base; that there would be a portion (381 sq. ft.) that would be below the highest annual tide line and, then, a portion (360+/- sq. ft.) that would be above the HAT line; that above that their goal is to do vegetative stabilization to be able to shore up and build up around the tree roots exposed on some of the larger pines right on the edge through a series of native plantings and erosion-

control matting at the base and, then, the planting per DEP's recommendations. He said that the actual design is a three-foot keeway at the bottom with underlying support with non-woven geo-textile filter fabric and a 6-inch crushed stone base; so, the filter fabrics will prevent the fine sediments from getting back out into the waterway; that the 6-inch crushed stone is protection for the filter fabric and, then, a two-foot thick hard armament of 24-inch minus stone would be installed on top of that. He added that it's varying heights as we shape it to the embankment; that we went through the whole process with DEP and Army Corps of Engineers (ACE), who helped with the design to avoid as much impact as possible to protect the fragile embankment.

Mr. Duncan asked how high the retaining wall would be above current water bottom.

Mr. Taylor said that there's a series of profile views in the plan that show the highest annual tide line; that it's about a one-to-one ratio; that at the highest point it might be about 17 feet high down to about 10 feet high; that we had to project out a little bit from the existing tow in order to get a one-to-one ratio.

Mr. Duncan asked, under normal tide fluctuation, that most of this would be above high tide.

Mr. Taylor said that he would say, maybe, the actual stone portion you would be looking at, at its tallest from the tow, might be 12 feet and, then, it will be natural vegetative above that; that, if it's a larger tide, it might be 7 feet above it; that it then tapers down at each end as you approach the property lines.

Ms. Bennett asked if this was going to affect any of the adjacent properties in terms of erosion and sedimentation.

Mr. Taylor said, with sedimentation, no; that with erosion, because of the northern design of the property, it actually anchors into a cove; that the primary problem is the peak of the parcel where it's also the tallest part of the embankment and then gradually kind of slopes down at each end; that we've stopped the hard armament at a point where it actually is relatively protected and there are only minor signs of erosion; that he thinks the actual existing vegetative stabilization is holding the embankment up; so, it's really just this one peak area that is really standing tall and is essentially open and there's really nothing to stop it at this point; that it will continue, adding that when the pines do fall, it's calving and ripping out 30- to 40-foot sections from the embankment; that the worry is that they will keep doing that and they are huge pines at the top. He added that the property adjacent has a much more gradual slope on the embankment and the trees that run down to the water's edge and it seems to be pretty stable.

Ms. Horner asked if we were under §44-35.

Ms. Pelletier said yes; that the DEP considers retaining walls a structure. She added that, with the Table of Land Uses, any structure requires PB approval.

Mr. Duncan said that this is case #PB17-17 and asked if this is a revision to a previously-approved or is this a stand-alone.

Ms. Pelletier said that you could call it that; that it doesn't make a difference, either way, with a Shoreland Permit; that it's not like a Site Plan Review, not the same formalities that go along with it; that you don't have to determine the application complete, etc. She added that you could schedule a public hearing, or not; that you just had one for this for the pier that came through two months ago; that no one brought up the issue of the wall, or the dock, even.

Mr. Duncan said that we, as a Board, have no responsibility, per se, for the engineering design of said structure; that it's just that we're approving the construction of a structure in the Shoreland Zone.

Ms. Pelletier said exactly, within that 75 feet, and the DEP has had a full review of this, also.

Mr. Lentz asked if Mr. Taylor had applied to the State of Maine.

Mr. Taylor said yes, as well as ACE.

It was agreed that there was no need for a site walk.

Ms. Bennett asked if the applicant had reached out to the abutters with this change.

Mr. Taylor said that, with the DEP notification, they received, as part of the full application, notification of the project. He clarified that the dock and Shoreland stabilization was all part of the original DEP package but just didn't present the Shoreland stabilization to the PB, as he didn't think it as necessary.

Mr. Lentz said that this is an administrative change.

The other PB members agreed.

Ms. Horner moved, second by Mr. Lentz, that the Planning Board approve PB17-17, as an administrative change, with the same terms and conditions applied.

VOTE

5-0

**Acting Chair votes in the
affirmative**

Mr. Duncan informed the applicant 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.

ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS

Ms. Bennett asked if we had received a response from Attorney Saucier yet.

Ms. Pelletier said not yet.

Mr. Lentz said that we have a vacancy of a regular member, at this point, and asked if we were going to discuss how we are going to fill that vacancy; that he thought the norm would be the most senior alternate would move up to a regular position.

Ms. Pelletier said that that was the responsibility of the SB; that the person who wants to move up fills out an application and makes a request. She added that they should have a re-election of officer and can put that on the next agenda.

Mr. Lentz said that, even if that vacancy is filled, we still have a vacancy for an alternate, which we should ask the SB to advertise; that he doesn't know how we are going to take care of those things.

Ms. Pelletier said that she thinks those things are in the works; that they are aware and it's just up to you to do a re-election of officers.

There was discussion regarding the process the SB used to fill these types of vacancies.

Mr. Bouchard said that he wanted to ask a question, because he has been out of town quite a bit, asking what happened to our Chairman and why is he no longer on the Board.

Mr. Duncan asked who wanted to field that question, because all he knew was what he read in the paper.

Mr. Pomerleau said that he would answer that question; that he was removed for violation of the code of conduct; that he thinks it will be a public record, as of tomorrow, a written decision.

Mr. Duncan discussed access to the building; that he was happy not to have a key, assuming that you or at least someone with a key will be here for each meeting until at least the election of officers takes place.

Ms. Pelletier said yes; that it would probably be a good idea for someone else to have a key, in case something happens to her, so that they could get in the building; that it should probably be Mr. Duncan, if he didn't mind.

Mr. Duncan said that he would come in tomorrow to talk with Ms. Pelletier.

ITEM 8 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED

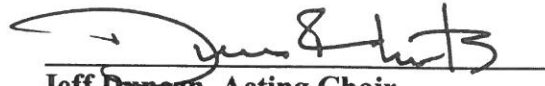
There was no discussion.

ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for October 3, 2017 at 7PM.

ITEM 10 – ADJOURN

There was a motion and a second to adjourn the meeting at 9:22 PM.



Jeff Duncan, Acting Chair
Date approved: 12/19/2017

Respectfully submitted,

Ellen Lemire, Recording Secretary

