TOWN OF ELIOT, MAINE

PLANNING BOARD AGENDA

TYPE OF MEETING: IN PERSON WITH REMOTE OPTION **DATE: Tuesday, December 6, 2022**
PLACE: TOWN HALL/ZOOM **TIME: 6:00 P.M.**

PLEASE NOTE: IT IS THE POLICY OF THE PLANNING BOARD THAT THE APPLICANT OR AN AGENT OF THE APPLICANT MUST BE PRESENT IN ORDER FOR REVIEW OF THE APPLICATION TO TAKE PLACE.

All in-person attendees are asked to wear face masks

1) **ROLL CALL**
   a) Quorum, Alternate Members, Conflicts of Interest
2) **PLEDGE OF ALLEGIANCE**
3) **MOMENT OF SILENCE**
4) **10-MINUTE PUBLIC INPUT SESSION**
5) **REVIEW AND APPROVE MINUTES**
   a) August 2nd, 2022 ~ November 15th, 2022 – if available
6) **NOTICE OF DECISION**
   a) 276 HL Dow – if available
   b) 7 Maclellan Lane – if available
7) **PUBLIC HEARING**
8) **NEW BUSINESS**
9) **OLD BUSINESS**
   a) June 2023 Ordinance Amendments
      1. Housing
      2. Day Nurseries
      3. Event Centers
      4. Marijuana
   b) Impact Fees
10) **OTHER BUSINESS / CORRESPONDENCE**
   a) Updates, if available: Ordinance Subcommittee, Comprehensive Plan, Town Planner
11) **SET AGENDA AND DATE FOR NEXT MEETING**
   a) December 13th, 2022 – Motion to move second December meeting from Dec. 21st to December 13th
12) **ADJOURN**

NOTE: All Planning Board Agenda Materials are available on the Planning Board/Planning Department webpages for viewing.

To view a live remote meeting: (Instructions can also be found on the Planning Board webpage)

- ***a) Go to www.eliotme.org***
- ***b) Click on "Meeting Videos" – Located in the second column, on the left-hand side of the screen.***
- ***c) Click on the meeting under "Live Events" – The broadcasting of the meeting will start at 6:00pm (Please note: streaming a remote meeting can be delayed up to a minute)***

Instructions to join remote meeting:

a) **To participate please call into meeting 5 minutes in advance of meeting start time. Please note that Zoom does state that for some carriers this can be a toll call. You can verify by contacting your carrier.**
b) **Please call 1-646-558-8656**
   1. **When prompted enter meeting number ID: 852 9731 6527**
   2. **When prompted to enter Attendee ID press #**
   3. **When prompted enter meeting password: 069406**
c) **Members of the Public calling in, will be first automatically be placed in a virtual waiting room until admitted by one of the members of the Planning Board. Members of the public will be unmuted one at time to allow for input. Please remember to state your name and address for the record.**
d) **Press *9 to raise your virtual hand to speak**

Carmela Braun – Chair

NOTE: All attendees are asked to wear facial protective masks. No more than 50 attendees in the meeting room at any one time. The meeting agenda and information on how to join the remote Zoom meeting will be posted on the web page at eliotmaine.org/planning-board. Town Hall is accessible for persons with disabilities.

ITEM 1 - ROLL CALL

Present: Carmela Braun – Chair, Jeff Leathe – Vice Chair, Christine Bennett – Secretary, Lissa Crichton, and Jim Latter.

Also Present: Jeff Brubaker, Town Planner.

Voting members: Carmela Braun, Jeff Leathe, Christine Bennett, Jim Latter, and Lissa Crichton.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION

There was no public input.

ITEM 5 – REVIEW AND APPROVE MINUTES

Mr. Latter moved, second by Ms. Crichton, to approve the minutes of June 7, 2022, as amended.

VOTE
5-0
Motion approved

ITEM 6 – NOTICE OF DECISION

There were no Notices of Decision.

ITEM 7 – PUBLIC HEARING

There were no Public Hearings.

Note: Old Business was taken out of order.

ITEM 8 – OLD BUSINESS

Note: Mr. Brubaker said that we talked about having an August 9 meeting. We do have that meeting to keep going with the ordinance amendments if we get too locked down with any one of them. I will be requesting motions for most ordinance amendment items, but not all, to go on the August 16th Public Hearing.

A. November 2022 Ordinance Amendments

1. Erosion and Sedimentation Control

Mr. Brubaker said that this is in a good spot. It has had legal review and consultant review from Kristi Rabasca. We just need to do some minor polishing and clearing up of some terms like 'permitting authority' and 'enforcement authority'. Otherwise, it's in a really good spot. Eliot is way ahead of most other southern Maine communities in regards to this ordinance. What I would say is let's schedule a public hearing for these on the 16th and I will make those minor wordsmithing items and bring them back on the 9th.

Ms. Braun said that I need a motion to schedule a public hearing for the Erosion & Sedimentation Control ordinance amendment on the 16th.

Ms. Bennett moved, second by Mr. Latter, that the Planning Board schedule a Public Hearing for proposed Town Code Amendments of Chapter 1, Chapter 33, Chapter 44, Chapter 45, and Chapter 34 for the Erosion & Sedimentation Control Ordinance.

VOTE
5-0
Motion approved

2. Fees

Mr. Brubaker said that these ordinance amendments don't change the amounts. What they do is take the §1-25 Fees out of the Code, so they are no longer codified, and just fully and clearly empower the SB to maintain Master Fee schedules. Our attorney has done legal review on this and he has recommended some changes. I think these will be generally ready to go to public hearing August 16th and I will come back with those final modifications for August 9th. The primary purpose of this is to remove the fees from codification, bring them to the SB and, in the meantime, we will be able to actually draft the amounts and make sure that our fees are fully up-to-date with a full cost recovery base within State law, as sometimes State law sets the fee amounts, and just to have a very clear fee schedule that the SB is empowered to maintain.

Ms. Braun said that I need a motion to have the Fee Schedule go to Public Hearing.

Mr. Latter moved, second by Ms. Crichton, that the Planning Board set a Public Hearing to address the Fee Schedule and changes to §1-25 Fees for August 16th.

VOTE
5-0
Motion approved

ITEM 9 – NEW BUSINESS

A. November 2022 Ordinance Amendments
1. Ordinance Subcommittee update

Ms. Bennett said that I sent you a memo that outlined some of the things we tried to tackle in this round with an eye towards the November ballot. Just for my own scheduling and get my head wrapped around this after meeting with Mr. Brubaker of the other ordinances that we will need to take up between now and March, in order to get on the June ballot. The memo is just for you to have an idea of what may be coming. I think the Planner had some comments.

Mr. Brubaker said that I have specific comments on the subdivision and site plan ordinance amendments. I could give those now or, since we're talking about the memo, itself, I could defer unless PB members have comments.

Ms. Bennett said that the only thing I would note in the memo is that we did draft some new definitions in four categories to substitute for 'day nursery', which is a term I'm not sure where it comes from but no one is using that. So, we put together four specific definitions that align with State licensing requirements. One was a new definition for 'Adult Day Care', which otherwise would have been a 'use similar to' day nursery, again looking at State licensing. I put together a proposal for 'school' breaking it down into two different types. One is 'public or private', which aligns with what we usually think of as a school, and then a 'commercial' school that would be more specific to a specific skill or trade, such as a karate school or yoga studio or a driving school. Finally, something I have wanted to tackle for a long time – Elderly Housing. I'm proposing we change this definition to be 62 years of age and up instead of the current 55 years of age and up. I checked and it conforms with the federal Fair Housing Act. It just seems to make sense that, in the oldest State in the Union, that we use the older definition properly. Especially because it is incentivized through intervention from our Growth Management Permit. I will also say that I and Mr. Brubaker had a number of conversations about Open Space development. That's a big one to tackle. He has thought about this for a long time and has really excellent thoughts he would like to bring forward to the PB for further discussion.

2. Subdivision requirements

Mr. Brubaker said that I couldn't agree more with those things that Ms. Bennett mentioned and priorities for updates so thanks to both of you for getting the ball rolling on those. I think 'day nursery' sounds like something out of Charles Dickens. I have some comments on specific ordinance amendments on 'site plan review' and 'subdivisions'. I think the vesting is good. I just think we'll need to make sure that syncs with §1-20. Regarding "Sketch Plan approval shall expire within one year", we just need to reconcile that with §41-141, which requires a subdivider to submit a preliminary plan within 6 months after the sketch plan approval; that that creates a de facto 6-month expiration. Then, we'll make sure we sync the subdivision expiration language with §31-36 because that talks about what notes need to be on a subdivision plan and about expiration timelines. Finally, just some additional wordsmithing.

There were no comments by the PB.

Ms. Braun said that I need a motion on this subdivision amendment so it can go to public hearing.

Mr. Latter moved, second by Ms. Crichton, that the Planning Board schedule the site plan review subdivision changes for a Public Hearing on Tuesday, August 16th.

VOTE
5-0
Motion approved

3. Solar energy systems

Mr. Brubaker said that these are some fine-tuning and modifications, clarifications. Legal review is complete and the attorney said that it looks good. The DEP pre-review for the Shoreland Zone changes is in progress. They are actually still reviewing June's adopted amendment. The main thing is that it changes SES-LG (larger system) allowability to be allowable in the Limited Commercial Shoreland Zone but would be prohibited in other Shoreland Zones. It clarifies the exemption criteria for certain SES-LGs. So, recall that they would be prohibited in focus areas of State-wide ecological significance as defined by the Maine Natural Wilderness Program. But there's a carve-out, there, for systems that 90% of their area covers either Brownfield sites (new definition), a site that has already been significantly graded like a quarry, and a site that has already been developed, like farm buildings they would like to re-develop as a solar array or livestock corral areas or existing impervious surface. Other than that, they would be prohibited in the focus areas, and that is primarily east of Goodwin Road.

Ms. Bennett said that there were a couple of items in the ordinance that I want to have a discussion about. On page 6 where it refers to the exemption for brownfields, it has the words "existed as of June 22, 2022", which is when this amendment went into effect. I was wondering if we could add "or later". What if a brownfield site is identified after June 22, 2022.

Mr. Brubaker said that I think that's a great point of discussion. My reasoning behind putting the date in there is because probably some worst-case scenario where you wouldn't want somebody to be careless with their property and create a brownfield site.

Ms. Bennett asked if this is something that Attorney Saucier could weigh in on. I'm concerned that there could be a brownfield site that we don't know about. There could be a distinct possibility that there could be a brownfield site that hasn't been identified at this time.

Mr. Brubaker said that maybe it's a matter of me wordsmithing part of my intention behind this, which was that, if evidence surfaced that the site has been a brownfield site, they could then pro-actively say that it was a brownfield site before. I could clarify that.

Ms. Bennett said that that would be great.

Ms. Lemire said that there is a standard for something to be defined as a brownfield. There are criteria to determine if it is a brownfield site.

Mr. Brubaker said that that's a good point. Let me know if that needs updating because I would be glad to. I used a commonly-accepted, general definition but, if we feel there needs to be more clarity. Clearly, this would apply to sites where there is PFAS, which I don't want to only call out. If it turns out that somebody's land has been discovered to have PFAS and that contamination creates real problems for them using their land for farming, that would seem to be a suitable land that would be exempt. And if they are in those focus areas, that would give them a suitable exemption where they would get to have a bigger solar array to kind of compensate or make up for their issue they are dealing with.

Mr. Latter said, just to clarify, you want to make sure that, even after-the-fact, that these sites that seem to be a brownfield site as of a date certain so that we're not incentivizing bad behaviors of somebody misusing their land to the point that they can't develop it otherwise and then say that it's a brownfield.

Ms. Bennett said that the other discussion point I wanted to raise, specific to this ordinance, this ordinance would allow for a ground-mounted solar array to be sited in the Shoreland Zone. I dug into my old land trust archives to looked at our Limited Commercial Zone and what the soils are in that zone. We have five types of soil in that zone, three of which are deemed hydric soils. They have a lot of clay and often inundated with water. They are close to, or sometimes exhibiting properties of, wetland and those soils don't make for good construction, a good surface to construct anything on. This spring, when our solar array on the landfill was being annually inspected by Revision Energy, I happened to be at the Transfer Station. So, I went over and just chatted them up because I had been involved in getting that array built, asking them how it looked. They said that it looks awesome. It looks great. At the time, we were working on the solar ordinance and I told them that it would allow for ground-mounted solar arrays to be sited in wetland, asking them if they had seen this. He said yes, they had seen a bunch of them and, in every single one of those after a couple years, the whole frame gets wrecked because it's not solid ground to put it in. I know we've heard about a proposal of drilling down to the bedrock and pinning it. These folks have been traveling all over the State. They've seen these ground-mounted arrays in wetlands and not lasting, structurally, more than a couple of years. I am concerned if we start to allow these large 1-acre, many-acre, arrays being built in soils that can't support them, that we're going to have a huge liability down the road. I would like to propose that we do not allow ground-mounted solar arrays in wetlands. I would also like to propose that, in this ordinance where we're proposing for large ground-mounted arrays in the Limited Commercial area, we only allow them on soils that are not hydric soils. There are two soils more suited to construction on them.

Mr. Brubaker said that I will defer that to the PB for discussion. I think it's a good point. I will say that any land use that comes before the PB, the PB has the power to review it in

terms of soil suitability under §45-415, which does say that "All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, and water pollution, whether during or after construction." So, I would just pose that as an additional point for your discussion because it's a policy discussion as to whether that suffices to protect and limit proposals for these types of systems in the Limited Commercial or you agree with Ms. Bennett's points.

After brief discussion, Mr. Brubaker clarified that you would continue to have the allowability in Limited Commercial but have that extra check to make sure that within Limited Commercial soils are appropriate.

Mr. (Bill) Widi, River Road, said that I'm actually the one who kind of started this back in June. As you guys know how much feedback you got from people who don't want the solar arrays around them, so I thought Limited Commercial would be a great area to put them. I would take a cruise down past Passamaquoddy Lane, as that would be kind of a premo example. I like the Limited Commercial, assuming the soils are correct, etc.; that I'm all about that. We just have to find places to put these solar arrays in the Commercial District.

Ms. Braun said that we should emphasize the appropriate soils point on the application.

Mr. Brubaker said that I will make that wordsmithing for the 9th as we move this to public hearing.

Ms. Bennett said, regarding #4 on page 14 Wetlands, where it says "Wetland alteration shall be avoided or minimized…", I'm proposing that we do not allow solar arrays in wetlands; not minimize the impact or alteration but that they cannot be sited in a wetland. We could retain the language. As we know, there is more site work than what is just contained with the ground mounting, such as clearing of vegetation and trees around the array, and that would be reasonable but the actual arrays could not be sited in a wetland.

Mr. Latter asked if there was anything in State law that would prohibit our prohibition.

Mr. Brubaker said that the DEP has primary jurisdiction over requests for wetland alterations for wetlands that are contiguously less than 10 acres. I'm still trying to wrap my head around where the boundary line stops with the DEP and where it starts with local jurisdictions. It seems like some local jurisdictions do double up on the wetland standards that the DEP also regulates. So, I'm not absolutely sure we couldn't add these prohibitions but I will check with Attorney Saucier. I want to draw a distinction in this, not advocating for large array placement in wetlands because I don't think that's a good idea, in that if you have small isolated wetlands and the applicants propose to essentially alter those wetlands to create more stable ground, would that be allowed as opposed to a larger wetland that stays hydric and they try to site the solar array on top of the wetland, which would cause an issue as Ms. Bennett mentioned. Would there be some allowability, perhaps, for some small, isolated wetland alteration. We don't have it right

now but especially considering we might have a future wetland in-lieu-of payment compensation system like the State has.

Mr. Latter said that we define sizes, now, so maybe we could allow small ones in wetland, as long as the alterations shall be avoided, but the large ones should be prohibited.

Mr. Brubaker said that that is always the case. This list that Ms. Bennett has pointed us to is already only applicable to the larger systems.

Ms. Bennett said that that is a really good point because we do have a lot of wetland; that it's hard to spit and not hit a wetland. At the same time, we are also seeing that our wetlands are beginning to increase in size or migrate across the landscape; that we have drought in the summer but then we get some really heavy rain, especially in late winter. We have seen as an example an old wetland survey from 2008 that, when it was updated in 2021, these wetlands have marched further into what was the uplands, especially when these wetlands are near a large water body like a river. And solar arrays have a useful life of 20 to 40 years and we can expect some of these wetlands will start to increase.

Mr. Widi said that I agree and understand most of what Ms. Bennett is saying. My personal preference would be to give a percentage or maximum allowable square-footage so that there is a little flexibility. You don't want to stop a good project for just 10 square feet. I would like a little flexibility in there but I understand and appreciate what Ms. Bennett is saying.

Ms. Braun said that there is no flexibility for square footage, no way to get around that. We can't say that only so many square feet can go in the wetlands.

Ms. Bennett said or a wetland of only so many square feet.

Mr. Latter said that I think the key, though, is that you don't just want to define that you can only use so much. Once the project size, itself, becomes a certain size you want the prohibition to kick in. With a smaller project, you don't want this to get in the way of a good project. But as we've seen, for larger projects, have the resources to come in, look at how you do this, and gerrymander however they want to put these arrays to fit whatever we're saying here. I think what I've heard and what I'd like to reinforce is that you really want to limit the large industrial arrays away from wetlands.

Ms. Braun agreed. We have to do that.

Ms. Lemire asked if there was any language around The Great Thicket or York River Wild & Scenic.

Ms. Bennett said that we have an exclusion for areas that have been deemed of ecological significance by the Maine Natural Areas Program. That doesn't necessarily dovetail completely with Great Thicket boundaries or some other focus areas but it seems like a

logical and fair way. The State has taken an assessment of this area and put it on this list of, I think, very different areas of State-wide ecological significance and I think we should do everything we can to support preservation of that resource.

Mr. Brubaker said that, in addition, we have other environmental and habitat protections, utilizing information from guidance documents like IF&W and the DEP as to how to write one of these ordinances. So, you see those provisions, there, about staying away from Blue Heron colonies, ribbon snakes, Blanding's turtles, spotted turtles, and the like. I do feel it has a very strong menu of environmental protections.

Ms. Bennett said, to Mr. Latter's point as far as not wanting to get in the way of a good project, especially one that isn't enormous. Our definition of a large-scale energy system starts at 16,000 square feet, which is actually pretty small considering that a buildable acre is 40,000 square feet, so, we're talking about less than a ½ acre. Perhaps we say when one of these large, ground mounted solar arrays gets proposed when it exceeds 5 acres (200,000 square feet) or at 5 acres or more this is going to need to show documentation that the project will sited in wetland.

Mr. Latter said that, in my mind, a 5-acre array is big. I don't want to get in the way of a property owner building a solar array he will utilize on his property (ex: dairy farm) and benefit from the solar power advantage. What I don't want to do is see a property owner use a solar array as a primary source of revenue on a piece of property and chewing up a bunch of wetland. We don't have the discretion to decide whether we like it or not once this is set in an ordinance and comes before us. All we can say is can you cross your Ts and dot your Is, or not. I'm trying to figure out how to craft the ordinance to make sure whether what I think is appropriate for Eliot or not appropriate for Eliot.

Mr. Brubaker said that, to me, the total percentage of total array coverage limit makes more sense than the threshold. Basically, pointing the applicant towards if they are going to develop one of these large-scale systems, they mostly need to stay on dry soils but maybe there's a small pocket of isolated wetland that they would be allowed to alter, either by itself or with appropriate compensation and mitigation, such as payment-in-lieu into the Town Land Bank, as an example. But no more, and keep the number low so they have some flexibility but not too much.

Ms. Bennett agreed that would be a good way to go.

Ms. Braun asked for a motion to move this to a public hearing.

Ms. Bennett moved, second by Mr. Latter, that the Planning Board schedule a Public hearing for proposed Town Code Amendments to Chapter 1, Chapter 33, Chapter 44, and Chapter 45 related to Solar Energy Systems on August 16, 2022.

VOTE
5-0
Motion approved

4. Event Centers

Mr. Brubaker said that this is just for discussion to night. We have SMPDC doing good work, here. They are crafting this ordinance. You all provide great input on the 7th, and now that those minutes are approved, I can pass those along to them so that they can revise the ordinance appropriately. It needs more work, though. This is one that is very sensitive and we want to get it right. I've already provided review comments compared to the draft you see now. I would certainly welcome any input from you tonight that I can further pass along to SMPDC but my recommendation would be to keep working on it and punt it for the June 2023 ballot.

Ms. Braun agreed this was a very sensitive issue and that we would really like to make sure we have it right, especially if we're going to keep it to one particular zone as opposed to another zone; that obviously we need to have a fee in one particular zone. I don't think the Village Zone is appropriate for an event center.

The PB agreed that the work, so far, was good; to keep working on it and to table it to the June 2023 ballot.

5. Advisory Question: Cap on Marijuana Establishment Licenses

Ms. Braun asked if we are presenting it as an advisory question or a cap.

Mr. Brubaker said, sharing his screen, that we are presenting it as a cap on the ballot, per the PB's direction. So, we have legal review in progress. Attorney Saucier and I had a good conversation about it today. Overall, it would add a provision to Chapter 11, our Marijuana Licensing Chapter, that would establish a maximum number of allowable licenses for both marijuana establishments and medical marijuana establishments. I have a placeholder in there where it is ready to insert actual numbers but, since this has had to come together really quickly, I didn't put the actual numbers in, yet. I would like some feedback on that. I have for your benefit provided a log of all the marijuana uses, as well as a summary. You can see that we have nearly 30 different marijuana uses. Now this includes all uses in the approval process. By the way, some of these uses are co-located in the same property or the same building. So, we have 7 that have been issued as a State-activated license according to OMP's own website. We have 3 Medical Marijuana uses that are currently in operation. "No longer active" simply means that an applicant applied for a marijuana use and then they came back and applied for a different one, so that previous use has been superceded. We have 2 where they have gotten their local license from us but, at least according to OCP, the active license is not there at the State level. We have a couple that are kind of in the building permit process. We have 9, overall, that have received PB approval but haven't gone further than that. Then we currently have 5 that have applied to the PB and are going through the approval process. So that adds up to about 30 and you can see the stats, there, by type of establishment. So, this would establish the license cap in groups in cultivation and manufacturing under the same cap for medical and adult use. It exempts testing facilities; that that is the same as Berwick

and we do have one testing facility in Town. It would need a bit more wordsmithing. We do plan to address the cap through a first-come, first-serve basis rather than a lottery; that that was advised by our attorney. With that, I'd be happy to answer any questions or take feedback but this would also be something we would want to schedule for the August 16th Public Hearing.

Mr. Latter said that what if we set a cap and then before that number is encoded into law, we have more applications than we have now and could count. Let's say we want four marijuana stores. That's it, with nine total in the pipeline. Does that prohibit us from saying four.

Mr. Brubaker said that there would be some potential legal issues that we would have to face if we capped it at lower than the existing number of applications.

Mr. Latter said that, in my mind what I'm saying is, you already have your application in and we can't say no to you but, when you're done using that property for that use, that use goes away.

Mr. Brubaker said that my intuition would be to set a cap, per establishment type, for no lower than what our stats tell us is already approved or in progress.

Ms. Braun agreed.

Mr. Latter said that just because they're approved or in progress doesn't mean the project will come to fruition. So, there's going to be a prohibitive setting the cap below that, understanding that if people get their application in and approved before that's codified into law…

Ms. Bennett said that I think it would be exposing us to some litigation because we don't know if the current applicants…we have no crystal ball to know that somebody who has already been permitted is going to fail to move forward. Out of caution I would suggest that we set a cap for the number permitted now plus the number we have in the pipeline.

Mr. Brubaker said that the PB has approved 5 marijuana stores and 3 have applied to the PB.

Mr. Widi said that I don't see why you can't set the number at PB approved and State active licensed ones because you're still going to have that two months between now and when the vote is; that you're going to get flooded with them and the number will move. I understand Attorney Saucier's advice. I'm not sure it's necessarily for the ones that have applied to the PB. You can literally apply to the PB for whatever so those don't really have any standing, in my opinion, yet.

Note: Criteria for standing is found in §1-20.

Mr. Widi asked what do you do after you set the number at 8 and then you get shut off from adjusting the question, as the Charter says 60 days, and you then get flooded with applications after that. Actually, I think it's 45 days of the question being voted that you can't change the question. So, within that 45-day time period, you could get 30 applications. You then have the same issue with those people who have applied to the PB because that number doesn't exist for that 45-day time period; that you can't move the number but they can keep applying.

Ms. Bennett said I think if we had that happen, in my mind, that would be grounds under the Charter to as for an emergency decision by the SB or a Special Meeting.

Mr. Widi commented that there is no good answer.

Mr. Brubaker said that it's interesting because somebody can apply to the PB but only certain sites in the C/I District remain suitable under our performance standards for certain marijuana establishments. So, somebody could throw out an application and it could be problematic with regard to our zoning performance standards. But what do you then do because they've technically applied. Does that affect the cap that that then gets set. When we were talking about moratoria, MMA has guidance that says that, generally, the moratorium should be forward-looking, and that's true, but the one exception they gave was a moratorium in Kittery where Kittery was able to legally back date the moratorium because there had been public discussion about the moratorium. I don't know if the mere fact of us talking about it now would then be able to send a message; that in the instance of a marijuana store, the cap should be 8 because we currently, as of today, we have those 8, or should the cap be 5. I don't know. These are good questions.

Mr. Leathe asked how much time are we at risk of the number moving up before it gets codified.

Mr. Brubaker said that we have the public hearing August 16th. The SB March 25th meeting would decide whether to place it on the ballot. It would then be placed on the ballot and it would become effective either November 15th, a week after the ballot (default by the Charter) or another effective date as the ordinance, itself, defines.

Mr. Widi said that, in thinking about it, I may have a solution. If you set it at 5, and all the ones that are going to be pending or approved from now until the vote would be grandfathered in, then set it in June to what is existing. Set it at 5 in November. You have 3 more that apply and get approved before November. Then, in June, you reset the number at the existing; done.

Mr. Latter said that, if we really want the number to be 5, and we end up with 8, as those businesses live their lifespan and go away, is that license transferable or go back to the State.

Ms. Braun said that a license is not transferable.

Mr. Widi said that I think that's the easiest, cleanest way to do it.

Ms. Bennett said that it appeals to me because you're talking about a lower number. But the reality is that it takes a long time. It takes more than 6 months from when someone gets permitted to when they will be licensed, I think. So, I think we have to accommodate those that have their applications before the PB at this time, whether they actually move forward or not.

Mr. Leathe said that I think you're going to have that issue no matter what we. It may be an opportunity for some folks to move forward more quickly but there's nothing we can do about that. If the idea is a good one, we'll just see how it goes.

Mr. Brubaker said that, if I may, I could present this discussion in a nutshell to our attorney for his review, too.

The PB agreed.

Ms. Braun said that, if the PB has no more comments or questions, we need a motion on this for a Public Hearing.

Mr. Latter moved, second by Mr. Leathe, that the Planning Board set a Public Hearing for the Proposed Town Code Amendments of Chapter 11, Chapter 33, and Chapter 45 on Tuesday, August 16, 2022.

VOTE
5-0
Motion approved

B. 143 Harold L. Dow Highway (Map 23/Lot 25), PB22-13: Adult Use Marijuana Retail Store & Medical Marijuana Dispensary - Sketch Plan Review

Received: June 3, 2022
1st Heard: August 2, 2022 (sketch plan review)
2nd Heard: _____, 2022
Public Hearing: _____, 2022
Site Walk: _____, 2022
Approval: _____, 2022

Mr. (John) Chagnon, P.E. LLS, was present for this application.

Mr. Chagnon said that Tim Pickett is the owner of the property. Green Truck LLC is the applicant with a valid P&S agreement for the property. There will be two proposed tenants with a similar building to the one you approved at 16 Arc Road where there will be two different sides with two sales of different types in the same building but separated by a wall. There is a survey plan that was done and that helped us create an existing conditions plan. The site has a lot of wetlands in the back and a swale along the front. We are showing some setbacks with an area in the middle that allows for structures.

Currently, there are a couple existing buildings, some sheds, and I believe it is used as a residence but also as a business. I'm not quite sure, exactly, and I apologize for that. The site plan that Mr. Brubaker brought up [on the screen] shows a 6,000 square-foot building that meets the setback requirements from the property line and other natural features. There is an entrance pretty much in the same location as exists now but widened out so that you would have two-way traffic entering and exiting. A proposed sign at that entrance, which will meet the ordinance requirements. It will probably go a little closer to the street now that that ordinance has changed. There is parking on the right side, as you come in, then an aisle, then a landscaped area in front of the building as you go from northwest to southeast. As you come around the building, there is a double row of parking in the back. A drive-around and then a single row of parking in the front. That provides for proper turning movements for the Fire Department to drive around the building. There is a dumpster in the south corner. There are notes there that talk about the ordinance requirements for parking. This does conform to the changes to the ordinance regarding one per 100 square feet for marijuana retail. So, this is the first step. I'm looking for your feedback and answer any questions.

Mr. Brubaker said that I inadvertently left my staff report out of the packet but I did email it separately and shared it with the applicant, too. There's been some discussion about the 500-foot rule in §33-190(5). In my opinion, this does not meet that standard because the proposed building is less than 500 feet away from a residential property. You can see correspondence in your packet between myself and Mr. Seymour and Attorney DelMar, who are both here. I would also say that we would want to clarify with Mr. Chagnon the status and the source of the wetlands shown on the existing conditions plan because there are some notes in the boundary survey included indicate that this was an approximate wetland boundary, so we would want to know more about the status and the source of the wetland delineation. I suggest this is an important topic because the site is very characterized by wetlands so any clarity on the delineated wetlands and potential wetland alteration that impact this proposed building footprint and parking area would be good to know in more detail. Those are my comments but you can see other information in the packet.

Mr. Leathe said that, looking through the applicant's package regarding disposal of plant material, that says "This property will be used for Retail only and will not include and production, cultivation, or manufacturing on the property." Then on the odor remediation plan page, it says "All cultivation, drying, trimming, and packaging rooms will be equipped with carbon filtration air scrubbers…".

Mr. Chagnon said that the second page is in error and will be edited. To answer Mr. Brubaker's question, the property owner hired Great Works Surveying to do a property survey and that survey talks about approximate wetlands. The Ambit Engineering plan shows the wetland line that was delineated by Mr. (Steve) Riker, who is our employee and a certified wetland scientist. We'll clarify that but that's why the other plan has notes that may conflict with the lack of a note. We will make a note on this plan. Mr. Riker doesn't like us to put a note on the plan because, in Maine, a certified wetland scientist is not needed. You don't have a requirement in Maine that you be a certified wetland

scientist. A note delineating that it was done by a certified wetland scientist is nice and we'll put it on there but it really doesn't mean what it means in other states.

Ms. Braun asked if he had contacted the DEP in relation to this property.

Mr. Chagnon said yes. Mr. Seymour has contacted the DEP. As far as their review of the property, they do not do site inspection reviews on-site, consultations, look-sees with people because they're just too busy. We will be submitting an application when the time is right. I don't know what other question there is about the DEP relative to the wetland.

Mr. Brubaker said that I think the key would be, assuming you are altering wetland, what is your status on your Permit-by-Rule or Tier I Individual Permit application to the DEP. We're not talking about getting DEP people out there to walk the site. We're actually talking about the expected wetland alteration and the status of permitting you would be required to go through with the DEP.

Mr. Chagnon said yes, we understand that. The plan doesn't show extensive, expected wetland alteration.

Mr. Brubaker said that you wouldn't be altering any wetlands.

Mr. Chagnon said maybe at the entrance but, otherwise, the plan you have before you (Sheet C2) does not impact wetland. The southwest corner of the parking lot is close and we will have to look at that carefully. But there is no wetland impact shown on this plan other than potentially at the driveway entrance. We need to widen that for safety so we would be applying for whatever is required to do that.

Mr. Brubaker said that this footprint would be entirely housed within Mr. Pickett's existing footprint. In other words, my knowledge of Mr. Pickett's property is that he has his uses there and in developing those uses is the wetland. When you zoom out, in the larger picture, this property and the adjacent property are strongly characterized by wetlands. And so, I envision this property kind of as Mr. Riker's delineation as shown there where there are the current uses and the wetlands really close around those current uses. So, what you're saying is that this proposed 6,000-square-foot building plus the additional parking area and additional site features will not touch any of the wetlands; that it may at the entrance but nowhere else.

Mr. Chagnon said yes. You keep saying his existing uses are involved by wetlands.

Mr. Brubaker said yes, they are surrounded by wetlands. It's a very wet property. My simple question is do you think you'll alter wetlands. I feel like we're getting a round-about answer here.

Mr. Chagnon said no, that I've said I'm not going to.

Mr. Brubaker said that I just wanted to clarify that.

Mr. Chagnon said that I think there is some. If you say that you believe there are more wetlands than what's been shown on the plan that's a different question.

Mr. Brubaker said not necessarily. I just wanted to clarify what the wetland alteration or wetland impacts would be.

Mr. Chagnon said that I hope I've been clear.

Ms. Braun said that I'm not clear on it. That particular piece of property, as I know it, is very, very, very wet. So, it just concerns me that you aren't going to apply the DEP permitting.

Mr. Chagnon said that we are going to apply for whatever permits necessary with the DEP. I never said we weren't going to apply for a permit. All I said is, based on the wetland delineation that we've done, to-date so far, we're not impacting wetlands with the site development.

Ms. Braun asked if it was going to be a paved parking area.

Mr. Chagnon said yes.

Ms. Braun said that it's not going to be in the 75-foot setback area from the wetland.

Mr. Chagnon said correct.

Ms. Bennett said that the parking lot will be in the setback area from the wetland.

Mr. Chagnon said that that the setback is the Town's setback to structures.

Ms. Bennett said right, not impervious surfaces. I want to clarify something regarding Sheet C1 existing conditions plan. At the northeastern corner of the property, towards Route 236, can you describe that area. Is that the gravel driveway, parking, work area that exists right now. I'm familiar with the buildings. The whole thing is kind hash-marked the same way. What do the dashed lines indicate to us.

Mr. Chagnon said that there is a setback line, an edge of wetland line, and there's an edge of gravel line, and they're labeled in the middle of the lot.

Ms. Bennet asked regarding the edge of gravel periphery, sort of adjacent to the wetland, what are the dashed lines in the center.

Mr. Chagnon said the 75-foot setback.

Ms. Bennett said that it's ringed by wetlands.

Mr. Chagnon said correct.

Ms. Bennett said that there is this island in the middle, here, that isn't part of setbacks and that's where you're going to put the 6,000-square-foot structure.

Mr. Chagnon agreed that was the good building portion and where it would be located.

Ms. Crichton asked if that 75-foot wetland setback needed to go around where the parking lot is.

Mr. Chagnon clarified that because the wetland occurs in the front of the property, there is a 75-foot wetland setback along the front then on the sides and in the rear. He described the oval-shaped upland that the structure would be built on.

Ms. Crichton said that, if you look at your plans, the parking comes up in the upper left-hand corner. Doesn't that have to be 75 feet also.

Mr. Chagnon said no, that it does not.

Mr. Latter said do you have a fair idea of the wetlands, as they're shown on this print, are what they are. Because they're pretty tight, they have an island in the middle. I get that they are in the island so they don't have to deal with all the setbacks. That makes sense. Do you think the wetlands, as identified on that print, are what they are so that the island that they are showing in the middle, here, is what it is.

Mr. Brubaker said that the best way to answer that question would be, if you feel it warranted, a third-party review of their product. Now, Mr. Chagnon has represented to you that his colleague, Mr. Riker, whom we all know did this wetland delineation.

Mr. Chagnon said correct. And if you really want to look at it, I would encourage you to look at the survey that someone else did and look at the wetlands that show on that survey, then look at our real wetland delineation.

Mr. Latter said that you are in a really tight area and I just want to make sure we're making good decisions. My other point is the 500-foot measure. Is that building to building, parcel to parcel, the 500-foot buffer.

Mr. Brubaker said that it's the nearest corner of the proposed marijuana building to the nearest point along the property line of the sensitive use (building).

Mr. Latter said that if it's determined, and I'm not saying that anybody is stipulating this, that the building at 150 Harold L. Dow Highway is a residence, this would still meet the buffer requirement.

Mr. Brubaker said no, clarifying that it's marijuana building to property line.

Mr. Chagnon said the building proposed to any point of the property, not building to building.

Mr. Brubaker said yes.

Mr. Latter said that your map is showing a radius, here.

Mr. Chagnon said that that is building to building and that was not a correct interpretation. It is 500 feet building to building.

Mr. Latter asked _____ (accurate measure?)

Mr. Chagnon said I don't know. It's a great question and one that may require further review by someone.

Ms. Braun agreed, saying that I'm not convinced that it's 500 feet. We need to clarify that. Do we have to get someone in to do the measurements to ascertain that it is 500 feet.

Mr. Brubaker said that it's self-evident that it is less than 500 feet.

Ms. Braun said that you don't meet the 500-foot setback.

Mr. Chagnon said from that property. And the applicant pursued this property based on an understanding of what uses existed at other properties. In other words, it's not crystal clear from the records that they reviewed that that property at 150 Dow Highway was residential.

Ms. Braun said that it is my understanding that it has been residential from the 1970's, which pre-dates the zoning. It was grandfathered. It's a residential property. There are two apartments upstairs and five bedrooms so it has been residential all this time.

Mr. Chagnon said yes. Confusing enough, though, if your own Planner didn't realize it in the beginning when he (applicant) talked to Mr. Brubaker about this site. I think some of the confusion comes in the site plans that have been submitted for the property.

Mr. Latter said that I'd like to stipulate that you're trying to follow the rules based on the facts as they were understood by the people that were talking about them. But those facts may be in question and that may change how we make a decision on it.

Attorney DelMar, representing the applicant, said that generally just a summary of what happened, Mr. Seymour did visit the Planner before he put a $50,000 non-refundable deposit on the property that's across the street from 150 Dow Highway. After that, the Planner said that that property has an apartment in it and, unfortunately, all of the records – all of the applications for change of use for that property dating back years – had no indication of any apartment. None whatsoever. Some of them had marked off "all uses are described here". So, people who own property should have the right to rely on the

records that are filed by applicants and decisions made by the PB and Mr. Seymour did rely on that in putting this deposit down on the property. Furthermore, the courts have applied strict construction to cases where there's nonconforming matters where the courts are basically saying that we want to get everything into conformance as soon as possible. So, as soon as the town has a legal right to make it conforming, they should do that. We have a memo, here. (It was passed out to the PB.) It's a pretty important issue so we spent some time putting together this memorandum. So generally, what the applicant's position is on this is that the non-conforming residential use of the property is discontinued because either they stopped using it as a residence during some period of time during the period since the 1970's until now or, even if that wasn't the case, the applications for change of use that did not include residence in them supercedes the apartment argument. In other words, you all need to have applicants put every use into the applications for change of use so they can determine how much parking they need, what's the traffic like, all these different things. Do you agree with that.

Ms. Braun said that we are not lawyers. We're going by the information provided to us.

Attorney DelMar said that I'm just asking generally.

Ms. Braun said that we have been putting as much information in as we possibly can in the application.

Attorney DelMar asked if all uses are required to be in the application.

Ms. Braun said just the change of use.

Mr. Brubaker said that I would just like to reserve some time to address this issue after Attorney DelMar is finished.

Ms. Braun agreed.

Attorney DelMar said that, basically, I'm going to read part of this because I can't say it better than it's written here. "*With all available evidence, it is undisputed that the Property at a certain point in the 1970's had a lawful nonconforming residential use in a designated commercial district. However, due to the change of use applications, this residential use has been superseded at least three times by conforming uses for retail, education, and childcare."* Those were the applications presented without any mention of apartments. "*The Change of Use applications make no mention of any sort of residential aspect to the property, let alone any attempt to maintain the residential use. Indeed, it would make little sense for a town to approve a Change of Use application if it did not disclose all aspects of the property."* So, we're not just talking about one. We're talking about multiple applications, on record, with no apartment listed. It's just purely commercial. If the PB was to accept that in that case, in all three cases, or even one, you set a precedent for future cases in how you didn't need to apply that to everybody, that nobody needs to include all of the uses, which would be detrimental to this. So, you wouldn't be able to really make an informed decision without all the information you

would need, all the uses. And, it's detrimental to other property owners need to be able to rely on the record. If the record says they are using it commercially then it's reasonable to rely on that, with all the respect to the owner. It's just that the other property owners have a right to rely on that record and to determine that's okay would be detrimental on many levels, including the enormous investment that would be lost by Mr. Seymour. Am I being clear. Do you have any questions.

The PB had no questions.

Attorney DelMar said one more point, in case I don't get to talk again. The courts are applying strict construction. What that means is that there is no leeway when it comes to nonconformance. They are saying to convert to conforming as soon as possible and there's no excuse to not do that when you have the opportunity to do that. I do hope I get to speak again after other people. I do appreciate your time. Thank you very much.

Mr. Brubaker said that I appreciate Attorney DelMar's comments. Obviously, this is the first time I'm receiving this memo so I haven't had a chance to review it in detail. I'd just like to read a few paragraphs from my letter that's also in your packet and shared with the applicant as an exhibit in the applicant's memo, dated August 1st if I may. It starts on page 2 after I talk about how the existing Town property card does show apartment uses:

> The Town records include Building Permit No. 862 (see attached), issued by the Town Building Inspector on May 24, 1977, to the current owner (Nancy Shapleigh, then Nancy Boyce), for "Fencing, door, + window alteration/repair of office/home property". The permit explicitly mentions an "office/home" mixed use. The Property Card indicates that the building was built in 1970. From a review of Town property tax records, it is likely that the building was built, if not in 1970 exactly, then sometime in the early 1970s. As I have stated before, I have heard recollection from the Shapleigh/Widi family of having lived in the building in the 1970s.
>
> The Town's first zoning ordinance was adopted at a Special Town Meeting on February 8, 1971. This zoning ordinance included provisions allowing for legally nonconforming uses to continue and for variances to be issued via Board of Appeals (BOA) review. It separated the Town into two districts, the General Residence (GR) zone and the Commercial-Industrial (CI) zone, the latter being defined as "extend[ing] parallel to and 1500 feet back from the center line of Route 236…". The 1982 zoning ordinance is the earliest ordinance I can find to explicitly prohibit apartments in the C/I district, which is clear in Section 207 – Table of Land Uses. However, this ordinance also included Section 402.2, which stated: "The CEO [Code Enforcement Officer] may permit accessory uses and structures for existing residential use in the Commercial/Industrial District. Dimensional Standards shall be the same as those for the Suburban District (Section 305)." (See attached.) A nearly verbatim provision still exists in the Town Code today, in Section 45-192(b).
>
> In summary, the 150 HL Dow Property had a permit granted by the Town Building Inspector in 1977 referencing residential use. Shapleigh/Widi family members have conveyed to me memories of living there in the 1970s. And the Town's zoning ordinance, by 1982 if not earlier, allowed the CEO to permit "existing residential use" in the C/I District. Based on the preponderance of evidence available to me, it cannot be concluded that the 150 HL Dow Property's residential use is invalid or illegal, as you imply. In fact, the evidence points to the residential use being specifically permitted and legal. Apartment residences deserve the same protection under the 33-190(5)b rule as other types of residences. Therefore, Comment #3 of my Review Letter 1 continues to apply to your team's application.

Mr. Brubaker said that I will mention two other points. With all applicants, it's up to the applicant to do due diligence in researching property records with respect to their application. Secondly, we do have a provision in our Code that speaks to discontinuance of non-conforming use that says nothing about previous PB review and building permit applications that are neutral with respect to that non-conforming use. It simply talks about a non-conforming use needs to be discontinued for a year before it can be considered discontinued. I haven't seen any evidence that the residential use was discontinued for a year. Therefore, I would affirm my letter.

Mr. (Bill) Widi said that I'm representing my grandmother (Nancy Shapleigh). She is sight-impaired. I pulled all the documents. She just can't tell you what they say because she can't read. Unless someone has an issue with the American Disabilities Act The quip about the Planner not knowing exactly that property, I don't think that's fair.

Attorney DelMar interrupted to ask if this was a public hearing.

Ms. Braun said no. He is a member of the family that has some questions and has the right to speak.

Attorney DelMar said that that happens at public hearing.

Mr. Widi added that I'm supplying documents.

Ms. Braun said that I allow comments during non-public hearing meetings.

Mr. Brubaker clarified that that is specifically allowed by the by-laws.

Mr. Widi repeated his comment about the Planner not knowing exactly the property. That's not fair. We have thousands of properties; that the Planner couldn't possibly know every single thing that's happening at every single one of them at any given moment. This is a four-unit apartment building. Two of them are apartments. They have always been rented since 1976. My grandmother bought the building in July 1976. She even had her surprise 40th birthday party there. And then two units downstairs. Any application that came in here was for either Unit A or Unit B, which are the downstairs commercial units. There was a daycare and they are not going to put in apartments that are continuously rented in their application because it has no bearing on a daycare. There is an assumption that it has not always been rented but I can prove that it always has. Does the PB have a copy of the permit.

Mr. Brubaker said yes, the 1977 one.

Mr. Widi said that that gets us to 1977. He showed a picture of his mom's graduation from 1981. He showed a picture of his older brother (by 5 years) that shows him in the back yard of the building. His brother is 5 years old there and I was born in 1988. So, we gone from 1977 to 1981 to 1988. Your favorite person here was actually born and brought back to that property as a baby, showing his baby picture and birth certificate that

actually lists the address. It was 38 Dow Highway until they renumbered everything for E911. That gets you to 1988, again. This is my father's DD214 release from the Air Force. This dated 1989. Then, a not so proud family moment, my brother actually got arrested, ironically of all things, one of which was growing marijuana in one of the bedrooms and that was in 2008, the day after Thanksgiving. And the last 14 years it has obviously still been full. I think we've proved that the apartment has been a continuing use and, so, that does not meet the 500-foot setback.

Mr. Latter said that this building has occupied and is today.

Mr. Widi said that it is today; that it has been continuously occupied.

Attorney DelMar said that the fact that people actually live there doesn't mean it's an "approved" residential property. They submitted at least three change of use applications with no residential use on them. The property owners and prospective property owners have relied on the records and made decisions and actions based on that and should be able to rely on that. I don't know what the tax rate is that they are paying, whether it's commercial or residential or split, if they are paying commercial. She asked the Planner if he knew if they were paying commercial.

Mr. Brubaker said I don't; that I'd like to comment on this after you are done. I can't provide any information with respect to recent tax rates.

Attorney DelMar said that it doesn't even need to be recent. If any period of time, it was a commercial tax rate paid, that would be further evidence along with the change of use applications. Just because people lived there doesn't mean…it's like if somebody has a business somewhere, just because they're doing business there doesn't mean that they're doing it legally.

Ms. Braun asked how you can say that doesn't mean they are doing it legally. Please clarify.

Attorney DelMar said that just because someone is living in a certain place…like somebody could be living at the property that Mr. Seymour put a $50,000 non-refundable deposit on, that doesn't mean it's residential. That would be an illegal use of the property. So, what I'm saying is that the applications for change of use supercede, or trump, any actual use. If they applied and said that we would like to use the property for x, y, and z and you approved it. Three times.

Mr. Latter said that it is possible that they put in an application to use a portion of the property.

Attorney DelMar said that we don't know the intentions and again, with all due respect to the owner, I don't know what their intentions were.

Mr. Latter said that I am trying to figure all this out. As I understood it from my time on the PB, is that a non-conforming use that is continuously in use, continues that non-conforming use. That's a lay understanding.

Attorney DelMar said that, if there is a non-conforming use on any of the properties that we have, we don't have to put it in our application for change of use. We can still use it for that.

Mr. Latter said that I am just trying to ascertain whether this buffer is in place, or not. You have presented the position that it's not and I appreciate that. I think we should probably get some guidance from the Town legal department.

Ms. Braun agreed.

Mr. Brubaker said that I would be happy to do that. But if I could, in this case I believe that those previous PB and building permit reviews for this property, 150 H.L. Dow Highway, are immaterial to the question at hand because the preponderance of evidence, at least that I've seen, is that this apartment, this residential use, is a legally, non-conforming use that hasn't been discontinued. Therefore, the preponderance of evidence, irrespective of any previous PB or building permit reviews, unless there was a clear kind of ceding of the residential property, which I don't if that evidence has been presented or ever has been, the preponderance of evidence is that this is a residential use and has been a legally, non-conforming residential use. I would take issue with the assumption that people who live in apartments don't deserve the same protections from that standard in our marijuana performance standards as other types of residences. Again, I'll just reiterate that this appears to be, and continues to be, a legally, non-conforming residential use.

Attorney DelMar said, responding to Mr. Brubaker, is that what I understand you to be saying is that if someone has a nonconforming use before, we're ceding the nonconforming use.

Mr. Brubaker said that an applicant can certainly have a residential use that they then plan to actively change. So, ultimately what happens is adaptive re-use. Certain communities are pretty good at adaptive re-use where you have a nice, old stately home, kind of a fringe between a residential and a commercial corridor, that becomes an office building that used to be in a home. I'm sure you can find good examples around here. In that case, the residential use completely went away and the office came in. In this case, I couldn't find any evidence of the property owner conveying to the Town that they wished to stop the residential use. And so, the important threshold here is in that section I mentioned before, §45-193(a), which says a nonconforming use which is discontinued for a period of one year may not be resumed. So, the threshold is whether the use was discontinued for a year. The threshold does not have anything to do with PB or building permit applications that did not clearly say that they are giving up the residential use. To my current knowledge, I don't think in any of those previous PB reviews and building permit reviews that they did that. The family has presented evidence that this has been a

continuous residential use. They've lived there, they've wanted to live there, and it's still lived in.

Attorney DelMar said that I would submit that the three applications that have zero mention of the apartments is evidence that the use stopped and that should supercede anything that's actually happening there. There are other non-conforming uses and, if somebody applies for a certain business, or something like that, are you going to apply that across the board.

Mr. Leathe said that I guess I have a simple question. When you look at those, do they state in there that they are using the whole building. Obviously, there is commercial use on the first floor and residential on the second. Is it stated in any of those applications that they are discontinuing the use of the second floor as residential.

Attorney DelMar said that one of them says it's for the entire property on the application.

Mr. Leathe said that that doesn't mean that ends the residential upstairs. They could be renting it out to support the business below them.

Mr. Widi asked if he could ask a question.

Ms. Braun said yes.

Mr. Widi asked which applicant said that.

Attorney DelMar said the one in 2003 [PB03-36].

Mr. Widi said that was Vanessa Moulton. That was the daycare that had one side. After discussion, the application was for the Eliot Driving School and they had one side.

Ms. Braun said that that was just the lower-level commercial part.

Mr. Widi said that, just like they (current applicant) don't own the property yet most of your applicants don't own the properties. So just because they might fill something out on a form, or fill something out on the form incorrect, doesn't mean they own the property. And if that was signed at any time by my grandmother, she's blind and has been for 20 years. So, if applicants are coming in and they're not Nancy Shapleigh, and it happened to have her signature, she is blind.

Ms. Braun said that I'm not going to continue this conversation until we get some legal advice. I'm going to ask Mr. Brubaker to contact our legal attorney to get his decision on this. At that point, we will contact you and tell you what his decision was.

Mr. Chagnon said that you are dealing with a slippery slope, here. If an applicant comes to you for a change of use on a property and it doesn't identify all the uses, you can't render a complete decision. The application that was mentioned for the driving school

said that the property had seven parking spaces and there were five spaces that were needed for the driving school. You need to look at these applications in total. Mr. Seymour could get site plan approval to convert this property to his intended use and then as long as Mr. Pickett is less than one year removed from living there, he could come back and say he's putting an apartment in upstairs because it was a pre-existing residential use where you just have commercial. I understand it's a slippery slope that some of these applications were intended to be for a certain part but that's why the record was reviewed and looked at in that vein as being a use.

Ms. Braun said, as I said, until we get a legal opinion from the Town counsel, I'm not going to continue this application. Once we have that, we will contact you and notify you of what he said.

ITEM 10 – OTHER BUSINESS/CORRESPONDENCE

Mr. Brubaker said that we have the Community Resilience Partnership work session tomorrow at 4PM. We are recommending an August 9th meeting. We were awarded an allocation from KACTS to provide grant funding for two intersections, the Route 236 Dover and Goodwin Road intersection, as well as the Route 236 State Road intersection. This will fund the design phase, which is the first step. These will fund intersection improvements and connecting Old Field Road. The allocation year is for 2025 because this funding is awarded a few years out. It would require a 10% local match. We also are very fortunate to have the DOT very engaged in Route 236 right now. We are going to communicate with their chief state-wide safety officer about the potential for safety funding supplement other funding on Route 236. We are fortunate to have essentially the DOT's deputy director coming to Eliot for a site visit to take a look at these intersections. In addition to that meeting, I'm going to set up a meeting with Eliot Baptist Church to talk about the recommended intersection improvements there at that intersection because it does warrant a signal. It is a DOT designated high-crash location. We're grateful to have the DOT's engagement on this and grateful to KACTS, our regional agency.

Ms. Bennett said that it's a testament to your persistence.

Mr. Brubaker said that Mr. Sullivan is very engaged in this, too. That's also not to set aside other parts of Route 236. The DOT has also approached us about the section between Depot Road and Bolt Hill Road. They also would like to engage with the Town in the design effort at that intersection, too, and to be clear the Depot Road intersection, itself, because it has a history. The study that recommended a center turn lane along Route 236, and other improvements, for safety and traffic did not identify a preferred concept at Depot Road. It did suggest a possible round-about option, something that's a smaller footprint than the DOT proposed in 2016. They also suggested a non-round-about improvement. Typically, the other improvement alternative would consider, when you do an alternatives analysis, is the no-build alternative: what if you do nothing. I'm coming to you from a neutral perspective. There's no preferred intersection concept for Depot Road. I do think that the DOT would like to know as soon as possible what the Town's preferred concept is because that will help inform this larger design effort for Route 236.

Mr. Latter said that, as somebody who comes up Cedar Road all the time, it's not a matter of if, it's a matter of when someone is going to get hit there.

ITEM 11 – SET AGENDA AND DATE FOR NEXT MEETING

Ordinance final work on August 9 then public hearing on August 16.

The next regular Planning Board Meeting is scheduled for August 9, 2022 at 7PM.

ITEM 13 – ADJOURN

The meeting adjourned at 8:14 PM.

_____
Christine Bennett, Secretary
Date approved: _____

Respectfully submitted,

Ellen Lemire, Recording Secretary

ITEM 1 - ROLL CALL

Present: Carmela Braun – Chair, Jeff Leathe – Vice Chair, Christine Bennett – Secretary, Lissa Crichton, and Jim Latter.

Also Present: Jeff Brubaker, Town Planner; Kristie Rabasca, PE, LEED AP BD+C, Integrated Environmental Engineering, Inc.

Voting members: Carmela Braun, Jeff Leathe, Christine Bennett (Zoom), Jim Latter, and Lissa Crichton.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION

There was no public input.

ITEM 5 – REVIEW AND APPROVE MINUTES

Mr. Latter moved, second by Ms. Crichton, to approve the minutes of June 21, 2022, as amended.

VOTE
5-0
Motion approved

ITEM 6 – NOTICE OF DECISION

There were no Notices of Decision.

ITEM 7 – PUBLIC HEARING

There were no public hearings.

ITEM 8 – NEW BUSINESS

A. Stormwater/Low Impact Design (LID) – presentation by Kristie Rabasca, Integrated Environmental Engineering, Inc.

Ms. Rabasca said that we have a submittal that is due to the Maine DEP on September 1st, 2022. Mr. Brubaker and I just wanted to run through the proposed submittal with you to see if you have any specific objections to any of these low-impact development strategies that we're going to attempt to adopt over the next two years. Our submittal is an intent to adopt Low Impact Performance Standards (LID) that will affect development projects that disturb one or more acres of land in Town. We are being required to do this by the

Stormwater Permit (MS4). There was an appeal that was settled last November. The draft of the submittal is based on the Model Ordinance that Mr. Brubaker has attended the meetings for. We had an ordinance committee that included many stormwater professionals, planners from the Portland area and from the southern Maine area that helped to develop this Model Ordinance. It's very similar to the Model Ordinance that we developed for the Erosion & Sedimentation Control standards that you are working to get on the November ballot. She put the draft submittal up on the screen. We have this addition as new proposed Chapter 36 for Low Impact Development Strategies. The threshold is the disturbance of one or more acres of land and that includes subdivisions that might be phased, if they are going to eventually disturb one or more acres of land. We are just going to do this in the Urbanized area but we may want to expand that out Town-wide. The definition is: "A broad approach to site planning that preserves natural resources, processes, and habitat, defines what portions of the Site are suitable for development and then utilizes Stormwater Treatment Measures to manage Runoff from the proposed developed impervious areas. In LID, Stormwater Treatment Measures using natural processes such as vegetated buffers are given preferences over constructed treatment Stormwater Treatment Measures. The goals of LID are to minimize the environmental impacts of the development." This is to apply to a pre-development scenario so that it looks very much the same in a post-development scenario. Our definition is focused very much on getting the developer to think first about what portions of the site are suitable for development by minimizing the disturbance of the site and minimizing the impervious area as much as they can, which I see in a lot of your PB minutes. For areas where they do have to create impervious cover – the roof, the roads, the parking lots, sidewalks – they'll be using stormwater treatment measures to treat the runoff for water quality. In LID, we do give preference to natural processes, such as vegetated buffers or swales or treatment that will use natural vegetation, like open swales that are vegetated and under-drained that will allow infiltration in order to do that treatment rather than purchase a constructed storge system that is going to be underneath the parking lot. It's a more holistic approach to doing development and I do see a lot of these concepts in the reviews that you are giving to the developers as they come into the community. Are there any questions on the definition.

Mr. Latter said that you say you give preference to natural processes. Don't you want effective processes, first and foremost.

Ms. Rabasca said that every site is going to be different. A pure low impact development would be to minimize the disturbances as long as there is good vegetation and it is not invasive vegetation. We do try to account for some of that in the descriptions and performance standards. However, I hear you. It's a juggling act.

Mr. Latter said that, first and foremost, I want to handle the stormwater from the impervious surfaces. If we can do it using natural methods that's great but I don't want them to use natural methods in a less effective stormwater management.

Mr. Brubaker said that one good way to test that is when they submit a drainage study. There is a lot of hydric stuff out there that we all know. The main result of that is

hopefully they are showing a model reduction in stormwater runoff. The final numbers in the study should be showing a reduction. Hopefully, that will be a good gauge going forward to show the effectiveness of the methods used.

Mr. Latter said that I just envision a scenario where somebody is pushing these natural solutions when it might not be what the site would need. I don't want to get hung up on that and feel uncomfortable pushing for something that we think might need to be more effective.

Mr. Brubaker said that, in that case, the PB would have the ability to say that it's nice that it's natural but it's not effective and, therefore, it's not meeting our performance standards.

Ms. Rabasca said that, if you're going to have a large vehicle maintenance facility moving in and they are going to have a lot of dripping vehicles, maybe they're going to have to store some outside, you are going to want to make them have an oil-water separator that's pretty robust; that you aren't going to have them discharge off into a vegetated buffer. It was quite a balance trying to come up with performance standards that would fit the Maine DEP order we got for low impact development but still allow the developers enough latitude to design what they need to design to address the site; that the sites are all so different and the operations are, as well. I do think it is a very good point.

Mr. Leathe said, regarding applicability, in talking about urbanized areas being SPR, is that the whole Town.

Mr. Brubaker said no. It is a specific area of land that exists primarily in the Village Zone. It's hard to describe but it's primarily along the river in the Village Zone and parts of Route 236, and a lot of East Eliot is outside that area.

Mr. Leathe asked if any more of the Town was being considered as applicable.

Ms. Rabasca said that the Town has applied other stormwater ordinances Town-wide in order to be protective of water quality so that you don't get into a situation where you have urban-impaired streams and have mandated watershed management plans in trying to correct water quality. The Post-Construction Ordinance was applied Town-wide. In particular, one of the ideas behind low impact development is that, when a drop of water falls in an undeveloped area, it's going to evapotranspire, some of it will evaporate. But some of it is going to run off, so, when you are doing low impact development properly, you are making sure that water droplet acts the same way after the development that it did before; that it's not picking up pollutants and carrying them downstream. It's not causing erosion or scouring small streams; that you're not causing flooding. So, protection of non-urbanized area is a much less costly thing to do than correct water quality if you get these impairments. If you were to ask my opinion, I would say it would be very beneficial to natural resources, water quality, general quality of life to apply low impact development standards Town-wide.

Mr. Leathe said that my other question was around disturbance of one acre of land. Then it goes on to say, and I think I understand, that if it is less than an acre but part of a larger parcel, and there's more disturbance in the larger parcel, it has to be included or something like that.

Ms. Rabasca said that that is primarily for subdivisions. For example, I was reading about the Clover Farm Subdivision that's going in and how it's basically three or four lots that two of the lots are quite large. If they were to phase one lot and not disturb an acre of land for that first phase, by the time we get to the second phase, they would be triggering the low impact development. That's what that means.

Mr. Brubaker said that I agree with Ms. Rabasca. I think that this should also be applied Town-wide. We are really hoping to develop a nice network of stormwater standards with the intention of having really good sites with all the PB reviews.

Mr. Leathe asked if Mr. Brubaker said that these should be synced.

Mr. Brubaker said that, as Ms. Rabasca mentioned, the Post-Construction Stormwater Management standards are Town-wide. The proposed Erosion and Sedimentation Control standards that we will discuss in a minute are Town-wide. So, it would be a good alignment to have the LID standards be, as well. These are yet to be adopted. We are just talking about the Model Ordinance right now, so, we have a choice. From what I'm hearing from you and others, we are willing to do it Town-wide.

Mr. Leathe said that, ideally, these should sync outside of these area developments.

Mr. Brubaker said yes. I see the highlighted section, there, so that would need to change to Town-wide.

Mr. Leathe asked Ms. Rabasca if other communities were having the same discussion of urbanized area or Town-wide.

Ms. Rabasca agreed that other communities are going to be having that same discussion. I've had discussions with Falmouth and they will be implementing town-wide. Kittery hasn't made their decision, yet, but we did submit their proposed standards just today. We left the 'urbanized area' in because that's all that's required by the General Permit. So, the Maine DEP doesn't really care if we decide to apply it Town-wide after they review and approve. They're fine if we decide we want to be more stringent on developers.

Ms. Braun said that Town-wide makes more sense to me to make it uniform with all the others we have. And we want to protect the entire Town, not just a certain section.

Mr. Latter said that, with the scale of the ordinance, I would think we would need it just as much, if not more, in the non-urbanized areas.

Ms. Rabasca said that many of the developments that will come into Town will be outside of the urbanized area. The urbanized area is the urbanized area because it is where you already have a lot of impervious cover and a lot of development that has already occurred. I would like to look at the standards, now, to make sure you have a good understanding of the standards, themselves, before we submit. I have this section highlighted in yellow. Regarding performance standards, some communities put their technical standards in appendices that then they can have a special abbreviated approval or change process associated with them so that's what I put in this language. I think the Town of Eliot doesn't have this so I feel like I probably need strike it: "*These Technical Appendices detail the required LID Performance Standards. These appendices shall be updated from time to time by the Town Engineer to reflect the most current information, and shall become effective upon public hearing and approval by the Planning Board."* Rather than as in your community where it has to go through more. I don't think, from a procedural standpoint, you can even do this.

The Planner and PB agreed this language should be deleted as it would be in the Code and that needs Town approval.

Mr. Latter asked if the Code could point to an administrative document.

Mr. Brubaker said that it could but we would also have to actually create the document. I don't know what the options are, Ms. Rabasca. If communities have the ability to refer to a document, what would they do. Do they create their own specialized LID standards or do they use resources from the DEP. What, ideally, would we point to in terms of the performance standards. In other words, what would we need to do to create the 'technical appendices'. As Mr. Latter mentioned, we could empower the PB or SB to approve these standards. What do other communities do here.

Ms. Rabasca said that I believe this came from Yarmouth. I believe that the way that worked is that, once this goes through the public process and it is approved with the sentence in it and you decide who it is and what that process will be, I believe you could do that, moving forward, but I would definitely check with Bernstein Shur because it might also require a change to the Charter in order to be able to do that. I think, for now, we remove this because most of your performance standards are embedded in your ordinances and we have to go through the full public process in order to change them.

Ms. Lemire said that we do have appendices for our Sewer and I think the SB has authority to amend them.

Mr. Brubaker said that we're actually talking about this with regard to the Fee Schedule. The SB has its powers delegated to it under the Charter, as well as the PB, and then, under Chapter 2, it does have a more specific enumeration of things that the SB is empowered to do without going to Town Meeting. Presumably, there could at least be some thought process as to empowering the SB/PB to developing these standards independently of the ordinance, as long as the ordinance references those standards. I think it could be done. I think it would just be would the Town have the capacity to

develop customized LID standards, an actual manual of standards, who would actually do that. Or, could we refer to another document or something like that. It's like the phrase "with great power comes great responsibility".

Mr. Latter said that, ultimately, it does devolve back to the voter. The administration is answerable to the SB and the SB is answerable to the voters. All you're doing is trying to keep technical expertise and decisions related to technical expertise with subject matter experts.

Ms. Rabasca said that I think one of the reasons to check into an abbreviated process to update the actual technical performance standards is that the Maine DEP will be updating Chapter 500; that we do have references to that and, so, it would be nice for us to be a little more nimble in updating the technical standards as the State standards get updated so that we don't end up being in conflict with them. As you'll see in some of these instances, some of these performance standards are based on Chapter 500 State development standards but, in some instances, these are brand new and they're not even State standards, yet. If the DEP does something and a developer can't do this, we need to be able to allow them a waiver.

Mr. Brubaker said that I was confused because the standards are already there.

Ms. Rabasca clarified that these are the performance standards that we developed as part of the ordinance committee that we are recommending the Town of Eliot adopt unless the PB has significant issues with any of these. I have added blue text boxes for tonight's review. The first LID standard (page 10) is DEP mandated, which the Town covers most of. What is new is **Predevelopment Drainageways** that would require developers to look at sensitive areas regarding what they will and will not develop and create a narrative description to submit to the PB, which would help minimize flooding offsite, try to protect high-permeability soils to help ensure some type of base flow (especially in drought) to help infiltration, and preserve Maine native vegetation and significant and essential wildlife habitats. This performance standard will be very new to design engineers and developers, as it's not currently a State requirement. It will require that they do a high intensity soils survey, which will take them some additional time/thought during design and a little more time for PB review but this should be a very good benefit to water quality.

Mr. Latter said that the high intensity soils survey is often asked to be waived and this would make it harder to grant.

Ms. Rabasca agreed, saying that they would really need to do it.

There was a brief discussion regarding people who begin work on sites even before coming to the PB and that that is not legally allowed and is a fineable offense.

Mr. Leathe said that I think what Ms. Rabasca just talked about them having a thoughtful approach to the land parcel before they carve it up at all, before they cut any trees down,

before they do anything and starting with that in the discussion with us. Let's start there and then move into the project and what they want to do with it. Personally, I think it's a great approach.

Ms. Braun agreed.

Ms. Rabasca asked if there were any significant objections to us including this performance standard in our submittal to the DEP.

Mr. Brubaker said no, that I just have a clarifying question. This would apply to one acre of new disturbance. In other words, if I'm coming in and developing on an existing parking lot or on existing compact gravel, for instance, it's possible that my development may not apply to this. Is that right.

Ms. Rabasca said that maintenance is not considered to be disturbance so, as you know, the devil's in the details on these definitions. So, ripping up a parking lot and putting a new parking lot back in, that's considered maintenance. But, if they are going to change the landscape and they are going to be disturbing one or more acres of land, then that would trigger this.

Mr. Leathe asked what if they were disturbing ¾ of an acre of land, even though they had previously disturbed 7 acres of parking lot.

Ms. Rabasca said that that would not trigger this.

Mr. Brubaker said that if they were taking a portion of the parking lot and building something on top of it, an out building for instance, this would not apply, correct.

Ms. Rabasca said that I believe it would apply. That is not considered maintenance. They would be disturbing the parking lot, baring soils, changing the landscape.

Mr. Brubaker asked if they would still then have to do the high intensity soils survey for the soils that are currently locked up under the pavement that would then be replaced by the building. How would that work with a site that is being plopped on top of an existing impervious surface.

Ms. Rabasca said that I would say yes. If they are triggering the standard, they would have to do their high intensity soil survey. When I think of Eliot, you have a lovely rural character and most of your areas are really suburban. So, you have a lot of green space so I kind of figure that. You think about applying this in downtown Portland or Bangor or South Portland, like a mall area. And you do, with low-impact development, start to correct some of what they call 'sins of the past'. So, you're also trying to improve the potential for infiltration and improve the quality of the stormwater runoff through re-development of projects. So, this would apply to development or re-development. It does seem like we are okay with this. We do have until 2024 to carve out the rest of the details and we will be doing this with many other communities, as well. The **second one** is a

pretty straightforward and nominal performance standard. It's a requirement that the project plans **depict limits of disturbance directly on the plan**, Sometimes, people don't do that. But more importantly, that they will depict the limits of the disturbance on-site using flagging, fencing, signs, or other means to provide a clear indication of what those limits are. That is really going to help the CEO. It is a very minor impact but really great benefit to water quality.

The PB had no questions or objections.

Ms. Rabasca said that the next one is regarding open space and I have seen some discussion in your PB minutes about this. The Ordinance Committee had many, many discussions over this and we decided to make this optional in the base model ordinance but I left it here for Eliot consideration: "*Rural New Developments shall preserve at least 40% of the Site as open space and Suburban New Developments shall preserve at least 25% of the Site as open space."* You, fortunately, actually have zoning districts that use the words Rural and Suburban so we could fairly easily apply these standards to those different districts. All of the references we reviewed in developing these performance standards said to make sure you have a good standard for open space. This actually came from The Center for Watershed Protection, which is one of the nationally-renowned watershed/water protection agencies (Chesapeake Bay). I know that open space regulations are very complicated and they have to be balanced with coverage requirements and minimum and maximum lot sizes, setbacks, etc. So, because there were so many discussions, we decided to make this optional. For Eliot, I have seen that your Chapter 41has a requirement for just 10% of open space in subdivisions and I didn't know what the pleasure of the PB might be to increase that.

Mr. Leathe said that we have an ordinance subcommittee that Ms. Bennett heads up and one of the areas for further discussion is indeed the open space area. I think this is an interesting idea to add to that discussion but I don't think that is anything that will be determined in the near term.

Ms. Rabasca said that Mr. Brubaker and I can come up with some language that says that you currently do have an open space requirement in subdivisions but you also have the ordinance committee considering.

Mr. Leathe said that this is just one of several changes that we will recommend.

Mr. Latter asked, just as a point of reference, did the subdivision we just approved have 10% open space.

Note: This particular subdivision was conventional, not open space.

Mr. Brubaker clarified that the open space language in our ordinance says that it "*may require up to 10% open space*".

Ms. Rabasca said that, for now, I think that Mr. Brubaker and I can smoosh this language a little more, or adjust this a little more, if needed. But I'll say the ordinance committee is considering 'open space' issues currently and the Town does not intend to adopt this until the evaluation by the ordinance committee has been completed.

Ms. Braun asked on the 40% requirement, wouldn't that depend on the size of the development. We have an 8-lot subdivision and 40% of that would be pretty high. So, I would think it would have to be based on the size of the development, wouldn't it.

Ms. Rabasca said that more so the way that we have seen this applied is that it's based on the zoning you have. Usually, you have minimum lot sizes so the rural districts in the community have larger minimum lot sizes, smaller setbacks, and they are typically in areas where there is no public water or public sewer so they have to be big lots to accommodate a septic system and water well. So, they are naturally a bit better suited to having a larger requirement for open space and that's why the rural ones are 40%. Thinking of subdivsions that you've reviewed recently, if they are in the suburban area, you might want to go to 25%. You'll notice that we aren't recommending an open space requirement for village or town centers (urban), again, because they probably have sewer and you probably want your higher density population there. Many times, communities have a separate village plan.

Mr. Leathe said that one of the ways we have been looking at open space, theoretically, is that it may be a better application in the Village and Suburban Districts than the Rural District because of the access to infrastructure – police, fire, sewer, water – and creating more open space where there's higher density living and make more of a community out of it versus in the woods off of Goodwin Road, or something. So, I'm just curious why this group doesn't think of the things that way.

Ms. Rabasca said that I think it boiled down to the fact that most urban centers have some kind of predisposed plan for trails and open space. So, with this piece of the code, they didn't want to interfere with that element.

Mr. Leathe said that we have no downtown, village center.

Ms. Bennett said that, for our village district, we talked about having a village plan. We also talked, in our last Comp Plan, about increasing the density in this zone but we have not. Just for reference, we have 1-acre zoning in the Village District.

Ms. Rabasca said that it's a complicated matter.

Ms. Bennett agreed. I love the optional recommendation. I think it will make for a fruitful conversation later on.

Ms. Rabasca said, regarding the fee-in-lieu, that I wanted to point out that that is also very helpful to start to create a fund, should the Town have an opportunity to buy a piece of property that would really benefit your village open spaces, that you might have

acquired the finances to do so through a fee-in-lieu type of open space program. I think, if this looks good, we will go with this on this performance standard. It sounded pretty reasonable. Are people familiar with the **Maine Stream Smart Principles**. (There was some familiarity.) You actually have stream smart culvert on one of your roads, which was installed by Public Works a few years ago. They are basically open-bottom culverts that are bank-full width for any stream and they have a natural substrate bottom to allow fish passage and habitat passage. This Maine Stream Smart Program is from the Maine Audubon Society and developed over a number of years. The Maine DEP has been offering grants to municipalities to convert their municipal stream culverts to these stream smart culverts and a lot of municipalities are taking advantage of this program. The design engineers are really familiar with this concept; that it's a much better program for the environment. We're only requiring it, under this performance standard, for passages of waters of the State. A professional engineer has to have taken the stream smart course in order to design this. This is not currently a State requirement but will be a new requirement. It's brand new to design engineers and developers but it's stuff that almost all the civil engineers in Maine know about already and are familiar with it; that they've already taken the class. This will be a moderate impact on design and construction but it will really be a good benefit to water quality.

Ms. Bennett asked if the Maine Stream Smart Principles are also really good for climate resiliency as far as large water events.

Ms. Rabasca said yes, they will. Because the Stream Smart crossing requires that you be more than bank-full width for the stream passing. It really helps to, especially when you're closer to the ocean, alleviate flooding back up stream because you'll allow the passage. So, it's just a really great program, all-around.

Mr. Leathe asked if, when you mention an artificially channelized stream, that is a stream that has already been truncated for development.

Ms. Rabasca said yes. So, if a development already has a culvert on it, that would have to get converted. But, if it was just a ditch, it wouldn't have to be a stream smart culvert. It has to meet the definition of a water of the State in order to have this stream smart culvert. Did that answer your question.

Mr. Leathe said maybe not. I'm trying to understand what artificially channelized means. Is that something that humans did or is that something that occurs naturally in the world.

Ms. Rabasca said that I think some of the city committee members wanted this put in because there are streams in some of the more populated areas where streams have been straightened or moved over a little bit before the regulations kicked in and, so, they didn't want the stream smart crossings to apply to those artificially channelized streams. I don't think it will apply to Eliot much at all. In downtown Berwick, for example, there's a stream that runs under the former Prime Tanning that's a pretty classic example of the kind of thing they didn't want to have to undo. That might also be considered that a lot of the planners were concerned about 'takings'. They didn't want to open themselves up to

lawsuits; that someone might say that you're going to make me take all that developed area I just bought away and I will have to turn it back into a stream or put a big bridge on it, etc. Are there any concerns or questions about this one. We3 do have this one as listed that you intend to adopt this performance standard.

There was no objection.

Ms. Rabasca said that the **next one** is related to the same standard for the stream crossings and the stream smart culverts (Rural and Suburban Projects). To the extent practicable, projects are going to preserve the natural pre-development drainageways on-site by using the natural existing flow patterns. We are allowing some waivers and exceptions for that; that I think we may have to strength those a little bit. If they are slowing the water down, then they can get an exception or if they can demonstrate an alternative analysis.

Ms. Bennett asked if we had to have an exception here.

Ms. Rabasca said no.

Ms. Bennett said that it seems to me that, possibly, we would be opening a can of worms for our engineers becoming a mini army corps of engineers. I have some concerns about granting exceptions.

Ms. Rabasca said that I think we could leave the exception in here for now and then it would be more stringent to remove the exception later. This will be a moderate impact on the design; that they will have to spend a little more time thinking about the design that are a good benefit to our water quality.

The PB agreed.

Ms. Rabasca said that, regarding **Stormwater Treatment Measures**, they are going to have to treat the impervious cover using the same kinds of stormwater treatment measures they would use in Chapter 500, and to the same level. Chapter 500 says you have to treat 95% of the first inch of water that falls on your impervious area. That's what a developer would have to treat using the Stormwater Treatment Measures, which is underdrain soil filters or wet ponds or other innovative measures, treating it to remove pollutants now. This is already required in Chapter 500 but at a much larger threshold than the Town will be regulating.

ITEM 9 – OLD BUSINESS

A. November 2022 Ordinance Amendments – updates as needed.
1. **Ordinance Subcommittee Update**
2. **Site Plan Review, Subdivision, and Performance Guarantee updates**
3. **Solar Energy Systems**
4. **Event Centers**
5. **Maximum Number of Licenses for Marijuana Establishments and Medical Marijuana Establishments**
6. **Erosion and Sedimentation Controls**
7. **Fees**

ITEM 10 – OTHER BUSINESS/CORRESPONDENCE

A. Town Planner update – written or verbal – if needed.

ITEM 11 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for August 16, 2022 at 7PM.

ITEM 13 – ADJOURN

_____ moved, second by _____, that the Planning Board adjourn.

VOTE
5-0
Motion approved

The meeting adjourned at 9:03 PM.

_____
Christine Bennett, Secretary
Date approved: _____

Respectfully submitted,

Ellen Lemire, Recording Secretary

Proposed Town Code Amendments of Chapter 1 – General Provisions, _____, and Chapter 45 – Zoning, Related to Housing

Planning Board recommends _____ (#-#)
Select Board recommends _____ (#-#)

DRAFT for December 6, 2022 Planning Board review

Short title

Proposed Town Code Amendments of Chapter 1 – General Provisions, _____, and Chapter 45 – Zoning, Related to Housing

Ballot question – Town Meeting and Referendum, June 6, 2023

ARTICLE #__: Shall an Ordinance entitled "[insert final title here]" be enacted?
(A copy of this ordinance is available in the Town Clerk's Office)

Background and rationale

[to be added]

New text underlined in bold
~~Deleted text in strikethrough~~
[Text in brackets, bold, and italics introduces a large block of new text:]
[Text in brackets and italics is a temporary explanatory note]

Sec. 1-2. - Definitions and rules of construction.

[abridged to only show changes]

Accessory dwelling unit means a~~ separated living area which is part of an existing or new single family owner occupied residence, and which is clearly secondary to the existing single family use of the home~~ **self-contained dwelling unit located within, attached to, or detached from a single-family dwelling unit located on the same parcel of land. An accessory dwelling unit must meet**~~ and that meets~~ the requirements of section 45-459.

[DECD Guidance: "Municipalities may also define ADUs, as long as the definition is consistent with state law in Title 30-A, §4301. 1-C."]

[…]

Affordable housing means decent, safe and sanitary dwelling units that can be afforded by households with annual incomes no greater than 80 percent of the median household income in non-metropolitan York County, as established by the U.S. Department of Housing and Urban Development (median household income shall be published in the Annual Report of the Municipal Officers of the Town of Eliot, Maine). A renter-occupied unit is affordable to such households if the unit's monthly housing costs, including rent and basic utility costs (the costs of heating and of supplying electricity to the unit plus the cost, if any, of supplying public water and public wastewater disposal service to the unit), do not exceed 30 percent of gross monthly income. An owner-occupied unit is affordable to such households if its price results in monthly housing costs that do not exceed 28 percent of gross monthly income for principal, interest, insurance and real estate taxes. Estimates of mortgage payments are to be based on down payments and rates of interest generally available in the area to low and moderate income households.

Affordable housing development **means "affordable housing development" as defined by 30-A MRSA §4364(1), as may be amended.**

[…]

Short-term rental **means living quarters offered for rental through a transient rental platform.**

State law reference – 30-A M.R.S.A. 4364-C.

[…]

Tiny home **means "tiny home" as defined by 29-A MRSA 101(80-C), as may be amended.**

[State law: "a living space permanently constructed on a frame or chassis and designed for use as permanent living quarters that:

A. Complies with American National Standards Institute standard A 119.5 on plumbing, propane, fire and life safety and construction or National Fire Protection Association standard 1192 on plumbing, propane and fire and life safety for recreational vehicles; [PL 2019, c. 650, §1 (NEW).]

B. Does not exceed 400 square feet in size; [PL 2019, c. 650, §1 (NEW).]

C. Does not exceed any dimension allowed for operation on a public way under this Title; and [PL 2019, c. 650, §1 (NEW).]

D. Is a vehicle without motive power. [PL 2019, c. 650, §1 (NEW).]

"Tiny home" does not include a trailer, semitrailer, camp trailer, recreational vehicle or manufactured housing."]

[…]

Transient rental platform **means "transient rental platform" as defined by 36 MRSA 1752(20-C), as may be amended.**

[State law: "an electronic or other system, including an Internet-based system, that allows the owner or occupant of living quarters in this State to offer the living quarters for rental and that provides a mechanism by which a person may arrange for the rental of the living quarters in exchange for payment to either the owner or occupant, to the operator of the system or to another person on behalf of the owner, occupant or operator."]

[…]

Sec. 45-405. Dimensional standards.

[DRAFT table]

Lots and structures in all districts shall meet or exceed the following minimum requirements:

District	Rural	Suburban	Village	C/I	MHP
Min. lot size, acres (ac) or square feet (ft^2)					
Lots served by both public water and public sewer service *[ref. 2009 Comp Plan Future Land Use Policy 1, Strategy 1]*			**20,000 ft^2 or ½ ac**		
~~Min. lot size (acres or $ft.^2$)~~ **All other lots**	3 **ac**	2 **ac**	1 **ac**	3 **ac**	6,500 $ft^{2\,n}$ 12,000 $ft^{2\,n}$ 20,000 $ft^{2\,n}$
Min. yard dimensions (ft.)					
Front yard	30	30[p]	30[p]	50[a,p] 30	20[o]
Side yards	20	20[p]	20[p]	20[p] 100[b]	20[o]
Rear yard	30	30[p]	30[p]	20[p] 100[b]	10[o]
Accessory building[c]					
Front yard setback	30	30	30	50[a] 30[a]	5[o]
Side and rear yard setback	10	10	10	20 100[b]	5[o]
Accessory dwelling unit	u	u	u	u	—
Max. height (ft.)	35	35	35	55[d]	35
Max. lot coverage (%)	10	15[q]	20[q]	50[q]	50[o]
Setback-normal high water mark (feet)[e]	75	75	75	75	75
Dwelling units:					
Min. size (sq. ft. per unit)**:**	~~<400[g]~~	~~<400[g,r]~~	~~<400[g,r]~~	~~r~~	~~<400~~

Accessory dwelling unit (ADU)	**u**	**u**	**u**	**u**	**--**
Assisted living facility	**--**	**300**	**300**	**300**	**--**
Federal and state elderly housing, other than assisted living facility	**--**	**No min.**	**No min.**	**No min.**	**--**
Mobile home park units	**--**	**--**	**--**	**--**	**650**
Tiny home	**190**	**190**	**190**	**190**	**--**
All other units	**650**	**650**	**650**	**650**	**--**
Min. area ~~(acres):~~ **per dwelling unit, acres (ac) or square feet (ft^2)**					
Lots served by both public water and public sewer service					
1 unit	**--**	**--**	**20,000 ft^2**	**--**	**--**
2 units	**--**	**--**	**40,000 ft^2**	**--**	**--**
Each additional unit	**--**	**--**	**20,000 ft^2**	**--**	**--**
Affordable housing developments on growth-area lots served by both public water and public sewer service *[per LD2003]*					
1 unit	**--**	**--**	**8,000 ft^2**	**--**	**--**
2 units	**--**	**--**	**16,000 ft^2**	**--**	**--**
Each additional unit	**--**	**--**	**8,000 ft^2**	**--**	**--**
Affordable housing developments on growth-area lots that are not served by either public water or public sewer service *[per LD2003]*					
1 unit	**--**	**0.8 ac**	**0.4 ac**	**--**	**--**
2 units	**--**	**1.2 ac**	**0.8 ac**	**--**	**--**
Each additional unit	**--**	**0.8 ac**	**0.4 ac**	**--**	**--**
All other lots					
1 unit	3	2	1	—	o

2 units	6	4	2	—	—
Each additional unit	3	1	½[g]	—	—
Assisted living facility	—	s	s	s	—
Elderly housing	—	g	g	g	—
Life care facility	—	t	t	t	—
Max. number of principal structures per lot	h	h	h	v	1
Signs:					
~~Signs~~ Max. sign area (sq. ft.)	6	6	6	100	6
Max. sign area (sq. ft.), commercial establishments only	12	12	12	100[i]	12
Max. sign area (sq. ft.), new residential subdivisions	50[j]	50[j]	50[j]		50[l]
Min. setback (ft.) (front lot line only)	8[k]	8[k]	8[k]	--[k]	8[k]
Min. st. frontage (ft.)[l]	200	150	100	300	50/75/100[n]
Backlots[m]					

Notes:

a. A front yard abutting a state or town road shall have a minimum depth of 50 feet from the right-of-way line. A front yard abutting an interior street within the proposed site shall have a minimum depth of 30 feet from the right-of-way line. All parking areas shall conform to setback requirements.

b. All side and rear yards abutting an existing residential use shall have a minimum depth of 100 feet from the side or rear lot lines.

c. Accessory buildings shall be located no less than 30 feet from any principal buildings on adjacent property.

d. Rooftop antennas and other telecommunications structures shall conform to the requirements of sections 33-185 and 45-460. Steeples and spires shall be exempt from maximum height requirements.

e. Setbacks and setback measurements in shoreland zones shall follow requirements of chapter 44.

f. (Reserved.)

g. The minimum acreage for elderly housing in all districts, where allowed, shall be one acre for the first dwelling unit and one quarter acre for each additional unit. Minimum acreage requirements shall revert back to dwelling unit requirements if elderly housing is discontinued. ~~Dwelling unit minimum size (square feet per unit) requirements do not apply to federal or state elderly housing.~~

h. In the rural, suburban and village districts, more than one principal structure may be located on a single lot, provided each such structure is located in such a fashion that it could be separately conveyed on a separate lot in compliance with all dimensional requirements of the district (except that any lawfully existing structure which does not meet all minimum dimensional requirements may continue that nonconformity).

i. See section 45-528(c) for other requirements applicable to two or more commercial or industrial establishments under separate ownership on one parcel within the commercial/industrial district.

j. Signs identifying subdivisions of ten or more lots shall be posted at the entrance of the subdivision and shall be approved by the planning board. Signs shall contain only the name of the subdivision.

k. See section 45-532 for additional sign placement requirements.

l. Street frontage shall be measured along one street. The planning board is authorized to vary frontage requirements for new subdivisions according to section 41-255(g). Such lots shall be treated as conforming lots for the purpose of this chapter.

m. Back lot requirements are contained in section 45-466.

n. Lots within a mobile home park shall be a minimum of:

6,500 feet^2 if served by public sewer. Minimum lot width is 50 feet.

12,000 feet^2 if served by central subsurface wastewater disposal approved by the state department of human services. Overall density of park, including road rights-of-way and buffer strips shall be 20,000 feet^2 per dwelling. Minimum lot width is 75 feet.

20,000 feet^2 if served by onsite subsurface wastewater disposal. Minimum lot width is 100 feet.

o. See section 41-276 et seq. for specific requirements.

p. Elderly housing, nursing facility, assisted living facility and life care facility shall have setbacks of 50 feet from lot line or 100 feet from residential dwelling unit, whichever is greater.

q. Life care facility shall have a maximum lot coverage of 50 percent. Elderly housing, nursing facility or assisted living facility individually shall have a maximum lot coverage of 35 percent.

r. ~~Each dwelling unit in an assisted living facility shall have a minimum of 300 square feet.~~ **(Reserved.)**

s. One acre for the first dwelling unit and then one-fifteenth acre for each additional dwelling unit provided all other dimensional requirements are met.

t. One acre for the first dwelling unit and then one-fifteenth acre for each additional assisted living facility dwelling unit plus one-fourth acre for each additional elderly housing dwelling

unit plus district acreage requirement (1-village, 2-surburban, 3-C/I) for each single family dwelling unit provided all other dimensional requirements are met.

Example: A 15-acre suburban district lot could contain three single family dwelling units (five acres) plus 61 assisted living facility dwelling units (five acres) plus 17 elderly housing dwelling units (five acres) plus a nursing facility (0 acres) provided all dimensional requirements are met.

u. See section 45-459 for requirements.

v. In the C/I district, more than one principal structure may be located on a single lot which meets the minimum lot size and street frontage requirements for the district. Each such structure must maintain required yards adjacent to the front, side, and rear lot lines and must be located no closer than 20 feet (as viewed from the front lot line) to any other such structure on the lot. Such structures need not comply separately with the minimum lot size and frontage requirements, but the aggregate of all the structures on the lot shall not exceed the maximum lot coverage requirement. Nonconforming lots of record, with existing commercial structures, at the time of adoption of this section change may also contain more than one principal structure provided the setback and expansion requirements are met. Separation of structures shall not be less than 20 feet.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 305); T.M. of 12-15-93; Amend. of 3-26-94; Ord. of 3-25-00(1); T.M. of 6-19-01, (art. 8); T.M. of 3-16-02, (art. 4); T.M. of 11-5-02; T.M. of 6-14-05; T.M. of 6-18-2011(5); T.M. of 6-14-2016(1); T.M. of 11-6-2018(5)……..)

Cross reference(s)—Requirements unique to mobile home park subdivisions, § 41-276 et seq.; other district regulations, § 45-286 et seq.

Sec. 45-459 – Accessory dwelling unit

(a) An ~~accessory dwelling unit (ADU) is a small apartment which is part of an existing or new single family owner-occupied home, and which is clearly secondary to the single family home. The~~ accessory dwelling unit may be rented so that the owner-occupant may benefit from the additional income. The owner may also elect to occupy the accessory dwelling unit and rent the principal dwelling unit.

(b) Owner-occupied means that either the principal dwelling unit or the accessory dwelling unit is occupied by a person who has a legal or equitable ownership interest in the property and bears all or part of the economic risk of decline in value of the property and who receives all or part of the remuneration, if any, derived from the lease or rental of the dwelling unit.

(c) An accessory dwelling unit may be permitted as an accessory use to a single family home under the following conditions:

(1) Only one accessory dwelling unit (ADU) is permitted per lot. The accessory dwelling unit shall be located in the same building as the principal dwelling unit or in a building accessory to the principal dwelling unit. ~~Any structure containing an accessory dwelling unit must meet minimum yard and setback requirements for principal structures.~~

[Reading DECD guidance p. 13, it appears that LD2003 does not require municipalities to allow more than one ADU to be built on a lot with an existing home, if one unit is attached and the other is detached. In other words, the LD2003 language, "A municipality shall allow on a lot with one existing dwelling unit the addition of up to 2 dwelling units: one additional dwelling unit within or attached to an existing structure or one additional detached dwelling unit, or one of each," does not, in DECD's interpretation, apply to ADUs. We can revisit this if Rulemaking says otherwise.]

(2) A building permit for the proposed construction of a new ADU or the creation of a new ADU within an existing building, must be issued by the CEO. Planning board approval is not required for an ADU.

(3) A building permit for a new single family home may include an ADU as long as the provisions of this section are met and the building conforms to all of the dimensional requirements for the zone in which it is being built. An ADU may be included in a new home constructed on a lawful nonconforming lot of record which may be built upon pursuant to section 45-194.

(4) The property owner must occupy either the principal dwelling unit or the ADU as their principal residence, and at no time receive rent for the owner-occupied unit. Principal residence must be proven by voter registration or other evidence acceptable to the CEO.

(5) The maximum gross floor area of an ADU shall be 1,000 square feet or 50 percent of the gross floor area of the principal dwelling unit, whichever is less. The minimum gross floor area of an ADU shall be ~~300~~ **190** square feet. An ADU shall not have more than two bedrooms.

(6) Apartments built prior to November 2, 1982 and existing on March 16, 2002, shall be considered lawful nonconforming uses which may continue pursuant to section 45-191.

Any apartments existing on (effective date of section 45-459) and built on or after November 2, 1982 shall not be considered lawful nonconforming uses, unless the property owners applies for a building permit for the ADU and brings the unit up to the health and safety provisions of the minimum housing code standards. A grace period of one year from the adoption of this article will be allowed for homeowners to modify such unlawful non-conforming units. The CEO will have the authority to waive certain space and setback requirements for such unlawful nonconforming units where full compliance would be impractical. On March 16, 2003, all owners of unlawful nonconforming units who have not brought them up to the health and safety standards of the minimum housing code, will be in violation of this section and subject to fines per subsection 45-6(b).

(7) When any property containing an accessory dwelling unit is sold or transferred, the new owner must continue to meet the requirements of this Section in order to continue the use of the accessory dwelling unit. Should the new owner not meet the requirements of this section, the use of the unit must be discontinued. However, any lease in effect at the time of transfer may be continued until it expires or up to one year from the date of the transfer, whichever is shorter. This subsection (7) does not apply to an apartment built before November 2, 1982 and existing on March 16, 2002.

(8) To ensure continued compliance by current and subsequent owners, the applicant shall provide and record in the county registry of deeds a covenant in a form acceptable to the town attorney that the existence of the accessory dwelling unit is predicated upon the occupancy of either the accessory dwelling unit or the principal dwelling by a person who owns the property. It is also required that any owner of the property must notify a prospective buyer of the limitations of this section.

(9) New accessory dwelling units are not subject to the requirements of the growth management ordinance, chapter 29. ~~However, the number of accessory dwelling units that may be issued building permits within a calendar year is limited to a total of 12, to be issued on a first- come, first-served basis in the order in which the code enforcement officer receives completed applications for building permits under section 45-127. If two or more applications are received simultaneously (as in as a single mail delivery), the code enforcement officer shall determine their order by random selection. The provisions of this paragraph are retroactive to January 1, 2003.~~

(10) This provision shall not prohibit the conversion of a single family dwelling to a multifamily dwelling so long as said conversion complies with all current zoning requirements. However, if such conversion is approved, any accessory dwelling unit previously allowed under this section must be incorporated into and meet all the requirements for one of the units of the multifamily dwelling. Multifamily dwellings shall not include accessory dwelling units as defined in this section.

(11) Design criteria:

a. An ADU shall be designed to maintain the architectural design, style, appearance, and character of the main building as a single-family residence. If an ADU extends beyond the existing footprint of the main building, such an addition must be consistent with the existing facade, roof pitch, siding, and windows.

b. Exterior stairs are restricted to the rear or sides of the structure.

(12) Occupancy of an ADU shall be limited to the following: No more than two persons per bedroom are allowed, unless otherwise approved by the code enforcement officer and the fire chief or their respective designees. Increased occupancy limits may be granted after application to the code enforcement officer and inspection of the dwelling unit.

~~(13) One off-street parking space must be provided for the accessory dwelling unit in addition to the off-street parking required for the principal dwelling unit.~~

[re#](14) An occupancy permit must be issued by the CEO prior to occupancy of an accessory dwelling unit created or modified pursuant to this section 45-459.

(15) The CEO shall prepare a biennial report to the planning board on accessory dwelling units which will include:

a. The number of units established;

b. The geographic distribution of the units; and

c. The average size of the units.

The planning board shall reassess the provisions of this section allowing accessory dwelling units every five years or sooner if records show that 20 percent of single family homes have ADUs.

(16) The code enforcement officer may inspect an accessory dwelling unit, with or without complaint with a minimum of 48 hours of receipt of notice of inspection to the property owner to ensure compliance with the section. Any property owner found in violation of this section shall have 30 days from the date of written notice to correct such violation. Failure to correct the violation shall result in the revocation of the accessory dwelling unit certificate of occupancy, as well as subjecting the property owner to the remedies and penalties provided in sections 45-101 and 45-102.

(d) Lot line setbacks.

(1) Except as provided in paragraph (2) of this section, any structure containing an ADU must meet minimum yard and setback requirements for principal structures.

(2) An accessory structure that existed as of April 27, 2022, and meets accessory structure, but not principal structure, setback requirements in Section 45-405, may be fully converted into an ADU, may be renovated to include an ADU, or may be replaced with an ADU, subject to the following limitations:

a. The accessory structure to be converted must have a valid building permit issued by the Town, or the applicant must demonstrate that it was built before building permits were required for such structures.

b. The ADU, or structure containing the ADU, shall meet minimum setback requirements for accessory structures.

c. Compared to the accessory structure to be converted, renovated, or replaced, the ADU, or ADU area within the renovated accessory structure, shall not have a greater footprint within the minimum setback area for principal structures.

d. **Compared to the accessory structure to be converted, renovated, or replaced, the height of the ADU, or the portion of the renovated accessory structure containing the ADU, shall not be increased within the minimum setback area for principal structures, except where additional height (such as additional ceiling height) is required by an applicable building or life safety code. Within the minimum setback area for principal structures, an ADU shall not have more than one story above ground.**

e. **The ADU shall not have a porch, attached deck, or balcony within the minimum setback area for principal structures.**

f. **The ADU shall not be a short-term rental.**

Emergency responder access for ADUs – seek FD's comment

State law reference

(T.M. of 3-16-02, (art. 4); T.M. of 6-10-03; T.M. of 6-14-05; T.M. of 6-8-2021(1) , art. 34)

From: Planner
To: Kim Tackett
Subject: FW: Housing Opportunity Program Introduction
Date: Thursday, December 1, 2022 10:00:30 AM

Kim,

Can you include the below email string in the 12/6 PB packet? This would be for the Housing Ordinance Amendment Item.

Thanks,
Jeff

Jeff Brubaker, AICP
(207) 439-1813 x112

From: Paul Schumacher <pschumacher@smpdc.org>
Sent: Wednesday, November 30, 2022 2:41 PM
To: Werner Gilliam <wgilliam@kennebunkportme.gov>; Dylan Smith <dsmith@yorkmaine.org>; Beth Della Valle <Bdellavalle@sanfordmaine.org>; Planner <jbrubaker@eliotme.org>; Christine Bennett <perfectpickle@comcast.net>; Chris Osterrieder <costerrieder@kennebunkmaine.us>; Tammy Bellman <tbellman@sbmaine.us>
Cc: Raegan Young <ryoung@smpdc.org>; Hannah Bonine <hbonine@smpdc.org>; Lee Jay Feldman <ljfeldman@smpdc.org>
Subject: FW: Housing Opportunity Program Introduction

Update on LD 2003.

Start from bottom.

We had a meeting with legislators before Thanksgiving which I guess spurred a call or two.

From: Gove, Hilary [mailto:Hilary.Gove@maine.gov]
Sent: Wednesday, November 30, 2022 2:28 PM
To: Paul Schumacher <pschumacher@smpdc.org>; Averill, Benjamin <Benjamin.Averill@maine.gov>; Lee Jay Feldman <ljfeldman@smpdc.org>
Cc: Roberts, Tiffany <tiffany.roberts@legislature.maine.gov>
Subject: RE: Housing Opportunity Program Introduction

Hi Paul,

Per statute, DECD is required to create rules and then solicit applications for these grants through a competitive application process.

We acknowledge your concern that rulemaking and the competitive application process are time

consuming, but we are doing our best to expedite these processes as much as we can to reduce the burden on municipalities and regional planning organizations. We are exploring some options to address the tight deadline.

We are happy to meet with you to discuss this further. We will have the most scheduling flexibility in January.

Looking forward to hearing from you.

Hilary

From: Paul Schumacher <pschumacher@smpdc.org>
Sent: Wednesday, November 30, 2022 1:59 PM
To: Averill, Benjamin <Benjamin.Averill@maine.gov>; Ljfeldman <Ljfeldman@smpdc.org>
Cc: Gove, Hilary <Hilary.Gove@maine.gov>; Roberts, Tiffany <tiffany.roberts@legislature.maine.gov>
Subject: RE: Housing Opportunity Program Introduction

Hi Ben and Hillary,

Thank you for this info and update. I look forward to meeting you both sometime!

One question we have is whether the two grant programs will be competitive or whether some of the money will be allocated by some formula to Regional Planning Organizations who currently work directly with municipalities? It just seems that a competitive program, requiring a bid process, responses, reviews of the proposals, and then contracts developed will use some precious time.

You certainly have a great deal of work to do and in view of the July 2023 deadline, it seems not a lot of time to do it. SMPDC is in full support of this initiative, but I am sure you are aware of some of our concerns (on behalf of our municipalities) regarding getting ordinances written, hearings held and any changes made prior to Town Meeting schedules. This has been relayed to us by a number of communities.

We certainly think there are components of the legislation (particularly the ADU section) which can be achieved efficiently. The other items may require some real forensic ordinance work – which for towns with staff may not be a big deal. But as you both know, that is not the case for most towns in Maine.

Thanks again for getting in touch with us. We would be happy to discuss some of these issues in more depth if that would help. We regularly meet with Planners down this way who have a keen (understatement!!) interest in this legislation.

Best,

Paul Schumacher
Executive Director
SMPDC
110 Main St., Suite 1400
Saco, Me. 04072
(207) 571.7065
www.smpdc.org

From: Averill, Benjamin [mailto:Benjamin.Averill@maine.gov]
Sent: Monday, November 28, 2022 4:24 PM
To: Paul Schumacher <pschumacher@smpdc.org>; Lee Jay Feldman <ljfeldman@smpdc.org>
Cc: Gove, Hilary <Hilary.Gove@maine.gov>
Subject: Housing Opportunity Program Introduction

Hi Paul and Lee Jay,

I am emailing as a quick introduction of sorts. Hilary Gove and myself constitute DECD's new Housing Opportunity Program. One of the main items that Hilary and I are tasked with is rule making and other components of the roll out for the provisions of LD 2003. We are hoping to have rule making related to the components of LD 2003 tentatively completed during Spring of 2023. We both realize that there may be many changes that communities need to make to their zoning codes as they work to amend their codes. The LD 2003 Guidance document that was circulated earlier this year will hopefully help communities as they begin to draft new amendments to their codes. We will be updating the guidance document as we move through the rule making process and expect the document to be " living" to address questions as they come up.

Additionally, I wanted to let you know that there will be two different technical assistance grants that will be released in 2023. One grant program will be directed towards municipalities to support housing planning services including the amendment or creation of ordinances and master planning efforts related to housing and the incorporation of the components of LD 2003. Additionally, there will be funding directed towards regional service providers to support municipal ordinance development and provide technical assistance to assist communities to encourage new housing opportunities. Additional information on the grants will be released in the coming months. We will be sharing more information related to rule making for LD 2003 as well as the grant programs on our

website. Information will also be shared with anyone who has requested to receive updates from our list serv (by emailing Housing.DECD@maine.gov). Please let Hilary or me know if you or any of your member communities have any questions. I hope you both had a great Thanksgiving holiday weekend!

Best,

Ben

Ben Averill
Housing Opportunity Program Coordinator
Dept. of Economic & Community Development
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Accessory dwelling units in Portsmouth: 'Easiest' housing solution or is it too late?

Jeff McMenemy Portsmouth Herald

Published 5:06 a.m. ET Nov. 29, 2022

PORTSMOUTH — City Councilor Andrew Bagley believes building accessory dwelling units (ADUs) is "the easiest way to create affordable housing" in Portsmouth.

"ADUs is where a community makes its commitment to affordable housing and the environment, it's the least disruptive way to increase affordable housing infill in areas where we have water and sewer," he said during a recent City Council discussion about proposed amendments to the city's ADU regulations.

Bagley is opposed to the proposed amendments, stating they create "a lot of new hurdles, there's quite a bit in here (regarding) design language, where it sounds like we're creating an HDC (Historic District Commission) throughout the rest of the city."

He also criticized what he described as "the extensive and I think unreasonable ... requirements for off-street parking" that are part of the amendments.

He said he's concerned the amendments, if enacted, would "have a chilling effect on the creation of ADUs in our city." He added, "I think we need to approach it from the standpoint of how to get to yes. This feels like it's heavily biased toward people that don't want ADUs in the community."

Reached for an interview, Bagley doubled down on his public meeting comments, saying, "The community knows there's a clear challenge if you have children growing up or parents on a fixed income to stay in the community."

Housing that allows people to stay in Portsmouth

"One of the best ways we have to solve that, especially for mother-in-law apartments, is to let your parents, or kids when they're through with school, live in an ADU," Bagley said. "It's a very targeted way to reduce the cost of rent for people who already have connections to the community, and it also has the least impact on the look and feel of a neighborhood."

But he is concerned it already costs too much for homeowners interested in creating an ADU on their property.

If the new amendments are approved as written, those costs will only go up, he said.

In Maine: Pot shop at eatery site on Kittery traffic circle? Why a town board rejected idea

"From talking to our Planning Department and talking with surveyors and architects, I've heard the cost is already between $20,000 and $30,000," for homeowners to pay attorneys, architects and/or engineers to prepare the plans for an ADU, he said.

The cost to build the ADU could then reach between $200,000 and $300,000, he estimated.

He pointed to the ADU costs during the council discussion and said, "that's one of the fundamental problems of zoning. It favors developers, it favors rich people because they will have the money to go to the boards to successfully argue for these variances, and for all these regulations."

ADUs have limited impact in Portsmouth so far

Despite his push for ADUs, Bagley acknowledged that since the state Legislature passed a law regarding ADUs, only about 30 have been built in Portsmouth, "which represents 0.05 percent of housing units in the city."

Mayor Deaglan McEachern called ADUs "a tool in the toolbox" when it comes to providing more affordable housing.

More in Portsmouth: Portsmouth eyes eminent domain for water project. Durham homeowners cite 'disrespect'

"I think we can't expect any one housing policy to solve our housing problems," he said during an interview. "Obviously 30-some-odd ADUs is not a lot. But it's definitely a tool in the toolkit to help families stay together."

By creating ADUs, homeowners can "generate income and that income allows more people to stay in the community, whether it's someone from their family or another young family," McEachern said.

"I think that's a win-win," he added.

He also credited the city's Land Use Committee, which proposed the ADU amendments, stating "their goal was to give people who want to develop ADUs more guidance."

"Hopefully people can administratively have more land use approvals without having to go through a long process," he said. "That's the goal of it."

'A lot of quality in a small space': Tiny home owners take step forward with new Maine law

He also disagreed with the contentions by some councilors that the amendments will create more regulations, thus making it harder and more expensive to get approvals.

"I don't think the answer anyone wants in Portsmouth is we're going to throw out the codebook, I don't think anyone wants that," McEachern said. "The city of Portsmouth has to get behind it."

He added that "there's no rule that prohibits affordable housing from being built in the city of Portsmouth."

"They don't do it out of the kindness of their heart," he added.

What are the proposed amendments for ADUs in Portsmouth?

City Councilor Beth Moreau explained in a memo to her fellow city councilors that "over the last four months, the Land Use Committee has received significant public input and has continued to work with consultant Rick Taintor to respond to public input in the refinement of ADU regulations."

Taintor previously served as Portsmouth's city planner. Moreau said the committee's recommended amendments were sent to the City Council Nov. 4 for referral to the Planning Baord.

There are amendments proposed on a number of the roughly 30 pages that outline the city's ADU ordinance, according to information included in a recent City Council packet.

More background on ADU's in Portsmouth: As popularity of accessory dwelling units grows, Portsmouth looks to simplify permitting

The proposed amendments "are intended to achieve three broad policy objectives: (1) to remove barriers and provide more flexibility for the creation of accessory dwelling units (ADUs); (2) to strengthen provisions for ensuring that ADUs fit into established neighborhood patterns and minimize any adverse impacts on abutting properties; and (3) to simplify the ordinance and make it easier for users to understand and navigate," according to the document.

The proposed amendments include, for example, one stating "any municipal regulation applicable to single-family dwellings shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit."

An explanation included in the document explains that "these changes are meant to clarify that ADUs are subject to all applicable regulations, not just the ones that are itemized in the current ordinance."

Another proposed amendment dictates "at least one off-street parking space shall be provided for an ADU with up to 750 square feet and at least two spaces shall be provided for an ADU with more than 750 square feet."

Another proposed amendment states an ADU "shall be architecturally consistent with the principal dwelling through the use of similar materials, detailing, and other building design elements."

More: 'Elf The Musical' brings Broadway talent to The Music Hall in Portsmouth

There is also an entirely new section in the ADU ordinance which establishes "detailed standards for architectural consistency of an ADU with the principal single-family dwelling," according to the amendments.

An explanation stresses "these standards are requirements ("shall"), not guidelines ("should")."

It goes on to say if "the planning director determines that an ADU that is otherwise permitted does not comply with any of these standards ... then the proposed use will require a conditional use permit, including a public hearing by the Planning Board."

Too late for affordable housing?

David Choate is the executive vice president of Colliers International's New Hampshire office.

He questioned what impact, if any, ADUs will have on affordable housing in Portsmouth.

"I don't think it's going to increase it. I think a lot of them may be renting at market value, because there's no requirement to rent them at lower rates," Choate said. "If they're being rented to children or grandparents that's one thing, but I don't think it's going to put a dent in workforce or affordable housing in the city."

Choate also noted that the remaining developable land in Portsmouth continues to be bought and developed for market-rate housing.

"I think in Portsmouth's case, the horse is out of the barn in terms of affordable housing," Choate said.

With NH's rental market red hot, state gives developers $50M to build 'our way out of this crisis'

He feels the city has also not acted quickly enough, particularly in Portsmouth's red-hot housing market the last few years, to address affordable housing.

"The way all the available land is being gobbled up, it's going to be irrelevant by the time it gets approved," he said about the proposed ADU amendments. "It's just talk, talk, talk, and they're not getting a freaking thing done that I can see."

He agreed with McEachern that one of the biggest issues Portsmouth and other communities face is there's no enabling legislation in New Hampshire to allow the city to require affordable housing as part of a new housing development.

"They need that enabling legislation to allow it to be a requirement," Choate said.

Affordable housing coming to Seacoast: Exeter, Epping, Dover projects receive millions

He also suggested allowing for other creative solutions, like "allowing businesses in appropriate locations to build some housing for their workers."

He pointed to the dorms the owners of Water County had approved for their location on Route 1, but never built.

"I think there needs to be more things like that," he said.

What's next for Portsmouth's ADU regulations

The process is ongoing. The council voted 6-2 at its recent meeting to refer the proposed ADU amendments to the Planning Board for a report back to the council.

Both Bagley and City Councilor Kate Cook voted against the motion.

City Councilor Beth Moreau, who chairs the Land Use Committee, said, "I think what we have now is a completely sort of rework of the law."

"We now have ADU units that if you are going to do one completely in your house, a floor of your home, the basement of your home, and you want to create an ADU there, you can basically do it through an administrative approval or it can be an accessory structure that's already existing, as long as it stays within 600 square feet or smaller," she said.

The amendments also outline "what all ADUs have to be," including "what any architectural requirements might be," Moreau said.

City Councilor Vince Lombardi stated, "I'm not sure I agree with Councilor Bagley. I think that this is a step toward one of our major goals that we have."

He added the amendments were "a step in the right direction," but acknowledged they "may need tweaking."

City Councilor Rich Blalock, who serves on the Land Use Committee, said the group's goal was to "lower the barrier" for getting ADUs approved.

"I think we've been working very hard at doing that," he said.

Cook questioned the parking requirements, asking, "Why are we strict about parking for an accessory dwelling unit in a neighborhood that has ample street parking? It seems to me that the market would decide."

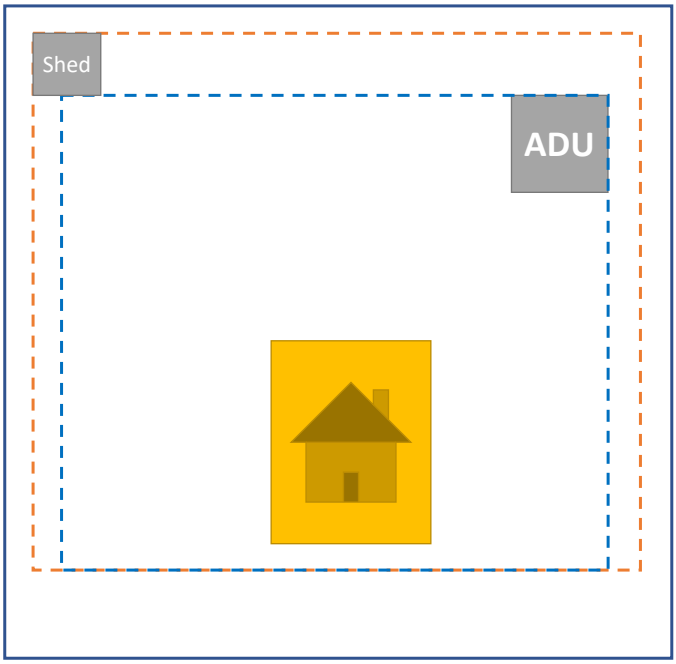
Cook noted she lives in a neighborhood where there are homes without off-street parking.

"That's pretty common in my neighborhood and so really what happens in my neighborhood is it's a market decision," Cook said. "Why don't we let it be a market decision throughout the city?"

Accessory structure setbacks (30/10/10)

Principal structure setbacks (30/20/30)

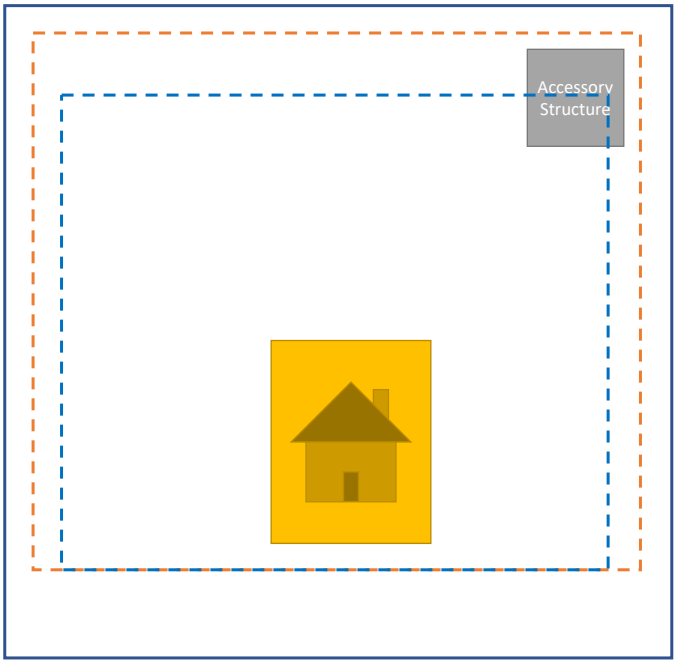
Current: ADUs have to meet principal structure setbacks.



Accessory structure setbacks (30/10/10)

Principal structure setbacks (30/20/30)

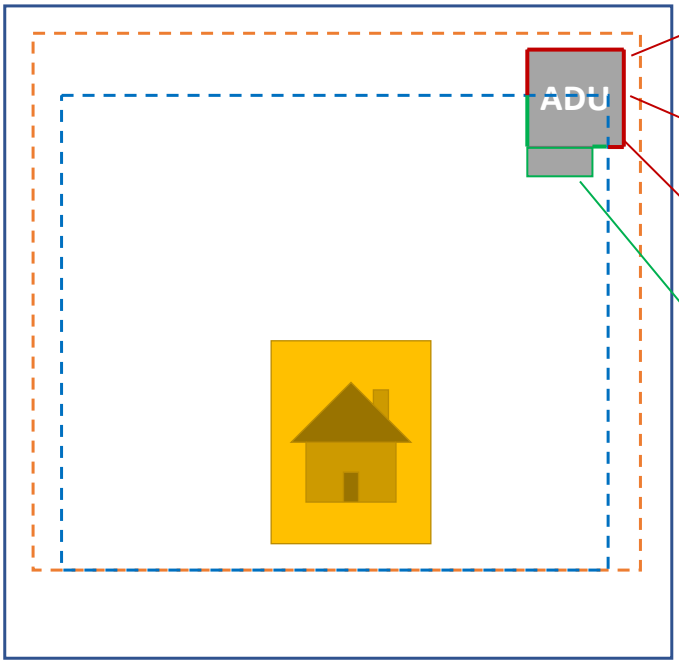
Accessory structure existing on property as of [date]



Accessory structure setbacks (30/10/10)

Principal structure setbacks (30/20/30)

Proposed: Accessory structure could be converted into ADU, within limitations



No additional footprint within principal yard/setback area

Height limitations within principal yard/setback area

No porch/deck/ balcony within principal yard/setback area

For portion that meets principal setbacks, additional footprint and height, or porch/deck/ balcony allowable

Max size still applies: lesser of 1000 sf / 50% PDU

No short term rental

Proposed Town Code Amendments of Chapter 1 – General Provisions, _____, and Chapter 45 – Zoning, Related to Child Care

Planning Board recommends _____ (#-#)
Select Board recommends _____ (#-#)

DRAFT for December 6, 2022 Planning Board review

Short title

Proposed Town Code Amendments of Chapter 1 – General Provisions, _____, and Chapter 45 – Zoning, Related to Child Care

Ballot question – Town Meeting and Referendum, June 6, 2023

ARTICLE #__: Shall an Ordinance entitled "[insert final title here]" be enacted?
(A copy of this ordinance is available in the Town Clerk's Office)

Background and rationale

[to be added]

New text underlined in bold
~~Deleted text in strikethrough~~
[Text in brackets, bold, and italics introduces a large block of new text:]
[Text in brackets and italics is a temporary explanatory note]

Sec. 1-2. - Definitions and rules of construction.

[abridged to only show changes]

[…]

Child care center **means: (1) a house or other place in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for 13 or more children under 13 years of age; or (2) Any location or locations operated as a single child care program or by a person or persons when there are more than 12 children being cared for.**

State law reference – 22 MRSA 8301-A(1-A)

Child care facility **means a child care center, small child care facility, or nursery school. "Child care facility" does not include a facility operated by a family child care provider, a youth camp licensed under 22 MRSA 2495, programs offering instruction to children for the purpose of teaching a skill such as karate, dance or basketball, a formal public or private school in the nature of a kindergarten or elementary or secondary school approved by the Maine Commissioner of Education in accordance with MRSA Title 20-A or a private school recognized by the Maine Department of Education as a provider of equivalent instruction for the purpose of compulsory school attendance. Any program for children under 5 years of age that is located in a private school and programs that contract with one or more Child Development Services System sites are required to be licensed as a child care facility.**

State law reference – 22 MRSA 8301-A(1-A)

~~*Day nurseries* means a house or other place in which a person maintains or otherwise carries out, for consideration, a regular program which provides care for three or more children. This term includes day care centers.~~

[…]

Family child care provider **means a person who provides day care in that person's home on a regular basis, for consideration, for 3 to 12 children under 13 years of age who**

are not the children of the provider or who are not residing in the provider's home. If a provider is caring for children living in that provider's home and is caring for no more than 2 other children, the provider is not required to be licensed as a family child care provider.

[…]

Nursery school **means a house or other place in which a person or combination of persons maintains or otherwise carries out for consideration during the day a regular program that provides care for 3 or more children 33 months of age or older and under 8 years of age, provided that:**

(1) No session conducted for the children is longer than 3 1/2 hours in length;

(2) No more than 2 sessions are conducted per day;

(3) Each child in attendance at the nursery school attends only one session per day; and

(4) No hot meal is served to the children.

"Nursery school" does not include any facility operated as a child care center or small child care facility licensed under subsection 22 MRSA 8301-A(2), a youth camp licensed under section 22 MRSA 2495, or a public or private school in the nature of a kindergarten approved by the Maine Commissioner of Education, in accordance with MRSA Title 20-A.

State law reference – 22 MRSA 8301-A(1-A)

~~*Nursery schools*. See "day nurseries."~~

[…]

Private school **means an academy, seminary, institute or other private corporation or body formed for educational purposes covering kindergarten through grade 12 or any portion thereof.**

State law reference – 20-A MRSA 1

[…]

Public school **means a school that is governed by a school board of a school administrative unit and funded primarily with public funds.**

State law reference – 20-A MRSA 1

[…]

School means ~~any institution at which instruction is given in a particular discipline.~~ **a public school or private school. It does not mean a child care facility, although a child care facility may be located within a school as provided in the definition of *child care facility* in this section.**

[…]

Small child care facility **means a house or other place, not the residence of the operator, in which a person or combination of persons maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for 3 to 12 children under 13 years of age.**

State law reference – 22 MRSA 8301-A(1-A)

Sec. 45-290. - Table of permitted and prohibited uses.

The following table of land uses designates permitted uses by a yes and prohibited uses by a no. Any use not listed is a prohibited use. The letters CEO, SPR, and SD are explained in section 45-402.

Table of Land Uses

Land uses	R	S	V	C/I
Accessory dwelling unit	CEO	CEO	CEO	CEO
Agriculture, except animal breeding and care	yes	yes	yes	no
Animal breeding	yes[1]	12	SPR[1&8]	no
Animal husbandry	yes[1]	yes[1]	yes[1]	no
Apartment house, see multiple-family dwelling	—	—	—	—
Apartment, see single-family dwellings	—	—	—	—
Aquaculture	13	13	SPR[8]	no
Assisted living facility	no	SPR/SD	SPR/SD	SPR/SD
Auto graveyards	SPR	no	no	no
Auto hobbyist storage area	SPR	SPR	no	no
Auto junkyard	no	no	no	no
Auto recycling business	9	9	no	SPR
Auto recycling operation, principal	9	no	no	SPR
Auto recycling operation, limited	9	9	no	SPR
Auto repair garages	14	14	SPR[8]	SPR
Auto service stations	no	9	no	SPR
Banks	no	no	SPR	SPR
Bathhouse	11	11	no	no
Bathing beach	yes	yes	yes	no
Bed and breakfasts	14	14	SPR[8]	SPR
Boarding homes, see lodging businesses	—	—	—	—
Boarding kennel	no	no	no	SPR
Bulk oil fuel tanks	no	no	no	SPR[2]

Business office	14	14	SPR[8]	SPR
Campgrounds	SPR	no	no	no
Cemeteries	SPR	SPR	SPR	no
Child care facility: child care center	**no**	**no**	**no**	**SPR**
Child care facility: family child care provider	**SPR[8]**	**SPR[8]**	**SPR[8]**	**SPR[8]**
Child care facility: nursery school	**no**	**no**	**no**	**SPR**
Child care facility: small child care facility	**SPR[22]**	**SPR[22]**	**SPR[22]**	**SPR**
Clearing	yes	yes	yes	yes
Clinics	no	no	no	SPR
Clustered housing	SPR	no	no	no
Commercial adult enterprise	no	no	no	SPR
Commercial establishment, 2 or more where allowed	-	9	no	SPR
~~Day nurseries~~	~~SPR~~	~~16~~	~~SPR[8]~~	~~SPR~~
Earth material removal, less than 100 cubic yards 100 cubic yards or greater	yes SPR	yes SPR	yes SPR	yes SPR
Elderly housing	no	SPR/SD	SPR/SD	SPR/SD
Emergency operations	yes	yes	yes	yes
Equipment storage, trucks, 3 or more	no	no	no	yes
Essential services	yes	yes	yes	yes
Expansion of an existing telecommunication structure or collocation of antenna on a existing telecommunication structure or alternate tower structure	CEO	CEO	CEO	CEO
Farm equipment stores	SPR	10	no	SPR
Fences	yes[5]	yes[5]	yes[5]	yes[5]
Firewood sales	yes	13	SPR[8]	yes
Fireworks sales	no[19]	no[19]	no[19]	no[19]
Forest management, except timber harvesting	yes	yes	yes	yes
Funeral establishment	no	no	SPR	SPR
Gambling casino	no	no	no	no
Gardening	yes	yes	yes	yes

Gasoline stations	no	9	no	SPR
Governmental buildings or uses	SPR	SPR	SPR	SPR
Grain or feed stores	SPR	10	no	SPR
Harvesting wild crops	yes	yes	yes	yes
Home business	SPR[8]	SPR[8]	SPR[8]	no
Home occupations	10	10	no	no
Home office	CEO	CEO	CEO	CEO
Hospitals	no	no	no	SPR
Indoor commercial, recreational and amusement facilities	no	no	no	SPR
Industrial and business research laboratory	no	no	no	SPR
Industrial establishments and uses	no	no	no	SPR
Institutional buildings and uses, indoor	no	9	no	no
Junkyards	no	no	no	no
Landfill, dump	no	no	no	no
Libraries	SPR	SPR	SPR	SPR
Life care facility	no	SPR/SD	SPR/SD	SPR/SD
Lodging businesses, including bed and breakfasts, boarding homes or houses, hotels, inns, lodginghouses, rooming homes, and the like	14	14	SPR[8]	SPR
Manufacturing	SPR[8]	SPR[8]	SPR[8]	SPR
Marijuana establishment*	no	no	no	SPR[20]
Medical marijuana establishment*	no	no	no	SPR[20]
Mobile home parks	SPR/ SD[7]	SPR/SD[7]	SPR/SD[7]	no
Motel	no	no	no	SPR
Multiple-family dwelling	no	SPR	SPR	no
Museums	SPR	SPR	SPR	SPR
New construction of telecommunication structure 70 feet and higher	9	9	no	SPR

New construction of telecommunication structure less than 70 feet high	CEO	CEO	CEO	CEO
Nurseries, plants	CEO	17	SPR[8]	no
Nursing facility	no	SPR	SPR	SPR
Off-site parking	no	no	no	no
Parks	SPR	SPR	SPR	no
Places of worship	SPR	SPR	SPR	SPR
Playgrounds	SPR	SPR	SPR	no
Printing plant	14	14	SPR[8]	SPR
Produce and plants raised locally, seasonal sales	yes	yes	yes	no
Professional offices	14	14	SPR[8]	SPR
Public utility facilities	SPR	SPR	SPR	SPR
Recreational facilities, nonintensive	SPR	SPR	SPR	no
Recreational use not requiring structures	SPR	yes	yes	no
Restaurant	9	9	SPR[8]	SPR
Restaurant, takeout	no	no	no	SPR
Retail stores, local, other	18	18	SPR[8]	SPR
Road construction	CEO	CEO	CEO	SPR
Schools	SPR	SPR	SPR	SPR
Sewage disposal systems, private	CEO	CEO	CEO	CEO
Signs, 6 square feet	CEO	CEO	CEO	CEO
Signs, other	CEO	CEO	CEO	CEO
Single-family dwellings	CEO	CEO	CEO	no[6]
Small wind energy system	SPR	SPR	SPR	SPR
Solar energy system, small-scale ground mounted or roof-mounted	CEO[21]	CEO[21]	CEO[21]	CEO[21]
Solar energy system, larger-scale	SPR[21]	SPR[21]	no	SPR[21]
Surveying and resource analysis	yes	yes	yes	yes
Timber harvesting	yes	yes	yes	yes

Truck terminals and storage	no	no	no	SPR
Two-family dwellings	CEO	CEO	CEO	no[6]
Veterinary hospital	15	15	No	SPR
Warehouse	no	no	no	SPR
Waste containers	CEO[3]	CEO[3]	CEO[3]	CEO[3]
Wholesale	no	no	no	SPR
Wholesale business facilities	no	no	no	SPR
Uses similar to allowed uses	CEO	CEO	CEO	CEO
Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO
Uses similar to uses requiring a planning board permit	SPR	SPR	SPR	SPR

*Marijuana establishment and medical marijuana establishment are defined in section 11-3 of this Code.

Notes:

1. Buildings housing animals shall be no less than 100 feet from property lines.

2. Each bulk oil fuel tank shall not exceed 50,000 gallons in size and use shall be limited to local use only.

3. Only as an accessory to an allowed principal use on the lot. Must conform to the requirements of 45-422, Waste containers.

4. Individual stores shall not have more than 2,500 square feet of gross floor area, except stores located on Route 236 may have up to 5,000 square feet. Customer sales areas shall be confined to one floor.

5. Must conform to the requirements of section 45-423.

6. See section 45-192(b) for an exception on accessory uses and structures.

7. See division 2 of article V of chapter 41 of this Code for specific areas where mobile home parks are allowed.

8. Must conform to the requirements of section 45-456.1 Home business.

9. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.

10. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.

11. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "CEO" and must be visually screened from abutting (same street side) non-commercial properties.

12. Use is "SPR 1 & 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR 1" and must be visually screened from abutting (same street side) non-commercial properties.

13. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "yes" and must be visually screened from abutting (same street side) non-commercial properties.

14. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.

15. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties in accordance with Sec. 33-175(a). Overnight boarding and outdoor kenneling of animals is prohibited in the rural and suburban zoning districts.

16. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) noncommercial properties.

17. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "CEO" and must be visually screened from abutting (same street side) noncommercial properties.

18. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR 4" and must be visually screened from abutting (same street side) noncommercial properties.

19. See chapter 12 for additional regulations pertaining to the sale and use of fireworks.

20. Must conform to the requirements of section 33-190. Marijuana establishments and medical marijuana establishments may only be authorized as principal uses, and not as accessory uses.

21. Must conform to the requirements of section 45-462.

22. [adaptive reuse pilot program]

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 207); T.M. of 12-15-93; Amend. of 3-25-95; T.M. of 3-27-99(1), § 5; Ord. of 3-25-00(1); T.M. of 3-16-02, (art. 3), (art. 4); T.M. of 6-19-01, (art. 6), (art. 7); T.M. of 11-5-02; T.M. of 11-4-03; T.M. of 11-4-03; T.M. of 3-20-04; T.M. of 6-14-08; T.M. of 6-12-2010(3); T.M. of 6-18-2011(6); T.M. of 11-8-2011; T.M. of 6-16-2012(1); T.M. of 6-16-2012(2); T.M. of 11-5-2019(5); T.M. of 7-14-2020(5) ; T.M. of 6-8-2021(2) , art. 33; T.M. of 6-8-2021(4) , art. 31; T.M. of 11-2-2021(4) , art. 5; T.M. of 6-14-2022(2) , art. 25)

Cross reference(s)—Review procedures and standards for site review requirements in the zoning table of uses, § 33-56 et seq.

Impact Fee and TIF Study

Except from my initial FY23-24 budget request – Jeff Brubaker

- Impact fees are fees "assessed on new residential, commercial and industrial development to offset the cost of additional municipal infrastructure made necessary by the development" (MMA 2000)
- Potential uses include (30-A MRSA 4354):
    - Waste water collection and treatment facilities;
    - Municipal water facilities;
    - Solid waste facilities;
    - Public safety equipment and facilities;
    - Roads and traffic control devices;
    - Parks and other open space or recreational areas; and
    - School facilities
- Definition in statute (30-A MRSA 4301): "…a charge or assessment imposed by a municipality against a new development to fund or recoup a portion of the cost of new, expanded or replacement infrastructure facilities necessitated by and attributable at least in part to the new development."
- Impact fees cannot be used for non-capital costs, such as operations and maintenance, managing existing deficiencies, or facilities that will not serve the new development (State Planning Office 2003)
- Requirements for establishing impact fees (MMA Info Packet 2018)
    - Established by an ordinance consistent with Comp Plan
    - "reasonably related to the development's share of the cost of infrastructure improvements made necessary by the development"
    - "segregated from the municipality's general revenue"
    - "consistent with the capital investment component of the municipality's comprehensive plan and according to a fee schedule"
    - Refunded if fee or portion thereof exceeds actual costs
- Support for Impact Fees in current Comp Plan (2009)
    - **Survey Question 14:** Should developers pay impact fees to offset Town services? Yes (86%); No (7%)
    - "The town may need to explore all possible financing options for additional facilities as well, including impact fees…"
    - TIF projects "can be combined with other sources of funds (from the state, impact fees or other sources) to help pay for infrastructure."
    - Future Land Use Policy 3, Strategy 6: "Develop local sources of funding for a conservation acquisition program in Eliot with a focus on developing and maintaining

an open space fund through various mechanisms to be considered…Development of a conservation impact fee"
    - Economy Policy 2, Strategy 2: "If public investments for economic development are envisioned, identify the mechanisms to be considered to finance them ([e.g.] impact fees, etc.)."
    - Transportation Policy 2, Strategy 1: "Develop a transportation impact fee system."
    - Outdoor and Active Recreation Resources Policy 2, Strategy 3: "Consider an impact fee on new residential development for purchasing needed recreational facilities and open space based on needs identified through an assessment of facilities and standards described in policy 2, strategy 1 above."
    - Public Facilities and Governmental Services Policy 2, Strategy 4: "Examine grants, user fees, impact fees, off-site improvements through the development approval process and other methods to help augment town capital planning efforts"
- The study would inform the Town in setting impact fee levels for allowable impact fee categories.
- Another purpose of the study is to estimate reasonable prorated amounts that the Route 236 TIF District could contribute to TIF-eligible capital improvements where there is a partial benefit to the TIF District but a partial benefit outside the TIF District. For example, the study could estimate the percentage of traffic volume for a certain intersection that serves TIF properties, and estimate the TIF district's allowable share for improvements to that intersection.
- Request: **$50,000** in FY23-24 budget for Impact Fee portion, **$25,000** from TIF to pay for TIF portion