

TOWN OF ELIOT  
INCORPORATED 1810  
1333 STATE ROAD  
ELIOT, MAINE 03903  
439-1813

## AGENDA ELIOT BOARD OF APPEALS

TYPE OF MEETING : REGULAR MEETING      DATE: February 26, 2020

LOCATION : ELIOT TOWN HALL      TIME : 7:00 P.M.

1. 7:00 PM: ROLL CALL
2. PUBLIC COMMENT PERIOD
3. PUBLIC HEARINGS:
  - A. Theory Wellness of Maine 2, LLC, requesting a Reconsideration of Board of Appeals decision of January 16, 2020, regarding waiver of dimensional standards on property located at 151 Harold Dow Highway, Map 29, lot 25
  - B. Raymond Neufeld, Map 17, lot 29, Village district, Limited Residential, Shoreland Zone, requesting a waiver of dimensional standards on property located at 17 Riverside Drive
4. REVIEW AND APPROVE PREVIOUS MINUTES
5. CONTINUED REVIEW OF PROPOSED WAIVER AMENDMENT
6. OTHER BUSINESS
7. ADJOURN

POSTED  
2/12/20

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Bill Hamilton, Chairman  
Board of Appeals

cc: CEO,  
S/M,  
BOA MEMBERS

# Public Hearing Notice

*Authority: Eliot Board of Appeals*

*Date: Wednesday, February 26, 2020*

*Time: 7:00 P.M.*

*Place: Eliot Town Hall, 1333 State Road*

The Town of Eliot Board of Appeals will hold Public Hearings on February 26, 2020, on the following appeals to the Town of Eliot, Maine, Municipal Code Ordinances:

- **Theory Wellness of Maine 2, LLC, requesting a reconsideration of Board of Appeals decision of January 16, 2020, regarding waiver of dimensional standards on property located at 151 Harold L. Dow Highway, map 29, lot 25.**
- **Ray Neufeld, applicant, Earnest Searles, owner, requesting a setback waiver for property located at Riverside Avenue, Tax map 003, lot 004, located in the Village District, with Limited Residential and Resource Protection overlay zones.**

POSTED  
2 | 12 | 20

Town of Eliot  
1333 State Road  
Eliot, ME 03903

## BOARD OF APPEALS PUBLIC HEARING NOTICE

February 13, 2020

Dear Property Owner:

You are receiving this notice because you are an abutter to an application that was submitted to the Board of Appeals for review. The Board of Appeals has scheduled a public hearing on the application(s) at the date and time listed below for the purpose of soliciting comments on the application.

### Public Hearing Notice

*Authority: Eliot Board of Appeals*

*Date: Wednesday, February 26, 2020*

*Time: 7:00 P.M.*

*Place: Eliot Town Hall, 1333 State Road*

The Town of Eliot Board of Appeals will hold Public Hearings on February 26, 2020, on the following appeals to the Town of Eliot, Maine, Municipal Code Ordinances:

- **Theory Wellness of Maine 2, LLC, requesting a reconsideration of Board of Appeals decision of January 16, 2020, regarding waiver of dimensional standards on property located at 151 Harold L. Dow Highway, map 29, lot 25.**
- **Ray Neufeld, applicant, Earnest Searles, owner, requesting a setback waiver for property located at Riverside Avenue, Tax map 003, lot 004, located in the Village District, with Limited Residential and Resource Protection overlay zones.**

If you are interested in the specific details of the application, you may review the application, and any supporting materials that have been submitted during normal business hours (Monday 10:00 – 5:00, Tuesday & Thursday 8:00-4:00, Wednesday 8:00-12:00 and Friday 6:30-1:00)

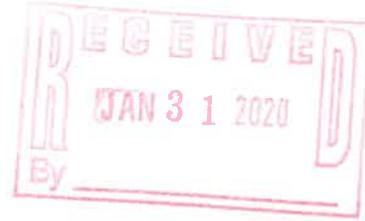
Although an overview of the application will be presented at the public hearing, it is your responsibility to inform yourself as to the specific content and details of the proposal under consideration. During the public hearing, you will be allowed to ask questions, speak in favor of, and/or express concerns. If you cannot attend the public hearing, you may submit written comments to the Code Enforcement Office via email or in person.

This is the only notice you will receive. If the application is continued to a future meeting, you will not be notified again. Please feel free to contact us at (207) 439-1813 with any questions.

January 31, 2020

BY HAND DELIVERY

William Hamilton, Chairman  
Town of Eliot Zoning Board of Appeals  
Town of Eliot  
1333 State Road  
Eliot, Maine



RE: Request for Reconsideration of the Eliot Board of Appeals Denial of  
Theory Wellness of Maine 2, LLC's Waiver Request

Dear Chairman Hamilton and Members of the Board of Appeals:

Please accept this letter as a request for reconsideration by Theory Wellness of Maine 2, LLC ("Theory Wellness") of the Board of Appeals ("Board") January 23, 2020 decision to deny Theory Wellness's request for a waiver of the dimensional requirement that its proposed adult use marijuana retail store may not be sited within 500 feet of a public facility.

**Background**

As you know, Theory Wellness proposes to operate an adult use marijuana retail store at 151 Harold L. Dow Highway in the Town of Eliot. The property is located in the Commercial Industrial District (Map 29, Lot 25), on a non-conforming lot of record. Theory Wellness submitted a complete application to the Board on December 23, 2019 asking the Board to grant Theory Wellness a waiver from the requirement that the proposed store be set back at least 500 feet from the lot line of a public facility. *See* Article III, § 33-190(5) of the Town's Code of Ordinances (the "Code") (providing that "[n]o marijuana store structure shall be sited within 500 feet of the lot lines of any public facility").

Importantly, the Code provides that any setback deviation for a non-conforming lot of record, such as this one, may be permitted as a *waiver* up to a maximum 50 percent reduction, and that any *further* reduction frontage, setback or yard requirements shall be considered a *variance*. *See* Eliot, Me, Code of Ordinances, Article III, § 45-194(c)(2).

On January 16, 2020, the Board held a public hearing concerning Theory Wellness's application, which specifically sought a waiver to reduce the 500-foot setback requirement from the Eliot Post Office—a public facility—by 26 percent. At the hearing, the Board determined that the Eliot Post Office's lot line is located 372.1 feet from Theory Wellness's proposed retail store—well within the 50 percent threshold applicable to a waiver request. A Board member noted, however, that there appeared to be "residents" located within 500 feet of Theory Wellness's proposed store. Specifically, it was claimed that there were six (6) "residents" within 500 feet of the proposed store. The CEO stated during the hearing that the proposed store's proximity to these "residents" had not been flagged as an issue prior to the hearing.

On January 23, 2020, the Board issued a written decision denying Theory Wellness's request for a waiver by effectively *sua sponte* converting Theory Wellness's application seeking a waiver to reduce the 500-foot setback requirement from the Eliot Post Office to a request for a variance from the setback

January 31, 2020

Page 2

requirement applicable to residential properties—a variance that Theory Wellness had not requested in its application.

The standards applied by the Board in its written decision to Theory Wellness’s waiver request parrot the standards for granting a variance under the Code:<sup>1</sup> The Board found that Theory Wellness met the requirement that “the need for the waiver [is] due to the unique circumstances of the property and not to the general condition of the neighborhood” and that granting the waiver would not “alter the essential character of the locality,” but voted that Theory Wellness had not met the requirement that “the hardship [to the applicant is] the result of action taken by the applicant or a prior owner” or that “the granting the waiver [will] substantially reduce or impair the use of abutting property.” The Board therefore denied the waiver application.

### **Request For Reconsideration**

Theory Wellness did not have an opportunity to present to the Board facts or argument regarding the standards applicable for a residential setback variance because it did not submit such a variance request to the Board. Specifically, Theory Wellness was not given the opportunity to develop evidence and testimony as to whether or not any alleged “residents” are located within 500 feet of the proposed store or whether any such residents indeed qualify as a “residential property”—the actual standard in Section 33-190(5) of the Code.

Accordingly, Theory Wellness respectfully requests that the Board reconsider its January 23<sup>rd</sup> decision denying Theory Wellness’ waiver application and schedule a reconsideration hearing to allow Theory Wellness to present evidence and argument concerning the land use status of the properties within 500 feet of the proposed store, which the Board *sua sponte* identified as “residents,” as well as the variance standards to the extent they apply here.

Thank you for your consideration of this request. If you have any questions, please don’t hesitate to contact me.

Very truly yours,



Agnieszka A. Dixon

cc: Brandon Pollock (via e-mail)  
Shelly Bishop, CEO (via e-mail)

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<sup>1</sup> Specifically, the Code requires that an applicant demonstrate four elements in order to obtain a setback variance: (1) That the land in question cannot yield a reasonable return unless a variance is granted; (2) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; (3) That the granting of the variance will not alter the essential character of the neighborhood; and (4) That the hardship is not the result of action taken by the applicant or a prior owner. Eliot, Me., Code of Ordinances Article III, § 45-49(b); *see also* 30-A M.R.S. § 4353(4-C).



# Abutters List Report

Eliot, ME  
January 03, 2020

## Subject Property:

Parcel Number: 029-025-000  
CAMA Number: 029-025-000  
Property Address: 155 HAROLD L DOW HWY

Mailing Address: LETELLIER, MATTHEW HRS OR DEVS  
C/O ELIOT DONUTS LLC  
369 LAFAYETTE ST  
HAMPTON, NH 03842

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## Abutters:

Parcel Number: 022-001-000  
CAMA Number: 022-001-000  
Property Address: BEECH RD

Mailing Address: LEAVITT, ROBERTA IRREVOCABLE  
TRUST JEANETTE K LASORSA  
TRUSTEE  
1172 STATE RD  
ELIOT, ME 03903

Parcel Number: 022-005-000  
CAMA Number: 022-005-000  
Property Address: BEECH RD

Mailing Address: HERBOLD, SETH  
13 BITTERSWEET LN  
ELIOT, ME 03903

Parcel Number: 029-021-000  
CAMA Number: 029-021-000  
Property Address: 162 HAROLD L DOW HWY

Mailing Address: IRVING OIL LIMITED ATTN:  
CORPORATE REAL ESTATE  
PO BOX 868  
CALAIS, ME 04619

Parcel Number: 029-022-000  
CAMA Number: 029-022-000  
Property Address: 160 HAROLD L DOW HWY

Mailing Address: GROGAN, MICHAEL F GROGAN, DONNA  
J  
PO BOX 482  
ELIOT, ME 03903

Parcel Number: 029-023-000  
CAMA Number: 029-023-000  
Property Address: 153 HAROLD L DOW HWY

Mailing Address: LAWRENCE, DAVID  
21 LYNCH LN  
KITTEERY, ME 03904

Parcel Number: 029-026-000  
CAMA Number: 029-026-000  
Property Address: 17 LEVESQUE DR

Mailing Address: ELIOT COMMONS PROFESSIONAL PRK  
C/O HASKELL KINGSTON  
17 LEVESQUE DR SUITE 4  
ELIOT, ME 03903

Parcel Number: 029-027-001  
CAMA Number: 029-027-001  
Property Address: 33 LEVESQUE DR

Mailing Address: M H PARSONS & SONS LUMBER CO  
WOODBRIIDGE RD  
YORK, ME 03909

Parcel Number: 030-003-000  
CAMA Number: 030-003-000  
Property Address: 150 HAROLD L DOW HWY

Mailing Address: SHAPLEIGH, NANCY E  
28 SANDY HILL LN  
ELIOT, ME 03903

Parcel Number: 030-004-000  
CAMA Number: 030-004-000  
Property Address: 247 HANSCOM RD

Mailing Address: WILLIAMS, MICHAEL T WILLIAMS,  
AMANDA M  
247 HANSCOM RD  
ELIOT, ME 03903



www.cai-tech.com

Data shown on this report is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this report.

1/3/2020

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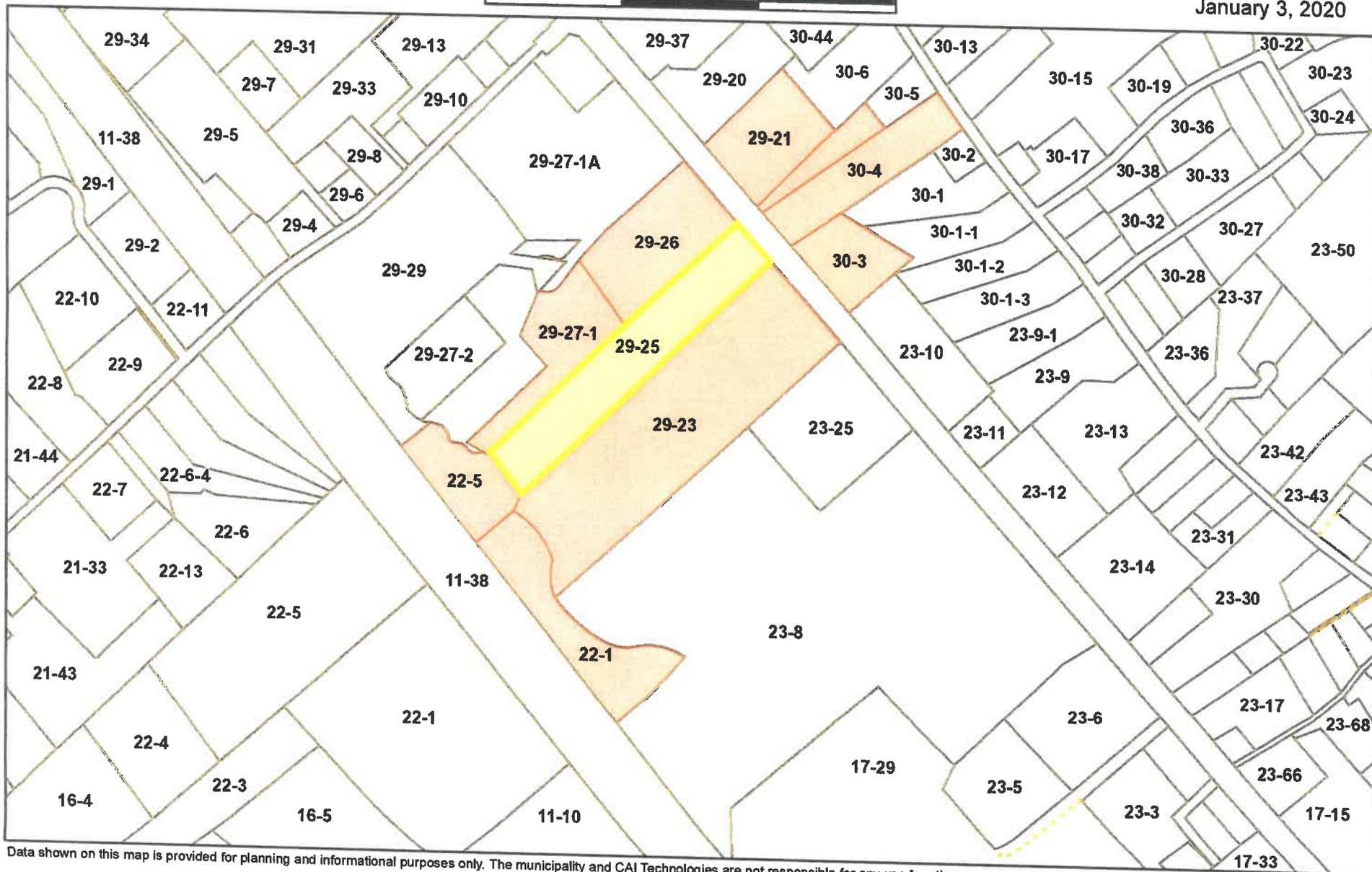
Eliot, ME



1 inch = 549 Feet



January 3, 2020



Abutter

Certified Mail #

ELIOT COMMONS PROFESSIONA  
C/O HASKELL KINGSTON  
17 LEVESQUE DR SUITE 4  
ELIOT, ME 03903

7190 1682 5150 0019 9341

GROGAN, MICHAEL F  
GROGAN, DONNA J  
PO BOX 482  
ELIOT, ME 03903

7190 1682 5150 0019 9334

HERBOLD, SETH  
13 BITTERSWEET LN  
ELIOT, ME 03903

7190 1682 5150 0019 9327

IRVING OIL LIMITED  
ATTN: CORPORATE REAL ESTA  
PO BOX 868  
CALAIS, ME 04619

7190 1682 5150 0019 9310

LAWRENCE, DAVID  
21 LYNCH LN  
KITTERY, ME 03904

7190 1682 5150 0019 9143

LEAVITT, ROBERTA IRREVOCA  
JEANETTE K LASORSA TRUSTE  
1172 STATE RD  
ELIOT, ME 03903

7112 4369 4680 2177 9441

M H PARSONS & SONS LUMBER  
WOODBRIDGE RD  
YORK, ME 03909

7112 4369 4680 2177 9458

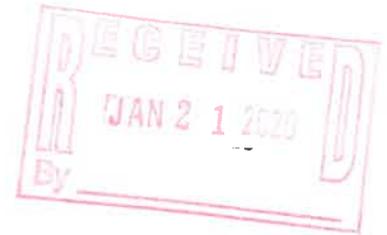
SHAPLEIGH, NANCY E  
28 SANDY HILL LN  
ELIOT, ME 03903

7112 4369 4680 2177 9465

WILLIAMS, MICHAEL T  
WILLIAMS, AMANDA M  
247 HANSCOM RD  
ELIOT, ME 03903

7112 4369 4680 2177 9472

**Eliot Board of Appeals  
TOWN OF ELIOT  
1333 State Road  
Eliot, Maine 03903**



**REQUEST FOR WAIVER**

Dear Appellant:

The Eliot Board of Appeals (BOA) has prepared this letter to ensure that you are aware of what will be expected of you when you present your case before the Board. In order for the BOA to consider a case, the law requires that you present the Board with a complete application. The purpose of this letter is to provide you with instructions on how to meet your responsibilities, so the Board may hear your case and judge it fairly.

You are requesting a WAIVER to frontage, setback, or yard size requirements. The BOA is authorized by Section 404.3.2 of the Eliot Zoning Ordinance to reduce these requirements by between 25 and 50% of that specified in the Zoning Ordinance, Section 305. (The BOA is not authorized to grant waivers in other attributes of Section 305, nor can the BOA reduce setbacks from the high water mark for property abutting shoreland. Such items must be addressed by a VARIANCE REQUEST). The Code Enforcement Officer may reduce frontage, setback, or yard size requirements up to 25% of the standard.

It is your responsibility to PROVE to the BOA that a waiver is necessary. You must present evidence to the BOA, which shows that you cannot make reasonable use of your land without the waiver. Note that the fact that a waiver would enhance the desirability of your land is NOT sufficient if you can comply with the ordinance without a waiver.

You must provide the Board with the factual information required on the WAIVER REQUEST form. Therefore, you must provide the BOA with proof that you have a legal interest in the property about which you are bringing an appeal. You must describe the property (a plot plan is usable), describe the waiver you seek, and prove that you cannot meet the requirements of the ordinance. If you do not know what zoning district your property is in or specific zoning restrictions on the property, you may obtain this information from the Town Offices.

Be sure to complete the application form and provide the Board with documentation of your case. You may bring to the hearing any witnesses you wish to have present evidence on your behalf about the property in question, any sworn written statements from individuals with personal knowledge of the property, and any documentation of previous requests for waivers, or variances.

In the event you are granted a waiver, you must record the waiver in the Registry of Deeds within 90 days as required by State Law in order for the waiver to be valid. Therefore, be sure to obtain a signed "Certificate of Waiver Approval" from the Board of Appeals.

Please pay special attention to the five questions on the Request for Waiver Application and answer them in detail to the best of your ability.

There is a One Hundred and Fifty Dollar (\$150.00) application fee payable at time of submittal. 10 copies and original of the application and associated materials shall be submitted by the appellant.

**BOARD OF APPEALS  
REQUEST FOR WAIVER**

Zone : Village district,  
          : limited residential  
Lot Size : 18,902 sq ft.  
Tax Map/Lot : 003-004  
Date : 1-10-2020

APPLICANT NAME : Ray Neufeld  
MAILING ADDRESS : 36 Cunningham ave, Floral Park NY 11001-3242  
TOWN : Floral Park NY 11001-3242  
OWNER OF PROPERTY : Ernest Searles

LOCATION (ADDRESS) OF PROPERTY: Riverside Ave., Eliot

YORK COUNTY REGISTRY:            BOOK 15905            PAGE 618-619

Please also include:

1. Site Location Map (Tax Map)
2. Proof of Ownership or Valid Option
3. Proof of Proper Representation (if you will not be appearing at the Public Hearing yourself)

In addition, a sketch plan, scale not less than 1"-20', of the property must accompany this application. It must show dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of proposed buildings or alterations, and any natural peculiarities of the lot in question.

The undersigned requests the Board of Appeals consider granting a Waiver as follows:

**A. Nature of Waiver: Describe generally the nature of the waiver.**

To reduce setbacks for front and rear by 25%.  
Attachment #1 shows preliminary survey with current setbacks  
and proposed new home and shows areas where home does  
not fit within current setbacks. Attachment #2 shows  
a potential 25% reduction in setbacks and the home  
fitting within these setbacks.  
The request is to grant waiver reducing front and  
rear setbacks to 22.5 feet so that the proposed home  
can be built on this lot.

The Board of Appeals will use the following to evaluate request for dimensional Waivers. All applicants for dimensional waivers under the provisions of Section 45-194 should answer the following questions to the best of

their ability. If Board members desire additional information they will ask for it at the Public hearing on your request.

1. Is the need for the Waiver due to the unique circumstances of the property and not to the general conditions of the neighborhood?

yes, the set backs on the subject property are unique to the property and not conditions of the neighborhood

2. Will granting of a waiver, alter the essential character of the locality?

No, the waiver will allow a modest single family home consistent with other homes in the neighborhood to be built.

3. Is the hardship the result of action taken by the applicant or a prior owner?

No. The subject property is a legally non-conforming lot. We'd like to build a new home on the lot but a reasonable home won't fit with set backs as they are currently

4. Will granting of the waiver substantially reduce or impair the use of abutting property and

No. The other homes in the neighborhood & home owners will not be impaired in use.

5. Is the granting of a waiver based upon demonstrated need, not convenience, and is there no other feasible alternative available?

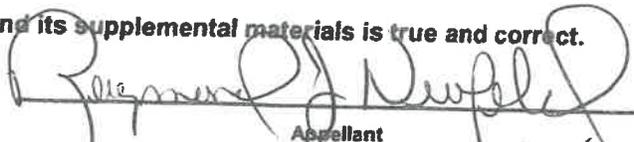
The waiver is based on need. The building envelope without waiver will not allow a reasonably sized home to be built. Attachment #1 shows building envelope without waiver and proposed home with areas of non-compliance. Attachment #2 shows building envelope with waivers and shows proposed home fitting on the subject property

I certify that the information contained in this application and its supplemental materials is true and correct.

DATE:

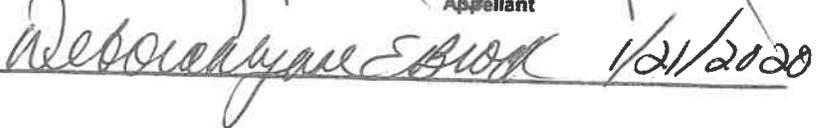
January 13<sup>th</sup>, 2020

Signed:



Appellant

Date accepted by Town Clerk or CEO:

 1/21/2020

P&S and Extension showing Valid Option

DocuSign Envelope ID: 02263351-A9F4-4771-88C7-613FC3AC276E

DocuSign Envelope ID: B9431F4D-CC95-4C3A-AD8A-89970D08DAED

**PURCHASE AND SALE AGREEMENT - LAND ONLY**  
("days" means business days unless otherwise noted, see paragraph 20)

Offer Date August 12, 2019

10/22/2019 Effective Date  
Effective Date is defined in Paragraph 20 of this Agreement.

1. PARTIES: This Agreement is made between Raymond J. Neufeld ("Buyer") and Eleanor S. Krueger, Joan E. Searles, Dennis H. Searles, Ernest O. Searles, Joan E. Searles, Ernest O. Searles ("Seller").

2. DESCRIPTION: Subject to the terms and conditions hereinafter set forth, Seller agrees to sell and Buyer agrees to buy  all part of (if "part of" see para. 22 for explanation) the property situated in municipality of Elliot, County of York, State of Maine, located at Address # forthcoming Riverside Ave, and described in deed(s) recorded at said County's Registry of Deeds Book(s) 15905, Page(s) 0618.

3. PURCHASE PRICE/EARNEST MONEY: For such Deed and conveyance Buyer agrees to pay the total purchase price of ~~\$190,000.00~~ 183,000. Buyer  has delivered; or  will deliver to the Agency within 3 days of the Effective Date, a deposit of earnest money in the amount \$5,000.00. Buyer agrees that an additional deposit of earnest money in the amount of \$N/A will be delivered. N/A

If Buyer fails to deliver the initial or additional deposit in compliance with the above terms Seller may terminate this Agreement. This right to terminate ends once Buyer has delivered said deposit (s). The remainder of the purchase price shall be paid by wire, certified, cashier's or trust account check upon delivery of the Deed.

This Purchase and Sale Agreement is subject to the following conditions:

4. ESCROW AGENT/ACCEPTANCE: REMAX Shoreline ("Agency") shall hold said earnest money and act as escrow agent until closing; this offer shall be valid until August 16, 2019 (date) 5:00  AM  PM; and, in the event of non-acceptance, this earnest money shall be returned promptly to Buyer.

5. TITLE AND CLOSING: A deed, conveying good and merchantable title in accordance with the Standards of Title adopted by the Maine Bar Association shall be delivered to Buyer and this transaction shall be closed and Buyer shall pay the balance due and execute all necessary papers on within 45 days (closing date) or before, if agreed in writing by both parties. If Seller is unable to convey in accordance with the provisions of this paragraph, then Seller shall have a reasonable time period, not to exceed 30 calendar days, from the time Seller is notified of the defect, unless otherwise agreed to in writing by both Buyer and Seller, to remedy the title. Seller hereby agrees to make a good-faith effort to cure any title defect during such period. If, at the later of the closing date set forth above or the expiration of such reasonable time period, Seller is unable to remedy the title, Buyer may close and accept the deed with the title defect or may terminate this Agreement in which case the parties shall be relieved of any further obligations hereunder and any earnest money shall be returned to the Buyer.

6. DEED: The property shall be conveyed by a Warranty deed, and shall be free and clear of all encumbrances except covenants, conditions, easements and restrictions of record which do not materially and adversely affect the continued current use of the property.

7. POSSESSION: Possession of premises shall be given to Buyer immediately at closing unless otherwise agreed in writing.

8. RISK OF LOSS: Until the closing, the risk of loss or damage to said premises by fire or otherwise, is assumed by Seller. Buyer shall have the right to view the property within 24 hours prior to closing for the purpose of determining that the premises are in substantially the same condition as on the date of this Agreement.

9. PRORATIONS: The following items, where applicable, shall be prorated as of the date of closing: rent, association fees, (other) Real estate taxes shall be prorated as of the date of closing (based on municipality's fiscal year). Seller is responsible for any unpaid taxes for prior years. If the amount of said taxes is not known at the time of closing, they shall be apportioned on the basis of the taxes assessed for the preceding year with a reapportionment as soon as the new tax rate and valuation can be ascertained, which latter provision shall survive closing. Buyer and Seller will each pay their transfer tax as required by State of Maine.

10. DUE DILIGENCE: Buyer is encouraged to seek information from professionals regarding any specific issue or concern. Neither Seller nor Licensee makes any warranties regarding the condition, permitted use or value of Sellers' real property. This Agreement is subject to the following contingencies, with results being satisfactory to Buyer:

Page 1 of 5 - P&S-LO

Buyer(s) Initials [Signature]

Seller(s) Initials [Signature]

CONTINGENCY	YES	NO	FULL RESOLUTION	OBTAINED BY	TO BE PAID FOR BY
1. SURVEY Purpose: _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days	_____	_____
2. SOILS TEST Purpose: _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days	_____	_____
3. SEPTIC SYSTEM DESIGN Purpose: _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days	_____	_____
4. LOCAL PERMITS Purpose: to obtain all required local, state permits to construct a single family home on the parcel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within 30 days	Buyer	Buyer
5. HAZARDOUS WASTE REPORTS Purpose: _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days	_____	_____
6. UTILITIES Purpose: _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days	_____	_____
7. WATER Purpose: _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days	_____	_____
8. SUB-DIVISION APPROVAL Purpose: _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days	_____	_____
9. DEP/LUPC/ACOE APPROVALS Purpose: _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days	_____	_____
10. ZONING VARIANCE Purpose: _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days	_____	_____
11. HABITAT REVIEW/WATERFOWL Purpose: _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days	_____	_____
12. REGISTERED FARMLAND Purpose: _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days	_____	_____
13. MDOT DRIVEWAY/ENTRANCE PERMIT Purpose: _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days	_____	_____
14. DEED RESTRICTION Purpose: _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days	_____	_____
15. TAX STATUS* Purpose: _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days	_____	_____
16. BUILD PACKAGE Purpose: _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days	_____	_____
17. OTHER Purpose: _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days	_____	_____

\* If the land is enrolled in the Maine Tree Growth Tax program, Seller agrees to provide Buyer with the current Forest Management and Harvest Plan within \_\_\_\_\_ days.  Yes  No

Further specifications regarding any of the above: none

Unless otherwise specified above, all of the above will be obtained and paid for by Buyer. Seller agrees to cooperate with Buyer and shall give Buyer and Buyer's agents and consultants reasonable access to the property in order to undertake the above investigations. If the result of any investigation or other condition specified herein is unsatisfactory to Buyer, Buyer will declare the Agreement null and void by notifying Seller in writing within the specified number of days, and any earnest money shall be returned to Buyer. If the result of any investigation or other condition specified herein is unsatisfactory to Buyer, and Buyer wishes to pursue remedies other than voiding the Agreement, Buyer must do so to full resolution within the time period set forth above; otherwise this contingency is waived. If Buyer does not notify Seller that an investigation is unsatisfactory within the time period set forth above, this contingency is waived by Buyer. In the absence of inspection(s) mentioned above, Buyer is relying completely upon Buyer's own opinion as to the condition of the property.

*[Handwritten initials]*

*[Handwritten initials: ESK, JESS]*

11. FINANCING: Buyer's obligation to close:

- is not subject to a financing contingency. Buyer has provided Seller with acceptable proof of the funds.
- is not subject to a financing contingency. Buyer shall provide proof of the funds acceptable to Seller within 5 days. If such proof is unacceptable to Seller, Seller may terminate this Agreement no later than \_\_\_\_\_ days from receipt. If proof of funds is not provided within such time period, Seller may terminate this Agreement which right shall end once such proof is received, however Seller retains the agreed upon time period to terminate if such proof is unacceptable. If Seller terminates in either case, the earnest money shall be returned to Buyer.
- is subject to financing as follows:
  - a. Buyer's obligation to close is subject to Buyer obtaining a \_\_\_\_\_ loan of \_\_\_\_\_ % of the purchase price, at an interest rate not to exceed \_\_\_\_\_ % and amortized over a period of \_\_\_\_\_ years. Buyer is under a good faith obligation to seek and obtain financing on these terms. If such financing is not available to Buyer as of the closing date, Buyer is not obligated to close and may terminate this Agreement in which case the earnest money shall be returned to Buyer.
  - b. Buyer to provide Seller with letter from lender showing that Buyer has made application for loan specified in (a) and, subject to verification of information, is qualified for the loan requested within \_\_\_\_\_ days from the Effective Date of the Agreement. If Buyer fails to provide Seller with such letter within said time period, Seller may terminate this Agreement and the earnest money shall be returned to Buyer. This right to terminate ends once Buyer's letter is received.
  - c. Buyer hereby authorizes, instructs and directs its lender to communicate the status of the Buyer's loan application to Seller, Seller's licensee and Buyer's licensee.
  - d. After (b) is met, if the lender notifies Buyer that it is unable or unwilling to provide said financing, Buyer is obligated to provide Seller with written documentation of the loan denial within two days of receipt. After notifying Seller, Buyer shall have \_\_\_\_\_ days to provide Seller with a letter from another lender showing that Buyer has made application for loan specified in (a) and, subject to verification of information, is qualified for the loan requested. If Buyer fails to provide Seller with such letter within said time period, Seller may terminate this Agreement and the earnest money shall be returned to Buyer. This right to terminate ends once Buyer's letter is received.
  - e. Buyer agrees to pay no more than \_\_\_\_\_ points. Seller agrees to pay up to \$ \_\_\_\_\_ toward Buyer's actual pre-pays, points and/or closing costs, but no more than allowable by Buyer's lender.
  - f. Buyer's ability to obtain financing  is  is not subject to the sale of another property. See addendum  Yes  No.
- Buyer may choose to pay cash instead of obtaining financing. If so, Buyer shall notify Seller in writing including providing proof of funds and the Agreement shall no longer be subject to financing, and Seller's right to terminate pursuant to the provisions of this paragraph shall be void and Seller's obligations pursuant to 11e shall remain in full force and effect.

12. BROKERAGE DISCLOSURE: Buyer and Seller acknowledge they have been advised of the following relationships:

Marcel Bartley ( ) of RE/MAX Shoreline ( )  
 Licensee MLS ID Agency MLS ID  
 is a  Seller Agent  Buyer Agent  Disc Dual Agent  Transaction Broker  
 ( ) of ( )  
 Licensee MLS ID Agency MLS ID

is a  Seller Agent  Buyer Agent  Disc Dual Agent  Transaction Broker  
 If this transaction involves Disclosed Dual Agency, the Buyer and Seller acknowledge the limited fiduciary duties of the agents and hereby consent to this arrangement. In addition, the Buyer and Seller acknowledge prior receipt and signing of a Disclosed Dual Agency Consent Agreement.

13. PROPERTY DISCLOSURE FORM: Buyer acknowledges receipt of Property Disclosure Form.

14. DEFAULT/RETURN OF EARNEST MONEY: Buyer's failure to fulfill any of Buyer's obligations hereunder shall constitute a default and Seller may employ all legal and equitable remedies, including without limitation, termination of this Agreement and forfeiture by Buyer of the earnest money. Seller's failure to fulfill any of Seller's obligations hereunder shall constitute a default and Buyer may employ all legal and equitable remedies, including without limitation, termination of this Agreement and return to Buyer of the earnest money. Agency acting as escrow agent has the option to require written releases from both parties prior to disbursing the earnest money to either Buyer or Seller. In the event that the Agency is made a party to any lawsuit by virtue of acting as escrow agent, Agency shall be entitled to recover reasonable attorney's fees and costs which shall be assessed as court costs in favor of the prevailing party.

15. MEDIATION: Earnest money or other disputes within the jurisdictional limit of small claims court will be handled in that forum. All other disputes or claims arising out of or relating to this Agreement or the property addressed in this Agreement (other than requests for injunctive relief) shall be submitted to mediation in accordance with generally accepted mediation practices. Buyer and Seller are bound to mediate in good faith and to each pay half of the mediation fees. If a party fails to submit a dispute or claim to mediation prior to initiating litigation (other than requests for injunctive relief), then that party will be liable for the other party's legal fees in any subsequent litigation regarding that same matter in which the party who failed to first submit the dispute or claim to mediation loses in that subsequent litigation. This clause shall survive the closing of the transaction.

16. PRIOR STATEMENTS: Any representations, statements and agreements are not valid unless contained herein. This Agreement completely expresses the obligations of the parties and may only be amended in writing, signed by both parties.

17. HEIRS/ASSIGNS: This Agreement shall extend to and be obligatory upon heirs, personal representatives, successors, and assigns of the Seller and the assigns of the Buyer.

18. COUNTERPARTS: This Agreement may be signed on any number of identical counterparts, such as a faxed copy, with the same binding effect as if the signatures were on one instrument. Original, faxed or other electronically transmitted signatures are binding.

19. NOTICE: Any notice, communication or document delivery requirements hereunder may be satisfied by providing the required notice, communication or documentation to or from the parties or their Licensee. Only withdrawals of offers and counteroffers will be effective upon communication, verbally or in writing.

20. EFFECTIVE DATE/BUSINESS DAYS: This Agreement is a binding contract when the last party signing has caused a paper or electronic copy of the fully executed agreement to be delivered to the other party which shall be the Effective Date. Licensee is authorized to fill in the Effective Date on Page 1 hereof. Except as expressly set forth to the contrary, the use of the term "days" in this

JES MB RES  
 ( ) ( ) ( )

Agreement, including all addenda made a part hereof, shall mean business days defined as excluding Saturdays, Sundays and any observed Maine State/Federal holidays. Deadlines in this Agreement, including all addenda, expressed as "within x days" shall be counted from the Effective Date, unless another starting date is expressly set forth, beginning with the first day after the Effective Date, or such other established starting date, and ending at 5:00 p.m. Eastern Time on the last day counted. Unless expressly stated to the contrary, deadlines in this Agreement, including all addenda, expressed as a specific date shall end at 5:00 p.m. Eastern Time on such date.

21. CONFIDENTIALITY: Buyer and Seller authorize the disclosure of the information herein to the real estate licensees, attorneys, lenders, appraisers, inspectors, investigators and others involved in the transaction necessary for the purpose of closing this transaction. Buyer and Seller authorize the lender and/or closing agent preparing the entire closing disclosure and/or settlement statement to release a copy of the closing disclosure and/or settlement statement to the parties and their licensees prior to, at and after the closing.

22. OTHER CONDITIONS: See back up offer addendum

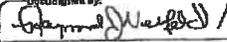
23. GENERAL PROVISIONS:

- a. A copy of this Agreement is to be received by all parties and, by signature, receipt of a copy is hereby acknowledged. If not fully understood, contact an attorney. This is a Maine contract and shall be construed according to the laws of Maine.
- b. Seller acknowledges that State of Maine law requires buyers of property owned by non-resident sellers to withhold a prepayment of capital gains tax unless a waiver has been obtained by Seller from the State of Maine Revenue Services.
- c. Buyer and Seller acknowledge that under Maine law payment of property taxes is the legal responsibility of the person who owns the property on April 1, even if the property is sold before payment is due. If any part of the taxes is not paid when due, the lien will be filed in the name of the owner as of April 1 which could have a negative impact on their credit rating. Buyer and Seller shall agree at closing on their respective obligations regarding actual payment of taxes after closing. Buyer and Seller should make sure they understand their obligations agreed to at closing and what may happen if taxes are not paid as agreed.
- d. Buyer acknowledges that Maine law requires continuing interest in the property and any back up offers to be communicated by the listing agent to the Seller.
- e. Whenever this Agreement provides for earnest money to be returned or released, agency acting as escrow agent must comply with Maine Real Estate Commission rules which may require written notices or obtaining written releases from both parties.

24. ADDENDA:  Yes  No Explain: Back up offer

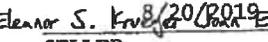
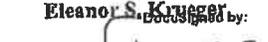
25. ELECTRONIC SIGNATURES: Pursuant to the Maine Uniform Electronic Transactions Act and Digital Signature Act, the parties authorize and agree to the use of electronic signatures as a method of signing/initialing this Agreement, including all addenda. The parties hereby agree that either party may sign electronically by utilizing an electronic signature service.

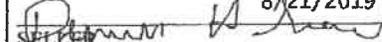
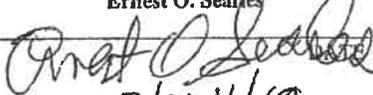
Buyer's Mailing address is 36 Cunningham Ave, Floral Park, NY 11001-3242

DocuSigned by: 	<u>8/14/2019</u>	DATE	BUYER	DATE
BUYER Raymond J. Neufeld				
BUYER	DATE	BUYER	DATE	

Seller accepts the offer and agrees to deliver the above-described property at the price and upon the terms and conditions set forth and agrees to pay agency a commission for services as specified in the listing agreement.

Seller's Mailing address is \_\_\_\_\_

DocuSigned by: 	<u>8/20/2019</u>	DATE	SELLER	DATE
SELLER Eleanor S. Krueger				
DocuSigned by: 	<u>8/22/2019</u>	DATE	SELLER	DATE
SELLER Joan E. Searles				

DocuSigned by: 	<u>8/21/2019</u>	DATE	SELLER	DATE
SELLER Ernest O. Searles				
	<u>8/24/19</u>			

**COUNTER-OFFER**

Seller agrees to sell on the terms and conditions as detailed herein with the following changes and/or conditions:

The parties acknowledge that until signed by Buyer, Seller's signature constitutes only an offer to sell on the above terms and the offer will expire unless accepted by Buyer's signature with communication of such signature to Seller by (date) \_\_\_\_\_ (time) \_\_\_\_\_  AM  PM.

SELLER \_\_\_\_\_ DATE \_\_\_\_\_ SELLER \_\_\_\_\_ DATE \_\_\_\_\_

SELLER \_\_\_\_\_ DATE \_\_\_\_\_ SELLER \_\_\_\_\_ DATE \_\_\_\_\_

The Buyer hereby accepts the counter offer set forth above.

BUYER \_\_\_\_\_ DATE \_\_\_\_\_ BUYER \_\_\_\_\_ DATE \_\_\_\_\_

BUYER \_\_\_\_\_ DATE \_\_\_\_\_ BUYER \_\_\_\_\_ DATE \_\_\_\_\_

**EXTENSION**

The time for the performance of this Agreement is extended until \_\_\_\_\_ DATE \_\_\_\_\_

SELLER \_\_\_\_\_ DATE \_\_\_\_\_ SELLER \_\_\_\_\_ DATE \_\_\_\_\_

SELLER \_\_\_\_\_ DATE \_\_\_\_\_ SELLER \_\_\_\_\_ DATE \_\_\_\_\_

BUYER \_\_\_\_\_ DATE \_\_\_\_\_ BUYER \_\_\_\_\_ DATE \_\_\_\_\_

BUYER \_\_\_\_\_ DATE \_\_\_\_\_ BUYER \_\_\_\_\_ DATE \_\_\_\_\_

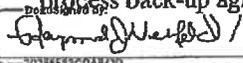


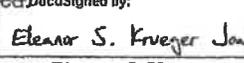
### BACK-UP ADDENDUM

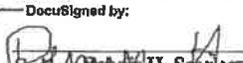
To Agreement dated August 12, 2019, between Eleanor S. Krueger, Joan E. Searles, Dennis H. Searles and Ernest O. Searles ("Seller") and Raymond J. Neufeld ("Buyer") for property located at Address # forthcoming Riverside Ave., Eliot, ME 03903

The Purchase and Sale Agreement is further subject to the following terms:

1. Buyer and Seller acknowledge that Seller's right to sell the above-referenced property is already subject to the terms and conditions of a purchase and sale agreement which is still in effect (the "Prior Agreement") and that this Agreement shall be a back-up agreement to the Prior Agreement. Seller's obligations under this Agreement are subject to the Prior Agreement becoming null and void. Seller closing on the sale of the property under the terms of the Prior Agreement shall terminate this Agreement and the earnest money deposit, if any, shall be returned to Buyer.
2. Seller shall notify Buyer by written notice in the event that the Prior Agreement becomes null and void which will eliminate the back-up nature of this Agreement and the date of notification shall be the Notification Date. Notwithstanding anything to the contrary in this Agreement, all time periods and deadlines for performance set forth in this Agreement, including the obligation to deliver any earnest money deposit, shall run from the Notification Date rather than the Effective Date.
3. At any time prior to the Notification Date, Buyer may terminate this Agreement by written notice to Seller. If Buyer elects to terminate, all rights and obligations of Buyer and Seller hereunder will terminate and the earnest money deposit, if any, shall be returned to Buyer.
4. Seller reserves the right to extend, amend or otherwise modify the terms and conditions of the Prior Agreement in Seller's sole discretion without notice to Buyer and without affecting the terms and conditions of this Agreement.
5. Buyer acknowledges that Buyer is in back-up position number 1. Seller agrees to process back-up agreements in the order they were accepted.

DocuSigned by:  
  
 Buyer Raymond J. Neufeld Date 8/14/2019

DocuSigned by:  
  
 Seller Eleanor S. Krueger Date 8/22/2019

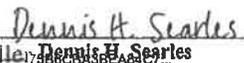
DocuSigned by:  
  
 Seller Dennis H. Searles Date 8/22/2019

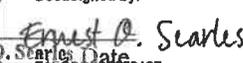
DocuSigned by:  
  
 Seller Ernest O. Searles Date 8/22/2019

### NOTICE TO BUYER

Seller hereby notifies Buyer that the Prior Agreement has become null and void and the back-up status of the Agreement between Seller and Buyer is now eliminated.

DocuSigned by:  
  
 Seller Eleanor S. Krueger Date 8/22/2019

DocuSigned by:  
  
 Seller Dennis H. Searles Date 8/22/2019

DocuSigned by:  
  
 Seller Ernest O. Searles Date 8/22/2019

### WITHDRAWAL NOTICE TO SELLER

Buyer hereby declares the Agreement null and void. The earnest money, if any, shall be returned to Buyer.

Buyer Raymond J. Neufeld Date \_\_\_\_\_ Buyer \_\_\_\_\_ Date \_\_\_\_\_



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From: Marcel Bartley via DocuSign dse NA3@docusign.net  
 Subject: Completed: Riverside Ave Vacant Land  
 Date: Jan 16, 2020 at 5:29:41 PM  
 To: Raymond J. Neufeld RJNEUFELD@AOL.COM

DocuSign Envelope ID: 0F89D91D 7AC1 48FF AC9C 7F3C4D3001C9

**EXTENSION ADDENDUM**

Addendum to Purchase and Sale Agreement, dated August 12, 2019 between  
Eleanor S. Krueger, Dennis H. Searles, Joan E. Searles, Ernest O. Searles ("Seller") and  
Raymond J. Neufeld ("Buyer") (the "Agreement")

for property located at 17 Riverside Ave, Elliot, ME 03903

The deadline set forth in paragraph 10 of the Agreement  
 (insert "Agreement" or title of Addendum being amended) is extended to March 13, 2020 (date).

Eleanor S. Krueger Joan E. Searles 1/15/2020  
 Seller Date  
**Eleanor S. Krueger**

Raymond J. Neufeld 1/16/2020  
 Buyer Date  
**Raymond J. Neufeld**

Dennis H. Searles 1/16/2020  
 Seller Date  
**Dennis H. Searles**

Buyer Date

Joan E. Searles 1/16/2020  
 Seller Date  
**Joan E. Searles**

Buyer Date

Ernest O. Searles 1/15/2020  
 Seller Date  
**Ernest O. Searles**

Buyer Date

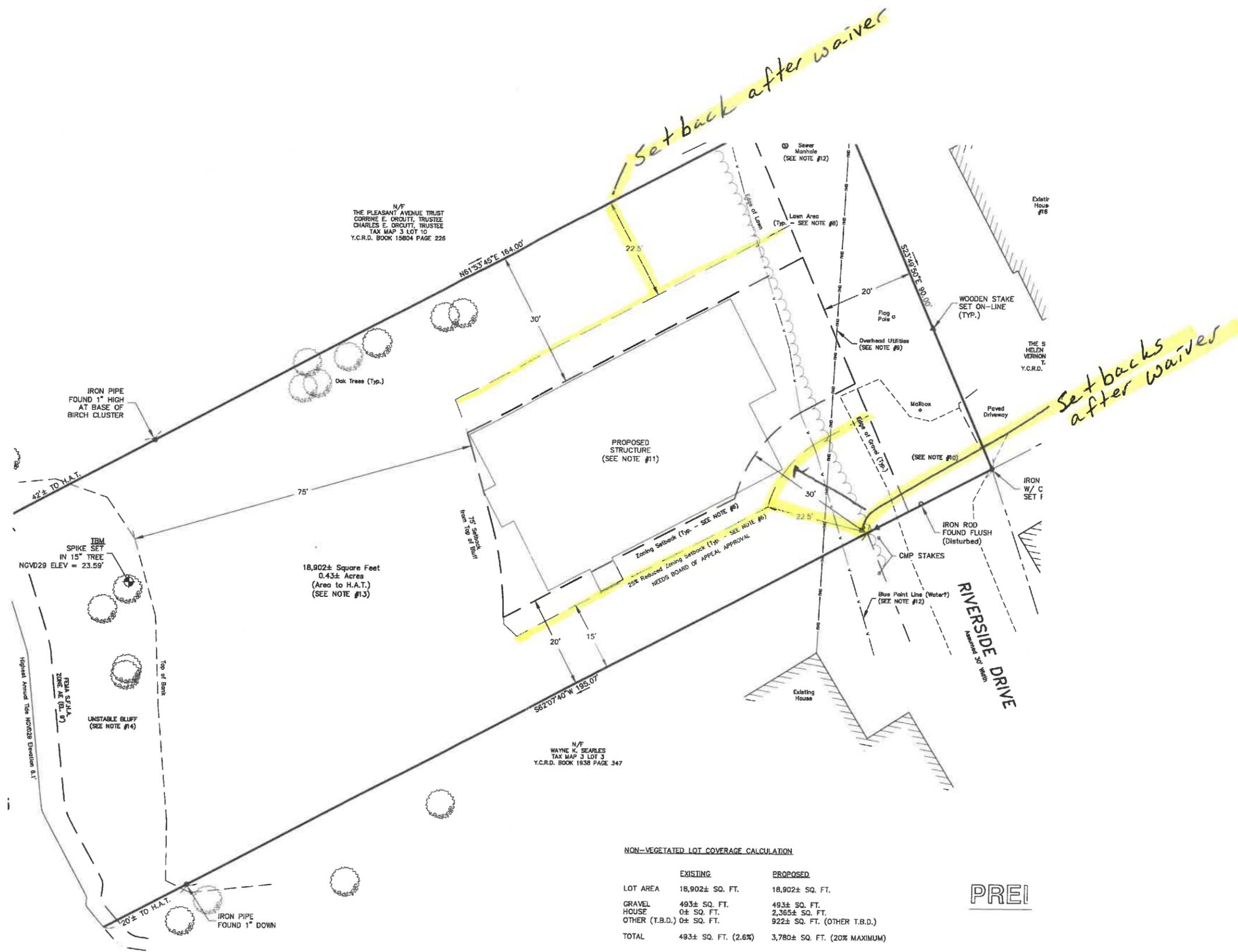


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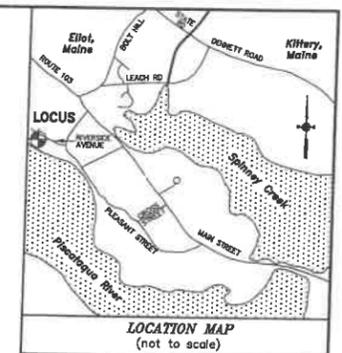
NON-VEGETATED LOT COVERAGE CALCULATION

	EXISTING	PROPOSED
LOT AREA	18,902± SQ. FT.	18,902± SQ. FT.
GRAVEL HOUSE	493± SQ. FT.	493± SQ. FT.
OTHER (T.B.D.)	0± SQ. FT.	2,365± SQ. FT.
TOTAL	493± SQ. FT. (2.6%)	3,780± SQ. FT. (20% MAXIMUM)

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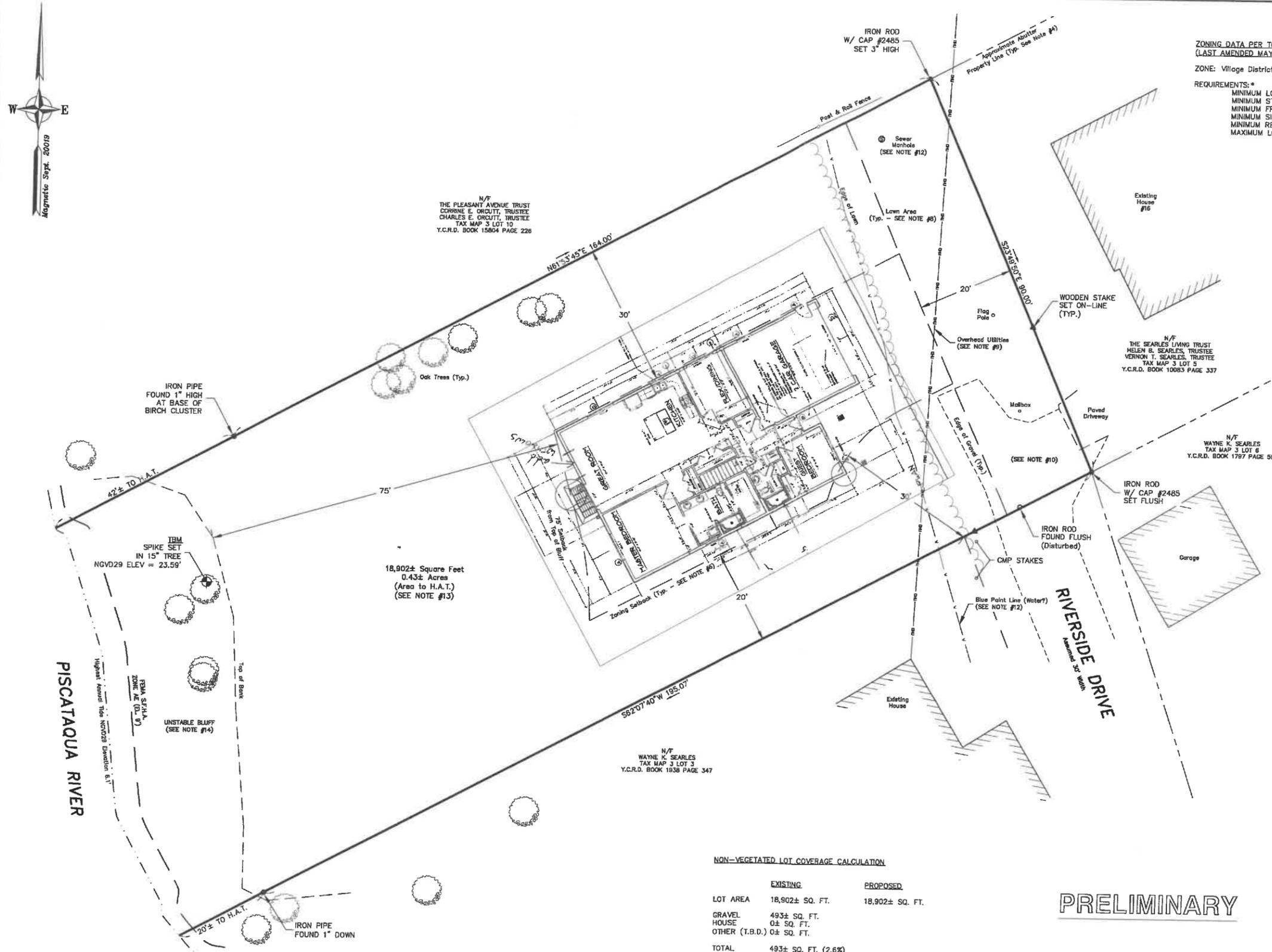


ZONING DATA PER TOWN OF ELIOT ZONING ORDINANCE  
(LAST AMENDED MAY 2, 2019):  
ZONE: Village District  
REQUIREMENTS: \*  
MINIMUM LOT SIZE: 43,560 Square Feet  
MINIMUM STREET FRONTAGE: 100 Ft  
MINIMUM FRONT SETBACK: 30 Ft  
MINIMUM SIDE SETBACK: 20 Ft  
MINIMUM REAR SETBACK: 30 Ft  
MAXIMUM LOT COVERAGE: 20%



- PLAN REFERENCES:
1. "PLAN OF LAND, MAISIE SEARLES, ELIOT, MAINE", PREPARED BY K.E. MOORE & B.G. STAPLES LAND SURVEYORS, DATED JULY 1971, NOT RECORDED.

- NOTES:
1. OWNERS OF RECORD:  
TAX MAP 3 LOT 4  
ERNEST O. SEARLES, DENNIS H. SEARLES,  
ELANORE S. KRUEGER, & JOAN E. SEARLES  
Y.C.R.D. BOOK 15905 PAGE 618  
DATED JULY 21, 2010
  2. TOTAL EXISTING PARCEL AREA:  
TAX MAP 3 LOT 4  
0.43± AC. - AREA TO HIGHEST ANNUAL TIDE
  3. BASIS OF BEARING IS PER PLAN REFERENCE #1.
  4. APPROXIMATE ABUTTER'S LINES SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY AND SHALL NOT BE RELIED UPON AS BOUNDARY INFORMATION.
  5. EASEMENTS OR OTHER UNWRITTEN RIGHTS MAY EXIST THAT ENCUMBER OR BENEFIT THE PROPERTY NOT SHOWN HEREON.
  6. ZONING INFORMATION AND SETBACKS SHOWN HEREON ARE FOR REFERENCE PURPOSES. CONFIRM CURRENT ZONING REQUIREMENTS WITH THE TOWN OF ELIOT PRIOR TO DESIGN OR CONSTRUCTION.
  7. THE BOUNDARY SHOWN HEREON IS DETERMINED FROM WRITTEN RECORDS, FIELD EVIDENCE AND PAROL TESTIMONY RECOVERED AT THE TIME OF SURVEY AND MAY BE SUBJECT TO CHANGE IF OTHER EVIDENCE BECOMES AVAILABLE.
  8. A YARD, MAILBOX & FLAG POLE APPEARING TO BE MAINTAINED BY ELIOT TAX MAP 3 LOT 5 EXTEND ONTO THE LOCUS PARCEL. CONSULTATION WITH A TITLE ATTORNEY IS ADVISED.
  9. OVERHEAD UTILITIES SERVICING ELIOT TAX MAP 3 LOT 3 CROSS THE LOCUS PARCEL. NO EASEMENT IS REFERENCED IN CURRENT DEED AT Y.C.R.D. BOOK 15905 PAGE 618.
  10. LOT MAY BE SUBJECT TO A RIGHT-OF-WAY AS DESCRIBED AT Y.C.R.D. BOOK 10083 PAGE 337 PER ABUTTING PARCEL TAX MAP 3 LOT 6 DEED. NO RIGHT-OF-WAY IS REFERENCED AT Y.C.R.D. BOOK 15905 PAGE 618.
  11. REFER TO DESIGN DRAWINGS TO BE PROVIDED BY THE APPLICANT FOR BUILDING DIMENSIONS AND SPECIFICATIONS.
  12. SEWER AND WATER UTILITIES APPEAR TO CROSS THE SUBJECT LOT. NO SEWER OR WATER EASEMENT IS REFERENCED AT Y.C.R.D. BOOK 15905 PAGE 618. LOT APPEARS TO BE SUBJECT TO A 20-FOOT WIDE SEWER EASEMENT. REFERENCE IS MADE TO SEWER EASEMENT AT Y.C.R.D. BOOK 3697 PAGE 32 FOR TERMS AND CONDITIONS.
  13. THE ENTIRE LOT IS WITHIN THE 250' SHORELAND ZONE AND IS SUBJECT TO SHORELAND ZONE REQUIREMENTS.
  14. ADJACENT COASTAL BLUFF IS CLASSIFIED AS "UNSTABLE" AS SHOWN ON MAINE GEOLOGICAL SURVEY PORTSMOUTH QUADRANGLE, OPEN-FILE No. 02-207, DATED 2002.

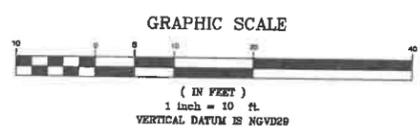


PISCATAQUA RIVER

PRELIMINARY

NON-VEGETATED LOT COVERAGE CALCULATION

	EXISTING	PROPOSED
LOT AREA	18,902± SQ. FT.	18,902± SQ. FT.
GRAVEL HOUSE	493± SQ. FT.	0± SQ. FT.
OTHER (I.B.D.)	0± SQ. FT.	0± SQ. FT.
TOTAL	493± SQ. FT. (2.6%)	



**EXISTING CONDITIONS & PROPOSED SITE PLAN**  
FOR PROPERTY AT  
17 Riverside Avenue  
Eliot, York County, Maine  
OWNED BY  
**Ernest O. Searles, Dennis H. Searles  
Elanore S. Krueger, & Joan E Searles**  
PREPARED FOR  
**Ray Neufeld**  
36 Cunningham Avenue  
Floral Park, NY 11001

**EASTERLY SURVEYING, Inc.**  
SURVEYORS IN N.H. & MAINE 191 STATE ROAD, SUITE #1  
(207) 439-6333 KITTELY, MAINE 03904

SCALE: 1" = 10'  
PROJECT NO. 19809 DATE: 12/13/19 SHEET: 1 OF 1 DRAWN BY: A.M.P. CHECKED BY: A.M.P.

DRAWING No: 19809 SITE  
FIELD BOOK No: "Eliot #20"

**Tax Map 3 Lot 4**

REV.	DATE	STATUS	BY	CHKD	APPD.

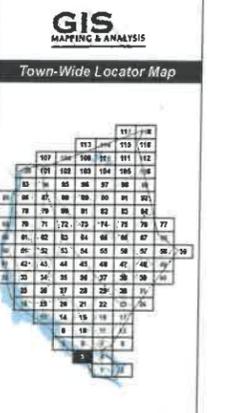


**Town of Eliot  
Assessors Maps**

**Legend**

- Map Index
- Town Boundary
- Property Boundary
- Right of Way
- Road Right of Way
- Common Area
- Cemetery
- Swamp
- Waterbody

Map 8  
Block 81  
Unit 2



**Scale and Orientation**

0 50 100  
1 inch = 100 feet

↑

**Notes**

Disclaimer:  
The information is provided as a reasonably accurate point of reference, but is not guaranteed and is not to be used for conveyances. The Town of Eliot shall not be held liable for the accuracy or release of this data. Copyright the Town of Eliot. Maps Revised to April 1, 2017.



# Abutters List Report

Eliot, ME  
February 04, 2020

## Subject Property:

Parcel Number: 003-004-000  
CAMA Number: 003-004-000  
Property Address: RIVERSIDE AVE

Mailing Address: SEARLES, ERNEST ET AL  
54 OLD ROUTE 4  
BERWICK, ME 03901

---

## Abutters:

Parcel Number: 003-003-000  
CAMA Number: 003-003-000  
Property Address: 15 RIVERSIDE AVE

Mailing Address: SEARLES, WAYNE  
15 RIVERSIDE AVE  
ELIOT, ME 03903

Parcel Number: 003-005-000  
CAMA Number: 003-005-000  
Property Address: 16 RIVERSIDE AVE

Mailing Address: SEARLES LIVING TRUST HELEN  
B/VERNON T SEARLES  
16 RIVERSIDE AVE  
ELIOT, ME 03903

Parcel Number: 003-006-000  
CAMA Number: 003-006-000  
Property Address: RIVERSIDE AVE

Mailing Address: SEARLES, WAYNE K  
15 RIVERSIDE AVE  
ELIOT, ME 03903

Parcel Number: 003-009-000  
CAMA Number: 003-009-000  
Property Address: 11 PLEASANT AVE

Mailing Address: VEINO, JAMES L JR VEINO, JANET E  
11 PLEASANT AVE  
ELIOT, ME 03903

Parcel Number: 003-010-000  
CAMA Number: 003-010-000  
Property Address: 15 PLEASANT AVE

Mailing Address: PLEASANT AVENUE TRUST CORRINE E  
& CHARLES E III ORCUTT TRSTS  
58 WOOD LANE  
ACTON, MA 01720

Orcutt, Thomas Dragon  
Orcutt, Elizabeth Doris  
12 Canterbury lane  
Groton, MA 01450



www.cai-tech.com

Data shown on this report is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this report.

2/4/2020

Page 1 of 1



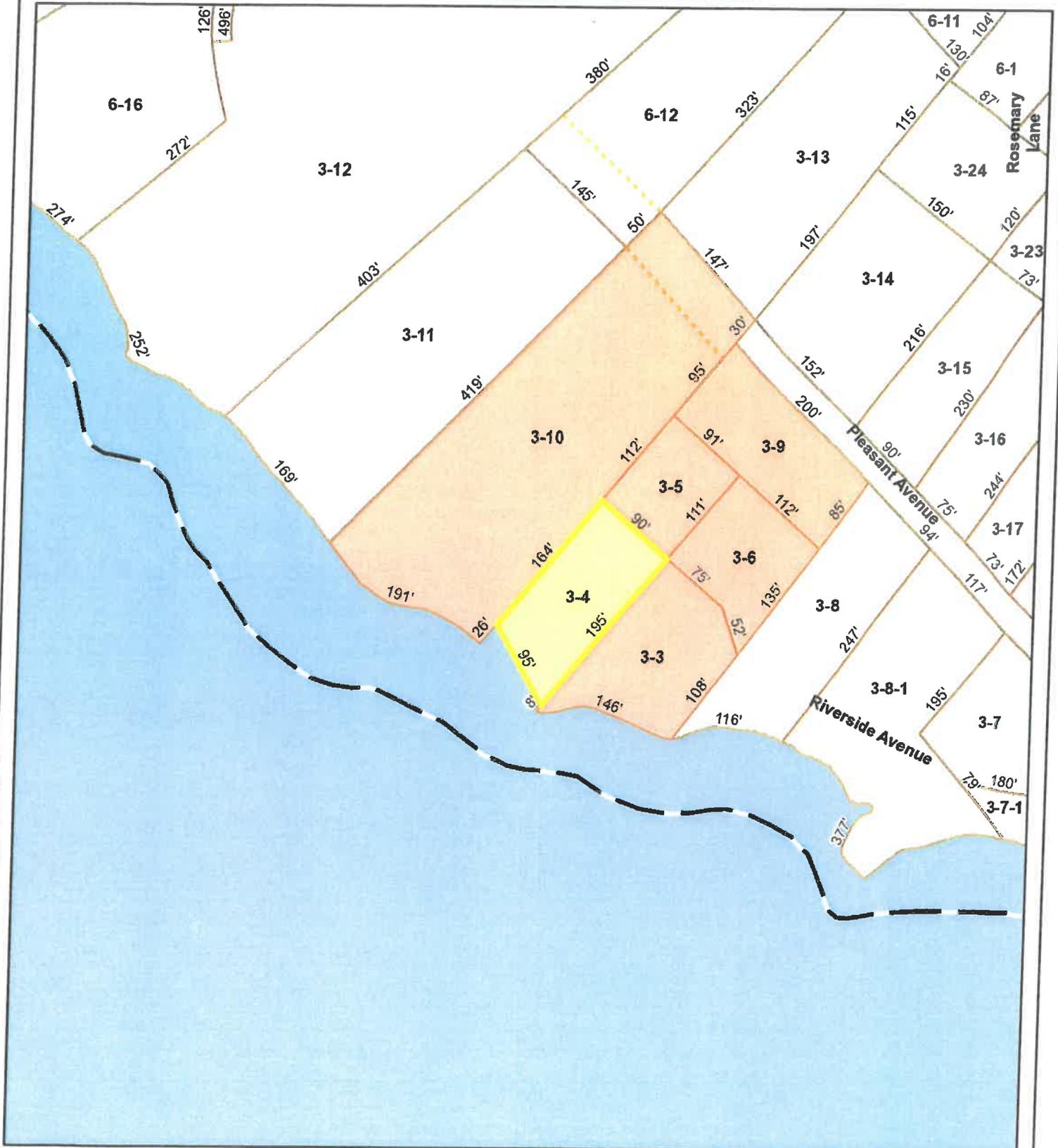
N

Eliot, ME

1 inch = 137 Feet



February 4, 2020



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

**Abutter****Certified mail #**

Map 3 Lot 3

Map 3 Lot 6

SEARLES, WAYNE  
15 RIVERSIDE AVE  
ELIOT, ME 03903

7112 4369 4680 2177 4231

Map 3 Lot 5

SEARLES LIVING TRUST HELEN  
B / VERNON T SEARLES 16  
RIVERSIDE AVE  
ELIOT, ME 03903

7112 4369 4680 2177 4248

Map 3 Lot 9

VEINO, JAMES L JR  
VEINO, JANET E  
11 PLEASANT AVE  
ELIOT, ME 03903

7112 4369 4680 2177 4255

Map 3 Lot 10

ORCUTT, THOMAS DRAGON  
ORCUTT, ELIZABETH DORIS  
12 CANTERBURY LANE  
GROTON, MA 01450

7112 4369 4680 2177 4262

CURRENT OWNER					TOPO	UTILITIES	STRT / ROAD	LOCATION	CURRENT ASSESSMENT					4509 ELIOT, ME					
SEARLES, ERNEST ET AL  54 OLD ROUTE 4  BERWICK ME 03901					1 Level	2 Public Water	1 Paved	2 Suburban	Description	Code	Assessed	Assessed							
						3 Public Sewer			RES LAND	1300	211,200	211,200							
					SUPPLEMENTAL DATA								<b>VISION</b>						
					Alt Prcl ID STYLE GROSS EFFEC  PHOTO GIS ID 3-4	PRECINC HEART TIF  Assoc Pid#													
RECORD OF OWNERSHIP					BK-VOL/PAGE	SALE DATE	Q/U	V/I	SALE PRICE	VC	PREVIOUS ASSESSMENTS (HISTORY)								
SEARLES, ERNEST ET AL					15905 0618	07-28-2010	U	I		0 1	Year	Code	Assessed	Year	Code	Assessed V	Year	Code	Assessed
SEARLES, MASIE M					1797 0591	01-17-1968	U			0	2019	1300	211,200	2019	1300	211,200	2018	1300	211,200
					Total						211200		Total		211200		Total		334400
EXEMPTIONS					OTHER ASSESSMENTS					This signature acknowledges a visit by a Data Collector or Assessor									
Year	Code	Description	Amount	Code	Description	Number	Amount	Comm Int											
			Total	0.00															
ASSESSING NEIGHBORHOOD										APPRAISED VALUE SUMMARY									
Nbhd	Nbhd Name	B	Tracing	Batch						Appraised Bldg. Value (Card)						0			
002										Appraised Xf (B) Value (Bldg)						0			
NOTES										Appraised Ob (B) Value (Bldg)						0			
WATERFRONT LAND										Appraised Land Value (Bldg)						211,200			
										Special Land Value						0			
										Total Appraised Parcel Value						211,200			
										Valuation Method						C			
										Total Appraised Parcel Value						211,200			
BUILDING PERMIT RECORD										VISIT / CHANGE HISTORY									
Permit Id	Issue Date	Type	Description	Amount	Insp Date	% Comp	Date Comp	Comments	Date	Id	Type	Is	Cd	Purpost/Result					
									09-11-2018	MP			50	In Office Review - Inventor					
									11-07-2014	MP			50	In Office Review - Inventor					
									07-21-1997	NR			00	Measur+Listed					
LAND LINE VALUATION SECTION																			
B	Use Code	Description	Zone	Land Type	Land Units	Unit Price	Size Adj	Site Index	Cond.	Nbhd.	Nbhd. Adj	Notes	Location Adjustment	Adj Unit P	Land Value				
1	1300	RES VACANT B	VD		18,000 SF	5.23	3.40000	9	0.60	002	1.100	ROW		1.0000	11.73	211,200			
Total Card Land Units					18,000 SF	Parcel Total Land Area					0.4132	Total Land Value					211,200		

CONSTRUCTION DETAIL			CONSTRUCTION DETAIL (CONTINUED)		
Element	Cd	Description	Element	Cd	Description
Style:	99	Vacant Land			
Model:	00	Vacant			
Grade:					
Stories:					
Occupancy					
Exterior Wall 1					
Exterior Wall 2					
Roof Structure:					
Roof Cover					
Interior Wall 1					
Interior Wall 2					
Interior Flr 1					
Interior Flr 2					
Heat Fuel					
Heat Type:					
AC Type:					
Total Bedrooms					
Total Bthrms:					
Total Half Baths					
Total Xtra Fixtrs					
Total Rooms:					
Bath Style:					
Kitchen Style:					
<b>CONDO DATA</b>					
Parcel Id			C		Owne 0.0
				B	S
Adjust Type	Code	Description	Factor%		
Condo Flr					
Condo Unit					
<b>COST / MARKET VALUATION</b>					
Building Value New		0			
Year Built		0			
Effective Year Built		0			
Depreciation Code					
Remodel Rating					
Year Remodeled					
Depreciation %					
Functional Obsol		0			
Economic Obsol		0			
Trend Factor		1			
Condition					
Condition %		0			
Percent Good					
RCNLD		0			
Dep % Ovr					
Dep Ovr Comment					
Misc Imp Ovr					
Misc Imp Ovr Comment					
Cost to Cure Ovr					
Cost to Cure Ovr Comment					

No Sketch

**OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)**

Code	Description	L/B	Units	Unit Price	Yr Blt	Cond. Cd	% Gd	Grade	Grade Adj.	Appr. Value

**BUILDING SUB-AREA SUMMARY SECTION**

Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprec Value
Ttl Gross Liv / Lease Area		0	0	0		

No. 101.

Abstract of the Will of

ERNEST O. SEARLES

STATE OF MAINE



PROBATE OFFICE

December 29, A. D. 19 67

J. Woodrow Vallely, Register of the Probate Court for said County of

York, hereby certify that the last Will and Testament

Ernest O. Searles,

of Eliot, deceased,

late of was proved, approved and allowed by the Judge of Probate for said County of York, at a Court held at Alfred on the twelfth day of December A. D. 19 67;

and that the following is a true copy of so much of said Will as devises Real Estate in the County of York, aforesaid:

\*\*\*

After the payment of my just debts and funeral charges, I bequeath and devise as follows: I give to my daughter-in-law Mazie M. Searles, the widow of my son Harlon, who since the death of my wife has been very good to me, the following land: beginning at the southwest corner of land owned by my grandson, Vernon T. Searles, and running southwest to an iron hub marking the southwestern division of land owned by Dr. Robert Hutton, Jr., then running southeast by Piscataqua River to an iron hub set in river bank, then running northeast to iron hub marking the southeast corner of land owned by my grandson, Vernon T. Searles, then running northwest to point of beginning, providing that she have the right of occupancy of that part of my house she now occupies for the term of eighteen (18) months or longer, upon agreement with my son Norman.

My daughter-in-law, Mazie M. Searles, during such occupancy shall pay the taxes, mortgage payments if any and other running expenses of the property.

In the event that my said daughter-in-law shall fail, refuse, or otherwise fail to comply with any of the conditions hereinbefore contained, then the provisions and arrangements hereinbefore set forth shall terminate and she shall quit and deliver up the said premises she now occupies upon request or demand of my son, Norman Roy Searles.

All the rest of land owned by me containing buildings thereon and contents of same, except such furniture and other articles owned by my daughter-in-law Mrs. Mazie Searles, widow of my son Harlon, is hereby given to my son, Norman Roy Searles, and his heirs. \*\*\*

It is hereby understood and intended by me that any money or other assets which are now jointly held by my son Norman and myself are not to be construed as assets of my estate as it is intended and so-arranged because of legal consideration that we have committed to each other wherein he presently has the right to expend for his sole use either in whole or in part of the same, but it is my wish that he use same in improvement to the property.

\*\*\*

Witness my hand and the seal of the Probate Court for said County of York, the day and year first above written.

J. Woodrow Vallely, Register.

York, ss. Received JAN 17 1968 at 11:05 AM and recorded from the original.

Abstract of the Will of

CLARENCE H. SHAPLEIGH



STATE OF MAINE

PROBATE OFFICE

December 29, 1967 A. D. 19.67.

Woodrow Vallely, Register of the Probate Court for said County of York, hereby certify that the last Will and Testament of Clarence H. Shapleigh, late of Malden, Massachusetts, deceased, was proved, approved and allowed by the Judge of Probate for said County of York, at a Court held at Alfred on the twenty-sixth day of December A. D. 19.67; and that the following is a true copy of so much of said Will as devises Real Estate in the County of York, aforesaid:

\*\*\*

SECOND: In the event my beloved wife, LILLA M. SHAPLEIGH shall survive me, I give, devise and bequeath to my dear wife, all the rest, residue and remainder of my property whether real, personal or mixed of whatsoever nature and wheresoever situated to hold absolutely and in fee simple.

\*\*\*

SIXTH: I hereby nominate and appoint JOHN P. DONNELLY executor of this my WILL, request that he be exempt from giving any surety on his bond as such and empower him to sell any Real Estate without receiving a license from the Probate Court so to do.

\*\*\*

Note: John P. Donnelly declined the trust.

Witness my hand and the seal of the Probate Court for said County of York, the day and year first above written.

Woodrow Vallely, Register.

York, ss. Received JAN 17 1968 and recorded from the original.

Return to:  
Bruce A. Whitney, Esq.  
Post Office Box 187  
South Berwick, ME 03908

Doc# 2010031447  
Bk 15905 Ps 618 - 619  
Received York SS  
07/28/2010 11:16AM  
Debra L. Anderson  
Registrar of Deeds

**DEED OF DISTRIBUTION  
BY PERSONAL REPRESENTATIVE**  
(Testate)

**Ernest O. Searles** of 54 Old Route 4, Berwick, ME 03901, duly appointed and acting Personal Representative of the estate of **Maisie M. Searles a/k/a Maisie E. Searles** deceased (testate), whose will was duly admitted to probate in the Probate Court for the County of York, Maine, (docket No. 2009-0369) by the power conferred by law, and every other power, (in distribution of the estate) grants to **Ernest O. Searles** of 54 Old Route 4, Berwick, Maine a one half interest in the following described premises, **Dennis H. Searles** of 58 Summer Street, Porter, ME 04068 a one-sixth interest in the following described premises, **Eleanor S. Krueger, formerly known as Eleanor M. Searles** of 183 Kimberly Circle, Wells, ME 04090 a one-sixth interest in the following described premises and **Joan E. Searles** of 191 N Pleasant Road, Lake Zurich, IL 60047 a one-sixth interest in the following described premises, being the persons entitled to distribution, the real estate in Eliot, County of York, and State of Maine, described as follows:

A parcel of land located on a private way known as Riverside Drive in the Town of Eliot, County of York and State of Maine and being bounded and described as follows:

Beginning at the southerly corner of land of Helen E. Searles and Vernon T Searles co-trustees of the Searles Living Trust as described in a deed recorded at the York County Registry of Deeds in Book 10083, Page 337; then running South 52° West along land of Wayne Keith Searles as described in a deed recorded at the York Registry in Book 1938, Page 346, for a distance of approximately 198 feet to the Piscataqua River; thence turning and running westerly along said River for a distance of approximately 90 feet to land of Corrine E. Orcutt as described in a deed recorded at the York Registry in Book 3361, Page 38; thence turning and running North 53° 02' 30" East along land of said Orcutt for a distance of approximately 198 feet to land of said Searles Living Trust; thence turning and running South 31° 16' East along land of said Searles Living Trust for a distance of 90 feet, more or less, to the point of beginning.

Poor Copy At Time Of Recording

Meaning to describe and conveying the same premises devised to Maisie (also spelled Maizie) Searles under the Will of Ernest O. Searles, York County Probate Docket No. 83713. For additional title information see the deed of Vernon O. Searles and others to Ernest O. Searles dated May 28, 1955 and recorded at the York County Registry of Deeds in Book 1290, Page 23.

The above-described premises are conveyed together with the right to travel over a private way known as Riverside Avenue to Pleasant Street.

Maisie M. Searles a/k/a Maisie E. Searles died testate on March 16, 2009. Her Will, dated June 6, 1961 failed to provide for her husband Ernest O. Searles. She was not married to Ernest O. Searles at the time of the June 6, 1961 Will. At her death Maisie M. Searles had children who are not the issue of Ernest O. Searles. Under the provisions of Title 18-A M.R.S.A. § 2-301 and § 2-102 (4) Ernest O. Searles receives one half of the estate.

Dated at South Berwick, Maine on July 21, 2010.

Estate of Maisie M. Searles

Bruce A. Whitney  
Witness

By: Ernest O. Searles  
Ernest O. Searles  
Personal Representative

STATE OF MAINE  
COUNTY OF YORK, ss

July 21, 2010

Then personally appeared the above-named Ernest O. Searles in his said capacity and acknowledged the foregoing instrument to be his free act and deed, before me.

Bruce A. Whitney  
Bruce A. Whitney  
Attorney at Law

Searles, Maisie estate to Ernest, et al Eliot real estate

END OF DOCUMENT

1 **ITEM 1 - ROLL CALL**

2  
3 Present: Bill Hamilton - Chairman, Charles Rankie – Vice Chair, Ellen Lemire -  
4 Secretary, John Marshall, Cabot Trott, Rosanne Adams – Alternate.

5  
6 Also Present: Shelly Bishop - CEO, Kristina Goodwin – Interim Recording Secretary.

7  
8 Absent: Jay Meyer – Alternate (excused).

9  
10 Voting members: Bill Hamilton, Charles Rankie, Ellen Lemire, John Marshall, and Cabot  
11 Trott.

12  
13  
14 **ITEM 2 –PUBLIC COMMENT PERIOD**

15  
16 There was no public input.

17  
18 **ITEM 3 – PUBLIC HEARINGS**

19  
20 Mr. Hamilton said we have two public hearings tonight. Let me just briefly go over how  
21 these Public Hearings will take place. I will read the appellants request in each case. We  
22 will determine voting members. There are five regular voting members tonight and one  
23 alternate member and we have one alternate member Jay Meyer who has an excused  
24 absence. Our five regular members will be our voting members tonight. After I read the  
25 request from the appellant I will ask if there are any conflicts of interest among the board  
26 members and, if there are, we will appoint the alternate board member as a regular  
27 member. Then we will determine the parties to the action and in this case, there are no  
28 parties to the action because they are both waivers, with not either the Planning Board or  
29 the Code Enforcement Officer directly in this appeal. Then we will determine  
30 jurisdiction, in other words just because a case was brought to the Board of Appeals  
31 doesn't mean we have jurisdiction to hear it. So, I will site the Ordinance which will give  
32 us the ability to listen to your appeal tonight. Then we will determine standing for anyone  
33 who comes to the Board of Appeals, which means you either own the property or are  
34 leasing the property and you have an interest in that property. In this case there are no  
35 issues of timeliness, that doesn't apply tonight in either one of these cases. Then I will  
36 open the Public Hearing for each hearing and the Appellant will have the floor to begin  
37 with and you will have the uninterrupted ability to tell us what you are asking for in your  
38 appeal. Because these are waiver requests, I ask that you address the five questions in the  
39 application. These five questions to the Board of Appeals are five questions we would  
40 like satisfied for us to be able to grant the appeal you are asking for, unlike a variance  
41 where it is absolutely required for you to meet each of the four criteria. In the case of a  
42 waiver you are not required to satisfy each and every one of those requirements in order  
43 for your request to be possibly granted. So, I would ask as an appellant, when you come  
44 forward, that you address those issues and after your testimony, the Board will ask  
45 questions of you and we will get questions and answers going on that. Then I would ask  
46 that, although the Code Enforcement officer is not directly involved, I would ask for her

47 view on each of these requests and then we will have questions for the Code Enforcement  
48 Officer. Then any Abutter that would like to testify and there also may be questions from  
49 the Board to each Abutter. Then any other interested party in the room will to be able to  
50 speak. I also do ask when you speak that you speak your name and address for the  
51 recording secretary. I will read the first request.

52

53 **7:06 PM Public Hearing opened.**

54

55 **A. Sweet Dirt Inc., Map 54, Lot 2, C/I Zone, requesting a setback waiver for**  
56 **property located at 483 Harold Dow Highway for a marijuana**  
57 **cultivation/production facility where a 500-foot setback is required from a public**  
58 **facility (Transfer Station and Route 236).**

59

60

61 Mr. Hamilton asked if there are any conflicts of the five regular members of the  
62 Board in this case.

63

64 Mr. Rankie stated I have no conflict but for the sake of transparency, I would like it  
65 know that Mr. Pope is the second cousin to my daughter-in-law but there is no  
66 conflict whatsoever and that will not impact my judgement in any way.

67

68 Mr. Hamilton asked if anyone on the Board had any issue with that disclosure?... No  
69 issue. I will ask that the Appellant please come forward and give us your testimony  
70 please.

71

72 Mr. Nielsen stated my name is Brian Neilson of Attar Engineering. I will be  
73 representing Sweet Dirt and their project at 483 Harold L Dow Highway. As you  
74 stated we will be seeking a reduction of 250 feet from 33-190(5) which states that we  
75 need to be five hundred feet from a Public Facility. I just state so the want the Board  
76 to be aware that there was a similar request made by Sweet Dirt in 2017 for the  
77 property just next door related to the same facility and also has the same landlord  
78 Jacklyn Nooney. I will turn it over to the Board.

79

80 Ms. Lemire asked 33-190 is what you said?

81

82 Mr. Nielsen stated correct.

83

84 Ms. Lemire stated its 33-189. This is Medical Marijuana correct?

85

86 Mr. Nielsen said let me look at my ordinances... Correct.

87

88 Ms. Lemire said Ok.

89

90 Mr. Hamilton stated just for the record that's 33-190.

91

92 Ms. Lemire said no... Oh, the address?

93  
94 Mr. Hamilton said no. The Ordinance Section is 33-190  
95  
96 Ms. Lemire said 33-189 is Medical Marijuana. 33-190 is the Adult Retail.  
97  
98 Mr. Neilson said I guess which in 33-189 requires the 500-foot set back.  
99  
100 Ms. Lemire said they both require the 500-foot set back.  
101  
102 Mr. Hamilton asked do (or use the word if) you want to continue your testimony  
103 before we ask questions?  
104  
105 Mr. Neilson said well first I would like to clarify this point because it is the subject.  
106  
107 Mr. Hamilton stated ok, under the code in Chapter Eleven it says this essentially is  
108 the Marijuana Establishment. It says it is the marijuana establishment.  
109  
110 Mr. Neilson said to my understanding that Chapter 11, according to 11-1, is for Adult  
111 Use Marijuana establishments only and not medical.  
112  
113 Mr. Hamilton said correct.  
114  
115 Ms. Lemire said yes... right... it is.  
116  
117 Mr. Hamilton said I guess I was confused in the application where I don't believe the  
118 word medical was used.  
119  
120 Mr. Neilson said if you look at the site plan which was attached to the application, all  
121 of the uses are labeled with Medical Marijuana.  
122  
123 Mr. Hamilton asked this site plan?  
124  
125 Mr. Neilson said correct  
126  
127 Mr. Hamilton said well again it wasn't listed on the application, so let's clarify that.  
128  
129 Mr. Hamilton said, as far as the jurisdiction on Medical Marijuana, is that the  
130 question?  
131  
132 Mr. Neilson said correct.  
133  
134 Mr. Hamilton said it's the set back that we are concerned about.  
135  
136 Mr. Neilson said correct. I believe that it is in 33-190(5). Or is that incorrect?  
137

138 Mr. Trott stated if we are going by Medical Marijuana its Non-profit medical marijuana  
139 dispensaries and primary caregivers. It would be (c).  
140  
141 Mr. Neilson said thank you sir.  
142  
143 Mr. Hamilton said I think I am confused.  
144  
145 Ms. Lemire said 33-189 has a definition for sensitive uses and the definition is different then the  
146 one in 33-190.  
147  
148 Mr. Hamilton said ok let's continue. 33-189 states "A dispensary or registered primary caregiver  
149 facility may not be located within 500 feet of the property line of an existing public or private  
150 school, residential property, childcare facility, place of worship, or public facility".  
151  
152 Mr. Neilson said correct.  
153  
154 Mr. Hamilton asked does that answer your question? As far as the requirement for setback.  
155  
156 Mr. Neilson said, I hope. I was under the impression we were required to use the definition in 1-  
157 2.  
158  
159 Ms. Lemire said correct. The definition that includes the word 'road'. You are correct. 33-189  
160 goes back to the definition of 1-2. 33-190 goes back to the definition in Chapter 11.  
161  
162 Mr. Neilson said that is what we are looking at getting the waiver.  
163  
164 Mr. Hamilton said ok. Would you please address the five questions which are on the application?  
165  
166 Mr. Neilson said sure do you want me to read the question on the application? Or just read the  
167 answer.  
168  
169 Mr. Hamilton said let's read the question.  
170  
171 Mr. Neilson said ok. "Is the need for the waiver due to the unique circumstances of the property  
172 and not to the general condition of the neighborhood?" It is. The need for the waiver is due to the  
173 location of the property in relation to the Eliot Transfer Station.  
174  
175 Mr. Neilson asked do you want me to just continue through the questions and you can comment  
176 after?  
177  
178 Mr. Hamilton said sure.  
179  
180 Mr. Neilson said ok. "Will granting of a waiver, alter the essential character of the locality?" No.  
181 The essential character of the locality will remain as is. No changes are proposed to the site plan  
182 with the exception of the items that are required by state license.  
183

184 Mr. Neilson read Is the hardship the result of action taken by the applicant or a prior owner? The  
185 hardship is not a result of action taken by the applicant. Due to the requirements of... I stated here  
186 33-190 e but as clarified it should be 33-189 c... there are limited properties that fit the  
187 dimensional requirements and the needs of Sweet Dirt's operation.  
188

189 Mr. Neilson read "Will the granting of the waiver substantially reduces or impair the use of  
190 abutting property and ..." Is there something that is supposed to be after that?

191  
192 Ms. Lemire stated I think there is a piece missing.

193  
194 Mr. Hamilton said your right.

195  
196 Ms. Lemire asked Ms. Bishop in the five criteria, number four.

197  
198 Ms. Bishop stated the road?

199  
200 Mr. Neilson said I think she is referring to the part in bold, the question it seems to cut off.

201  
202 Mr. Neilson said I think its just an error in the form.

203  
204 Mr. Neilson said the answer is No. It will allow the owner of the property to lease to Sweet Dirt.  
205 A tenant that is already in good standing on the abutting property, 495 Harold L Dow Highway.  
206 495 Harold L Dow Highway was granted a very similar dimensional waiver from the same  
207 property, that being the Eliot Transfer Station.

208  
209 Mr. Neilson read "Is the granting of a waiver based upon demonstrated need, not convenience,  
210 and is there no other feasible alternative available?" The granting of the waiver is based on the  
211 needs of the business. There are no feasible alternatives that suit Sweet Dirt's operation.

212  
213 Mr. Hamilton said ok. Do you have anything to add to the application at this point?

214  
215 Mr. Neilson said not at this point.

216  
217 Mr. Hamilton asked questions from the board?

218  
219 Mr. Trott said Mr. Chair if I may. Going back on #1 you have listed just the setback from the  
220 Transfer Station. You 're applying for this property, the other waiver it doesn't matter. It doesn't  
221 have anything to do with this property.

222  
223 Mr. Neilson was only noting that precedence exists.

224  
225 Mr. Trott said no precedence is set by a waiver.

226  
227 Mr. Hamilton stated the Board of Appeals does not set precedence.

228  
229 Ms. Lemire said no.

230  
231 Mr. Neilson said understood.  
232  
233 Mr. Hamilton stated that each instance is its own individual case.  
234  
235 Mr. Trott said you have a residence within the five hundred feet and there is also the public  
236 facility within 500 feet.  
237  
238 Mr. Neilson asked which residence is that?  
239  
240 Mr. Trott said formally Gaylen Marble's.  
241  
242 Mr. Neilson stated I was just informed that Sweet Dirt owns 505 now.  
243  
244 Mr. Trott stated its still residential. It doesn't matter who owns it. It's the Use.  
245  
246 Ms. Lemire stated that's right its just the use.  
247  
248 Mr. Trott said unless you have gone to the Planning Board for a change of use that we don't  
249 know about its still a residential property.  
250  
251 Mr. Neilson asked may I give the floor to Mr. Pope to clarify that?  
252  
253 Mr. Hamilton asked Mr. Pope would you care to clarify?  
254  
255 Mr. (Hughes) Pope, 43 Creek Crossing, said, to your point, that is true. It is grandfathered as a  
256 residence but it is also in the Commercial Industrial zone.  
257  
258 Mr. Trott stated it is the use of the property not the zoning that you are getting the waiver for. So  
259 even though it is in the Commercial Zone it is grandfathered residential before it was made the  
260 commercial industrial zone. The use of the property is residential.  
261  
262 Mr. Pope stated I understand that and we did go the Board of Appeals for 495 and the Board of  
263 Appeals did deem...  
264  
265 Mr. Trott stated that, again, that doesn't play in this. All I am doing is trying to state that there is  
266 a residence and that there is a request for waiver from the residence in this request.  
267  
268 Mr. Pope stated I see your point and I agree but it was also an autobody shop. Isn't that correct?  
269  
270 Mr. Trott said yes it was but it's also got a residential use.  
271 Mr. Hamilton asked do we know what the set back is to that residence? Is it within the 500-foot  
272 setback?  
273  
274 Ms. Bishop said the structure is not shown on the site plan.  
275

276 Mr. Rankie asked Mr. Chairman your request, does that affect the request that is being asked for  
277 today?  
278  
279 Mr. Hamilton stated I think it may well.  
280  
281 Mr. Neilson asked can I ask why and how that measurement was taken?  
282  
283 Mr. Trott stated by the GIS. I thought I had written it down in my notes but I have every other  
284 one but that one.  
285  
286 Mr. Neilson stated fair enough. So, GIS from the limit of the lot line to the limit of the structure?  
287  
288 Mr. Trott stated from the lot line to the structure.  
289  
290 Mr. Neilson asked so that would be from the greenhouse to the...  
291  
292 Mr. Trott said yes but that doesn't mean that I used the GIS professionally.  
293  
294 Mr. Neilson stated well the GIS has a certain error.  
295  
296 Mr. Trott said yes. Then we also have the public facility. 'That' not meaning the Town municipal  
297 facility, 'that' meaning 236.  
298  
299 Mr. Neilson said on the plan Route 236 is just outside the 250-foot waiver that we are requesting.  
300 So, if granted that would be included.  
301  
302 Mr. Trott asked what is your measurement to Route 236?  
303  
304 Mr. Neilson said I would have to scale it but its outside the 250-foot approximately 273.  
305  
306 Mr. Trott asked so that puts it outside the 250-foot waiver.  
307  
308 Mr. Neilson said well 50% would be 250. And its 275 feet away which makes it within  
309 compliance.  
310  
311 Mr. Rankie Mr. Chairman?  
312  
313 Mr. Hamilton yes Mr. Rankie.  
314  
315 Mr. Rankie what you are saying you need for a waiver is one hundred and ten feet? It states that  
316 the Town Public Works / Transfer Station tax map 54/lot 8 is located approximately 390 feet  
317 from the limit of the proposed Marijuana facility structure. So, if you need to have a 500- foot set  
318 back subtract 390 then you get 110. Ok. So that brings me to the point. My point is we had some  
319 discussion when Mr. Pope was before us before about granting what was needed as opposed to  
320 what was wanted. We disagreed on that but the majority granted that to Mr. Pope. After that we  
321 got legal counsel and we did some research and we found that we erred and all we can grant you

322 is what you need period. If we were to grant this to you tonight, we would be granting you 110  
323 feet.

324

325 Mr. Neilson asked So is it what we need or what we requested?

326

327 Mr. Rankie stated the Board of Appeals bases our justification on granting you a waiver with the  
328 reasonable amount of return not the maximum. Plus, it does count when we go to court cases.  
329 There have been court cases that the Board of Appeals have granted 250-feet and some abutters  
330 did not like it and they brought the Board of Appeals to court and they won. So, you can only be  
331 granted what you need not what you want.

332

333 Mr. Neilson said understood.

334

335 Mr. Rankie stated, and you can correct me if you need to and I am sure you will Mr. Chairman,  
336 but if we were to grant anything to you today it would be 110 feet not 250.

337

338 Mr. Neilson said if it is deemed through discussion of the board that the road is within part of the  
339 definition of Public Facility, we need to have the set back from that as well.

340

341 Mr. Rankie said then your numbers here are not correct and they would be a different thing.

342

343 Mr. Neilson said right and would the board consider what we need to be roughly 250 feet?

344

345 Mr. Rankie said that's not for me to say that's for the Chairman. What you have presented us  
346 here is based on the 250 and based on what I just read. So, based on that we would be granting  
347 110 feet.

348

349 Mr. Hamilton asked are any other questions from the Board.

350

351 Mr. Trott said I would like to move to my next question. Reading the question "Is the hardship  
352 the result of action taken by the applicant or a prior owner?" you said the hardship is not a result  
353 of action taken by the applicant. Due to the requirements of 33-190 but you meant to have in  
354 here is 33-189, that it's not created by Sweet Dirt but if you need a waiver to fit your needs isn't  
355 that being created by their want to move in to these buildings to expand their business? Is there a  
356 need to have this waiver?

357

358 Mr. Neilson said in Eliot in the commercial industrial district on 236 in order to operate you  
359 would need a 500-foot building setback from Route 236 which there are very limited properties  
360 that would allow...and that there is hardship.

361

362 Mr. Trott said but the hardship wasn't put on them by the vote of the people. The people voted  
363 back in November to create this ordinance, that if I recall there were quite a few signs out from  
364 Sweet Dirt to support this ordinance to have this ordinance put in place. Now with that  
365 happening that didn't create hardship on them and that wasn't put on them with this property.  
366 They weren't in this property yet.

367

368 Mr. Neilson asked Is that the Chapter 11 ordinance or...?

369

370 Mr. Trott said for the same setback.

371

372 Mr. Neilson said correct but those setbacks do not include road.

373

374 Mr. Trott said yes but it does for the town. If you eliminate the road it is one of three setback  
375 issues out of there.

376

377 Mr. Neilson said I see.

378

379 Mr. Trott said I understand that and I took time to go and look at properties and there is maybe  
380 twelve properties within that area.

381

382 Mr. Neilson said so then wouldn't that mean then the hardships are created by the lots in the  
383 town? Because it's allowed use and your trying to buy property.

384

385 Mr. Trott said but that didn't change the lot sizes. The town voted to have this ordinance in  
386 place. The people of the Town of Eliot voted to have this ordinance in place that if it changed the  
387 operation and what they are doing in their current property that ordinance would create a  
388 hardship for them. But this is a new property with known limitations that's not a hardship created  
389 by the town.

390

391 Mr. Neilson May I allow Justice to take the floor?

392

393 Mr. Hamilton Absolutely.

394

395 Mr. Rines said Thank you for your time. Justice Rines I work for Sweet Dirt and I represent them  
396 on various legal matters.

397

398 Mr. Hamilton asked could you state your address.

399

400 Mr. Rines said 372 Wybird Street, Portsmouth.

401

402 Mr. Rankie asked Mr. Hamilton could you make sure our recording secretary has the spelling of  
403 his name.

404

405 Mr. Rines stated I think they know me. They know me. Unfortunately for them.

406

407 Mr. Rines said that the reason why we are looking to move into the facility next door is  
408 stemming from the June 10th fire. We are building a new facility but we can't operate Adult Use  
409 now, the state isn't looking at opening those businesses until June or July. We are a medical  
410 cannabis company now.

411

412 Mr. Trott said so I just want to clarify you said we can't do anything now about Adult Use.

413

414 Mr. Rines said correct.

415

416 Mr. Trott said but this doesn't have anything to do with Adult Use. I just don't want to get  
417 anything confused. You are doing Medical Marijuana.

418

419 Mr. Rines said that is correct. But the reason we lost our medical cultivation facility, we are  
420 building a new one, we have no way to produce right now because of the fire. So, our hardship is  
421 we lost our cultivation facility. Our landlord is nice enough to agree to allow us to move next  
422 door with our medical cultivation facility so we can continue to survive and hopefully build a  
423 vibrant business and an economic drive for Eliot. So, the hardship is not due to us, it is due to the  
424 fire and frankly scrambling to try to keep our business going.

425

426 Mr. Trott said I do understand that. I watched it, I saw it, I get it. But I take it then that this is a  
427 temporary. That because you had a fire you are going to move in and do this other thing. Yes, the  
428 fire was a hardship again the hardship is not something that the town or a change of ordinance  
429 has put on Sweet Dirt. I am just trying to clarify that the people of the Town voted and you want  
430 us to waive a percentage of what the people of the Town of Eliot voted to have.

431

432 Mr. Rines said that is correct.

433

434 Mr. Trott said and I am just trying to clarify that your stating that you want to expand this and  
435 that but nowhere in this application does it say we had a fire and we need to do this.

436

437 Mr. Rines said right.

438

439 Mr. Trott said you have come up with something completely different then what you have put in  
440 your application.

441

442 Mr. Rines said well no they relate. I am just trying...

443

444 Mr. Trott said I am just saying I don't see anything on here that says this hardship was created by  
445 the fire.

446

447 Mr. Rines said I understand but, I respectfully disagree. We have requested a waiver based on  
448 the hardship that there are extremely limited properties located on 236. They are going for a  
449 premium especially when anyone finds out the business, we are in. We have an amicable  
450 landlord who is willing to let us move in. The hardship for us is but for this limitation which  
451 arguably would invalidate most of 236 when you're considering the road. It is the principle  
452 reason why we can't continue our business.

453 Mr. Trott said but we have to consider the road because that's what our ordinance says.

454

455 Mr. Rines said right and that's why we are requesting waivers.

456

457 Mr. Trott said and we need to consider the residential and we need to consider the town property.

458

459 Mr. Rines said I was hoping with the residential you could look at the context of that property.  
460 Yes, its residential and Sweet Dirt has purchased it from Gaylen Marble and there is no intent to  
461 use that as a residence.

462  
463 Mr. Trott said intent is great but, it hasn't gone and got the use changed. We are looking at the  
464 black and white that is on the paper. So, I understand but that is my question. Yes, I do  
465 understand that there is limited properties. I understand that with that ordinance it does reduce  
466 your ability to find a property that within the Town of Eliot meet it and probably and most  
467 communities that follow that same. but ten years from now who knows what's going to happen.

468  
469 Mr. Hamilton said I would like to interject into this line of questioning. Yes, indeed the Town  
470 did vote for an ordinance to allow Medical Marijuana and other marijuana code. But the Town  
471 also did vote for 44-194 which is non-conforming lots of record, this is a non-conforming lot of  
472 record and they are asking basically for a practical difficulty variance but we call it a waiver at  
473 this point. We are going to change all that very soon, we hope, because it's very confusing and  
474 there is nothing in the ordinance that really relates to what you're doing here so we are flying by  
475 the seat of our pants here.

476  
477 Mr. Rines said as are we.

478  
479 Mr. Hamilton said to answer your question, to head off this line of questioning, we do have the  
480 ability to grant a 50% reduction in non-conforming lots of record, up to a 50% reduction. So,  
481 he's not out of line with this request and I think he has defined the reason of request, which is a  
482 hardship.

483  
484 Mr. Trott said I don't believe I said he was out of line with his request. I was just trying to clarify  
485 the application that is what I am trying to clarify. We don't have the right ordinance in here.

486  
487 Mr. Hamilton said I was very confused by the application itself; it didn't mention Medical  
488 Marijuana at all. It mentioned cultivation and repurposing a portion of an existing building for a  
489 marijuana production facility which could have been Medical Marijuana or it could have been  
490 Adult.

491  
492 Mr. Rines said no it should have been adult.

493  
494 Mr. Hamilton said right. So, the application isn't very well put together.

495  
496 Mr. Trott said so that is my line of questioning. Again, I understand the fire. I understand the  
497 limitations. But you haven't stated that and that's why I need to ask the questions. If I may  
498 continue?

499 Mr. Hamilton said yes.

500  
501 Mr. Trott said so this is not going to be a temporary thing? So, you are going to move into that.  
502 And that's going to change the whole use of her property. And you're going in front of the board  
503 for a change of use of the landscaping business.

504

505 Mr. Rines said the landscaping business would continue to operate and per the ordinance that is  
506 clearly delineated on the Site Plan submitted to the Town. That fenced-in section if you are  
507 looking at the site map, that sole portion will be occupied, there is essentially no construction,  
508 it's a fence, security, and being sure we build a partition that can't be accessed from the rest of  
509 the building.

510

511 Mr. Trott said my last thing is it talks about other options. How much property was acquired by  
512 purchasing Gaylen Marble's?

513

514 Mr. Rines said 3 acres.

515

516 Mr. Trott said now does that back section give you the ability to fit back there?

517

518 Mr. Rines said maybe a year from now.

519

520 Mr. Trott asked so there is another option?

521

522 Mr. Rines said not a viable one for us at this point, no.

523

524 Mr. Trott asked but there is another option?

525

526 Mr. Rines said that would probably fit into the hardship.

527

528 Mr. Trott said again I believe the Town has jumped the gun with the ordinance and it has put you  
529 guys in a bad spot.

530

531 Mr. Rines asked a tough spot? Could you clarify that?

532

533 Mr. Trott said with the setbacks and chapter 11 and chapter 198

534

535 Ms. Lemire stated chapter 33-189...

536

537 Mr. Trott said on both of them they are very hard for you to do anything in the Town of Eliot. No  
538 doubt. Thanks, I appreciate it.

539

540 Mr. Rines said Thank you.

541

542 Mr. Hamilton asked are there any other questions from the board?

543

544 Ms. Lemire said I have a follow-up. Just on the structure. So the greenhouse out back of the  
545 structure your using that? In the other structure the back portion, you said you are going to secure  
546 it? And Jackie will have her landscaping business in the rest of the building?

547

548 Mr. Rines said that's correct.

549

550 Ms. Lemire said ok. Thank you.

551  
552 Mr. Rines said there will be no access for her employees.  
553  
554 Ms. Lemire asked will there be similar security to what you had on the other property?  
555  
556 Mr. Rines said yes.  
557  
558 Mr. Hamilton said yes Sir.  
559  
560 Mr. Pope said I am not sure how many months ago we initially submitted our plan to the Town,  
561 but it has been quite some time. Our whole purpose for us moving over there is there is already  
562 infrastructure in place that our existing landlord isn't using. So, while we have been bleeding  
563 financially it seems like a very viable option for us to get back on our feet. It's just enough space.  
564 I have been doing this for a very long time. I have given up a lot of the responsibility of getting  
565 up here and talking. I am sitting back here in the corner shrinking because this whole discussion  
566 seems like it has spun so far from where I was back in 2017 standing here and going through the  
567 Planning Board and through Board of Appeals and having these discussions. I understand that  
568 the Board of Appeals doesn't discuss precedence. That makes sense to me, but it's clear to see  
569 that the sky's not falling by granting us permission for us to move our business over the lot line  
570 where our landlord has graciously given us permission to do so. I feel like we have worked very  
571 hard and diligently to be honest and forthright and patient with the process within the town.  
572 There are a large number of companies that aren't doing it the way that we're doing it. We could  
573 be making lots of money but it wouldn't be doing it the right way. So, we're here tonight, I am  
574 here tonight to ask permission going through the Town process that this is a reasonable request.  
575 While I am not a person to argue semantics of things, I don't feel that we are being unreasonable.  
576 While I don't know any of you, you all seem like smart individuals. I think it's clear to see we  
577 are not trying to pull the wool over anyone's eyes. We are not trying to push our way through  
578 town. I live here in town. I help pay for everything we have in town. We went through the Code  
579 Enforcement Officer and the Town Planner so anything that you're seeing tonight that is in error  
580 or doesn't quite match what you are looking for we sought help from the people that help us  
581 through the process. So I feel like we are getting a lot of unnecessary heat and I feel like... Well  
582 perhaps heat isn't the right word.  
583  
584 Mr. Trott said its offensive.  
585  
586 Mr. Pope said well I apologize. I feel like as a community, it's taken a community to get us here  
587 tonight and some of the questions I feel like are personal more than anything else.  
588  
589 Mr., Trott said you are addressing me, so I will address you back. It's ok to address me like that.  
590 It's not a personal thing. I firmly believe in your business.  
591  
592 Mr. Pope said Thank you.  
593  
594 Mr. Trott said I am a business owner. I am one of your neighbors and you don't even know who  
595 I am.  
596

597 Mr. Pope said you own the boat yard.

598

599 Mr. Trott said that is correct. I have grown up in this town. I sponsor this town. I back this town.  
600 Just like everybody else here. This is not a personal thing. There is an ordinance that is in place.  
601 Ok. The ordinance has these setbacks. There is this little thing that we are going through as a  
602 board right now with waivers. They are not a clear-cut thing. It is a lot easier for us to decide  
603 when you are approaching us for a variance believe it or not. So there is a lot of questions. Me  
604 asking questions is to clarify, I am not against you. I am not looking at your business. I am  
605 looking at an ordinance. I personally don't care what business is, I am looking at the ordinance  
606 that the town voted to have. That's all I am doing. I apologize if the line of question seems like I  
607 am against you.

608

609 Mr. Pope said it does.

610

611 Mr. Trott said well I apologize.

612

613 Mr. Pope said and since we are talking this way. When I did go to the Meet Market I was talking  
614 to your worker outside and I told him what my business was and you were coming to the door  
615 and he said oh he doesn't like your business. I can't talk to you.

616

617 Mr. Trott said my employees are not me.

618

619 Mr. Hamilton said I would like to make a comment. I think we are getting off track. I want to go  
620 back to what you said about doing it correctly. Is there anything else you would like to add?

621

622 Mr. Rankie asked I would like an opportunity if I could please?

623

624 Mr. Hamilton said first of all I asked the appellant if there is anything else, he would like to add  
625 to the application or to this request tonight. Before we ask any more questions.

626

627 Mr. Pope said at this time no, I am having a hard time talking.

628

629 Mr. Hamilton said if you would please stay right there, we may have a few more questions.  
630 Charlie?

631

632 Mr. Rankie said thank you. Yes, you were here before. No, I didn't have a copy of the ordinance  
633 in front of me when you were here before. I had an opportunity to read the ordinance. When we  
634 close the meeting, I will talk more about the specifics of the ordinance but, while we are still  
635 open, I thank you for the opportunity, a lot of work was put into this ordinance. There is need for  
636 it by whoever it was that wrote it. There is currently a memo from our Code Enforcement Officer  
637 who did what we asked her to do when we were talking before. She wrote to the Planning Board  
638 and asked them to review it, that perhaps it's too harsh in respect to the setback. So that's in  
639 process. For us to grant you a waiver for the property next door Hughes, that goes forever with  
640 that property. If we had the power to say Hughes go next door, go do your thing, fix your  
641 property, and then move back there everything's cool, that would be a whole other question you  
642 would be asking us. If we were to grant the waiver for the property next door, that's forever with

643 the property. So that's a pretty serious thing. Our job, as our colleague Mr. Trott mentioned, is  
644 not to do what we think is right, because it's us personally, our job is to look at the ordinance and  
645 look at the hardship and to look at what is presented and take care of the people's business for all  
646 of the residents in Eliot. So, nobody likes no, but, this is what we have and this is how I will  
647 make my decision.

648  
649 Mr. Hamilton asked do you have a question? We can discuss this during our deliberation.

650  
651 Mr. Rankie said I did intend for us to do that but, I couldn't address Mr. Pope when we did that  
652 then though. Mr. Chairman I am finished thank you.

653  
654 Mr. Hamilton asked John do you have anything to add to this conversation?

655  
656 Mr. Marshall said I think not.

657  
658 Mr. Hamilton asked Ellen?

659  
660 Ms. Lemire said the only question I would ask you, is if you could continue to use the  
661 greenhouses on a temporary basis and I don't even know if that would work as far as setbacks  
662 and stuff go, until the Planning Board and the Town have had a chance to finish the process of  
663 maybe amending, analyzing the blocks, the limitation in the ordinance, is that doable? Is that a  
664 possibility?

665  
666 Mr. Pope said yea anything is a possibility. Yes. Yes, it is.

667  
668 Mr. Rankie asked do you have the setback? Is that the question.

669  
670 Ms. Lemire said and that would be the next question. Do just the greenhouses need it or does just  
671 the section of the greenhouses need it?

672  
673 Mr. Rines said it's both.

674  
675 Ms. Lemire said it's both, ok. Alright well that answers that question.

676  
677 Mr. Pope said I believe the greenhouses are even further back than the one that the previous  
678 building that burnt down was but I am not certain of it.

679  
680 Ms. Lemire said but that was a waiver for the other property correct?

681 Mr. Pope said correct. I am just using it for reference.

682  
683 Ms. Lemire said ok.

684  
685 Mr. Hamilton asked Ellen do you have any other questions.

686  
687 Ms. Lemire said no.

688

689 Mr. Hamilton said I don't have any questions at this point thank you very much.

690

691 Mr. Pope said thank you.

692

693 Mr. Hamilton said I do have a question for the Code Enforcement Officer. Could you weigh in  
694 on this please.

695

696 Ms. Bishop said you said before they do have a non-conforming lot. They have the ability in that  
697 non-conforming section to bring their application to the board. Staff has talked a little bit about  
698 that setback requirement. An area I would like clarification on is some of the different definitions  
699 of uses. In this particular area being residential property. What is a residential property?

700 Especially when you are within a commercial zone. We don't have a definition for that. It can be  
701 viewed a few different ways, where this use is within a Commercial/Industrial Zone and you  
702 have a residential property, that's ok but, what's the intent behind residential property in this  
703 section of the ordinance. I am not sure if I am being clear on that.

704

705 Mr. Hamilton said it's clear to me.

706

707 Ms. Bishop said ok. I think that is a piece that can definitely be looked at. I think we need to look  
708 next door and say what is it that we have is it a property, is it a residential home within the  
709 commercial zone. Those kinds of things.

710

711 Mr. Marshall said Mr. Chairman can I add a question into this argument?

712

713 Mr. Hamilton said I would like her to finish testifying.

714

715 Ms. Bishop said I was pretty much done. It would offer some clarification if we had a definition,  
716 mainly because we have a residential property within the commercial industrial zone. Thank you.

717

718 Mr. Hamilton asked John?

719

720 Mr. Marshall asked is a residential use in the commercial zone considered a conditional use that  
721 goes away after it has not been used for a while?

722

723 Ms. Bishop said yes. And it has the ability to stay there a while just like a residence does.

724

725 Mr. Marshall asked how long has it been since it was a residential use?

726

727 Ms. Bishop said I do not know.

728

729 Mr. Trott said less than a year. Right?

730

731 Ms. Bishop said I will add to that it doesn't say residential use it says residential property. I think  
732 we should discuss and clarify in the future; I know it doesn't help us now.

733

734 Mr. Hamilton said it is a very foggy zone. In fact, the intent of the ordinance as I understand, is  
735 to prevent an encroachment on a residential property in the residential zone. That to me is the  
736 intent of the ordinance. That's how we address a use, it's a non-conforming use in the  
737 commercial zone.

738  
739 Ms. Bishop said right.

740  
741 Mr. Marshall said there has also been discussion about the road. Are we actually dealing with a  
742 setback from the road? I don't see that in what I am looking at here. If we do consider setback  
743 from the road, we can't do this anyway, very few.

744  
745 Mr. Hamilton said but in this case this application would prevail, well qualify because it's more  
746 than 250 feet away. They only need the 50%.

747  
748 Mr. Marshall asked but are we actually dealing with the setback from the road?

749  
750 Mr. Hamilton said we dealt with the setback from the road previously.

751  
752 Mr. Rankie said I believe we are dealing with the setback from the property.

753  
754 Mr. Marshall said we are dealing with the setback from the transfer station.

755  
756 Mr. Hamilton said we are, that was the request. But we actually have information to the fact that  
757 it's closer to the road.

758  
759 Mr. Marshall asked where is it within our code that we are dealing with the setback from the  
760 road?

761  
762 Mr. Hamilton said let me ask the Code Enforcement Officer.

763  
764 Ms. Bishop said that's 33-189(c) that calls out public facility and we go back to the definition of  
765 1-2 and within the definition of public facility it includes roads.

766  
767 Mr. Marshall asked 33-189?

768  
769 Ms. Bishop said yes. C. And the memo that you have speaks to that because the Chapter 11  
770 definition of public facility is different. The word road has been removed.

771  
772 Mr. Marshall said it states "A dispensary or registered primary caregiver facility may not be  
773 located within 500 feet of the property line of an existing public or private school, residential  
774 property, childcare facility, place of worship or public facility." I don't see that it says roads.

775  
776 Ms. Lemire said you have to go back to the definition of public facility found in Chapter 1, in  
777 which roads is included in that definition.

778  
779 Mr. Marshall said that makes it more than tough.

780

781 Ms. Bishop said there is an amendment that the Planning Board will be talking about, that will  
782 reference the definition of public facility back to Chapter 11 and that should clarify and remove  
783 roads from that definition.

784

785 Mr. Hamilton said just to be clear the Planning Board is very much aware of the complications of  
786 the ordinance and they are trying to resolve it with an amendment on the June ballot.

787

788 Mr. Rankie asked Mr. Chair could I ask our Code Enforcement Officer a question? Were you  
789 able to get any sense to the pleasure of the Planning Board?

790

791 Ms. Bishop said it's more of a discussion at that time. They talked about it more in the second  
792 meeting more in-depth with that there has been a proposed language change to clarify going  
793 forward.

794

795 Mr. Rankie asked do you have any idea what that may be?

796

797 Mr. Bishop asked the language itself?

798

799 Mr. Rankie said yes. We are prohibited from watching or going to any of the Planning Board  
800 meetings due to conflict. But if you can share that with us, I think that may be helpful.

801

802 Ms. Goodwin asked may I speak for just a second?

803

804 Mr. Hamilton said yes.

805

806 Ms. Goodwin said so attached to the memo that you have that Ms. Bishop wrote, is the memo I  
807 wrote to the Planning Board, I mean that I wrote to Mr. Lee, just clarifying what the Planning  
808 Board's task was and what that new proposed ordinance would read like.

809

810 Mr. Hamilton asked and could you summarize that?

811

812 Ms. Goodwin said yes. 33-189 has the whole definition then the last part says public facility and  
813 the proposed change is public facility as defined in Chapter 11. So that definition would defer  
814 back to the definition in Chapter 11, which the definition of public facility in Chapter 11 does not  
815 include roads.

816

817 Mr. Rankie asked is there any read on the public facility that was more to my question then the  
818 road. In the road is almost a no-brainer.

819

820 Ms. Bishop said there is no change to public facility, other than road, to the definition.

821

822 Mr. Rankie asked are they working on the 500 feet?

823

824 Ms. Bishop said not to my knowledge. However, I suggested maybe doing a workshop between  
825 the two boards. When someone keeps needing to appear before the board as a consistent conflict

826 with the ordinance and waivers requested, that's a time to look at an ordinance and say what is  
827 happening. That's the discussion that I want to have with the Planning Board that we haven't had  
828 the opportunity to do yet.

829

830 Mr. Rankie asked so their primary discussion is about the road?

831

832 Ms. Bishop said yes.

833

834 Mr. Hamilton said I have a question for the Code Enforcement officer. Is this application also  
835 subject to reviewed by the Planning Board?

836

837 Ms. Bishop said this particular application is not but the use is.

838

839 Mr. Hamilton said right. The application from the B.O.A is not relevant but the use is. In other  
840 words, the applicant needs to go in front of the Planning Board.

841

842 Ms. Bishop said yes.

843

844 Mr. Hamilton said thank you. Any other questions to the Code Enforcement Officer.

845

846 Ms. Lemire said the use of the structure, when measuring the 500 hundred feet, do you measure  
847 from the whole building that Jaclyn Nooney will be using or do you measure only from the part  
848 of the building that Sweet Dirt will be using?

849

850 Ms. Bishop said it is from the area that Sweet Dirt will be using.

851

852 Ms. Lemire said ok.

853

854 Ms. Bishop said as long as there is a defined wall.

855

856 Ms. Lemire said ok. Thank you.

857

858 Mr. Hamilton asked are there any other questions for the Code Enforcement Officer? If not,  
859 questions from any of the abutters of the property?

860

861 Ms. Lemire said I have a comment.

862

863 Mr. Hamilton asked you have a comment in general or to someone specifically? To the Code  
864 Enforcement Officer? Is it a question?

865

866 Ms. Lemire asked are you asking for abutters to speak?

867

868 Mr. Hamilton said yes.

869

870 Ms. Lemire said Nancy Shapleigh.

871

872 Mr. Hamilton said ok, yes.

873

874 Ms. Lemire said so this afternoon I got a call from Nancy Shapleigh, down on River Road, and  
875 she's blind, and she can't write letters, she can't write emails, she lives alone. So, she gave me  
876 information about how she feels about this as a direct abutter and asked me to relay that  
877 information.

878

879 Mr. Rankie asked she's an abutter?

880

881 Ms. Lemire said she's directly across she has the full circle...

882

883 Mr. Trott said no that's the next case.

884

885 Ms. Lemire said ok never mind.

886

887 Mr. Hamilton said ok, any other abutters who would like to testify. If not, any interested parties  
888 speak to or for or against the application? If not, I would like to hear from our alternate member.  
889 Typically, since the alternate member is not eligible to vote after we close the public hearing and  
890 go to our deliberations, I always like to afford the ability to them to weigh in on this application.

891

892 Ms. Adams said I do not.

893

894 Mr. Hamilton said you would care not to? Ok. The last bite of the apple goes to the applicant.  
895 Would you like to say anything else to us before we close the public hearing and go to  
896 deliberations, this is the time to do that.

897

898 Mr. Hamilton said yes.

899

900 Mr. Neilson said just want to make sure, I guess it's worth noting that at the very end of the  
901 revised version I did note the distance from Route 236 is approximately 173 feet, I don't know if  
902 you got that version?

903

904 Mr. Hamilton said yes, we have.

905

906 Mr. Neilson said ok.

907

908 Mr. Hamilton said that's on page 2 of 3 of the application. It's actually the first page. Any other?

909

910 Mr. Hamilton said yes sir.

911

912 Mr. Rines said I want to reiterate what Mr. Pope was saying before. We are really trying to do  
913 this the right way. We are trying to be above-board. There are a lot of players in this industry  
914 which are giving us a bad name. So, it's an uphill battle across the board. We appreciate your  
915 time; we appreciate your consideration. We want to be a valuable part of Eliot; we want help you  
916 prosper. Thank you very much.

917

918 Mr. Hamilton said thank you. Yes sir.

919

920 Mr. Pope said I want to apologize to Mr. Trott. I let me emotions get involved. But it is very  
921 emotional. This is my life. It's very confusing as the applicant having been through so much of  
922 this already, I feel like we are going backwards now and I didn't know that was possible. I  
923 thought that once we had made a conclusion that anything else beyond that goes forward, it  
924 doesn't go backward. So I feel like the things you all are considering right now, were considered  
925 by the Planning Board a year or more ago and I was asked to be on the Cannabis Committee, I  
926 believe the Planning Board and the Cannabis Committee both discussed the road and how they  
927 weren't even going to consider that as part of all of this and while that's a fallacy among itself  
928 because the language is still there. I haven't gone through all the videos and all the minutes but  
929 as a resident and a business owner in my head I said ok, we have already been through this. Not  
930 only on the Cannabis Committee but with the Planning Board. I can't speak for the Select Board;  
931 I don't go to those meetings very often but I just ask that you to consider what has been approved  
932 and not to move me back more. Thank you

933

934 Mr. Hamilton said thank you. If there are no other comments or questions from the audience.

935

936 Ms. Wypyski said Stacey Wypyski I live at 38 Creek Crossing. I was a member of the Adult Use  
937 Cannabis Committee and we did work really hard with the Planning Board. We tried to get as  
938 close to the language and God knows the Planning Board did. All I can say is watching it we saw  
939 other people come in trying from various companies that I have no idea who they were would  
940 come in they would attend our meetings because they were open to the public and other people  
941 in the Town of Eliot would come in. We sat there and listened we wrote this ordinance, with the  
942 road we did say to take it out, I'm sorry I can see why they are trying to take it out, it somehow  
943 got lost but all I can say is I am a neighbor of Hughes. He has done everything right. This  
944 company has done everything right. Everything we put up, they said ok that's what we will do.  
945 So, I just ask you guys to listen to what Hughes said, they are not trying to pull the wool over  
946 Eliot's eyes, they are trying to really follow the rules and I hope you guys see that. Thank you.

947

948 Mr. Hamilton said thank you. Did you get the name?

949

950 Ms. Goodwin said I will get it from her.

951

952 Mr. Hamilton said if there are no other comments, I am closing the Public Hearing and the Board  
953 of Appeals will begin its deliberation.

954

955 **8:05 PM Public Hearing closed.**

956

957 Mr. Hamilton said I would like to go over the findings of fact.

958

959 **Findings of Fact:**

960 **1. Applicant is Sweet Dirt of 987 Harold L Dow Highway**

961 **2. Property Location 483 Harold L Dow Highway**

962 **3. Map 54 Lot 2**

963 **4. Located in Commercial Industrial District**

- 964           **5. 3 Acre Parcel**  
965           **6. Applicant has proven standing**  
966           **7. No timeliness issues**  
967           **8. Applicant is seeking a waiver to dimensional standards under 45-194(c)(2) of**  
968           **Eliot Code as the property is a non-conforming lot of record 229 feet of frontage**  
969           **on Harold L Dow Highway where 300 feet is required by Town ordinance.**  
970           **9. 45-194(c)(2) the Board of Appeals is granted permission to waive up to a 50%**  
971           **reduction in setback.**  
972           **10. Applicant is proposing to open a marijuana production facility which under 33-**  
973           **189 requires a 500-foot setback from the lot lines of any public facility and the**  
974           **Eliot Transfer Station is approximately 390 feet from the proposed Marijuana**  
975           **production facility.**  
976           **11. It is testified that there is a residence within 500 feet of the Marijuana**  
977           **production facility, it's no longer occupied and believed to be purchased by the**  
978           **Applicant.**  
979           **12. Route 236 is 273 feet from the structure and under Section 1 of Eliot Code of**  
980           **Ordinances a Public Facility is considered a roadway. Even though it was**  
981           **testified that the Planning Board is currently reviewing the roads being part of**  
982           **the Medical Marijuana Ordinance.**  
983           **13. All Marijuana Use Applications require review by the Planning Board prior to**  
984           **the issuance of any building permit or certificate of occupancy under 33-189 of**  
985           **the Town Ordinances.**  
986           **14. It was clarified that Section 33-189 applies in this application rather than 33-190.**  
987           **15. It was testified that one of the reasons for the application is due to a fire which**  
988           **recently destroyed their business.**

989  
990           Mr. Marshall asked if it was relevant to mention that they are an existing business, that  
991           have been through this process not too long ago and that the only thing that is changing is  
992           their moving next door. We will go through these five questions; we went through them  
993           before and nothing has changed for them except they are moving next door like 400  
994           yards.

995  
996           Mr. Hamilton said I'd rather not put that in the findings of fact since we are really  
997           determining this individual case.

998  
999           Mr. Marshall said this is part of the individual case, they are an existing business in this  
1000           community which has been approved and been through this process before.

1001  
1002           Mr. Hamilton said the approval process of a prior application really shouldn't be part of  
1003           this application. That would be like you are asking us to use precedence.

1004  
1005           Mr. Marshall said we are not approving a new business is what I am getting at.

1006  
1007           Mr. Hamilton said we are not approving a business, we are proving or disapproving a lot  
1008           line. The Planning Board that's their job. Any other findings of fact?

1009

1010 Ms. Lemire said the hardship about the fire.  
1011  
1012 Mr. Hamilton said it was testified that one of the reasons for the application is due to a  
1013 fire which recently destroyed their business.  
1014  
1015 Mr. Trott said wouldn't we mention that this isn't temporary and that they will continue  
1016 to keep production in the building.  
1017  
1018 Ms. Lemire said that without production their business is dead.  
1019  
1020 Mr. Trott said I understand.  
1021  
1022 Mr. Hamilton said I don't know if the issue of whether this is permanent or temporary is  
1023 really applicable.  
1024  
1025 Mr. Trott said they just testified that this was going to be a permanent not a temporary  
1026 solution. It was just a fact that they put in. That's what I thought. You can clarify that.  
1027  
1028 Mr. Hamilton said I don't know how that relates to a lot line issues. We are not  
1029 determining the approval of their business.  
1030  
1031 Mr. Trott said I thought that was what we talked about, is the fact about the business.  
1032  
1033 Mr. Hamilton said I think the fire is just especially another piece of information about  
1034 why they are applying for this lot. I think it just gives us a little more information that's  
1035 all. It's another fact, it's just another reason on why they are making this application.  
1036  
1037 Mr. Hamilton asked are there any other findings of fact.  
1038  
1039 Ms. Adams asked is it clear that the property is next door.  
1040  
1041 Mr. Hamilton said yes.  
1042  
1043 Mr. Hamilton asked if that is it for the findings of fact?  
1044  
1045 Mr. Trott said that it was stated that there is an option that does exist for them to build on  
1046 the new property that they acquired.  
1047  
1048 Mr. Hamilton said ok. It was testified that there is potential for use of the newly acquired  
1049 property for the business.  
1050  
1051 Mr. Marshall asked how is that relevant.  
1052  
1053 Mr. Trott said well its part of the 5 questions. I asked if there was any other options and  
1054 their legal advisor said that at this time it's just not feasible option.  
1055

1056 Mr. Rines said I am pretty sure I was clear that was not a viable option for us.  
1057  
1058 Mr. Trott asked I thought you said it was viable.  
1059  
1060 Mr. Rines said I said maybe a year or two from now.  
1061  
1062 Mr. Trott said it doesn't matter, it's just that it's an option.  
1063  
1064 Ms. Lemire said a future option.  
1065  
1066 Mr. Neilson asked can I clarify this?  
1067  
1068 Mr. Hamilton said yes. Since we are bringing this up.  
1069  
1070 Mr. Neilson said that property hasn't been evaluated for that use. Whether it's viable or  
1071 not is not... I don't know if it's a possibility or not.  
1072  
1073 Mr. Hamilton asked if I say that there was a potential for future use of the abutting  
1074 property that was recently purchased.  
1075  
1076 Mr. Neilson said I don't believe that was what was stated. Am I correct there? The  
1077 potential hasn't been evaluated. So it's tough to say if there is or isn't.  
1078  
1079 Mr. Hamilton said I will leave it out.  
1080  
1081 Mr. Neilson said Thank you.  
1082  
1083 Mr. Hamilton said any other findings of fact?  
1084  
1085 Mr. Trott said no. But I would note disagreement.  
1086  
1087 Mr. Hamilton said ok. Let's go back then. Does the Board believe we should keep that  
1088 last finding of fact?  
1089  
1090 Ms. Lemire said well if the property hasn't been evaluated. No soil testing or anything  
1091 like that?  
1092  
1093 Mr. Rines said no.  
1094  
1095 Ms. Lemire said then you can't classify that as a feasible alternative. You couldn't say  
1096 it's feasible until you know.  
1097  
1098 Mr. Trott said what I asked is if there was an option. Their statement was not at this time.  
1099  
1100 Ms. Lemire said right. I am trying to focus on the language and the criteria.  
1101

1102 Mr. Trott said that's what I am saying that we put in there that he bought the property.  
1103 When that question was asked that was how he answered it.

1104  
1105 Mr. Hamilton said all the findings of fact need to be agreed on by the board. As a show of  
1106 hands please show if we should include that option or not.

1107  
1108 Mr. Marshall said I don't think so.

1109  
1110 Ms. Lemire said I don't think so.

1111  
1112 Mr. Hamilton said I don't think so either. Charlie?

1113  
1114 Mr. Rankie no I am all set.

1115  
1116 Mr. Hamilton stated what I would like to do now is deliberate on the 5 questions. I would  
1117 like to get the option of the members

1118  
1119 **Deliberation:**

1120  
1121 1.) Is the need for the waiver due to the unique circumstances of the property and not to  
1122 the general condition of the neighborhood? (Met 5-0)

1123  
1124 Mr. Hamilton asked Charlie if they have met that requirement.

1125  
1126 Mr. Rankie said its's not their fault. It is not because the conditions of the  
1127 neighborhood.

1128  
1129 Mr. Lemire said yes

1130  
1131 Mr. Hamilton said I believe yes

1132  
1133 Mr. Trott said I believe yes.

1134  
1135 Mr. Marshall said I agree they have met the conditions of number 1.

1136  
1137 2.) Will granting of a waiver alter the essential character of the locality? (Met 5-0)

1138  
1139 Ms. Lemire said no

1139  
1140 Mr. Rankie said no this will not alter the character.

1140  
1141 Mr. Hamilton said I also agree

1141  
1142 Mr. Trott said I agree.

- 1142 Mr. Marshall said I agree they have met that condition.
- 1143 3.) Is the hardship the result of action taken by the applicant or a prior owner? (Met 4-1)
- 1144 Mr. Hamilton said the action that we are thinking about is the hardship issue. Which in  
1145 this case is the setback. The setback requirement was recently created by the zoning  
1146 ordinance. But it is allowed by our other zoning ordinance through non-conforming lots  
1147 of record. This is a non-conforming lot which has existed prior to our ordinance. Not the  
1148 person, we are talking about the property itself. The land, the land being a non-  
1149 conforming lot of record.
- 1150 Mr. Rankie no.
- 1151 Mr. Hamilton so you believe that was satisfied.
- 1152 Mr. Rankie said yes.
- 1153 Mr. Trott No I don't think that was satisfied.
- 1154 Mr. Hamilton said I believe it was satisfied.
- 1155 Ms. Lemire asked give me your reason again.
- 1156 Mr. Hamilton said the applicant is developing a property which is a nonconforming lot of  
1157 record. He is developing in a zone which was recently allowed for medical marijuana. He  
1158 is requesting for waiver for setback requirements because the lot is non-conforming and  
1159 that is not an issue that he created it was by the recent ordinance. Through the ordinance  
1160 he has the right to develop through the waiver requirement.
- 1161 Mr. Marshall said I concur with the applicant.
- 1162 Mr. Trott said if it was a property that they already owned and that this was created then I  
1163 would say it was created by the ordinance.
- 1164 Ms. Lemire said I believe the root of hardship was the fire. Because the fire basically  
1165 destroyed their business. They have this reprieve next door. I think the core of the  
1166 hardship was the fire.
- 1167 Mr. Hamilton asked do you believe that the hardship was a result taken by the applicant.
- 1168 Ms. Lemire said no.
- 1169 Mr. Hamilton said so you agree this was not created by... So you agree with John, Charlie  
1170 and I?
- 1171 Ms. Lemire said yes.

1172 4.) Will the granting of the waiver substantially reduce or impair the use of abutting  
1173 property? (Met 5-0)

1174 Ms. Lemire said no.

1175 Mr. Rankie said no.

1176 Mr. Marshall said it does not alter the use of the area.

1177 Mr. Hamilton said no.

1178 Mr. Trott said no.

1179 5.) Is the granting of a waiver based upon demonstrated need, not convenience, and is  
1180 there no other feasible alternative available? (Met 3-2)

1181 Mr. Rankie said convenience. So, no

1182 Ms. Lemire said yes.

1183 Mr. Hamilton said yes.

1184 Mr. Marshall said I agree with the applicant I believe it's terribly inconvenient.

1185 Mr. Hamilton said So you agree that he has met that?

1186 Mr. Marshall said yes.

1187

1188 **Motion:**

1189

1190 Mr. Rankie moved, second by Mr. Trott, that the Board of Appeals deny the waiver  
1191 request.

1192

1193 **Discussion:**

1194

1195 Mr. Rankie said can I discuss?

1196

1197 Mr. Hamilton said yes.

1198

1199 Mr. Rankie said 190 has very specific requirements under the ordinance.

1200

1201 Ms. Lemire said no. 190 is Adult Use. 189 is medical marijuana.

1202

1203 Mr. Hamilton said its under 33-189. Anyone else want to have a discussion while Charlie  
1204 is digesting that?

1205

1206 Mr. Trott said under 33-189 (c) not looking at the business. We have had issues with  
1207 waivers since I have joined the board. Yes, there has to be a partial difficulty variance.  
1208 Come June yes, we may not have this issue any more but I am looking at this ordinance  
1209 that the people voted for.  
1210

1211 Mr. Hamilton ok do you feel that the town transfer station is at risk?  
1212

1213 Mr. Trott said the town has talked about having a rec field or community service center. I  
1214 understand but if someone says why did we give a waiver on this? The ordinance says  
1215 this.  
1216

1217 Mr. Hamilton said I would like to provide a rebuttal as Mr. Trott asked. You are  
1218 certainly correct that 33-189 requires a 500-foot set back from the transfer station but the  
1219 town many years ago voted on 45-194 (c) (2): "In cases where it is not possible to  
1220 comply with these and other zoning requirements, the following rules shall apply: The  
1221 code enforcement officer is authorized to permit a 25 percent reduction in frontage,  
1222 setback, and yard requirements only. Any other deviation in frontage, setback or yard  
1223 requirements to a maximum 50 percent reduction may be permitted as a waiver after  
1224 public hearing by the board of appeals. Any further reduction in frontage, setback or yard  
1225 requirements shall be considered a variance." Which we all know is difficult to get. So  
1226 the wisdom of the town despite the new ordinance is to include this with non-conforming  
1227 lots of record and issues of setbacks. If this were a public school, private school,  
1228 childcare facility or residential facility or a place of worship. But because it's the town  
1229 dump...  
1230

1231 Mr. Trott said I know we have a nonconforming lot. The applicant has stated even  
1232 conforming lots can't meet this. Just because he doesn't have the road frontage, he can  
1233 appeal it.  
1234

1235 Mr. Hamilton said yes. If you're an ordinance guy you have to go with it.  
1236

1237 Mr. Rankie said if it wasn't for the frontage this would be a variance. 33-190 I keep being  
1238 told I can't read it says all Medical Marijuana establishments.  
1239

1240 Ms. Lemire said that is for Adult Use.  
1241

1242 Mr. Rankie said if you remember I said that I didn't have this ordinance in front of me.  
1243 But now I have read this and read how specific the people were when they wrote this  
1244 ordinance.  
1245

1246 Mr. Hamilton said I am sorry 33-190 doesn't apply.  
1247

1248 Mr. Rankie said the people wanted the 500 feet and I think we are over-stepping.  
1249

1250 Mr. Hamilton said we are looking at 33-189. 33-190 does not apply.  
1251

1252 Ms. Lemire said you were using a current ordinance to say no. But one of the arguments  
1253 you had was the potential in the future of a rec center.  
1254

1255 Mr. Trott said I was referring to question 5 “Is the granting of a waiver based upon  
1256 demonstrated need, not convenience, and is there no other feasible alternative available?”  
1257

1258 Mr. Hamilton asked any other discussion?  
1259

1260 **Discussion ended.**  
1261

1262 All those in favor of denying the application. Motion fails  
1263

1264 **Vote 5-0**  
1265 **Motion Fails**  
1266

1267  
1268 **Mr. Marshall moved to accept the application. Mr. Rankie seconded the motion.**  
1269

1270 **Discussion:**  
1271

1272 Mr. Rankie said we need to amend the motion and only give them what they need. Is the  
1273 road included?  
1274

1275 Mr. Hamilton said I don’t believe it is.  
1276

1277 Mr. Marshall said I am concerned that someone is going to insist on our town road be a  
1278 public facility. I will amend my vote to a 227-foot set back to include the road.  
1279

1280 Mr. Rankie I will amend my second to include that.  
1281

1282 Mr. Hamilton said a motion has been made and amended to approve the application with  
1283 a 227-foot set back. Any further discussion.  
1284

1285 **Discussion ended.**  
1286

1287 **Mr. Marshall moved to amend his motion. Mr. Rankie seconded the amendment.**  
1288

1289  
1290 **Vote 5-0**  
1291 **Motion Approved**  
1292

1293 Mr. Hamilton said you will receive a letter of Notice of Decision within 7 days. Anyone  
1294 who would like to appeal our decision will have 45 days to appeal to the Supreme Court.  
1295

1296 **Closed at 8:48**  
1297

1298 **Opened at 8:58**

1299

1300 **B. Theory Wellness of Maine, LLC, Map 29, Lot 25, C/I Zone, requesting a setback**  
1301 **waiver for property located at 151 Harold Dow Highway for a proposed Adult**  
1302 **Use Marijuana Store where a 500-foot setback is required from a public facility**  
1303 **(Eliot Post Office).**

1304

1305 Mr. Hamilton asked if there were any conflicts of interest. No conflicts of interest noted.  
1306 Standing has been met by a copy of a lease agreement.

1307

1308 Mr. Pollock said my name is Brandon Pollock 38 Montvale Ave. #210 Stoneham, MA  
1309 02180 and as mentioned we are requesting a setback waiver for 151 Harold L Dow  
1310 Highway for an Adult Use Cannabis Store. We are seeking a waiver from section 33-190  
1311 (e) of the Town Ordinances. We operate Medical Cannabis and Adult Use in  
1312 Massachusetts. We have been looking to expand into Maine. We have a store under  
1313 construction in South Portland and looking to expand into Eliot. We are seeking a setback  
1314 waiver here with a non-conforming lot. Besides this setback waiver we are not requesting  
1315 any other waivers from the Town Ordinance. I will run through the 5 questions as  
1316 requested by the chair

1317

1318 1.) Is the need for the waiver due to the unique circumstances of the property and not to  
1319 the general condition of the neighborhood?

1320

1321 Mr. Pollack said Yes, that is true. This is just due to the property being within 500 feet of  
1322 the Eliot Post Office. The property is within 372 feet from the Eliot Post Office. So, we  
1323 are requesting a 182-foot setback. That's about 26%. We are just over the 25% which  
1324 could have been handled by the Code Enforcement Officer. This is not due to the general  
1325 condition of the neighborhood. This is particular to the unique circumstances of the  
1326 property. As the Board has heard it is very difficult to locate compliant property in the  
1327 Town of Eliot. It is a very thoughtful ordinance that is in place but also reasons for  
1328 needing waivers. In our view it has been difficult to find compliant property that is not  
1329 within 500 feet of a residence or public facility, school or a daycare. So, for number one  
1330 we believe yes this is due to the unique circumstances of the property.

1331

1332 2.) Will granting of a waiver, alter the essential character of the locality?

1333

1334 Mr. Pollack said No in our opinion it will not alter the character of the locality. We are  
1335 proposing a cannabis retail store as the second tenant in a retail building, we have plenty  
1336 of parking. There is a dozen of spaces for that building. We are proposing our location  
1337 next to Dunkin Donuts which is already a retail use, which in our opinion is in a real  
1338 retail District. We are in the CI District which is where the Town has decided is the  
1339 location for this type of business. Our proposed building has easy in and out lanes for  
1340 customers. It is designed as a retail facility so we don't believe that it alters the character  
1341 of the locality.

1342

1343 3.) Is the hardship the result of action taken by the applicant or a prior owner?

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Mr. Pollack said I appreciate the conversation that the Board had during the application previous to this one. My initial answer to this question is No. The hardship is simply based on the structure and how close it is to the post office. However, I do acknowledge that this is a hardship we took on ourselves by choosing to pick this location knowing that we would need to apply for a setback waiver. That hardship has a second derivative hardship where it is very difficult to find property and we looked at dozens of properties in Eliot and this one we could find which wasn't near what we would consider a more sensitive use, such as a school or a residential property or daycare. We feel the post office is separated by a significant vegetative buffer and is certainly an agreeable compromise. We are dealing with a rather difficult real estate situation here. With the ordinance there are very few pockets that aren't surrounded by some sort of sensitive use. But in general no we feel the hardship is based on the structure as it's been existing but we do feel that we chose to pick that building.

4.) Will the granting of the waiver substantially reduce or impair the use of abutting property?

Mr. Pollack said So, this would be the Post Office. In our view no, this would not substantially reduce or impair the use of the Post Office. First and foremost, we do not share a driveway with the Post Office it's a totally separate driveway. Secondly and most importantly there is a large vegetative buffer, our entire setback is a wooded area, so if we were worried about our customers parking in the Post Office or visibility to the Post Office from our location I don't feel like that would be a substantial risk or that would reduce or impair the use of the Post Office

5.) Is the granting of a waiver based upon demonstrated need, not convenience, and is there no other feasible alternative available?

Mr. Pollack said Yes, we are unable to operate our business without the request of a setback waiver. We have been looking for compliant real estate since the summer. When the original ordinance was starting to be put together, we saw what the buffers were going to be looking like so we looked for over 5 months but we weren't able to find any feasible property, in our opinion this was the most agreeable property that we could find.

Mr. Pollack said I am happy to answer any questions from the Board.

Mr. Hamilton said Thank you. Questions?

Mr. Trott said I just need clarification on the date, nobody signed that it was accepted.

Mr. Hamilton said mine does.

Ms. Lemire said it was signed and dated. We have two different signatures on the application. Why would you have two different people sign the same application? Are you the representative for the Appellant?

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Mr. Hamilton said this is our issue. This is the Town Clerk or CEO signature. So, it's a Town issue. It's nothing to do with you. I don't know why it is here.

Ms. Goodwin said he turned in 10 copies and Deb only signed one and really on here it says date accepted it doesn't really have a signature. It doesn't ask for a signature. It says what date was it accepted.

Mr. Trott said no I understand. It just usually has a signature. Alright cool.

Mr. Hamilton said it's a little confusing but we have everything under control. Ok. Questions for the Applicant?

Ms. Lemire asked so you said all of the different properties you looked at required a waiver?

Mr. Pollack said correct, yes that is correct. We looked at numerous properties both for sale and for lease in areas that would be suitable in the CI Zone and we were unable to find any that didn't require some waiver. There were a couple of other ones that were more near the Post Office in that plaza, where the Shipyard Brew is but, they also abutted behind them this large residential complex. For our experience that brings a lot of neighborhood opposition. What we found in the past is of course first and foremost not being near a school or a daycare or a place where children congregate. Second keep away from residential but the Post Office is a new one for us and again it was the best we could find. We would have absolutely purchased or leased a property if it didn't require any sort of setback waiver because it takes all the risk out of the process for us. That was using multiple real estate brokers, I drove up and down the road maybe once every two weeks to see if anyone put any signs up.

Mr. Hamilton said questions?

Mr. Trott said yes. First, I would like to say Thank you for putting the effort to try to be in this town.

Mr. Trott said we have residence issues:  
Map 30-Lot 3 - 205 feet from Apartment above the thrift shop.  
Map 23 Lot 25 - Wood Carver 430 feet from his property  
Map 29 Lot 22 - 233 feet Grogan's property.  
Map 30 Lot 4 - residential property off Hanscom Road  
Including Map 30 Lot 1 - residential property off Hanscom Road

Mr. Pollack asked Mr. Trott can I ask is that measured from the corner of our suite?

Mr. Trott said I measured from the corner of Dunkin Donuts and I didn't realize that it was just from the portion you're in. So, if we went from the corner of the building where

1435 you would be operating, you would get a little bit further but you still would be within the  
1436 500 feet of those residence.

1437  
1438 Mr. Pollack said I do apologize for that. I did meet with staff and that wasn't brought to  
1439 my attention but that's an interesting one. How do you know that there is an apartment  
1440 above the business?

1441  
1442 Mr. Trott said 50 plus years of living here. Unfortunately, that is some of it because there  
1443 is no sign out there that says upstairs there is a tenant.

1444  
1445 Mr. Pollack said we did do our due diligence.

1446  
1447 Mr. Trott said nope that's nothing you could have helped.

1448  
1449 Mr. Hamilton asked so does the woodworker work and live at this property?

1450  
1451 Ms. Lemire said yes.

1452  
1453 Mr. Hamilton said ok. I wasn't sure that he lived there.

1454  
1455 Mr. Trott said we also have the 236 issue.

1456  
1457 Mr. Hamilton asked what is the measurement from the project to 236.

1458  
1459 Ms. Bishop said because we are working with the adult use ordinance the road doesn't  
1460 apply.

1461  
1462 Mr. Trott said my apologies she did point that out to me earlier.

1463  
1464 Mr. Hamilton said well thank you for doing that research-

1465  
1466 Mr. Trott asked why Eliot? You're out of Stoneham Mass.

1467  
1468 Mr. Pollock said our business is allowed to operate 4 business in the State of Maine.  
1469 Eliot is one of the most foresighted communities, it has already been thoughtful in putting  
1470 zoning into place. There are already rules that we can start to work with. So, our other  
1471 community is South Portland where we are already permitted and just about done with  
1472 construction. We are also looking at Waterville. I went to college in Waterville so I am  
1473 familiar there. They also have an ordinance in place. So, it's really simply about  
1474 spreading our business in the State of Maine and looking for communities putting in rules  
1475 that we can follow.

1476  
1477 Mr. Trott said as you can see, we do have some rules and growing pains going on.

1478  
1479 Mr. Pollack said it's a new industry so its to be expected. The Town of Eliot doing it  
1480 initially a lot of towns are going to learn from them. For better or worse.

1481  
1482 Mr. Trott said my next question I think goes to the Chair. I know it's been voted on.  
1483 When does the law come into effect?  
1484  
1485 Mr. Pollock said, through the chair, the law is in effect. There are no stores open. The  
1486 State is accepting applications for stores. We have submitted our paperwork to the State,  
1487 which is to begin a pre-process. They run a background check, make sure you can have  
1488 operating procedures. Once you have your different locations finalized and constructed  
1489 then you go back to the state for a final license. We are hearing the first stores will open  
1490 in May or June.  
1491  
1492 Mr. Trott asked if you had your final license and were approved you could start operating  
1493 today?  
1494  
1495 Mr. Pollock said there is more permitting just here in Eliot, planning board reviews and  
1496 the town also has an application, probably similar to a liquor licenses at the town level.  
1497 This is just the first step for us.  
1498  
1499 Mr. Trott said the reason for my questioning is I wasn't sure when the law took effect and  
1500 the next question is if it hadn't taken effect will what we do now count?  
1501  
1502 Mr. Hamilton said I can answer that question. It's like any other approval process. We are  
1503 only part of this process. I am not sure if it really makes a difference which comes first to  
1504 address this setback issue. The rest can still proceed. This is just one of the hurdles. I  
1505 think we can address that hurdle now. It's definitely within our purview.  
1506  
1507 Mr. Rankie said which hurdle specifically are you referring to?  
1508  
1509 Mr. Hamilton said we are talking about the request for setback waiver requirements.  
1510 That's the hurdle he has to meet before...  
1511  
1512 Mr. Rankie said but what we have before us is a request for a 26 % relaxation based on  
1513 the Post Office. However, we have heard from Mr. Trott that there are residences all  
1514 around here that are not on this waiver request.  
1515  
1516 Mr. Hamilton said yes that's the testimony that we have received.  
1517  
1518 Mr. Rankie asked but what does that mean?  
1519  
1520 Mr. Hamilton said what that means is when it comes to our deliberation, we should  
1521 certainly consider that.  
1522  
1523 Mr. Hamilton asked are there any other questions for the applicant.  
1524  
1525 Mr. Hamilton said if there are no questions, I would like to hear from the Code  
1526 Enforcement Officer on this application.

1527  
1528 Ms. Bishop said the non-conforming lot certainly gives the applicant the right to request a  
1529 waiver. Speaking to the residences around the area it was just brought to my attention as  
1530 well after packets had already been distributed and that's certainly something we need to  
1531 discuss further. I would like to bring out the same piece of the ordinance which talks  
1532 about residential property versus residential use or a former residential dwelling which  
1533 we do have a definition for. I just feel there should be some sort of clarity at some point  
1534 to say what is a residential property and what is the intent because it is essentially a  
1535 commercial zone.  
1536  
1537 Mr. Trott said but the property across the street on Hanscom Road is residential in a  
1538 residential zone.  
1539  
1540 Mr. Hamilton said and even an apartment being in the Commercial Industrial Zone could  
1541 still be residential. Is that correct?  
1542  
1543 Ms. Bishop yes.  
1544  
1545 Mr. Hamilton asked but there is an apartment?  
1546  
1547 Mr. Trott said yes to my knowledge there is an apartment still in that building.  
1548  
1549 Mr. Marshall asked have all the abutters have been notified of this?  
1550  
1551 Ms. Lemire said yes as far as I know.  
1552  
1553 Ms. Bishop said direct abutters so those who are directly adjacent and directly abutting  
1554 the properties.  
1555  
1556 Mr. Marshall asked would abutters be notified across the State Road?  
1557  
1558 Ms. Bishop said yes.  
1559  
1560 Mr. Hamilton asked so 30-4, 29-22, and 29-21 all those have been notified?  
1561  
1562 Ms. Lemire said Nancy Shapleigh was notified.  
1563  
1564 Mr. Marshall asked which one is Nancy's do you know?  
1565  
1566 Ms. Lemire said it's the Full Circle resale.  
1567  
1568 Ms. Bishop asked do you want me to list the names of the property owners?  
1569  
1570 Mr. Hamilton said no.  
1571  
1572 Ms. Bishop said it's on the map. It's the shaded areas on the map.

1573  
1574 Mr. Hamilton said I think in the future we usually get a list of the abutters. If we could  
1575 please get the list of the abutters.  
1576  
1577 Mr. Hamilton said do you know what the road frontage is of this property is? It is under  
1578 300.  
1579  
1580 Ms. Bishop said it is under 300. We will find it.  
1581  
1582 Mr. Hamilton asked any other questions for the Code Enforcement officer?  
1583  
1584 Mr. Hamilton asked any abutters who would care to testify? Any other interested parties?  
1585 Ok Mr. Pollack you have the final say to make any other comments or statements. Is  
1586 there anything else you would like to say or add?  
1587  
1588 Mr. Pollack said yes, I guess just as a final comment still to say there is more sensitive  
1589 uses with residential abutters then previously identified. I still don't believe that this  
1590 really effects the character of our proposal. This is not on the road proposed dispensary; it  
1591 would be set back behind the Dunkin Donuts and again I think that is the retail part of  
1592 town and I think this would be a good place for this sort of business. Thank you.  
1593  
1594 Mr. Marshall asked will there be any sort of signage on your property?  
1595  
1596 Mr. Pollack said yes there will be the name of our property, Theory wellness. There will  
1597 be no reference to cannabis and no neon lights. We consider ourselves sort of a craft  
1598 cannabis brand so more of a high-end.  
1599  
1600 Mr. Marshall asked so you can say the name of your company you just can't say what  
1601 you sell?  
1602  
1603 Mr. Pollack said you can say cannabis but that's just not how we do business.  
1604  
1605 Mr. Rankie said no you can't.  
1606  
1607 Ms. Lemire said not in this town.  
1608  
1609 Mr. Pollack said well fair enough. I am happy to pull pictures of our other stores but it  
1610 just says Theory Wellness  
1611  
1612 Mr. Marshall asked I just wonder how you can do business when nobody knows what  
1613 your business is.  
1614  
1615 Mr. Pollack said people know.  
1616  
1617 Mr. Trott said because word gets around in a small town.  
1618

1619 Mr. Trott asked so just selling your product no cultivation? Just retail sale?  
1620

1621 Mr. Pollack said yes so this is just retail sale. From the outside it just looks like a normal  
1622 retail store. There will be no visibility inside. The windows are frosted. We check  
1623 identification at the front door so there is no one under 21 allowed inside the premise.  
1624 Everything is sealed already, so we don't have any complaints of odor. We do have a  
1625 carbon filter we install to reduce any odor outside the building. We operate just like any  
1626 other retail store, it's just a new type of store.  
1627

1628 Mr. Rankie said the ordinance said that you need to put all of your product in a safe at  
1629 night. How does that work?  
1630

1631 Mr. Pollack said so we build a room inside the dispensary in a central location that is not  
1632 touching an exterior wall and that is a room that is reinforced the way it is constructed as  
1633 well as having an extra strong door on it. Inside that safe room we also have a safe inside  
1634 where we keep our cash for extra security. It has cameras in it, alarm system and is  
1635 climate controlled. All of our security plans go to the Chief of Police prior to the start of  
1636 construction. That's how we go about meeting that requirement if that helps.  
1637

1638 Mr. Hamilton asked any other questions? I will also say that all marijuana applications  
1639 require site plan review and will be reviewed by the Planning Board prior to any issuance  
1640 of building permit or certificate of occupancy per section 33-190. So, it will be reviewed  
1641 by the Planning Board if it gets that far. It's not relevant to what we are doing. Any other  
1642 questions from the public?  
1643

1644 Mr. Pomerleau said Robert Pomerleau, Cedar Road in Eliot. I just want to give you one  
1645 perspective and I do mean one as a voting citizen that voted in favor of these ordinances  
1646 and why I did. I'll take you back a couple of years ago when the town was trying to  
1647 decide to opt in or not. We put out an advisory vote to the town and the way we  
1648 structured the question was would you support retail marijuana establishments in Eliot if  
1649 they were limited to the Commercial Industrial District on Route 236 and limited in the  
1650 number of establishments. Now that was the premise upon which the Planning Board,  
1651 because it was a favorable vote, now I do believe the citizens when they said yes, wanted  
1652 them to consider limiting the location and number of facilities. When the Planning Board  
1653 got into its deliberations on that issue of numbers, they rejected actions specifying any  
1654 limits, unlike what a lot of communities in Maine have done, like Portland most recently  
1655 has put a number on them. They had two rationales: one of them was why should that be  
1656 any different than any other retail entities, let a market establish competition, and number  
1657 two, and more importantly, that because of the setback requirements and particularly  
1658 because of the definition of public facility, including roads like 236, that the ordinance  
1659 itself was going to self-limit the number of facilities in town. So if you take 500 feet back  
1660 from 236 or from a public facility and I find nothing in the ordinance that justifies the  
1661 distinction what I think or what you think is desirable or undesirable public facilities  
1662 they are all relevant, but between that and the limitation between schools and residences,  
1663 I sat down with a map and said between these there is not going to be a lot of places to  
1664 put a retail marijuana facility other than sitting it in the middle of the swamp land

1665 somewhere. So, I for one, voted for that ordinance because I like the limitations of the  
1666 setback requirements and was going to limit the number of facilities. I wasn't happy to  
1667 see them not establish numbers but I was satisfied that the language was going to do that  
1668 job.

1669  
1670 Mr. Hamilton asked while you are there would you like to comment on this current  
1671 application?

1672  
1673 Mr. Pomerleau asked this current application here? Which is where, the back of the  
1674 commons?

1675  
1676 Ms. Lemire said no the back of Dunkin Donuts.

1677  
1678 Mr. Pomerleau said either it's within 500 feet of a public facility or it isn't. My only  
1679 comment is I would like the Board to adhere to the ordinances that the citizens have  
1680 passed taking into consideration what may have prompted them to approve it. I think  
1681 those setback requirements, now I will acknowledge I may be a unique person here  
1682 because I read it, I knew exactly what was in the ordinance and what the restrictions  
1683 would be, I won't sit here and tell you that the vast majority of citizens had any clue other  
1684 than that they would rely on the Planning Board and the Town Administrators to do  
1685 something that was in the best interest of the town and was opposed to a big expansion of  
1686 retail establishment because there was a 'no revenue' component. I saw no particular  
1687 benefit to the town of Eliot absent any revenue component other than more costs. More  
1688 Police, Fire, Administrative Cost, so on and so forth, and whether or not they were going  
1689 to establish sufficient fees to a least not cause property tax to go up to support these  
1690 things. I have no particular opposition to any retail marijuana. I have no particular  
1691 opposition to any medical marijuana. I am totally ambivalent. I just want our town boards  
1692 to follow our ordinances. Thank you.

1693  
1694 Mr. Rankie Mr. Chairman just before you invited Mr. Pomerleau to speak I think you  
1695 dismissed my question about the particular of the safe for storing of the product and I  
1696 would like to just go back to that briefly and say that I think that is relevant because we  
1697 are being asked to not only relax the setback from a public building but also a residential  
1698 building, so the security of the building was my thinking on that. Thank you.

1699  
1700 Mr. Hamilton said this moment before we close the public hearing is questions to the  
1701 people that are here to ask and answer questions not as part of our deliberation that will  
1702 occur once our Public Hearing is closed. That's more where your comment should be.

1703  
1704 Mr. Rankie but I had to ask him what does his safe... they were words on a piece of paper  
1705 to me in an ordinance. That's why I asked him had to ask him.

1706  
1707 Mr. Hamilton any other questions or comments?

1708  
1709 Mr. Pomerleau can I refer back to the argument that Charlie put back on 190 as opposed  
1710 to 189 as it applied to medical well, marijuana. I do believe that the current law allows

1711 medical marijuana establishments to have a retail component. I am not sure of what the  
1712 current law and details if it requires a whole separate license and application process in  
1713 addition to the medical marijuana. From what I understand the distinction is the Medical  
1714 Marijuana requires a medical card and the retail component of that does not. It's just like  
1715 buying liquor you do need to show that your 21 and you can buy Marijuana. I think it's a  
1716 very legitimate question to ask yourself with a medical marijuana establishment with a  
1717 retail component as to the application of 190, when it says all. And your distinction was it  
1718 applies to retail. Does it make any difference if its retail for public use or retail for  
1719 medical marijuana? I don't see it.

1720  
1721 Ms. Lemire said there's nothing about Medical Marijuana in there.

1722  
1723 Mr. Marshall said that would be a question for the Code Enforcement Officer to weigh in  
1724 as well. How would... Actually, no under Medical Marijuana Dispensary it is a retail  
1725 location that dispenses marijuana. That could be retail. Whether it applies to 189 or 190  
1726 that is the issue.

1727  
1728 Mr. Rankie said that's for new business really. We are all under 190 with this particular  
1729 waiver we are looking at

1730  
1731 Mr. Hamilton said but since he brought it up it's worth looking at.

1732  
1733 Ms. Lemire said I have a comment.

1734  
1735 Mr. Hamilton said yes is it a question for someone in the audience?

1736  
1737 Ms. Lemire said it's an abutter. I got a phone call today from Nancy Shapleigh. She lives  
1738 on River Road but she owns the property across from you that has the Full Circle thrift  
1739 shop in it across from Dunkin Donuts. She had several comments. She is not in support of  
1740 this. The first reason and one of her biggest reasons is because it's still not federally legal.  
1741 She has seen a real negative impact on family and friends from the use of this. She is  
1742 concerned about the septic system. I don't know if you know the history of that property  
1743 but they had a very serious issue with their septic system and had to have it replaced. I  
1744 am assuming you would use all the same power, water, electric, septic that Dunkin  
1745 Donuts is using.

1746  
1747 Mr. Pollack said I can't speak for my landlord he would be responsible for that. But I  
1748 would hold them to all appropriate standards.

1749  
1750 Ms. Lemire said ok. These are just her comments. She is really concerned for the traffic  
1751 impact. So those were her comments as a direct abutter.

1752  
1753 Mr. Hamilton said thank you. Any other questions or comments? Yes, Sir.

1754  
1755 Mr. Brearley said Dana Brearley 61 Bradstreet Lane Eliot Maine. We haven't met you  
1756 folks yet but we were in front of the Planning Board in the spring to get approved for the

1757 Northern Pool and Spa property- - 291 Harold L Dow Highway. A couple of things one: I  
1758 am not going to speak for the Planning Board but they said they were not going to hear  
1759 until the preliminary approval from the State and **second**, just voicing as a citizen from  
1760 Eliot we established our real estate which meets all of the requirements for Adult Use  
1761 before Adult Use was released and we personally would like to see a just process to see  
1762 how the market reacts before the change. Thank you.

1763  
1764 Mr. Hamilton said thank you. Any other questions?... Ok the Public Hearing is closed.

1765  
1766 **9:37 PM Public Hearing closed**

1767  
1768 Mr. Hamilton said next we will go over the findings of fact.

1769  
1770 **Findings of Fact:**

- 1771 **1. Applicant: Theory Wellness LLC of 38 Montvale Ave., #210 Stoneham, MA**
- 1772 **02180**
- 1773 **2. Map 29/Lot 25**
- 1774 **3. 7.69 Acres**
- 1775 **4. Standing verified by lease agreement**
- 1776 **5. Owner is Eliot Donuts, LLC, located at 369 Lafayette Street Hampton, NH**
- 1777 **03842**
- 1778 **6. Property is a non-conforming lot of record due to road frontage on Route**
- 1779 **236, which is less than the required 300 feet.**
- 1780 **7. Per Section 45-194(c)(2), the Board of Appeals may grant a waiver to**
- 1781 **dimensional standards of up to 50% of setback standards**
- 1782 **8. 33-190(e)of the Eliot Municipal Code states that “No marijuana store**
- 1783 **structure shall be sited within 500 feet of the lot lines of any public facility” and**
- 1784 **the Eliot Post Office is a Public Facility. Its lot line is 372.1 feet from the**
- 1785 **proposed Adult Marijuana Store**
- 1786 **9. It was testified that there is a wooded buffer between the Eliot Post Office**
- 1787 **and the proposed location for the Adult Marijuana Store.**
- 1788 **10. It was testified that there are 6 residents less than 500 feet from the**
- 1789 **applicants proposed business.**
- 1790 **11. CEO noted that she also noticed the residential proximity after the fact.**
- 1791 **12. All marijuana Establishments under Eliot Code of Ordinance Section 33-190**
- 1792 **require Site Plan Review approval by the Eliot Planning Board prior to any**
- 1793 **issuance of any Building Permits or Certificate of Occupancy**

1794  
1795 Mr. Hamilton asked any other findings of fact?

1796  
1797 Ms. Lemire said I actually have a question about one of them you mentioned the Site  
1798 Plan review of the Planning Board as a standard condition, a standard finding?

1799  
1800 Mr. Hamilton said because it’s specific to these types of applications and because it’s  
1801 sited in the ordinance, I just used it as a verification sort of reminder finding of fact that it

1802 is indeed that these applications require Planning Board approval in addition to the  
1803 approval of the Board of Appeals.

1804  
1805 Ms. Lemire said but we have never done that. It's not a finding of fact from the meeting  
1806 itself.

1807  
1808 Mr. Hamilton said our findings of fact should also stipulate, I think, at least in my  
1809 opinion it certainly question it, it's more of a reminder that whoever is receiving this  
1810 finding of fact that, if it goes to court or anything like that, that our action is not the final  
1811 action in this case. This doesn't always happen; it is rare that the Planning Board has  
1812 additional approvals. It has approvals on Home Occupation and... I can't recall off hand  
1813 on this. Other things the Planning Board would have jurisdiction over that we would be  
1814 involved in through the ordinance.

1815  
1816 Ms. Bishop said it's kind of miscellaneous like when we had the Yoga studio.

1817  
1818 Mr. Hamilton said its just a reminder that it's also required.

1819  
1820 Mr. Rankie said I believe you started applying that to remind us as well that there is a  
1821 governing body after us.

1822  
1823 Mr. Hamilton said it's more of a reminder to us that we are part of a process.

1824  
1825 Ms. Lemire said but it's not a finding of fact.

1826  
1827 Mr. Hamilton said well I don't know.

1828  
1829 Mr. Rankie said I think it's a finding of fact.

1830  
1831 Mr. Hamilton said it is a fact that the Planning Board, if we approve this, can go ahead  
1832 and accept an application. If we do not approve this that's the end of the story.

1833  
1834 Ms. Bishop said can I speak to that?

1835  
1836 Mr. Hamilton said yes.

1837  
1838 Ms. Bishop said I don't know that it's written anywhere but the Town stance has been to  
1839 not accept any applications regarding Adult Use marijuana until their preliminary license  
1840 is issued from the State. I think we spoke to that when we received this application. It  
1841 came up, it was discussed, and the feeling was to go ahead and schedule it for the  
1842 Appeals Board, possibly giving the 30-day window. But just to caution you, I don't know  
1843 what direction it will go but I guess currently the towns stance is that applications  
1844 wouldn't be reviewed until at the earliest March.

1845  
1846 Mr. Hamilton said ok and where is that written?

1847

1848 Ms. Bishop said we are discussing that but we haven't found that it is written anywhere.

1849

1850 Mr. Hamilton said so it doesn't really apply to us then.

1851

1852 Ms. Bishop said that is correct. I just wanted to ...

1853

1854 Mr. Rankie said it's just more of an FYI.

1855

1856 Ms. Bishop said that is correct.

1857

1858 Mr. Hamilton said thank you. Ok and that makes sense if the local ordinance does not  
1859 permit the waiver then the applicant would not be applying for a license from the State  
1860 for this location.

1861

1862 Ms. Bishop said that is correct. I think the State for the preliminary license approval you  
1863 do not need to have a location for that.

1864

1865 **Motion:**

1866

1867 Mr. Hamilton said Well that is good to know. I will entertain a motion.

1868 Mr. Rankie moved, second by Mr. Trott, that the Board of Appeals deny the waiver  
1869 request.

1870

1871 **Discussion:**

1872

1873 Mr. Hamilton said a motion has been made and seconded to deny the waiver request.  
1874 Discussion? Charlie? Since you made the motion.

1875

1876 Mr. Rankie said, under discussion I passionately exercised previously, I found that we  
1877 found that we haven't agreed that it all applied to 190. 190 applies to 190 so we all agree.  
1878 190 is very, very specific. It was erroneously said that the cannabis word can be used in  
1879 advertising. That is not true, it is very, very specific what can be on the signage, including  
1880 the signage can't even show a symbol of marijuana. If you go through this the  
1881 surveillance cameras are very specific, door and window intrusion. There has to be  
1882 alarms for door and window, a locking safe, exterior lighting.

1883

1884 Mr. Hamilton asked can I interrupt? What does this have to do with the setback  
1885 requirement?

1886

1887 Mr. Rankie said this has to do with that I don't believe the Planning Board did not  
1888 deliberately, in representing this to the citizens, look to have the 500-foot relaxed and if  
1889 you don't want me to continue on this, I am ok with that. But I will also state that we are  
1890 not talking about just a public structure, we are talking about 6 residential locations. The  
1891 Planning Board, in presenting this to the citizens to vote for or against, was very specific  
1892 about many things including the 24 hours, that's why I believe that the 500 foot is  
1893 relevant. They put this 500-foot set back from Public Facilities, worship places,

1894 residential properties and childcare facilities. Personally, I think it's a harsh ordinance  
1895 and needs some work from the Planning Board but I don't think its our place to grant the  
1896 waiver. I think it needs to go back to the Planning Board and have them take another look  
1897 at it and see if it's exactly what they want and if it's what the citizens want. But I don't  
1898 think it's our place to grant a waiver for this.

1899

1900 **Deliberation**

1901

1902 Mr. Hamilton said before we go on, I would like the members to weigh in on each of the  
1903 5 questions.

1904

1905 1.) Is the need for the waiver due to the unique circumstances of the property and not to  
1906 the general condition of the neighborhood? (Met 5-0)

1907

1908 Mr. Marshall said I feel they have met that requirement.

1909

1910 Mr. Trott said I agree they have met that requirement.

1911

1912 Mr. Hamilton said I agree.

1913

1914 Ms. Lemire said I agree with this one.

1915

1916 Mr. Rankie said I agree.

1917

1918 2.) Will granting a waiver, alter the essential character of the locality? (Met 5-0)

1919

1920 Mr. Marshall said it appears, with the signage requirement and all of that, with the  
1921 sensitivity in that area I think it meets that requirement as well.

1922

1923 Mr. Hamilton said I agree.

1924

1925 Ms. Lemire said John what did you say I didn't hear you.

1926

1927 Mr. Marshall said that because of the requirements of the town, and I am guessing  
1928 because of the state as well, that they can't have any signage visible from the outside that  
1929 indicates what they are selling I think it meets that character.

1930

1931 Mr. Rankie said it does not change the character and I would like to expand just a little  
1932 bit on this. We are using a measurement stick that doesn't fit what we are being asked.  
1933 We have admitted that we have altered these from setbacks because you want to build a  
1934 little closer to your neighbor's house. This is a little different. This is a restriction that the  
1935 citizens of Eliot put in place because of the nature of this business not because of the  
1936 physical structure, it's because of the nature of the business. We are measuring this with  
1937 something that doesn't fit what we are talking about.

1938

1939 Mr. Marshall said that gets addressed a little further down the line. It's not relevant to this  
1940 question.  
1941  
1942 Mr. Rankie said I understand but it's not just yes, yes, no and no. It's a different  
1943 measurement than we have ever dealt with before.  
1944  
1945 Mr. Marshall said do you think this facility will alter the essential character of this  
1946 locality where it's located?  
1947  
1948 Mr. Rankie said no.  
1949  
1950 Mr. Hamilton so you agree with this is what I'm hearing.  
1951  
1952 Mr. Rankie said this is no different than a drug store or any other retail establishment.  
1953  
1954 Mr. Trott said I agree with that.  
1955  
1956 Ms. Lemire said I can agree with that reasoning.  
1957  
1958 3.) Is the hardship the result of action taken by the applicant or prior owner?  
1959 (Not met 3-2)  
1960  
1961 Mr. Marshall said I think with listening to applicant about searching around for other  
1962 property and finding none I would say that it is no.  
1963  
1964 Mr. Hamilton said so he meets that requirement... ok.  
1965  
1966 Mr. Trott said as I said I don't believe that he meets that requirement because is it them  
1967 who is choosing to rent it creates the setback needs.  
1968  
1969 Mr. Hamilton said I think it does meet that requirement.  
1970  
1971 Ms. Lemire said no.  
1972  
1973 Mr. Rankie said I am having a hard time hearing but I think I heard John say that he was  
1974 having difficulty in finding another property in Eliot and that's why this is no.  
1975  
1976 Mr. Marshall said that was the testimony.  
1977  
1978 Mr. Rankie said I couldn't hear very well but there was a gentleman that spoke I couldn't  
1979 hear very well but I thought he said he had a property that met this requirement?  
1980  
1981 Ms. Lemire said yes.  
1982  
1983 Mr. Rankie asked so there are other properties in town without a waiver for this particular  
1984 property?

1985  
1986 Mr. Rankie said I do not believe that he has met that requirement.  
1987  
1988 4.) Will the granting of the waiver substantially reduce or impair the use of the abutting  
1989 property? (Not met 4-1)  
1990  
1991 Mr. Marshall said if it was just the Post Office, I would agree that it could be dealt with.  
1992 With the other 6 locations, that I haven't seen exactly where they are just yet and I regret  
1993 that, where there are residences, that one I have a problem with it.  
1994  
1995 Mr. Hamilton asked so your saying no?  
1996  
1997 Mr. Marshall said I will say that he hasn't. That one is a difficult one to me  
1998  
1999 Mr. Trott said I say he has not  
2000  
2001 Mr. Hamilton said I say he has not either.  
2002  
2003 Ms. Lemire said he has not met that one.  
2004  
2005 Mr. Rankie said again going back to the ordinance, if a marijuana store is located next to  
2006 a say a residence, the residence wants to do a daycare that the store does not affect them.  
2007 So, it can't change the character of the neighborhood.  
2008  
2009 Mr. Marshall said so your saying that it would affect the neighborhood?  
2010  
2011 Mr. Rankie said it's a difficult thing we are looking at but based on 33-190, its stating  
2012 right here that it won't change what they can do, the abutters.  
2013  
2014 Mr. Lemire said future abutters.  
2015  
2016 Mr. Rankie said any future uses Ellen.  
2017  
2018 Mr. Marshall said my argument wasn't that it would impair what the current property  
2019 owners were going to do, it's the idea of waiving it for the Post Office and that they got a  
2020 couple of hundred feet of forest in-between.  
2021  
2022 Mr. Rankie said but we are talking residences.  
2023  
2024 Mr. Marshall said but we are talking residences and they may have children, they may  
2025 have other reasons, I wish I had a better word, but they could be offended by a marijuana  
2026 store next door. If it was one waiver we had to make, just the Post Office, but its 6  
2027 residences.  
2028  
2029 Mr. Rankie said but the question is reduce or impair.  
2030

2031 Mr. Marshall said it impairs the wellbeing of the property owners. I know it's not fair in  
2032 so many words but it does. There are many residences that I know of, Mrs. Shapleigh for  
2033 one, will be impaired by that.

2034  
2035 Mr. Marshall asked so Charlie do you agree with the other 4 members of the Board or are  
2036 you standing alone?

2037  
2038 Mr. Rankie said it will not impair the use.

2039  
2040 5.) Is the granting of a waiver based upon demonstrated need, not convenience, and is  
2041 there no other feasible alternative available? (Not met 5-0)

2042  
2043 Mr. Marshall said now hearing the testimony of the public, I guess I would have to  
2044 disagree with this one.

2045  
2046 Mr. Rankie said sign me down as a no, too.

2047  
2048 Mr. Trott said I am going to have to say no.

2049  
2050 Mr. Hamilton said I am going to have to say no.

2051  
2052 Ms. Lemire said I am in agreement.

2053  
2054 Mr. Hamilton said ok we have gone through that; do we have a motion? I will entertain a  
2055 motion.

2056  
2057 Mr. Rankie I already moved.

2058  
2059 Mr. Hamilton said a motion has been made and seconded. Any discussion.

2060  
2061 Mr. Hamilton asked can you remind us what the motion was?

2062  
2063 Mr. Hamilton said the motion was to deny the application. Further discussion? We have  
2064 gone through the 5 questions that the applicant has answered. They are not criteria  
2065 because the applicant does not have to meet them. Any other discussion? If not all of  
2066 those who are in favor of denying the application please raise your hand.

2067  
2068 **Discussion ended.**

2069  
2070 **Vote 5-0**  
2071 **Motion Approved**

2072  
2073 Mr. Hamilton said it was unanimous 5 to 0. I am sorry your application was denied. You  
2074 have 45 days to appeal to superior court, you will receive a Notice of Decision within 7  
2075 days. Thank you very much.

2076

2077 **ITEM 4 – REVIEW AND APPROVE MINUTES**

2078  
2079 Ms. Lemire moved, second by Mr. Trott, to approve the minutes of November 21, 2019,  
2080 as amended.

2081 **VOTE**

2082 **5-0**

2083 **Motion approved**

2084  
2085 **ITEM 5 – CONTINUED DISCUSSION OF WAIVER AMENDMENT REVISIONS**

2086  
2087 Further discussion is scheduled for Wednesday January 29<sup>th</sup> at 7:00 pm. Then potentially a future  
2088 meeting with the Planning Board.

2089  
2090 **ITEM 6 – OTHER BUSINESS**

2091  
2092 There was no other business.

2093  
2094 **ITEM 7 – ADJOURN**

2095  
2096 There was a motion and a second to adjourn the meeting at 10:51 PM.

2097  
2098  
2099

2100

2101

2102

2103

2104

2105 **Respectfully submitted,**

2106

2107 **Kristina Goodwin, Recording Secretary**

2108

\_\_\_\_\_  
**Bill Hamilton, Chair**  
**Date approved: \_\_\_\_\_**

To the Eliot Planning Board,

For over a year the BOA has discussed an issue for which, according to both our town attorney and the MMA, an amendment to the zoning ordinance is recommended.

**Background:**

In the current Eliot code, as follows: (note highlight in red)

Sec. 45-194. - Nonconforming lots of record.

(a) If a single lot of record on the effective date of the adoption or amendment of this chapter does not meet the area, road frontage or setback requirements of the district in which it is located, it may be built on provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, that all other provisions of this chapter are met and it conforms with all state laws and regulations.

(b) If two or more contiguous lots or parcels are in single ownership of record at the time of adoption or amendment of this chapter and if all or part of the lots do not meet the dimensional requirements of this chapter, the lands involved shall be considered to be a single parcel for the purposes of this chapter, and no portion of such parcel shall be built upon which does not meet dimensional requirements of this chapter. This subsection shall not apply to any subdivision approved by the planning board for which an approved plan was recorded in the county registry of deeds prior to the adoption of the ordinance from which this chapter is derived.

(c) All setback, yard, residential density, lot coverage, height, use, and other basic requirements shall apply to nonconforming lots. In cases where it is not possible to comply with these and other zoning requirements, the following rules shall apply:

(1) On lots smaller than 10,000 square feet, permitted lot coverage shall be at least 2,000 square feet or a maximum of 25 percent, whichever is greater in applicable cases.

(2) The code enforcement officer is authorized to permit a 25 percent reduction in frontage, setback, and yard requirements only. Any other deviation in frontage, setback or yard requirements to a maximum 50 percent reduction may be permitted as a waiver after public hearing by the board of appeals. Any further reduction in frontage, setback or yard requirements shall be considered a variance. This section shall not apply to setbacks from the high water mark which is provided in [section 45-195\(c\)](#). In the shoreland zone the code enforcement officer shall not authorize reductions in frontage, setback or yard requirements. Such reduction can only be granted through the board of appeals.

(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, (§ 404)

The problem lies in that there is no definition in either the Eliot Code of Ordinances or state statutes of the term “waiver.” And also no criteria exists with which the BOA can render a determination as to whether to grant or deny such a request, other than

5 questions listed on the BOA “Waiver” application which are derived from state statutes regarding a “practical difficulty variance”.

(Title 30-A, section 4353: (emphasis in red))

4-C. Variance from dimensional standards. A municipality may adopt an ordinance that permits the board to grant a variance from the dimensional standards of a zoning ordinance when strict application of the ordinance to the petitioner and the petitioner's property would cause a **practical difficulty** and when the following conditions exist:

- A. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood; [PL 1997, c. 148, §2 (NEW).]
- B. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties; [PL 1997, c. 148, §2 (NEW).]
- C. The practical difficulty is not the result of action taken by the petitioner or a prior owner; [PL 1997, c. 148, §2 (NEW).]
- D. No other feasible alternative to a variance is available to the petitioner; [PL 1997, c. 148, §2 (NEW).]
- E. The granting of a variance will not unreasonably adversely affect the natural environment; and [PL 1997, c. 148, §2 (NEW).]
- F. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435. [PL 1997, c. 148, §2 (NEW).]

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this subsection, "**practical difficulty**" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

If adopted, this type of “Practical Difficulty Variance” would apply only to nonconforming lots of record and would replace 45-194 (c)(2) of the Eliot code and would eliminate the CEO’s authority to grant up to 25% reduction. The BOA would apply this new provision for requests of up to 50% reduction. Any further reduction in frontage, setback or yard requirements shall be considered a “Hardship Variance”, as currently provided in the Eliot code under “Variance”.

Currently both the BOA and the CEO are operating on waiver provisions which have no definition or criteria. In addition, the CEO is acting in a capacity that is only granted to the BOA by state statute, namely the granting of variances. The CEO has no authority to grant variances.

The BOA recommendation is to:

- 1) Define both “Practical Difficulty Variance” and “Hardship Variance” in Sec. 1 of the Eliot Code (definitions);
- 2) Amend Sec. 45-194 to include the “Practical Difficulty Variance” under (c) ((2) and eliminate the CEO’s provision to grant any reductions;

- 3) Under Sec. 45-49(b) of the Eliot Code, under “Powers”, the definition of “Variance” be changed to include both “Hardship Variance” and “Practical Difficulty Variance”;
- 4) In addition, it has been recommended that we also include a provision allowing “Disability Variances”, which conform to state statutes:

(Title 30-A, Sec.4353)

- 5) 4-A. Disability variance; vehicle storage. A disability variance may be granted pursuant to this subsection.
- 6) A. The board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this paragraph solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability.
- 7) The board may impose conditions on the variance granted pursuant to this paragraph, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this paragraph, the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure. [PL 2009, c. 342, §1 (NEW).]
- 8) B. If authorized by the zoning ordinance establishing the board, the board may grant a variance to an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability for the construction of a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose. The width and length of the structure may not be larger than 2 times the width and length of the noncommercial vehicle. The owner shall submit proposed plans for the structure with the request for the variance pursuant to this paragraph to the board.
- 9) The person with the permanent disability shall prove by a preponderance of the evidence that the person's disability is permanent.
- 10) For purposes of this paragraph, "noncommercial vehicle" means a motor vehicle as defined in Title 29-A, section 101, subsection 42 with a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate issued pursuant to Title 29-A, section 521 and owned by the person with the permanent disability. [PL 2009, c. 342, §1 (NEW).]
- 11) The board may impose conditions on the variance granted pursuant to this subsection.
- 12) All medical records submitted to the board and any other documents submitted for the purpose of describing or verifying a person's disability are confidential.
- 13) For purposes of this subsection, "disability" has the same meaning as a physical or mental disability under Title 5, section 4553-A.

Respectfully submitted,

Eliot Board of Appeals,

Bill Hamilton , Chairman