
TOWN OF ELIOT, MAINE

PLANNING BOARD AGENDA

TYPE OF MEETING: REMOTE
PLACE: ZOOM MEETING

DATE: Wednesday, April 29, 2020
TIME: 5:00 P.M.

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

- 1) ROLL CALL
- 2) PLEDGE OF ALLEGIANCE
- 3) MOMENT OF SILENCE
- 4) 10-MINUTE PUBLIC INPUT SESSION
 - a) To participate in the public input session, please call into meeting 5- 10 minutes in advance of meeting start time, so the Planning Board Chair is aware that a member of the Public is interested in providing input.
 - b) Please call 1-646-558-8656
 1. When prompted enter meeting number: **936 1601 0813 #**
 2. When prompted enter meeting password: **920733 #**
 - c) Members of the Public calling in will be muted upon entry and will be unmuted one at time to allow for input. Please remember to state your name and address for the record.
- 5) REVIEW AND APPROVE MINUTES
 - a) March 3, 2020
- 6) NOTICE OF DECISION
 - a) 43 Harold L Dow Highway (Map 23 / Lot 1) PB19-22
- 7) OLD BUSINESS
- 8) NEW BUSINESS
- 9) CORRESPONDENCE
- 10) SET AGENDA AND DATE FOR NEXT MEETING
 - a) Discuss remote meeting Agenda and process
- 11) ADJOURN

Dennis Lentz

Dennis Lentz, Chair

POSTED
4/23/20

1 **ITEM 1 - ROLL CALL**

2
3 Present: Dennis Lentz - Chairman, Ed Cielezsko, Melissa Horner, and Carmela Braun.

4
5 Also Present: David Galbraith, Planner; Kristina Goodwin, Land Use Administrative
6 Assistant; Shelly Bishop, CEO.

7
8 Absent: Christine Bennett (excused), Bill Olsen – Alternate (excused).

9
10 Voting members: Dennis Lentz, Ed Cielezsko, Melissa Horner, and Carmela Braun.

11
12 **ITEM 2 – PLEDGE OF ALLEGIANCE**

13
14 **ITEM 3 – MOMENT OF SILENCE**

15
16 **ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION**

17
18 There was no public input.

19
20 **ITEM 5 – REVIEW AND APPROVE MINUTES**

21
22 **Mr. Cielezsko moved, second by Ms. Braun, to approve the minutes of February 18,**
23 **2020, as amended.**

24 **VOTE**

25 **4-0**

26 **Motion approved**

27
28 **ITEM 6 – NOTICE(S) OF DECISION**

29
30 **A. 483 Harold L. Dow Highway (Map 54/Lot 2) PB19-19: Request to amend a**
31 **previously-approved Site Plan by changing the use of two existing greenhouse**
32 **structures from Wholesale Business Facility to Registered Primary Caregiver for**
33 **the purpose of medical marijuana cultivation. Applicant: Sweet Dirt, Inc. Owner:**
34 **The Flower Companies, Inc.**

35
36 **Mr. Cielezsko moved, second by Ms. Braun, that the Planning Board approve the**
37 **Planning Board Notice of Decision for PB19-19, dated February 18,2020.**

38
39 **VOTE**

40 **4-0**

41 **Motion approved**

42
43 **B. 423 River Road (Map 33/Lot 1) PB19-25; Applicant proposes to add second floor**
44 **above existing 28’X26’ first floor and convert 14’X10’6” screened porch to new**
45 **finished sunroom with deck above. Property is a small, two-bedroom home on a**
46 **narrow lot.**

47
48 **Mr. Cielezsko moved, second by Ms. Braun, that the Planning Board approve the**
49 **Planning Board Notice of Decision for PB19-25, dated February 18, 2020.**

50
51 **VOTE**
52 **4-0**
53 **Motion approved**

54
55 **ITEM 7 – PUBLIC HEARING**

56
57 **A. 43 Harold L. Dow Highway (Map 54/Lot 2) PB19-22; Request to amend a**
58 **previously-approved Site Plan by converting the garage unit into a Restaurant,**
59 **Take-out. Applicant: Blakeslee McElroy LLC; Owner: Blakeslee McElroy LLC.**

60
61 **Received: December 2, 2019**
62 **1st Heard: January 21, 2020**
63 **Public Hearing: March 3, 2020**
64 **2nd Hearing: February 18, 2020**
65 **Site Walk: N/A**
66 **Approval: March 3, 2020**

67
68 Mr. Jonathan Blakeslee (owner) and Mr. Mark MacElroy (owner) were present for this
69 application.

70
71 **6:41 PM Public Hearing opened.**

72
73 Mr. Blakeslee said we are seeking approval for a small restaurant/take-out in the garage
74 building at 43 Harold L. Dow Highway. There is no plan or desire for a drive-thru, there,
75 and not looking to make any changes to the property, itself. In the garage, we will remove
76 the two front garage doors, with two doors for entrance/exit to the left and the right door
77 would be replaced with commercial windows. The current rear door is not designed for
78 public egress and there is no plan to change the existing side garage door.

79
80 Mr. (David) Damon, abutter, asked about the hours of operation.

81
82 Mr. Blakeslee said that the proposed hours are for Monday through Friday 7AM-6PM,
83 Saturday 7AM-5PM, and Sunday 9AM-4PM. There is a possibility, if need warrants, of
84 opening an hour earlier but we are not planning to stay open later than 6PM.

85
86 Mr. Damon asked if there was a safety study on the use of Route 236. We have two
87 private abutting roads that are within 50 feet of their driveway. Currently, with the
88 chiropractors on one side and Mr. Blakeslee on the other side and we are trying to turn,
89 we have traffic passing us left and right at 50MPH in the breakdown lane. He expressed
90 his deep concern for a study to make sure no one would get killed there.

91

92 Mr. Lentz said that they are within their rights with that curb-cut there. He asked the
93 Planner if he could pass this concern to the Town Manager, as he wasn't sure who would
94 handle this, but he knows they (Kittery) are doing a traffic study right now.

95
96 Mr. Galbraith said he could talk with the Town Manager. His understanding is that that is
97 primarily looking at utility work within the existing ROW and not talking about
98 modifying curb-cuts, a designated turning lane, or de-acceleration/acceleration lanes.

99

100 **7:09 PM Public Hearing closed.**

101

102 Ms. Braun said that the applicant answered all her questions.

103

104 Mr. Cielezsko said he finds it complete and in good standing. The Planner's comments
105 are also envisioned as passing and I think we should move this application along.

106

107 Mr. Lentz said that we did get a letter promoting the applicant's business from people in
108 Eliot and found the application complete February 18th.

109

110 **Mr. Cielezsko moved, second by Ms. Braun, that the Planning Board approve the**
111 **request to amend a previously-approved site plan, PB19-22, to change a garage into**
112 **a restaurant/take-out under the standard conditions of approval:**

- 113 **1. The property may be developed and used only in accordance with the plans,**
114 **documents, material submitted, and representations of the applicant made**
115 **to the Planning Board. All elements and features of the use as presented to**
116 **the Planning Board are conditions of approval and no changes in any of**
117 **those elements or features are permitted unless such changes are first**
118 **submitted to and approved by the Eliot Planning Board. Copies of approved**
119 **permits from Maine DEP, Army Corps of Engineers, if applicable, and State**
120 **shall be provided to the CEO before construction on this project may begin.**
- 121 **2. The permit is approved on the basis of information provided by the**
122 **applicant in the record regarding the ownership of the property and**
123 **boundary location. The applicant has the burden of ensuring that they have**
124 **the legal right to use the property and that they are measuring required**
125 **setbacks from the legal boundary lines of the lot. The approval of this**
126 **permit in no way relieves the applicant of this burden. Nor does this permit**
127 **approval constitute a resolution in favor of the applicant of any issues**
128 **regarding the property boundaries, ownership, or similar title issues. The**
129 **permit holder would be well-advised to resolve any such title problems**
130 **before expending money in reliance on this permit.**
- 131 **3. The applicant authorizes inspection of premises by the Code Enforcement**
132 **Officer during the term of the permit for the purposes of permit**
133 **compliance.**

134

135

136

137

VOTE

4-0

Motion approved

138 Mr. Lentz said that the application stands approved and there is a 30-day period from
139 which the PB decision can be appealed by an aggrieved person or parties – move forward
140 but move forward cautiously.

141
142 **ITEM 8 – OLD BUSINESS**

143
144 There was no old business.

145
146 **ITEM 9 – NEW BUSINESS**

147
148 **A. 100 Harold L. Dow Highway (Map 23, Lot 12) PB20-2: Sketch Plan; Applicant**
149 **proposes redevelopment of a portion of the parcel for bulk storage propane.**

150
151 **Received: January 22, 2020**
152 **1st Heard: March 3, 2020**
153 **Public Hearing: _____, 2020**
154 **2nd Hearing: _____, 2020**
155 **Site Walk: N/A**
156 **Approval: _____, 2020**

157
158
159 Attorney (Sandra) Guay (Woodman, Edmands), Mr. (Chris) Tymula (Project Engineer),
160 Ms. (Jody) Amden (Project Safety & Compliance Specialist), and Mr. (Peter) Kropp
161 (applicant representative from Energy North - ENI) were present for this application.

162
163 Attorney Guay said that we very much appreciate the PB reviewing this application this
164 evening. We are on a lease deadline, which the PB has in their packets. This application
165 is for a bulk propane storage facility located in the C/I District at 100 Harold L. Dow
166 Highway and is on a 1.02-acre area of the 3-acre parcel that is the entire parcel at that
167 location. It is located in an area that is an existing graveled area used by the owner for
168 storage of boats, storage containers, and concrete. At present, there are two commercial,
169 existing uses at the property – a boat storage, retail, and repair operation, which was
170 approved by the PB in 2017 (Tab 11), and an auto sales repair business. We are seeking
171 to amend the existing 1995 site plan (Tab 10 – PB95-31) and will not impact any of the
172 other two uses but just that 1-acre area over to the left of the site. We are proposing
173 above-ground propane tanks. The application says bulk oil tanks and that was really the
174 only category that was close. The CEO suggested that we use that one. You do have
175 another category that says something like ‘categories like other categories’ but they
176 apparently felt that ‘bulk oil tank’ was the most appropriate. It does require, in ‘bulk oil
177 tank’ that each tank not exceed 50,000 gallons in size. Again, these will be propane tanks
178 but they will be 30,000-gallon LPG and Jody can explain the difference, if you like. The
179 Eliot Fire Chief submitted a letter and I don’t think he has any real concerns about the
180 project but I will let him speak to that, himself. This application also includes one waiver
181 request for the High Intensity Soils Report. This is because the site is currently developed
182 with gravel and paved areas and has been occupied by storage containers, both sit on
183 concrete, and the proposed development retains existing conditions with limited grading

184 and development, with no negative impact to the wetlands in the area. I'm hopeful that
185 we can respond to any questions that you have tonight. She reiterated that we are on a
186 little bit of a tight schedule here. Our hope is to be able to submit the final site plan
187 application by March 17th, in time for the April 21st meeting unless anything unexpected
188 comes up, that would allow ENI to meet their May 1st deadline under their lease
189 agreement. She turned it over to Mr. Tymula to review the plan.

190
191 Mr. Tymula, Civil Engineer with Greenman-Pederson, reviewed what was on the plan.
192 The whole site is largely gravel and essentially surrounded by large wetlands. Our
193 wetlands specialist flagged the wetlands in July, delineating the actual location edges of
194 the wetlands. The existing gravel limit are pretty close to the edge of the wetlands, shown
195 in the darker green next to the tan. That is actually on gravel today and what we are
196 looking to do, outside the limits of our work, is remove the gravel and re-establish the
197 vegetative area. We are maintaining the existing curb-cut along Route 236 and entering
198 the site with the existing garage on the right-hand side, traversing the site, and taking a
199 clockwise turn moving to the left through a gated entrance with two 30-foot cantilever
200 gates, one at the top and one at the bottom, one to enter and one to exit. There is a 6-foot
201 stockade chain-link fence surrounding the site for safety and security purposes. The
202 torpedo images on the plan are the four 30,000-gallon propane tanks. We have 6 bobtail
203 parking spaces and those are for the transport delivery trucks. There are two bobtail
204 loading stations and one transport off-load station for the large transport vehicles. The
205 site is fairly flat and there is not a lot of grading going on out there and not a lot of work,
206 to be honest, going on out there. Essentially, the gravel will work as a good base for the
207 foundation of the above-ground fuel storage tanks. We do have lighting shown within the
208 limits, the fenced area for safety and security, and along the bottom of the fenced area we
209 show a row of some local landscaping to provide some buffering and screening between
210 the highway and self-storage facility. Again, pretty simple and straightforward. The only
211 other thing we are looking to do, on-site, is that there are currently overhead electrical
212 services to the existing garage. We are looking to put a new pole and then go
213 underground, which makes sense for everybody so that there is then no concern with
214 interference with fires or propane service.

215
216 Mr. Lentz asked Mr. Tymula to walk him through where the trucks will be coming in,
217 where he will load, and where he will go back out. He also asked if there was a need for a
218 new entrance permit.

219
220 Mr. Tymula said that we reached out to Maine DOT and, based on the anticipated
221 number of vehicles entering and exiting, there is no need. Pointing to the plan, he
222 clarified the path trucks will take going in and out of the site. The transport truck will
223 enter once and exit once a day and the bobtails (small delivery trucks – UPS size) would
224 be up to four times, total, two bobtails twice a day, pointing to the location where the
225 transport and bobtails would off-load. Mr. Tymula said that we have four

226
227 Mr. Lentz asked about lighting.

228

229 Mr. Tymula said that we have five light poles and all the light is essentially dark sky
230 compliant and contained within the site.

231
232 Ms. Horner asked how far away the trucks traveled for delivery.

233
234 Mr. Kropp said that, for this site, it will be local - 25 miles – and as far away as we would
235 probably be going.

236
237 Ms. Braun asked if they had all the State permits.

238
239 Mr. Tymula said that we are just at the beginning phases of that. There is no DOT permit
240 but I do believe we need a DEP Stormwater Permit and a permit for the above-ground
241 storage tanks.

242
243 Ms. Braun said that I believe that all has to be done before construction begins.

244
245 Ms. Amden said I am working on a propane State permit but, usually, what we do is to
246 wait for the local permits because the State is looking for local approval before and we
247 don't want to see any changes to the site plan. So, we wait for approval from the Fire
248 Chief and the Town and, then, we have everything else in place to go forward with that.

249
250 Mr. Lentz asked the Fire Chief if he was okay with the issues he had.

251
252 Chief Muzeroll said that I have worked with the representative of the company on a
253 safety plan. We have talked about it, moved things around, and I am completely satisfied
254 with what they need to present. There is adequate municipal water supply out there for
255 fire suppression and we worked on being able to get around adequately.

256
257 Ms. Braun asked if there were any plans to place any sort of vegetation at the back to
258 buffer the residents behind the facility.

259
260 Mr. Tymula said that, at this time, we are just focusing on the front roadside view of it.
261 There is a tree line, pointing that out on the plan, of about 50 feet just within the property
262 limits and it goes further back.

263
264 Mr. Lentz asked about stormwater run-off.

265
266 Mr. Tymula said, from a stormwater run-off perspective, the site is flat and we are
267 actually reducing the amount of overall impervious and gravel on-site so we actually
268 have better stormwater flows post than we do pre.

269
270 Ms. Horner asked about hours of operation and any trucks that will be on-site.

271
272 Mr. Tymula said that it will be anticipated that there will be one of the larger transport
273 trucks and two of the bobtail trucks on a daily basis for a total of six trips per day.

274

275 Mr. Kropp said that, in the winter, the hours of operation will be 6AM to 5PM. We will
276 be keeping two small bobtail home delivery trucks on the premises. We will not be
277 keeping any of the large transport trucks on the site.

278
279 Mr. Lentz said no fumes or anything like that.

280
281 Mr. Kropp said no.

282
283 Ms. Horner said that you had mentioned you would be removing the gravel and re-
284 vegetating the area, asking if that was noted on the plan.

285
286 Mr. Kropp said that it is.

287
288 Mr. Lentz said that the last time we dealt with one of these, abutters had a lot of trouble
289 with back-up alarms.

290
291 Ms. Amden said that, if you notice with the traffic flow, it is designed to go all the way
292 around. We try to minimize backing and there shouldn't be any backing.

293
294 Ms. Braun asked if she heard right that it's currently used as boat storage.

295
296 Attorney Guay said that I think it's boat storage and some other things stored there, as
297 well – boat storage, storage containers, concrete – and she thinks it's just overflow
298 storage from the businesses that are on-site now.

299
300 Ms. Horner asked if that was a change of use.

301
302 Mr. Tymula said that the site is Eliot Automotive, right next to Jenkins Fuel.

303
304 Attorney Guay clarified that we are seeking a site plan amendment for this use. This is
305 overflow and that existing use isn't being changed. The automotive use and boat use will
306 still be there.

307
308 Ms. Braun said that I am concerned with where you are proposing to put this facility. It's
309 a change of use for us because it's now storage.

310
311 Attorney Guay agreed it was an additional new use. We're actually asking to amend the
312 site plan to allow this new use to go there.

313
314 Ms. Horner asked if this didn't need to be put into condo to meet our ordinance.

315
316 Mr. Galbraith said no. Currently, it's one lot. They are doing a ground lease agreement.
317 The entire lot is 3 acres in size and they have a lease agreement for 1.02 acres of the site
318 so it's going to remain a single lot of record.

319

320 Attorney Guay said yes, adding that the Town ordinance allows multiple uses on a single
321 lot in that zone.

322
323 Mr. Tymula said that the lease line is shown as ‘this’ dark line (on plan).

324
325 Mr. Cielezsko said that the original 1995 approval was for auto recycling. He asked when
326 the change of use came in to sell cars.

327
328 Attorney Guay said that there was an original 1995 site plan approval and, then, the PB
329 approved the other use in 2017, I believe.

330
331 Mr. Cielezsko said that the 2017 approval, I think, was for boat storage, which was
332 envisioned on their plans to be right where the tanks are proposed. There was never talk
333 about having the boat storage on top pf the cars. Are you envisioning having the boat
334 storage with the cars and you using the other half of the lot.

335
336 Attorney Guay agreed it was a little confusing and it took a while for me to locate this
337 original plan and try to make sense of what was going on. The approved 1995 plan didn’t
338 really show everything very well.

339
340 Mr. Cielezsko said that that 1995 approval was for auto recycling. He would like to know
341 when the change came that they sold cars and, then after that, what are you envisioning.
342 Are those tanks, were the boats are, supposed to be from the 2017 plan.

343
344 Attorney Guay said that the 2017 site plan shows storage and retail over to the left side of
345 the parcel, from the road, and then it did show some storage over on the left but I don’t
346 think, other than just some...he hasn’t really been utilizing that for storage.

347
348 Mr. Cielezsko said that I understand what he’s approved was boats over there; so, are you
349 envisioning changing that and having the boats be over the cars.

350
351 Attorney Guay said that my understanding is that is the plan for the owner of the lot that
352 owns that business is to just to keep his...

353
354 Mr. Lentz said that his cars and boats are going to be on one side and you are going to be
355 on the other.

356
357 Attorney Guay said that that was correct. What we are seeking now is a revision to the
358 site plans that have been approved before to allow the propane here and the owner will be
359 keeping his storage area over where his business is.

360
361 Mr. Lentz asked if that was the lease agreement.

362
363 Attorney Guay agreed that that was the lease agreement.

364

365 Mr. Cielezsko would like to see when they got approval to sell vehicles there, as a used
366 car lot. This is an amendment to a plan that has the same owners of the 2017 plan.

367
368 Attorney Guay suggested that that may be a code issue you might want to talk to your
369 code officer about. I don't think it affects this site plan that is in front of you right now.

370
371 Mr. Lentz said that I don't think it does, either.

372
373 Mr. Galbraith said that that is more research for the staff than it is the applicants. By the
374 time they are back in front of you I could provide an outline for that.

375
376 The PB agreed.

377
378 Mr. Cielezsko asked, regarding the four tanks, how the tanks were filled.

379
380 Ms. Amden explained that the transport will come in. They will use the PTO on their
381 truck to push the gas into the system. All the tanks fill together. When the delivery
382 bobtail trucks are loading, they will all go down together.

383
384 Mr. Cielezsko asked if there are pumps at the site or is it pressurized going into the
385 trucks.

386
387 Ms. Amden said that there are pumps to load the bobtails but the PTO on the transport
388 pushes the gas in, essentially being pumped in from the truck. The bobtails will be loaded
389 from **corcking** pumps that will be on the ground and that is shown on the plan.

390
391 Mr. Cielezsko asked if there were concrete barriers around the area of loading so there is
392 no striking.

393
394 Ms. Amden explained that, by NFPA 58, you are required to have crash protection all the
395 way around.

396
397 Mr. Cielezsko said that it was electrical power to run the pumps and the bobtail won't
398 load from where the transport pushes the gas in.

399
400 Ms. Amden said that there are designated areas for the bobtail and a designated area for
401 the transport.

402
403 Mr. Galbraith said that, in the package the applicant submitted, there is a flow chart of the
404 tank pumping diagram that shows how they are all connected and where the loading
405 stations are. If you would like, on the next go-around I can make sure we have the
406 11'by17', which are a little easier to see.

407
408 The PB agreed.

409

410 Mr. Cielezsko asked, regarding signage, if the applicant was going to have any
411 identification there for what it is going to be.
412
413 Ms. Amden said that we have to, by code, have some signage – No Smoking signs. Every
414 company has their own emergency contact on the outside of the fence.
415
416 Mr. Cielezsko ask if there was any identifier like a retail sign.
417
418 Mr. Kropp said that, as of right now, no, we won't have a roadside sign that says propane.
419 It's not a retail location. Our front tank will be wrapped in our logo and that will be it.
420
421 Mr. Cielezsko said to make sure the applicant addresses that issue with the CEO because
422 Eliot is a little tough on signs.
423
424 Mr. Kropp said that we will address that. If we have to have bare tanks, we will have bare
425 tanks.
426
427 Mr. Lentz said that I think Ms. Horner found the answer to one of Mr. Cielezsko's
428 questions. If you look at the last page in their handout, under Findings of Fact (February
429 6, 2018 – Item #4), the current use is auto sales/repair, so it is on record.
430
431 Mr. Cielezsko said yes, but I would still like to see the approval.
432
433 Ms. Horner asked if there was a note on the plan on how tall that vegetation was going to
434 be in front.
435
436 Mr. Kropp said that, on our landscape plan, we do have a landscape legend at the top, and
437 it does say the maximum, listing all the plantings, from 4-5-foot arborvitaes to ground
438 cover.
439
440 Mr. (Dan) Gordon, 1951 State Road, asked to speak. He was wondering how tall these
441 tanks would be, would they be visible from Dow Highway. He also said he was curious
442 about safety because 120,000 gallons of liquid propane is a frightening amount to have in
443 our community, citing devastating explosions that happened in local communities in
444 Maine and Massachusetts.
445
446 Mr. Lentz said that we share your concern and that is why we have the Fire Chief go
447 down there and thoroughly go through that they are following the NFPA fire code.
448
449 Ms. Amden, responding to Mr. Gordon, said that the tanks are 11 feet in diameter but
450 from the ground to the very top, because they sit on piers, will be roughly 14 feet high
451 and they are 47 feet long.
452
453 Mr. Gordon asked if they will be visible from the road.
454
455 Mr. Kropp said yes but we do have a 6-foot fence and landscaping so it is mitigated.

456
457 Ms. (Mary) Hogan, Jennie Lane, asked about the all-night lighting impact on Hanscom
458 Road residents.

459
460 Mr. Lentz said that we can ask them to provide that to us. Normally, all lighting is down,
461 as you heard them describe it, so that it isn't reflecting out. That's what the ordinance
462 calls for.

463
464 Mr. Kropp confirmed that we are proposing to have all the lights to be facing directly
465 downwards. Along the rear property line, we are showing foot candle levels of 0.1. There
466 is a wooded buffer in between that and further back so there should be no concern with
467 visibility of light.

468
469 Mr. Lentz said that we will hold a public hearing and abutters will be invited.

470
471 Mr. Galbraith recommended that the PB could find this complete and then we could
472 move directly to a public hearing. It's a very complete preliminary application.

473
474 The PB agreed.

475
476 **Mr. Cieszko moved, second by Ms. Horner, that the Planning Board consider this**
477 **application complete and move it forward for a public hearing.**

478 **VOTE**

479 **4-0**

480 **Motion approved**

481
482 The Public Hearing is scheduled for April 21, 2020.

483
484 **B. 88 Beech Road (Map 21, Lot 33) PB20-3: Applicant is seeking an amendment to a**
485 **previously-approved site plan to increase the amount of yoga classes allowed and**
486 **add the use of a commercial kitchen.**

487
488 **Received: November 5, 2019**

489 **1st Heard: March 3, 2020**

490 **Public Hearing: _____, 2020**

491 **2nd Hearing: _____, 2020**

492 **Site Walk: N/A**

493 **Approval: _____, 2020**

494
495 Mr. (Jonah) Amberger and Ms. (Amylyn) Amberger, applicants, and Mr. (Ryan)
496 McCarthy, P.E. Tidewater Engineering were present for this application.

497
498 Ms. Amberger said we are seeking an amendment to our already-approved land use as a
499 school for Yoga and meditation, which was approved April 19, 2016. There are no
500 physical changes to our site plan, essentially. As it is drawn up, the property will remain
501 largely the same as is documented on the March 28th site plan review application and the

502 April 16th approved site plan, with a few minor changes to accommodate the occasional
503 need for overflow parking as indicated by the attached marked up site plan. We also
504 request to add an additional land use of ‘recreational facility, non-intensive’, as this
505 category fully encompasses the diversity of the health and wellness classes that we wish
506 to offer. Originally, we were approved as a Yoga and meditation school...we have a
507 broad definition of the term ‘yoga’ that includes Tai Chi and other aspects, that moving
508 meditation, but what we found is that that language is a little bit restrictive. We would
509 like to be a little more in the health and wellness realm. Last year, it was brought to our
510 attention by the CEO in January that we had exceeded the use for our property. Since that
511 time, we have been working with the various Town officials to amend this. At this point,
512 we were unaware of any neighbor complaints or concerns. It should be noted that, upon
513 our initial approval t the Public Hearing on April 19th, the PB did approve our
514 submission, as presented, unanimously with a 4-0 vote and we were given the green light
515 to proceed cautiously because there are 30 days to appeal. This was our first time with
516 this experience so we took that as a green light and we went and we grew. We did not
517 receive a notice of decision and it was not completed until 8½ months after our initial
518 approval and we weren’t notified of the notice of decision meeting at Town Hall. If we
519 had read those findings of fact, which basically indicated a max of 12 classes, hours from
520 9-6, and dedicated as a school for Yoga and meditation, and also max size class of 20, we
521 would have appealed that. Just to clarify, with opening a business, we didn’t really know
522 what the needs were going to be in the community and, when we submitted our plan, we
523 submitted approximate hours of 9-6 and initially starting with 12 classes; so, in our
524 minds, that was our languaging and, so, when we were given the green light, we went.
525 So, unknowingly, we’ve been out of compliance, so we’re here today to hopefully rectify
526 that, to possibly hear the concerns of our neighbors because we haven’t been spoken to
527 directly. We are looking forward to this opportunity, wishing it could have happened a
528 little differently, but here we are. With that said, our growth exceeded our expectations.
529 We didn’t realize there was going to be such a desire for such offerings for health and
530 wellness. In our enthusiasm to do good for the community we unintentionally impacted
531 the people who live next to us. Because we received no direct complaints, we didn’t
532 know how we were affecting our neighbors. For the record, our deepest desire is to be a
533 place of peace and, for most folks who have been with us, that has been their experience.
534 If we had known our activities were causing discontent, we certainly could have curtailed
535 them. We want to take this moment to directly address the neighbors and the audience
536 and apologize for causing harm unwittingly. We’ve always been community organizers.
537 We like to gather people, and so it was, but I hope they will accept our apology. Moving
538 forward, our neighbors have a right to quiet enjoyment and we want to respect that and
539 we also have a right within our usage of our property, as long as it’s within the
540 ordinances, to do what we can do on our property. We are here today to kind of present
541 how we’d like to amend the previously-approved site plan. She reiterated what they had
542 been approved for and that the reason we are here to amend that, for possible extended
543 hours, is because people get off work at 6PM and it would not be feasible for us to end
544 classes at 6PM. What we are proposing is to extend our hours of operation from 7AM to
545 9PM for folks who work; that we had anticipated a 9AM class and a 5PM class. Again,
546 we’ve operated Yoga schools for many years prior to and we’ve always utilized those
547 spaces in a creative manner. You plant a seed, you see what works, and see what doesn’t

548 and then you make changes. We didn't realize there was going to be so much more
549 restrictions. Now we know and we'd like to come into compliance. We would also like to
550 be able to provide up to 4 classes Monday through Friday and 3 classes on the weekends,
551 with the length of classes to vary because some classes are 2½ hours long, some are an
552 hour, and some are 1½ hours. We are not going to do back-to-back so it does not create
553 any difficulty with traffic. We are seeking permission to offer, once a month, Yoga Off
554 the Mat Community Creative Sessions. She remembered she needed to give the PB an
555 update because she made a change.

556
557 Mr. Lentz asked Ms. Goodwin if that change had gone through the process.

558
559 Ms. Goodwin said no.

560
561 Mr. Lentz asked Ms. Amberger to give that to Ms. Goodwin to be processed.

562
563 Ms. Amberger agreed. Basically, I noticed some errors because we had originally
564 submitted a plan back in November and then we adjusted it, so the exhibits were all
565 wrong. Back to the Yoga Creative Sessions, she said that the one thing that makes Shiloh
566 Farm special is that it's not just people coming to practice Yoga and leaving. People are
567 really finding a sense of community in a place of belonging. We would love to be able to,
568 at least once a month, have an opportunity for folks to wither share poetry readings, share
569 music, within the barn. Regarding class sizes, the original proposal said 20. We can
570 comfortably fit 22 for Yoga classes with mats. We'd like to have 35 participants,
571 possibly, for workshops if they are seated at tables and chairs. For example, we've posted
572 at _____ (one of their other businesses?) for a flower essence workshop so people
573 come and they sit and learn about flower essences and, then, with the creative community
574 sessions, that is where the extended parking would come in to play once a month. Mr.
575 McCarthy has calculated that our property could contain 40 cars. Lastly, we are seeking
576 approval for a commercial kitchen in the main residence as an accessory to the school to
577 supply food for the day-long classes on the weekend. It would minimize traffic, coming
578 and going, because people would come, have a day-long workshop, and be able to get
579 fed. For production of products from the farm, we grow elderberry and we want to be
580 able to sell the elderberry and jams and so on. I want to speak to a memo that we just
581 received. On January 24, 2019 is when we received the Notice of Violation from Mark
582 Mitchell (CEO). At that point, we hadn't received complaints and were actually getting
583 positive feedback from the Town, so, we thought that all was good and that was a bit of a
584 shock. He came for a walk-through with the Chief and they gave suggestions to help with
585 public safety. One of the suggestions was a second egress off the barn. We were saving
586 our pennies for that and jumped on that and did the second egress. He suggested an
587 improvement of a window egress. We have a little barn apartment and that would
588 improve the safety for people staying there and, then, also putting in a fire door. That part
589 of the project is still in the works. He has not come and inspected it since we've done
590 these improvements. Essentially, in conclusion, the amendments that we seek are really
591 primarily focusing on the activities in and around the community barn in regards to health
592 and wellness classes, extended hours. We want to speak to our neighbors, again, and
593 really ease their minds. Again, in our exuberance, we were highly social creatures the

594 past two years and we are also ready to reel that in. We have hosted a variety of friends'
595 weddings and we are not a wedding venue. We also utilized a field across the street,
596 which belongs to our friends who own the property and we are also no longer utilizing
597 that field because of the affects that it has Ellen and Rod and also the public safety issues
598 that do arise. So, that is where we're at. I'm sure there's a ton of questions because there
599 were a lot of other things in that memo and we would be happy to answer those as they
600 arise.

601
602 Mr. Lentz said that I don't know where that stack went to but I received 'this' tonight just
603 before we started. Some of these are likes, some of these are dislikes. I don't know how
604 many meetings have been going on outside of here. There must have been some because,
605 all of a sudden, they threw this to the PB. I think what I'd like to do, with the Board's
606 agreement, is if this document you just handed out tonight is what you are looking for,
607 then I would like to take the time to have the staff decide what's different in this than
608 what the original plan was. And, with those things that are different, I would like to know
609 what the ordinance has to say about those things.

610
611 Ms. Amberger said, really, the only difference was that I changed...my exhibit notes
612 were wrong because, when we submitted our proposal in the fall, it was more extensive.
613 Then we received feedback that folks were unhappy so we went back to the drawing
614 board to try to shore things back. So, that upper part, that beginning part, those exhibits;
615 so, I just changed those exhibits...

616
617 Mr. Lentz clarified that I wasn't speaking to that. The original application that came here
618 in 2016 said you were going to have two classes, one on the morning starting at 9 and the
619 other one in the afternoon. and it would all be over at 6PM; that you would have 12
620 classes. I would like to see what's different there than what you just gave me now.

621
622 Mr. Cielezsko said that this is all in our package, already; that she just mis-numbered the
623 exhibits so we know what they want to do.

624
625 Mr. Lentz agreed but I would like the staff to compare what was in 2016 to what is here
626 so we see what are the differences.

627
628 Mr. Cielezsko said that I would like to present that this is not an amendment to an
629 approved plan. This needs full site review as a new business. For me, it's cut and dry. No
630 one else. I don't have to hear it from the Town. This needs a full site review, starting
631 from scratch.

632
633 Mr. Lentz said that I don't have an issue with that if that's what the Board wants.

634
635 Ms. Horner said that I totally disagree. What I'm hearing is that this business was
636 approved as a school. It's still a school; they're not changing their use. In Eliot, when
637 people have changes to their original application, they're supposed to come before the PB
638 to amend that. What I'm hearing is that this applicant wants to amend the weekly class
639 number from 12 to 41, they want to amend their hours, and they want to amend a once-a-

640 month offering for a community creative session so you could call it 42. Eliot doesn't
641 speak to short-term rentals so I don't think we even go there, or touch that, and has
642 nothing to do with us at all. They are not changing their use so I think the memo from the
643 CEO is overkill. In my opinion, none of those things apply to this application. I was at
644 this original approval and we talked a lot about what the right use was for this parcel and
645 should it be 'Yoga studio' or should it be 'school'. We went back-and-forth a lot on that
646 and, of course, Eliot doesn't have a 'Yoga' use, anyway. But I remember the applicant
647 speaking to this and I think we're at a point where we...I don't think we need to start
648 over. I think that's a waste of everybody's time and money because I'm hearing small
649 amendments that we can approve, or not.

650
651 Ms. Amberger said that we've met with a number of consultants and, given that there are
652 no physical changes to the site plan, in theory we should just jump straight to public
653 hearing but it was recommended that we come before and address with an amendment,
654 here, because it has become a bit contentious. Maybe Mr. McCarthy could speak more to
655 the site plan but I don't know what that would accomplish in that nothing is being
656 changed. Our property remains the same. We're not adding anything. We're not building
657 anything. We're not growing a parking lot. If a farm has an event, then people can park
658 on the grass; as long as emergency vehicles can come through, that is typically allowed.
659 We are scaling back significantly. We'd love to have a forum with our neighbors to talk
660 more about this, if they are willing, but that might just have to come out at the public
661 hearing. That's really what we're requesting. I want to hear people's concerns and we
662 want to hear people's concerns and that's the forum to do that.

663
664 Mr. Olsen said that, in regard to the number Ms. Horner threw out there, 41 classes, what
665 is actually being requested is 4 classes a day Monday through Friday and 3 on Saturday
666 and 3 on Sunday.

667
668 NOTE: It is 26 classes.

669
670 Mr. Cielezsko said that they were approved for a school and now they want to change it
671 or add 'recreational facility, non-intensive'. They envisioned a school, and I don't have
672 the minutes so I don't know the discussion that took place, but they were approved as a
673 school. That's classes. That's it and, like any school or private school everywhere around
674 this place. we've discussed using 'Yoga studio' as a school and everybody's been pretty
675 much square about what they mean by 'school'. What they are presenting here is more
676 'recreational facility, non-intensive' and it's not minor. It's a whole different...and then
677 they say they have an apartment above the barn; so, there's overnights. What's being
678 presented orally, right here, is what I'm seeing. They are talking about lighting parking
679 lots and having a parking lot. I stand by that this should have a full site plan review.

680
681 Ms. Horner said that they have a parking lot already.

682
683 Mr. Amberger said that, in regards to seeking an amendment to a use, the only reason we
684 have considered that and brought it to the PB is because we had to eliminate classes like
685 Tai Chi from the schedule because, from the Town's perspective, that didn't fall under

686 the Yoga school, which is not the way we believe Yoga is represented properly. So, we
687 were just looking to have a more broad capacity to offer a more diversity of classes. If
688 you would accept that under Yoga school, we wouldn't need another usage.
689

690 Ms. Amberger added or redefining because 'recreational, non-intensive' was a suggestion
691 by one of the Interim Planners – Mr. Sanderson; that we offer ping pong and there is an
692 instructor and he said that would be a broader definition. However, also within this
693 submission, we kind of put ourselves into a box by saying Yoga and meditation school
694 rather a school for health and wellness. That that could be more encompassing. We're not
695 fixated on that other use but were kind of guided in that direction that it was a little bit
696 more of a broad term. To address your comment about the parking area, we worked
697 extensively with Mr. McCarthy. When we first came before the PB back on March 1,
698 2016 thinking we were going to do this, again first time to the rodeo, we went through the
699 whole process. It was quite expensive to get approved. We did the soils study, we did all
700 of the things, and that's all in our original plan. Also, to speak to that, the reason we were
701 able to do that, the property was essentially split in half and that's written in the findings
702 of fact. The barn side is actually listed as commercial use, as a separate, and then there's
703 the residential on our side. It gets confusing because, again, we heard commercial and
704 you kind of put on a different hat. We do recognize that we are in a residential area and,
705 again, we are here to reel it back in in our overenthusiasm to be respectful neighbors and
706 to be able to continue to offer much needed classes to people in the community. It's
707 multi-generational. I still believe this is more of a public hearing matter of let's hear the
708 supporters and let's hear the folks who have concerns. We're not standing here and
709 saying we are standing in stone and this is it, with no room to bend, but if we don't know
710 what the exact concerns are, we don't know how to address those so we want to hear
711 those.
712

713 Mr. Lentz said that most folks coming in here have a very good idea of what they want to
714 accomplish. I think part of our role has to be to understand exactly what it is that you
715 want to do and, sorry, but then it needs to be checked to see if the ordinances will allow
716 this to happen. We're going to have to go back and forth on some of these. That's not
717 something you want to do in a public forum, believe me. We'll get to the public thing but
718 you've got to do this first.
719

720 Mr. Galbraith said that, in my report, I did give an overview, but I also raised concerns
721 the staff has had; that they have had multiple meetings with both neighbors and the
722 applicants. The Town Manager actually offered to try to bring the parties together so that
723 we can iron some of this stuff out before we go to public hearing and there wasn't
724 agreement to have joint meetings. The Town Manager, myself, Ms. Goodwin, Ms.
725 Bishop, we've all met with numerous folks about this issue and we tried to maybe
726 mediate a little bit and get all the concerns on the table. The items that were on the dais,
727 tonight, were letters from the applicants – letters of support. We also did have some
728 letters from neighbors that we put up there; that Ms. Goodwin had emailed those
729 documents to the PB but, because of the size of the packet, I didn't want you guys to get
730 a stack report that was 3 inches thick. I tried to provide some back history, going through
731 for quite a long time. It is true that we did find the original Notice of Decision that was

732 dated 9 months after the actual decision, which fortunately was not on any of staff's
733 watch, but that is unacceptable and the applicant should have received that. On numerous
734 occasions they were kind of surprised, when they came back to research our property
735 files, and came up with the Findings of Fact conditions of approval, I did try to outline
736 the neighborhood concerns and the issues we came across when researching the case
737 files. One of the things we wanted was direction from the PB about moving forward.
738 They can request a public hearing be held and the chips can fall...if there is some
739 working with the neighborhood, I think that's a good idea to iron that out before we go to
740 public hearing.

741
742 Mr. McCarthy said that one thing I want to try to clarify, here, is there may be some
743 misunderstanding. I don't think that the applicant was just expecting for this to just be
744 approved through a public hearing process. What we want to make sure that everyone
745 understands, here, is that we do have an approved site plan and we want to expand upon
746 that site plan – expand the use, increase the number of classes, expand the hours to a
747 different setting from what was previously approved. And the process to do that is
748 through that site plan amendment process. What we propose to you for increases in
749 classes, hours, or types of classes is all in your jurisdiction to be able to take those
750 additions, or changes, that we are proposing and to review your ordinances to make sure
751 we are still compliant with all the different sections. So, you'll still have that opportunity
752 to do that because any changes we do you then have to review and approve, just like you
753 would in that same site plan approval process. So, to go back and start from scratch with
754 a new site plan, it doesn't make sense. I don't know what it gains you because you still
755 get to review anything we propose and choose whether or not you want to accept it or
756 you don't want to accept it. But the fact of the matter is that the applicant does have an
757 approved use, they have an approved site plan, and that's clearly defined in that decision.

758
759 Mr. Lentz said as long as they are operating within the confinements of that.

760
761 Mr. McCarthy said correct.

762
763 Mr. Lentz said that that is what we're trying to understand.

764
765 Mr. McCarthy said that maybe one thing we could provide is a simple comparison chart
766 that says previously approved was 12 classes a week, we're proposing 26, 9AM-6 PM,
767 7AM-9PM, the types of classes, and that will make it very simple for you to look at and
768 see the physical changes we are making.

769
770 Mr. Lentz agreed that it would make it simple for the public because we do want to have
771 a public hearing.

772
773 Mr. McCarthy said I would ask, if the PB or the staff agrees, whether you'd be able to
774 approve the application as complete and then schedule that public hearing so that we can
775 continue this process. We can get you the clear comparison of the two and start the site
776 plan amendment process.

777

778 Mr. Lentz said that the only issue I would have with that is that I want to see that
779 document we are talking about before the public hearing.

780
781 Mr. McCarthy said that all the information is in your packet to be able to pick it apart.
782 We can clearly specify that in that document.

783
784 Mr. Lentz said that that is what I would like to see.

785
786 Mr. McCarthy asked if we could do that contingent upon accepting it as complete, since
787 it actually is in your documents that are in your hands, that at least gets us moving
788 forward. There has been a lot of time that has passed for the applicants from when they
789 first started this process over six months ago and they'd really like to keep this ball
790 rolling.

791
792 Mr. Lentz said that we've seen this for one day so we are going to take a little time to get
793 through this so we do it right. We should have some kind of packet that we can hand out
794 to the people so that they will understand as we are going through it.

795
796 Mr. McCarthy said of course.

797
798 Mr. Lentz said that then there are some things they are not going to like and some things
799 they will.

800
801 Ms. Horner noted, if I may, a lot of the complaints are not in the PB's purview. There is
802 nothing stopping me from having a bonfire in my back yard and my neighbors
803 complaining about it, either, so I think that the complaints and the pros should be handled
804 with a grain of salt with this PB because, as they said, the neighbors have a right to
805 enjoyment of their property and so do they. As long as they are compliant with the
806 ordinances, then it's a code issue.

807
808 Mr. Lentz said that you are right and that's why I asked to take them and tell me which
809 ones are not applicable.

810
811 Ms. Horner said that I don't want to be bullied by code issues because it's not what we
812 are doing in this room.

813
814 Mr. Cielezsko said that we are supposed to be bullied by code issues. That's what we go
815 by and I don't know what people think. I didn't read that list.

816
817 Mr. Lentz suggested to not do the code, first, is what I think Ms. Horner is saying. Let's
818 not let them be the drivers.

819
820 Mr. Cielezsko said that I got the list of complaints and support tonight and I didn't even
821 open it because that is for the public hearing and should be presented with the public
822 hearing or they can be read before the public hearing. I don't care, at the moment, what
823 the public thinks. I'm looking at it as a project and the project wants to change/add from a

824 'school' to a 'recreational facility, non-intensive'. That is such a difference from a
825 'school'. What they describe with kitchens and everything is all non-corralled scheduling
826 and is not anything that we should accept. I still say this is such a mess that we should
827 start fresh. Speaking of your Tai Chi, you could have gone to the Board of Appeals and
828 they could very well have overruled whoever told you you can't have Tai Chi because
829 it's not Yoga. If you were approved for Yoga, there is no reason why you couldn't have
830 Tai Chi. If that is the only problem, then the Board of Appeals could have taken care of
831 that. This is a lot of changes and reiterated that this should have full site plan review.

832
833 Ms. Braun agreed with Mr. Cieleuszko. This is a totally different idea from what was
834 initially approved. Especially when you add commercial kitchen and you not only want to
835 cater meals but you also want to sell products on the land. That's not part of a school.

836
837 Mr. Cieleuszko said that they have to present how all that becomes part of that
838 'recreational facility, non-intensive' because it certainly has nothing to do with schools.

839
840 A member of the public asked to speak.

841
842 Mr. Lentz said not at this time. We will have a public hearing on this and you will have
843 an opportunity to speak.

844
845 Mr. McCarthy said that, again, whether you start from scratch with the site plan or do a
846 site plan amendment to an already-approved site plan, you can change use, you can add
847 uses, you can expand upon it. The site plan amendment process will follow that same
848 process as the site plan. You will have every opportunity comment on anything to make
849 sure we're meeting every part of the ordinance just as you would with a site plan. So, it's
850 really the same thing.

851
852 Ms. Horner asked what use would a commercial kitchen fall under.

853
854 Mr. Galbraith said that there is licensing from the State, really. There are inspections by
855 the Fire Department, Code Office. There is sort of a residential kitchen and a commercial
856 kitchen in the existing house, currently. Ms. Bishop (CEO) and I have gone out to the site
857 and visited. We got a tour through all the buildings out on-site and they do operate as an
858 Airbnb currently, on-site. They don't do bookings like a hotel does and, really, the
859 commercial kitchen is to feed clients who are there to serve their longer activities on
860 weekends or for preparing foods for guests who happen to stay there.

861
862 Mr. Cieleuszko said that that puts the icing on the cake for me.

863
864 Mr. Lentz asked Ms. Bishop if she would like to add anything.

865
866 Ms. Bishop said that I was looking at the land use table on that question and believe Mr.
867 Galbraith answered that very well. I will answer any questions you have but I don't have
868 anything to add at this point.

869

870 Ms. Amberger thanked Mr. Cielezsko and Ms. Braun for their perspectives. If we had
871 known that we could have just gone to the Appeals Board when we came with this idea
872 then, by golly, we would have done that. Again, we're not schooled in the procedures so
873 we come to the Town to be guided. We want to be doing the right thing. We don't want
874 to be circumventing the ordinance at all. So, we followed the guidance of an Interim
875 Planner who said that, perhaps, you can add on that 'recreational facility, non-intensive'
876 to encompass a variety of classes. To be honest, a school offers a variety of classes.
877 When people go to a school for day classes, there are night classes, continuing ed classes,
878 learn to speak Spanish classes, learn how to dance. There is a variety of options within a
879 school definition. The challenge with Eliot is that there is no definition of a school so that
880 does open up for interpretation; that I'm basing it on my perception of a school. It's a
881 learning facility and it offers a diversity of learning experiences. Many schools that I
882 know of offer meals. There's a cafeteria for people who are there all day so we can feed
883 them and, so, we're asking that that's a part of the experience. In a way, it really
884 minimizes impact on the neighborhood because people come, they are in the barn for
885 class, they go in and eat, then they go back to class and that's really what we are hoping
886 to seek for. I'm not attached to the term 'recreational facility, non-intensive'. I was just
887 following the guidance of the Planner who is no longer here. If that's a point of
888 contention, we're happy to get rid of that. If going down that road requires us to go
889 through an entire site plan again, it's going to look exactly the same, and it doesn't seem
890 to make much sense to speak on the Airbnb piece. We've been doing that since 2014,
891 before we even came before the PB. We went to Ms. Pelletier and Ms. Ross asking if
892 that was okay because before you can have an Airbnb, it always says check with town
893 ordinance to make sure it is not restricted.

894
895 Mr. Lentz said that we don't have them.

896
897 Ms. Amberger said that there is no ordinance against it and, so, we've been operating an
898 Airbnb. They defer to State law, if the town doesn't have it. Under State provisions, if
899 you don't have more than 3 (or 5 in some) rooms, you don't need licensing as long as you
900 post a sign that says "this unit is not approved by DHHS", and it's posted in each room.
901 We didn't even address that on here because there is no ordinance. That's in our home
902 and that's something that's completely separate.

903
904 Mr. Lentz asked if Ms. Horner would go along with a modified site plan.

905
906 Ms. Horner clarified just an amendment to the site plan. Yes, I think that's what we are
907 looking at. They're asking for four changes.

908
909 Mr. Lentz said that I think there are more than four but we can go through it. Most things
910 aren't going to change.

911
912 Ms. Braun said that I still have a hard time with what has been presented, as far as the
913 commercial kitchen part, the sale of merchandise on the property. There's no clear-cut
914 information given about what the extracurricular activities are going to be, what the hours
915 are going to be for those activities, whether or not they will go over your timeframe or

916 things of that nature, how many extra people are going to be present at those functions, if
917 in fact, you do get approval. What's the impact to traffic out on that road. That is a
918 suburban, residential area. It is a heavily-travelled road. How many cars are coming in
919 and out on a daily basis. That all needs to be addressed. I noticed you are asking for a
920 traffic data variance (waiver?). Based on what I am hearing, you need to have a traffic
921 data report done because of the number of cars that are going in and out of there.

922
923 Mr. Lentz said that I think if you look at the list of the things they handed tonight, and
924 they said that these are the things we want to do, and we look at what we have on the
925 current application, the current plan, and said 'these' are different, the things that are
926 different are the things we should be going after.

927
928 Ms. Braun said that that's what I'd like to see.

929
930 Mr. Lentz clarified that that's what we're calling a modified site plan.

931
932 Ms. Braun clarified what is different from what was originally approved to what is being
933 presented today.

934
935 Mr. Lentz asked Mr. McCarthy if he was saying it right.

936
937 Mr. McCarthy said a site plan amendment.

938
939 Mr. Lentz said right, a site plan amendment.

940
941 Mr. McCarthy said that, for instance, you have a great example of a traffic study. If the
942 PB felt the need for a traffic study because of the expanded use that we're asking for, it's
943 in your jurisdiction to ask for that and, then, we can present that. We can have it prepared
944 so it's all part of this. Just because it's called a site plan amendment doesn't prevent you
945 from asking for those things and us providing and showing proof that we are meeting the
946 ordinance.

947
948 Ms. Braun said that I am not looking to say that this is complete tonight.

949
950 Mr. Cielezsko said that I fully want a new start, a full site plan review. If it's the same as
951 what you have, it would never fly the way this is for me. None of us are letting this go
952 through to public hearing next month. So, you come back next month with a sketch plan,
953 we can approve it as a site plan and see what you guys are planning because this is too
954 open-ended. It's too different from a school. Totally different from a school.

955
956 Mr. Lentz said that you're almost back to talking almost an amended site plan.

957
958 Mr. Cielezsko said no, I'm talking a full site plan.

959
960 Mr. Lentz continued which you will deal with the amendments on there.

961

962 Mr. Cieleuszko clarified we will look at it fresh, like the old site plan is gone.

963

964 Mr. Lentz asked if Ms. Braun would go along with that.

965

966 Ms. Braun said yes because, in my opinion, history means nothing. History has nothing to
967 do with today.

968

969 Ms. Horner said that is exactly why they are asking for an amendment.

970

971 Mr. Cieleuszko said that what they were given was very, very small, as a note of history.

972

973 Mr. Lentz said let's be the trolls under the bridge. We need to make a decision, one way
974 or the other. I'm okay with either way.

975

976 **Mr. Cieleuszko moved, second by Ms. Braun, that the Planning Board determine that**
977 **this is not an amended site plan and that they have to present a new full site plan for**
978 **this business.**

979

VOTE

980

3-1 (Ms. Horner)

981

Motion approved

982

983 Mr. Lentz said that we will have a full site plan.

984

985 Mr. McCarthy asked if the Town staff could explain the difference between a full site
986 plan and a site plan amendment. We want to make sure that a new site plan will not take
987 away the approval that we already have.

988

989 Mr. Lentz said I understand, asking for the Planner's input.

990

991 Mr. Galbraith said that you already have approval for the uses outlined for that and that
992 will not be taken away.

993

994 The PB agreed.

995

996 Ms. Horner said that we are doing a full site plan review for amended hours and
997 additional classes.

998

999 Mr. Cieleuszko said that that is not what they are asking for.

1000

1001 Mr. McCarthy said that, perhaps, the Town Planner could explain that the site plan
1002 amendment process is the same process we would follow for a site plan. Because you
1003 already have an approval, this has to be an amendment to a site plan.

1004

1005 Mr. Galbraith said that a full site plan has bigger requirements. We look for a traffic
1006 study, etc. I think the actual look of the plan and visiting the site to look at it, the actual
1007 physical site plan is not going to change for what they are proposing. I suspect it will

1008 have the same dates on it that were approved back in 2016, just new copies of that with
1009 your application. If you want to have a traffic study done, we can ask them for a traffic
1010 study. Because there are no physical changes to the site, I would assume you would seek
1011 waivers for a number of things, like High Intensity Soils Report.

1012
1013 Mr. Cielezsko said that the Planner could work with them and we could address that
1014 under a new site plan at the next meeting at their next opening. All these things can be
1015 addressed.

1016
1017 Mr. Lentz said that we will have a public hearing but, first, we'll come back with that
1018 information. We'll try to do that as quickly as we can.

1019
1020 Mr. Galbraith had one request. Ms. Bishop, Ms. Goodwin, and myself have all been
1021 working with the clients and the surrounding neighborhood and I would want to make
1022 sure that we all stay involved with this project because there have been changes in staff.
1023 There are administrative assistant changes, CEO changes, there have been multiple
1024 planners that have touched this thing and, for fairness to all, I'd want to make sure we
1025 were reviewing this project all the way through. It's confusing when you go back and see
1026 different memos from different people.

1027
1028 Mr. Lentz said that I can see it in my head how it used to work some years ago. We just
1029 used to just to 'see the previous application', 'see the previous application', We didn't re-
1030 write everything over again.

1031
1032 After some discussion, the PB agreed to hear this application on April 21st.

1033
1034 Mr. Lentz told the applicants not to wait until the last minute to send the information.

1035
1036 A member of the audience said that we know there are no comments but could we just
1037 ask a question.

1038
1039 Mr. Lentz said yes.

1040
1041 Mr. (Seth) Herbold, Bittersweet Lane, said that we heard one thing that concerned us. It
1042 was that Ms. Horner said that she didn't think that the neighbors' concerns...that they
1043 should be taken with a grain of salt.

1044
1045 Ms. Horner said that that is not what I said.

1046
1047 Mr. Herbold asked if she could clarify that.

1048
1049 Ms. Horner said that tonight is not the appropriate time to take public influence from one
1050 side or the other to take the scheduling of this application. So, tonight I didn't want to use
1051 these things to leverage our opinion on one thing or the other and that the neighbors have
1052 rights to their property usage and the applicants have property rights for their usage. I
1053 imagine that a lot of the complaints being made are code issues and not land issues; that

1054 we are here to hear land issues. That will come up at the public hearing and you will have
1055 an opportunity to speak on those for us to consider.

1056
1057 Mr. Lentz said that part of the reason we get in trouble is because we do allow more
1058 public input than, technically, we should because we do care about that. It's very hard to
1059 balance what the ordinance says because they're not very clear and trying to figure out
1060 what was the intent of that ordinance and, amongst that, trying to be fair to the applicant
1061 and to the public. It's a difficult thing. These people do a good job.

1062
1063 Another member of the audience asked if the applicants were going to have a traffic
1064 evaluation done; if it would be an accurate evaluation if it is what's going on now
1065 compared to what they plan on.

1066
1067 Mr. Cielezsko said that that would be a better question for the office, to talk with the
1068 CEO or Planner. This is so preliminary we are not even supposed to talk about the case.
1069 They have not been forced to do anything yet.

1070
1071 Mr. Lentz said that it was done before and, now, the number of vehicles may have
1072 changed. The pattern may have changed so, maybe it needs to be done.

1073
1074 Ms. Goodwin clarified with the PB that April 21st is meant to only review the plan and
1075 the input from the public, whether it's in support of or against, you want to hold off on
1076 that input until the public hearing.

1077
1078 Mr. Cielezsko said that that's correct, no one is speaking at the April 21st meeting.

1079
1080 Mr. Galbraith said not until the PB determines the application is complete, then we'll do
1081 the public hearing.

1082
1083 Mr. Lentz said exactly, then we're right back on track.

1084
1085 Mr. Galbraith said that he has talked with the neighborhood and the applicants and I think
1086 there are going to be a number of folks from both sides, and we were pretty full tonight,
1087 so we may want to do something across the road or something, Again, if we can get an
1088 idea of numbers. I just don't want 100 people standing in here.

1089
1090 Mr. Lentz said that we will look at that.

1091
1092 **C. Target Deadlines for November 2020**

1093
1094 It was agreed that all completed work on PB ordinances has been pushed to the SB. The
1095 PB is now working on completing Open Space and ADU ordinances.

1096
1097 Mr. Galbraith said that we are starting to generate a list, internally, of things that come up
1098 or things we've been finding to clarify. There are uses that we don't address that 10 years
1099 ago people weren't doing, such as doggie daycare. People are looking to convert barns

1100 into things like for wedding receptions. We will make a list of a number of uses like that
1101 and share that with the PB.

1102
1103 Mr. Cielezsko asked if that could be done by our next administrative meeting (April 7).

1104
1105 Ms. Goodwin said that we could. One of the other things that's included in your packet
1106 today is correspondence from the Board of Appeals.

1107
1108 Mr. Lentz said that I would like to put that on the list.

1109
1110 Ms. Godwin said that we can put together a list of some of the things that we're running
1111 into when we're all sitting down with applicants and noticing that there may be
1112 something that's hard to guide because there may not be a definition, for example.

1113
1114 Mr. Cielezsko recommended you itemize what you want to hit first because obviously we
1115 won't get to them all.

1116
1117 Junk yard and Agri-Tourism (definitions in Chapter 1, putting on land use table, which
1118 districts) were also discussed.

1119
1120 Mr. Cielezsko asked if the staff was happy with this list of deadlines.

1121
1122 Mr. Galbraith said yes; that that has already been forwarded and the things the PB voted
1123 to amend has already been sent to the Town Manager, who is forwarding it to the SB.

1124
1125 Ms. Goodwin said that everything you already discussed for the June ballot has already
1126 moved into their realm. They will send it out for legal review and then that will be heard
1127 by the SB. We worked on this (timeline) pretty closely with the Town Clerk and the
1128 Town Manager to try to really capture everybody's viewpoints. One of the things I have
1129 noticed sitting at the BOA meetings is that there is a lot of discussion with the different
1130 boards about being surprised that maybe it's too late to get something to you for an
1131 amendment. So, giving them an idea of when you guys need to see it, to start looking at
1132 it, to taking it apart was something that, from observation, was important for them to
1133 know. One of the other things that I don't think has happened in the past is setting a
1134 proposed workshop date with the SB before the final date so you can still make changes
1135 if you want. This was discussed internally that it might give some clarification and help
1136 the process move along. We can certainly remove the workshop. It is more a
1137 recommendation from the staff as we see the internal workings of the process it goes
1138 through after it leaves here.

1139
1140 Mr. Lentz said that it sounds like we need their approval to push this thing through and I
1141 don't want it to be that way.

1142
1143 Ms. Goodwin said no; that this was for after the whole PB process was done but before
1144 the last deadline. If all the SB members were to come, it would have to be advertised as a

1145 workshop. Also, this would give them an opportunity to hear what the proposed
1146 amendments are, digest it, and ask any questions they might have.

1147
1148 Ms. Horner said that she didn't mind but she doesn't remember ever pushing something
1149 to the SB then getting a memo back questioning anything so it almost seems like we are
1150 creating more work.

1151
1152 Ms. Goodwin said that it's just something we noticed about trying to be more transparent
1153 within the different sections and being allowed to have people in here before something
1154 falls to them, in case there's any questions.

1155
1156 Mr. Lentz said that we could invite them to the public hearing.

1157
1158 Ms. Goodwin said that that would be fine but might still need to be advertised. This
1159 timeline is just a proposal. It's just to help some of the committees work closer together.
1160 She added that one of the thoughts was that it would be nice for the SB to hear all the
1161 reasons behind it so that, when they have their public hearing, if concerns come up, they
1162 will be familiar with the PB's thought process. This is your deadline table and you have
1163 the right to amend it however you would like. It is just a suggestion and completely up to
1164 the PB.

1165
1166 The PB agreed that the staff was trying to provide transparency and ease for everybody to
1167 understand what's going on in Eliot and that was great. They discussed the load of work
1168 they had to do and this would be another night.

1169
1170 Ms. Braun said I think what they are getting at having the SB here is that it is a time for
1171 us to present to them what our thought process was or do we need ordinances so that,
1172 when they get the material, they're not wondering what it's all about. Then, when they
1173 have their public hearing, they can intelligently respond with the reasoning behind it and
1174 why it's being done. I think, in the long run, it gives them more information and it does
1175 make them understand where we're coming from.

1176
1177 Mr. Lentz said okay, let's try it.

1178
1179 Mr. Galbraith said that Ms. Goodwin does provide overviews of all the proposed
1180 amendments that gives the purpose of each ordinance and what it will accomplish to
1181 them.

1182
1183 Mr. (Bob) Pomerleau said that, during budget season, they probably won't warm up to
1184 another workshop. The Charter pretty clearly says that ordinances originate from the PB
1185 and the SB's role is to then put them on a warrant. It is rare that they are going to go
1186 beyond the narrative provided.

1187
1188 Mr. Lent said to try it.

1189

1190 Ms. Goodwin said that I will forward this on the Mr. Lee and have him make sure that the
1191 SB feels like that is a good use of everybody's time, as well.

1192
1193 Mr. Lentz said that they may come back that they don't want to do that.

1194
1195 Ms. Horner said that it makes more sense to me, or easier, to have the Chair or Vice
1196 Chair to go to the public hearing to represent us in case there is a question from the public
1197 the SB isn't savvy to, then they could defer to...and I'm pretty sure our Chair goes to all
1198 the SB meetings, anyway...but to make it more 'official', if that might be more helpful to
1199 satisfy what everyone's looking for.

1200
1201 The PB agreed to follow the proposed schedule.

1202
1203 *****

1204
1205 Mr. Galbraith said that on the news today they were talking about that, with all these
1206 adult use marijuana facilities knocking down the door, they (State) pushed back what
1207 they were originally going to do, possible another 3 months, at least. We're going to have
1208 some unhappy clients because we've said we are not accepting applications. When the
1209 State starts issuing conditional approvals, we are going to get a glut of these things
1210 coming in.

1211
1212 Ms. Braun said that one thing to notice is that there is only one application for a testing
1213 facility. With all these retail applications from folks, but only one testing facility, and I
1214 would imagine that they (State) are going to make them test everything before they put it
1215 out to the public...

1216
1217 Ms. Goodwin said that I and Ms. Albert attended a session where they were talking about
1218 just that; that when it comes time, there is going to be a huge bottleneck because of that.

1219
1220 **ITEM 10 – CORRESPONDENCE**

1221
1222 **A. Correspondence received from the Board of Appeals regarding proposed waiver**
1223 **amendments.**

1224
1225 This will be reviewed at the April 7th administrative meeting.

1226
1227 **ITEM 11 – SET AGENDA AND DATE FOR NEXT MEETING**

1228
1229 The next regular Planning Board Meeting is scheduled for March 17, 2020 at 7PM.

1230
1231 **ITEM 11 – ADJOURN**

1232
1233 There was a motion and a second to adjourn the meeting at 9:10 PM.

1234
1235

1236
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1241
1242
1243
1244
1245
1246
1247

Dennis Lentz, Chair
Date approved: _____

Respectfully submitted,
Ellen Lemire, Recording Secretary

TOWN OF ELIOT, MAINE

PLANNING BOARD NOTICE OF DECISION

CASE #: **PB19-22 - AMENDED SITE**

PLAN/REQUEST FOR PLANNING BOARD

ACTION:

MAP/LOT: **23/1**

DATE OF DECISION: **03-03-2020**

_____, 2020

White Heron Tea & Coffee Maine, LLC
14 Cove Road
Eliot, Maine 03903

To Mr. Jonathan Blakeslee and Mr. Mark MacElroy,

This letter is to inform you that the Planning Board has acted on your **application to amend a previously-approved site plan** as follows:

APPLICATION DOCUMENTS AND SUPPORTING MATERIAL SUBMITTED:

Submitted for January 21, 2020:

1. Application for a Request for Planning Board Action to amend a previously-approved site plan (PB08-07, dated April 1, 2008) received December 2, 2019.
2. Photographs of proposed signage, received December 2, 2019.
3. Site Plan done by Argonaut Design and Development, titled *White Heron Tea & Coffee Community*, dated December 1, 2019.
4. Site Plan Review Submissions Checklist, received December 2, 2019.
5. Letter addressing Site Plan Submission Checklist from applicant, dated December 1, 2019.
6. Contract for the Sale of Commercial Real Estate, dated October 3, 2019.
7. Memo from David C.M. Galbraith, Interim Town Planner, dated January 18, 2020, summarizing requested change of use and recommendations.

Submitted for February 18, 2020:

1. Letter describing updates and changes requested by the Planning Board, submitted by Jonathan Blakeslee, dated January 28, 2020.
2. Amended Site Plan Review Submissions Checklist, received January 28, 2020.
3. Updated letter addressing Site Plan Submission Checklist from applicant, dated January 28, 2020.
4. Updated photographs of proposed building sign, left side showing existing garage door and windows that will be left unchanged, proposed double entry/exit doors within existing garage door space (left) and proposed windows framed within existing garage door space (right), and proposed free-standing sign.
5. Updated Site Plan done by Argonaut Design and Development, titled *White Heron Tea & Coffee Community*, dated January 25, 2020.
6. Internal café design drawing done by Northshore Market Place, dated January 27, 2020.

Submitted for March 3, 2020:

1. Memo from David C.M. Galbraith, Interim Planner, dated February 30, 2020.
2. Letter from abutters in support of this project, dated March 1, 2020.

FINDINGS OF FACT:

1. The owner of the property is: Blakeslee McElroy, LLC (mailing address: 14 Cove Road, Eliot, Maine 03903).
2. The applicant is: White Heron Tea & Coffee Maine, LLC (mailing address: 14 Cove Road, Eliot, Maine 03903).
3. The property is located at 43 Harold Dow Highway, Eliot, ME and is .49 acres.
4. Property can be identified as Assessor's Map 23/ Lot 1 and is located in the Commercial/Industrial Zoning District.
5. The applicant proposes to amend a previously-approved site plan (PB08-07, approved April 1, 2008) by changing the use from "garage" to convert the existing garage into a "Restaurant, Takeout" and for a new free-standing multi-sign post and building-mounted Café sign.
6. The proposal will be mostly take-out, with limited bar-type seating (6).
7. Proposal will be serviced by an on-site 1,000-gallon driveable septic system and well. There will be no take-out window or drive-thru.
8. Hours of operation will be 7AM to 6PM.
9. The second floor of the garage will remain as an office.
10. The free-standing sign will be relocated from the right-of-way onto the property, per approval of the Code Enforcement Officer.
11. The existing building and footprint will not change, except to enclose the two front garage bay doors, one for exit/entry and one as windows.
12. Copies of the application and supporting materials were provided to the Code Enforcement Officer, Police and Fire Departments. Comments from the Fire Chief are attached.
13. The application was found complete February 18, 2020.
14. The Planning Board approved the change of use from "garage" to "Restaurant/Takeout" on February 18, 2020.
15. The Planning Board approved the following requested waivers: §§33-127(5), (6), (9), (10), (11), (12), (13). §33-127(7) was not applicable as a waiver as this is shown on the site plan.
16. There will be no changes to existing site conditions.
17. A site walk was not held.
18. The Planning Board reviewed the application at the following regular meetings:
 - January 21, 2020.
 - February 18, 2020.
 - March 3, 2020.
19. The following application fee(s) have been paid by the applicant, in accordance with §1-25:
 - Site Plan Review Application Fee: \$125 (Check dated 01/09/2020).
 - **Public Hearing Fee: \$175 (Check dated _____).**
20. In accordance with §33-129 & 130, a public hearing was advertised in the Portsmouth Herald/Seacoast Online on February 22, 2020 and held on March 3, 2020. In accordance with §33-129 & 130, abutting land owners were notified via certified mail. One abutter commented on his concern for the traffic impact and asked about the hours of operation.

CONCLUSIONS:

1. Revisions to site plans are allowed with Planning Board approval under Section 33-140 (Revisions to final site plans after planning board approval).
2. Per §45-290 (Table of Permitted and Prohibited Uses), "Restaurant, Takeout" is a permissible use in the Commercial/Industrial Zone with Planning Board approval.
3. The standards of Section 45-405 (Dimensional standards) of the Zoning Ordinance (Chapter 45) have or will be met.
4. All applicable performance criteria and/or ordinance requirements have been addressed by the Planning Board in accordance with Chapter 45, Planning & Development, Article VIII.

DECISION:

1. Based on the above facts and conclusions, on **March 3, 2020**, the Planning Board voted to approve your application to amend a previously-approved site plan (PB08-07 approved **April 1, 2008**) for a change of use by converting the existing garage into a "Restaurant, Takeout".

CONDITIONS OF APPROVAL:

The applicant must comply with all requirements of the Town of Eliot Land Use Ordinances. In addition, to further promote the purposes of the (Eliot Zoning Ordinances), the Planning Board has voted to impose the following conditions on the approval of this application:

1. The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board. Copies of approved permits from Maine DEP, Army Corps of Engineers, if applicable, and State shall be provided to the CEO before construction on this project may begin.
2. The permit is approved on the basis of information provided by the applicant in the record regarding the ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.
3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.

PERMITS:

The Planning Board has approved your application and the Code Enforcement Officer is authorized to grant you the necessary Permits or Certificates of Occupancy, as appropriate. It is your responsibility to apply for these permits. In exercising this approval, you must remain in compliance with all the conditions of approval set forth by the Planning Board, as well as all other Eliot, State, and Federal regulations and laws. Be aware, however, that Site Plan approvals (including home businesses) that are granted by the Eliot Planning Board have expiration provisions specified in Section 33-59 of the Town of Eliot Code of Ordinances, which states:

The approval of a site plan review under chapter 33, article III shall expire if the work or change involved does not commence within two years of the date the planning board makes its determination of approval under section 33-131, or if the work or change is not substantially completed within three years after such date.

The holder of an approved permit should take care to ensure that the approval granted on **March 3, 2020** does not expire prior to commencement of work or change.

APPEALS:

This decision can be appealed to the Board of Appeals within 30 days after **March 3, 2020** by an aggrieved person or party as defined in Sec. 1-2 and Sec. 45-50(b) of the Eliot Zoning Ordinance. Computation of time shall be in accordance with general provisions of the Town of Eliot Municipal Code of Ordinances, section 1-2.

Sincerely,

Dennis Lentz, Chair

This letter reviewed and approved by the Planning Board on _____, 2020.

CC: Shelly Bishop, Code Enforcement Officer
Elliott Moya, Police Chief
Jay Muzeroll, Fire Chief
Martine Painchaud, Tax Assessor

Fire Chief Memo

February 13, 2020

Planning Board
Town of Eliot

Ref: White Heron Tea and Coffee Community

43 HL Dow Highway – PB19-22

Board Members,

I have reviewed the above application and offer the following comments:

- The building will now become a mixed-use occupancy. Restaurant and office space.
- Verification of required fire separation IAW NFPA 101 will need to be verified by the Eliot CEO or the Eliot Fire Chief.
- If there will be a commercial kitchen in use the applicant will need to verify whether a NFPA 96 ventilation system will be required. The Maine Fire Marshal's website has the required forms.
- Since it is a mixed-use occupancy, I recommend a "Knox Box" key system be installed to support access to all areas of the structure.

As always, I'm available for additional support

Sincerely,
Chief Jay Muzeroll
Eliot Fire