

TOWN OF ELIOT, MAINE

PLANNING BOARD AGENDA

TYPE OF MEETING: REMOTE
PLACE: ZOOM ONLINE MEETING

DATE: Tuesday, September 29, 2020
TIME: 7:00 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
- 5) REVIEW AND APPROVE MINUTES
 - a) September 15, 2020 - if available
- 6) NOTICE OF DECISION
- 7) OLD BUSINESS
 - a) Medical and Adult Use Marijuana Town Code Amendments – Review of Draft
 - b) Variance Town Code Amendments (recommendation of Board of Appeals) – Review of Draft
- 8) NEW BUSINESS
 - a) Site plan review and subdivision review processes – Overview
 - b) Planning Board motion templates
 - c) Meeting schedule and upcoming submission deadlines
- 9) CORRESPONDENCE
- 10) SET AGENDA AND DATE FOR NEXT MEETING
 - a) October 6, 2020
- 11) ADJOURN

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

- a) Go to www.eliotme.org
- b) Click on “Meeting Videos” – Located in the second column, on the left-hand side of the screen.
- c) Click on the meeting under “Live Events” – The broadcasting of the meeting will start at 7:00 (Please note: streaming a remote meeting can be delayed up to a minute)

Instructions to join remote meeting:

- a) To participate please call into meeting 5 minutes in advance of meeting start time. Please note that Zoom does state that for some carriers this can be a toll call. You can verify by contacting your carrier.
- b) Please call **1-646-558-8656**
 1. When prompted enter meeting number: **987 1151 7478 #**
 2. When prompted to enter Attendee ID **press #**
 3. When prompted enter meeting password: **468691 #**
- c) Members of the Public calling in, will be first automatically be placed in a virtual waiting room until admitted by one of the members of the Planning Board. Members of the public will be unmuted one at a time to allow for input. Please remember to state your name and address for the record.
- d) Press *9 to raise your virtual hand to speak


Denny Lentz – Chair (kw)

1 **ITEM 1 - ROLL CALL**

2
3 Present: Dennis Lentz - Chairman, Melissa Horner, Carmela Braun, Mallory Strange –
4 Alternate, Jeff Leathe - Alternate.

5
6 Also Present: Jeff Brubaker, Town Planner; Kearsten Mertz, Land Use Administrative
7 Assistant

8
9 Absent: Christine Bennett, Bill Olsen (excused).

10
11 Voting members: Dennis Lentz, Melissa Horner, Carmela Braun.

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

14
15 **ITEM 3 – MOMENT OF SILENCE**

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

18
19 There was no public input.

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

22
23 Ms. Braun moved, second by Ms. Horner, to approve the minutes of September 1, 2020,
24 as amended.

25 **VOTE**
26 **3-0**
27 **Motion approved**

28
29 **ITEM 6 – NOTICE OF DECISION**

30
31 **A. 483 Harold L. Dow Highway (Map 54/Lot 02), PB20-12**

32
33 Mr. Brubaker confirmed that all fees have been paid.

34
35 Ms. Lemire said that she had added the fees and that she would change the footer to
36 reflect the PB case number.

37
38 **Ms. Braun moved, second by Ms. Horner, that the Planning Board approve the**
39 **Notice of Decision for PB20-12, as amended.**

40 **VOTE**
41 **3-0**
42 **Motion approved**

43
44 **B. 2135 State Road (Map 94/Lot01), PB20-13**

45

46 **Ms. Braun moved, second by Ms. Horner, that the Planning Board approved the**
47 **Notice of Decision for PB20-13, as written.**

48 **VOTE**

49 **3-0**

50 **Motion approved**

51
52 Mr. Brubaker noted that he talked with Ms. Raitt earlier. She submitted everything to the
53 State and it looks like she has all her approvals for her Home Business.

54
55 **ITEM 7 – PUBLIC HEARING**

56
57 There were no public hearings.

58
59 **ITEM 8 – OLD BUSINESS**

60
61 **A. 1470 State Road (Map 27/Lot 22), PB20-17: Federal Firearms License Transfer**
62 **and Firearms Sales – Home Business.**

63
64 Mr. Lentz said that we had a lot of good conversation on this at the last meeting and I
65 hope everybody is in sync. He thanked Mr. Brubaker for his overview.

66
67 At this time, Mr. Maloney was not present.

68
69 Mr. Brubaker agreed there was a good active discussion. I learned a lot more details
70 about what Mr. Maloney is proposing. The reason this is on the agenda tonight is because
71 he did submit a revised application. This isn't the decision night but to let the PB get a
72 look at the revised application and the staff report that went with it. The Public Hearing is
73 still expected for October 6th.

74
75 It was clarified that the resubmitted application date was not updated but the application,
76 itself, was revised.

77
78 Ms. Braun said that the application still says 'gun sales' and I don't see how that is
79 incidental to the paperwork. Couldn't the Kittery Trading Post say the same thing; that
80 the sale of the gun is incidental to the background check.

81
82 Mr. Brubaker said that the 'customarily incidental' language applies to on-site sales. So,
83 with regard to our Home Business regulation, there is no hurdle for a Home Business to
84 overcome for selling products, if they do so, via internet, phone, or mail. As a Home
85 Business, you can sell products via internet, phone, or mail but, if you are selling on-site
86 and the products are not homemade, as a Home Business, you can only sell non-
87 homemade products on-site if they are customarily incidental. That's where I think I
88 would agree with you, Ms. Braun. The sale of firearms is not 'customarily incidental' to
89 the paperwork for other sales of firearms. With that in mind, I did recommend that on-site
90 sales of firearms not be allowed.

91

92 Ms. Braun asked if he was going to do just internet sales, as I read it to be on-site.

93

94 Mr. Brubaker said that his application says that he would like to sell on-site as
95 ‘customarily incidental’ to his paperwork for other sales. What I am saying is that I
96 would disagree with that portion of his application, recommending against just that
97 portion while still recommending that he could sell via internet, mail, and phone.

98

99 Mr. Lentz said that on the last page of the Planner’s memo, with your recommended
100 conditions, there are those things that are allowed and are not allowed and I think that’s
101 where we were at the end of our last conversation. I would think the PB would want to
102 stick with that. If he wants to sell firearms, he can go to Route 236 and sell firearms retail
103 but this is a Home Business, which is still not straight on the application. The applicant’s
104 write-up is “Home Business – Home Office” and, again, I think it’s a Home Business,
105 and I think we’ll see our way through that, if that’s what we were talking about. With
106 those few things you added on to the recommendation, I thought we were on the right
107 track.

108

109 Mr. Brubaker said that this clearly is a Home Business – the service of facilitating firearm
110 transfers between a manufacturer and another buyer, where he doesn’t hold title to that
111 firearm. As far as my interpretation, our Home Business regulations wouldn’t prevent
112 that; so, he could do that. I did put in there in a note to the PB that he could still facilitate
113 the transfer of those firearms “on-site by appointment only” but he wouldn’t be able to
114 sell any firearms on-site. So, this is just trying to thread the needle between what he
115 wants, what I interpret the PB feedback for him was, and what our Home Business
116 regulations allow and don’t allow in terms of sales.

117

118 Mr. Lentz agreed that, regarding the passing of the firearm, he is neither the owner or the
119 seller, as Mr. Brubaker wrote in his memo.

120

121 Mr. Brubaker agreed, adding that it’s in his application “by appointment only during
122 specific hours” and made that part of my recommendation.

123

124 Mr. Horner said that we review each application on its own merit but I do remember we
125 approved a Home Business for an auto shop off of Fernald Lane and I’m just pressed
126 to...I feel like the gun thing is being just a little bit biased because if someone is working
127 on cars, and there’s a car sale, that’s incidental to being an auto repair shop. It seems as
128 though this is the same concept that a sale of something that he’s dealing in could be
129 incidental. Additionally, in the State of Maine anyone can sell anyone a gun and maybe
130 I’m wrong but I don’t think we have the right to say that he can’t sell a firearm at his
131 home when I could do that, myself, without even being someone that is processing
132 federal paperwork.

133

134 Mr. Lentz said that I think that the situation is that for a Home Business, unless he’s
135 actually manufacturing the gun in his home, that’s just a retail sale that we were just
136 speaking about. Home Business is strictly you made it there in your house or it’s

137 incidental to whatever you're making. An example would be, if you are making soap and
138 wanted to sell soap dishes, that would be incidental.

139
140 Ms. Horner said that our ordinance speaks to the making and manufacturing of; that I
141 think it just says on-site sales of merchandise and products that are customarily
142 incidental. So that would be like saying that the soap-maker couldn't sell milk, that they
143 need milk to make the soap, but they didn't make the milk themselves. I see a sale of this
144 as incidental because he could come into possession of a gun any which way. I'm happy
145 to be wrong but I just don't know how we can tell somebody that they can't sell
146 something that is incidental. It comes down to whether we agree it's incidental or not. I
147 can see the argument that it is incidental the same way that some guy is working on some
148 woman's car and decides she doesn't want it anymore. It's an incidental sale and now he
149 has it.

150
151 Mr. Lentz clarified that what Ms. Horner was saying was that, if the transfer and
152 paperwork is the main business, then the gun is incidental to that.

153
154 Ms. Horner said why not, yes. I may be over-thinking this but it seems as though he could
155 obtain a gun from anywhere. He could have a client he is transferring a new firearm to
156 and the new client says that I have this old gun that I don't want anymore, asking if Mr.
157 Maloney knew anyone who would want to buy it and Mr. Maloney might say he knows
158 this other guy who would. It just does seem that that would come up in conversation.
159 Folks that collect and trade and purchase firearms. Everybody's "got a guy" and I happen
160 to have a guy who sells guns. I just want the PB to be careful that a personal bias of guns
161 isn't what's coming into play here and we are actually interpreting the ordinance; that we
162 need to treat these applicants fairly regardless of our personal feelings about firearms.

163
164 Mr. Lentz said that I may be wrong but I think I said last time that, because it's a Home
165 Business, he cannot sell firearms on-site because it's not something he manufactured or
166 made in his home. If he would tell us that it was strictly a transfer of paperwork, that's
167 where he's getting his money from and that's his business, then the gun becomes
168 incidental to the transfer of all that paperwork that he does. I still don't think they're
169 allowed to do that on-site.

170
171 At this time, the applicant (Mr. Maloney) joined the meeting.

172
173 Ms. Horner said, regarding page 4, #7 g. of the application, that there are four things
174 there and there is one you and Ms. Braun keep referencing about "products that are
175 created, grown, or built" and then there's the one I'm referencing, which is "On- site
176 sales of merchandise and products that are customarily incidental". So, I think that any of
177 us are arguing that Mr. Maloney isn't making the product...we all not he's not making
178 those products. But what it seems like what we're disagreeing on is whether a sale is
179 incidental to the service he's already providing. I'm arguing that I do see it as incidental,
180 much like my auto repair shop example; a person with an auto repair shop saying every
181 once-in-a-while I want to sell a car. I have a hard time believing this PB wouldn't see that
182 as okay, whereas, because we're talking about guns, it's not okay. I'm just expressing my

183 opinion. Please feel free to tell me if you think I'm wrong. I really want to make this fair
184 for the applicant and not getting caught up in what he's selling.

185
186 Mr. Lentz invited Mr. Maloney to speak.

187
188 Mr. Maloney said that I didn't hear the first part but I do believe that the sales would be
189 incidental, as that is not my primary purpose. My primary purpose is not to have a
190 showroom where people can come in a pick one of the guns I have in the house. It's on a
191 'by appointment' basis only to do the paperwork, which would be my primary purpose.

192
193 Mr. Brubaker said that this is a reasonable debate for the PB. Again, there's no
194 restrictions in our Home Business regulation on off-site phone, mail, and internet, or
195 similar sales, of firearms. You can have any product. It's just a matter of what is
196 'customarily incidental' and, unfortunately, there's not a lot to go on in terms of Maine
197 court precedent. There was the one court case I found in Sanford that talked about the test
198 is whether the thing being sold is dependent on a principal use has a reasonable
199 relationship with that primary use and is, by custom, _____, habitually and by long
200 practice, established as reasonably associated with the primary use. The PB could find, in
201 approving this action, that the sales of firearms are 'customarily incidental' to the transfer
202 of other firearms; that this is something for the PB to decide. I interpreted that court
203 decision more as something where, if you are selling something you make as a Home
204 Business, there are really some parameters that need to be done – other things that you
205 sell – so that your home does not turn into an unrestricted retail operation. We are dealing
206 with residential areas, here, and that's where the soap example comes in. I'm making my
207 recommendation but, at the end of the day, the PB could decide differently based on
208 whether you think sale of firearms are 'customarily incidental' to the service of
209 facilitating the firearm transfer.

210
211 Ms. Horner said that, if we decided that firearm sales isn't 'incidental', there is nothing to
212 stop the applicant from potentially selling a firearm, anyway.

213
214 Mr. Brubaker said that the Town of Eliot can only enforce those regulations. So, if the PB
215 allowed on-site sales of firearms and then the CEO would recognize that. If the PB didn't
216 allow on-site sales of firearms, I think the CEO would be responsible for enforcing that.
217 But, really, this is immaterial to what is being sold. This is really about trying to contain
218 the non-produced goods that are sold out of a home.

219
220 Ms. Horner asked if the Planner was saying that, if I sold a firearm out of my house, the
221 CEO could come knock on my door.

222
223 Mr. Brubaker clarified that the PB can decide to do any land use application and, then, if
224 the use is somehow contrary to that decision and our local land use regulations, then
225 that's the CEO's responsibility. But, if the PB decides that firearms sales, on-site, are
226 allowed and include that in their approval of the Home Business, then the CEO would
227 abide by that decision. So, really, again it's up to the findings of fact and what decisions
228 the PB makes.

229
230 Ms. Horner said that it would only be withing that 200 square feet of the home office
231 where it would not be allowed if the PB decided it wasn't allowed.

232
233 Mr. Lentz agreed that it was tied to the Home Business.

234
235 Ms. Horner said that I get the legality of it but there's nothing stopping Mr. Maloney
236 from selling a gun out of his house, even if we got it into the application, because he
237 could just have someone into his kitchen instead of the 200 square feet; that it just seems
238 moot.

239
240 Mr. Brubaker said that I think the thing stopping it would be that there needs to be a
241 defined space for the business in the home and that could be no more than 1,500 square
242 feet. So, if the PB does allow those on-site sales and that sales operation doesn't exceed
243 that limit of 1,500 square feet that is in the Home Business regulations, then yes, he could
244 sell firearms on-site.

245
246 Mr. Maloney said that what I think you're saying is that, even without a business license,
247 I can still sell a firearm from my home. I think that's Ms. Horner's point that; whether I
248 have a business license, or not, it's still something in the State of Maine that I can do.
249 Any Maine resident can sell a firearm to another Maine resident without a firearms
250 license.

251
252 Ms. Horner clarified that what I'm saying is that, if the PB decides that incidental sales of
253 guns is not part of this application, and so there's no gun sales, the only part of his home
254 that he can't sell a gun out of is 200 square feet of office space that he has. That is the
255 only thing that the CEO would have jurisdiction over, if someone even complained. I
256 don't think we can stop him from selling guns on property. It's just that we say he can't
257 have on-site sales in that 200 square feet of his house. And that's if somebody
258 complained and if the CEO went over there to talk to him about it. That's all. I'm just
259 trying to be very clear about what we're saying. So, if we say he can sell guns, he can sell
260 them in his office but, if sales of guns aren't incidental, then he just can't do it in his
261 office.

262
263 Mr. Maloney said that I completely agree what you just said. I understand the restrictions
264 of the business aspect and then able to still sell a firearm as a regular person without a
265 business license. If the business is restricted to that area it is still something I can do. I'm
266 not looking to manipulate the business license. I'm trying to be able to meet the federal
267 guidelines of how they want things done and the paperwork needs to be done that way.
268 Right now, we can meet in my kitchen and I can sell them a gun, sign a piece of paper,
269 and be done with it but, there's no background check. All I need is if I want to take out a
270 license and, besides that, I don't need to check anything. At least with the license, I can
271 verify that the person is allowed to have a firearm; that they're not a felon or somebody
272 who is prohibited from having one. Without the license, I don't follow the same
273 guidelines.

274

275 Mr. Lentz said that, if I'm reading this correctly, my opinion is that we are trying to
276 maintain the integrity of the ordinance. The request was for a Home Business and, to
277 maintain the integrity of the Home Business, I believe what we said was that the
278 paperwork processing and all that processing that he does is the primary business and that
279 the firearm, itself, is incidental. That doesn't mean he can't sell a firearm, as long as it
280 has the paperwork that he's transferring. That's my opinion. The exception of that you
281 can't do the firearm out of the house; that it can't be on-site, it has to be off-site. It can be
282 phone, internet, or any other similar sales but it can't be from the house.

283
284 Mr. Brubaker clarified that what's before the PB right now is to interpret a Home
285 Business application based on the Home Business regulations that on the books. There
286 are parts of the State law that we are not really dealing with here and our Home Business
287 regulations really are neutral on what is being sold. As I understand the spirit of the
288 Home Business regulations, as well as the Home Occupation regulations, it is to really
289 limit the amount of retail sales, whatever happens, out of the home in a residential
290 district. The staff report is trying to thread the needle to respond to what Mr. Maloney has
291 proposed to do while staying within parameters of the Home Business regulations. The
292 sticking point, by far, is that yes, absolutely our regulations allow for phone, mail, and
293 internet sales of the product the Home Business is selling. Obviously, our Home Business
294 regulations allow for homemade products to be sold on-site out of the home. So, the big
295 sticking point is this term 'customarily incidental'. I have provided guideposts for the
296 PB's discussion on what 'customarily incidental' is. I will defer to the PB to decide in
297 this case. I'm just trying to follow what little precedent there is in the State of Maine on
298 this.

299
300 Mr. Lentz asked, from the PB standpoint, what information is still required from the
301 applicant.

302
303 Ms. Horner said that I think we have everything.

304
305 Mr. Lentz asked if we were prepared, then, to move forward with a Public Hearing.

306
307 It was confirmed that it is scheduled for October 6th.

308
309 Ms. Braun said that, going by the ordinance, I still don't see where, and it's not made in
310 the home, it is incidental to the paperwork. If the paperwork was the primary thing, that
311 would be a whole different thing; that a gun sale is incidental in a residential area, in my
312 mind, is not incidental. I could be wrong but that is my opinion.

313
314 Ms. Horner asked for clarification on what it is not being incidental to.

315
316 Ms. Braun said to the paperwork; that I don't feel that the sale of the gun is incidental to
317 the paperwork.

318
319 Mr. Maloney said that, with a federal license, I can't conduct the sale of a gun without
320 conducting the paperwork. Once I receive a federal license, if I'm to sell a gun without

321 doing that paperwork, then I'm charged by the ATF for it because it's not being done
322 their way. If you wanted to purchase a gun from one of the PB members, and you came to
323 my house and I said you were good without doing any paperwork, I would be responsible
324 for that. So, the paperwork is the primary. If somebody was to come here and say that I
325 want to transfer this gun but, while I'm here, I'm interested in ordering something else,
326 would you be able to order that for me; that that would be something I could order but my
327 primary thing is to be able to do the paperwork for people looking to transfer a gun to
328 somebody else.

329
330 Mr. Lentz asked if there is always a firearm with the transaction or just transactions and
331 no firearm.

332
333 Mr. Maloney explained that the firearm would have to be present. If you were purchasing
334 a firearm from me, the gun would have to be present so that I could verify that the gun
335 that's being transferred is the gun you say it is – the serial numbers are correct and
336 everything like that; that I have to document all of that. I can provide the PB with a copy
337 of the ATF form, which is the same form you have to fill out if you go to the Kittery
338 Trading Post. It is a multiple-page form that includes all of your information, along with
339 the firearm information and a copy would be made once the background check is done.

340
341 Mr. Lentz said that, then, with the paperwork there is always a firearm.

342
343 Mr. Maloney said yes. But it doesn't have to be something that I have where I'm selling;
344 that it could be something that you would be bringing to have transferred to another
345 person.

346
347 Ms. Braun asked if Mr. Maloney would be advertising that you do gun sales as part of
348 your business plan.

349
350 Mr. Maloney said no. I only plan on doing it for friends, family members, people that I
351 work with and, as I said, it would be by appointment. If I did a sale or a transfer and they
352 wanted to have somebody else to come, they would have to contact me to set up an
353 appointment. I don't plan on making any type of advertising pages for it.

354
355 Ms. Braun said that you indicated in the application that you would have one employee.
356 If the gun sales are not going to be primary and it's primarily paperwork, what would the
357 employee be doing.

358
359 Mr. Maloney said that the employee would be my wife in case something was to happen
360 to me then she would be on the federal paperwork to able to maintain the firearms that I
361 personally own because any firearms that I have registered with the ATF would have to
362 be turned over to somebody who is listed on the license. She is basically a beneficiary on
363 the license; that she wouldn't be doing any paperwork. She would be the other person
364 listed on my federal license.

365

366 Ms. Strange said I am still trying to wrap my head around finding the gun sales incidental
367 and I guess I'm missing an understanding of how these guns are coming into possession,
368 as well.

369
370 Mr. Maloney said that, if somebody wanted to order a firearm from a certain
371 manufacturer, they could do that and I would have to take possession of that firearm prior
372 to it being transferred to them. It's not like Amazon; that you can't go online and
373 purchase a firearm and have it delivered to your door. You have to have it delivered to
374 somebody who holds a federal firearms license and, once it's received by them, they do
375 the background paperwork and then it can be transferred to the actual buyer.

376
377 Mr. Lentz said that, if I ordered a gun over the internet from, for example, Smith &
378 Wesson, they wouldn't ship that gun directly to me. It would go to a firearms dealer.

379
380 Mr. Maloney said yes.

381
382 Mr. Lentz said that this is where you would get involved. It would come to you and then
383 what would you do.

384
385 Mr. Maloney agreed and said that I would then contact the person that made the
386 purchase. He would have to contact me prior to let m know they would have something
387 sent to me. Once I received it, I would contact them to do the paperwork and turn it over
388 to them.

389
390 Mr. Lentz said that you are not the seller or owner of that gun, or buyer.

391
392 Mr. Maloney said no; that at that point I'm just doing the federal paperwork. I'm not
393 purchasing the firearm. I don't spend any money on it. I'm not selling the firearm to
394 them. I'm not making money off it. I'm simply the middle man receiving it and then
395 documenting it because, if for some reason they don't pass the background check and
396 can't obtain the firearm, then I would send it back to the manufacturer.

397
398 Mr. Lentz said that that's where the soap dish analogy fits in with the soap being made.

399
400 Ms. Braun asked how the applicant would come into possession if you were going to sell,
401 because you said that you were going to sell them. My interpretation is not me calling
402 and ordering from a manufacturer, that's having the gun in your possession and selling it
403 to somebody else. Where do you get those particular firearms.

404
405 Mr. Maloney said that, if I wanted to sell a firearm, I would purchase it from a
406 manufacturer and then sell it to somebody else. Like I said before, my intentions...it
407 would be more or less like if somebody really wanted a specific gun, then I could order it
408 from the manufacturer. I could have them pay for it through the manufacturer and that
409 would eliminate having to do the sale at the residence. But I could still purchase it and, as
410 a dealer, I would get it at a lower cost so, if I were to sell it for a higher cost, then I would

411 be making a profit, but I would still have them purchase it through the manufacturer and I
412 would do the paperwork for them.

413
414 Ms. Horner said that the way that I saw it was that it is much like people who are into
415 cars, there are people who are into guns. That maybe I have a gun that belonged to my
416 dad and somebody wants it, and you know who that somebody is. So, you might purchase
417 my dad's handgun from me because your buddy down the street wants to buy it. So, you
418 might buy it from me and turn it over to your friend for a price; that that could be a
419 potential sale, right.

420
421 Mr. Maloney said that that was correct. I deal with a lot of people at work and just people
422 I know that are, like elderly people that are getting rid of firearms that family members
423 don't want anymore. If I were to purchase something like that, that would be something
424 that I could sell.

425
426 Ms. Strange said that I'm still trying to understand how, if you purchase it directly and
427 then re-selling it, it would be the 'soap dish' rather than the 'soap'.

428
429 Mr. Maloney said that, if I purchased it directly, that would be completely like that but
430 my intention is not to be purchasing firearms to have in stock in my house. I don't plan
431 on having an inventory in my house besides my personal guns, which are already in my
432 house. If someone looked at those and wanted to buy one, then there is the potential that I
433 could sell one, but I don't plan on having an inventory of new guns that I'm ordering
434 from companies to have in stock and make sales out. I'm also okay with being able to do
435 sales over the internet, by phone, or mail. I agree that if I was to buy somebody else's
436 firearm off them and sell it, that may be considered more of an incidental sale. I don't
437 need to make purchases directly from the manufacturer. That's not my intention.

438
439 Ms. Braun said that I still don't see how the sale you just talked about would be
440 incidental to the paperwork.

441
442 Ms. Horner said that there is no sale that is incidental to the paperwork unless he's selling
443 his own gun. The paperwork is getting done for two other people.

444
445 Ms. Braun said yes but, if he has a gun in his possession and he's selling it to somebody
446 else, it's not something that the person called the manufacturer and ordered it and had it
447 shipped to him, it's something he had in his possession that he's selling to somebody
448 else. How is that then incidental to the paperwork.

449
450 Mr. Lentz said that it is not and that's not part of the business. That is something that any
451 one of us can do. We don't need a license to do that. I can call you tomorrow and sell you
452 one of my guns and I don't need a business license. I don't need anything. So, we need to
453 separate that from the Home Business that he's talking about, I think. I'm trying to say
454 that that's not part of his business. That's not what he's asking for. Any one of us can do
455 that. We can buy or sell a firearm to our neighbor. That is not what he's asking to do; that
456 he's asking to be able to massage the paperwork. He's the in-between guy, the way I see

457 it. And in no way in that business is he the buyer or the seller. He's strictly the man in the
458 middle. The buyer can order over the internet from a gun company, it gets shipped to Mr.
459 Maloney, Mr. Maloney does the paperwork, and whatever, and transfers the firearm. He's
460 not selling it; he's giving him something that the man already bought from the
461 manufacturer.

462
463 Ms. Strange said that, to that extent, should the paperwork then say sales because I agree
464 that the word 'sales' is a bit misleading. Should it be something like brokering or
465 something that's more directly tied to what he's really pursuing.

466
467 Mr. Lentz said that that was an excellent question. I don't know the answer. He asked if
468 Mr. Brubaker could help us there.

469
470 Mr. Brubaker said that I would agree with Ms. Strange. What Mr. Maloney has described
471 is, at least in part, more of a brokerage than actual sales. And again, we're really talking
472 about on-site sales versus phone, internet, or mail sales. If you're personally selling your
473 firearm to another person and it's not part of a business you can do that under Maine law.
474 So, again, we're really talking about a brokerage in the case where Mr. Maloney is
475 serving as the transfer of the firearm and never takes title to that firearm.

476
477 Mr. Lentz asked Mr. Maloney if that was a description of your business.

478
479 Mr. Maloney said yes.

480
481 Mr. Lentz asked for Ms. Horner's input.

482
483 Ms. Horner said that I think we should wait for the Public Hearing. Ant to be perfectly
484 transparent, I don't think it matters because, if he needs to remove the sale of firearms
485 from his application in order to get this approved with the Town, there is nothing that the
486 Town can do to limit him in selling a firearm, anyway. So, if he needs to remove that to
487 get approval because the PB can't wrap their head around what he's trying to do, then he
488 should probably just do that and then he can just sell guns out of his kitchen instead.

489
490 Mr. Lentz said that I totally agree. That's why I said let's keep them separate. The buying
491 and selling of firearms can be done with anyone in this State. It's the rest of the business
492 that we're talking about, as far as a Home Business. Do we need to change something
493 before we go to a Public Hearing or are we prepared to go just as we are. I don't think we
494 should be arguing or having this discussion, again, if we don't have to.

495
496 Ms. Horner said that I think that's up to the applicant and maybe the Planner, if he wants
497 to amend it. I'm comfortable with the way the application is but I can only speak for
498 myself, and Ms. Bennett and Mr. Olsen aren't here to weigh in on how they feel about it.
499 It seems reasonable that, after the Public Hearing and after it goes back to the PB, the
500 applicant can certainly amend the application if the PB isn't feeling like leaving the sales
501 on there is appropriate.

502

503 Mr. Brubaker said that I just want to clarify that he can sell goods via phone, mail, and
504 internet and he can broker firearms sales as a Home Business. Really the question is on-
505 site sales and I think the crux might be, if Maine State law allows you to sell firearms,
506 individual to individual, that's fine. Our Home Business regulations aren't really
507 touching that. Really, the question is are you selling an inventory of goods, whatever they
508 are, as a business in your home. That's where our Home Business regulations apply. So, I
509 think we're kind of circling in on a sweet spot, here, in terms of what the PB has said,
510 what Mr. Maloney wants, and still staying within the confines of our Home Business.

511
512 Mr. Lentz said that Mr. Maloney would say that I am not selling from an inventory from
513 my house.

514
515 Mr. Maloney said no, I am not selling from an inventory out of my house. I have three
516 kids in here and I don't need people walking through all day long looking at guns
517 hanging on my walls.

518
519 Mr. Lentz asked if we need to redefine anything.

520
521 Mr. Brubaker said that I would just say that the only thing that really needs to be
522 clarified in the staff report is what kind of sales, to Ms. Horner's point, State law allows
523 anybody to do outside of the umbrella of a Home Business. Then, I will again try to
524 clarify what activity I think our Home Business regulations apply to and what activity our
525 Home Business regulations really aren't touching.

526
527 Mr. Lentz said that you are saying that the sale and purchasing of guns is as it's defined
528 by the State laws. It's separate from the Home Business that we're talking about.

529
530 Mr. Brubaker said that I'm not totally well-versed on State law as it pertains to
531 individuals selling guns to other individuals but I think other PB members and Mr.
532 Maloney have a really good understanding of that. So, what I'm saying is that, if
533 individuals are selling to individuals, and they're not doing it under the umbrella of a
534 Home Business, then they can do whatever they're allowed to do under State law. But, if
535 somebody establishes a Home Business and they want to sell goods out of their home, it's
536 simply the case that they need to follow the Town's Home Business regulations. I think
537 we're getting there in terms of something that follows the Home Business regulations and
538 also an understanding of what Mr. Maloney, or anyone, can do outside of a business
539 umbrella within State law.

540
541 Mr. Maloney said that I can clarify what Maine State law is. You can sell any firearm to
542 any Maine resident and you don't need to do a bill of sale. They recommend that you
543 check for a firearms permit but you don't have to do a background check. You just have
544 to verify whether they are of age, whether it's a pistol or rifle or long gun and then verify
545 that they are a Maine resident. So, if someone is 18 years old and wants to come over
546 here and purchase a rifle, non-business related, they can come over and purchase one.
547 And I don't need to do a bill of sale, a background check, just verify they are a Maine
548 resident. If someone wants to purchase a hand gun in the State of Maine, all they need to

549 do is the exact same thing but they have to be over the age of 21. With the firearms
550 license, I actually have to do a background check, I have to make sure they are a resident,
551 I have to make sure they don't have any domestic violence related things, restraining
552 orders, any type of restrictions that would prevent them from having a firearm. If I don't
553 have the federal firearms license, I can sell to anyone by simply looking at their driver's
554 license to say they are from the State of Maine. I can write a bill of sale for my records
555 but I don't have to.

556
557 Mr. Lentz said that we will see you on the 6th, asking if the applicant had any questions of
558 us.

559
560 Mr. Maloney said that I don't. I wish I could have made everyone comfortable with what
561 my intentions are but I think we're getting closer.

562
563 Mr. Lentz said that I think so, too. He asked if there was anything specific Ms. Horner
564 thought we might need.

565
566 Ms. Horner said no; that I think it's just going to come down to whether the applicant
567 wants to keep the sales piece on his application and work with the PB members that are
568 there that night or if he wants to remove it and not even have to have the conversation
569 again.

570
571 Mr. Lentz said that I agree with you there.

572
573 Ms. Braun said that it's really up to Mr. Maloney if he wants to leave the sale piece on
574 there and just go to Public Hearing then see what happens. My comfort level would be to
575 not have the word 'sales' on there but that's just my personal opinion. I'm not biased
576 against guns, or gun sales, or anything along those lines. It's just in the spirit of the
577 ordinance to me this does not fit what's allowed.

578
579 Ms. Strange said that I would have to agree. I think it's up to the applicant and I also
580 agree that I would be more comfortable removing or changing that verbiage but I think,
581 again, that that's up to the applicant whether he wants to have this discussion with the
582 other PB members or make the decision to remove it.

583
584 Mr. Lentz said that we will see you, Mr. Maloney, on the 6th and it's your decision, I
585 guess, whether you remove the sales piece off the application or leave it on; so, if you
586 have no other questions of us, we will see you on the 6th for a Public Hearing.

587
588 Mr. Maloney thanked the PB for their time.

589
590 **B. Surrey Lane (Map 37/Lot 22), PB2004: Final Subdivision Plan**

591
592 Mr. Cuomo was present for this final plan approval.

593

594 Mr. Lentz said that this is a 4-lot residential subdivision. On August 4th we did a
595 preliminary plan approval and did a Notice of Decision. Now, we are to do a final
596 approval. I believe everything we asked for – addresses for the four lots, plan notes
597 indicating the wetlands and shown on the plan – I can't remember the rest of them.
598

599 Mr. Brubaker said that there was the condition that Lot #2, which is in the southeast
600 corner, not be sold until the lot line adjustment sale is closed, as well as the condition that
601 the applicant add a 3" crown on Surrey Lane.
602

603 Mr. Lentz said to Mr. Cuomo that I believe everything has been updated on the latest
604 plan. Do you have anything to say to us or need from us.
605

606 Mr. Cuomo said that I don't think so. I believe I've added everything to the plan you
607 have requested. The Notice of Decision has been typed up and you have signed off on
608 that so we're looking for a final plan approval.
609

610 Mr. Lentz said that when we do this final plan approval, I believe the PB has 45 days to
611 sign the actual mylar copy that will be registered. So, if we do approve this plan tonight,
612 in the next couple of weeks you would be stopping in to see Mr. Brubaker.
613

614 Mr. Brubaker said that Mr. Cuomo already dropped off the final plan copies so it would
615 just be stopping in to sign or, if you don't feel comfortable coming in to sign, it would
616 just be arranging another way to sign.
617

618 Mr. Lentz asked what was the opinion of the PB. It appears we got everything we asked
619 for.
620

621 Ms. Horner said that I was feeling a little silly because I don't ever remember doing a
622 subdivision this way. I would make a motion right now but I will let the other PB
623 members chime in.
624

625 Mr. Lentz said that I felt the same silliness. It's the first time I've done one this way but
626 I'm sure this must be by the book so maybe we weren't doing the book before.
627

628 Ms. Braun said that it looks like we've gotten everything we've asked of the applicant
629 and he's done a very good job, thanking Mr. Cuomo. I'm comfortable with it.
630

631 Mr. Lentz said that I am, as well, and thanked the applicant.
632

633 **Ms. Braun moved, second by Ms. Horner, that the Planning Board approve the**
634 **Final Plan for PB20-4.**

635 **VOTE**
636 **3-0**
637 **Motion approved**
638

639 Mr. Lentz thanked Mr. Cuomo; that you have been very gracious and it's been a pleasure
640 working with you. There is a 30-day appeal that someone could appeal our decision
641 starting tonight.

642
643 Mr. Cuomo said that, as a point of clarification, I was told by the surveyor that you no
644 longer sign mylars, or, they no longer sign mylars at the Registry. You are saying we
645 have to have a mylar for you to sign.

646
647 Mr. Lentz said that I know it used to be a mylar and it's been a while since we signed one
648 so it could be paper now.

649
650 Mr. Brubaker said yes.

651
652 Mr. Cuomo said that you have the plans, all the copies you've asked for. Now, you folks
653 are going to sign them and I am going to record the paper plan at the Registry.

654
655 Mr. Lentz said that that was correct.

656
657 **C. 811 Harold L. Dow Highway (Map 79/Lot 20): Addition of outdoor seating**
658 **continued.**

659
660 Mr. DeHetre was present for this application.

661
662 Ms. Metz said that there was nothing new submitted for this and asked the PB to hold on
663 while she got Mr. Brubaker back into the meeting so he could explain it.

664
665 Mr. Brubaker said that the Land Use regulations, out Town code, specifies that the PB
666 needs to take action within a certain time and this is the last regular meeting before that
667 timeline expires. Unless the PB decides you want to continue the discussion and override
668 that timeline in the Town code, there needs to be some kind of decision tonight on the
669 application that's before you.

670
671 Ms. Horner asked if we didn't ask for more information as a continuance or does that not
672 count.

673
674 Mr. Lentz said that we did ask for more information, yes.

675
676 Ms. Horner said that we have to take action even though we've asked for more
677 information.

678
679 Mr. Lentz said that I think we need to take action on the application, not on the amount of
680 things we have or don't have, because time is running out.

681
682 Mr. DeHetre said that I went in and talked with Mr. Brubaker for a while. I'm going to
683 put screening across the back; that I'm going to do that no matter what just to be a good

684 neighbor and give them peace and quiet; so that is all set. We also talked about where we
685 might be able to do something temporary for next year.

686
687 Mr. Brubaker said that the idea was that this application would either be formerly
688 withdrawn, or rejected, but then Mr. DeHetre could come back to the PB with an
689 application for an outdoor seating area for next warm season with the ability to satisfy the
690 bathroom requirement with portable toilets for one season, only, just to allow it to operate
691 for one warm season. I did want to clarify that that would require making the case that
692 portable toilets would be acceptable within code for that short duration, only, and it
693 would not be a long-term solution. That's just kind of a suggestion I had. The PB can
694 certainly do whatever course of action it wants. I'm just trying to figure out some way
695 that an alternative application could be considered by the PB.

696
697 Mr. Lentz asked if Mr. Brubaker was anticipating that we would deny this current
698 application.

699
700 Mr. Brubaker said that I believe, technically, it's looking like that because I don't believe
701 there's enough information or the requirements haven't all been met, primarily because
702 of the bathroom issue. So, I would recommend that that be considered as the option
703 tonight. I do think the applicant is looking to come back with a more temporary
704 application for consideration by the PB as it applies to next warm season. There's just no
705 getting around the plumbing code for a long-term solution and, yet, at the same time Mr.
706 DeHetre has mentioned it would cost a lot; that the idea would be to at least consider this
707 one-year recommendation for next year.

708
709 Mr. Lentz said that we recognize that it's a small business. We would certainly try to help
710 you as long as we stay inside the code. I think there's been 2 or 3 letters that have been
711 written and put on record with, I'm going to say, numerous code violations and I don't
712 think it's a good thing to permanently build something larger when you have all those
713 violations that are currently going on. It shouldn't shed any light on what you're trying to
714 do but you can't not hardly see that. I think working with the CEO to try to rectify some
715 of those things would be a good thing to do in the meantime.

716
717 Mr. DeHetre said that, when you say code violations, you're talking about the fence that
718 rotted and fell down that we've been trying to put up for the last couple of years; that the
719 Town Manager was with us at the last Selectmen's meeting; that we've been trying to do.
720 That's just an issue of me getting together with the owner of the property and getting him
721 to put his half in and I'll build it. And, if I have to do it all myself, I'll do it all myself.
722 Like I've said, if I'm not there tomorrow, it's still his property and he should be
723 responsible for it. But, if he doesn't, I'm going to be the bigger person and get it done,
724 even though it's been a tight budget year with the COVID. As far as any other code
725 violations, I don't know what those would be.

726
727 Mr. Lentz said that, if you check some of the letters, that will give you information. He
728 discussed some of the abutter comments, adding that there are 120 people who live back

729 there and it looks like only 2 or 3 made any complaints. I get along with everybody there;
730 that they all usually come in and eat and I was shocked to see some of the stuff there.

731
732 Mr. Lentz said that I think you and Mr. Brubaker have a relatively good plan, as far as
733 doing something in the future that's temporary. If you come back with that, I think we
734 can work with you on it.

735
736 Mr. DeHetre said that you gave me some great insight into screening and all the things
737 you're looking for. Before the nice weather gets here next year, I'll having everything
738 prepared better for you, as far as things that should have been done.

739
740 Mr. Lentz said that some of the future things you've talked about you already have a plan
741 that's drawn with some of those things already on it; that you're kind of ahead of the
742 game a little bit. He asked the PB members for their input on this application.

743
744 Ms. Braun said I think Mr. Brubaker's plan is a good one. It would be wise for the
745 applicant to withdraw at this time, make some changes, and come back next summer to
746 see what happens at that point. At this point in time, I think it would be a wise decision to
747 withdraw the application.

748
749 Ms. Horner said that I agree with Ms. Braun.

750
751 Ms. Strange agreed. I think the strongest course of action would be to come back at a
752 later time.

753
754 Mr. Lentz asked if the applicant wished to withdraw his application or have the PB deny
755 it.

756
757 Mr. DeHetre said that I will withdraw it. He asked what the process was for bringing this
758 back.

759
760 Mr. Brubaker said that I would recommend that the applicant submit an updated
761 application at that time. I do want to reiterate that, I think that no matter what, I would
762 recommend to the PB and to the applicant that that screening get done no matter what
763 happens.

764
765 Mr. DeHetre said yes. I didn't know if you could suspend the application or you had to
766 resubmit it.

767
768 Mr. Brubaker said that I would recommend that you resubmit.

769
770 Ms. Horner said that, if he withdraws it on his own, doesn't that hit the pause button and
771 he doesn't have to pay again, whereas, if we voted it down, he has to reapply and start all
772 over. I may be wrong but it seems to me that, if he withdraws it, then he doesn't have to
773 pay again, which to me seems fair.

774

775 Mr. Lentz suggested we leave that up to the staff to figure that out.

776

777 Mr. Brubaker said, looking at the relevant section of the code, it does deal with when the
778 PB disapproves a site plan but I don't see anything that talks specifically about what the
779 fee situation is when the applicant withdraws and resubmits. So, I would not be able to
780 recommend anything contrary to if he withdraws, he could come back with a modified
781 application and wouldn't have to resubmit the fees. But I could find something later
782 that's contrary to that; that it does seem like the applicant could withdraw and come back
783 with a new application but not have to repay the fees.

784

785 Mr. DeHetre said that I will withdraw my application. I want to thank the PB for their
786 time and patience.

787

788 After further discussion, Mr. Brubaker said that there is nothing in Chapter 33 with
789 regard to withdrawing an application; that it's not even a formal thing in Chapter 33. I
790 think this is, informally, the PB and the applicant agreeing that they are basically putting
791 it on hold and Mr. DeHetre is going to come back sometime in the new year and the PB is
792 not formally rejecting your application. I don't see anything, right now, that you would
793 come ack and have to repay the fee.

794

795 **ITEM 9 – NEW BUSINESS**

796

797 **A. 290 Harold L. Dow Highway (Map 37/Lot 20), PB20-15: Site Plan Review and**
798 **Change of Use from commercial development to adult use marijuana dispensary –**
799 **Preliminary Review.**

800

801 **Received: August 18, 2020**

802 **1st Heard: September 15, 2020 (preliminary/sketch plan)**

803 **2nd Hearing: _____, 2020**

804 **Public Hearing: _____, 2020**

805 **Site Walk: _____, 2020**

806 **Approval: _____, 2020**

807

808 Dana Brearley (applicant East Coast Cannabis Company) and Brian Nielsen (E.I.T. Attar
809 Engineering, Inc.) were present for this application.

810

811 Mr. Lentz said that we are changing the use from 'commercial development' to
812 'marijuana establishment'.

813

814 Mr. Nielsen said that we are here seeking preliminary completeness, if you will. This
815 same property, in a similar fashion, was before the PB in 2017 where it received
816 approval. The only thing that we're changing is the use and the building envelope. The
817 remainder of the site layout, as it was approved in 2017, remains the same. That includes
818 stormwater, utilities, parking lot layout, the place where the building envelope is being
819 located, and the impervious area surrounding it is all remaining the same. We're hear

820 looking to do adult use marijuana sales out of the project and can take any questions and
821 comments.

822
823 Mr. Lentz said that this is strictly sales, no growing, manufacturing, cultivation.

824
825 Mr. Nielsen said that that is correct.

826
827 Mr. Lentz asked about edible products.

828
829 Mr. Nielsen said that I believe that will be part of the sales. Is that correct, Mr. Brearley.

830
831 Mr. Brearley said yes. There will be no manufacturing of edible products but there will
832 be sales of such.

833
834 Ms. Horner asked if this was the Northern Pool & Spa warehouse.

835
836 Mr. Nielsen said that this is directly across the street. The next application on the agenda
837 is that warehouse.

838
839 Ms. Horner said that I noticed that your wastewater disposal plan was dated 2017. Do
840 you need to get something updated on that.

841
842 Mr. Nielsen said that I don't believe so because it's part of the site plan approval so, as
843 long as we get site plan approval again, I believe that is allowed.

844
845 Ms. Braun asked if the same would hold true for the traffic study that you got from the
846 MDOT; that that's dated 2010.

847
848 Mr. Nielsen said that I believe it would as long as traffic congestion hasn't adjusted too
849 much since then but, if the PB requires it, the PB can always ask for a traffic study.

850
851 Mr. Brubaker agreed, if the PB wants to.

852
853 Ms. Horner said that I don't want to overstep but said that this land was purchased from
854 Mr. Paul with the building package, basically, so you're essentially putting up what
855 we've already seen; that you're just changing the use.

856
857 Mr. Nielsen said not exactly. The use has changed and the building style and kind of
858 general location will change because the use has changed. It's mostly to maintain
859 cohesion and the fact that it was already approved; that we know that that configuration
860 works and we still have our Maine DEP permit (stormwater), which is good for 5 years
861 so that's still valid. Essentially, as you know, if we don't change our impervious area, we
862 are in a much better position to continue construction.

863
864 Ms. Braun said that, since the ownership is changing, wouldn't you have to have them
865 change the permit.

866
867 Mr. Nielsen said that it would have to be updated but it can pass to a new owner.
868
869 Ms. Horner said that, with this new building, that the impervious surface was staying the
870 same but it's just a new shape and layout, basically, but it's all the same footprint.
871
872 Mr. Nielsen said that that was correct.
873
874 Mr. Lentz said that it was a little smaller footprint.
875
876 Mr. Brearley said that the previous footprint was a little over 10,000 square feet. We are
877 actually looking to reduce that down to only 3,000 square feet, which will sit within part
878 of the same footprint that was originally approved.
879
880 Mr. Lentz said that I see a trailer in the parking lot.
881
882 Mr. Nielsen said that I'll give it to Mr. Brearley once we get to the operational side but I
883 believe it will be a permanent structure but it won't be like a drive-on trailer. It will be
884 anchored down, structurally, it has to meet IBC (international building code) per the
885 CEO. The intention is for it to be there until construction is fully complete.
886
887 Mr. Brearley agreed. They pre-fabricate modular units that you can use for retail stores.
888 They are designed as such. So, the goal would be that, as we're conducting construction
889 and get the building erected, we would operate out of the modular unit in the meantime.
890
891 Mr. Lentz clarified that, when the building is complete, the trailer goes away.
892
893 Mr. Brearley said correct, that it will not be a permanent fixture.
894
895 Ms. Braun said that, as far as I know, the State hasn't given the go-ahead for sales, yet,
896 but sometime in October.
897
898 Mr. Brearley said yes, October 9th is when the Adult Use Program goes live.
899
900 Ms. Braun said that I saw that you have your temporary license for that service.
901
902 Mr. Brearley said yes, our conditional license.
903
904 Ms. Braun said that, in looking at the parking plan, I see that you have some handicap
905 parking. I don't see an access point from the parking lot for the handicap folks. How
906 would they get up there.
907
908 Mr. Nielsen said that that was one of the things that Mr. Brubaker noted in his review and
909 we spoke about it. We are just going to rearrange the curb-cuts on that section of the
910 sidewalk and that way they will essentially follow right along the line of where the

911 handicap striping is. The planter will be adjusted so that a wheelchair can be wheeled
912 directly onto the sidewalk and the same thing will happen at the other spot.

913
914 Ms. Braun said that I don't see a lighting plan or am I missing it.

915
916 Mr. Nielsen said that it's after the details. I can screen-share if you would like to review
917 it. The PB agreed and he put it on the screen and described the plan, with the parking lot
918 well-lighted but dropping off to zero at the property lines.

919
920 Ms. Horner asked if the 'stars' near the front of Route 236 was the landscaping.

921
922 Mr. Nielsen showed the plan on the screen and said that this was also in Mr. Brubaker's
923 review, rightly so, because I was supposed to provide a planting schedule. He explained
924 the location of the bioretention area that includes specific types of plantings and various
925 shade trees that would be between that and Route 236.

926
927 Ms. Horner said that I've always tried to make sure that businesses on Route 236 adhere
928 to that screening but, of course, I'm not the person who can enforce that. Ms. Nooney's
929 property, to me, is the ideal screening on Route 236 and, so, I'm definitely going to bring
930 that back up; that I know it's nobody's fault, here, but I don't believe that property
931 maintained what they agreed to do when we approved that the first time, along with a
932 couple of other properties on Route 236 that are basically clear-cutting their properties.
933 I'm definitely going to bring that back up because I feel our ordinance is pretty clear on
934 that. I would certainly appreciate if you and the applicant could start working on
935 something, knowing that, hopefully, everybody else is going to have to start adhering to
936 that, too.

937
938 Mr. Nielsen asked Mr. Brearley if, given the space available, does that sound reasonable
939 to you.

940
941 Mr. Brearley said of course. We plan to abide by all of Eliot's rules.

942
943 Mr. Nielsen said that you will not know what is back there except for the sign.

944
945 Ms. Horner said that that is how our ordinance reads.

946
947 Mr. Lentz asked how often you intend on having shipments in and out of there and where
948 will they load and unload.

949
950 Mr. Brearley said that we will have a specific section of the building, usually in the rear,
951 where we would take care of shipments and those will probably happen once daily.

952
953 Mr. Lentz said that, as far as retail out of that building, everything will be retail sales
954 inside that building.

955
956 Mr. Brearley said that that is correct.

957
958 Mr. Lentz said that there will be no drive-up windows or anything like that.
959
960 Mr. Brearley said no, it's not compliant with the law.
961
962 Ms. Braun asked if they had to have odor management.
963
964 Mr. Brearley said that, also due to marijuana law, everything must be sealed in that
965 building. So, where there's no manufacturing or cultivation, there is no odor.
966
967 Ms. Braun asked what kind of security they will have.
968
969 Mr. Brearley said that we will have a security service and a guard there. We will share
970 emergency contact information with the Police Department.
971
972 Ms. Braun asked if the applicant has talked with the Fire Chief.
973
974 Mr. Brearley said that I have not personally run it by the Fire Chief. His only comment
975 was that, upwards of 3,000 square feet or more, we might need more suppression.
976
977 Ms. Braun asked about location of the fire hydrants.
978
979 Mr. Nielsen said that we don't have any fire hydrants on-site. I will find out how far
980 down Route 236 they are.
981
982 Ms. Braun suggested they might want to consider putting one on-site.
983
984 Mr. Lentz asked about fencing.
985
986 Mr. Nielsen said that it is not.
987
988 Mr. Brearley said that it would not be fenced, not for retail purposes. There is a vault
989 inside where all of the product would be stored.
990
991 Mr. Lentz asked about trash removal or excess debris; that he saw a dumpster in a
992 concrete pad and asked if that was going to be locked.
993
994 Mr. Brearley said that it will be locked. It will not contain any excess marijuana product.
995 That will all be standard business trash. There are no scraps of marijuana product in a
996 retail store; that everything that goes in there will be packaged and leave purchased.
997
998 Mr. Lentz asked if we got anything back from the Police Chief.
999
1000 Mr. Brubaker said that he has not received anything from the Police Chief or the Fire
1001 Chief.
1002

1003 Ms. Horner asked if there will be a sign.
1004
1005 Mr. Brearley said yes and that it will comply with Eliot's ordinances about dispensary
1006 signs within the municipality.
1007
1008 Mr. Nielsen said that we would be using the language Mr. Brubaker suggested in his
1009 memo on the final plan.
1010
1011 Mr. Lentz asked what days of the week will they be doing business.
1012
1013 Mr. Brearley said that the business would operate 7 days a week from 10AM to 7PM.
1014
1015 Mr. Brubaker said that he saw 10AM to 8PM in the application.
1016
1017 Mr. Brearley said correct and offered his apologies.
1018
1019 Mr. Lentz asked if Mr. Nielsen didn't feel that they needed a traffic study.
1020
1021 Mr. Nielsen said that I don't believe so. Traffic hasn't changed much and we're
1022 improving the entrance.
1023
1024 Mr. Brearley said that we are also reducing the amount of previously-approved retail
1025 space by almost 9,000 square feet.
1026
1027 Mr. Lentz said that I know I'm jumping ahead of myself but I've done a lot of reading on
1028 this. You have a driveway right across the street that was there before; that this is a new
1029 one with no traffic coming in or out. They are directly across the street from one another
1030 and the next application we're going to look at is going to talk about that driveway. So, I
1031 think you should check to see if we need a traffic study done. It's better to have the
1032 opposing driveways rather than staggered.
1033
1034 Mr. Brearley said that, fortunately, being the applicant for 291, as well, that is still only
1035 cultivation and manufacturing facility and is not changing in size at all. That's going to
1036 have the same traffic that it has today. I might also add that the exit of one of the current
1037 tenants of Northern Pool & Spa, who is building an operation in Dover and will be
1038 moving there, will significantly reduce traffic on the 291 parcel.
1039
1040 Mr. Lentz said that just including your working people, there are 45 trips/day across the
1041 street (Northern Pool & Spa) and 55 here. That's about 100 trips/day in opposing
1042 driveways on Route 236. I may be misquoting but I think that's what's in the other
1043 application.
1044
1045 Mr. Brubaker said that there would be 55 peak hour trips for this application and 48 for
1046 the one across the street.
1047

1048 Mr. Lentz said that I'm not saying that you need that but I'm just saying it might be a
1049 good idea to check.

1050
1051 Mr. Brubaker said that one thing to clarify is that, typically, when applicants report the
1052 trip generation, they're using the ITE Trip Generation Manual and that often has stats for
1053 both normal peak hours, like AM and PM rush hour, and it also has stats for peak hours
1054 for the trip generator. So, those peak hours could be at the same time or at different times.

1055
1056 Mr. Nielsen said that, even though I'm not a traffic engineer, knowing enough about the
1057 ITE, I agree with that. So, at one end, you might have people showing up for work versus
1058 people showing up for purchasing and that traffic generation is going to be very different.

1059
1060 Mr. Brearley said that the start of day work hours at Northern Pool & Spa are upwards of
1061 3 hours earlier than when we are intending to open our dispensary doors and the majority
1062 of dispensary traffic, at least in other states, happens after work hours and the weekends.

1063
1064 Ms. Braun asked if it wouldn't be worthwhile to make a phone call to the DOT just to ask
1065 them whether or not you need one.

1066
1067 Mr. Nielsen said that it's always worth a phone call and I'm happy to report back any
1068 correspondence with the DOT. Unfortunately, the last time I reached out to the DOT, it
1069 took them three months to get back to me but I'll try again.

1070
1071 Ms. Braun said that the only reason I'm suggesting that is that Route 236 is a very
1072 heavily traveled road at all hours of the day; so, just to be sure that we're not going to
1073 have any kind of major accident up that way, it might be worth just the conversation.

1074
1075 Mr. Nielsen said that I will see what the updated numbers look like and get back to you.

1076
1077 Mr. Lentz said there was a well on the property and asked if that well has ever been used
1078 or is it there from the last proposal.

1079
1080 Mr. Nielsen said that that is there from the last proposal. When I did my site visit, I did
1081 not see it.

1082
1083 Mr. Lentz said that I'm wondering if that's sufficient for what you're planning to do.

1084
1085 Mr. Nielsen said that well water use is pretty limited on this property to bathrooms. No
1086 cultivation, or anything like that. Sink, toilet, it's not going to be a huge amount more
1087 than your typical home.

1088
1089 Mr. Lentz asked for any additional PB input.

1090
1091 Ms. Horner said that I'm all set.

1092
1093 Ms. Strange said that I'm all set with this, as well.

1094
1095 Ms. Braun said no more at this time; that he's answered pretty much everything, so far.
1096
1097 Mr. Lentz asked what was our next step. Are we pushing this forward as a completed
1098 application.
1099
1100 Mr. Brubaker said that that is for the PB to decide. If the PB decides that then the next
1101 step is a motion that it is complete and then schedule a public hearing, I don't know if
1102 there is an appetite for a site walk but that would be another decision point.
1103
1104 Ms. Horner asked if it would be wise to vote to change the use first. I think we have to
1105 approve the use before we approve the preliminary plan.
1106
1107 Mr. Brubaker said that this is the very first time that this application has gone before the
1108 PB so I'm just trying to figure out what that would mean to vote for a change of use,
1109 tonight, if the overall process of reviewing the application is still in preliminary sketch
1110 plan review and hasn't yet held a public hearing.
1111
1112 Ms. Horner asked if we needed a public hearing to do a change of use.
1113
1114 Mr. Brubaker said that all marijuana uses are subject to the site review process, which
1115 typically has this preliminary sketch plan review and then a public hearing before a
1116 decision is made. The recent example was for 483 H.L. Dow. That said, there is that
1117 provision in Town code that talks about the PB finding that a particular site plan
1118 amendment is minor and the ability for the PB to approve everything tonight. In that case,
1119 we're talking about the entire application, change of use plus the site plan improvement.
1120 So, the typical process is that this is the preliminary sketch plan review and then you have
1121 a public hearing before making a decision on the application as a whole.
1122
1123 Ms. Horner said that it sounds like we could vote to approve the change of use and then
1124 the next meeting would be the formal application for a site plan review and, if that's fine,
1125 then we could schedule a public hearing, or, we can approve this as a change of use, do a
1126 site plan review, then schedule a public hearing for the next meeting.
1127
1128 Mr. Brubaker said that I'm just a little bit confused by the notion of splitting up this
1129 application into pieces.
1130
1131 Ms. Horner said that I don't think I did.
1132
1133 Mr. Lentz said that I believe the recommendation was preliminary sketch plan review. Is
1134 it complete.
1135
1136 There is usually a motion for preliminary completeness.
1137
1138 Ms. Horner asked if that included a change of use.
1139

1140 Mr. Lentz said yes; that that is what this application is for. If we're promoting that this
1141 preliminary sketch plan is complete, then I think we're accepting the fact that this is a
1142 change of us from 'commercial' to 'marijuana establishment'. He asked Mr. Brubaker if
1143 that was wrong or right.

1144
1145 Mr. Brubaker asked if Ms. Horner meant that the approval would be the final action on
1146 the change of use question by the PB.

1147
1148 Mr. Lentz said that I'm saying that it goes along with the motion to approve the
1149 preliminary sketch plan review. I'm thinking that, when you do that, you've accepted the
1150 fact that this is an application about change of use.

1151
1152 Mr. Brubaker said that I do see the clause, here, in §33-190 (12 "If any type of marijuana
1153 establishment to change to another type of establishment or to add another type of marijuana
1154 establishment to its existing operations, such change of use or additional use must be reviewed
1155 and approved by the planning board for compliance with this section." I guess I'm just
1156 wondering what the approval of change of use means in this preliminary stage.

1157
1158 Ms. Horner said that they are not asking for (12); that they are asking to change from
1159 'commercial' to 'marijuana'. Isn't (12) from marijuana to marijuana.

1160
1161 Mr. Brubaker said yes.

1162
1163 Ms. Horner said that that is not this.

1164
1165 Mr. Brubaker asked what is it.

1166
1167 Ms. Horner said that it is a 'commercial retail establishment' changing to 'adult use
1168 marijuana'.

1169
1170 Mr. Brubaker said that my question is what is the PB approving the change of use mean
1171 tonight.

1172
1173 Ms. Horner said that it means that they can submit a formal application.

1174
1175 Mr. Brubaker said that, then, it's part-and-parcel of the decision of application
1176 completeness and moving forward to formal application submittal, followed by a public
1177 hearing.

1178
1179 Ms. Horner said that I'm always a stickler for this change of use stuff. I've always been
1180 under the impression, as far as I've been taught, to even consider a formal application, it
1181 has to be a land use that's approved. So, we'd have to change the use of this property in
1182 order for them to submit a final application, which they could have done in two meetings,
1183 but Mr. Nielsen was smart and asked for a change of use and a sketch plan review. So,
1184 now, at the next meeting we can do sketch plan review and a public hearing. We've done
1185 that before, too, where it's just sketch plan review before a public hearing; then we find

1186 the application complete, have the public hearing right after that and, then, we vote on it
1187 for final approval that same night.

1188
1189 Mr. Lentz said that we could go on for a very long time. Do we believe that this is a
1190 preliminary sketch plan review and that it's okay to move forward with it. Does it have
1191 all the information we need or is there something else we need from Mr. Nielsen. By
1192 approving this, or moving this forward, I believe we have agreed that there is an okay
1193 with the change of use.

1194
1195 Ms. Horner agreed; that I just think we could break it out separately, or together; that I
1196 don't think it matters. Maybe Ms. Lemire has something to say.

1197
1198 Ms. Lemire said that the only thing I will say is that, historically, the PB has done the
1199 change of use first and, then, approved the plan complete at whatever level it's at –
1200 preliminary for tonight, or sketch; that it came in as preliminary. Regardless, historically,
1201 it's been the change of use approved, if necessary, and then completeness.

1202
1203 Mr. Lentz said that I think the historical part of it is that it was always acceptable to have
1204 preliminary sketch plan but, now, with the application going to marijuana, it says that
1205 they all have to come before the review board, the PB...

1206
1207 Ms. Horner said no, that was marijuana to marijuana.

1208
1209 Mr. Brubaker said that, just to clarify, all marijuana applications require site plan review.

1210
1211 Ms. Horner said right.

1212
1213 Mr. Lentz said that, right now, we're at the preliminary sketch plan review.

1214
1215 Mr. Brubaker said yes.

1216
1217 Mr. Lentz said that that says to me that it's begging the question of whether there is
1218 enough information that we have to move this forward, whatever it may be. Is there
1219 anything else we need from Mr. Nielsen.

1220
1221 Ms. Braun said that the only thing I would like is just the answer to my traffic question;
1222 and he's going to make those changes to the handicap parking spaces, as well.

1223
1224 Mr. Nielsen said that it would be into the Town ahead of, if I get my wish and we
1225 schedule the public hearing for the very next meeting, that meeting.

1226
1227 Mr. Brubaker said that I guess I'm confused because I found this section in our Town
1228 code that basically talks about any change of use has to be done in accordance with our
1229 land use table. If you go to our land use table, it talks about 'marijuana establishments' in
1230 the C/I District being subject to site plan review and what we're doing now is the first
1231 step in site plan review. So, I may be misinterpreting what Ms. Horner said or what the

1232 applicant is talking about. I just see the change of use question being bundled up with site
1233 plan review and approval. And, so, I guess I'm confused by what my interpretation of the
1234 discussion as being, some kind of final decision of change of use is occurring at tonight's
1235 meeting.

1236
1237 Mr. Lentz reiterated that my feeling is that, if we are approving this as a preliminary
1238 sketch plan; that it is a preliminary sketch plan and the whole application is about a
1239 change of use from 'commercial' to 'adult use marijuana. If that's the case, then, if we're
1240 moving this forward, we automatically accept the fact that the change of use is riding
1241 along with it.

1242
1243 Mr. Brubaker said that that makes sense to me, as long as it's not a final decision on the
1244 question of change of use tonight.

1245
1246 Mr. Lentz said that I think that goes with the next phase.

1247
1248 Mr. Brubaker said okay, we are on the same page, now.

1249
1250 Mr. Lentz asked Ms. Horner if she was okay with that.

1251
1252 Ms. Horner said yes; that I always feel like I'm saying the same thing as everybody else
1253 but not in the right way.

1254
1255 Mr. Lentz asked if there is a motion to move this preliminary sketch plan review to a site
1256 plan review.

1257
1258 Ms. Horner asked if it makes sense to do that and schedule a public hearing at the next
1259 meeting, since we don't really need too much, instead of dragging this out for another
1260 month. Maybe I'm messing up the agenda but couldn't we have the site plan review
1261 before the hearing then, if it passes, we would have the public hearing on it, and if we
1262 need more stuff then the public hearing would just get postponed. I feel like we used to
1263 do it that way.

1264
1265 There was concern for messing up with notices/timeframes and Ms. Metz said I would
1266 send out the notice either way.

1267
1268 Ms. Horner said that I'm sorry, I'm not trying to make this complicated but with all the
1269 change-over in staff, no offense to anybody, it feels like we're using all the same rules
1270 and doing it differently than we used to.

1271
1272 Ms. Lemire said that it feels off.

1273
1274 Mr. Lentz suggested that at our next agenda, which is administrative, why don't we bring
1275 this up and go over it once-and-for-all so we all get the same feeling walking out of there;
1276 that I was just as confused as you are last time, and I think Ms. Braun was at one point,
1277 too. So, all of a sudden, things have change and that's okay; that they've probably

1278 changed for the better but we all have to understand them. Would you accept that without
1279 objection.

1280
1281 Ms. Horner said that I feel like that, usually, a site plan review is a minimum of three
1282 meetings.

1283
1284 Mr. Brearley said that I'm confused a little as to the process, as well. I understand it could
1285 be three meetings but, if we could do it sooner and that's possible, this is capital
1286 expensive for us, so I just want to make sure that we're answering everything on the front
1287 end and I understand why it would be pushed off to a potential third meeting.

1288
1289 Mr. Lentz said that it may be more.

1290
1291 Ms. Metz said that I can see Ms. Horner's point that we can always rearrange the agenda.
1292 Is that where you were going, Ms. Horner. It's a back space and a re-type. It's not a big
1293 deal to arrange it that way so that the site plan comes before the public hearing, you guys
1294 approve the site plan, the public hearing shows up right afterwards, no problem. She
1295 asked if Mr. Brubaker had any thoughts.

1296
1297 Mr. Brubaker said that I think we're complicating this too much. This is the preliminary
1298 sketch plan review and the questions before the PB are whether you need more
1299 information from the applicant, whether you want to hold site walk or waive it, or, if you
1300 don't need more information from the applicant, the motion is to accept the application as
1301 complete and you may, then, wish to schedule a public hearing in the future.

1302
1303 **Ms. Horner moved, second by Ms. Braun, that the Planning Board find PB20-15 as**
1304 **complete, pending the traffic study findings.**

1305 **VOTE**
1306 **3-0**
1307 **Motion approved**

1308
1309 **The PB agreed that a site walk was not necessary.**

1310
1311 **The Public Hearing was scheduled for October 6, 2020.**

1312
1313 Mr. Lentz said that I hate to ask this question but are we going to have the public hearing
1314 before we consider the review. The process again. I'm completely lost how we did it and
1315 how we should do it and I'm kind of flying around right now.

1316
1317 Mr. Brubaker said that, typically, the sketch plan review happens first and, once that's
1318 considered complete, the applicant would then submit the full application and the PB
1319 would review it. But Mr. Nielsen pretty much submitted a full application right off the
1320 bat. So, the idea, here, is that this would be a public hearing on the full application that he
1321 has submitted. The PB would have a chance to take public comment, review the
1322 application again plus some of the follow-up information that's been suggested that he's

1323 agreed to provide; hold the public hearing and, then after that, if you are ready to make a
1324 decision on approval, you can do that.

1325
1326 Mr. Lentz said that we have done sketch plan review. As far as I'm concerned, the next
1327 step is site plan review phase. Is that wrong.

1328
1329 Mr. Brubaker clarified that the public hearing is part of that.

1330
1331 Mr. Lentz asked if we do the public hearing prior to the site plan review or after the site
1332 plan review.

1333
1334 Mr. Brubaker said that they are concurrent, part of the site plan review.

1335
1336 **B. 291 Harold L. Dow Highway (Map 37/Lot 02), PB20-16: Change of Use from**
1337 **non-profit medical marijuana dispensary to adult use marijuana**
1338 **cultivation/manufacturing/production facility – Preliminary Review.**

1339
1340 **Received: August 18, 2020**
1341 **1st Heard: September 15, 2020 (preliminary sketch site plan)**
1342 **2nd Hearing: _____, 2020**
1343 **Public Hearing: _____, 2020**
1344 **Site Walk: _____, 2020**
1345 **Approval: _____, 2020**

1346
1347 Dana Brearley (applicant East Coast Cannabis Company) and Brian Nielsen (E.I.T. Attar
1348 Engineering, Inc.) were present for this application.

1349
1350 Mr. Lentz asked if this was a preliminary sketch plan review.

1351
1352 Mr. Brubaker said yes.

1353
1354 Mr. Nielsen said that this is directly across the street from the application we just spoke
1355 about – 291 Harold Dow Highway. To clarify the uses, the use is only changing from
1356 what it currently is, which is (I know it says dispensary) medical marijuana cultivation
1357 and medical marijuana manufacturing, and we are looking to adjust that to adult use
1358 cultivation and adult use manufacturing. There are no changes to the current site layout,
1359 no additional buildings, no changes to what you see from the currently-approved plan,
1360 other than the switch from medical to adult.

1361
1362 Mr. Lentz said that, from now on, this PB will consider that a marijuana establishment.

1363
1364 Mr. Nielsen said that that's correct. What I should have said is a marijuana establishment
1365 and, more specifically, just so we have the context for the conditional licenses, cultivation
1366 and manufacturing.

1367
1368 Mr. Lentz said yes. Thank you.

1369
1370 Ms. Braun asked if I understand correctly that the medical marijuana part is being taken
1371 away and it's strictly going to be for adult cultivation and manufacturing.
1372
1373 Mr. Nielsen said that I believe that's correct.
1374
1375 Mr. Brearley agreed.
1376
1377 Ms. Horner said that you are changing it, not adding it.
1378
1379 Mr. Brearley said that, ideally for property value purposes, it would be nice to have
1380 approvals for both medical and adult use but, for this meeting, that facility will be
1381 completely transitioned from a medical operation to an adult use operation.
1382
1383 Ms. Braun said that they would be cultivating, manufacturing, and packaging the
1384 marijuana. Is that correct.
1385
1386 Mr. Brearley said yes.
1387
1388 Ms. Braun asked if any edibles will be manufactured at this facility.
1389
1390 Mr. Brearley said that they would.
1391
1392 Ms. Braun asked if they had delved into the industrial-sized kitchen that's required.
1393
1394 Mr. Brearley said yes. We actually already have it built and we have a food establishment
1395 license from the State, currently, for medical purposes. That is the same one we would
1396 need for adult use.
1397
1398 Ms. Braun asked if they don't need anything else from anybody else about a kitchen in
1399 there from the Agricultural Department, or anything like that.
1400
1401 Mr. Brearley said no; that we already have all those check-offs.
1402
1403 Ms. Braun asked if the odor management controls that are currently in place be continued
1404 to be continued in place for this adult processing center.
1405
1406 Mr. Brearley said that they will, yes.
1407
1408 Ms. Braun said that odor, security, lighting, fencing; all those are the same.
1409
1410 Mr. Brearley said yes. Everything the same, no changes.
1411
1412 Ms. Braun said that there are no additional buildings being put in and no trailers, or
1413 anything like that.
1414

1415 Mr. Brearley said that that is correct.
1416
1417 Mr. Lentz said that we manufacture it, package it, and send it across the street. Is that
1418 correct.
1419
1420 Mr. Brearley said yes.
1421
1422 Mr. Lentz asked if there will be retail outside of your own facility.
1423
1424 Mr. Brearley said yes.
1425
1426 Ms. Braun asked if the number of employees will increase at this facility.
1427
1428 Mr. Brearley said no. It will be the same staff. Our distribution is maxed in that footprint
1429 so we can't increase.
1430
1431 Mr. Lentz asked if there is any change to security.
1432
1433 Mr. Brearley said no. Disposal stays the same, hours of operation do not change and
1434 number of days is Monday through Friday.
1435
1436 Mr. Lentz asked if the applicant would be selling out of this building, if a customer could
1437 drive up.
1438
1439 Mr. Brearley said no, that they cannot.
1440
1441 Mr. Lentz said that this would strictly be delivering. Can other people come there and
1442 pick up at all.
1443
1444 Mr. Brearley said that we don't necessarily have to only deliver products but that is how
1445 we intend to do it.
1446
1447 Ms. Strange said that I see that there is a shed intended and asked what that was for.
1448
1449 Mr. Brearley said that that is just for supply storage but no marijuana-related products.
1450 Soil, pots, and things of that nature.
1451
1452 Mr. Lentz asked if there is anything else we need and have we completed the sketch plan
1453 review.
1454
1455 There was nothing else. The PB agreed that they had finished sketch plan review.
1456
1457 Mr. Lentz asked if we should schedule this application for site plan review on October
1458 6th.
1459

1460 Mr. Nielsen said that I know we're all kind of re-learning the processes. But, for 483 we
1461 had a very similar proposal where we simply changing marijuana to marijuana with very
1462 limited site changes. We got completeness voted on and then the public hearing was
1463 scheduled for the very next meeting. Is something similar possible here.

1464
1465 Mr. Lentz clarified that that is what I was asking. This, to me, is preliminary sketch plan
1466 review. It appears you have all the information. I don't hear anybody saying that they
1467 need more. So, the next thing we do would be to have a site plan review and a public
1468 hearing.

1469
1470 Mr. Nielsen said understood. Thank you very much.

1471
1472 Mr. Lentz said that, if they are on the same night, I'm not sure how to put that into the
1473 agenda, yet.

1474
1475 Mr. Brubaker recommended specific language. I think the idea would be that the PB
1476 makes a motion deciding on whether the sketch plan application is complete and, as part
1477 of that motion, decides to schedule a public hearing.

1478
1479 Mr. Lentz asked if there was a motion.

1480
1481 **Ms. Braun moved, second by Ms. Horner, that the Planning Board find that PB20-**
1482 **16 Preliminary Site Plan Review complete and we go forward with a Public**
1483 **Hearing.**

1484
1485 **VOTE**
1486 **3-0**
1487 **Motion approved**

1488
1489 The Public Hearing is scheduled for October 6, 2020.

1490
1491 **C. Review of draft Planning Board written argument regarding Item B on the**
1492 **September 17, 2020 Board of Appeals agenda pertaining to an appeal of the**
1493 **Planning Board's approval of PB20-8 (21 Foxbrush Drive).**

1494
1495 Mr. Lentz asked if everybody had a chance to read the draft to the Board of Appeals from
1496 the PB. Mr. Brubaker and I talked about this and we decided it was necessary to respond.
1497 Mr. Brubaker gets a lot of credit because he did this on his own and, in reading through
1498 it, he did a beautiful job. What we want tonight is for you to confirm that it's okay for us
1499 to send this to the BOA for their meeting Thursday night.

1500
1501 Ms. Metz said that Ms. Horner asked that the draft letter be emailed to her.

1502
1503 Ms. Strange said that, in the letter on the first page where it begins "According to the
1504 approved Notice of Decision...", the last line refers to an advertised hearing on July 10th

1505 but, then, later on the second page it refers to July 15th. I just want to make sure we have
1506 the right date there.

1507
1508 Mr. Brubaker said that I think July 15th refers to the site walk as opposed to the Public
1509 Hearing.

1510
1511 Mr. Lentz said that it went in to the paper on July 10th.

1512
1513 The PB agreed that the letter was accurate and that it was well-done.

1514
1515 **Ms. Braun moved, second by Ms. Horner, that the Planning Board confirm that we**
1516 **forward this letter to the Board of Appeals.**

1517
1518 **VOTE**
1519 **3-0**
1520 **Motion approved**

1521
1522
1523 *****

1524
1525 Mr. Lentz said that I appreciate all of your help. It's unbelievable that we had to stay this
1526 late but we did get through it and I'm really happy for your work. We do need to get that
1527 squared away as far as what is the process so we aren't debating over and over again.

1528
1529 Mr. Brubaker said that I apologize for any process confusion. I'll try to be clearer about
1530 that at future meetings. I also want to say that there is the potential to hold a meeting on
1531 the 29th that would be an administrative hearing. I just wanted to get the will of the PB on
1532 whether you want to hold that. I think the suggested agenda items would be the marijuana
1533 ordinance, as well as a draft of the variance changes that the BOA had previously
1534 suggested and then, also, a placeholder on the agenda for clarifying some of these process
1535 questions that the PB has had over the last few meetings.

1536
1537 Mr. Lentz said that I think that's a good plan. Please do not apologize. It's something a
1538 little different; that I can't put my finger on it but it seems we're all in the same boat.
1539 We're out of sync for some reason and I don't know how to get it back. I think it's very
1540 important that we need to do that but, please, don't apologize because we're all learning.
1541 You guys have worked so hard and I'm so proud of all of you. You've done a great job
1542 and this letter is spectacular. Ms. Horner has done a great job on the ordinance.

1543
1544 Ms. Horner said that I'll just say that I feel like a kid who has had a hundred substitutes
1545 since my teacher's been out having her baby. I think everyone's doing a really great job,
1546 and everyone has done a really great job, but everyone has these little nuances when
1547 they're learning the Eliot code. Even though we're doing the same things, it's not
1548 happening in the same way. I've been on this Board for almost 10 years and I feel like I
1549 usually know what's going on but these tiny little, quirky things happen and it's just
1550 because we had a different substitute last week.

1551
1552 The PB will meet on the 29th for an administrative meeting.

1553
1554 **ITEM 10 – CORRESPONDENCE**

1555
1556 There was no correspondence.

1557
1558 **ITEM 11 – SET AGENDA AND DATE FOR NEXT MEETING**

1559 The next meeting is an administrative meeting
1560 ➤ Marijuana Ordinance review
1561 ➤ Draft BOA variance review
1562 ➤ Process review
1563

1564
1565 October 6th meeting will have public hearings for PB20-17, PB20-15, and PB20-16.

1566
1567 The next regular Planning Board Meeting is scheduled for September 29, 2020 at 7PM.

1568
1569 **ITEM 12 – ADJOURN**

1570
1571 There was a motion and a second to adjourn the meeting at 9:53 PM.

1572
1573
1574
1575
1576 **Carmela Braun, Secretary**
1577 **Date approved:** _____

1578
1579
1580 **Respectfully submitted,**
1581
1582 **Ellen Lemire, Recording Secretary**

1583
1584

DRAFT Adult Use and Medical Marijuana Licensing and Land Use Regulations Amendments

Discussion draft for Planning Board review, September 29, 2020.

(CHAPTER 11)

Sec. 11-1. - Purpose.

The purpose of this article is to provide for and regulate the issuance of local licenses for adult use marijuana establishments as defined in this article and by the state under the Marijuana Legalization Act, 28-B M.R.S.A. ch. 1, as may be amended **and to provide for and regulate the issuance of Local Licenses for Medical Marijuana Establishments as defined in this Article and by the State of Maine under the Maine Medical Use of Marijuana Act, 22 M.R.S.A. Chapter 558-C, as may be amended.**

(T.M. of 11-5-2019(2))

Sec. 11-2. - Authority.

This article is adopted pursuant to the authority granted by 28-B M.R.S.A. § 401 et seq., as may be amended, and 22 M.R.S.A. § 2421 et seq., as may be amended.

(T.M. of 11-5-2019(2))

Sec. 11-3. - Definitions.

As used in this article, the following words and phrases shall have the meanings ascribed to them in this section and section 33-190 of this Code.

Adult use marijuana shall mean "adult use marijuana" as that term is defined in 28-B M.R.S.A. § 102(1), as may be amended.

Adult use marijuana product shall mean "adult use marijuana product" as that term is defined in 28-B M.R.S.A. § 102(2), as may be amended.

Applicant shall mean a person that has submitted an application for licensure as a marijuana establishment pursuant to this article.

Caregiver retail store shall mean "caregiver retail store" as that term is defined in 22 MRSA 2422(1-F), as may be amended.

Cultivate or cultivation shall mean the planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana for use or sale. It does not include manufacturing.

Formatted: Font: (Default) Times New Roman, 12 pt, Not Bold

Commented [P1]: Medical marijuana opt-in

Commented [P2]: Point of discussion: move all these definitions to Section 1-2? Some marijuana definitions are here and some are already in

Formatted: Highlight

Commented [P3]: May want to consolidate "medical marijuana retail store" into this definition.

Harvested marijuana shall mean "harvested marijuana" as that term is defined in 22 M.R.S.A. § 2422(3-C), as may be amended.

Immature plant shall mean "immature marijuana plant" as a marijuana plant that is not a mature marijuana plant or a seedling.

Licensed premises shall mean the premises specified in an application for a state or local license pursuant to this article that are owned or in possession of the licensee and within which the licensee is authorized to cultivate, manufacture, distribute, sell, or test adult use marijuana **or medical marijuana** products in accordance with the provisions of this article and the requirements of state law and regulations.

Licensee shall mean a person licensed pursuant to this article or, in the case of a holder of an occupational license, a natural person licensed pursuant to this article.

Local marijuana license shall mean any license required by and issued under the provisions of this article.

Local licensing authority shall mean the select board as further specified in the provisions of this article.

Manufacture or manufacturing of marijuana shall mean the production, blending, infusing, compounding or other preparation of marijuana products, including, but not limited to, marijuana extraction or preparation by means of chemical synthesis. It does not include cultivation.

Marijuana ~~shall mean "marijuana" as shall mean the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not; but shall not include the resin extracted from any part of such plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin including hashish and further, shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil or cake or the sterilized seed of such plant which is incapable of germination and as that term is defined in 28-B M.R.S.A. § 102(27), as may be amended.~~ **defined in 28-B M.R.S.A. § 102(27), as may be amended.**

Deleted: is

Marijuana concentrate shall mean the resin extracted from any part of a marijuana plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin, including, but not limited to, hashish. In determining the weight of marijuana concentrate in a marijuana product, the weight of any other ingredient combined with marijuana to prepare a marijuana product may not be included.

Marijuana cultivation facility shall mean a "cultivation facility" as that term is defined in 28-B M.R.S.A. § 102(13), as may be amended. A marijuana cultivation facility is an entity licensed to cultivate, prepare and package adult use marijuana and to sell adult use marijuana to marijuana establishments.

Marijuana establishment shall mean a "marijuana establishment" as that term is defined in 28-B M.R.S.A. § 102(29), as may be amended. A marijuana establishment is a marijuana store, a marijuana cultivation facility, a marijuana products manufacturing facility, or a marijuana testing facility or a marijuana social club.

Marijuana products manufacturing facility shall mean a "products manufacturing facility" as that term is defined in 28-B M.R.S.A. § 102(4243), as may be amended. A marijuana products manufacturing facility is an entity licensed to purchase adult use marijuana; to manufacture, label and package adult use marijuana products; and to sell adult use marijuana products from a marijuana cultivation facility only to other marijuana products manufacturing facilities, or marijuana stores and marijuana social clubs.

Marijuana social club shall mean a "marijuana social club" as that term is defined in 28-B M.R.S.A. § 102(33), as may be amended. A marijuana social club is an entity licensed to purchase adult use marijuana products from a marijuana products manufacturing facility and to sell adult use marijuana products to consumers for consumption on the licensed premises. Marijuana social clubs are prohibited within the town.

Marijuana store shall mean a "marijuana store" as that term is defined in 28-B M.R.S.A. § 102(34), as may be amended. A marijuana store is an entity licensed to purchase adult use marijuana from a marijuana cultivation facility and to purchase adult use marijuana products from a marijuana products manufacturing facility and to sell adult use marijuana and adult use marijuana products to consumers.

Marijuana testing facility shall mean a "testing facility" as that term is defined in 28-B M.R.S.A. § 102(5354), as may be amended. A marijuana testing facility is a facility licensed to develop, research and test marijuana, marijuana products and other substances.

Mature marijuana plant shall mean a marijuana plant that is flowering.

Medical marijuana **shall mean marijuana used or intended for** "medical use" as defined in 22 M.R.S.A. § 2422(5), as may be amended.

Deleted: . The medical use of marijuana, with the term

Medical marijuana assistant **shall mean an** "assistant" as that term is defined in 22 M.R.S.A. § 2422(1-D), as may be amended.

Deleted: . An

Medical marijuana caregiver **shall mean** "caregiver" as that term is defined in 22 M.R.S.A. § 2422(8-A), as may be amended.

Deleted: . A

Medical marijuana cultivation area **shall mean a** "cultivation area" as that term is defined in 22 M.R.S.A. § 2422(3), as may be amended.

Deleted: . A

Deleted: . A

Medical marijuana cultivation facility **shall mean a** medical marijuana cultivation area used or occupied by one or more medical marijuana registered caregivers. **A medical marijuana cultivation facility is only authorized as a principal use, and not as an accessory use. A medical marijuana cultivation facility is prohibited from selling medical marijuana**

Commented [P4]: This should be reflected in the Ch. 44 and 45 land use tables, not in Ch. 11.

Commented [P5]: Deleted the previous clause here because the Town Code doesn't define "special exception".

Deleted: , and only where expressly allowed as a permitted or special exception use

to medical marijuana qualifying patients, medical marijuana caregivers or medical marijuana registered caregivers on premise. A medical marijuana cultivation facility shall not be used or occupied by a “collective” as that term is defined in 22 M.R.S.A. § 2422(1-A), as may be amended.

Medical marijuana dispensary, **shall mean a** “registered dispensary” as that term is defined in 22 M.R.S.A. § 2422(6), as may be amended. A medical marijuana dispensary includes a location at which marijuana is cultivated by a registered dispensary pursuant to 22 M.R.S.A. § 2428, as may be amended. A medical marijuana dispensary is not a medical office or a professional office and is only authorized as a principal use, and not as an accessory use, and only where expressly allowed as a special exception use.

Deleted: . A

Commented [P6]: Same comments as above

Medical marijuana establishment, **shall mean a** medical marijuana dispensary, a medical marijuana cultivation facility, a medical marijuana caregiver retail store, a medical marijuana products manufacturing facility, or a medical marijuana testing facility.

Deleted: . A

Deleted: medical marijuana establishment is

Medical marijuana product **shall mean a**, “marijuana product” as that term is defined in 22 M.R.S.A. § 2442(4-L), as may be amended.

Deleted: .

Deleted: M

Medical marijuana products manufacturing facility, **shall mean a** “manufacturing facility” as that term is defined in 22 M.R.S.A. § 2422(4-R), as may be amended. A medical marijuana products manufacturing facility is only authorized as a principal use, and not as an accessory use, and only where expressly allowed as a permitted or special exception use.

Deleted:

Deleted: . A

Deleted: H

Commented [P7]: Same comments as above

Medical marijuana qualifying patient **shall mean a** “qualifying patient” as that term is defined in 22 M.R.S.A. § 2422(9), as may be amended.

Deleted: . A

Medical marijuana registered caregiver **shall mean a**, “registered caregiver” as that term is defined in 22 M.R.S.A. § 2422(11), as may be amended.

Deleted: . A

Medical marijuana registered patient, **shall mean a** “registered patient” as that term is defined in 22 M.R.S.A. § 2422(12), as may be amended.

Deleted: . A

Medical marijuana retail store. A medical marijuana store is a retail establishment operated by a single medical marijuana registered caregiver where harvested marijuana is sold by that medical marijuana registered caregiver to medical marijuana qualifying patients for patients’ medical use and may include an area for consultation with patients. Two or more medical marijuana registered caregivers are prohibited from forming, owning or operating a medical marijuana retail store as a single medical marijuana retail store. A medical marijuana retail store is only authorized as a principal use, and not as an accessory use.

Commented [P8]: Consider consolidating this into “caregiver retail store” which is the term in state law, 22 MRSA 2422 (Definitions) and 2429-D (Local regulation)

Deleted: . A

Medical marijuana testing facility, **shall mean a** “marijuana testing facility” as that term is defined in 22 M.R.S.A. § 2422(5-C), as may be amended. A medical marijuana testing facility is only authorized as a principal use, and not as an accessory use, and only where expressly allowed as a permitted use.

Commented [P9]: Same comment as above.

Owner shall mean a person whose beneficial interest in a marijuana establishment **and/or medical marijuana establishment** is such that the person bears risk of loss other than as an insurer, has an opportunity to gain profit from the operation or sale of a marijuana establishment **and/or medical marijuana establishment** and has a controlling interest in a marijuana establishment **and/or medical marijuana establishment**.

Plant canopy shall mean the total surface area within the licensed premises of a cultivation facility that is authorized by the department for use at any time by the cultivation facility licensee to cultivate mature marijuana plants. The surface area of the plant canopy must be calculated in square feet and measured using the outside boundaries of the area and must include all of the area within the boundaries. If the surface area of the plant canopy consists of noncontiguous areas, each component area must be separated by defined boundaries. If a tiered or shelving system is used by the cultivation facility licensee, the surface area of each tier or shelf must be included in calculating the area of the plant canopy. Calculation of the area of the plant canopy may not include the areas within the licensed cultivation facility that are used to cultivate immature marijuana plants and seedlings and that are not used at any time to cultivate mature marijuana plants.

Person shall mean a natural person, partnership, association, company, corporation, limited liability company or organization or a manager, agent, owner, director, servant, officer or employee thereof. Person does not include any governmental organization.

Public facility shall mean any facility, including, but not limited to, buildings, property, and recreation areas which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

Commented [P10]: Not needed, at least in this chapter, if the buffering requirement for public facilities below is struck.

Seedling shall mean a marijuana plant that is: (1) not flowering; (2) less than six inches in height; and (3) less than six inches in width.

State license shall mean any license, registration or certification issued by the state licensing authority.

State licensing application shall mean the application form and supporting materials required by the state for the purpose of a person obtaining a state license, registration or certification for the cultivation, manufacture, distribution, testing and sale of adult use marijuana, and/or adult use marijuana products in this state.

State licensing authority shall mean the authority (or authorities) created by the state for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, testing and sale of adult use **or medical** marijuana, and/or adult use **or medical marijuana** products in this state.

(T.M. of 11-5-2019(2))

Sec. 11-4. - Allowed.

Marijuana establishments **or medical marijuana establishment** shall be allowed, subject to the requirements and restrictions of this chapter and chapters **33 and 45** of this Code.

(T.M. of 11-5-2019(2))

Sec. 11-5. - Prohibited activities.

(a) No marijuana establishment **or medical marijuana establishment** shall be established or operated within the town without first receiving and then maintaining all approvals required under this Code, including, but not limited to, this chapter and chapters **33 and 45** in this Code.

(b) No marijuana establishment **or medical marijuana establishment** shall conduct any activity for which it has not received the required state license and local marijuana license.

(c) Marijuana social clubs **or medical marijuana social clubs** are prohibited within the town.

(T.M. of 11-5-2019(2))

Sec. 11-6. - License required.

(a) State license. A marijuana establishment shall not operate until it is licensed by the state licensing authority pursuant to the requirements of 28-B M.R.S.A. ch. 1, as may be amended. An applicant may not operate a marijuana establishment without a state license and all other necessary town approvals. **A Medical Marijuana Establishment shall not operate until it is licensed, registered or certified, as applicable, by the State Licensing Authority pursuant to the requirements of 22 M.R.S.A. Chapter 558-C, as may be amended. An Applicant may not operate a Medical Marijuana Establishment without any required State License and without all other necessary Town approvals.**

(b) Local marijuana license. A local marijuana license issued under the provisions of this article is required for any marijuana cultivation facility, marijuana products manufacturing facility, or marijuana store. **A marijuana testing facility does not require a local marijuana license issuance but is required to file an application. A Local License issued under the provisions of this Article is required for any Medical Marijuana Cultivation Facility, Medical Marijuana Products Manufacturing Facility, Medical Marijuana Dispensary or Medical Marijuana Retail Store. A Medical Marijuana Testing Facility does not require a Local License.**

Commented [P11]: Point of discussion: licensing for testing facilities needed? This is based on South Portland's code, but Portland's does require a local license: 12 months, concurrent with state license, \$1000 fee.

Commented [P12]: Same question as above.

(T.M. of 11-5-2019(2))

Sec. 11-7. - Marijuana licensing procedures.

(a) License required. It shall be unlawful for a licensee for any marijuana establishment **or medical marijuana establishment**, **except for a marijuana testing facility or medical marijuana testing facility**, to operate without a valid local marijuana license from the town.

Commented [P13]: Same question as above.

(b) Application. An applicant for a local marijuana license **or medical marijuana license** shall file in person at the office of the town administrative assistant a completed application made on a form provided by the administrative assistant. The application shall be signed as required by subsection (c) below and shall be notarized. An application shall be considered complete when it contains the information and/or items required in this subsection (b), accompanied by the appropriate license application fee:

- (1) The applicant's full legal name and any other names used by the applicant in the preceding five years.
- (2) Current business address or another mailing address for the applicant.
- (3) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
- (4) The business name, location, legal description, mailing address and phone number.
- (5) The name and business address of the statutory agent or other agent authorized to receive service of process.
- (6) A copy of the applicant's state license for operation of a marijuana establishment.
- (7) If the application is for a medical marijuana establishment, a copy of the applicant's active registered caregiver registry identification card.
- (8) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
- (9) A statement of whether any establishment in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to a court order of closure.
- (10) The completed application entitled: adult use marijuana stores, cultivation facilities, manufacturing facilities, and testing facilities application.
- (11) If a state license is required for the proposed use, a copy of the applicant's state license application and supporting documentation as filed with the state licensing authority, and any amendments thereto.
- (12) Evidence of all state approvals or conditional approvals required to operate a marijuana establishment, including, but not limited to, a state license as defined by this article, a state retail certificate, or a state health license.
- (13) If not included in the applicant's state license application, attested copies of the articles of incorporation and bylaws if the applicant is a corporation, operating agreement if the applicant is a limited liability company, evidence of partnership if the applicant is a partnership, or articles of association and bylaws if the applicant is an association.
- (14) If not included in the applicant's state license application, an affidavit that identifies all owners, officers, members, managers, or partners of the applicant, their ownership interests, and their places of residence at the time of the application and for the immediately preceding three years.

Commented [P14]: Seems redundant

- (15) If not included in the applicant's state license application, a release authorized by 16 M.R.S.A. § 620(6), as may be amended, with the application for each applicant and for each officer, owner, member, manager, or partner of the applicant seeking a local license.
- (16) Evidence of all land use approvals or conditional land use approvals required to operate a marijuana establishment pursuant to this Code, including, but not limited to, a building permit, special exception approval, site plan approval, change of use permit or certificate of occupancy.
- (17) Evidence of all other local approvals or conditional approvals required to operate a marijuana establishment pursuant to this Code, including, but not limited to, food license or victualer's license.
- (18) A description of the premises for which the license is sought, including a floor plan of the premises showing how the floor space is or will be used, parking for the premises, total floor area of the building(s), and the nature and location of any existing or proposed exterior lighting and signage.
- (19) A copy of the applicant's security plan and operations manual.

The information provided pursuant to this subsection (b) shall be supplemented in writing by certified mail, return receipt requested, or in person to the town administrative assistant within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

(c) Signature. If a person who seeks a local marijuana license under this section is an individual, they shall sign the application as applicant. If a person who seeks a license is other than an individual, each person with an influential interest in the establishment or in a legal entity that controls the establishment shall sign the application for a license as applicant. Each applicant must be qualified under this article and each applicant shall be considered a licensee if a marijuana license is granted.

(d) Confidentiality. The information provided by an applicant in connection with an application for a local marijuana license under this article shall be maintained by the office of the town administrative assistant on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure. **The information provided by an applicant in connection with an application as Medical marijuana registered caregivers and other applicants submitting applications and supporting information that is confidential under 22 M.R.S.A. § 2425-A(12), as may be amended, and the Maine Freedom of Access Act, 1 M.R.S.A. § 403(3)(F), shall mark such information as confidential. An individual who possesses a valid Maine medical marijuana registered caregiver registry identification card need not identify themselves in an application for a license for a medical marijuana establishment. The cardholder must identify themselves and provide the relevant cards to the [redacted] for examination, but the identity of the cardholder shall not be a public record and the [redacted] shall not share the identity of the cardholder, except as necessary by law in the performance of their duties. At the time of application, the cardholder may appoint a representative to appear before the Licensing Authority on their behalf. Advertisements**

Commented [P15]: Not sure why this is necessary. It would be difficult to maintain confidentiality because as a practical matter, when the use is going through Planning Board review, the PB needs to know who the registered caregiver is and that their registration is active. They also need to review affidavit of ownership, documentation of lease, etc., so it seems inevitable that it would become part of the public record.

Commented [P16]: This is not really a core duty for a Town Planner. The Town does not currently have a general business licensing program but has looked into starting one. It would be good to consult with the Town Manager, Town Clerk, and Select Board on some of these proposed changes.

Deleted: Town Planner

Deleted: Town Planner

for public hearing shall contain the location of the proposed medical marijuana establishment and the identity of the owner of the real estate and the identity of the designated representative. The _____ may certify that the applicant meets the necessary legal requirements as a cardholder(s).

Deleted: Town Planner

(T.M. of 11-5-2019(2))

Sec. 11-8. - Issuance of local marijuana license.

(a) Responsibilities and review authority.

(1) The local licensing authority shall have the authority to impose any conditions on a license that may be necessary to ensure compliance with the requirements of this chapter or to address concerns about operations that may be resolved through the conditions. The failure to comply with such conditions shall be considered a violation of the license.

(2) No local marijuana license shall be granted by the local licensing authority until the police chief, the fire chief, the code enforcement officer, and if applicable the health inspector have all made their recommendation upon the applicant's ability to comply with this article. Whenever inspections of the premises used for or in connection with the operation of a licensed business are provided for or required by ordinance or state law, or are reasonably necessary to secure compliance with any ordinance provision or state law, it shall be the duty of the applicant or licensee, or the person in charge of the premises to be inspected, to admit any officer, official, or employee of the town authorized to make the inspection at any reasonable time that admission is requested.

(b) Upon the filing of a completed application for a marijuana license, the town administrative assistant shall immediately schedule a public hearing on the application before the town select board to occur within 30 days. The administrative assistant shall provide written notice of the public hearing to the applicant and to the select board within five days of the filing of a completed application.

(1) At the public hearing on the local marijuana license application, the select board shall take testimony of the applicant and any interested members of the public. The hearing shall focus upon the criteria for issuance of a permit.

(2) The select board shall issue to the applicant written notice of its decision to grant or deny the license. If the board denies the permit, the written notice shall set forth the board's reasons for the denial. The select board shall grant a marijuana license unless it finds that the issuance of the license would be detrimental to public health, safety or welfare, as demonstrated by the following criteria:

a. An applicant is less than 21 years of age.

b. An applicant has failed to provide information required by this article for issuance of a license or has falsely answered a question or request for information on the application form.

c. The establishment is in a location where a marijuana establishment is not permitted.

d. Any establishment in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):

1. Been declared by a court of law to be a nuisance; or
2. Been subject to an order of closure.
3. Been convicted of or pled guilty or nolo contendere to a specified criminal activity.

e. A person who has had a license for a marijuana establishment and/or medical marijuana establishment revoked by the town or by the state.

f. An Applicant who has not acquired all necessary state approvals and licenses and other required local approvals prior to the issuance of a local marijuana license.

(c) The town may suspend or revoke a license for any violation of this chapter, chapter 45 or any other applicable building and life safety code requirements. The town may suspend or revoke a license if the licensee has a state license for a marijuana establishment **and/or medical marijuana establishment** suspended or revoked by the state. The licensee shall be entitled to notice and a hearing prior to any suspension or revocation.

(d) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and the address of the business. The license shall be posted in a conspicuous place at or near the entrance to the business so that it may be read at any time that the business is occupied by patrons or is open to the public.

(e) A local marijuana license renewal application shall be subject to the same review standards as applied to the initial issuance of the license and the same notice requirement as a new application. As part of the renewal process, the select board shall consider compliance from prior years, and based upon that review, may add conditions to any future license to correct, abate or limit past problems.

(T.M. of 11-5-2019(2))

Sec. 11-9. - License fees

The initial license and annual renewal fees for marijuana establishments licenses shall follow the town's master fee schedule.

(T.M. of 11-5-2019(2))

Sec. 11-10. - License expiration and renewal.

- (a) Each local marijuana license issued shall be effective for one year from the date of issuance.
- (b) Renewal applications must be submitted at least 30 days prior to the date of expiration of the annual local marijuana license. An application for the renewal of an expired license shall be treated as a new license application.

(T.M. of 11-5-2019(2))

Sec. 11-11. - Operating requirements.

The licensee shall comply with all of the following requirements during the term of local marijuana license:

- (1) Display of license. The current local marijuana license shall be displayed at all times in a conspicuous location within the licensed premises.
- (2) Location. All licensed premises shall be in fixed, permanent locations. Licensees shall not be permitted to operate marijuana establishments **or medical marijuana establishment** in temporary locations such as mall kiosks, town events or farm stands.
- (3) Compliance with other laws. A marijuana establishment **or medical marijuana establishment** shall meet all operating and other requirements of state and local law and regulation. To the extent the state has adopted or adopts in the future any stricter law or regulation governing marijuana establishments the stricter law or regulation shall control.

(T.M. of 11-5-2019(2))

Sec. 11-12. - Transfer of ownership and change of location.

- (a) Licenses issued under this article are not transferable to a new owner.
- (b) A state transfer license shall require a new local marijuana license.
- (c) Licenses are limited to the location for which they are issued and shall not be transferable to a different location. A licensee who seeks to operate in a new location shall acquire a new local license for that location.
- (d) Licensees shall provide evidence to the town clerk annually of their license issue date with complete list of employees, owners, directors, and stake holders.

(T.M. of 11-5-2019(2))

Sec. 11-13. - Appeals.

Any appeals of decision shall be made to the state superior court.

(T.M. of 11-5-2019(2))

Sec. 11-14. - Violations and penalties.

(a) The operation of any marijuana establishment **or medical marijuana establishment** without the required local marijuana license or in violation of the requirements of this chapter shall be a violation of this chapter.

(b) Fines shall be set forth for violation of any of the provisions of this article; violators shall be punished by a civil penalty of not less than \$1,000.00 and not more than \$10,000.00 for each violation, plus attorneys' fees and costs, to be recovered on complaint, to the use of the town. Each day a violation is committed, or permitted to continue, shall constitute a separate violation and shall be fined as such.

(T.M. of 11-5-2019(2))

Sec. 11-15. - Other laws.

Except as otherwise specifically provided herein, this article incorporates the requirements and procedures set forth in the Maine Marijuana Legalization Act, 28-B M.R.S.A. ch. 1, as may be amended. In the event of a conflict between the provisions of this chapter and the provisions of the Maine Marijuana Legalization Act or any other applicable state or local law or regulation, the more restrictive provision shall control.

Except as otherwise specifically provided herein, this Article incorporates the requirements and procedures set forth in the Maine Medical Use of Marijuana Act, 22 M.R.S.A. Chapter 558-C, as may be amended. In the event of a conflict between the provisions of this Chapter and the provisions of the Maine Medical Use of Marijuana Act or any other applicable State or local law or regulation, the more restrictive provision shall control.

(T.M. of 11-5-2019(2))

Sec. 11-16 Effective Date.

This Article shall take effect pursuant to the Town Charter. However, no application for any Local License for a marijuana establishment or medical marijuana establishment shall be acted upon until the effective date of regulations promulgated and adopted pursuant to 28-B M.R.S.A. Chapter 1, as may be amended.

Sec. 11-17. Severability.

The provisions of this Article are severable, and if any provision shall be declared to be invalid or void, the remaining provisions shall not be affected and shall remain in full force and effect.

(PERFORMANCE STANDARDS)

~~Sec. 33-189. Nonprofit medical marijuana dispensaries and registered primary caregivers.~~

~~(a) The provisions for nonprofit medical marijuana dispensaries shall apply to both dispensaries and registered primary caregivers.~~

~~(b) The applicant must hold a current dispensary certificate or registered primary caregiver license in good standing from the State of Maine Department of Health and Human Services, Division of Licensing and Regulatory Services prior to making an application with the town. If approved, the dispensary or registered primary caregiver facility operator shall annually submit a copy of the current dispensary certificate or registered primary caregiver license to the code enforcement officer.~~

~~(c) A dispensary or registered primary caregiver facility may not be located within 500 feet of the property line of an existing public or private school, residential property, childcare facility, place of worship or public facility.~~

~~(d) All cultivation of marijuana must take place in a fully enclosed and locked structure. Outdoor cultivation of marijuana is prohibited.~~

~~(e) The property shall be screened in accordance with section 33-175.~~

~~(f) The dispensary or registered primary caregiver facility shall comply with the parking requirements of section 45-495(9).~~

~~(g) The dispensary or registered primary caregivers shall comply with all applicable town and state regulations.~~

~~(h) No materials described in the definition of a nonprofit medical marijuana facility shall be visible from the exterior of the building in which the nonprofit medical marijuana dispensary or registered primary caregiver facility is located.~~

~~(T.M. of 6-18-2011(6); T.M. of 11-8-2016(1))~~

Sec. 33-190. - Performance standards for marijuana establishments.

Notwithstanding anything to the contrary of 1 M.R.S.A. § 302 or any other law, to any application relating to the establishment or operation of a proposed marijuana establishment **or medical marijuana establishment**, whether or not such application had become "pending proceeding" as defined in 1 M.R.S.A. § 302 prior to the enactment of this section.

All marijuana establishments **and medical marijuana establishments** require site plan review and approval from the planning board prior to the issuance of any building permit or certificate

Commented [P17]: Not a complete sentence

Commented [P18]: Adding "new" here could cause confusion as to what constitutes "new" or what requires site plan review.

Deleted: new

of occupancy. The review of an application for a marijuana establishment shall not begin until the applicant has submitted to the Town a valid state-issued conditional license to operate the marijuana establishment pursuant to 28-B MRSA 205. The following performance standards are to be used by the planning board in reviewing site plan applications and compliance with the same shall serve as requirements for approval of such site plans.

Reference chapter 11-3 for definitions related to this section.

(1) All marijuana establishments **and medical marijuana establishments** shall be screened in accordance with section 33-175.

(2) All marijuana establishments **and medical marijuana establishments** shall comply with the parking requirements of section 45-495(15).

(3) Signage and advertising. All signage and advertising for any marijuana establishment **and medical marijuana establishments** shall comply with all applicable provisions of chapter 45 in this Code. In addition, no signage or advertising shall use the word "marijuana" or "cannabis," or any other word, phrase or symbol commonly understood to refer to marijuana. No interior signage, advertising as described above shall be visible from the exterior of the building in which the marijuana establishment is located. Signage containing misleading or deceptive marketing or marketing towards individuals under the age of 21 is prohibited.

(4) Area of activities for all marijuana establishments **and medical marijuana establishments**; control of odors and emissions; sealed walls; disposal plan; security.

a. All activities of marijuana including, without limitation, cultivating, growing, processing, displaying, selling and storage, shall be conducted indoors. Marijuana establishments **and medical marijuana establishments** are not permitted to conduct outdoor sales or services of any kind. Any common areas, including, but not limited to, storage areas and building facilities, shared with another marijuana establishment **and/or medical marijuana establishment** must be clearly identified as such on the site plan application.

b. Odor management. For all marijuana establishments **and medical marijuana establishments** odor of marijuana must not be perceptible at the exterior of the building at the premises or at any adjoining use of the property. Marijuana stores, marijuana product manufacturing facilities, marijuana testing facilities, **medical marijuana stores, medical marijuana product manufacturing, and medical marijuana testing facilities** are not required to install filtration equipment on the licensed premises but must satisfy the same odor standard contained herein. While the town does not mandate any particular equipment specifications with regard to filtration, all marijuana establishments are strongly encouraged to adopt best management practices with regard to implementing state-of-the-art technologies in mitigating marijuana odor, such as air scrubbers and charcoal filtration systems.

c. Noxious gases and fumes. Marijuana product manufacturing facilities, marijuana testing facilities, **medical manufacturing facilities, and medical marijuana testing facilities** shall

include appropriate ventilation systems to mitigate noxious gases or other fumes used or created as part of the production.

d. Sufficient measures and means of preventing smoke, debris, dust, fluids and other substances from exiting a marijuana establishment must be provided at all times.

e. Prior to planning board approval and for the duration of their operation, all marijuana establishments **and medical marijuana establishments** shall have in place an operational plan for proper disposal of marijuana and related byproducts in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. Dumpsters and trash containers must not be overflowing, and the surrounding area must be kept free of litter and trash. All dumpsters and containers shall be screened from public view. All trash receptacles on the premises used to discard marijuana products must have a metal cover or lid that is locked at all times. Security cameras must be installed to record activities in the area of such trash receptacles.

Deleted: A

f. Sufficient and appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana must be provided at all times. Security measures shall include, at a minimum, the following:

Commented [P19]: This whole section could be spelled out but subsidiary to state law and rules, e.g. 18-691 CMR Section 3.3; "stricter shall control"

1. Security surveillance cameras installed and operating 24 hours a day, seven days a week to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;
2. Door and window intrusion robbery and burglary alarm systems with audible and police department notification components that are professionally monitored and maintained in good working condition;
3. A locking safe **or secure storage container** permanently affixed to the premises that is suitable for storage of all adult use marijuana product and cash stored overnight on the premises;
4. Exterior lighting that illuminates the exterior walls of the premises and complies with applicable provisions of this Code; and
5. Deadbolt locks on all exterior doors and locks or bars on any other access points (e.g., windows).
6. Identification checks

All security recordings shall be preserved **as the State requires** for at least 72 hours. All marijuana establishments shall provide the police chief or their designee with the name and functioning telephone number of a 24-hour on-call staff person to whom the town may provide notice of any operating problems associated with the establishment.

(5) Separation (buffering) from sensitive uses.

a. No marijuana establishment or medical marijuana establishment structure shall be sited within 500 feet of the lot lines of a public or private school. This standard may not be relaxed by variance.

Deleted: store, medical

Deleted: retail store or medical marijuana dispensary

Deleted: ; and

Commented [P20]: Consistent with state law (28-A MRSA 402, paragraph 2A; Maine Medical Use of Marijuana Program Rule, 18-691 CMR, Section 7

b. No marijuana store, **medical marijuana retail store or medical marijuana dispensary** structure shall be sited within 500 feet of the lot lines of any ~~public facility,~~ place of worship, residential property, or childcare facility.

Formatted: Strikethrough

Deleted: s

The planning board will not preclude a sensitive use listed in a. and b. above from opening at a location within one or more applicable buffer zones solely because the sensitive use is within such buffer zones.

Deleted: department

Deleted: the

Deleted: .

A marijuana store, **medical marijuana retail store or medical marijuana dispensary** may continue to operate in its present location as a pre-existing use if a sensitive use as listed in a. and b. above later locates within the applicable buffer zone; however, the marijuana store does so at its own risk, and town-issued licenses, permits or approvals provide no protection or indemnification against enforcement of federal or other applicable laws that may prohibit operation of a marijuana store, near a sensitive use listed in a. and b. above.

The distance cited in this subsection shall be measured as the aerial straight-line distance between the nearest point of the proposed building for the marijuana establishment or medical marijuana establishment and the nearest point along a lot line of the site of the use listed in a. or b. above.

Deleted: store,

Deleted: retail store or medical marijuana dispensary

Deleted: (

Deleted:)

Deleted: (

Deleted:)

Deleted: at their closest points

For purposes of this measurement, if a marijuana store, medical marijuana retail store or medical marijuana dispensary is to be located on a site that is leased from an unrelated third party, such establishment's lot line shall be determined as follows:

- (i) If the establishment leases a freestanding building or buildings which is or are part of a larger parcel containing other freestanding buildings, the lot line of such establishment shall be the outer wall of the building(s) at its nearest point being leased by the establishment to the lot line of the site of the use listed in (a) or (b) above; and
- (ii) If the establishment leases a room or suite of rooms within a building, including, without limitation, individual units within a shopping plaza or shopping mall, the lot line of such establishment shall be the outer wall of the building at its nearest point being leased by the establishment to the lot line of the site of the use listed in (a) or (b) above.

Commented [P21]: To avoid confusion, I would recommend not using the term "lot line" here to describe a leased area because lot lines have definitions in Section 1-2 and a common understanding that they pertain to real property. If the measurement is from the closest point of the building with the marijuana use, it may not matter whether the use is conducted by the property owner or lessee. I do think there is merit in keeping some variation of part (ii) in order to give flexibility for a "one small shop in a large shopping plaza" situation.

(6) Hours of operation. Marijuana stores, **medical marijuana caregiver retail stores and medical marijuana dispensaries** are limited to the same hours of operation as those for establishments serving or selling alcoholic beverages or products in accordance with Section 6-11, or as may be set forth in state statute. When there is a conflict between state statute and local zoning, the more restrictive hours of operation shall apply.

Deleted: or

Deleted: y

Deleted: chapter 6 section 11

Deleted: Size

Deleted: of

Deleted: or

Deleted: medical marijuana cultivation facility

Deleted: ir

Deleted: state issued tier permit.

(7) Cultivation area limitation. The number of plants or area of the plant canopy in a marijuana cultivation facility shall not exceed the number of plants or area of the plant canopy allowed by the facility's cultivation facility license tier issued by the state in accordance with Title 28-B MRSA Section 301. The number of plants or area of the plant canopy in a **medical marijuana cultivation facility** shall not exceed the number of plants or area of the plant canopy allowed by

Title 22, MRSA, Section 2423-A, paragraph 2. The site plan shall include the facility's cultivation area allowance and show or list the square footage of the proposed cultivation area.

(8) Sale of edible products. No food products shall be sold, prepared, produced or assembled by a marijuana establishment except in compliance with all operating and other requirements of state, local law and regulation, and compliance with this Code including, without limitation, food establishment licensing requirements. Any goods containing marijuana for human consumption shall be stored in a secure area.

(9) Drive-through and home delivery. Marijuana establishments **and medical marijuana establishments** are prohibited from having drive-through pick-up facilities. Marijuana stores are prohibited from providing home delivery services. Adult use marijuana customers may only purchase and obtain adult use marijuana products from within a marijuana store.

(10) Pesticides. The only pesticides allowed to be used in marijuana establishments **and medical marijuana establishments** are non-synthetic substances, unless specifically listed as "prohibited" on the National List of Allowed and Prohibited Substances in 7 CFR Part 205, as may be amended from time to time, and pesticides determined to be "minimum risk pesticides" pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and listed in 40 CFR. § 152.25(f)(1) or (2), as may be amended from time to time. All marijuana establishments **and medical marijuana establishments** shall comply with all packaging and labeling requirements from the state.

Deleted: n

Deleted: l

Deleted: .

Deleted: .

(11) Inspections. The code enforcement officer or their designee will inspect all marijuana establishments **and medical marijuana establishments** prior to issuance of a certificate of occupancy, to verify that the facilities are constructed and can be operated in accordance with the application submitted, the land use approval(s) issued and the requirements of this section, local and state building codes and electrical codes. The fire chief or their designee will inspect all marijuana establishments prior to issuance of a certificate of occupancy, to verify that the facilities are constructed and can be operated in accordance with the requirements of all applicable state and local fire codes. The initial inspection shall occur after the establishment is ready for operation, but no marijuana, marijuana products will be permitted on the premises until the inspection is complete and a certificate of occupancy is issued. Nothing herein shall prevent the fire chief or their designee from inspecting marijuana establishments at random intervals, but not to exceed four times a year, and without advance notice provided that the inspection is during normal business hours of the establishment.

(12) Change of use/addition of use. If any type of marijuana establishment **or medical marijuana establishment** is to change to another type of marijuana establishment or to add another type of marijuana establishment to its existing operations, such change of use or additional use must be reviewed and approved by the planning board for compliance with this section.

Formatted: Font: Not Bold

(13) Other laws remain applicable. A marijuana establishment **or medical marijuana establishment** shall meet all operating, local and state licensing and other requirements of state and local laws and regulations. To the extent the state has adopted or adopts in the future any

stricter law or regulation governing ~~adult-use marijuana,~~ marijuana establishments, **and/or**
medical marijuana establishments, the stricter law or regulation shall control.

Deleted: and/or

DRAFT

Proposed Town Code Amendments Related to Variances

Discussion draft for Planning Board review, September 29, 2020

Article __. Shall an ordinance entitled “[insert title]” dated 6/8/2021 be enacted?

Background and rationale [DRAFT]

These amendments modify the existing language in the Town Code regarding variances to make them consistent with State law. Section 45-194 has a reference to a “waiver” of frontage, setback, or yard requirements for nonconforming lots of record, but there is no definition in either the Town Code or state statutes of the term “waiver” in this legal context. This section also authorizes the Code Enforcement Officer to permit a 25 percent reduction in frontage, setback, and yard requirements, but this authorization is not allowed by State law. The amendments remove the waiver reference and the Code Enforcement Officer 25 percent reduction authorization. They replace the waiver reference with three types of variances expressly provided for in State law: Practical Difficulty Variance, Hardship Variance, and Disability Variance (30-A M.R.S.A. Section 4353). The amendments also add definitions to all three variances, as well as supporting terms “Practical Difficulty” and “Noncommercial Vehicle” to Section 1-2 of the Town Code, and they accordingly modify Section 1-2’s generic definition of “Variance”. There are also existing references in the Town Code to variances relating to Chapter 25 – Floodplain Management Ordinance; these amendments do not change this type of variance. The State law criteria for a hardship variance are similar to the existing criteria for a “variance” in Section 45-49. The state law criteria for a hardship variance are now included in its definition in Section 1-2. A disability variance allows for variances to be granted for the purpose of making a dwelling unit accessible to a person with a disability who resides in or regularly uses the dwelling. There already was a reference to a disability variance in Ch. 44 – Shoreland Zoning, but not in Ch. 45 – Zoning. The amendments make similar changes to Ch. 44 – Shoreland Zoning, adding reference to a hardship variance and modifying the existing reference to a disability variance to make it consistent with the new reference in Ch. 45 and with State law. Ch. 44 does not include reference to a practical difficulty variance because such a variance is not allowed in State law for any properties that overlap wholly or in part with State-law-defined shoreland areas.

(New text underlined in bold)

~~Deleted text in strikethrough~~

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

[NOTE: for brevity, this section abridged in review drafts to only include definitions that are being modified, added, or deleted]

In the construction of this Code, and of all ordinances, the following rules shall be observed:

[...]

Noncommercial vehicle (as applied to the definition of disability variance) means a motor vehicle as defined in Title 29-A, M.R.S.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.

[...]

Practical difficulty means that the strict application of the ordinance to the property precludes the ability of the applicant to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the applicant.

State Law reference—Similar definitions, 30-A M.R.S.A. §4353(4-C)

[...]

Variance means a relaxation of ~~certain~~ requirements ~~or dimensional standards in the Town Code that regulate land use~~ of this chapter as provided in section 45-49(b). Unless otherwise specified, the generic use of “variance” means a disability variance, hardship variance, or practical difficulty variance, as applicable.

[...]

Variance, disability means a relaxation of dimensional standards applicable to the 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.

State Law reference—Similar definitions, 30-A M.R.S.A. §4353(4-A)

Variance, hardship means a relaxation of dimensional standards when strict application of the ordinance to the applicant and the applicant’s property would cause undue hardship. For the purpose of this definition, all of the following conditions must be met to demonstrate undue hardship:

- (1) **The land in question can not yield a reasonable return unless a variance is granted;**
- (2) **The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;**
- (3) **The granting of a variance will not alter the essential character of the locality; and**
- (4) **The hardship is not the result of action taken by the applicant or a prior owner.**

State Law reference—Similar definitions, 30-A M.R.S.A. §4353(4)

Variance, practical difficulty means a relaxation of lot area, lot coverage, street frontage, or setback standards for nonconforming lots of record when strict application of the ordinance to the applicant and the applicant’s property would cause a practical difficulty and when all of the following conditions exist:

- (1) **The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;**
- (2) **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;**
- (3) **The practical difficulty is not the result of action taken by the applicant or a prior owner;**
- (4) **No other feasible alternative to a variance is available to the applicant;**
- (5) **The granting of a variance will not unreasonably adversely affect the natural environment; and**
- (6) **The property is not located in whole or in part within shoreland areas as described in title 38, M.R.S.A. section 435.**

State Law reference—Similar definitions, 30-A M.R.S.A. §4353(4-C)

[...]

(T.M. of 6-19-01, (arts. 6—8); T.M. of 11-6-01, (arts. 2, 8); T.M. of 3-16-02, (art. 3, § 1), (art. 4); T.M. of 11-5-02; T.M. of 6-10-03; T.M. of 11-4-03; T.M. of 3-20-04; T.M. of 6-8-04; T.M. of 6-14-05; T.M. of 6-16-07; T.M. of 6-16-07; T.M. of 6-14-08; T.M. of 6-9-09(1); T.M. of 6-9-09(2); T.M. of 6-12-2010(3); T.M. of 6-18-2011(5); T.M. of 6-18-2011(6); T.M. of 6-16-2012(1); T.M. of 6-16-2012(3); T.M. of 6-11-2013(1); T.M. of 11-5-2013; T.M. of 6-9-2015(1);

Commented [P1]: Noted for general discussion: 30-A MRSA 4353 does “delegate to the municipal reviewing authority the ability to approve” certain types of development applications that don’t meet certain dimensional standards, and such approval is “not considered the granting of a variance”. This includes “lots with insufficient frontage” or reduced setbacks for nonconforming lots or structures.

Commented [P2]: State law (30-A MRSA 4353) uses “petitioner” but there is already a more limited definition of “petitioner” in the Town Code. “Applicant” seems like a self-evident term but we may need to add a definition of the term here. The current definition of “Applicant” in Section 1-2 is tailored to Ch. 35 – Post-Construction Stormwater Management.

Commented [P3]: New definition added above

Commented [P4]: Added this to make it clearer that all of the below conditions needed to be met.

Commented [P5]: This list is almost exactly drawn from 30-A M.R.S.A. 4353, except for replacing “petitioner” with “applicant” and adding “M.R.S.A.” to the last condition.

T.M. of 6-9-2015(2); T.M. of 6-14-2016(1); T.M. of 11-6-2018(2); T.M. of 11-6-2018(3); T.M. of 11-5-2019(3))

State Law reference— Similar definitions, 30-A M.R.S.A. § 2001.

Note on Ch 33 – Planning and Development

This chapter includes some express provisions about the ability of the Planning Board to waive site plan application content requirements, or waive some performance standards. Section 33-82 – Appeals discusses appeals of “approval or denial of an application or final plan, or by the granting or denial of a permit, variance, waiver or administrative appeal under this article.” But there is no Ch. 33 process laid out specifically for variances within Ch. 33.

The Maine Municipal Association (MMA) provides guidance on how municipalities can handle non-zoning variances (see attachment):

Variances other than from zoning requirements (e.g., from subdivision, minimum lot size or other non-zoning land use ordinances) may be granted only if and to the extent they are authorized by applicable ordinances. For example, a non-zoning ordinance may delegate the authority to grant variances to a planning board, board of appeals or other body and may prescribe whatever standards are deemed appropriate, as long as they are sufficiently specific (e.g., a requirement that development be “in the best interest of the community” would not suffice).

You can see how this plays out in Ch. 41 – Subdivisions, Section 41-66 – Variance:

Where the planning board finds that the subdivider or abutter has documented that extraordinary and unnecessary hardships may result from strict compliance with this article or where there are special circumstances of a particular plan, it may vary requirements of this article so that substantial justice may be done, and the public interest secured; provided that such variations will not have the effect of nullifying the intent and purpose of the official map, the comprehensive plan or the zoning chapter, where such exist.

The Planning Board has the opportunity to “fix” the lack of a uniform variance process for Ch. 33 requirements. It could include language that speaks to how a variance could be provided and what the specific thresholds that need to be met. Note that zoning variances may only be granted by a board of appeals.

Sec. 44-47. - Appeals.

(a) *Powers and duties of the board of appeals.* The board of appeals shall have the following powers:

(1) Administrative appeals: To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the planning board in the administration of this chapter, and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the code enforcement officer in his or her review of and action on a permit application under ~~the ordinance from which this chapter is derived~~ **this chapter**. Any order, requirement, decision or determination made, or failure to act, in the enforcement of ~~the ordinance from which this chapter is derived~~ **this chapter** is not appealable to the board of appeals.

(2) Variance appeals: To authorize variances upon appeal, within the limitations set forth in this chapter.

(b) *Variance appeals.* Variances may be granted only under the following conditions:

(1) **Except for where variances are specifically prohibited in this chapter, hardship variances** ~~Variances~~ may be granted only from dimensional requirements including, but not limited to, lot width, structure height, ~~percent of~~ lot coverage, and setback requirements.

(2) Variances shall not be granted for establishment of any uses otherwise prohibited by this chapter.

(3) The board shall not grant a variance unless it finds that:

a. The proposed structure or use would meet the provisions of section 44-35, except for the specific provision which has created the nonconformity and from which relief is sought; and

b. All of the defining factors and conditions of a hardship variance have been met.

b. ~~The strict application of the terms of this chapter would result in undue hardship. The term "undue hardship" shall mean:~~

~~(i) That the land in question cannot yield a reasonable return unless a variance is granted;~~

~~(ii) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;~~

~~(iii) That the granting of a variance will not alter the essential character of the locality; and~~

~~(iv) That the hardship is not the result of action taken by the applicant or a prior owner.~~

Commented [P6]: This references some dimensional standards where it is noted that they shall not be altered by variance.

Commented [P7]: Redundant, as the definition of lot coverage already includes "percentage of"

(4) Notwithstanding the ~~variance conditions~~ section above, the board of appeals may grant a disability variance only in accordance with the following rules:

- a. A disability variance shall only be granted for the installation of equipment or the construction of structures necessary for access to or egress from the dwelling (including railing, wall or roof systems necessary for the safety or effectiveness of the structure) by the person with the disability; or to allow an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability to construct a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose.
- b. The width and length of the place of storage and parking in subsection a. 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.
- c. Any person with the permanent disability seeking a disability variance shall prove by a preponderance of the evidence that the person's disability is permanent. For purposes of this subsection, "disability" has the same meaning as a physical or mental disability under Title 5, M.R.S.A. section 4553-A. 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.
- d. The board may impose conditions on a disability variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling.

~~to an owner of a residential 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 subsection 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. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the property" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.~~

- (5) The board of appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this chapter to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- (6) A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least 20 days prior to action by the board of appeals. Any comments received from the commissioner prior to the action by the board of appeals shall be made part of the record and shall be taken into consideration by the board of appeals.

- (c) *Administrative appeals.* When the board of appeals reviews a decision of the code enforcement officer the board of appeals shall hold a “de novo” hearing. At this time the board may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity the board of appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the board of appeals hears a decision of the planning board, it shall hold an appellate hearing, and may reverse the decision of the planning board only upon finding that the decision was contrary to specific provisions of the ordinance or contrary to the facts presented to the planning board. The board of appeals may only review the record of the proceedings before the planning board. The board appeals shall not receive or consider any evidence which was not presented to the planning board, but the board of appeals may receive and consider written or oral arguments. If the board of appeals determines that the record of the planning board proceedings ~~are~~ is inadequate, the board of appeals may remand the matter to the planning board for additional fact finding.

- (d) *Appeal procedure.*

(1) Making an appeal.

- (i) An administrative ~~or variance~~ appeal may be taken to the board of appeals by an aggrieved party from any decision of the code enforcement officer or the planning board, except for enforcement-related matters as described in section 44-48. Such an appeal shall be taken within 30 days of the date of the official, written decision appealed from, and not otherwise, except that the board, upon a showing of good cause, may waive the 30-day requirement.
- (ii) Applications for appeals shall be made by filing with the board of appeals a written notice of appeal which includes:
- a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
 - b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- (iii) Upon receiving an application for an administrative appeal or a variance, the code enforcement officer or planning board, as appropriate, shall transmit to the board of appeals all of the papers constituting the record of the decision appealed from.
- (iv) The board of appeals shall hold a public hearing on an administrative appeal or a request for a variance within 35 days of its receipt of a complete written application, unless this time period is extended by the parties.

(2) Decision by board of appeals:

- a. A majority of the full voting membership of the board shall constitute a quorum for the purpose of deciding an appeal.
- b. The person filing the appeal shall have the burden of proof.
- c. The board shall decide all administrative appeals and variance appeals within 35 days after the close of the hearing, and shall issue a written decision on all appeals.

Commented [P8]: It doesn't seem to make sense that this subsection applies to variance appeals.

- d. The board of appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the board. The board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven days of the board's decision. Copies of written decisions of the board of appeals shall be given to the planning board, code enforcement officer, and the municipal officers.
- (e) *Appeal to superior court.* Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the board of appeals may take an appeal to superior court in accordance with state laws within 45 days from the date of any decision of the board of appeals.
- (f) *Reconsideration.* In accordance with 30-A M.R.S.A. section 2691(3)(F), the board of appeals may reconsider any decision within 45 days of its prior decision. A request to the board to reconsider a decision must be filed within ten days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to superior court must be made within 15 days after the decision on reconsideration.

(T.M. of 11-06-2018(3))

Sec. 45-49. - Powers.

- (a) *Administrative appeals.* The board of appeals shall hear and decide where an aggrieved person or party alleges error in any permit, order, requirement, determination, or other action by the planning board or code enforcement officer. The board of appeals may modify or reverse action of the planning board or code enforcement officer by a concurring vote of at least three members, only upon a finding that the decision is clearly contrary to specific provisions of this chapter.
- (b) *Variance appeals.* The board of appeals shall hear and decide cases involving the relaxation of regulations affecting height, area, size of structures, size of yards or open spaces, or other types of variance specifically provided by this chapter. ~~On a case-by-case basis the board of appeals may elect to hear cases involving establishment or change to a different nonconforming use.~~ A variance shall be as limited as possible to ~~relieve a hardship~~ **satisfy the reason for the variance. Where a party establishes that all of the defining factors and conditions in Section 1-2 for one of the following types of variances have been met, the board of appeals shall grant that variance.**
- (2) **A practical difficulty variance shall be granted only as provided in Section 45-194.**
- (3) **A disability variance shall be granted only in accordance with the following rules:**
- a. **A disability variance shall only be granted for the installation of equipment or the construction of structures necessary for access to or egress from the dwelling (including railing, wall or roof systems necessary for the safety or effectiveness of the structure) by the person with the disability; or to allow an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability to construct a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose.**
 - b. **The width and length of the place of storage and parking in subsection a. 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.**
 - c. **Any person with the permanent disability seeking a disability variance shall prove by a preponderance of the evidence that the person's disability is permanent. For purposes of this subsection, "disability" has the same meaning as a physical or mental disability under Title 5, M.R.S.A. section 4553-A. 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.**
 - d. **The board may impose conditions on a disability variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling.**
- (4) **A hardship variance shall be granted for any relaxation of dimensional standards not applicable to subsections (1) or (2).**

Commented [P9]: Placeholder for discussion of yards vs. setbacks

Commented [P10]:

(5) A hardship variance shall be granted for any establishment or change to a different nonconforming use.

The board of appeals shall grant a variance where a party establishes that the strict application of this chapter will cause undue hardship. The words "undue hardship" mean:

- (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.

(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, (§ 507.4); T.M. of 12-15-93)

Sec. 45-50. - Appeal procedure.

- (a) In all cases, a person or party aggrieved by a decision of the code enforcement officer or by a decision of the planning board shall file his appeal within 30 days after a decision is made. When computing the 30 days, the day of the decision shall not be counted. All Saturdays, Sundays and holidays within the period shall be counted. The last day of the period so computed shall be included unless it falls on a day that the town hall is closed for business, in which event the time period will run until the end of the next day that the town hall is open for business. The appeal shall be filed with the board of appeals on forms approved by the board, and the aggrieved person or party shall specifically set forth on the form the grounds for the appeal. The aggrieved shall bear the burden of expense incurred in providing the board of appeals with information as is reasonable for it to arrive at a decision. The town clerk is responsible for receiving, dating and distributing appeal forms.
- (b) An aggrieved person or party is:
- (1) An owner of land whose property is directly or indirectly affected by the granting or denial of a permit, variance, ~~waiver~~ or administrative appeal under this chapter.
 - (2) A person whose land abuts land for which a permit, variance, ~~waiver~~, or appeal has been granted.
 - (3) A group of five or more residents or taxpayers of the town who represent an interest adverse to the granting or denial of such permit, variance, ~~waiver~~, or appeal.
- Municipal officials, and members of committees, boards, and commissions shall be granted the same rights as residents or taxpayers when filing appeals.
- (c) Following the filing of an appeal with the board of appeals, and before taking action on any appeal, the board of appeals shall hold a public hearing on the appeal during their next regularly scheduled meeting or sooner at their discretion, provided sufficient time exists from the date of filing to the regularly scheduled meeting, to meet the notification requirements of subsection (a) and administration of the same. The board of appeals shall notify the code enforcement officer and the planning board, at least ten days in advance of the time and place of the hearing, and shall publish notice of the hearing at least ten days in advance in a newspaper of general circulation in the area.
- (d) The board of appeals shall notify by mail the appellant and property owners abutting the property involved at least ten days in advance of the hearing, of the nature of the appeal and of the time and place of the public hearing. Abutting property shall include properties directly across a street or waterbody from the property for which the appeal is made. A fee in the amount established by the fee schedule set in section 1-25 shall be submitted by the appellant with the application.
- (e) The owners of property shall be those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the board of appeals.
- (f) At any hearing, a party may be represented by an agent or attorney. The board of appeals shall not continue hearings to other times except for good cause. A continuation of a hearing

to a time and place certain, announced at the meeting, does not require a renotification of the abutters, officials, agencies, interested parties, etc.

- (g) The code enforcement officer or his designated assistant shall attend all hearings and may present to the board of appeals all plans, photographs, or other material he deems appropriate for an understanding of the appeal.
- (h) Within 30 days of the close of the public hearing, the board of appeals shall make a decision on an appeal. Within seven days of its decision it shall notify, in writing, the appellant, the code enforcement officer, the planning board, and municipal officers of its decision and its reasons for the decision.
- (i) Upon notification of the granting of an appeal by the board of appeals, the code enforcement officer shall immediately issue a building permit in accordance with the conditions of approval, if any.
- (j) A variance under the provisions of this chapter secured by vote of the board of appeals shall expire if the work or change involved is not commenced within one year of the date on which the appeal is granted, and if the work or change is not substantially completed within two years.
- (k) Except where noted, the board of appeals shall act by affirmative vote of those present to reverse or modify any order, requirement, decision or determination of the code enforcement officer or planning board, or to decide other matters on which it is required to pass under this chapter or other ordinances. The failure of the board of appeals to reach a decision within 60 days of the filing of the appeal constitutes a denial of the appeal, unless the board has already scheduled a meeting on the appeal, under which circumstance the 60 days begins on the date of the first meeting on the appeal. Appeals from the decision of the board of appeals may be taken to the superior court as provided in 30-A M.R.S.A. § 2691(3)(G).
- (l) *Reconsideration.* Reconsideration of board of appeals action is administered in accordance with 30-A M.R.S.A. § 2691(3)(f). (Requests must be received within ten days of the original decision and if reconsideration is accepted, the board of appeals action must be completed within 45 days of the original decision.)

(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, (§ 507.5); T.M. of 3-27-99, (art. 3, § 1); T.M. of 3-23-02, (art. 50); T.M. of 11-4-03; T.M. of 11-8-05)

State Law reference— Procedure for board of appeal reconsideration, 30-A M.R.S.A. § 2691(3)(F); variance, 30-A M.R.S.A. § 4353.

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 street~~ 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. A relaxation of up to 50 percent of lot coverage (for lots 10,000 square feet or greater) or setback standards may be permitted by, and consistent with, a practical difficulty variance granted by the board of appeals after a public hearing. A practical difficulty variance shall not be granted for properties that are located in whole or in part within shoreland areas as described in title 38, M.R.S.A. section 435. 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(e). 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.~~
A relaxation of greater than 50 percent of lot coverage (for lots 10,000 square feet or greater) or setback standards may be permitted by, and consistent with, a hardship variance granted by the board of appeals after a public hearing.
 - (3) **A relaxation of greater than 50 percent of lot coverage (for lots 10,000 square feet or greater) or setback standards may be permitted by, and consistent with, a hardship variance granted by the board of appeals after a public hearing.**

(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))

Commented [P11]: Makes this consistent with the Section 1-2 definition

Commented [P12]: Added the 10,000 sf references to differentiate this rule from (1)

Commented [P13]: Placeholder for discussion of "lot area" and "street frontage" variance. Also for discussion of "setback" vs. "yard".

Commented [P14]: This is in the Section 1-2 definition, but it seems prudent to repeat here.

Commented [P15]: Seems antiquated and not needed in this subsection. Addressed in Ch. 44 – Shoreland Zoning.

Commented [P16]: With the deletion of the above CEO language, this clarification is no longer needed.



Zoning Variances

MMA Legal Services Information Packet

This packet is intended for general informational purposes only. It is not meant, nor should it be relied upon, as legal advice in any particular situation. Links to documents herein are provided as examples for informational purposes only and have not been reviewed by MMA Legal Services. Do not use any sample unless it has been reviewed by your legal counsel. The information herein is not a substitute for consultation with legal counsel and legal review or other specific guidance on the subject. The statutes and other information herein are only current as of the date of publication.

Date of last revision: 11/2017

This packet includes the following attachments:

- Title 30-A M.R.S. § [2691](#), § [4353](#), § [4406](#)
- "[Zoning Variances Should be the Exception, Not the Rule](#)," *Maine Townsman*, December 1986
- "[Setback Variances for Single Family Dwellings](#)," *Maine Townsman*, "Legal Notes," June 1992
- "[New Variance Test](#)," *Maine Townsman*, "Legal Notes," July 1997
- "[Variances: Self-created Hardship Revisited](#)," *Maine Townsman*, "Legal Notes," November 1995
- "[Variance Authority Exclusive to Appeals Boards](#)," *Maine Townsman*, "Legal Notes," May 1998
- "[After-the-Fact Variance Denied](#)," *Maine Townsman*, "Legal Notes," July 1999
- "[Variance Authority Redux](#)," *Maine Townsman*, "Legal Notes," May 2001
- "[Variance Authority III](#)," *Maine Townsman*, "Legal Notes," June 2004
- "[Zoning Variances – Which Ones Will Courts Uphold?](#)," *Maine Townsman*, "Legal Notes," August/September 2004
- "[Law Court Reaffirms Strict Variance Test](#)," *Maine Townsman*, "Legal Notes," March 2008
- Sample [Certificate of Zoning Variance](#)

Important issues and considerations include:

I. Zoning Variances Generally

Zoning variances are waivers of zoning ordinance restrictions that otherwise prohibit or restrict a land use or structure in a particular location. Zoning variances are authorized by statute (30-A MRS § 4353, linked above), but are meant to be an exception, not the rule. Zoning variances can only be granted in accordance with applicable statutory standards and ordinance limitations, if any. Variances other than from zoning requirements (e.g., from subdivision, minimum lot size or other non-zoning land use ordinances) may be granted only if and to the extent they are authorized by applicable ordinances. For example, a non-zoning ordinance may delegate the authority to grant variances to a planning board, board of appeals or other body and may prescribe whatever standards are deemed appropriate, as long as they are sufficiently specific (e.g., a requirement that development be "in the best interest of the community" would not suffice).

II. Authority to Grant Zoning Variances

Generally, zoning variances may only be granted by a board of appeals (see "Variance Authority Exclusive to Appeals Boards," "Variance Authority Redux," and "Variance Authority III," *Maine Townsman* "Legal Notes" linked above; *Perkins v. Town of Ogunquit*, 709 A.2d 106 (Me. 1998); and *York v. Town of Ogunquit*, 2001 ME 53, 769 A.2d 172). One exception is that a code enforcement officer can be authorized **by local ordinance** to grant a basic disability variance (30-A MRS § 4353-A). In addition, in very limited circumstances, a zoning ordinance can authorize a planning board to allow lesser dimensional standards in order to promote cluster development, accommodate lots with insufficient frontage, or to provide for reduced setback for lots or buildings made nonconforming by municipal zoning (30-A MRS § 4353(4-C)(last paragraph)).

An approval that falls within this statutory exception is generally not considered a zoning variance. This amendment to the law was enacted in 2005 in response to the court decision in *Sawyer v. Town of Cape Elizabeth*, 2004 ME 71, 852 A.2d 58. Seek the advice of an attorney when establishing any such provisions.

III. Types of Zoning Variances

As noted above, zoning variances are strictly governed by statute. A municipality may not alter the variance criteria listed in the law to make the criteria less demanding. However, municipalities do have the discretion to limit the type of requirements that may be the subject of a variance (e.g., prohibit use variances) and to add additional elements to the undue hardship test (e.g., to provide additional criteria for variances granted in the shoreland zone). Maine law authorizes five types of variances (see 30-A MRS § 4353).

- A. Two types of variances apply even if the municipality has not specifically adopted them in an ordinance. These are:
- The "undue hardship" variance (30-A MRS § 4353(4)), and
 - The "disability" variance for egress/ingress to a dwelling (30-A MRS § 4353(4-A))

The undue hardship test is the default statutory test for all zoning variances, including both "use" variances and variances from dimensional requirements. This test is described in section IV, below.

In 1991, the Legislature authorized disability variances in order to accommodate structures (e.g., wheelchair ramps, railings, etc.) necessary for access to or egress from a dwelling by disabled persons who reside in or regularly use the dwelling. No proof of undue hardship is required, but variances may be limited to the duration of the disability or the disabled person's occupancy or use of the dwelling.

- B. The other three types of variance only apply if a municipality has specifically adopted them by ordinance. These are:
- The special "setback" variance for single-family dwellings (30-A MRS § 4353(4-B)),
 - The "practical difficulty" variance from "dimensional standards" (30-A MRS § 4353(4-C)), and
 - A variance for construction of a garage to house the personal vehicle of permanently disabled person (30-A MRS § 4353(4-A)(B)).

In 1992, the Legislature authorized municipalities to enact ordinances to grant setback variances of up to 20% for single-family dwellings, pursuant to a modified undue hardship test that does not require proof that a property cannot yield a reasonable return without a variance (see "Setback Variances for Single Family Dwellings," *Maine Townsman*, "Legal Note", linked above). Since 1992, the Legislature amended this single-family dwelling setback variance authority to allow a municipality to grant a variance that exceeds 20% of a setback requirement by ordinance, if abutting landowners affected by the variance consent in writing (see 30-A MRS § 4353(4-B)).

In 1997, the Legislature amended the variance statute to authorize municipalities to enact zoning ordinances permitting a fourth category of variance—one for "practical difficulty" rather than "undue hardship." It permits variances from lot coverage, frontage and setback requirements when an applicant meets certain criteria. This test is described in section V, below.

In 2009, the law was amended to allow municipalities to authorize a variance to the owner of a dwelling if the variance is necessary for the construction of a storage place for a non-commercial vehicle owned by that person. The person must have a permanent disability and must reside in the dwelling. There are specific size and other limitations that apply (see 30-A MRS § 4353(4-A)(B)).

IV. The Undue Hardship Test

The "undue hardship" test for traditional zoning variances is a four-part statutory test (30-A MRS § 4353(4)) that has been the subject of extensive litigation (see "Zoning Variances Should Be the Exception, Not the Rule," *Maine Townsman*, and "Zoning Variances - Which Ones Will the Courts Uphold," *Maine Townsman*, "Legal Note," linked above). The "undue hardship" test is intentionally very strict (see "Law Court Reaffirms Strict Variance Test," *Maine Townsman*, "Legal Note," linked above). An applicant must meet each of the four statutory prerequisites, but it sometimes is difficult for a board of appeals to apply these criteria strictly or to deny what seems like a reasonable or harmless request. A board of appeals must remember that a variance should not be granted easily or lightly. This test must be strictly interpreted. Variances should be granted only if all of the elements of the "undue hardship" test are satisfied.

First, an applicant must show that the land cannot yield a reasonable return unless a variance is granted. “No reasonable return” has been construed strictly by the courts to mean “the practical loss of all beneficial use of the land.” *Toomey v. Town of Frye Island*, 2008 ME 44, 943 A.2d 563. An applicant generally will not meet this standard if a variance will merely increase the value or convenience of the property (*Forester v. City of Westbrook*, 604 A.2d 31 (Me. 1992); *Goldstein v. City of South Portland*, 1999 ME 66, 728 A.2d 165; *Brooks v. Cumberland Farms, Inc.*, 1997 ME 203, 703 A.2d 844). Second, the need for a variance must be due to the unique circumstances of the property and not the general conditions in the neighborhood. A variance may not be granted if the “hardship” is not unique but is shared in common with other properties in the neighborhood (*Waltman v. Town of Yarmouth*, 592 A.2d 1079 (Me. 1991); *O’Toole v. City of Portland*, 2004 ME 130, 865 A.2d 555). Third, the granting of a variance must not alter the essential character of the locality. Fourth, the hardship must not be the result of action taken by the applicant or a prior owner (see “Variances: Self-created Hardship Revisited,” Maine Townsman, “Legal Note,” linked above). See chapter 5 of MMA’s Manual for *Local Land Use Appeals Board* for more detailed information on each of the four “undue hardship” criteria.

V. The Practical Difficulty Test

The legislative intent behind creating another set of review standards for granting dimensional variances was to create a less stringent test for granting a variance than the already existing “undue hardship” test. The statute describes a “practical difficulty” as when 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” (30-A MRS § 4353(4-C)). However, the “practical difficulty” test is only applicable to “dimensional standards” (lot area, lot coverage, frontage and setback standards) and only if a municipality has specifically adopted it by ordinance. The “practical difficulty” test cannot be applied to parcels that are in whole or in part within areas included in shoreland zoning districts.

Where a municipality has adopted the “practical difficulty” test by ordinance an applicant must show the following:

- 1) The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
- 2) Granting 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;
- 3) The practical difficulty is not created as a result of an action taken by the applicant or a prior owner;
- 4) No other feasible alternative is available to the applicant;
- 5) The granting of a variance will not unreasonably adversely affect the natural environment; and
- 6) The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.

For Maine court decisions discussing the “practical difficulty” test see *Rowe v. City of So. Portland*, 1999 ME 81, 730 A.2d 673; *O’Toole v. City of Portland*, 2004 ME 130, 865 A.2d 555; *Wiper v. City of S. Portland*, No. CIV. A. AP-05-10 (Me. Super. Ct., October 31, 2005); and *Wiper v. City of So. Portland*, Dkt No. AP-07-27 (Me. Sup. Ct., Cum. Cty., March 8, 2008). For more information also see “New Variance Test” *Maine Townsman*, “Legal Notes,” July 1997, linked above.

VI. Shoreland Zoning Variances

The Maine Department of Environmental Protection (DEP) must be notified of variance requests impacting the shoreland zone. Title 38 MRS § 438-A(6-A) requires the board of appeals to send copies of all shoreland zoning variance applications (and any supporting material) to the Maine DEP for review and comment at least 20 days before taking action on the application. If the DEP submits comments to the board, they must be entered into the record and considered by the board in making its decision. The State Guidelines for Municipal Shoreland Zoning Ordinances, and many municipal ordinances, provide that written notice of the board’s decision to grant or deny a variance must be mailed or hand-delivered to the applicant and DEP within 7 days of the board’s decision.

VII. Recording Certificates

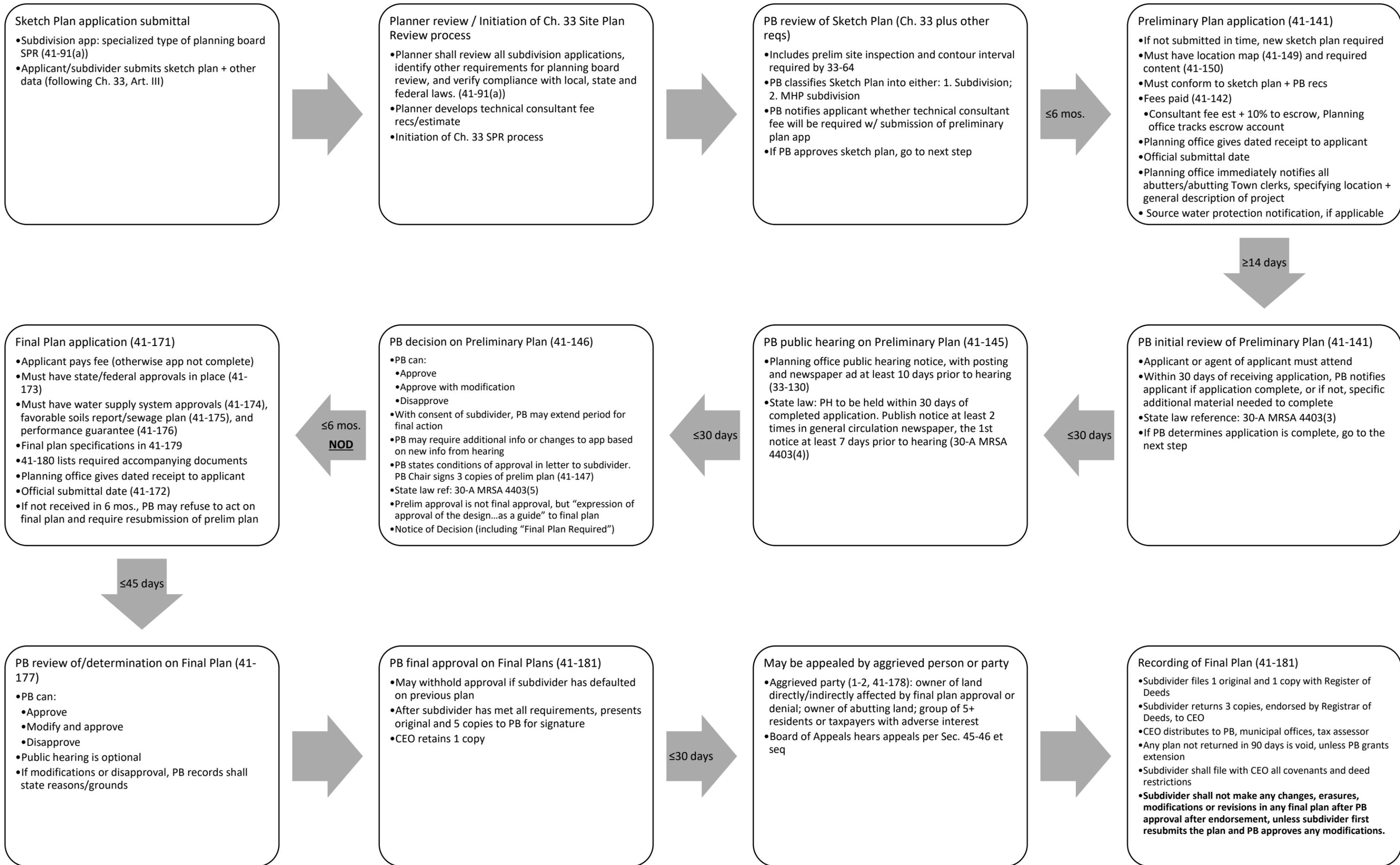
All zoning variances must be evidenced by recording a certificate in the local registry of deeds within 90 days after the final decision (30-A MRS §§ 4353). Similarly, a waiver granted from a subdivision approval standard must be recorded in the registry within 2 years (30-A MRS § 4406). A variance is not effective until recorded and is void if not recorded in time. The board should prepare a variance certificate and provide it to the applicant, but recording the certificate in the registry of deeds is the applicant’s responsibility. A “Sample Certificate of Zoning Variance” is linked above.

VIII. Legal Effect

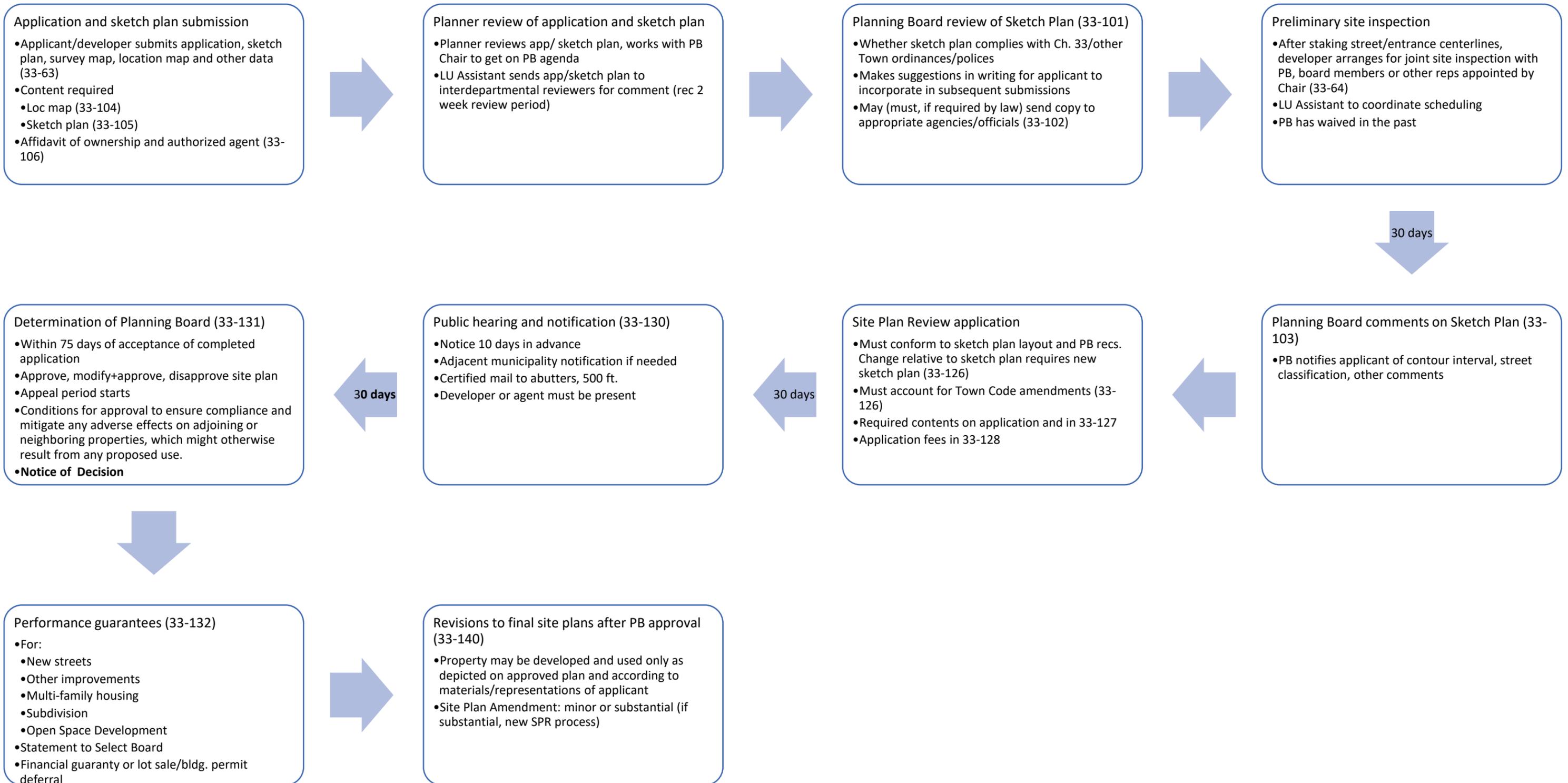
A variance waives or modifies an ordinance restriction, but the variance itself is not a permit. A permit or approval may still be required from some other authority (typically, a planning board or code enforcement officer). Except for "disability" variances (which may be limited to the applicant, see above), variances "run with the land" and pass automatically with title to successive owners.

An ordinance may provide that variances will expire or become void unless the use or structure permitted by variance is commenced within a certain time (see *Peterson v. Rangeley*, 715 A.2d 930 (Me.1998)). Generally, after a variance is granted and a building is constructed or activity conducted based on that variance, the building or activity should be treated as a legally conforming structure or use for the purposes of deciding which ordinance provisions govern it in the future (see *Sawyer Environmental Recovery Facilities, Inc. v. Town of Hampden*, 2000 ME 179).

Subdivision process (Ch. 41) – DRAFT



Site Plan Review process (Ch. 33) - DRAFT





1333 State Road Eliot, ME 03903 - Phone (207) 439-1817 - Fax (207) 439-1415

Planning Board Submission Deadlines (DRAFT)

Please find below the recently updated submission deadlines. Any materials submitted for Planning Board review are due in the Planning Office at least two weeks before the Planning Board's meeting, following the schedule shown below. The Planning Board's meeting agendas will be available approximately a week before the meeting. (The Planning Board meets on the first and third Tuesdays of the month, and generally reserves the first meeting of each month for administrative duties). Applications and other public records submitted to the Planning Board may be viewed by any member of the public, by visiting the Planning Office during normal business hours. You may also visit our website at www.eliotmaine.org for meeting information and applicable forms.

Questions about a Planning Board application? We are here to help answer questions about the Planning Board process and ordinance requirements.

Kearsten Metz – Land Use Administrative Assistant – landuse@eliotme.org

Meeting Date	Last Day to Submit Materials	Agenda Packet Date	Type of Meeting
October 6, 2020		September 29, 2020	Application Review
October 20, 2020	September 22, 2020	October 13, 2020	Application Review
November 10, 2020	October 13, 2020	November 3, 2020	Application Review
November 17, 2020	October 20, 2020	November 10, 2020	Application Review
December 1, 2020	November 3, 2020	November 24, 2020	Administrative
December 15, 2020	November 17, 2020	December 8, 2020	Application Review
January 12, 2021	December 15, 2020	January 5, 2021	Administrative
January 17, 2021	December 20, 2020	January 10, 2021	Application Review
February 2, 2021	January 5, 2021	January 26, 2021	Administrative
February 16, 2021	January 19, 2021	February 9, 2021	Application Review
March 2, 2021	February 2, 2021	February 23, 2021	Application Review
March 16, 2021*	February 16, 2021	March 9, 2021	Ordinance PH
April 6, 2021	March 9, 2021	March 30, 2021	Administrative
April 20, 2021	March 23, 2021	April 13, 2021	Application Review

* March 16: Latest regular meeting for public hearing and recommendation on June 2021 election ordinance amendments