

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

AGENDA ELIOT BOARD OF APPEALS

TYPE OF MEETING : REGULAR MEETING DATE: November 19, 2020

LOCATION: ON-LINE ZOOM MEETING TIME : 7:00 P.M.

- 1. 7:00 PM: ROLL CALL**
- 2. PUBLIC COMMENT PERIOD**
- 3. PUBLIC HEARING:**
Warren Ave. AF, LLC, d/b/a Atlantic Farms, 460 Warren Ave. Portland, ME requesting 5 waivers to dimensional setback standards regarding property owned by Matthew Letellier Hrs or Dev, C/O Eliot Donuts, LLC, 155 Harold Dow Highway, Unit 2, Map 29, Lot 25 in the Commercial Industrial Zone. Applicant proposes to operate an adult use marijuana retail store at that location under sec. 33-190(5) of the Eliot Code of Ordinances.
- 4. REVIEW OF PLANNING BOARD RECOMMENDATIONS REGARDING VARIANCE ORDINANCE AMENDMENTS**
- 5. REVIEW AND APPROVE PREVIOUS MINUTES**
- 6. OTHER BUSINESS**
- 7. ADJOURN**

**Bill Hamilton, Chairman
Board of Appeals**

**cc: CEO,
S/M,
BOA MEMBERS**

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

LEGAL NOTICE

ELIOT BOARD OF APPEALS

TYPE OF MEETING: Zoom Meeting

DATE: November 19th, 2020

TIME: 7:00 P.M.

LOCATION: Remote Zoom Meeting

PUBLIC HEARINGS:

1. Warren Ave. AF, LLC, d/b/a Atlantic Farms, 460 Warren Ave. Portland, ME requesting 5 waivers to dimensional setback standards regarding property owned by Matthew Letellier Hrs or Dev, C/O Eliot Donuts, LLC, 155 Harold Dow Highway, Unit 2, Map 29, Lot 25 in the Commercial Industrial Zone. Applicant proposes to operate an adult use marijuana retail store at that location under sec. 33-190(5) of the Eliot Code of Ordinances.

To view a live remote meeting:

- 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 on average of about a minute)

Instructions to join remote meeting:

- a) To participate please call into meeting 5 minutes in advance of meeting start time. Please be aware that Zoom has noted that this is sometimes a toll call. If you are unsure if you pay for toll calls please contact your service provider.
- b) Please call **1-646-558-8656**
 1. When prompted enter meeting number: **942 8595 9234 #**
 2. When prompted to enter Attendee ID **press #**
 3. When prompted enter meeting password: **930113 #**
 4. Members of the public will be unmuted one at time to allow for input.
 5. Press *9 to raise your virtual hand to speak

OBITUARIES&NEWS

CAPSULE

From Page A1

Holland, Trafton, Adams, Sewall and Blaisdell.

An Oct. 11, 1919, Portsmouth Herald newspaper clipping, removed from the capsule, reported the 24- by 14-inch granite cornerstone, with a depth of 10 inches, was a gift to the city by John H. Dowd and Company. The article reported a "laying of the cornerstone" ceremony at the then-new fire station when Mayor Albert Hislop delivered an address.

The box also contained an 1896 copper penny and a booklet commemorating the Fireman's Ball on Oct. 13, 1919, at Freeman's Hall. Included was a news clipping about "Firemen Field Day" with a clambake, a baseball game between Portsmouth and York firefighters, a tug-of-war and the firemen's ball.



A story about the original corner stone time capsule from the Saturday, Oct. 11, 1919 edition of the Portsmouth Herald newspaper. [RICH BEAUCHESNE PHOTOS/SEACOASTONLINE]

A full page of the Portsmouth Times was carefully removed by Germain, revealing news about the time capsule installation, alongside advertisements for piano rentals and someone

buying used false teeth in any condition. The page has the comic strip "Bonehead Benny," an ad for Vick's Vaporub, bowling league scores and a classified ad reporting D. M. Brooks lost "part of an express harness" while crossing Christian Shore. A help wanted ad sought census clerks, a job paying \$95 a month.

Typewritten papers listed government officials of the day including councilmen at large, ward councilors and officials charged with overseeing public buildings and places.

Firefighters on duty Friday morning gathered around a table to look at the mementos left by their predecessors generations

ago. Osgood is charged with preparing a proper display of the historic findings, inside the downtown fire station that's filled with historic firefighting items.

A collection of mementos from the current Fire Department was placed inside the same copper box to be entombed for the next 100 years. It includes a Portsmouth Herald front page, a roster of the firefighters on archival cotton paper, a hand-tooled leather department emblem, a COVID face covering with the department seal, challenge coins, 2020 coins and a Portsmouth Fire Department sticker.

Keven A. Hermenau

HAVERHILL — Keven A. Hermenau, 55, passed away Monday, October 26, 2020 at Massachusetts General

summer afternoons by the pool together. Keven loved everyone and will be missed by all who loved him.

Hospital after a brief but courageous battle with cancer. Born in Portsmouth, N.H., he was the son of Waldemar Hermenau and the late Carol A. (Bainbridge) Hermenau.



Keven is survived by the love of his life, Debbie Stack of Haverhill; daughter, Keely Hermenau and her partner Sam Hager of Amesbury; grand-

daughter Ellie; brother Bruce Hermenau and his wife Susan of Strafford, N.H.; sister Erica Cyr of Kankakee, Ill.; nieces and nephews Devon, Kamerin, Scott, Angela, Bryan and Jay; father Waldemar Hermenau. He was predeceased by his mother Carol A. (Bainbridge) Hermenau.

SERVICES: A celebration of Keven's life will be announced at a later date. Arrangements are by the Kevin B. Comeau Funeral Home, 486 Main St., Haverhill. Please visit Comeau Funeral Home on Facebook or www.comeau-funeral.com.

daughter Ellie; brother Bruce Hermenau and his wife Susan of Strafford, N.H.; sister Erica Cyr of Kankakee, Ill.; nieces and nephews Devon, Kamerin, Scott, Angela, Bryan and Jay; father Waldemar Hermenau. He was predeceased by his mother Carol A. (Bainbridge) Hermenau.

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CORONAVIRUS PANDEMIC

State leaders facing 2nd wave resist steps to curb virus

By Adam Geller and David Pitt
The Associated Press

DES MOINES, Iowa — Even as a new surge of coronavirus infections sweeps the U.S., officials in many hard-hit states are resisting taking stronger action to slow the spread, with pleas from health experts running up against political calculation and public fatigue.

Days before a presidential election that has spotlighted President Donald Trump's scattershot response to the pandemic, the virus continued its resurgence Friday, with total confirmed cases in the U.S. surpassing 9 million.

The number of new infections reported daily is on the rise in 47 states. They include Nebraska and South Dakota, where the number of new cases topped previous highs for each state.

The record increases in

new cases have eclipsed the spikes that set off national alarms last spring and summer. During those outbreaks, first in the Northeast and then in Sun Belt states, many governors closed schools and businesses and restricted public gatherings.

But this fall's resurgence of the virus, despite being far more widespread, has brought a decidedly more limited response in many states. Most are led by Republican governors backing a president who insists, falsely, that the country is getting the virus under control.

Over the past two weeks, more than 76,000 new virus cases have been reported daily in the U.S. on average, up from about 54,000 in mid-October, according to Johns Hopkins University. Deaths, which usually lag case numbers and hospitalizations, are also rising, from about 700 to more than 800 a day.

Legal Notice RYE SELECT BOARD STATEMENT RE: PARSONAGE/TD BANK SWAP (October 28, 2020)

Since the March 2020 Town Meeting the Select Board has been trying to implement the exchange of the former TD Bank property for the Parsonage property which town voters authorized. The principal reason for the exchange is to allow the Town to transfer some administrative departments from the town hall to the former bank building. This would alleviate the serious space shortage/overcrowding at the town hall and allow the second floor of town hall to be restored to its former historic use as a public gathering space. Since the exchange was first proposed in 2019, addressing the overcrowding of town hall has become even more important due to the Covid-19 Pandemic and the difficulty of maintaining social distancing among employees and visitors to town hall. The March 12, 2020 town vote on Article 7 authorized the selectmen to convey a parcel of ±0.4 acres with 500 Washington Road, LLC (a/k/a Daniel Philbrick) in an exchange at par for the 3.71 acre former TD Bank parcel. The ±0.4 acres was determined based on the area bounded by Washington Road, Olde Parish Road and the outside edges of the sidewalks which provide access to the Rye Public Library.

In April 2020 the selectmen submitted a subdivision application to the planning board to sever the ±0.4 acres from the larger 1.96 acre town parcel acquired in the 1990's for the expansion of the Rye Public Library. The Library Trustees opposed the proposed subdivision in part because they believed it infringed on library property under their control. The selectmen asked the planning board to continue the hearing on the April subdivision application so that they could try and resolve the trustees concerns. The delay in getting subdivision approval resulted in Mr. Philbrick exercising his right to withdraw from the Swap Agreement because subdivision approval was not obtained by May 31, 2020. The selectmen encouraged Mr. Philbrick to reconsider his withdrawal. In an effort to address the Library Trustees concerns, Mr. Philbrick proposed a new concept whereby the ±0.4 acres would become two (2) lots (Lot A and Lot B), each 0.2 acres in size. Both lots would be conveyed to Mr. Philbrick in exchange at par for the bank property. The southerly lot (Lot B) would be conveyed by Mr. Philbrick back to the town for library use. The Library Trustees envisioned creating a park there at some time after the library expansion presently being planned was completed. The remaining lot (Lot A) would be developed by Mr. Philbrick. In mid-August the Library Trustees, Mr. Philbrick and the Select Board signed an Agreement in Principal to move forward with this concept. The Agreement in Principal had the trustees and Mr. Philbrick splitting the cost of demolishing the Parsonage and the trustees purchasing Lot B for \$250,000 from a bequest. Unfortunately, the Agreement in Principal fell apart at the end of August. Since then the Select Board has worked with the trustees and Mr. Philbrick to try and, once again, get the swap back on track. At the urging of the Selectmen Mr. Philbrick recently made the following proposal. Its basic framework is acceptable to the Select Board.

1. The selectmen will demolish the two Parsonage buildings. They have the authority to do this under their prudential authority and their authority to manage town property.
2. The exchange at par was authorized by the 2020 Town Meeting and will move forward once Mr. Philbrick receives all permits and approvals for his redevelopment of the 0.4 acre parcel.
3. When the exchange is complete, Mr. Philbrick will reimburse the town for its expense in demolishing the buildings.
4. Mr. Philbrick will redevelop the northern part of the parcel with a historically appropriate four-unit dwelling and an attached office. Historic District Commission approval of his plans will be required.
5. The southerly 75 feet of the 0.4 acre parcel adjacent to the library will be preserved (via a deed restriction) as landscaped open space to be designed, established and controlled by Mr. Philbrick. This open space will enhance the visual prominence of the library and town museum, two of the most important buildings in the town center.
6. Mr. Philbrick will redevelop the northern part of the parcel with a historically appropriate four-unit dwelling and an attached office. Historic District Commission approval of his plans will be required.
7. Mr. Philbrick will be granted a license allowing him the use of three parking spaces at the end of the library/museum parking lot. The Select Board views this proposal by Mr. Philbrick as a win-win proposition.

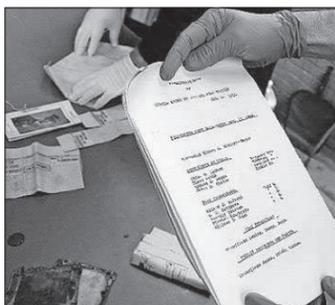
First, and most importantly, it accomplishes the swap of the two properties which town voters authorized eight months ago. That will allow the overcrowding at town hall to be alleviated and the second floor of town hall to be restored to its former historic grandeur. Second, it rids the Town of a significant financial liability and public safety hazard that the vacant Parsonage provides. Once the Parsonage was vacated of tenants, inspections by town officials and a historic preservation expert revealed that there were serious structural deficiencies and safety hazards in the building and significant deferred maintenance. Remodeling over the years has destroyed the historic significance of the buildings. The razing the buildings at no cost to the town will remove the financial burden of owning the buildings and rid the town of having a deteriorating, vacant hazard in the middle of the Town Center. The selectmen believe the Rye Public Library will benefit from this latest proposal. It will create a 75 ft. by 90 ft. area of attractively landscaped open space immediately adjacent to the future library expansion at no expense to the library. Mr. Philbrick has indicated a willingness to allow the Library Trustees to use the open space for library functions from time to time. The \$250,000 which the library would have spent to acquire Lot B under the aborted Lot A/Lot B proposal (as well as the \$16,000 to \$18,000 library share of demolition costs) can be used instead to jump start the fund drive for the proposed new Library expansion.

The selectmen note that this is the first Warrant Article aimed at solving the town hall space shortage that has passed in a decade. It passed because it is fiscally responsible. The property exchange is at par, and the funds necessary to fit up the former bank building will come from the sale of the trolley barn.

For all of these reasons, the Rye Select Board intends to accomplish the will of town voters by moving forward with the exchange at par of the two properties in accordance with Mr. Philbrick's proposal.



Portsmouth firefighters look through the mementos of a time capsule placed in a cornerstone of the Court Street firehouse in Portsmouth, dated Oct. 13, 1919, 101 years ago.



Portsmouth Fire Chief Todd Germain holds the program for the corner stone time capsule dedication ceremony from Oct. 13, 1919, which was opened on Friday after 101 years.

Legal Notice Town of Rye, New Hampshire Request for Proposals

The Town of Rye, NH is soliciting proposals from suppliers interested in providing a 30 cubic yard roll-off rubbish container with metal roll top equal to a Rudco Products standard container. Interested contractors should contact the Town of Rye, Public Works Department, 309 Grove Road, Rye, NH 03870, by phone 964-5300; by fax 964-9708, or by e-mailing dmccarthy@town.rye.nh.us to obtain a copy of the proposal criteria.

Proposals must be received in the Selectmen's Office, 10 Central Road, Rye, NH 03870, no later than 2:00 p.m., Thursday, November 12, 2020.

PM-00504901

Legal Notice PUBLIC HEARING ON PROPOSAL LEGAL/PUBLIC NOTICE PLANNING BOARD TOWN OF STRATHAM

Notice is hereby given that a public hearing will be held on November 18, 2020 at 7:00 PM at the Stratham Municipal Center, 10 Bunker Hill Avenue, Stratham, NH to discuss the following:

- **FIRM Updates for 2021.** Town of Stratham Planning Board proposing changes to Site Plan and Subdivision Regulations for purposes of complying with NH Office of Strategic Initiatives guidance for compliance with the new Rockingham County FEMA Flood Insurance Rate Maps (FIRM) and Flood Insurance Study (FIS) that will become effective January 29, 2021.
- **Driveway Regulations.** Town of Stratham Planning Board proposing Driveway Regulations, an amendment to the Subdivision Regulations Addendum A for increased consistency with NH RSA 236:13.
- **Exterior Site Lighting.** Town of Stratham Planning Board proposing an amendment to the Site Plan Regulations Section 5.8.1 related to exterior lighting and dark sky compliance.
- **Proposed Town Warrant Article – Historic Demolition Review.** To see if the Town will amend the Zoning Ordinance, Section XVI, Section 16.5.3 Procedure, by adding 16.5.3 d to clarify the permitting requirements and procedures for Historic Demolition Review; Pursuant to NH RSA 674:16, 675:3, and 675:7.

The public may also access this meeting at the date and time above using this conference call information. Please dial 1-800-764-1559 and input 4438 when prompted for a user pin/code. Please follow the Chair's instructions delivered at the meeting in order to register comments during the public meeting. If at any time during the meeting you have difficulty hearing the proceedings, please call 603-772-7391 ext. 147

Full text of the proposed projects and related information can be found on file with the Stratham Planning Department and posted on the Town website at www.strathamnh.gov/planning-board. All interested persons may be heard. Persons needing special accommodations and/or those interested in viewing the application materials should contact the Stratham Planning Department at (603) 772-7391 ext. 180

PM-00504934

Legal Notice INVITATION TO BID

Three New 2021 Chevy Tahoe Police Vehicles

Sealed bids for furnishing the Town of Kittery, Maine with three new 2021 Police Utility Vehicles, as per specifications will be received by the Chief of Police, Police Department, 200 Rogers Road, Kittery ME, 03904 until 2:00 PM, Friday, November 13, 2020, at which time they will be publicly opened and read. Proposals will be submitted in sealed envelopes, plainly marked: "Proposal for 2021 Police Vehicles". No facsimiles. Specifications may be obtained at Kittery Police Department or contact Dani at 207-439-1638 or dlinman@kitterypolice.com.

PM-00504860

LEGAL NOTICE ELIOT BOARD OF APPEALS

TYPE OF MEETING: Zoom Meeting
DATE: November 19th, 2020
TIME: 7:00 P.M.
LOCATION: Remote Zoom Meeting
PUBLIC HEARINGS:
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PM-00504964

Legal Notice

Wright Ryan, acting as the Town of Kittery's Construction Manager, is soliciting bids for sub-trade contractors for the Rice Public Library Renovation and Expansion project. Construction is scheduled to begin March 2021. Non-mandatory pre-bid meetings will be held on Monday November 2, at 10:00 am and on Thursday November 5 at 8:00 am. Face masks and social distancing measures will be required. For more information, bid documents, qualification requirements, and deadline information contact Sean Keay, Preconstruction Manager, Wright Ryan Construction Inc. skeya@wright-ryan.com or at 207-773-3625 extension 42.

PM-00504907



500 foot Abutters List Report

Eliot, ME
October 26, 2020

Subject Property:

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

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

Abutters:

Parcel Number: 011-038-000
CAMA Number: 011-038-000
Property Address: 299 BOLT HILL RD

Mailing Address: PUBLIC SERVICE CO OF NH DBA
EVERSOURCE ENERGY
PO BOX 270
HARTFORD, CT 06141-0270

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

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

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

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

Parcel Number: 023-008-000
CAMA Number: 023-008-000
Property Address: 135 HAROLD L DOW HWY

Mailing Address: PICKETT, TIM A
PO BOX 242
ELIOT, ME 03903

Parcel Number: 023-010-000
CAMA Number: 023-010-000
Property Address: 126 HAROLD L DOW HWY

Mailing Address: POLLARD, JOHN ERIC ARCHER, CARL
LEONARD
PO BOX 61
ELIOT, ME 03903

Parcel Number: 023-025-000
CAMA Number: 023-025-000
Property Address: 143 HAROLD L DOW HWY

Mailing Address: PICKETT, TIM
PO BOX 242
ELIOT, ME 03903

Parcel Number: 029-020-000
CAMA Number: 029-020-000
Property Address: 178 HAROLD L DOW HWY

Mailing Address: PATHFINDER BUSINESS OFFICES LLC
33 CREEKVIEW DR
ELIOT, ME 03903

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

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

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

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

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

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



www.cai-tech.com

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



500 foot Abutters List Report

Eliot, ME
October 26, 2020

Parcel Number: 029-026-000 CAMA Number: 029-026-000 Property Address: 19 LEVESQUE DR	Mailing Address: ELIOT COMMONS PROFESSIONAL PARK C/O HASKELL KINGSTON & ROBERT KLINE 19 LEVESQUE DR 2 ELIOT, ME 03903
Parcel Number: 029-027-001 CAMA Number: 029-027-001 Property Address: 33 LEVESQUE DR	Mailing Address: M H PARSONS & SONS LUMBER CO WOODBIDGE RD YORK, ME 03909
Parcel Number: 029-027-002 CAMA Number: 029-027-002 Property Address: 38 LEVESQUE DR	Mailing Address: ELIOT COMMONS SENIOR HOUSING LLC 470 FORE ST STE 400 PORTLAND, ME 04101
Parcel Number: 029-027-01A CAMA Number: 029-027-01A Property Address: 28 LEVESQUE DR	Mailing Address: SEA DOG REALTY LLC 86 NEWBURY ST PORTLAND, ME 04101
Parcel Number: 029-029-000 CAMA Number: 029-029-000 Property Address: 150 BEECH RD	Mailing Address: YORK/CUMBERLAND MGMT CORP BARON PLACE LABRECQUE PROPERTY MANAGEMENT PO BOX 460 SEBATTUS, ME 04280-0460
Parcel Number: 030-001-000 CAMA Number: 030-001-000 Property Address: 235 HANSCOM RD	Mailing Address: GREEN, JONATHAN B GREEN, BRENDA 235 HANSCOM RD ELIOT, ME 03903
Parcel Number: 030-001-001 CAMA Number: 030-001-001 Property Address: 229 HANSCOM RD	Mailing Address: DODGE, SHIRLEY G 229 HANSCOM RD ELIOT, ME 03903
Parcel Number: 030-001-002 CAMA Number: 030-001-002 Property Address: 223 HANSCOM RD	Mailing Address: POLLOCK, CRAIG S 223 HANSCOM RD ELIOT, ME 03903
Parcel Number: 030-003-000 CAMA Number: 030-003-000 Property Address: 150 HAROLD L DOW HWY	Mailing Address: SHAPLEIGH, NANCY E 28 SANDY HILL LN ELIOT, ME 03903
Parcel Number: 030-004-000 CAMA Number: 030-004-000 Property Address: 247 HANSCOM RD	Mailing Address: WILLIAMS, MICHAEL T WILLIAMS, AMANDA M 247 HANSCOM RD ELIOT, ME 03903



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10/26/2020

Page 2 of 2

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

REQUEST FOR WAIVER

Dear Appellant:

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

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

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

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

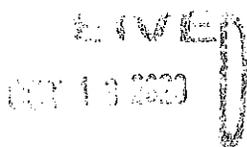
Be sure to complete the application form and provide the Board with documentation of your case. You may bring to the hearing any witnesses you wish to have present evidence on your behalf about the property in question, any sworn written statements from individuals with personal knowledge of the property,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

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

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

Twenty-Five Dollars (\$25.00) shall be submitted by the appellant with the application. In addition, mailing and newspaper costs shall be chargeable to the appellant. See Code Enforcement Officer for mailing and newspaper costs.

**BOARD OF APPEALS
REQUEST FOR WAIVER**



Zone : C/I
Lot Size : 7.69 acres
Tax Map/Lot : 29/25
Date : 9/25/2020

APPLICANT NAME : Warren Ave AF LLC d/b/a Atlantic Farms
MAILING ADDRESS : 460 Warren Ave
TOWN : Portland ME 04103
OWNER OF PROPERTY : Matthew Letellier Hrs or Dev, C/O Eliot Donuts LLC

LOCATION (ADDRESS) OF PROPERTY: 155 Harold Dow Highway, Unit 2, Eliot, ME 03903

YORK COUNTY REGISTRY: BOOK 10026 PAGE 0032

Please also include:

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

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

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

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

Atlantic Farms proposes to operate an adult use marijuana retail store at 155 Harold L. Dow Highway, Eliot, Maine 03903. The property in question is located within the Commercial Industrial Zoning District (Map 29, Lot 25), on a non-conforming lot of record. Atlantic Farms is seeking a waiver from the buffer setbacks provided in Eliot, Me., Code of Ordinances § 33-190(5) for marijuana retail stores. Atlantic Farms is seeking to occupy the rear space of the building (Unit 2) at 155 Harold Dow Highway, which has remained vacant while actively marketed for three years. This building is within the 500 foot buffer setback from the U.S. Post Office. Specifically, it is 380 feet from the U.S. Post Office property line. Atlantic Farms hereby requests a waiver of 120 feet, a 24% reduction in the buffer distance.

Atlantic Farms also seeks a waiver of the 500 foot buffer for a small number of residential properties within the C/I zone. Specifically, Atlantic Farms requests a 36.8% reduction from Parcel #30-4 down to 315.8 feet; a 35% reduction from Parcel #30-3 to 325 feet; a 34.1% reduction from Parcel #29-22 down to 329.2 feet; and a 6.4% reduction from Parcel 23-25 down to 468 feet. Atlantic Farms has received verbal and/or written support from each resident of these properties.

The Board of Appeals will use the following to evaluate request for dimensional Waivers. All applicants for dimensional waivers under the provisions of Section 45-194 should answer the following questions to the best of their ability. If Board members desire additional information they will ask for it at the Public hearing on your request.

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

The waiver is necessary due to this property's status as a nonconforming lot and due to the presence of the Great Creek wetlands covering the majority of the property. This lot is irregularly shaped, such that it is extremely

narrow and very long. Due to this nonconforming shape, and because the wetlands at the rear of the property made the vast majority of the lot unbuildable, the building was, by necessity, situated within close proximity of the existing residential properties located on Route 236. Had the property been dry, and the lot of required proportions, it is likely that the building would have been situated the required distance from the residential parcels.

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

Granting the waivers will not alter the essential character of the locality. The retail store would be housed within an existing retail space, behind the Dunkin' shop currently operating. This site is a commercial lot operating in close proximity to other commercial properties; the Eliot Commons shopping center is next door, and the Irving Gas Station, Kennebunk Savings Bank, and many other retail and commercial sites are in equally close proximity.

No exterior construction or site modification would need to occur in order to begin operating at this space. The retail store cannot easily be viewed from the road, due to its placement at the rear of the Dunkin' plaza. Moreover, residential abutters within the 500 foot buffer (those the ordinance seeks to shield from marijuana retail activities) have expressed unanimous support for Atlantic Farms to occupy this space as an adult use marijuana retail store. The Post Office is separated from the Atlantic Farms' proposed retail site by a stretch of thick woods, which completely obscures visibility between the buildings. Thus, residents accessing the Post Office will not have a view of the Atlantic Farms' site.

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

The hardship is not the result of action taken by the applicant or a prior owner. The building was erected prior to the passage of the sensitive use buffer requirement in Code of Ordinances § 33-190(5).

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

No, granting the waivers will not reduce or impair the use of abutting property. Atlantic Farms seeks to be a responsible, respectful corporate citizen of Eliot. To that end, the owners of this company personally spoke with all adjacent land owners about Atlantic Farms' pursuit of this space as a retail location for their operation. The individuals living in the residential properties within 500 feet were unanimously supportive – each person expressed that they did not oppose Atlantic Farm's operation of an adult use retail store at 155 Harold Dow. Four of these individuals signed letters of non-opposition in order to demonstrate to the Board of Appeals that Atlantic Farm's occupation of this space should not be disallowed because of the proximity of their residence.

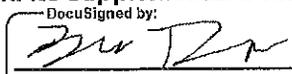
Moreover, granting the waiver for the U.S. Post Office will not impair the use of the Post Office by members of the general public. The Atlantic Farms retail store would be separated from the Post Office by a stretch of thick forest; as a result, vision from one building to the other is completely restricted. Moreover, the distance from the Atlantic Farms proposed shop and the Post Office building is 513 feet; the public would never step foot within the 500 foot buffer zone by visiting the Post Office. Finally, the Atlantic Farms shop and the Post Office are accessed from two separate streets; one is accessed via Route 236, and the other is accessed from Levesque Drive. The driving distance between the two locations is over 1,200 feet.

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

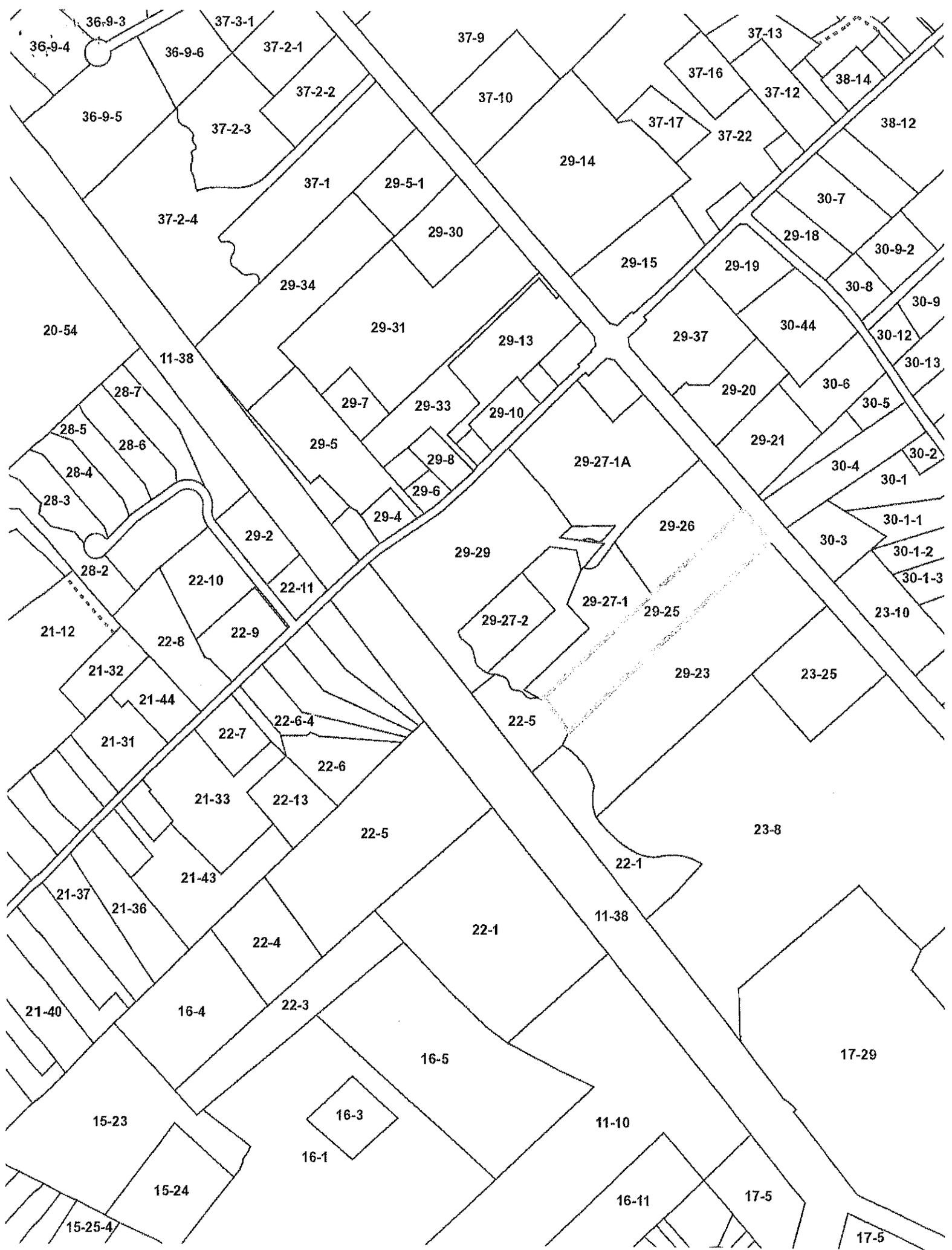
Yes, the request for waivers is based on demonstrated need. Within the C/I zone, the only zone which allows adult use marijuana retail stores, there are no other available properties for the applicant to locate this retail store. In fact, results of a comprehensive analysis of real estate listings in the last year showed that there has only been a single property (out of at least 14) available on the market in a year that meet the zoning and buffer standards in Section 33-190, and this parcel sold before Atlantic Farms began looking for a retail location in Eliot. For the owners of Atlantic Farms, some of whom are lifelong residents of Maine, Eliot is essential for the successful operation of their business. This property has been vacant while actively marketed for 3 years, and abutters have expressed a strong desire for a responsible, successful business to locate in this location. Atlantic Farms would take great pains to ensure its security, cleanliness, and aesthetic charm. With no other location available, the waivers are based on a demonstrated need.

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

DATE: 9/29/2020

Signed: 
DocuSigned by: Bryan Roach
8AC96515D2E6403... Appellant

Date accepted by Town Clerk or CEO:  Rawski Town Clerk
Wendy Rawski
received 10/13/2020

36-9-3
36-9-4
36-9-6
36-9-5

37-3-1
37-2-1
37-2-2
37-2-3
37-2-4

37-9
37-10

37-13
37-16
37-12
37-17
37-22

38-14
38-12

29-5-1
29-30
29-34
29-31

29-14

30-7

20-54

11-38

29-34

29-31

29-13

29-37

30-44

30-9

28-7
28-5
28-6
28-4
28-3

29-7

29-33

29-10

29-20

30-6

30-12

30-13

28-2

29-5

29-8

29-6

29-27-1A

29-21

30-4

30-2

30-1

21-12

29-2

29-29

29-26

30-3

30-1-1

30-1-2

30-1-3

22-10

22-11

29-27-1

29-25

23-10

21-32

22-8

22-9

29-27-2

29-23

23-25

21-44

22-6-4

22-5

21-31

22-7

22-6

21-33

22-13

22-5

23-8

21-43

22-1

21-37

21-36

22-4

22-1

11-38

21-40

16-4

22-3

16-5

17-29

15-23

16-3

11-10

16-1

16-11

17-5

15-25-4

15-24

17-5

May 19, 2020

Re: Proposed Lease Agreement ("Proposed Lease") covering certain premises located at 151 Harold L. Dow Highway, Eliot Maine ("Premises") to be entered into between **460 Warren Ave AF LLC d/b/a Atlantic Farms** ("Tenant") and **Eliot Donuts, LLC**, or assigns per below ("Landlord").

This letter shall constitute a non-binding letter of intent ("Letter of Intent") setting forth the preliminary understandings of the Tenant and the Landlord with respect to the business terms of the Proposed Lease. The business terms of the Proposed Lease are as follows:

Tenant: 460 Warren Ave AF LLC d/b/a Atlantic Farms

Guarantor: all principals of company shall guarantee performance and payment.

Tenant and Guarantors to submit financial statements to Landlord, execution of the Proposed Lease is subject to Landlord's receipt and satisfactory review of all financial statements.

Landlord: Eliot Donuts, LLC or a subtenant to be established to sublet the Premises

1. Premises: Approximately 1,997 sq. ft. of rentable area with a legal street address of 151 Harold L. Dow Highway, Eliot, Maine.
2. Possession Date: The Possession Date is the date Landlord delivers possession of the Premises to Tenant free of all other occupants' rights thereto and in "As is condition", which shall be upon the execution of the Proposed Lease.
3. Contingency Period: Tenant shall have ninety (90) days from execution of the Proposed Lease to receive all local and state permitting necessary to operate a Medical Marijuana Establishment and/or an Adult Use Marijuana Retail Establishment. Tenant will have the right to terminate the Proposed Lease if during the contingency period, Tenant does not receive all necessary permits, licenses and approvals to operate a Medical Marijuana Establishment and/or an Adult Use Marijuana Retail Establishment. Such right may be exercised by Tenant on seven (7) days written notice to Landlord. If Tenant is unable to obtain a permit for Medical Marijuana and/or Adult Use Marijuana Retail Establishment within such 90-day period due to the Town of Eliot's delay due to the current COVID 19 pandemic, Tenant may extend the Contingency Period for up to sixty (60) days, or until the approval of such permit, whichever is sooner upon prior written notice to Landlord.

Tenant shall give Landlord written notice within seven (7) days of Tenant's receipt of all necessary permits, licenses and approvals to operate a Medical Marijuana Establishment and/or an Adult Use Marijuana Retail Establishment. Upon this notification, the Contingency Period ends if not sooner.

Upon execution of the Proposed Lease Tenant shall pay in full the proposed monthly rent plus its proportionate share of additional rent (as set forth in the Proposed Lease) to Landlord to be used contingency payments during the Contingency Period. Contingency payments will be non-refundable.

4. Ongoing Contingency: After the expiration of the initial Contingency Period Tenant shall have the right, during the initial lease term to terminate the Proposed Lease if changes to local or state laws lead to the revocation of one or more permits required for Tenant to

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11. Maintenance: Tenant will maintain the interior of the Premises, the heating, ventilation and air conditioning systems (collectively, "HVAC Systems") of the Premises and the plumbing and electrical systems of the Premises during the lease term. Landlord will maintain the roof, exterior walls, foundation, underground or below the foundation sewer and utility pipes, lines, mains and conduits, the structural components and all common areas of the Premises.
12. Improvements: Landlord will deliver the Premises to Tenant in "As is Condition" to be further defined in the Proposed Lease.

Landlord shall permit the Tenant to undertake improvements as planned and necessary to operate a Medical and/or adult use Marijuana Dispensary, which improvements will be agreed upon and detailed in the Proposed Lease. No construction shall commence until the Contingency Period has expired or lapsed. Tenant will provide notification of all additional future planned improvements which will be subject to Landlord's written approval, which approval shall not be unreasonably withheld conditioned or delayed. Tenant retains ownership of all trade fixtures. Tenant to install state of the art HVAC to control elimination of any detectable odor outside the Premises
13. Permitted Use: Storage and packaging of cannabis, dispensing of cannabis to qualified patients and individuals over the age of 18 for Medical Marijuana, and 21 for Adult Use Marijuana and any other cannabis related activities as currently permitted by local and state law. This use is subject to Tenant obtaining all licenses and permits required under state and local law, and subject to Tenant's continuing compliance with all applicable state and local laws. Tenant shall be prohibited from expanding the type and scope of activities permitted on site without prior written approval of Landlord irrespective of the future change of state or municipal law permitting such activities
14. Assignment and Subletting: Tenant shall not have right to sublet the Premises to another Tenant, without Landlord's written approval, which shall not be unreasonably withheld, conditioned or delayed. Tenant shall have the right to assign the lease to affiliated or acquiring entities, subject to Landlord approval, which shall not be unreasonably withheld, conditioned or delayed, subject to reasonable financial review of any prospective tenant, and any such assignment shall not relieve the Tenant and Guarantors of any obligations under the Proposed Lease. Any increase in rent charged by Tenant on the assignment or sublet shall accrue to the benefit of the Landlord.
15. Signage: Subject to municipal and state approvals Tenant will have the right to place its exterior signs on the Premises and a panel on the existing pylon sign at the location during the lease term, subject to Landlord's approval, Signage will adhere to all applicable local and state regulations.
16. Zoning Classification: it shall be Tenant's responsibility to determine the zoning classification and permitted uses of the Premises prior to execution of the Proposed Lease
17. Additional Information: Landlord or his Agent shall prepare the Proposed Lease.
18. Governing Law: The applicable laws in the State of Maine will govern the Proposed Lease for this transaction.
19. Casualty, Taking & Condemnation: In the case of damage to the Premises for which repair costs exceed sixty-five percent (65%) of the replacement value of the Premises,

operate one or more of its Permitted Uses at the Premises, provided such revocation is not as a result of Tenant's actions (the "Buy Out"). Tenant may exercise the Buy Out upon six (6) months prior written notice to Landlord ("Buy Out Notice"), and shall pay to Landlord at the time of the Buy Out Notice an amount equal to six (6) months' rent at the then current rent rate including its proportionate share of additional rent, in which case the lease term will terminate six (6) months after the date of said Buy Out Notice, and during which time Tenant shall be responsible for monthly rental payments and its proportionate share of additional rent, and if Tenant fails to make monthly rental payments during such period of time Tenant's liability to Landlord shall include the monthly rental obligation for the remainder of the lease term.

5. Commencement Date: Lease payments begin on the Possession Date.
6. Lease Term: The initial lease term shall be for a period of sixty (60) full months, beginning on the Possession Date. Upon the expiration of the initial lease term, Tenant shall have three (3) options to extend for an additional five (5) years each.
7. Base Rent: Base rent during the lease term shall be:

So long as Tenant is operating under a Medical Marijuana license and is unable to obtain an Adult Use Marijuana Retail Establishment license the rent shall be as follows:

- a) Years 1-5: **Three Thousand Five Hundred Dollars (\$3500)** per month, plus Tenant's proportionate share of additional rent (as set forth in the Proposed Lease), with 3.00% yearly increases in rent.
- b) Years 6-10: Based on the previous year's rent, plus Tenant's proportionate share of additional rent, with 3.00% yearly increases in rent.
- c) Years 10-15: Based on the previous year's rent, plus Tenant's proportionate share of additional rent, with 3.00% yearly increases in rent.

At such time as Tenant receives an Adult Use Marijuana retail establishment license, or if no license is required, at such time as Tenant sells marijuana for adult recreational use, the base monthly rent shall be increased to \$5,000 per month until the next anniversary date of the lease with 3.00% yearly increases thereafter.

Additional Rent: Tenant shall be responsible for the monthly payment of its portion of taxes, insurance and common area maintenance including snow plowing and landscaping and common area utilities. Tenant's proportionate share of additional rent shall be based upon a fraction, the numerator of which shall be the square footage of the leased Premises, and the denominator of which shall be the total square footage of the building.

8. Utilities: Tenant will pay for all utilities serving the Premises during the lease term.
9. Real Estate Taxes: Tenant will pay its proportionate share of all real estate taxes assessed against the Premises during the lease term.
10. Insurance: Tenant be responsible as part of additional rent to pay for its portion of the cost to insure the Premises at the full replacement value against all fire and other casualties during the lease term and shall be responsible for any additional costs incurred by Landlord for insuring the site due to Tenant's use of the Premises for sale of cannabis. Tenant will provide general liability insurance, listing Landlord as additional insured, of \$1,000,000.00 during the lease term.

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Tenant may cancel the Proposed Lease if it is forced to discontinue revenue operations for more than thirty (30) days cumulative, although Tenant will in all cases be required to contribute all insurance proceeds.

20. Security Deposit: Tenant shall deliver to Landlord a refundable security deposit of \$3,500 plus first month's rent of \$3,500 as well as its proportionate share of additional rent due upon the execution of the Proposed Lease. Upon the expiration or earlier termination of the Proposed Lease, so long as Tenant is not then in default, Landlord shall, within thirty (30) days return the Security Deposit to Tenant.
21. Brokerage Fee: Landlord is responsible for all brokerage fees, which shall be paid pursuant to a separate agreement between Landlord and Broker.

The parties hereto understand and expressly acknowledge that there remain essential elements of the Proposed Lease yet to be negotiated and agreed upon. It is the express mutual intention of the parties hereto that this Letter of Intent shall not give rise to any legally binding contractual obligations between the parties hereto. Instead, this Letter of Intent only expresses the intention of the parties hereto to conduct negotiations which may or may not result in the formation and consummation of a binding lease agreement; provided, however, the parties are legally bound to negotiate in good faith. The parties hereto also agree that any expenses incurred in anticipation of entering a binding lease agreement shall be borne exclusively by the party making such expenditures unless otherwise provided. This letter of intent shall terminate without further obligation of either party in the event a lease agreement is not executed within 30 days of the date hereof

Sincerely,

Atlantic Farms Management LLC

By:  Date: 5/17/20

Agreed and accepted:
Eliot Domus, LLC

By:  Date: 5/19/20
Durval Salema

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Atlantic Farms - Eliot



PROJECT
NORTH



ALPHA Architects
17 CHESTNUT STREET
PORTLAND, ME 04101
PHONE: 207.761.9800
FAX: 207.761.9195
alpha@alphaarchitects.com

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of ALPHA ARCHITECTS

PRELIMINARY:
NOT FOR
CONSTRUCTION

Atlantic Farms - Eliot
151, ME-236
ELIOT, ME. 03908

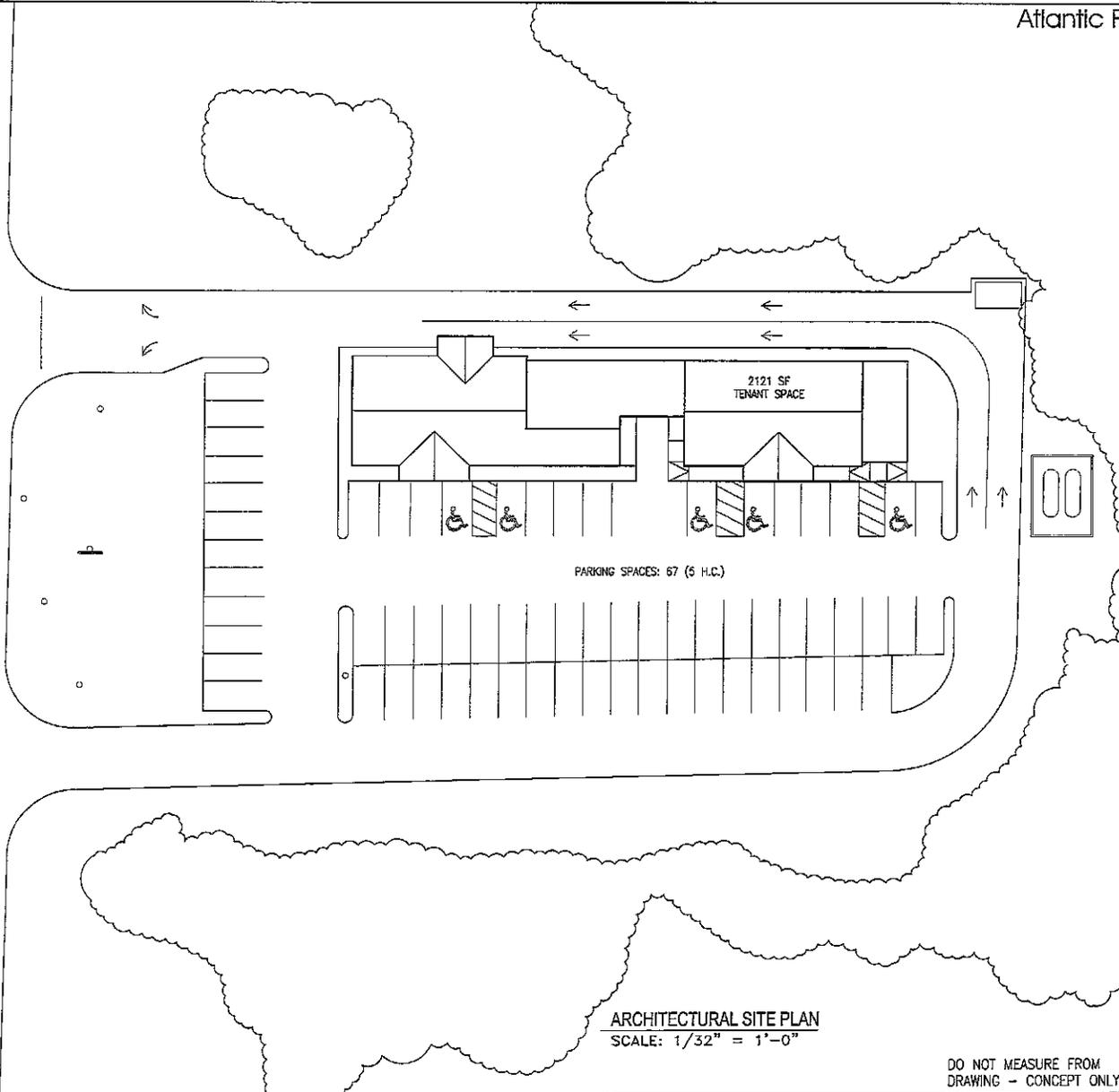
JOB: 20140

ISSUE DATE	
PRELIM	-
P BOARD	-
SFMO	-
CDs	-
PERMIT	-
REV. 2	-

ARCHITECTURAL
SITE DRAWING

A0.1

ME-236



ARCHITECTURAL SITE PLAN
SCALE: 1/32" = 1'-0"

DO NOT MEASURE FROM
DRAWING - CONCEPT ONLY 08-17-20



ALPHAarchitects
 17 CHESTNUT STREET
 PORTLAND, ME 04101
 PHONE: 207.761.9500
 FAX: 207.761.9596
 design@alpharchitects.com

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 written consent of ALPHA ARCHITECTS

FOR REVIEW
 ONLY: NOT FOR
 CONSTRUCTION

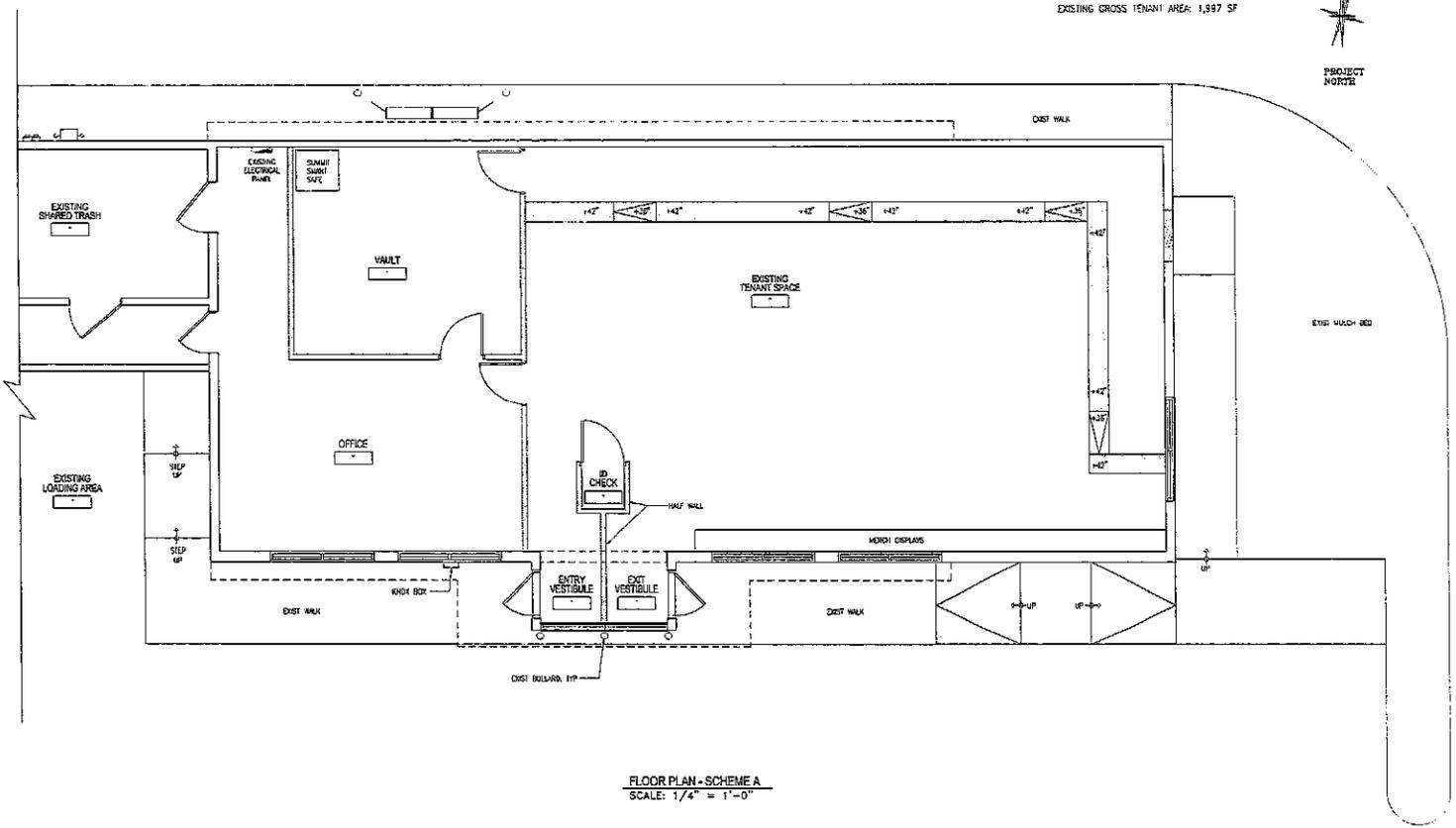
Atlantic Farms Elliot
 157, ME-2306
 ELLIOT, ME 03903

JOB: 20140

ISSUE DATE	
PRELIM	
SFVMO	
CDs	
REV. 1	
REV. 2	
REV. 3	

FIRST FLOOR
 SCHEME A
A

EXISTING GROSS TENANT AREA: 1,997 SF



FLOOR PLAN - SCHEME A
 SCALE: 1/4" = 1'-0"

8-14-20

June 2, 2020

Mr. William Hamilton
Chairman
Eliot Board of Appeals
Town of Eliot
1333 State Road
Eliot, Maine 03903

Re: Atlantic Farms at 155 Harold Dow Highway

Dear Mr. Hamilton,

I am writing in regards to Atlantic Farm's occupation of 155 Route 236, the site of the former Dunkin Donuts. I have spoken with their Manager, Bryan Roach, and he explained to me their hopeful plans for that site. I understand that my property line is an issue for their occupation of the site because it is within 500 feet of the building. Without a waiver from the Board of Appeals, the proximity of my property would prevent Atlantic Farms from locating at 155 Route 236.

I would like to express that I have no objection whatsoever to Atlantic Farms locating at 155 Harold Dow Highway, within 500 feet of my property line. I am in favor of bringing in a responsible tenant at that location, and I am satisfied that Mr. Roach and Atlantic Farms will be respectful neighbors who will bring in revenue for our town.

Though I understand your goal is to protect property owners within 500 feet of proposed marijuana retail establishments – namely, me – please do not use my property as a reason to deny them their request for a waiver.

Thank you.

Sincerely,

Sara Hamman

207 339-0637

June 2, 2020

Mr. William Hamilton
Chairman
Eliot Board of Appeals
Town of Eliot
1333 State Road
Eliot, Maine 03903

Re: Atlantic Farms at 155 Harold Dow Highway

Dear Mr. Hamilton,

I am writing in regards to Atlantic Farm's occupation of 155 Route 236, the site of the former Dunkin Donuts. I have spoken with their Manager, Bryan Roach, and he explained to me their hopeful plans for that site. I understand that my property line is an issue for their occupation of the site because it is within 500 feet of the building. Without a waiver from the Board of Appeals, the proximity of my property would prevent Atlantic Farms from locating at 155 Route 236.

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Though I understand your goal is to protect property owners within 500 feet of proposed marijuana retail establishments – namely, me – please do not use my property as a reason to deny them their request for a waiver.

Thank you.

Sincerely,

THOMAS GOULD
150A-L-Dow HWY
ELIOT ME 03903

June 2, 2020

Mr. William Hamilton
Chairman
Eliot Board of Appeals
Town of Eliot
1333 State Road
Eliot, Maine 03903

Re: Atlantic Farms at 155 Harold Dow Highway

Dear Mr. Hamilton,

I am writing in regards to Atlantic Farm's occupation of 155 Route 236, the site of the former Dunkin Donuts. I have spoken with their Manager, Jackson McLeod, and he explained to me their hopeful plans for that site. I understand that my property line is an issue for their occupation of the site because it is within 500 feet of the building. Without a waiver from the Board of Appeals, the proximity of my property would prevent Atlantic Farms from locating at 155 Route 236.

I would like to express that I have no objection whatsoever to Atlantic Farms locating at 155 Harold Dow Highway, within 500 feet of my property line. I am in favor of bringing in a responsible tenant at that location, and I am satisfied that Mr. McLeod and Atlantic Farms will be respectful neighbors who will bring in revenue for our town.

Though I understand your goal is to protect property owners within 500 feet of proposed marijuana retail establishments – namely, me – please do not use my property as a reason to deny them their request for a waiver.

Thank you.

Sincerely,



Tim Pickett
143 Dow Hwy
Eliot Maine

September 2, 2020

Mr. William Hamilton
Chairman
Eliot Board of Appeals
Town of Eliot
1333 State Road
Eliot, Maine 03903

Re: Atlantic Farms at 155 Harold Dow Highway

Dear Mr. Hamilton,

I am writing in regards to Atlantic Farm's occupation of 155 Route 236, the site of the former Dunkin Donuts. I have spoken with their Manager, Bryan Roach, and he explained to me their hopeful plans for that site. I understand that my property line is an issue for their occupation of the site because it is within 500 feet of the building. Without a waiver from the Board of Appeals, the proximity of my property would prevent Atlantic Farms from locating at 155 Route 236.

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Though I understand your goal is to protect property owners within 500 feet of proposed marijuana retail establishments – namely, me – please do not use my property as a reason to deny them their request for a waiver.

Thank you.

Sincerely,

[name]
[address]

Mike & Amanda Williams
247 Hanscom rd
Eliot, ME 03903

Michael Williams
Amanda Williams

CURRENT OWNER			TOPO	UTILITIES	STRT/ROAD	LOCATION	CURRENT ASSESSMENT			
LETELLIER, MATTHEW HRS OR DEV C/O ELIOT DONUTS LLC 369 LAFAYETTE ST HAMPTON NH 03842			1 Level	2 Public Water 6 Septic	1 Paved	1 Urban	Description	Code	Appraised	Assessed
							COMMERC.	3260	718,200	718,200
							COM LAND	3260	174,800	174,800
							COMMERC.	3260	80,000	80,000
SUPPLEMENTAL DATA										
Alt Prcl ID STYLE GROSS EFFEC PHOTO GIS ID 29-25				PRECINC HEART TIF Assoc Pid#						
							Total	973,000	973,000	

4509

ELIOT, ME

VISION

RECORD OF OWNERSHIP		BK-VOL/PAGE	SALE DATE	Q/U	V/I	SALE PRICE	VC	PREVIOUS ASSESSMENTS (HISTORY)									
LETELLIER, MATTHEW HRS OR DEVS SEAWARDS RICHARD L MANTIS ANDREW T		10026 9271 4132	0032 0205 0208	05-17-2000 01-19-1999 12-29-1986	U Q Q	I I I	8,000 205,000 135,000	1J 00 00	Year	Code	Assessed	Year	Code	Assessed	Year	Code	Assessed
								2020	3260	718,200	2019	3260	718,200	2019	3260	718,200	
									3260	174,800		3260	174,800		3260	174,800	
									3260	80,000		3260	80,000		3260	80,000	
								Total	973000		Total	973000		Total	973000		

EXEMPTIONS				OTHER ASSESSMENTS			
Year	Code	Description	Amount	Code	Description	Number	Amount
			0.00				

This signature acknowledges a visit by a Data Collector or Assessor

ASSESSING NEIGHBORHOOD			
Nbhd	Nbhd Name	B	Tracing
0001			

NOTES		APPRAISED VALUE SUMMARY	
DUNKIN DONUTS		Appraised Bldg. Value (Card)	707,600
		Appraised Xf (B) Value (Bldg)	10,600
		Appraised Ob (B) Value (Bldg)	80,000
		Appraised Land Value (Bldg)	174,800
		Special Land Value	0
		Total Appraised Parcel Value	973,000
		Exemption	0
		Valuation Method	C
		Total Appraised Parcel Value	PARCEL_PRC_net_pa

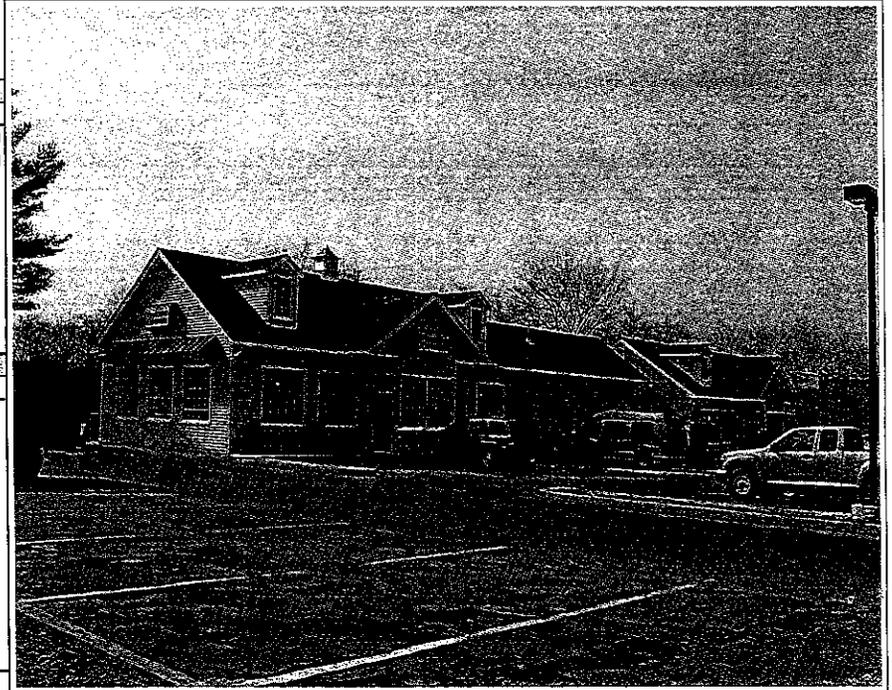
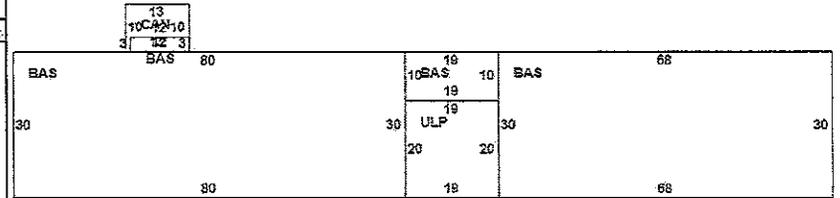
BUILDING PERMIT RECORD										VISIT / CHANGE HISTORY					
Permit Id	Issue Date	Type	Description	Amount	Insp Date	% Comp	Date Comp	Comments	Date	Id	Type	Is	Cd	Purpost/Result	
13-124	12-16-2013	RE	Remodel	120,000	01-31-2014	100	01-31-2014	REMODELING SERVICE DINI	05-06-1997	FG			00	Measur+Listed	
04-145	07-23-2004	AD	SIGNS	5,000											
04-069	06-02-2004	NC	New Construct	580,000		100									

LAND LINE VALUATION SECTION																
B	Use Code	Description	Zone	Land Type	Land Units	Unit Price	I. Factor	Site Index	Cond.	Nbhd.	Nbhd Adj	Notes	Location Adjustment	Adj Unit Pric	Land Value	
1	3260	REST/CLUBS	C/I		43,560 SF	2.45	1.40000	G	1.00		1.000			0	3.43	
1	3260	REST/CLUBS	C/I		6,690 AC	8,000	1.00000	0	0.50		1.000			0	3,800	
Total Card Land Units					7,690 AC	Parcel Total Land Area: 7.6900					Total Land Value					174,800

CONSTRUCTION DETAIL			CONSTRUCTION DETAIL (CONTINUED)		
Element	Cd	Description	Element	Cd	Description
Style:	21	Fast Food Rest			
Model	94	Commercial			
Grade	04	Average +10			
Stories:	1				
Occupancy	2.00				
Exterior Wall 1	25	Vinyl Siding			
Exterior Wall 2					
Roof Structure	03	Gable/Hip			
Roof Cover	03	Asph/F Glis/Cmp			
Interior Wall 1	05	Drywall/Sheet			
Interior Wall 2					
Interior Floor 1	11	Ceram Clay Til	RCN		769,100
Interior Floor 2					
Heating Fuel	03	Gas	Year Built		2004
Heating Type	01	None	Effective Year Built		2004
AC Type	03	Central	Depreciation Code		A
Bldg Use	3260	REST/CLUBS	Remodel Rating		
Total Rooms			Year Remodeled		
Total Bedrms	00		Depreciation %		8
Total Baths	0		Functional Obsol		0
Heat/AC	01	HEAT/AC PKGS	Economic Obsol		0
Frame Type	02	WOOD FRAME	Trend Factor		1
Baths/Plumbing	02	AVERAGE	Condition		
Ceiling/Wall	05	SUS-CEIL & WL	Condition %		
Rooms/Prtns	02	AVERAGE	Percent Good		92
Wall Height	10.00		RCNLD		707,600
% Comn Wall	0.00		Dep % Ovr		
1st Floor Use:	3260		Dep Ovr Comment		
			Misc Imp Ovr		
			Misc Imp Ovr Comment		
			Cost to Cure Ovr		
			Cost to Cure Ovr Comment		

OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)										
Code	Description	L/B	Units	Unit Price	Yr Bilt	Cond. Cd	% Good	Grade	Grade Adj	Appr. Value
DUW	DRIVE-UP WIN	B	1	11500.00	2004		92		0.00	10,600
PAV1	PAVING-ASPH	L	40,000	2.00	2008		100		0.00	80,000

BUILDING SUB-AREA SUMMARY SECTION						
Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprec Value
BAS	First Floor	4,666	4,666	4,666	0	
CAN	Canopy	0	130	26	0	
FEP	Porch, Enclosed, Finished	0	65	42	0	
ULP	Loading Platform, Unfinished	0	380	76	0	
Ttl Gross Liv / Lease Area		4,666	5,241	4,810		



BK 10026PG032

020083

WARRANTY DEED

RICHARD L. SEAWARDS, of 443 Portland Avenue, Rollinsford, New Hampshire, for consideration paid, grant to Matthew Letellier of 146 River Road, Eliot, Maine, with WARRANTY COVENANTS, the land in Eliot, County of York, State of Maine.

A certain lot or parcel of land together with the buildings and improvements thereon situated on the Westerly side of Route 236 in the Town of Eliot, County of York and State of Maine and bounded and described as follows:

Beginning at a stake situated on the westerly side of said Route 236 and at the southeasterly corner of the premises herein conveyed and the northeasterly corner of premises now or formerly belonging to Raymond Benoit; thence running in a westerly direction by and along said Raymond Benoit's land, one hundred fifty (150) feet, more or less, to a stake and land now or formerly of John W. Benoit, et ux; thence turning and running in a northerly direction by and along other land of said John W. Benoit one hundred (100) feet, more or less, to a stake and land now or formerly of the Willis Estate; thence turning and running in an easterly direction by and along said land of the Willis Estate, one hundred fifty (150) feet, more or less, to a stake and said Route 236; thence turning and running in a southerly direction by and along Route 236, one hundred (100) feet, more or less, to the point of beginning.

Also one other certain lot or parcel of land situated in the Town of Eliot, County of York and State of Maine, on the westerly side of Route 236, bounded and described as follows, to wit:

Beginning at a stake situated on the westerly side of said Route 236 at the southeasterly corner of the premises herein conveyed and at the southwesterly corner of land now or formerly of Keith C. Ferguson, et al; thence running in a westerly direction by and along land now or formerly of John W. Benoit and Flora D. Benoit one hundred fifty (150) feet, more or less, to a stake and land now or formerly of James Place; thence turning and running in a northerly direction by and along said Place land one hundred (100) feet, more or less, to the land now or formerly of the Willis Estate; thence turning and running in an easterly direction by and along said Willis Estate land one hundred fifty (150) feet, more or less, to land now or formerly of Keith Ferguson, et al; thence turning and running in a southerly direction by and along said Ferguson land, one hundred (100) feet, more or less, to the point of beginning.

Being the same premises conveyed to Richard L. Seawards and Matthew Letellier by Warranty Deed of Andrew T. Mantis and Edith A. Mantis dated January 19, 1999 and recorded in the York County Registry of Deeds Book 9271, Page 205.

MAINE R.E. TRANSFER TAX PAID

Witness my hand this 17 day of MAY, 2000.

James H. Schulte Richard L. Seawards
Richard L. Seawards
THE STATE OF New Hampshire
County of Stratford May 17, 2000

Then personally appeared the above-named Richard L. Seawards and acknowledged the foregoing instrument to be their free act and deed,

Before me,

James H. Schulte
Notary Public
Print Name:
My Commission Expires
JAMES H. SCHULTE
MY COMMISSION EXPIRES MARCH 8, 2002

RECEIVED YORK S.S.

2000 MAY 17 P 3:34

ATTEST: Lisa M. Rivas
REGISTER OF DEEDS

198 → Alex Nossiff
17 Pentland Ave
Dover NH 03820

Proposed Town Code Amendments Related to Variances

Discussion draft for Board of Appeals review, November 19, 2020

An earlier version of this draft was reviewed by the Planning Board on September 29, 2020, and the Planning Board advised for a draft to be reviewed by the Board of Appeals. Minor changes have been made from the September version to this one.

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.

The amendments 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 another type of variance, one relating to Chapter 25 – Floodplain Management Ordinance; these amendments do not change this.) 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 was already 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 text for a disability variance to make it consistent between the two chapters and consistent 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]. Any order, requirement, decision or determination made, or failure to act, in the enforcement of [the ordinance from which this chapter is derived] is not appealable to the board of appeals.

Commented [P6]: During the 9-29-20 Planning Board meeting, there was further discussion about these bracketed references here. Should they be replaced with more specific text?

(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.

Commented [P7]: This references some dimensional standards where it is noted that they shall not be altered by variance, e.g. maximum footprint of all principal/accessory structures associated with a single family residential structure permitted, by special exception, in the Resource Protection district [44-44(f)]

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

Commented [P8]: Redundant, as the definition of lot coverage already includes "percentage of"

(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.~~

(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 [P9]: 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.**

Commented [P10]: Use variances are now covered under subsection (4) below.

- (1) **A practical difficulty variance shall be granted only as provided in Section 45-194.**
- (2) **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.**
- (3) **A hardship variance shall be granted for any relaxation of dimensional standards not applicable to subsections (1) or (2).**

(4) A hardship variance shall be granted for any establishment or change to a different nonconforming use, except that no variance may be granted for any establishment or change to a different nonconforming use in a shoreland zoning district.

~~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)

Commented [P11]: The additional clause prohibiting use variances in shoreland zoning is to make this paragraph consistent with 44-47(b)(2). It has been added since PB review on 9-29-20. I think it is reasonable for the boards to contemplate additional criteria that must be met – over and above the hardship variance criteria – for a use variance to be issued. State law does allow for the municipality to add additional criteria to the undue hardship test. The overall principle here is that variances should be exceptions (something the Maine Municipal Association emphasizes), and arguably that is especially true of use variances. Applicants and potential applicants should be aware of that.

DRAFT

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

Commented [P12]: This subsection is tidied up to remove the "waiver" references.

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.~~
 - (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 [P13]: Makes this consistent with the Section 1-2 definition

Commented [P14]: Added the 10,000 sf references to differentiate this rule from (1)

Commented [P15]: Placeholder for discussion of "lot area" and "street frontage" variance. Also for discussion of "setback" vs. "yard".

Commented [P16]: This is in the Section 1-2 definition, but it seems prudent to repeat here.

Commented [P17]: Seems antiquated and not needed in this subsection. Addressed in Ch. 44 – Shoreland Zoning.

Commented [P18]: 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).