
TOWN OF ELIOT, MAINE

PLANNING BOARD AGENDA



1 **ITEM 1 - ROLL CALL**

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

Also Present: Jeff Brubaker, Town Planner.

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

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ITEM 2 – PLEDGE OF ALLEGIANCE

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ITEM 3 – MOMENT OF SILENCE

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ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION

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There was no public input.

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ITEM 5 – REVIEW AND APPROVE MINUTES

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

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VOTE

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5-0

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Motion approved

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ITEM 6 – NOTICE OF DECISION

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There were no Notices of Decision.

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ITEM 7 – PUBLIC HEARING

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There were no Public Hearings.

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Note: Old Business was taken out of order.

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ITEM 8 – OLD BUSINESS

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

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A. November 2022 Ordinance Amendments

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1. Erosion and Sedimentation Control

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

54
55 Ms. Braun said that I need a motion to schedule a public hearing for the Erosion &
56 Sedimentation Control ordinance amendment on the 16th.

57
58 **Ms. Bennett moved, second by Mr. Latter, that the Planning Board schedule a**
59 **Public Hearing for proposed Town Code Amendments of Chapter 1, Chapter 33,**
60 **Chapter 44, Chapter 45, and Chapter 34 for the Erosion & Sedimentation Control**
61 **Ordinance.**

62 **VOTE**

63 **5-0**

64 **Motion approved**

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66 **2. Fees**

67
68 Mr. Brubaker said that these ordinance amendments don’t change the amounts. What
69 they do is take the §1-25 Fees out of the Code, so they are no longer codified, and just
70 fully and clearly empower the SB to maintain Master Fee schedules. Our attorney has
71 done legal review on this and he has recommended some changes. I think these will be
72 generally ready to go to public hearing August 16th and I will come back with those final
73 modifications for August 9th. The primary purpose of this is to remove the fees from
74 codification, bring them to the SB and, in the meantime, we will be able to actually draft
75 the amounts and make sure that our fees are fully up-to-date with a full cost recovery
76 base within State law, as sometimes State law sets the fee amounts, and just to have a
77 very clear fee schedule that the SB is empowered to maintain.

78
79 Ms. Braun said that I need a motion to have the Fee Schedule go to Public Hearing.

80
81 **Mr. Latter moved, second by Ms. Crichton, that the Planning Board set a Public**
82 **Hearing to address the Fee Schedule and changes to §1-25 Fees for August 16th.**

83
84 **VOTE**

85 **5-0**

86 **Motion approved**

87
88 **ITEM 9 – NEW BUSINESS**

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90 **A. November 2022 Ordinance Amendments**

91 **1. Ordinance Subcommittee update**

92

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

99
100 Mr. Brubaker said that I have specific comments on the subdivision and site plan
101 ordinance amendments. I could give those now or, since we're talking about the memo,
102 itself, I could defer unless PB members have comments.

103
104 Ms. Bennett said that the only thing I would note in the memo is that we did draft some
105 new definitions in four categories to substitute for 'day nursery', which is a term I'm not
106 sure where it comes from but no one is using that. So, we put together four specific
107 definitions that align with State licensing requirements. One was a new definition for
108 'Adult Day Care', which otherwise would have been a 'use similar to' day nursery, again
109 looking at State licensing. I put together a proposal for 'school' breaking it down into two
110 different types. One is 'public or private', which aligns with what we usually think of as a
111 school, and then a 'commercial' school that would be more specific to a specific skill or
112 trade, such as a karate school or yoga studio or a driving school. Finally, something I
113 have wanted to tackle for a long time – Elderly Housing. I'm proposing we change this
114 definition to be 62 years of age and up instead of the current 55 years of age and up. I
115 checked and it conforms with the federal Fair Housing Act. It just seems to make sense
116 that, in the oldest State in the Union, that we use the older definition properly. Especially
117 because it is incentivized through intervention from our Growth Management Permit. I
118 will also say that I and Mr. Brubaker had a number of conversations about Open Space
119 development. That's a big one to tackle. He has thought about this for a long time and has
120 really excellent thoughts he would like to bring forward to the PB for further discussion.

121 122 **2. Subdivision requirements**

123
124 Mr. Brubaker said that I couldn't agree more with those things that Ms. Bennett
125 mentioned and priorities for updates so thanks to both of you for getting the ball rolling
126 on those. I think 'day nursery' sounds like something out of Charles Dickens. I have
127 some comments on specific ordinance amendments on 'site plan review' and
128 'subdivisions'. I think the vesting is good. I just think we'll need to make sure that syncs
129 with §1-20. Regarding "Sketch Plan approval shall expire within one year", we just need
130 to reconcile that with §41-141, which requires a subdivider to submit a preliminary plan
131 within 6 months after the sketch plan approval; that that creates a de facto 6-month
132 expiration. Then, we'll make sure we sync the subdivision expiration language with §31-
133 36 because that talks about what notes need to be on a subdivision plan and about
134 expiration timelines. Finally, just some additional wordsmithing.

135
136 There were no comments by the PB.

137

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

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

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3. Solar energy systems

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

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

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

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

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

Ms. Bennett said that that would be great.

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

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

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

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

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

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

237
238 After brief discussion, Mr. Brubaker clarified that you would continue to have the
239 allowability in Limited Commercial but have that extra check to make sure that within
240 Limited Commercial soils are appropriate.

241
242 Mr. (Bill) Widi, River Road, said that I’m actually the one who kind of started this back
243 in June. As you guys know how much feedback you got from people who don’t want the
244 solar arrays around them, so I thought Limited Commercial would be a great area to put
245 them. I would take a cruise down past Passamaquoddy Lane, as that would be kind of a
246 premo example. I like the Limited Commercial, assuming the soils are correct, etc.; that
247 I’m all about that. We just have to find places to put these solar arrays in the Commercial
248 District.

249
250 Ms. Braun said that we should emphasize the appropriate soils point on the application.

251
252 Mr. Brubaker said that I will make that wordsmithing for the 9th as we move this to
253 public hearing.

254
255 Ms. Bennett said, regarding #4 on page 14 Wetlands, where it says “Wetland alteration
256 shall be avoided or minimized...”, I’m proposing that we do not allow solar arrays in
257 wetlands; not minimize the impact or alteration but that they cannot be sited in a wetland.
258 We could retain the language. As we know, there is more site work than what is just
259 contained with the ground mounting, such as clearing of vegetation and trees around the
260 array, and that would be reasonable but the actual arrays could not be sited in a wetland.

261
262 Mr. Latter asked if there was anything in State law that would prohibit our prohibition.

263
264 Mr. Brubaker said that the DEP has primary jurisdiction over requests for wetland
265 alterations for wetlands that are contiguously less than 10 acres. I’m still trying to wrap
266 my head around where the boundary line stops with the DEP and where it starts with
267 local jurisdictions. It seems like some local jurisdictions do double up on the wetland
268 standards that the DEP also regulates. So, I’m not absolutely sure we couldn’t add these
269 prohibitions but I will check with Attorney Saucier. I want to draw a distinction in this,
270 not advocating for large array placement in wetlands because I don’t think that’s a good
271 idea, in that if you have small isolated wetlands and the applicants propose to essentially
272 alter those wetlands to create more stable ground, would that be allowed as opposed to a
273 larger wetland that stays hydric and they try to site the solar array on top of the wetland,
274 which would cause an issue as Ms. Bennett mentioned. Would there be some
275 allowability, perhaps, for some small, isolated wetland alteration. We don’t have it right

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

278
279 Mr. Latter said that we define sizes, now, so maybe we could allow small ones in
280 wetland, as long as the alterations shall be avoided, but the large ones should be
281 prohibited.

282
283 Mr. Brubaker said that that is always the case. This list that Ms. Bennett has pointed us to
284 is already only applicable to the larger systems.

285
286 Ms. Bennett said that that is a really good point because we do have a lot of wetland; that
287 it's hard to spit and not hit a wetland. At the same time, we are also seeing that our
288 wetlands are beginning to increase in size or migrate across the landscape; that we have
289 drought in the summer but then we get some really heavy rain, especially in late winter.
290 We have seen as an example an old wetland survey from 2008 that, when it was updated
291 in 2021, these wetlands have marched further into what was the uplands, especially when
292 these wetlands are near a large water body like a river. And solar arrays have a useful life
293 of 20 to 40 years and we can expect some of these wetlands will start to increase.

294
295 Mr. Widi said that I agree and understand most of what Ms. Bennett is saying. My
296 personal preference would be to give a percentage or maximum allowable square-footage
297 so that there is a little flexibility. You don't want to stop a good project for just 10 square
298 feet. I would like a little flexibility in there but I understand and appreciate what Ms.
299 Bennett is saying.

300
301 Ms. Braun said that there is no flexibility for square footage, no way to get around that.
302 We can't say that only so many square feet can go in the wetlands.

303
304 Ms. Bennett said or a wetland of only so many square feet.

305
306 Mr. Latter said that I think the key, though, is that you don't just want to define that you
307 can only use so much. Once the project size, itself, becomes a certain size you want the
308 prohibition to kick in. With a smaller project, you don't want this to get in the way of a
309 good project. But as we've seen, for larger projects, have the resources to come in, look
310 at how you do this, and gerrymander however they want to put these arrays to fit
311 whatever we're saying here. I think what I've heard and what I'd like to reinforce is that
312 you really want to limit the large industrial arrays away from wetlands.

313
314 Ms. Braun agreed. We have to do that.

315
316 Ms. Lemire asked if there was any language around The Great Thicket or York River
317 Wild & Scenic.

318
319 Ms. Bennett said that we have an exclusion for areas that have been deemed of ecological
320 significance by the Maine Natural Areas Program. That doesn't necessarily dovetail
321 completely with Great Thicket boundaries or some other focus areas but it seems like a

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

325
326 Mr. Brubaker said that, in addition, we have other environmental and habitat protections,
327 utilizing information from guidance documents like IF&W and the DEP as to how to
328 write one of these ordinances. So, you see those provisions, there, about staying away
329 from Blue Heron colonies, ribbon snakes, Blanding's turtles, spotted turtles, and the like.
330 I do feel it has a very strong menu of environmental protections.

331
332 Ms. Bennett said, to Mr. Latter's point as far as not wanting to get in the way of a good
333 project, especially one that isn't enormous. Our definition of a large-scale energy system
334 starts at 16,000 square feet, which is actually pretty small considering that a buildable
335 acre is 40,000 square feet, so, we're talking about less than a 1/2 acre. Perhaps we say
336 when one of these large, ground mounted solar arrays gets proposed when it exceeds 5
337 acres (200,000 square feet) or at 5 acres or more this is going to need to show
338 documentation that the project will sited in wetland.

339
340 Mr. Latter said that, in my mind, a 5-acre array is big. I don't want to get in the way of a
341 property owner building a solar array he will utilize on his property (ex: dairy farm) and
342 benefit from the solar power advantage. What I don't want to do is see a property owner
343 use a solar array as a primary source of revenue on a piece of property and chewing up a
344 bunch of wetland. We don't have the discretion to decide whether we like it or not once
345 this is set in an ordinance and comes before us. All we can say is can you cross your Ts
346 and dot your Is, or not. I'm trying to figure out how to craft the ordinance to make sure
347 whether what I think is appropriate for Eliot or not appropriate for Eliot.

348
349 Mr. Brubaker said that, to me, the total percentage of total array coverage limit makes
350 more sense than the threshold. Basically, pointing the applicant towards if they are going
351 to develop one of these large-scale systems, they mostly need to stay on dry soils but
352 maybe there's a small pocket of isolated wetland that they would be allowed to alter,
353 either by itself or with appropriate compensation and mitigation, such as payment-in-lieu
354 into the Town Land Bank, as an example. But no more, and keep the number low so they
355 have some flexibility but not too much.

356
357 Ms. Bennett agreed that would be a good way to go.

358
359 Ms. Braun asked for a motion to move this to a public hearing.

360
361 **Ms. Bennett moved, second by Mr. Latter, that the Planning Board schedule a**
362 **Public hearing for proposed Town Code Amendments to Chapter 1, Chapter 33,**
363 **Chapter 44, and Chapter 45 related to Solar Energy Systems on August 16, 2022.**

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365 **VOTE**
366 **5-0**
367 **Motion approved**

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4. Event Centers

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

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

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

5. Advisory Question: Cap on Marijuana Establishment Licenses

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

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

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

419
420 Mr. Latter said that what if we set a cap and then before that number is encoded into law,
421 we have more applications than we have now and could count. Let's say we want four
422 marijuana stores. That's it, with nine total in the pipeline. Does that prohibit us from
423 saying four.

424
425 Mr. Brubaker said that there would be some potential legal issues that we would have to
426 face if we capped it at lower than the existing number of applications.

427
428 Mr. Latter said that, in my mind what I'm saying is, you already have your application in
429 and we can't say no to you but, when you're done using that property for that use, that
430 use goes away.

431
432 Mr. Brubaker said that my intuition would be to set a cap, per establishment type, for no
433 lower than what our stats tell us is already approved or in progress.

434
435 Ms. Braun agreed.

436
437 Mr. Latter said that just because they're approved or in progress doesn't mean the project
438 will come to fruition. So, there's going to be a prohibitive setting the cap below that,
439 understanding that if people get their application in and approved before that's codified
440 into law...

441
442 Ms. Bennett said that I think it would be exposing us to some litigation because we don't
443 know if the current applicants...we have no crystal ball to know that somebody who has
444 already been permitted is going to fail to move forward. Out of caution I would suggest
445 that we set a cap for the number permitted now plus the number we have in the pipeline.

446
447 Mr. Brubaker said that the PB has approved 5 marijuana stores and 3 have applied to the
448 PB.

449
450 Mr. Widi said that I don't see why you can't set the number at PB approved and State
451 active licensed ones because you're still going to have that two months between now and
452 when the vote is; that you're going to get flooded with them and the number will move. I
453 understand Attorney Saucier's advice. I'm not sure it's necessarily for the ones that have
454 applied to the PB. You can literally apply to the PB for whatever so those don't really
455 have any standing, in my opinion, yet.

456
457 Note: Criteria for standing is found in §1-20.

458

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

466
467 Ms. Bennett said I think if we had that happen, in my mind, that would be grounds under
468 the Charter to as for an emergency decision by the SB or a Special Meeting.

469
470 Mr. Widi commented that there is no good answer.

471
472 Mr. Brubaker said that it's interesting because somebody can apply to the PB but only
473 certain sites in the C/I District remain suitable under our performance standards for
474 certain marijuana establishments. So, somebody could throw out an application and it
475 could be problematic with regard to our zoning performance standards. But what do you
476 then do because they've technically applied. Does that affect the cap that that then gets
477 set. When we were talking about moratoria, MMA has guidance that says that, generally,
478 the moratorium should be forward-looking, and that's true, but the one exception they
479 gave was a moratorium in Kittery where Kittery was able to legally back date the
480 moratorium because there had been public discussion about the moratorium. I don't know
481 if the mere fact of us talking about it now would then be able to send a message; that in
482 the instance of a marijuana store, the cap should be 8 because we currently, as of today,
483 we have those 8, or should the cap be 5. I don't know. These are good questions.

484
485 Mr. Leathe asked how much time are we at risk of the number moving up before it gets
486 codified.

487
488 Mr. Brubaker said that we have the public hearing August 16th. The SB March 25th
489 meeting would decide whether to place it on the ballot. It would then be placed on the
490 ballot and it would become effective either November 15th, a week after the ballot
491 (default by the Charter) or another effective date as the ordinance, itself, defines.

492
493 Mr. Widi said that, in thinking about it, I may have a solution. If you set it at 5, and all
494 the ones that are going to be pending or approved from now until the vote would be
495 grandfathered in, then set it in June to what is existing. Set it at 5 in November. You have
496 3 more that apply and get approved before November. Then, in June, you reset the
497 number at the existing; done.

498
499 Mr. Latter said that, if we really want the number to be 5, and we end up with 8, as those
500 businesses live their lifespan and go away, is that license transferable or go back to the
501 State.

502
503 Ms. Braun said that a license is not transferable.

504

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

506
507 Ms. Bennett said that it appeals to me because you're talking about a lower number. But
508 the reality is that it takes a long time. It takes more than 6 months from when someone
509 gets permitted to when they will be licensed, I think. So, I think we have to accommodate
510 those that have their applications before the PB at this time, whether they actually move
511 forward or not.

512
513 Mr. Leathe said that I think you're going to have that issue no matter what we. It may be
514 an opportunity for some folks to move forward more quickly but there's nothing we can
515 do about that. If the idea is a good one, we'll just see how it goes.

516
517 Mr. Brubaker said that, if I may, I could present this discussion in a nutshell to our
518 attorney for his review, too.

519
520 The PB agreed.

521
522 Ms. Braun said that, if the PB has no more comments or questions, we need a motion on
523 this for a Public Hearing.

524
525 **Mr. Latter moved, second by Mr. Leathe, that the Planning Board set a Public**
526 **Hearing for the Proposed Town Code Amendments of Chapter 11, Chapter 33, and**
527 **Chapter 45 on Tuesday, August 16, 2022.**

528 **VOTE**

529 **5-0**

530 **Motion approved**

531
532 **B. 143 Harold L. Dow Highway (Map 23/Lot 25), PB22-13: Adult Use Marijuana**
533 **Retail Store & Medical Marijuana Dispensary - Sketch Plan Review**

534
535 **Received: June 3, 2022**

536 **1st Heard: August 2, 2022 (sketch plan review)**

537 **2nd Heard: _____, 2022**

538 **Public Hearing: _____, 2022**

539 **Site Walk: _____, 2022**

540 **Approval: _____, 2022**

541
542 Mr. (John) Chagnon, P.E. LLS, was present for this application.

543
544 Mr. Chagnon said that Tim Pickett is the owner of the property. Green Truck LLC is the
545 applicant with a valid P&S agreement for the property. There will be two proposed
546 tenants with a similar building to the one you approved at 16 Arc Road where there will
547 be two different sides with two sales of different types in the same building but separated
548 by a wall. There is a survey plan that was done and that helped us create an existing
549 conditions plan. The site has a lot of wetlands in the back and a swale along the front. We
550 are showing some setbacks with an area in the middle that allows for structures.

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

567
568 Mr. Brubaker said that I inadvertently left my staff report out of the packet but I did email
569 it separately and shared it with the applicant, too. There's been some discussion about the
570 500-foot rule in §33-190(5). In my opinion, this does not meet that standard because the
571 proposed building is less than 500 feet away from a residential property. You can see
572 correspondence in your packet between myself and Mr. Seymour and Attorney DelMar,
573 who are both here. I would also say that we would want to clarify with Mr. Chagnon the
574 status and the source of the wetlands shown on the existing conditions plan because there
575 are some notes in the boundary survey included indicate that this was an approximate
576 wetland boundary, so we would want to know more about the status and the source of the
577 wetland delineation. I suggest this is an important topic because the site is very
578 characterized by wetlands so any clarity on the delineated wetlands and potential wetland
579 alteration that impact this proposed building footprint and parking area would be good to
580 know in more detail. Those are my comments but you can see other information in the
581 packet.

582
583 Mr. Leathe said that, looking through the applicant's package regarding disposal of plant
584 material, that says "This property will be used for Retail only and will not include and
585 production, cultivation, or manufacturing on the property." Then on the odor remediation
586 plan page, it says "All cultivation, drying, trimming, and packaging rooms will be
587 equipped with carbon filtration air scrubbers...".

588
589 Mr. Chagnon said that the second page is in error and will be edited. To answer Mr.
590 Brubaker's question, the property owner hired Great Works Surveying to do a property
591 survey and that survey talks about approximate wetlands. The Ambit Engineering plan
592 shows the wetland line that was delineated by Mr. (Steve) Riker, who is our employee
593 and a certified wetland scientist. We'll clarify that but that's why the other plan has notes
594 that may conflict with the lack of a note. We will make a note on this plan. Mr. Riker
595 doesn't like us to put a note on the plan because, in Maine, a certified wetland scientist is
596 not needed. You don't have a requirement in Maine that you be a certified wetland

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

599
600 Ms. Braun asked if he had contacted the DEP in relation to this property.

601
602 Mr. Chagnon said yes. Mr. Seymour has contacted the DEP. As far as their review of the
603 property, they do not do site inspection reviews on-site, consultations, look-sees with
604 people because they're just too busy. We will be submitting an application when the time
605 is right. I don't know what other question there is about the DEP relative to the wetland.

606
607 Mr. Brubaker said that I think the key would be, assuming you are altering wetland, what
608 is your status on your Permit-by-Rule or Tier I Individual Permit application to the DEP.
609 We're not talking about getting DEP people out there to walk the site. We're actually
610 talking about the expected wetland alteration and the status of permitting you would be
611 required to go through with the DEP.

612
613 Mr. Chagnon said yes, we understand that. The plan doesn't show extensive, expected
614 wetland alteration.

615
616 Mr. Brubaker said that you wouldn't be altering any wetlands.

617
618 Mr. Chagnon said maybe at the entrance but, otherwise, the plan you have before you
619 (Sheet C2) does not impact wetland. The southwest corner of the parking lot is close and
620 we will have to look at that carefully. But there is no wetland impact shown on this plan
621 other than potentially at the driveway entrance. We need to widen that for safety so we
622 would be applying for whatever is required to do that.

623
624 Mr. Brubaker said that this footprint would be entirely housed within Mr. Pickett's
625 existing footprint. In other words, my knowledge of Mr. Pickett's property is that he has
626 his uses there and in developing those uses is the wetland. When you zoom out, in the
627 larger picture, this property and the adjacent property are strongly characterized by
628 wetlands. And so, I envision this property kind of as Mr. Riker's delineation as shown
629 there where there are the current uses and the wetlands really close around those current
630 uses. So, what you're saying is that this proposed 6,000-square-foot building plus the
631 additional parking area and additional site features will not touch any of the wetlands;
632 that it may at the entrance but nowhere else.

633
634 Mr. Chagnon said yes. You keep saying his existing uses are involved by wetlands.

635
636 Mr. Brubaker said yes, they are surrounded by wetlands. It's a very wet property. My
637 simple question is do you think you'll alter wetlands. I feel like we're getting a round-
638 about answer here.

639
640 Mr. Chagnon said no, that I've said I'm not going to.

641
642 Mr. Brubaker said that I just wanted to clarify that.

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

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

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

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

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

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

Mr. Chagnon said yes.

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

Mr. Chagnon said correct.

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

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

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

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

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

Mr. Chagnon said the 75-foot setback.

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

689 Mr. Chagnon said correct.

690

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

693

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

695

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

698

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

702

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

705

706 Mr. Chagnon said no, that it does not.

707

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

713

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

717

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

721

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

725

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

728

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

732

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

734

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

737
738 Mr. Brubaker said yes.

739
740 Mr. Latter said that your map is showing a radius, here.

741
742 Mr. Chagnon said that that is building to building and that was not a correct
743 interpretation. It is 500 feet building to building.

744
745 Mr. Latter asked _____ (accurate measure?)

746
747 Mr. Chagnon said I don't know. It's a great question and one that may require further
748 review by someone.

749
750 Ms. Braun agreed, saying that I'm not convinced that it's 500 feet. We need to clarify
751 that. Do we have to get someone in to do the measurements to ascertain that it is 500 feet.

752
753 Mr. Brubaker said that it's self-evident that it is less than 500 feet.

754
755 Ms. Braun said that you don't meet the 500-foot setback.

756
757 Mr. Chagnon said from that property. And the applicant pursued this property based on
758 an understanding of what uses existed at other properties. In other words, it's not crystal
759 clear from the records that they reviewed that that property at 150 Dow Highway was
760 residential.

761
762 Ms. Braun said that it is my understanding that it has been residential from the 1970's,
763 which pre-dates the zoning. It was grandfathered. It's a residential property. There are
764 two apartments upstairs and five bedrooms so it has been residential all this time.

765
766 Mr. Chagnon said yes. Confusing enough, though, if your own Planner didn't realize it in
767 the beginning when he (applicant) talked to Mr. Brubaker about this site. I think some of
768 the confusion comes in the site plans that have been submitted for the property.

769
770 Mr. Latter said that I'd like to stipulate that you're trying to follow the rules based on the
771 facts as they were understood by the people that were talking about them. But those facts
772 may be in question and that may change how we make a decision on it.

773
774 Attorney DelMar, representing the applicant, said that generally just a summary of what
775 happened, Mr. Seymour did visit the Planner before he put a \$50,000 non-refundable
776 deposit on the property that's across the street from 150 Dow Highway. After that, the
777 Planner said that that property has an apartment in it and, unfortunately, all of the records
778 – all of the applications for change of use for that property dating back years – had no
779 indication of any apartment. None whatsoever. Some of them had marked off "all uses
780 are described here". So, people who own property should have the right to rely on the

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

795
796 Ms. Braun said that we are not lawyers. We're going by the information provided to us.

797
798 Attorney DelMar said that I'm just asking generally.

799
800 Ms. Braun said that we have been putting as much information in as we possibly can in
801 the application.

802
803 Attorney DelMar asked if all uses are required to be in the application.

804
805 Ms. Braun said just the change of use.

806
807 Mr. Brubaker said that I would just like to reserve some time to address this issue after
808 Attorney DelMar is finished.

809
810 Ms. Braun agreed.

811
812 Attorney DelMar said that, basically, I'm going to read part of this because I can't say it
813 better than it's written here. "*With all available evidence, it is undisputed that the*
814 *Property at a certain point in the 1970's had a lawful nonconforming residential use in a*
815 *designated commercial district. However, due to the change of use applications, this*
816 *residential use has been superseded at least three times by conforming uses for retail,*
817 *education, and childcare.*" Those were the applications presented without any mention of
818 apartments. "*The Change of Use applications make no mention of any sort of residential*
819 *aspect to the property, let alone any attempt to maintain the residential use. Indeed, it*
820 *would make little sense for a town to approve a Change of Use application if it did not*
821 *disclose all aspects of the property.*" So, we're not just talking about one. We're talking
822 about multiple applications, on record, with no apartment listed. It's just purely
823 commercial. If the PB was to accept that in that case, in all three cases, or even one, you
824 set a precedent for future cases in how you didn't need to apply that to everybody, that
825 nobody needs to include all of the uses, which would be detrimental to this. So, you
826 wouldn't be able to really make an informed decision without all the information you

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

833
834 The PB had no questions.

835
836 Attorney DelMar said one more point, in case I don't get to talk again. The courts are
837 applying strict construction. What that means is that there is no leeway when it comes to
838 nonconformance. They are saying to convert to conforming as soon as possible and
839 there's no excuse to not do that when you have the opportunity to do that. I do hope I get
840 to speak again after other people. I do appreciate your time. Thank you very much.

841
842 Mr. Brubaker said that I appreciate Attorney DelMar's comments. Obviously, this is the
843 first time I'm receiving this memo so I haven't had a chance to review it in detail. I'd just
844 like to read a few paragraphs from my letter that's also in your packet and shared with the
845 applicant as an exhibit in the applicant's memo, dated August 1st if I may. It starts on
846 page 2 after I talk about how the existing Town property card does show apartment uses:

The Town records include Building Permit No. 862 (see attached), issued by the Town Building Inspector on May 24, 1977, to the current owner (Nancy Shapleigh, then Nancy Boyce), for "Fencing, door, + window alteration/repair of office/home property". The permit explicitly mentions an "office/home" mixed use. The Property Card indicates that the building was built in 1970. From a review of Town property tax records, it is likely that the building was built, if not in 1970 exactly, then sometime in the early 1970s. As I have stated before, I have heard recollection from the Shapleigh/Widi family of having lived in the building in the 1970s.

The Town's first zoning ordinance was adopted at a Special Town Meeting on February 8, 1971. This zoning ordinance included provisions allowing for legally nonconforming uses to continue and for variances to be issued via Board of Appeals (BOA) review. It separated the Town into two districts, the General Residence (GR) zone and the Commercial-Industrial (CI) zone, the latter being defined as "extend[ing] parallel to and 1500 feet back from the center line of Route 236...". The 1982 zoning ordinance is the earliest ordinance I can find to explicitly prohibit apartments in the C/I district, which is clear in Section 207 – Table of Land Uses. However, this ordinance also included Section 402.2, which stated: "The CEO [Code Enforcement Officer] may permit accessory uses and structures for existing residential use in the Commercial/Industrial District. Dimensional Standards shall be the same as those for the Suburban District (Section 305)." (See attached.) A nearly verbatim provision still exists in the Town Code today, in Section 45-192(b).

In summary, the 150 HL Dow Property had a permit granted by the Town Building Inspector in 1977 referencing residential use. Shapleigh/Widi family members have conveyed to me memories of living there in the 1970s. And the Town's zoning ordinance, by 1982 if not earlier, allowed the CEO to permit "existing residential use" in the C/I District. Based on the preponderance of evidence available to me, it cannot be concluded that the 150 HL Dow Property's residential use is invalid or illegal, as you imply. In fact, the evidence points to the residential use being specifically permitted and legal. Apartment residences deserve the same protection under the 33-190(5)b rule as other types of residences. Therefore, Comment #3 of my Review Letter 1 continues to apply to your team's application.

847

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

856
857 Mr. (Bill) Widi said that I'm representing my grandmother (Nancy Shapleigh). She is
858 sight-impaired. I pulled all the documents. She just can't tell you what they say because
859 she can't read. Unless someone has an issue with the American Disabilities Act The quip
860 about the Planner not knowing exactly that property, I don't think that's fair.

861
862 Attorney DelMar interrupted to ask if this was a public hearing.

863
864 Ms. Braun said no. He is a member of the family that has some questions and has the
865 right to speak.

866
867 Attorney DelMar said that that happens at public hearing.

868
869 Mr. Widi added that I'm supplying documents.

870
871 Ms. Braun said that I allow comments during non-public hearing meetings.

872
873 Mr. Brubaker clarified that that is specifically allowed by the by-laws.

874
875 Mr. Widi repeated his comment about the Planner not knowing exactly the property.
876 That's not fair. We have thousands of properties; that the Planner couldn't possibly know
877 every single thing that's happening at every single one of them at any given moment.
878 This is a four-unit apartment building. Two of them are apartments. They have always
879 been rented since 1976. My grandmother bought the building in July 1976. She even had
880 her surprise 40th birthday party there. And then two units downstairs. Any application that
881 came in here was for either Unit A or Unit B, which are the downstairs commercial units.
882 There was a daycare and they are not going to put in apartments that are continuously
883 rented in their application because it has no bearing on a daycare. There is an assumption
884 that it has not always been rented but I can prove that it always has. Does the PB have a
885 copy of the permit.

886
887 Mr. Brubaker said yes, the 1977 one.

888
889 Mr. Widi said that that gets us to 1977. He showed a picture of his mom's graduation
890 from 1981. He showed a picture of his older brother (by 5 years) that shows him in the
891 back yard of the building. His brother is 5 years old there and I was born in 1988. So, we
892 gone from 1977 to 1981 to 1988. Your favorite person here was actually born and
893 brought back to that property as a baby, showing his baby picture and birth certificate that

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

901
902 Mr. Latter said that this building has occupied and is today.

903
904 Mr. Widi said that it is today; that it has been continuously occupied.

905
906 Attorney DelMar said that the fact that people actually live there doesn't mean it's an
907 "approved" residential property. They submitted at least three change of use applications
908 with no residential use on them. The property owners and prospective property owners
909 have relied on the records and made decisions and actions based on that and should be
910 able to rely on that. I don't know what the tax rate is that they are paying, whether it's
911 commercial or residential or split, if they are paying commercial. She asked the Planner if
912 he knew if they were paying commercial.

913
914 Mr. Brubaker said I don't; that I'd like to comment on this after you are done. I can't
915 provide any information with respect to recent tax rates.

916
917 Attorney DelMar said that it doesn't even need to be recent. If any period of time, it was
918 a commercial tax rate paid, that would be further evidence along with the change of use
919 applications. Just because people lived there doesn't mean...it's like if somebody has a
920 business somewhere, just because they're doing business there doesn't mean that they're
921 doing it legally.

922
923 Ms. Braun asked how you can say that doesn't mean they are doing it legally. **Please**
924 **clarify.**

925
926 Attorney DelMar said that just because someone is living in a certain place...like
927 somebody could be living at the property that Mr. Seymour put a \$50,000 non-refundable
928 deposit on, that doesn't mean it's residential. That would be an illegal use of the property.
929 So, what I'm saying is that the applications for change of use supercede, or trump, any
930 actual use. If they applied and said that we would like to use the property for x, y, and z
931 and you approved it. Three times.

932
933 Mr. Latter said that it is possible that they put in an application to use a portion of the
934 property.

935
936 Attorney DelMar said that we don't know the intentions and again, with all due respect to
937 the owner, I don't know what their intentions were.

938

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

942
943 Attorney DelMar said that, if there is a non-conforming use on any of the properties that
944 we have, we don't have to put it in our application for change of use. We can still use it
945 for that.

946
947 Mr. Latter said that I am just trying to ascertain whether this buffer is in place, or not.
948 You have presented the position that it's not and I appreciate that. I think we should
949 probably get some guidance from the Town legal department.

950
951 Ms. Braun agreed.

952
953 Mr. Brubaker said that I would be happy to do that. But if I could, in this case I believe
954 that those previous PB and building permit reviews for this property, 150 H.L. Dow
955 Highway, are immaterial to the question at hand because the preponderance of evidence,
956 at least that I've seen, is that this apartment, this residential use, is a legally, non-
957 conforming use that hasn't been discontinued. Therefore, the preponderance of evidence,
958 irrespective of any previous PB or building permit reviews, unless there was a clear kind
959 of ceding of the residential property, which I don't if that evidence has been presented or
960 ever has been, the preponderance of evidence is that this is a residential use and has been
961 a legally, non-conforming residential use. I would take issue with the assumption that
962 people who live in apartments don't deserve the same protections from that standard in
963 our marijuana performance standards as other types of residences. Again, I'll just
964 reiterate that this appears to be, and continues to be, a legally, non-conforming residential
965 use.

966
967 Attorney DelMar said, responding to Mr. Brubaker, is that what I understand you to be
968 saying is that if someone has a nonconforming use before, we're ceding the
969 nonconforming use.

970
971 Mr. Brubaker said that an applicant can certainly have a residential use that they then
972 plan to actively change. So, ultimately what happens is adaptive re-use. Certain
973 communities are pretty good at adaptive re-use where you have a nice, old stately home,
974 kind of a fringe between a residential and a commercial corridor, that becomes an office
975 building that used to be in a home. I'm sure you can find good examples around here. In
976 that case, the residential use completely went away and the office came in. In this case, I
977 couldn't find any evidence of the property owner conveying to the Town that they wished
978 to stop the residential use. And so, the important threshold here is in that section I
979 mentioned before, §45-193(a), which says a nonconforming use which is discontinued for
980 a period of one year may not be resumed. So, the threshold is whether the use was
981 discontinued for a year. The threshold does not have anything to do with PB or building
982 permit applications that did not clearly say that they are giving up the residential use. To
983 my current knowledge, I don't think in any of those previous PB reviews and building
984 permit reviews that they did that. The family has presented evidence that this has been a

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

987
988 Attorney DelMar said that I would submit that the three applications that have zero
989 mention of the apartments is evidence that the use stopped and that should supercede
990 anything that's actually happening there. There are other non-conforming uses and, if
991 somebody applies for a certain business, or something like that, are you going to apply
992 that across the board.

993
994 Mr. Leathe said that I guess I have a simple question. When you look at those, do they
995 state in there that they are using the whole building. Obviously, there is commercial use
996 on the first floor and residential on the second. Is it stated in any of those applications that
997 they are discontinuing the use of the second floor as residential.

998
999 Attorney DelMar said that one of them says it's for the entire property on the application.

1000
1001 Mr. Leathe said that that doesn't mean that ends the residential upstairs. They could be
1002 renting it out to support the business below them.

1003
1004 Mr. Widi asked if he could ask a question.

1005
1006 Ms. Braun said yes.

1007
1008 Mr. Widi asked which applicant said that.

1009
1010 Attorney DelMar said the one in 2003 [PB03-36].

1011
1012 Mr. Widi said that was Vanessa Moulton. That was the daycare that had one side. After
1013 discussion, the application was for the Eliot Driving School and they had one side.

1014
1015 Ms. Braun said that that was just the lower-level commercial part.

1016
1017 Mr. Widi said that, just like they (current applicant) don't own the property yet most of
1018 your applicants don't own the properties. So just because they might fill something out
1019 on a form, or fill something out on the form incorrect, doesn't mean they own the
1020 property. And if that was signed at any time by my grandmother, she's blind and has been
1021 for 20 years. So, if applicants are coming in and they're not Nancy Shapleigh, and it
1022 happened to have her signature, she is blind.

1023
1024 Ms. Braun said that I'm not going to continue this conversation until we get some legal
1025 advice. I'm going to ask Mr. Brubaker to contact our legal attorney to get his decision on
1026 this. At that point, we will contact you and tell you what his decision was.

1027
1028 Mr. Chagnon said that you are dealing with a slippery slope, here. If an applicant comes
1029 to you for a change of use on a property and it doesn't identify all the uses, you can't
1030 render a complete decision. The application that was mentioned for the driving school

1031 said that the property had seven parking spaces and there were five spaces that were
1032 needed for the driving school. You need to look at these applications in total. Mr.
1033 Seymour could get site plan approval to convert this property to his intended use and then
1034 as long as Mr. Pickett is less than one year removed from living there, he could come
1035 back and say he's putting an apartment in upstairs because it was a pre-existing
1036 residential use where you just have commercial. I understand it's a slippery slope that
1037 some of these applications were intended to be for a certain part but that's why the record
1038 was reviewed and looked at in that vein as being a use.

1039
1040 Ms. Braun said, as I said, until we get a legal opinion from the Town counsel, I'm not
1041 going to continue this application. Once we have that, we will contact you and notify you
1042 of what he said.

1043

1044 **ITEM 10 – OTHER BUSINESS/CORRESPONDENCE**

1045

1046 Mr. Brubaker said that we have the Community Resilience Partnership work session
1047 tomorrow at 4PM. We are recommending an August 9th meeting. We were awarded an
1048 allocation from KACTS to provide grant funding for two intersections, the Route 236
1049 Dover and Goodwin Road intersection, as well as the Route 236 State Road intersection.
1050 This will fund the design phase, which is the first step. These will fund intersection
1051 improvements and connecting Old Field Road. The allocation year is for 2025 because
1052 this funding is awarded a few years out. It would require a 10% local match. We also are
1053 very fortunate to have the DOT very engaged in Route 236 right now. We are going to
1054 communicate with their chief state-wide safety officer about the potential for safety
1055 funding supplement other funding on Route 236. We are fortunate to have essentially the
1056 DOT's deputy director coming to Eliot for a site visit to take a look at these intersections.
1057 In addition to that meeting, I'm going to set up a meeting with Eliot Baptist Church to
1058 talk about the recommended intersection improvements there at that intersection because
1059 it does warrant a signal. It is a DOT designated high-crash location. We're grateful to
1060 have the DOT's engagement on this and grateful to KACTS, our regional agency.

1061

1062 Ms. Bennett said that it's a testament to your persistence.

1063

1064 Mr. Brubaker said that Mr. Sullivan is very engaged in this, too. That's also not to set
1065 aside other parts of Route 236. The DOT has also approached us about the section
1066 between Depot Road and Bolt Hill Road. They also would like to engage with the Town
1067 in the design effort at that intersection, too, and to be clear the Depot Road intersection,
1068 itself, because it has a history. The study that recommended a center turn lane along
1069 Route 236, and other improvements, for safety and traffic did not identify a preferred
1070 concept at Depot Road. It did suggest a possible round-about option, something that's a
1071 smaller footprint than the DOT proposed in 2016. They also suggested a non-round-about
1072 improvement. Typically, the other improvement alternative would consider, when you do
1073 an alternatives analysis, is the no-build alternative: what if you do nothing. I'm coming to
1074 you from a neutral perspective. There's no preferred intersection concept for Depot Road.
1075 I do think that the DOT would like to know as soon as possible what the Town's
1076 preferred concept is because that will help inform this larger design effort for Route 236.

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

ITEM 11 – SET AGENDA AND DATE FOR NEXT MEETING

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

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

ITEM 13 – ADJOURN

The meeting adjourned at 8:14 PM.

Christine Bennett, Secretary
Date approved: _____

Respectfully submitted,
Ellen Lemire, Recording Secretary

1 **ITEM 1 - ROLL CALL**

2
3 Present: Carmela Braun – Chair, Jeff Leathe – Vice Chair, Christine Bennett – Secretary,
4 Lissa Crichton, and Jim Latter.

5
6 Also Present: Jeff Brubaker, Town Planner; Kristie Rabasca, PE, LEED AP BD+C,
7 Integrated Environmental Engineering, Inc.

8
9 Voting members: Carmela Braun, Jeff Leathe, Christine Bennett (Zoom), Jim Latter, and
10 Lissa Crichton.

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

13
14 **ITEM 3 – MOMENT OF SILENCE**

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

17
18 There was no public input.

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

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

24 **VOTE**

25 **5-0**

26 **Motion approved**

27
28 **ITEM 6 – NOTICE OF DECISION**

29
30 There were no Notices of Decision.

31
32 **ITEM 7 – PUBLIC HEARING**

33
34 There were no public hearings.

35
36 **ITEM 8 – NEW BUSINESS**

37
38 **A. Stormwater/Low Impact Design (LID) – presentation by Kristie Rabasca,**
39 **Integrated Environmental Engineering, Inc.**

40
41 Ms. Rabasca said that we have a submittal that is due to the Maine DEP on September 1st,
42 2022. Mr. Brubaker and I just wanted to run through the proposed submittal with you to
43 see if you have any specific objections to any of these low-impact development strategies
44 that we're going to attempt to adopt over the next two years. Our submittal is an intent to
45 adopt Low Impact Performance Standards (LID) that will affect development projects
46 that disturb one or more acres of land in Town. We are being required to do this by the

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

78
79 Mr. Latter said that you say you give preference to natural processes. Don't you want
80 effective processes, first and foremost.

81
82 Ms. Rabasca said that every site is going to be different. A pure low impact development
83 would be to minimize the disturbances as long as there is good vegetation and it is not
84 invasive vegetation. We do try to account for some of that in the descriptions and
85 performance standards. However, I hear you. It's a juggling act.

86
87 Mr. Latter said that, first and foremost, I want to handle the stormwater from the
88 impervious surfaces. If we can do it using natural methods that's great but I don't want
89 them to use natural methods in a less effective stormwater management.

90
91 Mr. Brubaker said that one good way to test that is when they submit a drainage study.
92 There is a lot of hydric stuff out there that we all know. The main result of that is

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

96
97 Mr. Latter said that I just envision a scenario where somebody is pushing these natural
98 solutions when it might not be what the site would need. I don't want to get hung up on
99 that and feel uncomfortable pushing for something that we think might need to be more
100 effective.

101
102 Mr. Brubaker said that, in that case, the PB would have the ability to say that it's nice that
103 it's natural but it's not effective and, therefore, it's not meeting our performance
104 standards.

105
106 Ms. Rabasca said that, if you're going to have a large vehicle maintenance facility
107 moving in and they are going to have a lot of dripping vehicles, maybe they're going to
108 have to store some outside, you are going to want to make them have an oil-water
109 separator that's pretty robust; that you aren't going to have them discharge off into a
110 vegetated buffer. It was quite a balance trying to come up with performance standards
111 that would fit the Maine DEP order we got for low impact development but still allow the
112 developers enough latitude to design what they need to design to address the site; that the
113 sites are all so different and the operations are, as well. I do think it is a very good point.

114
115 Mr. Leathe said, regarding applicability, in talking about urbanized areas being SPR, is
116 that the whole Town.

117
118 Mr. Brubaker said no. It is a specific area of land that exists primarily in the Village
119 Zone. It's hard to describe but it's primarily along the river in the Village Zone and parts
120 of Route 236, and a lot of East Eliot is outside that area.

121
122 Mr. Leathe asked if any more of the Town was being considered as applicable.

123
124 Ms. Rabasca said that the Town has applied other stormwater ordinances Town-wide in
125 order to be protective of water quality so that you don't get into a situation where you
126 have urban-impaired streams and have mandated watershed management plans in trying
127 to correct water quality. The Post-Construction Ordinance was applied Town-wide. In
128 particular, one of the ideas behind low impact development is that, when a drop of water
129 falls in an undeveloped area, it's going to evapotranspire, some of it will evaporate. But
130 some of it is going to run off, so, when you are doing low impact development properly,
131 you are making sure that water droplet acts the same way after the development that it did
132 before; that it's not picking up pollutants and carrying them downstream. It's not causing
133 erosion or scouring small streams; that you're not causing flooding. So, protection of
134 non-urbanized area is a much less costly thing to do than correct water quality if you get
135 these impairments. If you were to ask my opinion, I would say it would be very beneficial
136 to natural resources, water quality, general quality of life to apply low impact
137 development standards Town-wide.

138

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

143
144 Ms. Rabasca said that that is primarily for subdivisions. For example, I was reading about
145 the Clover Farm Subdivision that's going in and how it's basically three or four lots that
146 two of the lots are quite large. If they were to phase one lot and not disturb an acre of
147 land for that first phase, by the time we get to the second phase, they would be triggering
148 the low impact development. That's what that means.

149
150 Mr. Brubaker said that I agree with Ms. Rabasca. I think that this should also be applied
151 Town-wide. We are really hoping to develop a nice network of stormwater standards with
152 the intention of having really good sites with all the PB reviews.

153
154 Mr. Leathe asked if Mr. Brubaker said that these should be synced.

155
156 Mr. Brubaker said that, as Ms. Rabasca mentioned, the Post-Construction Stormwater
157 Management standards are Town-wide. The proposed Erosion and Sedimentation Control
158 standards that we will discuss in a minute are Town-wide. So, it would be a good
159 alignment to have the LID standards be, as well. These are yet to be adopted. We are just
160 talking about the Model Ordinance right now, so, we have a choice. From what I'm
161 hearing from you and others, we are willing to do it Town-wide.

162
163 Mr. Leathe said that, ideally, these should sync outside of these area developments.

164
165 Mr. Brubaker said yes. I see the highlighted section, there, so that would need to change
166 to Town-wide.

167
168 Mr. Leathe asked Ms. Rabasca if other communities were having the same discussion of
169 urbanized area or Town-wide.

170
171 Ms. Rabasca agreed that other communities are going to be having that same discussion.
172 I've had discussions with Falmouth and they will be implementing town-wide. Kittery
173 hasn't made their decision, yet, but we did submit their proposed standards just today.
174 We left the 'urbanized area' in because that's all that's required by the General Permit.
175 So, the Maine DEP doesn't really care if we decide to apply it Town-wide after they
176 review and approve. They're fine if we decide we want to be more stringent on
177 developers.

178
179 Ms. Braun said that Town-wide makes more sense to me to make it uniform with all the
180 others we have. And we want to protect the entire Town, not just a certain section.

181
182 Mr. Latter said that, with the scale of the ordinance, I would think we would need it just
183 as much, if not more, in the non-urbanized areas.

184

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

199
200 The Planner and PB agreed this language should be deleted as it would be in the Code
201 and that needs Town approval.

202
203 Mr. Latter asked if the Code could point to an administrative document.

204
205 Mr. Brubaker said that it could but we would also have to actually create the document. I
206 don't know what the options are, Ms. Rabasca. If communities have the ability to refer to
207 a document, what would they do. Do they create their own specialized LID standards or
208 do they use resources from the DEP. What, ideally, would we point to in terms of the
209 performance standards. In other words, what would we need to do to create the 'technical
210 appendices'. As Mr. Latter mentioned, we could empower the PB or SB to approve these
211 standards. What do other communities do here.

212
213 Ms. Rabasca said that I believe this came from Yarmouth. I believe that the way that
214 worked is that, once this goes through the public process and it is approved with the
215 sentence in it and you decide who it is and what that process will be, I believe you could
216 do that, moving forward, but I would definitely check with Bernstein Shur because it
217 might also require a change to the Charter in order to be able to do that. I think, for now,
218 we remove this because most of your performance standards are embedded in your
219 ordinances and we have to go through the full public process in order to change them.

220
221 Ms. Lemire said that we do have appendices for our Sewer and I think the SB has
222 authority to amend them.

223
224 Mr. Brubaker said that we're actually talking about this with regard to the Fee Schedule.
225 The SB has its powers delegated to it under the Charter, as well as the PB, and then,
226 under Chapter 2, it does have a more specific enumeration of things that the SB is
227 empowered to do without going to Town Meeting. Presumably, there could at least be
228 some thought process as to empowering the SB/PB to developing these standards
229 independently of the ordinance, as long as the ordinance references those standards. I
230 think it could be done. I think it would just be would the Town have the capacity to

231 develop customized LID standards, an actual manual of standards, who would actually do
232 that. Or, could we refer to another document or something like that. It's like the phrase
233 "with great power comes great responsibility".
234

235 Mr. Latter said that, ultimately, it does devolve back to the voter. The administration is
236 answerable to the SB and the SB is answerable to the voters. All you're doing is trying to
237 keep technical expertise and decisions related to technical expertise with subject matter
238 experts.
239

240 Ms. Rabasca said that I think one of the reasons to check into an abbreviated process to
241 update the actual technical performance standards is that the Maine DEP will be updating
242 Chapter 500; that we do have references to that and, so, it would be nice for us to be a
243 little more nimble in updating the technical standards as the State standards get updated
244 so that we don't end up being in conflict with them. As you'll see in some of these
245 instances, some of these performance standards are based on Chapter 500 State
246 development standards but, in some instances, these are brand new and they're not even
247 State standards, yet. If the DEP does something and a developer can't do this, we need to
248 be able to allow them a waiver.
249

250 Mr. Brubaker said that I was confused because the standards are already there.
251

252 Ms. Rabasca clarified that these are the performance standards that we developed as part
253 of the ordinance committee that we are recommending the Town of Eliot adopt unless the
254 PB has significant issues with any of these. I have added blue text boxes for tonight's
255 review. The first LID standard (page 10) is DEP mandated, which the Town covers most
256 of. What is new is **Predevelopment Drainageways** that would require developers to look
257 at sensitive areas regarding what they will and will not develop and create a narrative
258 description to submit to the PB, which would help minimize flooding offsite, try to
259 protect high-permeability soils to help ensure some type of base flow (especially in
260 drought) to help infiltration, and preserve Maine native vegetation and significant and
261 essential wildlife habitats. This performance standard will be very new to design
262 engineers and developers, as it's not currently a State requirement. It will require that
263 they do a high intensity soils survey, which will take them some additional time/thought
264 during design and a little more time for PB review but this should be a very good benefit
265 to water quality.
266

267 Mr. Latter said that the high intensity soils survey is often asked to be waived and this
268 would make it harder to grant.
269

270 Ms. Rabasca agreed, saying that they would really need to do it.
271

272 There was a brief discussion regarding people who begin work on sites even before
273 coming to the PB and that that is not legally allowed and is a fineable offense.
274

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

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

280
281 Ms. Braun agreed.

282
283 Ms. Rabasca asked if there were any significant objections to us including this
284 performance standard in our submittal to the DEP.

285
286 Mr. Brubaker said no, that I just have a clarifying question. This would apply to one acre
287 of new disturbance. In other words, if I'm coming in and developing on an existing
288 parking lot or on existing compact gravel, for instance, it's possible that my development
289 may not apply to this. Is that right.

290
291 Ms. Rabasca said that maintenance is not considered to be disturbance so, as you know,
292 the devil's in the details on these definitions. So, ripping up a parking lot and putting a
293 new parking lot back in, that's considered maintenance. But, if they are going to change
294 the landscape and they are going to be disturbing one or more acres of land, then that
295 would trigger this.

296
297 Mr. Leathe asked what if they were disturbing $\frac{3}{4}$ of an acre of land, even though they had
298 previously disturbed 7 acres of parking lot.

299
300 Ms. Rabasca said that that would not trigger this.

301
302 Mr. Brubaker said that if they were taking a portion of the parking lot and building
303 something on top of it, an out building for instance, this would not apply, correct.

304
305 Ms. Rabasca said that I believe it would apply. That is not considered maintenance. They
306 would be disturbing the parking lot, baring soils, changing the landscape.

307
308 Mr. Brubaker asked if they would still then have to do the high intensity soils survey for
309 the soils that are currently locked up under the pavement that would then be replaced by
310 the building. How would that work with a site that is being plopped on top of an existing
311 impervious surface.

312
313 Ms. Rabasca said that I would say yes. If they are triggering the standard, they would
314 have to do their high intensity soil survey. When I think of Eliot, you have a lovely rural
315 character and most of your areas are really suburban. So, you have a lot of green space so
316 I kind of figure that. You think about applying this in downtown Portland or Bangor or
317 South Portland, like a mall area. And you do, with low-impact development, start to
318 correct some of what they call 'sins of the past'. So, you're also trying to improve the
319 potential for infiltration and improve the quality of the stormwater runoff through re-
320 development of projects. So, this would apply to development or re-development. It does
321 seem like we are okay with this. We do have until 2024 to carve out the rest of the details
322 and we will be doing this with many other communities, as well. The **second one** is a

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

329
330 The PB had no questions or objections.

331
332 Ms. Rabasca said that the next one is regarding open space and I have seen some
333 discussion in your PB minutes about this. The Ordinance Committee had many, many
334 discussions over this and we decided to make this optional in the base model ordinance
335 but I left it here for Eliot consideration: "*Rural New Developments shall preserve at least*
336 *40% of the Site as open space and Suburban New Developments shall preserve at least*
337 *25% of the Site as open space.*" You, fortunately, actually have zoning districts that use
338 the words Rural and Suburban so we could fairly easily apply these standards to those
339 different districts. All of the references we reviewed in developing these performance
340 standards said to make sure you have a good standard for open space. This actually came
341 from The Center for Watershed Protection, which is one of the nationally-renowned
342 watershed/water protection agencies (Chesapeake Bay). I know that open space
343 regulations are very complicated and they have to be balanced with coverage
344 requirements and minimum and maximum lot sizes, setbacks, etc. So, because there were
345 so many discussions, we decided to make this optional. For Eliot, I have seen that your
346 Chapter 41 has a requirement for just 10% of open space in subdivisions and I didn't
347 know what the pleasure of the PB might be to increase that.

348
349 Mr. Leathe said that we have an ordinance subcommittee that Ms. Bennett heads up and
350 one of the areas for further discussion is indeed the open space area. I think this is an
351 interesting idea to add to that discussion but I don't think that is anything that will be
352 determined in the near term.

353
354 Ms. Rabasca said that Mr. Brubaker and I can come up with some language that says that
355 you currently do have an open space requirement in subdivisions but you also have the
356 ordinance committee considering.

357
358 Mr. Leathe said that this is just one of several changes that we will recommend.

359
360 Mr. Latter asked, just as a point of reference, did the subdivision we just approved have
361 10% open space.

362
363 Note: This particular subdivision was conventional, not open space.

364
365 Mr. Brubaker clarified that the open space language in our ordinance says that it "*may*
366 *require up to 10% open space*".

367

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

372
373 Ms. Braun asked on the 40% requirement, wouldn't that depend on the size of the
374 development. We have an 8-lot subdivision and 40% of that would be pretty high. So, I
375 would think it would have to be based on the size of the development, wouldn't it.

376
377 Ms. Rabasca said that more so the way that we have seen this applied is that it's based on
378 the zoning you have. Usually, you have minimum lot sizes so the rural districts in the
379 community have larger minimum lot sizes, smaller setbacks, and they are typically in
380 areas where there is no public water or public sewer so they have to be big lots to
381 accommodate a septic system and water well. So, they are naturally a bit better suited to
382 having a larger requirement for open space and that's why the rural ones are 40%.
383 Thinking of subdivisions that you've reviewed recently, if they are in the suburban area,
384 you might want to go to 25%. You'll notice that we aren't recommending an open space
385 requirement for village or town centers (urban), again, because they probably have sewer
386 and you probably want your higher density population there. Many times, communities
387 have a separate village plan.

388
389 Mr. Leathe said that one of the ways we have been looking at open space, theoretically, is
390 that it may be a better application in the Village and Suburban Districts than the Rural
391 District because of the access to infrastructure – police, fire, sewer, water – and creating
392 more open space where there's higher density living and make more of a community out
393 of it versus in the woods off of Goodwin Road, or something. So, I'm just curious why
394 this group doesn't think of the things that way.

395
396 Ms. Rabasca said that I think it boiled down to the fact that most urban centers have some
397 kind of predisposed plan for trails and open space. So, with this piece of the code, they
398 didn't want to interfere with that element.

399
400 Mr. Leathe said that we have no downtown, village center.

401
402 Ms. Bennett said that, for our village district, we talked about having a village plan. We
403 also talked, in our last Comp Plan, about increasing the density in this zone but we have
404 not. Just for reference, we have 1-acre zoning in the Village District.

405
406 Ms. Rabasca said that it's a complicated matter.

407
408 Ms. Bennett agreed. I love the optional recommendation. I think it will make for a fruitful
409 conversation later on.

410
411 Ms. Rabasca said, regarding the fee-in-lieu, that I wanted to point out that that is also
412 very helpful to start to create a fund, should the Town have an opportunity to buy a piece
413 of property that would really benefit your village open spaces, that you might have

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

432
433 Ms. Bennett asked if the Maine Stream Smart Principles are also really good for climate
434 resiliency as far as large water events.

435
436 Ms. Rabasca said yes, they will. Because the Stream Smart crossing requires that you be
437 more than bank-full width for the stream passing. It really helps to, especially when
438 you're closer to the ocean, alleviate flooding back up stream because you'll allow the
439 passage. So, it's just a really great program, all-around.

440
441 Mr. Leathe asked if, when you mention an artificially channelized stream, that is a stream
442 that has already been truncated for development.

443
444 Ms. Rabasca said yes. So, if a development already has a culvert on it, that would have to
445 get converted. But, if it was just a ditch, it wouldn't have to be a stream smart culvert. It
446 has to meet the definition of a water of the State in order to have this stream smart
447 culvert. Did that answer your question.

448
449 Mr. Leathe said maybe not. I'm trying to understand what artificially channelized means.
450 Is that something that humans did or is that something that occurs naturally in the world.

451
452 Ms. Rabasca said that I think some of the city committee members wanted this put in
453 because there are streams in some of the more populated areas where streams have been
454 straightened or moved over a little bit before the regulations kicked in and, so, they didn't
455 want the stream smart crossings to apply to those artificially channelized streams. I don't
456 think it will apply to Eliot much at all. In downtown Berwick, for example, there's a
457 stream that runs under the former Prime Tanning that's a pretty classic example of the
458 kind of thing they didn't want to have to undo. That might also be considered that a lot of
459 the planners were concerned about 'takings'. They didn't want to open themselves up to

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

464
465 There was no objection.

466
467 Ms. Rabasca said that the **next one** is related to the same standard for the stream
468 crossings and the stream smart culverts (Rural and Suburban Projects). To the extent
469 practicable, projects are going to preserve the natural pre-development drainageways on-
470 site by using the natural existing flow patterns. We are allowing some waivers and
471 exceptions for that; that I think we may have to strength those a little bit. If they are
472 slowing the water down, then they can get an exception or if they can demonstrate an
473 alternative analysis.

474
475 Ms. Bennett asked if we had to have an exception here.

476
477 Ms. Rabasca said no.

478
479 Ms. Bennett said that it seems to me that, possibly, we would be opening a can of worms
480 for our engineers becoming a mini army corps of engineers. I have some concerns about
481 granting exceptions.

482
483 Ms. Rabasca said that I think we could leave the exception in here for now and then it
484 would be more stringent to remove the exception later. This will be a moderate impact on
485 the design; that they will have to spend a little more time thinking about the design that
486 are a good benefit to our water quality.

487
488 The PB agreed.

489
490 Ms. Rabasca said that, regarding **Stormwater Treatment Measures**, they are going to
491 have to treat the impervious cover using the same kinds of stormwater treatment
492 measures they would use in Chapter 500, and to the same level. Chapter 500 says you
493 have to treat 95% of the first inch of water that falls on your impervious area. That's what
494 a developer would have to treat using the Stormwater Treatment Measures, which is
495 underdrain soil filters or wet ponds or other innovative measures, treating it to remove
496 pollutants now. This is already required in Chapter 500 but at a much larger threshold
497 than the Town will be regulating.

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506 **ITEM 9 – OLD BUSINESS**

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

521 **ITEM 10 – OTHER BUSINESS/CORRESPONDENCE**

522
523
524
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526
527

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

528 **ITEM 11 – SET AGENDA AND DATE FOR NEXT MEETING**

529
530
531
532
533
534

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

535

536 **ITEM 13 – ADJOURN**

537

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

538

VOTE

539

5-0

540

Motion approved

541

542

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544

The meeting adjourned at 9:03 PM.

545

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Christine Bennett, Secretary

Date approved: _____

551

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Respectfully submitted,
Ellen Lemire, Recording Secretary

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

Planning Board recommends _____ (#-#)

Select Board recommends _____ (#-#)

DRAFT for December 6, 2022 Planning Board review

Short title

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

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

ARTICLE #__: Shall an Ordinance entitled “[insert final title here]” be enacted?

(A copy of this ordinance is available in the Town Clerk’s Office)

Background and rationale

[to be added]

New text underlined in bold

~~Deleted text in strikethrough~~

[Text in brackets, bold, and italics introduces a large block of new text:]

[Text in brackets and italics is a temporary explanatory note]

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

[abridged to only show changes]

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

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

[...]

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

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

[...]

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

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

[...]

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

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

- A. Complies with American National Standards Institute standard A 119.5 on plumbing, propane, fire and life safety and construction or National Fire Protection Association standard 1192 on plumbing, propane and fire and life safety for recreational vehicles; [PL 2019, c. 650, §1 (NEW).]
- B. Does not exceed 400 square feet in size; [PL 2019, c. 650, §1 (NEW).]
- C. Does not exceed any dimension allowed for operation on a public way under this Title; and [PL 2019, c. 650, §1 (NEW).]
- D. Is a vehicle without motive power. [PL 2019, c. 650, §1 (NEW).]

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

[...]

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

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

[...]

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

Sec. 45-405. Dimensional standards.

[DRAFT table]

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

District	Rural	Suburban	Village	C/I	MHP
<u>Min. lot size, acres (ac) or square feet (ft²)</u>					
<u>Lots served by both public water and public sewer service</u> <i>[ref. 2009 Comp Plan Future Land Use Policy 1, Strategy 1]</i>			<u>20,000 ft² or ½ ac</u>		
Min. lot size (acres or ft. ²) <u>All other lots</u>	3 ac	2 ac	1 ac	3 ac	6,500 ft ² n 12,000 ft ² n 20,000 ft ² n
Min. yard dimensions (ft.)					
Front yard	30	30 ^p	30 ^p	50 ^{a,p} 30	20°
Side yards	20	20 ^p	20 ^p	20 ^p 100 ^b	20°
Rear yard	30	30 ^p	30 ^p	20 ^p 100 ^b	10°
Accessory building ^c					
Front yard setback	30	30	30	50 ^a 30 ^a	5°
Side and rear yard setback	10	10	10	20 100 ^b	5°
Accessory dwelling unit	u	u	u	u	—
Max. height (ft.)	35	35	35	55 ^d	35
Max. lot coverage (%)	10	15 ^q	20 ^q	50 ^q	50°
Setback-normal high water mark (feet) ^e	75	75	75	75	75
Dwelling units:					
Min. size (sq. ft. per unit):	<400 ^e	<400 ^{e,f}	<400 ^{e,f}	f	<400

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

<u>Accessory dwelling unit (ADU)</u>	<u>u</u>	<u>u</u>	<u>u</u>	<u>u</u>	<u>=</u>
<u>Assisted living facility</u>	<u>=</u>	<u>300</u>	<u>300</u>	<u>300</u>	<u>=</u>
<u>Federal and state elderly housing, other than assisted living facility</u>	<u>=</u>	<u>No min.</u>	<u>No min.</u>	<u>No min.</u>	<u>=</u>
<u>Mobile home park units</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>650</u>
<u>Tiny home</u>	<u>190</u>	<u>190</u>	<u>190</u>	<u>190</u>	<u>=</u>
<u>All other units</u>	<u>650</u>	<u>650</u>	<u>650</u>	<u>650</u>	<u>=</u>
Min. area-(acres): <u>per dwelling unit, acres (ac) or square feet (ft²)</u>					
<u>Lots served by both public water and public sewer service</u>					
<u>1 unit</u>	<u>=</u>	<u>=</u>	<u>20,000 ft²</u>	<u>=</u>	<u>=</u>
<u>2 units</u>	<u>=</u>	<u>=</u>	<u>40,000 ft²</u>	<u>=</u>	<u>=</u>
<u>Each additional unit</u>	<u>=</u>	<u>=</u>	<u>20,000 ft²</u>	<u>=</u>	<u>=</u>
<u>Affordable housing developments on growth-area lots served by both public water and public sewer service [per LD2003]</u>					
<u>1 unit</u>	<u>=</u>	<u>=</u>	<u>8,000 ft²</u>	<u>=</u>	<u>=</u>
<u>2 units</u>	<u>=</u>	<u>=</u>	<u>16,000 ft²</u>	<u>=</u>	<u>=</u>
<u>Each additional unit</u>	<u>=</u>	<u>=</u>	<u>8,000 ft²</u>	<u>=</u>	<u>=</u>
<u>Affordable housing developments on growth-area lots that are not served by either public water or public sewer service [per LD2003]</u>					
<u>1 unit</u>	<u>=</u>	<u>0.8 ac</u>	<u>0.4 ac</u>	<u>=</u>	<u>=</u>
<u>2 units</u>	<u>=</u>	<u>1.2 ac</u>	<u>0.8 ac</u>	<u>=</u>	<u>=</u>
<u>Each additional unit</u>	<u>=</u>	<u>0.8 ac</u>	<u>0.4 ac</u>	<u>=</u>	<u>=</u>
<u>All other lots</u>					
1 unit	3	2	1	—	o

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

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

Notes:

- a. A front yard abutting a state or town road shall have a minimum depth of 50 feet from the right-of-way line. A front yard abutting an interior street within the proposed site shall have a minimum depth of 30 feet from the right-of-way line. All parking areas shall conform to setback requirements.
- b. All side and rear yards abutting an existing residential use shall have a minimum depth of 100 feet from the side or rear lot lines.
- c. Accessory buildings shall be located no less than 30 feet from any principal buildings on adjacent property.
- d. Rooftop antennas and other telecommunications structures shall conform to the requirements of sections 33-185 and 45-460. Steeples and spires shall be exempt from maximum height requirements.
- e. Setbacks and setback measurements in shoreland zones shall follow requirements of chapter 44.
- f. (Reserved.)

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

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

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

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

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

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

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

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

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

6,500 feet² if served by public sewer. Minimum lot width is 50 feet.

12,000 feet² if served by central subsurface wastewater disposal approved by the state department of human services. Overall density of park, including road rights-of-way and buffer strips shall be 20,000 feet² per dwelling. Minimum lot width is 75 feet.

20,000 feet² if served by onsite subsurface wastewater disposal. Minimum lot width is 100 feet.

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

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

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

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

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

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

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

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

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

u. See section 45-459 for requirements.

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

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

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

Sec. 45-459 – Accessory dwelling unit

- (a) ~~An accessory dwelling unit (ADU) is a small apartment which is part of an existing or new single family owner-occupied home, and which is clearly secondary to the single family home. The accessory dwelling unit may be rented so that the owner-occupant may benefit from the additional income. The owner may also elect to occupy the accessory dwelling unit and rent the principal dwelling unit.~~
- (b) Owner-occupied means that either the principal dwelling unit or the accessory dwelling unit is occupied by a person who has a legal or equitable ownership interest in the property and bears all or part of the economic risk of decline in value of the property and who receives all or part of the remuneration, if any, derived from the lease or rental of the dwelling unit.
- (c) An accessory dwelling unit may be permitted as an accessory use to a single family home under the following conditions:
- (1) ~~Only one accessory dwelling unit (ADU) is permitted per lot. The accessory dwelling unit shall be located in the same building as the principal dwelling unit or in a building accessory to the principal dwelling unit. Any structure containing an accessory dwelling unit must meet minimum yard and setback requirements for principal structures.~~
[Reading DECD guidance p. 13, it appears that LD2003 does not require municipalities to allow more than one ADU to be built on a lot with an existing home, if one unit is attached and the other is detached. In other words, the LD2003 language, “A municipality shall allow on a lot with one existing dwelling unit the addition of up to 2 dwelling units: one additional dwelling unit within or attached to an existing structure or one additional detached dwelling unit, or one of each,” does not, in DECD’s interpretation, apply to ADUs. We can revisit this if Rulemaking says otherwise.]
 - (2) A building permit for the proposed construction of a new ADU or the creation of a new ADU within an existing building, must be issued by the CEO. Planning board approval is not required for an ADU.
 - (3) A building permit for a new single family home may include an ADU as long as the provisions of this section are met and the building conforms to all of the dimensional requirements for the zone in which it is being built. An ADU may be included in a new home constructed on a lawful nonconforming lot of record which may be built upon pursuant to section 45-194.
 - (4) The property owner must occupy either the principal dwelling unit or the ADU as their principal residence, and at no time receive rent for the owner-occupied unit. Principal residence must be proven by voter registration or other evidence acceptable to the CEO.
 - (5) The maximum gross floor area of an ADU shall be 1,000 square feet or 50 percent of the gross floor area of the principal dwelling unit, whichever is less. The minimum gross floor area of an ADU shall be ~~300~~ **190** square feet. An ADU shall not have more than two bedrooms.
 - (6) Apartments built prior to November 2, 1982 and existing on March 16, 2002, shall be considered lawful nonconforming uses which may continue pursuant to section 45-191.

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

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

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

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

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

(11) Design criteria:

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

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

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

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

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

- a. The number of units established;
- b. The geographic distribution of the units; and
- c. The average size of the units.

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

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

(d) Lot line setbacks.

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

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

- a. **The accessory structure to be converted must have a valid building permit issued by the Town, or the applicant must demonstrate that it was built before building permits were required for such structures.**
- b. **The ADU, or structure containing the ADU, shall meet minimum setback requirements for accessory structures.**
- c. **Compared to the accessory structure to be converted, renovated, or replaced, the ADU, or ADU area within the renovated accessory structure, shall not have a greater footprint within the minimum setback area for principal structures.**

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

Emergency responder access for ADUs – seek FD’s comment

State law reference

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

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

Kim,

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

Thanks,
Jeff

Jeff Brubaker, AICP
(207) 439-1813 x112

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

[Update on LD 2003.](#)

[Start from bottom.](#)

[We had a meeting with legislators before Thanksgiving which I guess spurred a call or two.](#)

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

Hi Paul,

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

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

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

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

Looking forward to hearing from you.

Hilary

From: Paul Schumacher <pschumacher@smpdc.org>

Sent: Wednesday, November 30, 2022 1:59 PM

To: Averill, Benjamin <Benjamin.Averill@maine.gov>; Ljfeldman <Ljfeldman@smpdc.org>

Cc: Gove, Hilary <Hilary.Gove@maine.gov>; Roberts, Tiffany <tiffany.roberts@legislature.maine.gov>

Subject: RE: Housing Opportunity Program Introduction

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Ben and Hillary,

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

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

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

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

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

Best,

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

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

Hi Paul and Lee Jay,

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

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

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

Best,

Ben

Ben Averill
Housing Opportunity Program Coordinator
Dept. of Economic & Community Development
111 Sewall Street, 3rd Floor
59 State House Station
Augusta, ME 04330
Tel: 207-441-9831
www.maine.gov/decd

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Accessory dwelling units in Portsmouth: 'Easiest' housing solution or is it too late?

Jeff McMenemy, Portsmouth Herald

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

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

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

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

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

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

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

Housing that allows people to stay in Portsmouth

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

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

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

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

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

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

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

ADUs have limited impact in Portsmouth so far

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

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

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

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

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

“I think that’s a win-win,” he added.

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

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

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

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

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

He added that “there’s no rule that prohibits affordable housing from being built in the city of Portsmouth.”

“They don’t do it out of the kindness of their heart,” he added.

What are the proposed amendments for ADUs in Portsmouth?

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

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

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

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

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

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

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

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

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

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

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

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

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

Too late for affordable housing?

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

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

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

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

“I think in Portsmouth’s case, the horse is out of the barn in terms of affordable housing,” Choate said.

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

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

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

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

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

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

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

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

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

What's next for Portsmouth's ADU regulations

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

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

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

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

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

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

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

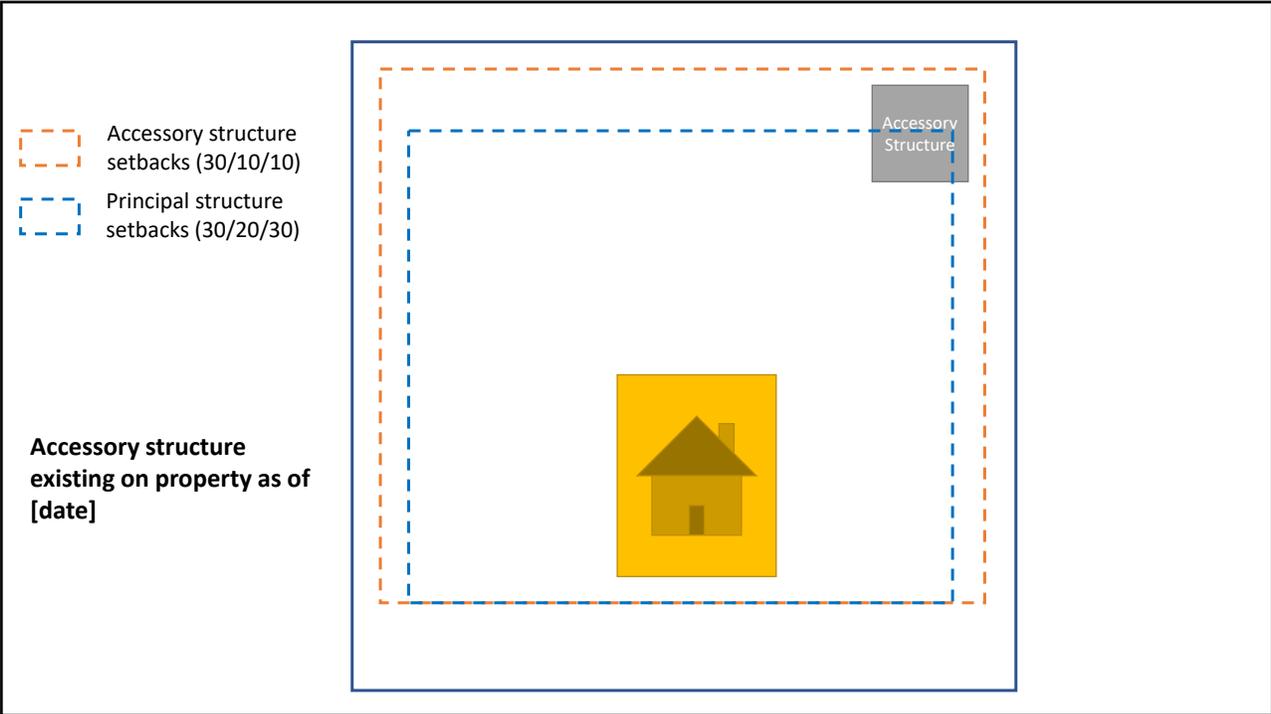
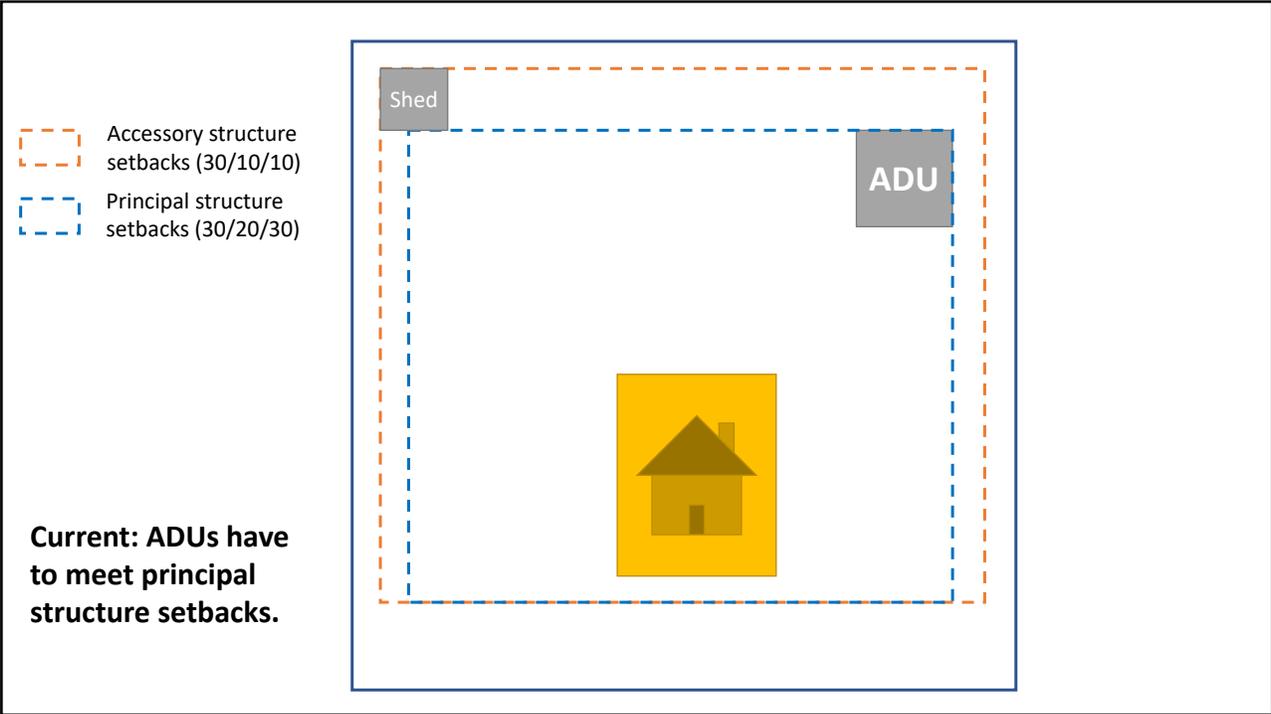
City Councilor Rich Blalock, who serves on the Land Use Committee, said the group's goal was to “lower the barrier” for getting ADUs approved.

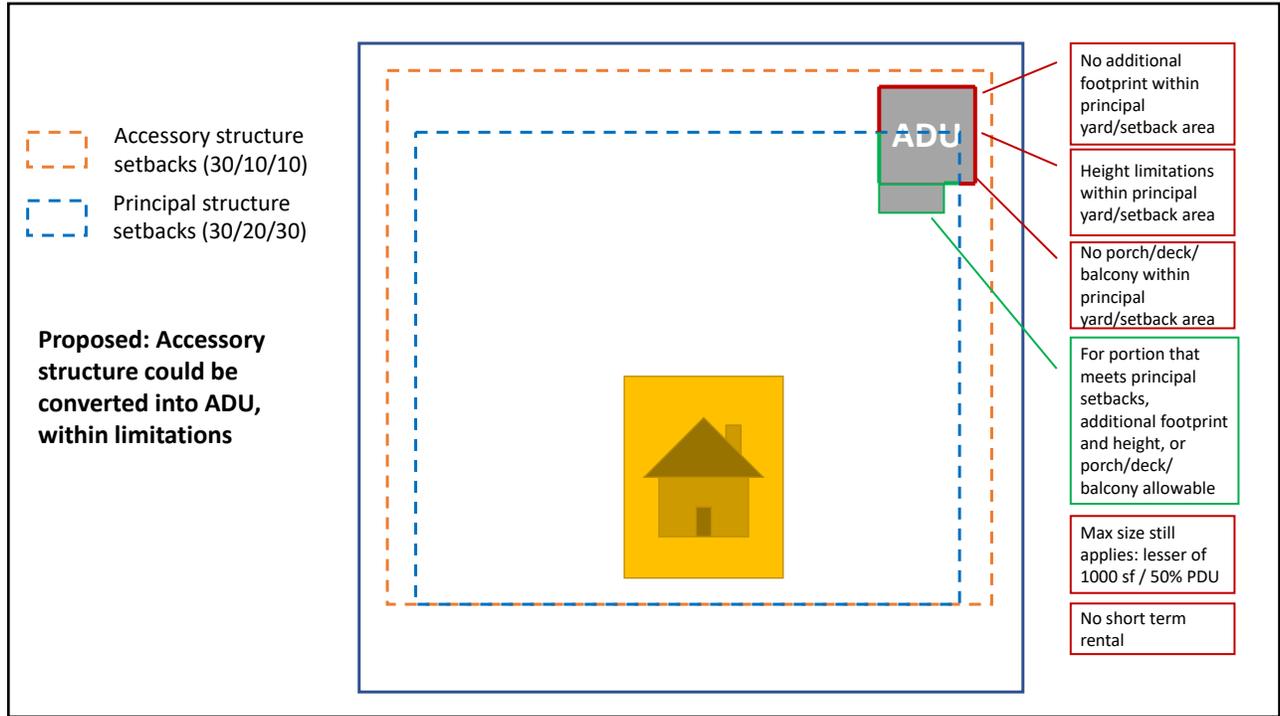
“I think we’ve been working very hard at doing that,” he said.

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

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

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





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

Planning Board recommends _____ (#-#)

Select Board recommends _____ (#-#)

DRAFT for December 6, 2022 Planning Board review

Short title

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

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

ARTICLE #__: Shall an Ordinance entitled “[insert final title here]” be enacted?

(A copy of this ordinance is available in the Town Clerk’s Office)

Background and rationale

[to be added]

New text underlined in bold

~~Deleted text in strikethrough~~

[Text in brackets, bold, and italics introduces a large block of new text:]

[Text in brackets and italics is a temporary explanatory note]

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

[abridged to only show changes]

[...]

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

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

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

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

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

[...]

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

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

[...]

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

- (1) No session conducted for the children is longer than 3 1/2 hours in length;**
- (2) No more than 2 sessions are conducted per day;**
- (3) Each child in attendance at the nursery school attends only one session per day; and**
- (4) No hot meal is served to the children.**

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

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

Nursery schools. See "day nurseries."

[...]

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

State law reference – 20-A MRSA 1

[...]

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

State law reference – 20-A MRSA 1

[...]

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

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

[...]

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

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

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

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

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

Table of Land Uses

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

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

Business office	14	14	SPR ⁸	SPR
Campgrounds	SPR	no	no	no
Cemeteries	SPR	SPR	SPR	no
<u>Child care facility: child care center</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>SPR</u>
<u>Child care facility: family child care provider</u>	<u>SPR⁸</u>	<u>SPR⁸</u>	<u>SPR⁸</u>	<u>SPR⁸</u>
<u>Child care facility: nursery school</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>SPR</u>
<u>Child care facility: small child care facility</u>	<u>SPR²²</u>	<u>SPR²²</u>	<u>SPR²²</u>	<u>SPR</u>
Clearing	yes	yes	yes	yes
Clinics	no	no	no	SPR
Clustered housing	SPR	no	no	no
Commercial adult enterprise	no	no	no	SPR
Commercial establishment, 2 or more where allowed	-	9	no	SPR
Day nurseries	SPR	16	SPR ⁸	SPR
Earth material removal, less than 100 cubic yards 100 cubic yards or greater	yes SPR	yes SPR	yes SPR	yes SPR
Elderly housing	no	SPR/SD	SPR/SD	SPR/SD
Emergency operations	yes	yes	yes	yes
Equipment storage, trucks, 3 or more	no	no	no	yes
Essential services	yes	yes	yes	yes
Expansion of an existing telecommunication structure or collocation of antenna on a existing telecommunication structure or alternate tower structure	CEO	CEO	CEO	CEO
Farm equipment stores	SPR	10	no	SPR
Fences	yes ⁵	yes ⁵	yes ⁵	yes ⁵
Firewood sales	yes	13	SPR ⁸	yes
Fireworks sales	no ¹⁹	no ¹⁹	no ¹⁹	no ¹⁹
Forest management, except timber harvesting	yes	yes	yes	yes
Funeral establishment	no	no	SPR	SPR
Gambling casino	no	no	no	no
Gardening	yes	yes	yes	yes

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

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

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

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

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

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

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

Notes:

1. Buildings housing animals shall be no less than 100 feet from property lines.
2. Each bulk oil fuel tank shall not exceed 50,000 gallons in size and use shall be limited to local use only.
3. Only as an accessory to an allowed principal use on the lot. Must conform to the requirements of 45-422, Waste containers.
4. Individual stores shall not have more than 2,500 square feet of gross floor area, except stores located on Route 236 may have up to 5,000 square feet. Customer sales areas shall be confined to one floor.
5. Must conform to the requirements of section 45-423.
6. See section 45-192(b) for an exception on accessory uses and structures.
7. See division 2 of article V of chapter 41 of this Code for specific areas where mobile home parks are allowed.
8. Must conform to the requirements of section 45-456.1 Home business.
9. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
10. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
11. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "CEO" and must be visually screened from abutting (same street side) non-commercial properties.

12. Use is "SPR 1 & 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR 1" and must be visually screened from abutting (same street side) non-commercial properties.
13. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "yes" and must be visually screened from abutting (same street side) non-commercial properties.
14. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
15. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties in accordance with Sec. 33-175(a). Overnight boarding and outdoor kenneling of animals is prohibited in the rural and suburban zoning districts.
16. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) noncommercial properties.
17. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "CEO" and must be visually screened from abutting (same street side) noncommercial properties.
18. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR 4" and must be visually screened from abutting (same street side) noncommercial properties.
19. See chapter 12 for additional regulations pertaining to the sale and use of fireworks.
20. Must conform to the requirements of section 33-190. Marijuana establishments and medical marijuana establishments may only be authorized as principal uses, and not as accessory uses.
21. Must conform to the requirements of section 45-462.

22. [adaptive reuse pilot program]

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

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

Impact Fee and TIF Study

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

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

an open space fund through various mechanisms to be considered...Development of a conservation impact fee”

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