

ITEM 1 - ROLL CALL

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

Also Present: Jeff Brubaker, Town Planner.

Absent: Lissa Crichton – Secretary (excused).

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

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION

Mr. (Jay) Meyer, Odiorne Lane, said that I have addressed this in the past to you regarding the public not having a package available here at our meetings. I think it's very important that you provide the public a package. This has been a policy that has been in place for a long time and I am really concerned that that is not available to the public. I've brought this up on a couple of occasions, now, and I would like an explanation as to why that's not available to us.

Mr. Brubaker said that, with regard to your suggestion that the press have a packet, if the press started coming to these meetings, I'd be happy to print a packet for them. We do make the packet available online. With that said, I think I can talk with our Admin Assistant about having an additional printed packet available for the public.

Ms. Braun asked if there was anything else, Mr. Meyer.

Mr. Meyer said no, other than the fact that I brought this up on several occasions and it's the same story. So, are we going to do it or are we not going to do it. Could we put a policy in place that we do that.

Ms. Braun said that, as Mr. Brubaker stated, we will discuss it with the Land Use Administrator and go forward from there.

Mr. Meyer asked whose responsibility is that in making sure that gets done.

Ms. Braun said that it is my and Mr. Brubaker's responsibility to speak to that and we will do so.

ITEM 5 – REVIEW AND APPROVE MINUTES

Mr. Latter moved, second by Ms. Bennett, to approve the minutes of January 4, 2022, as amended.

VOTE

4-0

Motion approved

ITEM 6 – NOTICE OF DECISION

PB21-36 was deferred until the next meeting (March 1, 2022) as it was not placed on tonight's agenda.

Mr. Brubaker said that I think the saving grace is that, as part of your motion and it's represented here in the Notice of Decision, you did authorize the Chair to work with the Planner in getting a letter out. I think that that was important, timing-wise, for Ms. Raitt, because we had the ability to send out that letter (State of Maine form acknowledging PB approval.)

ITEM 7 – NEW BUSINESS

A. 25 Alden Lane (Map 1/Lot 36), PB22-02: Shoreland Zoning Permit application – Garage Replacement.

Received: January 18, 2022

1st Heard: February 15, 2022 (Shoreland Zoning Permit Application/postponed)

2nd Heard: _____, 2022

Site Walk: N/A

Approval: _____, 2022

Mr. (Nick) Gray, applicant/contractor, was present for this application.

Mr. Gray said that we are going to postpone it for now and, hopefully, have it for the next meeting in March. We need to try to pull it to the 75-foot setback. Currently, the garage is only about 65 feet from the high-water mark and we were wanting to add a second story to it so we can't change that because of the 20-foot requirements between 65 feet and 75 feet. So, I would just like to postpone it until the next meeting.

Ms. Braun said that that was fine as long as you get together with Mr. Brubaker on your application.

Mr. Gray thanked the PB.

B. 72 Harold L. Dow Highway (Map 23/Lot 15), PB22-04: Retail Store in an Existing Building

Received: January 26, 2022

1st Heard: February 15, 2022 (site plan amendment review/approved as minor change)

Site Walk: N/A

Approval: February 15, 2022

Ms. (Aly) Eardley, applicant, was present for this application.

Ms. Eardley said that I'm looking to open a small retail shop at 72 Dow Highway, which is currently Randolph's Upholstery Shop. He's been there for about 40 years and he's getting ready to wind down his business and retire. I've been talking with him about renting the front half of his shop. I'll be looking to open the retail shop probably a couple days a week and I'll be selling home décor, painted furniture, gifts, and that kind of thing. I think it's never truly been a retail store before and that's why I'm here.

Ms. Braun asked if she was going to have a sign.

Ms. Eardley said that I would like to have a sign. Mr. Randolph is planning to take down at least one of his; that he has multiple signs on one stand so he offered me the top place. He will be taking down the other one eventually.

Ms. Braun said that the parking is sufficient but they are just not marked.

Ms. Eardley said that it's a big parking lot and I think we will put in curb bumpers, or something like that, to show people where to park.

Ms. Braun said that I would do this as a minor change and asked what other PB members thought.

Ms. Bennett said that from the existing use right now, even though it hasn't been a robust retail location, it's still a retail establishment. It's a modification. They are not changing the footprint or adding anything.

Ms. Braun agreed that they are not changing anything.

The PB members agreed.

Mr. Latter moved, second by Mr. Leathe, that the Planning Board Approve PB22-4 as a Minor Site Plan Amendment and Change of Use for a retail store (furniture, home décor, and gifts) in an existing building. The Planning Board finds that the approved revisions are minor and do not result in any substantial changes to the approved development or further impact abutters. The following are conditions of approval:

- 1. The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to**

the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board. Copies of approved permits from Maine DEP, Army Corps of Engineers, if applicable, and State shall be provided to the CEO before construction on this project may begin.

2. The permit is approved on the basis of information provided by the applicant in the record regarding the ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.
3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.
4. Applicant shall pay the Planning Board application fee prior to, or along with, submitting a building permit application.
5. At least one parking space shall be ADA accessible.
6. If feasible, the large waste container for the building shall be relocated within the parking lot and/or screened from Route 236 in accordance with §45-422.
7. The Code Enforcement Officer may approve minor changes in the sketch plan if they are not substantially contrary to the Planning Board's approval.

VOTE

4-0

Motion approved

Ms. Braun asked if the applicant had any questions.

Ms. Eardley said that I don't think so. Those things will be for when I get together with the CEO for inspections.

Ms. Braun agreed. You do understand about the dumpster and all of that.

Ms. Eardley said yes. I have been talking to the Planner about that. I think we'll end up screening the dumpster.

Mr. Brubaker said that the applicant has already paid her fee.

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

C. Ordinance Amendments was deferred to the end of the meeting agenda.

ITEM 8 – OLD BUSINESS

A. 771-778 Main Street (Map 6/Lot 43, 44) PB21-30: Subdivision with Nineteen (19) Elderly Housing Units and Two (2) Single-Family Units.

Received: October 14, 2021 (updated December 9, 2021)

1st Heard: December 14, 2021 (sketch site plan review)

2nd Hearing: January 25, 2022 (sketch plan review)

3rd Hearing: February 15, 2022 (sketch plan review)

4th Hearing: _____, 2022

Public Hearing: _____, 2022

Site Walk: _____, 2022

Approval: _____, 2022

NOTE: This application has been withdrawn.

B. 16 Arc Road (Map 45/Lot 17), PB21-29: Site Plan Review, Change of Use, and Shoreland Zoning Permit Application – Adult Use Marijuana Retail Store and Medical Marijuana Caregiver Retail Store.

Received: November 15, 2021 (update January 13, 2022)

1st Heard: January 25, 2022 (sketch plan review)

2nd Hearing: February 15, 2022

3rd Hearing: _____, 2022

Public Hearing: _____, 2022

Site Walk: _____, 2022

Approval: _____, 2022

Mr. (John) Chagnon, (Project Engineer, Ambit Engineering, Inc.) was present for this application.

Mr. Chagnon asked if Ms. (Rebecca) Brown could be let into the meeting. We were here last month and went over a proposal to amend an approval granted in 2021. The PB had a couple questions about the application and we've made some changes to the plan set to address those. Specifically, we moved the ADA space that was on the back side of the 6,000 square-foot building to the west end of the northerly rear parking area so it is not utilizing the loading area as the parking space laydown. We then added a walkway to the rear entrance door from that location and put a light on the door (Sheet C-2). On Sheet C-3 Facility Operations Plan, we revised the operational notes to eliminate references to

plant waste. There is no cultivation that will occur at this facility. The applicant did provide some information about waste that may occur in regards to the retail operation. On Sheet C-4 Grading, Drainage & Erosion Control Plan, we adjusted the grading slightly in the area of that new walkway to the rear door just to make everything up to speed and current. The Septic Location Plan Sheet C-5, we added a note to be very clear that there will be a pump with an alarm. With the Lighting Plan L-1, we added the photometric light intensities to the plan with the new light (new back door). All the other sheets remain unchanged. We did submit some additional information. The updated ownership disclosure. An adult use license. That additional disposal information I mentioned. Light fixture specifications. Then, the PB at the last meeting asked the applicant to engage a traffic engineer to do a study based on anticipated site use and trip generation. You should have a copy of that and Rebecca Brown is here. She was the traffic engineer and I will let her take it away.

Ms. Brown thanked the PB for allowing her to join virtually. I want to briefly go over the traffic study we put together and then, if you have any specific questions, I'd be happy to answer those. The traffic study we put together really was intended to review the [inaudible] operations of Arc Road as it intersects Route 236 in order to ensure it can handle the traffic that will be generated by the proposed marijuana use. Arc Road now is roughly 24 feet wide for the majority of its length but it does narrow in some places to 20 to 21 feet, which provides roughly a 10-foot travel lane in each direction. That does meet AASHTO's design guidelines for low volume roadways and will allow for passenger vehicles and the trucks that are currently on the roadway to safely pass each other. That is supported by the fact that trucks are passing each other safely today. We did do a review of collisions occurring based on Maine DOT's crash total record for the seven-year period from 2015 to 2020, which showed that a total of three crashes had occurred in the vicinity of the Arc Road intersection over that seven-year period. I understand that there was another one that may have been coded incorrectly. Two of the crashes involved deer and one involved the driveway into the Auto Sales business (Heritage) that's right on that corner there. Overall, pretty low occurrence of crashes that really don't indicate a particular safety concern there. We did also review sight lines at the intersection of Arc Road with Route 236 as well as at the site roadway intersection with Arc Road and both the intersection sight distance and the stopping sight distance at both locations did exceed actual recommendations for safe operations. So, based on those three elements, the geometry, the collisions, and the sight lines, we do not see any safety concerns that would arise from this proposal. The next thing we looked at was the trip generation and I understand that an estimate was previously provided based on a mix of different land uses. We have provided a trip generation estimate based on the Institute of Transportation Engineering (ITE) data, which is the leading source for data for trip generation information throughout the country. This is a relatively new land use to ITE and the majority of data is taken in Colorado, Oregon, and California, with a couple of sample sites in Massachusetts. We did provide an additional trip generation assessment based on some empirical trip generation data that was collected at a similar co-located facility in Lowell, Massachusetts that's operated by PatriotCare. That location has both medical marijuana sales and adult recreational sales, similar to the one being proposed. Overall, based on that data what we found was that the site would generate roughly 40 to 50

275 vehicle trips during the peak hour, during those weekday evening peak periods and
276 Saturday mid-day peak periods. When you think about a vehicle trip, it means one
277 vehicle entering or one vehicle exiting. So, that is essentially 20 cars coming to the site,
278 20 to 25 cars over the course of an hour. So, we took that traffic generated by the project
279 and added that on to the existing trips that are traveling along Route 236 at the Arc Road
280 intersection and ran an analysis using the Synchro analysis software to assess the ques,
281 the radius, and the level of service at that intersection. What we found was that all of the
282 movement through the intersection would operate at low levels of service with traffic on
283 Route 236 operating at levels of service 'A' and 'B' during the analysis time period and
284 traffic coming out of Arc Road operating at a level of service 'E' or better during all of
285 those time periods, with ques coming out of Arc Road, not exceeding two vehicles during
286 those peak hours. Based on the safety review that showed there was no significant safety
287 concerns and the traffic operations analysis that showed that the traffic could be handled
288 on the adjacent roadways, we did conclude that the intersection there at Route 236 and
289 Arc Road, as well as the Arc Road in and of itself could safely handle the traffic that we
290 generated on this project. So, if you have any specific questions on the traffic study, I'd
291 be happy to answer those for you, as well.

292
293 Ms. Bennett asked for clarification of what was the weekday evening peak hour.

294
295 Ms. Brown said that we looked at the traffic counts on the adjacent roadway, which was
296 peaking out from 4PM to 5PM. Arc Road was actually peaking at a little bit later; that I
297 believe it was 4:45PM to 5:45PM. So, we combined the Arc Road peak traffic with the
298 Route 236 peak traffic because we were looking at a worst-case scenario.

299
300 Mr. Latter asked, when you figure out vehicle trips, do you differentiate between existing
301 traffic that might be utilizing this facility with people who are out of the total traffic
302 volume by making the specific trip here. Do you differentiate between trips.

303
304 Ms. Brown said that I think you may be talking about pass-by trips, potential. Somebody
305 who is already on the roadway and might decide to stop here on their way to another
306 location. Is that it.

307
308 Mr. Latter said yes.

309
310 Ms. Brown said that we did not assume any pass-by trips although we would anticipate
311 that there will be some. So, there will be someone that may stop here on their way home
312 from work or while they're out and about shopping on a Saturday. But we did not take
313 any credit for that. We assumed everyone coming here is entirely new and, then, to be
314 conservative and give a worst-case scenario of what the traffic might be.

315
316 Mr. Brubaker said that, overall, I think it was a very thorough traffic impact assessment. I
317 think the big question here is Maine DOT's traffic movement requirement. I thought that
318 the TIA did a good job of mixing the ITE trip rates with an empirical study of the Lowell
319 dispensary because, as Ms. Brown mentioned, the ITE Manual is still catching up in
320 terms of good data for marijuana trip generation. But I do think this needs a little bit more

time so that we can see what the results of the traffic movement permit processes and think more about what may or may not need to be done with regard to Arc Road, including its intersection at Route 236. I thought the TIA did a good job of mentioning that there is an existing off-premise sign near the intersection. It's for the ARC property - WinWaste Solutions – that is the current corporation that owns the ARC property. I just want to mention that I've talked about that sign with our CEO and she will be following up with WinWaste Solutions on that, clarifying that that doesn't have anything to do with this application.

Mr. Chagnon said that I think the second comment is relating to the observation from the traffic engineer that that sign might be blocking some sight distance.

Mr. Brubaker agreed.

Mr. Chagnon said that, in regard to the first comment as far as the TIA study. Ms. Brown is prepared to address that process and what it means. We would like to move this along while that is ongoing. We think that would be a reasonable condition of the approval so could you tell us a little about that.

Ms. Brown said that, essentially, that process means filing a traffic movement permit (TMP) application, which is essentially a re-packaging of the traffic study that we already did, with specific sections that the DOT asked for and submitting that to them. There would be a scoping meeting held where they could potentially ask for some additional analysis. We don't really anticipate much additional analysis based on the number of trips that the project generates so we wouldn't exceed any of their volume thresholds to look at intersections beyond the Arc Road intersection. But what we would end up needing to meet is a 10-year volume projection so that would ultimately be included in that TMP application. We don't anticipate that much will come out of that process based on the findings of this traffic impact study and certainly that process could be a condition of approval if the PB wanted to say that obviously this project would be conditioned on the Maine DOT approving the traffic movement permit.

Mr. Chagnon said that I think, if I understand correctly, the results of that would be whether or not to widen Arc Road or put in a signal or some other thing that's sufficient with the intersection. But we don't anticipate that that's going to happen. The intersection has been operating with the ARC facility in place. The ARC facility approval did produce traffic studies. In the traffic studies, they claimed that they didn't need to address this with the State because municipal waste facilities are exempt from the requirement of obtaining this approval from the Highway Department. I think that we would request that this be a condition and that this get moved along to the public hearing. Mr. Brubaker, you said that you talked to the district engineer; that I don't know what that discussion involved but was there something that was brought up that you think warrants some additional time.

Mr. Brubaker said just the traffic movement permit process, itself. Seeing how that at least starts off before that PB starts that timeclock.

Mr. Chagnon asked if it was more of a 'this is a needed part of this'. It wasn't related to 'we need to do this because there seems to be an issue'.

Mr. Brubaker said that I don't know. I'm kind of on the fence. I think you've presented a lot of good information in favor of the existing infrastructure being able to handle these additional trips. But, I also, because of the nature of Arc Road, the variable width and how it dips down into the bridge over Sturgeon Creek, I'm just trying to envision what traffic would be like there when you have the existing ARC trucks mixing with the retail customers. Intuitively, I'm kind of on the fence about just how well that would work along Arc Road and then at the intersection where you have a two-lane facility without turn lanes on the main line of Route 236. I'm just thinking about some of that additional traffic. One of the things that was mentioned in the TIA was the level of service at the stop control intersection of Arc Road and Route 236. I've had some experience with reviewing TIAs and level of service 'e' isn't very good. At the same time, I think you see that a lot. It's somewhat normal to see stop control, the minor approach of stop control intersections, have a level of service 'e' so I think it's not as bad as if the traffic signal had level of service 'e' because that's the second worst grade. So, I'm on the fence about that, too. I guess I just want a little more air time for us to think about the traffic impact, even though I think they've made a good case in a lot of ways that the traffic impacts can be potentially acceptable with the additional trips. I think there's some sensitivity right now in Town with regard to traffic generated by marijuana retail stores so I think I'm a little extra cautious just based on anecdotal evidence from that.

Mr. Latter said that that was my question about the pass-by traffic versus specific destination traffic.

Mr. Brubaker said that pass-by trips are a good consideration for TIAs. The thing, though, is that if you imagine the pass-by trips in certain circumstances, what that does is that it takes a through-movement on Route 236 and turns it into a couple of turning movements. So, you actually have additional turning movements on the stop control approach as opposed to the person who had continued home from work.

Mr. Chagnon said that this is the nature of development on Route 236. If you're going to be adding businesses to Route 236 and improving the commercial use of that corridor, it is going to result in trips and the corridor has a volume of traffic, which is significant. It is an arterial street that carries a lot of traffic flowing through Eliot. So, I don't think this is unlike any other business proposition that is trying to locate in Eliot. And they know that coming in.

Ms. Braun asked if you have talked with the Conservation Committee (CC), yet.

Mr. Chagnon said that we've reached out to the Chair to put us on the agenda for the March 2nd meeting.

Ms. Braun said that we don't have their comments, either. We need comments from them. Have you (Joshua Seymour) gotten your license renewed, because all that is in the packet is your photo ID.

Mr. Seymour said yes. That was my adult use identification card. That is all updated. Regarding my adult use conditional license, we're waiting for the State OMP to produce that. The application has been submitted and there was a letter from my lawyer stating the progress of it. We felt that could also be condition of approval, as we are just waiting on the OMP to deliver that to us.

Mr. Chagnon said that the attorney sent that on the 11th and thought that I was submitting it and, then, I thought she was submitting it.

Mr. Seymour said that I am a little confused, as I know on the Maine DOT traffic movement requirement, with 100 cars at peak hour, they require that study; that I saw on our schedule that it was 52 during the Saturday peak. Am I missing something, here, as to why it's required when we're having half as many cars generated.

Mr. Brubaker said that, in my communication with the DOT engineer, he didn't specify why, but he may have been looking at the per 1,000 square feet trip generation. That's not to say that I actually... I think there's merit in the per register and the per 1,000 square feet trip generation, so I think that was a great aspect of the TIA. I just imaging he may have been narrowing in on the per 1,000 square feet.

Mr. Seymour asked if he assumed that based on 6,000 square feet or the actual retail space of the dispensaries; that we're a lot lower than 6,000. We're around 4,200, considering only retail space.

Mr. Brubaker said that I don't know. But, as you guys work with DOT, you could clarify that and, perhaps, see if there's a way to get out of that requirement.

Mr. Seymour said that I'm just wondering if a traffic movement study is necessary at all if there's a permit discussion we have with the DOT, explain the situation a little bit more, or the square footage a little bit more, and maybe we could have our engineer discuss with them directly to see if there is a further need for that study.

Mr. Brubaker said that I'm completely neutral on you voluntarily reaching out to the DOT to do what you need to do.

Mr. Seymour said that I could be completely wrong but it seemed like, when we looked at the numbers, that we are generating half as much traffic as required to create one of these traffic movement studies. When we look at the timeline of these things, we're stretching out four months almost for a traffic movement study. So, I'm wondering if the DOT would actually require that or that was just a general conversation that you may have had.

Mr. Brubaker said that I think the TIA had both the standard and the innovative way of measuring trips. I think that the innovative way was per register and, if the empirical data bears that up, that's great for the profession but I just wonder if the DOT may have been honing in on that per 1,000 square feet because it's more familiar. Ms. Brown, you may want to chime in on this if you want to say something further. That's just what I assumed the DOT engineer said.

Mr. Seymour said that I just want to be clear that it may not be based on 6,000 square feet. I believe it is based on the retail space and not including break rooms or product storage or areas that consumers cannot access. So, would the PB be okay making that a condition of approval in the event we may not actually have to have a traffic movement study done with the DOT.

Ms. Braun said that we're not ready for approval; that we haven't even done completeness yet.

Mr. Seymour said that I understand; that that would just be listed as a condition, if approved.

Ms. Brown said that there were a couple of things that were brought up as concerns for the traffic movement permitting and why we may want to wait for it. I did want to address a couple of those items. One was the idea that there are no turning lanes right now out on Route 236. Right now, Route 236 does have pretty wide travel lanes as well as an 8-foot shoulder immediately adjacent to the travel lanes so there's adequate width there that if there is a left turn that's waiting to turn in to Arc Road, somebody can maneuver around them. The other thing that was brought up was the level of service 'e' that's there which was mentioned that really, for unsignalized intersections, isn't that much of a concern. That really is true. The level of service is really a measure of the delay through the intersection and all that that level of service really means is that there's over a certain threshold of delay for somebody that's traveling through the intersection. What we tend to look at more as the volume-to-capacity ratio to assess whether the traffic volume exceeds the capacity of that road and, right now, it's less than half when we add the traffic that will be generated by this development. We also look at the ques because, obviously, we don't want to be creating extreme wrong ques there. But based on the level of service 'e', you typically would not warrant a traffic signal. I know that Mr. Chagnon had mentioned that a traffic movement permit would look at whether or not a traffic signal would be needed at that location. Typically, you're at a level of service 'f' with very long delays and ques before a traffic signal warrant is met because it takes a lot of volume coming in on the side street. With the volumes we're seeing out here, a traffic signal would not be warranted at that intersection. It wouldn't meet any of the volume-related criteria or the safety-related criteria to warrant installation of a traffic signal there. The only other thing that the Maine DOT might ask us for would be sight-returning lanes on Arc Road, as it comes out. They tend not to ask for that unless we do have a level of service 'f' and one of the reasons for that is because, when you have two vehicles that are queued up next to each other in an unsignalized condition, they are blocking sight lines for each other and you start seeing this competitive thing happening where people are slowly

504 inching forward next to each other for vehicles to see around each other. WE don't
505 anticipate that either of those conditions are going to be met that would warrant
506 improvements at that location. In terms of the DOT requirement for a TMP, we hadn't
507 initially applied for one because, based on trip generation, we thought we were well
508 below the threshold but, certainly, we would be re-packaging this information, providing
509 it to them, and asking for verification of whether or not it does meet the thresholds for
510 going through the TMP process. They could potentially come back after reviewing our
511 trip generation information and say that what we've provided is adequate and does not
512 require a traffic movement permit at that point. They definitely appear to be looking at
513 the scenario that looks at square footage and I think that's because that is their typical
514 standard to go based on the ITEP, the square footage. But they are open to accepting
515 empirical trip generation data from more local sites and very often prefer it for certain
516 land uses like, for example, Dunkin' Donuts. So, it is possible that they will not ask for
517 one at all.

518
519 Mr. Latter said, to address that point as a matter of process, if we were to make this a
520 condition, would the DOT give you something to give to us that says they have reviewed
521 the data and you don't need the study. We just do not want to grant final approval if the
522 study is necessary before we get it.

523
524 Ms. Brown said that we would ask them to provide a determination. So, they would
525 provide us a letter that says yes, we do need a permit or no we don't need it. So yes, that
526 would be something we are able to provide.

527
528 Mr. Latter said that the condition would be for either the study or a determination from
529 the DOT that none is needed.

530
531 Ms. Brown said yes. You could condition it as either a determination that no TMP is
532 required or issuance of a TMP.

533
534 Mr. Chagnon added whatever improvement that would require, if there was one, which
535 wouldn't affect the site plan per se.

536
537 Ms. Braun asked how long it typically takes for them to study before they decide you
538 have to do one.

539
540 Ms. Brown said that it typically is about a four-month process to go through the TMP
541 permitting process for us to provide them with all the information that they need, the
542 scoping meeting to be held, all the materials to be reviewed, then the permit to be issued.

543
544 Ms. Braun asked, if the DOT decides they need to do the study and it's a four-month
545 process, if we approve this facility what does the study do to our approval.

546
547 Mr. Brubaker said that I think the discussion was about a condition of approval where the
548 study would be done after approval and the result of that study be furnished to the Town.

Any potential improvements that may be required would be a potential condition of approval, as well.

Mr. Chagnon said, if I could, it's not that we're going to wait to start this until the approval, we would start this now. If you approved this now, subject to this condition, typically it would be a condition subsequent and has to be met before a building permit is issued. That would be the way to do it. Then they could proceed with their final building plans, get the building in to the CEO for that review, do the Fire Marshall review. Those things are going to take time and they will come together but they won't hold up the other processes that have to occur to get to a building permit.

Ms. Braun thanked Mr. Chagnon. She asked what the PB would like to do. Are we ready to say that the application is complete. If not, what else would we like to have.

Mr. Leathe asked to ask some basic questions regarding the site walk we did a while ago, as I missed the first meeting. Did you folks talk about signage.

Mr. Chagnon said that the plans show a conforming sign location that is at the end of the driveway along Arc Road. Then there's a note on the plan (Note #12) that talks about if there is a business sign desired on Route 236 that they would have to go through a process I believe would be an application to the Board of Appeals (BOA). There's nothing on the plans that you're asked to approve that indicate a sign other than a conforming sign at the site drive.

Mr. Leathe said that I recall that driveway going into that existing facility as being really narrow, not big, with a culvert where I think part of the creek flows underneath. What is the thought in terms of what that is going to look like, after the fact. Are you going to clear around it, widen it significantly. How are you going to handle the water flow.

Mr. Chagnon said that, with the project, this is probably the fourth approval of this site that I've been involved with. From the beginning, it was designed to be an 18- to 20-foot-wide gravel drive. It wasn't built that way. So, at this point with this more intense use, the plans show expanding that to an 18-foot-wide gravel drive, which the Fire Chief has accepted. The culverts will be extended and re-laid. It's not the creek but just some off-site run-off that does pass through from the solid waste facility to the north. The edge of the facility is probably 30 feet away from the property line.

Mr. Leathe asked if there was any wetlands impact as you extend that driveway and build the building.

Mr. Chagnon said that it was previously-approved wetland impact and there is no wetland impact for building the building and doing the site work. On the site walk there were some disturbed soils up there that show hydrophytic vegetation but that was because they were imported and moved around. There isn't a wetland and there wasn't a wetland in the middle of the site.

Mr. Leathe said that I remember about mid-way up from where the driveway opens into the clearing on the left, I thought there was a wet area.

Mr. Chagnon said correct; that it's the product of somebody moving hydrophytic soil and dumping it. It was never a wetland and it's not a part of a wetland complex.

Mr. Leathe asked about the detention pond that was built and never hooked up. Are you going to use that detention pond and this time it will be functional.

Mr. Chagnon said that it was partially constructed and, in this latest plan, we're impacting less area with impervious surface than the one that was approved in 2021. So, we're actually going to be making that pond even better, re-building it and raising up the grade of the bottom.

Mr. Leathe said that I have concerns with the visibility of this site. Are you going to do anything to make it more visible from Arc Road or is it going to be left as it is.

Mr. Chagnon said that there are no plans to clear a big path to the site.

Mr. Seymour said that we don't mind the privacy back there so we wouldn't open it any more than we need to for the driveway.

Mr. Chagnon said that, given its proximity to not be directly on the highway, it's a destination site.

Mr. Brubaker said that I thought I heard you (Mr. Chagnon) say that the driveway would remain gravel but I see in the details that you would pave the driveway.

Mr. Chagnon said that that's correct. It is currently gravel but it will be paved.

Mr. Latter said, just to follow up, that the original larger project before the PB last year also had a paved driveway.

Mr. Chagnon said yes.

Ms. Braun asked what the PB would like to do with the application. Are we ready to say it's complete.

Mr. Brubaker said that I think the applicant has provided a lot of good responses with regard to traffic. That doesn't mean that there are no more questions to be answered. Obviously, you have to at least begin the process with the DOT and see how they respond. I think the main thing for you to decide in terms of completeness is the conditional license question, whether you're satisfied by what has been provided in lieu of the actual renewed license. Now, to their credit, they did provide an active conditional license when the application was started and that conditional license was valid.

641 Mr. Seymour said that it expired on February 4th but we had already submitted for re-
642 approval. The OMP is just so overwhelmed with all of these approvals that they just still
643 haven't gotten back to us. I certainly expect that that would be a condition of approval, as
644 well.

645
646 Mr. Brubaker said, again, that our code says that you can't start reviewing adult
647 marijuana applications until they have their conditional license. In this case, they did. It's
648 just during the course of the review it expired.

649
650 Ms. Braun agreed and they are now just waiting for the renewal to come through. I'll
651 bring it back to the PB. What would we like to do.

652
653 Mr. Latter said that I think I'm ready to move forward. I don't think that the traffic
654 impact, just from the data I saw, is onerous. I do have some concern over the conditional
655 license but they seem to be acting in good faith in trying to get that moved forward as
656 rapidly as they can. Any of these issues would be made a condition of approval. The only
657 thing I'm worried about is our 75-day timeline. If we get to having to make a decision
658 and we still don't have the information that we really need, we would either have to make
659 it a condition of approval or we say 'We needed to see this before we could approve it.
660 We haven't seen it and now we can't approve it.' I don't want to be in that conundrum
661 with that situation.

662
663 Ms. Braun agreed regarding the timeframe.

664
665 Mr. Chagnon asked if that wasn't something the applicant could agree to waive. If you
666 ask the applicant if he's willing to wait another 30 days and he says yes, that's not an
667 acceptable way to move it forward at that time.

668
669 Mr. Brubaker said that is similar to what happened on another project with our attorney
670 backing it. I would say that, as long as the applicant agrees, the PB could extend that
671 deadline.

672
673 Ms. Braun said that the only thing that concerns me is how many times we can go back to
674 the well and say we need to extend it another 30 days.

675
676 Mr. Brubaker said that, unless State law says otherwise, it could hypothetically be done
677 indefinitely but obviously, for practical purposes, for the purposes of the people's time
678 and stuff like that, we'd eventually want to say no more extensions. Like Mr. Latter said,
679 we either need to approve with conditions, with a condition satisfying the sufficiency for
680 a denied permit.

681
682 Ms. Braun said that, if the PB is ready to accept completeness, the Chair will accept a
683 motion.

684
685 **Mr. Latter moved, second by Ms. Braun, that the Planning Board consider PB21-29**
686 **for 16 Arc Road Site Plan Review and Change of Use Shoreland Zoning Application**

for Adult Use Marijuana Retail Store and Medical Marijuana Caregiver Retail Store application is complete for the purpose of moving forward to a public hearing.

DISCUSSION

Mr. Leathe said that I am going to abstain from this vote as I was not at the meeting where it was presented.

DISCUSSION ENDED

VOTE

3-0-1 (Mr. Leathe abstained)

Motion approved

The Public Hearing is scheduled for March 15, 2022.

D. Ordinance Amendments – documents update only – discussion only as time allows.

1. Signs

Mr. Brubaker said that this just tries to clarify sign setbacks, particularly along Route 236. We had some issues with clarity on where signs should be placed and where signs are placed along Route 236. The idea is to clarify in our dimensional standards table, which is §45-405, that there is no lot line setback for signs in the C/I District. So basically, you can put a sign up as long as it is fully on your lot and not in the DOT ROW. There was a reference later in Chapter 45 suggesting that you may need to put signs 8 feet back from the lot line. Many signs out there today aren't doing that. It is very ambiguous saying there is no setback for a sign in the C/I District but what is important is to make sure that we don't have signs close to the edge of pavement and, so, you see that language in there. This is just starter language for discussion but requires signs to be at least 20 feet from the edge of pavement. If you go to page 7, you see some new language, here, stating:

- (b) For properties abutting Route 236, permanent pole-mounted or monument signs that are anchored to the ground and not designed, according to applicable safety standards, to break away in the event of a motor vehicle collision shall not be located within the Route 236 right-of-way boundary and shall not be located nearer than 20 feet from the edge of Route 236 pavement. In other locations, such a A-sign shall not be located nearer than eight feet from the right-of-way boundary or nearer than eight feet from the edge of the travelled way, and A lesser distance from the edge of pavement may be allowed by the permit-issuing authority upon written justification by a qualified, licensed engineer that such a sign complies with applicable clear zone standards for the adjacent roadway's design speed.

20 feet is generally following the AASHTO site design guide.

Mr. Leathe asked, when you talk about the Route 236 ROW, what do you mean by that geometrically.

Mr. Brubaker said that it's generally on the publicly-owned way about 100 feet. It varies but often it's 100 feet wide. It's owned by the Maine DOT. So, 20 feet away from edge of pavement but, in some cases, the ROW is actually further back. So, 20 feet away from edge of pavement is the absolute floor how close you can place a non-breakaway sign because you really don't want those heavy, concrete-mounted poles or monument signs closer than that for vehicle safety.

Mr. Leathe said that, if it was 100 feet with a sign within the 20 feet, there could be 10 feet from the ROW, or something like that.

Mr. Brubaker said that, if the ROW line between the ROW and the property was more than 20 feet back from edge of pavement, they would actually have to be further back because they couldn't encroach on the DOT's ROW. This is just a language draft so the idea is that the language could be smoothed a bit.

Mr. Leathe asked if you think the setback is clear enough.

Mr. Brubaker said maybe not and I would welcome any wording.

Mr. Latter asked if we can define 'in no case shall it be closer than 20 feet from the edge of pavement'.

Mr. Brubaker said yes, we could. That's what the intention was generally. It has the offramp for breakaway signs. Just very small signs that would be plowed over by a vehicle are less of a concern. We wouldn't want monument signs that close to the edge of pavement. There are some signs out there that I'm a little concerned with but the idea is to make sure those are set far enough back so that, if you have a run-off-the-road, the vehicle would have an adequate clear zone, as they say, to recover or slow down before hitting such a sign.

Mr. Latter said that you say 'in other locations, a sign shall not be located closer than 8 feet...'.

Mr. Brubaker said yes, other locations not abutting Route 236. If you notice in other zoning districts, there is an 8-foot sign setback. This tried to focus on Route 236 but if we want to make changes to those other zoning districts...obviously those other zoning districts with a lot of residential roads, you don't see many business signs. You do have some home business-type signs.

Mr. Leathe said that you mentioned there were some signs on Route 236, according to this new approach, that would be not in compliance. Is there any situation where there are signs along Route 236 that are totally passive and should be addressed in some way or is it that they are somewhat grandfathered.

Mr. Brubaker said that from my understanding just speaking in rough estimates, it's a real mix where we have some signs that are permitted and in the right

770 location. You have a number of signs that are unpermitted but still in the right
771 location. It's just that the property owner didn't go through the sign-permitting
772 process. Then you have other signs that are unpermitted and also not really in
773 locations that they should be. I think it would be good to take it to know how this
774 ordinance could address it, basically where signs are unpermitted but generally in
775 good locations could seek after-the-fact permits. That wouldn't be a free pass for
776 those signs of greater concern to stay where they are. In other words, the CEO
777 would still have the ability to do a code violation potentially or work with them to
778 re-locate the sign to a proper location.

779
780 Ms. Lemire said that I know when PBs have gone through ordinance changes like
781 this in the past, sometimes they put in language that allows someone who is
782 actually in violation a year to bring it back into compliance.

783
784 Mr. Brubaker said that that might be a good thing to add. How does everybody
785 feel about that.

786
787 Ms. Braun said that that would be fine.

788
789 Mr. Latter said that if anybody had a sign that was set in concrete would have to
790 comply with whatever the new ordinance is. It is also grandfathered from before
791 the ordinance was ever put in place.

792
793 Mr. Brubaker said that I think the idea is, if there are some signs that are not in
794 compliance now but would be in compliance with the more flexible setback
795 standard but just didn't happen to go through the sign-permitting process, this
796 would kind of bring them into the fold.

797
798 Mr. Latter asked what the cost was for as sign permit.

799
800 Mr. Brubaker said that I believe the permit fee is \$50.

801
802 Ms. Braun asked, if you have people who have signs that were unpermitted and
803 now, they want to bring them into compliance, should they then pay a fine of
804 some sort if they haven't been permitted for however long they've had them.

805
806 Mr. Brubaker said that the CEO has the power to charge an after-the-fact fee and
807 that's double the usual permit fee. Depending on the permitting sign, she also has
808 the ability to issue warnings and violations if they don't comply.

809
810 Mr. Latter said that I think the carrot-and-stick is the one-year moratorium to give
811 them a year to get caught up. After that, we charge them double.

816 **2. Additional Marijuana Performance Standards**
817

818 Mr. Brubaker said that this one isn't adding a whole lot because we do have some
819 pretty rigorous performance standards. It does add a requirement that the
820 applicant submit a wastewater disposal plan. Again, a number of these
821 requirements are also State requirements but I still think it holds more to have it
822 as a Town requirement, too, and it shouldn't be too hard for the applicant, either.
823 The next change is on page 4:

**For the purpose of this section, if a property with a principal commercial use in
the Commercial-Industrial zoning district includes an existing, lawfully permitted
and-or legally nonconforming accessory residential use, such property shall not be
considered a "residential property" under subparagraph (5)b. above. No
marijuana establishment or medical marijuana establishment may be located on
any property that has an unpermitted residential use.**

824
825
826 Mr. Brubaker said that we have the 500-foot rule that specifies that certain
827 marijuana uses can't be located within 500 feet of a residential property. This just
828 clarifies that, if you have a commercial property and a marijuana entity wants to
829 set up shop on that very property, if there is also an accessory residential on that
830 property, that property would not be considered a residential property. In other
831 words, that property wouldn't be allergic to itself with regard to the 500-foot rule.
832 It does say that if there is an unpermitted residential use on the property, then no
833 marijuana business would be able to open up there.

834
835 Mr. Latter said that they would have to get rid of the unpermitted residential use.
836

837 Mr. Brubaker said or they could make it permitted somehow.
838

839 Ms. Lemire said can I ask why this change.
840

841 Mr. Brubaker said that it's a fairness thing where I think that, if there is a
842 residential use on the same property and presumably everybody is cool on that
843 property with a marijuana use opening, that the sensitive use standard in that
844 narrow instance is kind of pointless. But it also tries to compel unpermitted
845 residential uses.
846

847 Mr. Leathe said, following up on the question, I really still am not clear about the
848 rationale for this. Have we seen a situation like this before. What's the principle
849 concern about having residential use mixed in with a marijuana facility.
850

851 Mr. Brubaker said that the importance of the rule in general is to make sure that
852 residential properties are protected and the impact mitigated of the marijuana
853 facility. Again, currently in our ordinance, the 500-foot rule only applies to
854 marijuana retail stores, medical marijuana dispensaries, and medical marijuana
855 caregiver retail stores. Marijuana cultivation and manufacturing are exempt from

all of these rules except for the public and private schools, which is State law. I think that the 500-foot rule is very important. This just carves out an exemption. Let's say that you had a commercial property and you have no other residential properties within 500 feet from where the marijuana business building would be located but you had an accessory apartment on that very property. I think a reasonable case could be made that that same accessory apartment doesn't need to be protected because presumably, if it's the same property, the person living there may be the property owner or may be related to the property owner or something like that.

Mr. Leathe said, taking that to an extreme, if someone had a marijuana facility and then wanted to put in a small residential apartment, would they be allowed to do that. Or is this only in the case of existing.

Mr. Brubaker said that they couldn't, probably, because our zoning doesn't allow it. Our zoning typically doesn't allow much residential in our C/I District, as it is. It does allow for non-conforming residential uses to continue so it is possible to get permitted for an accessory apartment if there's been a resident who has lived in the C/I District.

Mr. Latter said that it allows them to continue but does not allow them to be created. You can't create a non-conforming residential use in the C/I District.

Mr. Brubaker said that that was correct.

Ms. Lemire said, to that point, this ADU would only be allowed if it was already there but it could still be rented to anybody.

Mr. Brubaker said that, if it's a legally non-conforming residential use, that can continue in the C/I District. Correct.

Ms. Lemire said that, potentially, the rationale for having the 500 feet could be defeated that way. Part of the reason for the 500-foot sensitive boundaries is to keep it away from kids, away from schools, and that sort of thing.

Mr. Brubaker said right. So, the idea would be that, if a family was living on that property, they would either be the property owner or they would have a lease relationship. It would mean that potentially there could be a landlord who decides to...I don't know. I think this is an unlikely scenario.

Mr. Latter asked if we just say that any property with a non-conforming accessory residential use is not eligible to be a marijuana facility, then stop. There can't be that many. Down in Massachusetts, people had to decide if they wanted to be a marijuana facility or rent out to a family, as you can't do both. If you don't prohibit him from doing it, he might not intend to, but he's capable of it.

902 Mr. Brubaker said that there would be a number of things limiting the options
903 here. You couldn't invite a new residential use in the C/I District. We do have an
904 exception for elderly housing subdivisions but that's a little bit different. I don't
905 think we'd see that applying here, in this case. We're talking about an already
906 commercial property. You couldn't build a new accessory apartment. It would
907 already have to be in the C/I District. You couldn't build a single-family house in
908 the C/I District, currently. What you can have is a legally non-conforming
909 residential use in the C/I District continue.

910
911 Mr. Latter said that what I'm saying is could we then prohibit using those
912 particular properties from any use of marijuana retail sales.

913
914 Mr. Brubaker said that I guess the question is, then, why prohibit those properties
915 from having a marijuana use if other properties in the C/I District could have
916 them.

917
918 Mr. Latter said that at least you wouldn't have a residence on the same property.

919
920 Ms. Braun said but if they're already there on a commercial piece of property.

921
922 Mr. Latter said that we aren't saying they can't use it for some other use. We're
923 just saying specifically for marijuana use. If you have a residential property, and
924 I'm not saying I agree with it, it was just to address.

925
926 Ms. Braun said that, if it is in the commercial zone and there is already a non-
927 conforming residence on the property, they could still do cultivation. They don't
928 necessarily have to do retail. They could still do cultivation and still have the non-
929 conforming residence. Cultivation would make more sense to me than retail. With
930 retail you run into the traffic, and all of that. Not with cultivation.

931
932 Mr. Brubaker asked if the concern is about a malicious landlord scenario where a
933 family, anyone, living in a legally non-conforming situation in the C/I District on
934 a commercial property, the landlord basically wants to annoy them and decides to
935 open a marijuana retail store next to them.

936
937 Ms. Braun said that I would think that anybody that is living in a non-conforming
938 residence on a commercial property would be related somehow to the owner.

939
940 Ms. Bennett said not necessarily.

941
942 Ms. Braun said that I think that they would either work for the owner in a
943 different capacity or they are related to them somehow

944
945 Mr. Brubaker said that I can certainly take this out if there's a concern about this
946 enabling that situation where somebody is happily living in a commercial

property in the C/I District and they don't own the property and they are legally living there.

Mr. Latter asked if anyone ever tried to get a permit for a marijuana facility on a property that has a residence.

Ms. Braun said not that I know of.

Mr. Brubaker said no; that currently we would tell them they can't. I've heard stories about unpermitted residential but, if we knew definitively that there was a permitted residential use there, we would say you can't because of the 500-foot rule.

Ms. Braun asked if this is something we want to run by Attorney Saucier.

Mr. Latter said that this is so the non-conforming use doesn't trigger the 500-foot setback on the properties itself (1:37:54).

Mr. Brubaker said that is because the property owner can control their own property but can't control others. But I can see there being some concern, here, so I might delete it or think more about the wording here, as I don't want to inadvertently open up Pandora's Box with other issues.

Ms. Braun said no. Maybe talk about the wording with Attorney Saucier and see what he thinks about it. That might be a better path to see what the legal issues are on that.

Mr. Brubaker said okay.

Ms. Lemire said that long-term was what I was thinking about, a carve-out. You're making a special exception to something that the Town voted to keep in place. People tend to like to take advantage of those types of things and try to open them up a little bit more. That is the only thing I'm thinking of. What are the unintended consequences down the road, potentially. That's all. Probably not anything.

Mr. Brubaker said that I'm going to take it out, for now, and mention it to Attorney Saucier.

Ms. Braun said yes, if you wouldn't mind, please.

Mr. Latter said so leave well enough alone.

Mr. Brubaker said that the next one is that applications for new marijuana retail stores shall include a traffic impact assessment, and you can read the rest of the wording, there:

- (10) Applications for new marijuana retail stores (or existing marijuana retail stores seeking site plan amendments involving a potential change to trip generation or traffic circulation) shall include a traffic impact assessment that addresses, at minimum, Sections 33-153 and 45-406. Unless waived by the Planning Board, any approval motion shall include a condition requiring the applicant to collect turning movement counts for all site driveways for, at minimum, one full weekday and one full weekend day that the marijuana retail store is open, and submit such data to the Town Planner. Such count data shall be disaggregated by the hour, or a shorter time period, to show peaking characteristics. Nothing in this paragraph is intended to prevent the Planning Board from requiring traffic information or otherwise exercising its review authority under the aforementioned sections when reviewing applications for other marijuana or medical marijuana establishments.

Ms. Braun said that I agree with that.

There was general PB agreement.

Ms. Bennett said that I was wondering, as we're looking at our marijuana ordinance right now, if we could have a discussion about §4(b) about odor management. When we adopted the ordinance, we were pretty explicit: "*Odor management. For all marijuana establishments and medical marijuana establishments, odor of marijuana must not be perceptible at the exterior of the building at the premises or at any adjoining use of the property.*" We obviously have a problem that this requirement is not being met. I don't know if it's all of the facilities, or just one, but we have a real problem going on with odor.

Mr. Brubaker said that I agree with that.

Ms. Bennett said that I don't know what we can do, if there is adequate allowance in our ordinance to start to levy fines or inspections or have the actual establishment take odor readings outside their building. I think a lot of people in our community are upset about the fact that you can drive down Route 236 and you are overwhelmed by the smell of marijuana. If you go to the transfer station, you can be overwhelmed sometimes, with certain wind directions, with the smell of marijuana. That was a big concern when we drafted this ordinance because it wasn't stretching outside the bounds of what is really going to happen with these and we didn't want to disturb people with this commercial activity. So, I just put that out there. Is there any way, if anyone has any ideas of how we can somehow get our rules to be enforceable or stricter or something around that.

Mr. Brubaker said that I fully agree. I've smelled it, too, and I know that others have.

Ms. Braun asked if that doesn't come under code enforcement. The rules are in place. They're supposed to have all this once the rules are established. It's really out of our hands, isn't it, to enforce it.

Ms. Bennett said but what if they are in violation of their permit. Why don't we pull their permits until they stop smelling.

Ms. Braun agreed, saying that that is out of our purview. I think it's code enforcement's purview.

Mr. Brubaker said that it is code enforcement's purview but I think I interpret what Ms. Bennett is saying is that is there a way to sharpen our pencils with this language. I don't know but there might be.

Mr. Latter asked what can we do once we've granted someone their permit. They get the building permit, they're there, they're not complying. We set the condition on the site plan.

Ms. Bennett said that I was wondering if there's some way; that when applicants come in, they always have whatever the measurement is for the odor and say we will be able to filter with our system and we are all impressed with that because that sounds like they are going to mitigate and eliminate any odor and, yet, it's not working. So, maybe the onus needs to be on these establishments that they go out and take an odor reading of whatever there is. There's probably some device that can detect the scent of marijuana and they would submit their log to the Town. Some sort of regular reporting to the Town. I'm just spit-balling about it, here, but it's becoming a problem in our community. Frankly, the only reason I voted for this ordinance is because it had this in it.

Mr. Latter asked if there is anything else that we do that requires a property owner to submit data.

Several said stormwater management.

Ms. Braun said that, even with the new rules on stormwater management, it might necessitate one dedicated employee to do that type of stuff. So, you're adding another employee and another issue. But, once they know all the rules and they submit all of their data, it's out of our hands, at that point, unless you can figure out a way to make this more stringent.

Mr. Brubaker said that I fully agree with everything the PB is saying. The tricky thing with odor is the subjectivity factor. As I understand it, there is a leading product for odor detection but it's basically almost like a cornucopia-type device that somebody holds up to their nose to better detect faint scents. So, there's still an element of subjectivity. But I would be enthusiastic about any ideas that you

guys have for innovative ways to kind if sharpen the pencil for this ordinance, especially meeting the challenge of the subjectivity factor of odors.

Mr. Leathe asked if Mr. Brubaker has heard of this as an issue in any other towns or cities that have marijuana cultivation. I don't imagine that we're unique.

Mr. Brubaker said no, that we're not.

Mr. Leathe said, as a comment, one of the things that I've thought about a lot for our community is we do our best to come up with ordinances and rules that we want these folks to follow, to find out later that it's not exactly the way we thought it was going to be. I always think that we, as a committee, are not able to do anything about it because there's no loop of communication on feedback once a project is done that comes back to the PB and says okay now that it's done tells us how we are doing. It would be interesting to see if there was a way to put a feedback loop into some of these projects so that, after-the-fact, we actually can start to address any impacts. It seems that code enforcement is somewhat independent of what we do and, when folks leave here with an approval, we sort of wash our hands and we're done and then it's the CEO's problem to follow up. I just wonder if that process could be enhanced in some way.

Mr. Brubaker said that I think it's a couple things and a great point. You're right. A lot of PB approvals are set-it-and-forget-it. I don't mean that in a bad way. Part of that is because the approval runs with the land and it would be administratively difficult if you were receiving various topical reports every meeting. But, with regard to a more sensitive discussion use like marijuana, I think the closest thing we have to that is the annual licensing process. Once the PB approves, the project goes through the licensing process with the SB and that would be an area where, if there are some pretty clear code violations that if not addressed right up front by a code violation like they have been, certainly once they get to renewal of their license and they're back in this room before the SB, that that could be a leverage that the Town has to then revoke the license.

Ms. Lemire said that that is already in the language. Isn't it.

Mr. Brubaker said yes. That's all in Chapter 11 of the code. But you're right. A lot of these times, these approvals have been done and then there's no more feedback to the PB.

Mr. Leathe said that I don't know, in these small towns, if the SB is in the loop enough on these projects to begin with because they're not in the same process, the initial approval process, and wonder whether there should be some integration or something between us and them, if that's how the licensing goes, so that maybe we're asked for an opinion on every license renewal pr marijuana license renewal, just like we do with the Conservation Commission. Maybe ask if we have any questions about this marijuana renewal. It just seems there just has to be some

1116 way to get our arms around some of these things that just seem to explode after
1117 they leave the room.

1118
1119 Mr. Latter said that the SB isn't going to look at the site plan and review the
1120 documentation. They're going to ask if everything is okay...yep, okay.

1121
1122 Ms. Lemire said that they depend on a response from the Town Manager and the
1123 Police.

1124
1125 Mr. Latter said that I'm just speculating that none of these folks are looking back
1126 at the site plan review process, and any conditions. With the building permit and
1127 certificate of occupancy, those folks are looking at it. Once again, once that
1128 moves forward, unless inspection services are keyed in on something, nobody is
1129 going back and looking at any conditions we put on it once they're open.

1130
1131 Mr. Brubaker said that it's partially incumbent upon Town staff to keep track of
1132 that. I sent a pretty strongly-worded email, about a week and a half ago, with
1133 regard to the traffic situation on Route 236 and copied a lot of people on that
1134 email. But it certainly is a mix where the PB really strongly scrutinizes the
1135 application during your review and the SB should at least be checking some
1136 things when they review the license; that it is also the responsibility of the staff to
1137 review all applications and red flags before the respective board.

1138
1139 Ms. Braun asked if we could make the suggestion to the SB that, prior to a
1140 marijuana license coming up for renewal, that they ask us for input.

1141
1142 Mr. Brubaker said that we could. I just know that the workload has been a lot.

1143
1144 Ms. Braun said that I understand but, if that is the only way we have of
1145 controlling some of these things.

1146
1147 Mr. Brubaker said that one thing that we could do is have a kind of informational
1148 agenda item where I would almost call it a consent agenda item where the written
1149 information is provided in the agenda packet and we don't necessarily take time
1150 to discuss it but, certainly, a PB member could decide to bring...do you know
1151 consent agendas.

1152
1153 Ms. Braun said that I don't think so.

1154
1155 Mr. Brubaker said that in some towns you have kind of a long list; that this tends
1156 to be not big cities but larger towns. You have a long list of items put forth as a
1157 batch for approval by the governing body and they would tend to be minor things
1158 like licenses or permits or approval of a new pumper truck or something like that.
1159 Basically, the whole consent agenda gets approved as a batch but each member
1160 has the ability hold an item if they've reviewed it and don't like consent agenda
1161 item e. I have a question about this and I will pull it. What usually happens is that

the board says that we approve items a through d and items f through g to get those items out of the way then talk about the issues we have with item e.

Ms. Lemire said that it's actually a really nice tool.

Mr. Brubaker said that one of the things I can do is put on the PB agenda a 'for your information, here is an upcoming license' because they have them a lot. Ms. Albert does great work keeping track of all that. For the purposes of not cluttering the discussions, you could say you don't have anything you want to say about 'this particular license renewal' but, since it is on the agenda, you would have the ability to pull it and discuss it.

Ms. Braun suggested we try that.

Mr. Latter said that we might send a communication to the SB prior to renewal that says 'they said they would have 4-foot shrubs and they still don't'.

Ms. Braun agreed, saying that we should try that and see how that works.

Mr. Latter, going back to odor, said that there is no objective data gathering for obnoxious gases and fumes. There's no way to measure this objectively with standards.

Mr. Brubaker said that I'm not aware of any for marijuana. I don't know if Ms. Bennett might be aware of any.

Ms. Bennett said that I will Google it right now. I don't know that there is.

Ms. Braun agreed that the odor is bad. I know that the CEO is busy but it does come within her purview, in my opinion.

Ms. Bennett said that I would love for us to think about it a little more. Maybe it's the annual licensing process or induce the establishments to up their game with their filtration systems. I know, from their applications, they have some pretty high-tech scrubbers going on there. Maybe they're not cleaning them. Maybe they're not always running them. Maybe they're not replacing the carbon filters. Just some operational missteps that are happening that are causing this. You know, it gets embarrassing when other people say they just drove through Eliot and it smells like a marijuana field.

Mr. latter said that it's almost like an audit in that it is incumbent on the person doing the work to prove to the auditor what they're doing.

Ms. Bennett agreed. The SB would be the auditor for the annual permit and they (business) would have to submit the information.

1208 Mr. Latter said that it's up to them to figure out how to prove it. It's not up to us
1209 to figure out how we want them to prove it.
1210
1211 Ms. Braun said that, if they are coming up for license renewal, there should be an
1212 audit of the performance standards to see if they are complying; that the business
1213 would have to prove their compliance.
1214
1215 Ms. Bennett suggested it may be as simple as surveying neighboring properties
1216 because our ordinance says it can't go onto neighboring properties. We could also
1217 have a letter to abutters asking for their experiences with odor or lack of. I don't
1218 know.
1219
1220 Ms. Braun said, again, you are coming up against a staffing issue.
1221
1222 Ms. Bennett described a situation on Route 236 near a marijuana retail where the
1223 neighboring business owner could smell marijuana on his drivers and wouldn't let
1224 them drive but it wasn't the drivers, they weren't smoking. It was the odor from
1225 an unpermitted grow marijuana facility. So, there is an instance where an abutter,
1226 a neighbor, felt that they had no power. The only power he had was to come to us
1227 and plead with us. I think that maybe there may be people who don't want to
1228 contest with their neighbors but are sort of suffering in silence right now.
1229
1230 Mr. Brubaker said that that's a good point. The SB does hold public hearings on
1231 renewals.
1232
1233 Ms. Lemire agreed, saying that nobody ever shows up.
1234
1235 Mr. Brubaker said that, again, it may be a case where people are a little shy.
1236
1237 Ms. Bennett added that they may not know that we have a rule that it's not
1238 supposed to smell; that the ordinance section says it's not supposed to smell
1239 beyond your property line or even the exterior of the building. The people may
1240 not be empowered enough to speak up for themselves in this matter.
1241
1242 Mr. Brubaker said that I will throw this out there. Do we entertain moving back
1243 from 500 feet to 1,000 feet or some increment between for residential properties.
1244
1245 Ms. Braun said that I was always for 1,000 feet.
1246
1247 Ms. Lemire asked how much of a potential impact might that have on future
1248 approvals.
1249
1250 Mr. Brubaker said that it could have a big impact.
1251
1252 Ms. Braun asked me what was going in down at Eliot Commons and, as it's
1253 public knowledge, I told her it was a marijuana retail store. Her comment was

1254 “How many more of those do we need in Town? How much more can the Town
1255 support?” A breakfast place is what she said would be ideal. I get that a lot from
1256 people.

1257
1258 Mr. Latter asked if there is any thought to limiting the number of retail licenses.

1259
1260 Ms. Braun said that that was brought up and turned down but I can’t remember
1261 what the rationale was.

1262
1263 Mr. Latter said that, down in Massachusetts, communities that approved
1264 recreational marijuana had to give at least 10% of however many licenses there
1265 were, I think there were 48 liquor establishments, and so we had to approve 5
1266 marijuana establishments. We could have approved more but that was how the
1267 legislation came through. Is there any way to change this.

1268
1269 Ms. Lemire said that you would have to revise the ordinance but you can do it.
1270 That was a major discussion point when they were putting it together; that some
1271 people wanted the limit and some people wanted to, because there is so much
1272 wetland out there and Shoreland and residential and schools and all of that, that it
1273 was a belief that that would limit them and it didn’t work.

1274
1275 Mr. Brubaker said that, if I or Ms. Metz could count up the times that we have
1276 told people no...it is working with regard to our zoning districts. We tell a lot of
1277 people no, even on Route 236 because they’re in a different zone than C/I. So, it
1278 is working to some extent and the 500-foot rule that is very important to the
1279 community, is working on some properties, too, and doing what it should be
1280 doing. I had an inquiry right when I started about the IBH boat storage and they
1281 couldn’t do it because there’s residential properties on Hanscom Road. I had an
1282 inquiry about within the mall building of Eliot Commons and they couldn’t do it
1283 so there is some limiting going on. I can understand why people perceive that
1284 Route 236 is becoming the “green mile”.

1285
1286 Ms. Lemire said that it’s known as that now. I’ve heard 2 or 3 people who have
1287 actually said that.

1288
1289 Mr. Latter said that I’ve heard that from friends that I grew up with when I told
1290 them I moved to Eliot. They said that they go up there all the time.

1291
1292 Ms. Braun said that that is what we were trying to avoid, having that terminology
1293 based on Eliot.

1294
1295 Ms. Bennett said to remember that it’s all C/I Zone, if you think about it. It’s not
1296 very big. It’s somewhat compact and there are a lot of wetlands so they aren’t
1297 going to be able to expand far. It seems, no matter what intentions anybody may
1298 have, it’s become a monoculture just as the used car businesses were one and all
1299 up and down the road. There are some scattered uses in our C/I Zone but it’s now

1300 going the way of marijuana. It is encouraging to hear that the ordinance is
1301 working as intended and it isn't unfettered.
1302
1303 Ms. Lemire agreed that it is and I didn't mean to imply that it wasn't.
1304
1305 Mr. Brubaker said that it's not a shield and it's not a cargo net; that it's kind of a
1306 sieve.
1307
1308 Ms. Braun said that I think holding up their commercial renewal license using the
1309 audit system is the only way to go.
1310
1311 Mr. Latter said that I do think that, if it weren't for the smell, people would have
1312 less issue with it.
1313
1314 Ms. Braun said the smell and the traffic. The traffic is getting bad with it being
1315 backed up all the way sometimes. It's very dangerous.
1316
1317 Ms. Bennett said that unfortunately, and Mr. Brubaker is our transportation
1318 Planning expert, we don't have much say what happens on Route 236 because it's
1319 a State arterial road and those roads have to get really bad. The transportation
1320 engineer with the last applicant said that it's an 'e', that it's not even an 'f' yet. It
1321 has to get really, really bad before the State before the State will do anything.
1322
1323 Mr. Brubaker said that I have on my list, and if you agree, an update on Route 236
1324 plans and ideas for our coming meeting.
1325
1326 Ms. Braun said yes, please. I would like to hear that.
1327
1328 Mr. Brubaker said that there is a meeting on Thursday that will hopefully bring
1329 some interesting information.
1330
1331 Ms. Braun asked if we were getting any closer to anything.
1332
1333 Mr. Brubaker said that we'll see. There's been some back-and-forth
1334 communications between both Kittery and Eliot and the DOT in recent months.
1335
1336 Mr. Latter wondered whether the amount of traffic generated with marijuana was
1337 comparative to other businesses.
1338
1339 Mr. Brubaker said that I think we're still learning that nationwide. I think the
1340 applicant's engineering consultant did an excellent TIA, overall, because they did
1341 try and pare that very not high sample size ITE data with empirical data on the
1342 Lowell dispensary.
1343

Mr. Latter said that what we really need is for New Hampshire to legalize recreational marijuana. If we're just licensing recreational marijuana for the local population, we're not going to get to seventeen.

Ms. Braun said that I don't think that most of it is to the local population. If you look at it, it is out-of-state people that are coming here to open marijuana facilities because they can't open them in their own state. It makes me wonder how much of the income that's generated from those facilities is remaining in Eliot as opposed to going home with the owners, and our infrastructure is suffering.

Mr. Brubaker said that it will be interesting to see a couple of things. One is that Kittery will before too long have some adult use marijuana retail stores, including one out on Route 236. Secondly, the legislature is considering allowing deliveries of adult use marijuana retail, although it might just be medical, but some type of delivery where the delivery could occur in any municipality, whether they opted in or not.

3. Site Plan Content Requirements

Mr. Brubaker said that this one is pretty much just revising the Affidavit of ownership section to clarify the companies involved, the chain of ownership to the property and the applicant so the PB knows he has legal authority and standing to the PB so that you know they have the legal standing to develop it but also, I have prima facie review of the documents. So, there's a limit of how far you want to reasonably dig into the legal standing of deeds, purchase & sales agreements, and so forth. There has to be some level of trust put in for the documents presented, too, and certainly if others are concerned about something happening in the chain of title long ago, that would affect the current applicant's standing, they would have legal means to pursue that. So, it's a balancing act.

Ms. Lemire said that it's also one of the standard conditions of approval that it's their responsibility it is taken care of.

Mr. Leathe said that I think this is absolutely terrific. I've been concerned for a while, now, that these applicants are coming in with a lack of clarity about who owns what and who is involved. In section 5, it says: "If any corporations are involved...". Does that mean C Corporations, S Corporations, LLC's, Partnerships. You might want to make sure you have a product to capture any corporation. They come in all sizes and shapes and clarifying them would be good.

Mr. Brubaker said that you will notice that, with the strikethrough, this is carry-over language from what's in the existing code.

Ms. Bennett said that, in that same section you put forward, I just had a suggestion that we also include the details we need to receive standing, some

proof of a license or an application for a license. There are certain land uses that require licenses, such as daycares, marijuana businesses, and solar, to give proof that that applicant has standing with the State of Maine and the Utilities Commission, or at least a verified vendor. We can put that in there and, if it's not applicable, we just say that's not applicable. I think it would be good for us to know that the person actually is a recognized vendor.

Mr. Latter said that I know, with daycares, that the State wants the applicant to show that they have an approved site plan before they can apply for a license.

Mr. Brubaker said that, in that case, the applicant could say that they wanted to but I have to get your approval first.

Ms. Braun said that we can also put it in there that they have to produce it when they have it. That can be a condition of approval.

Mr. Brubaker said that I like that idea. Because we talked about it, Arc Road is like the example from our ordinance. They did the right thing where they had their conditional license right at the beginning.

Ms. Bennett said that I also had another comment. The '§33-127 Contents; required information', with (4) Perimeter Survey, we have written down "existing easements, buildings, watercourses, and other essential existing physical features." I think that some of the features that sometimes aren't on there are environmental features. We look at the wetlands sometimes, we have whether they're treed or not treed, but things like ledges are an environmental feature that development perhaps shouldn't go near or any other historic, archeological, or protected resources. If we could just spell that out to them. They are simple things for a surveyor to find.

Mr. Brubaker said sure. I can add something under (4).

Ms. Bennett agreed that could be part of (4). It could even be in brackets to check for environmental, historic, and archeologic resources.

Mr. Brubaker said that I can add that. On page 3, this is really getting at starting to take a look at picking up on aesthetics. Sometimes you've seen applicants voluntarily provide this. This would require any new buildings to structures or additions to actually submit side profiles so you get to see the look of the walls. It would only be for site plan review use in itself.

Ms. Braun said that we have had some plans come through that showed the actual wall and that's been very helpful.

Mr. Brubaker said that one of the things I think that some applications can do better is really locking in what is the height of your building to make sure they are

meeting the code. Then, (20) is just some flexibility. We kind of do this informally already. This just establishes flexibility for Home Businesses. The presumption is that they don't have to do a high intensity soils survey, and some of this other stuff.

The PB agreed that they liked this.

Mr. Brubaker said that this is a rough draft and I will bring a revised copy to the March 1st meeting.

Ms. Braun said that, due to no fault of our own, that we are starting our meetings at the new time of 6PM was not posted anywhere. So, I'm not personally comfortable with starting this on the 1st (March) without the public having sufficient notice that we are doing this, especially consider that in March we're having a public hearing on ordinances. The public is used to 7PM. My comfort level would be to begin this in April but I would like to hear what you folks have to say about that.

Ms. Bennett said that I think it's a prudent step to take. You would hate to catch people unaware on something this important as a public hearing and the public comes an hour into it, or for an application.

Ms. Braun said that I'm trying so hard to make the public feel included in the process that, if we start at 6PM and they haven't had sufficient time to absorb it, it just destroys everything we've accomplished so far. My suggestion would be to put it on the website, outside of this room, outside at the kiosk, and Ms. Bennett suggested the e-alerts, which I think would be wonderful for those folks on that. I'm going to need a motion to change the new meeting time from March 1st to April 1st.

Mr. Latter moved, second by Ms. Bennett, that the Planning Board change our meeting time of March 1st and March 15th meetings to 7PM.

VOTE

4-0

Motion approved

Ms. Bennett said that she had a couple questions for the Planner. She asked if we are going to get a revised draft at the next meeting.

Mr. Brubaker said yes.

Ms. Bennett said that I tried to watch the SB meeting last week and it didn't include the part of it. The reason I wanted to was because there was a PB item on there for ancillary counsel. Could you tell me what that is.

Mr. Brubaker said yes. I was here in my office when the meeting started and I realized that the live stream wasn't working. So, I ran in there and got the livestream working. This isn't necessarily just for the PB although I think it would often apply to the PB. The idea would be to have a back-up legal counsel on-call in the case where Bernstein Shur had a conflict of interest or was otherwise unavailable. What we did with Odiorne Solar was a sole-source procurement as we needed legal counsel very quickly. Ideally, we would have somebody locked in on-call and just issue a quick task order to them.

Ms. Braun asked if they passed that.

Ms. Lemire said that they were very supportive of that.

Mr. Brubaker said that we will be pursuing that.

There was discussion around having a dialogue with the SB to understand each other's positions.

Ms. Lemire said that that has happened on several occasions.

Ms. Braun suggested a workshop situation.

Mr. Latter asked if we should ask to schedule one once a year if for no other reason than to touch base. I'm sure there are a lot of agenda items that touch us even if it's not super actionable. At least both bodies would have a chance to understand some of the perspectives of the other.

Ms. Braun said that I think that's a good idea. Even every six months would be ideal, as far as I'm concerned, with the way the workload has been going lately. Stuff could fall through the cracks. Could that suggestion be made.

Mr. Brubaker said sure. I will talk to Mr. Sullivan about it.

Ms. Lemire asked if the work to be done on Route 236 would impact Arc Road.

Mr. Brubaker said that that remains to be seen. The sewer and water project pretty much stops at Arc Road. I think that someday in the future there is some interest in eventually connecting the Middle School.

Ms. Braun said that any construction that goes on at Arc Road is certainly going to affect their business and what goes on there, and it's going to affect the traffic

coming in and out of there because there is going to be no shoulder that they can go onto to wait.

Ms. Lemire said that I was thinking about that when Mr. Chagnon was doing his presentation, and listening to Ms. Brown. I was thinking how is it going to be re-designed because it's going to be impacted to some degree and I just don't know.

Mr. Brubaker said that what's been discussed for over a year, a couple of years actually, and our recent Route 236 study was just finalized that I will be presenting to you on the 1st, is a set of improvements within the existing edge of pavement on Route 236, including as a centerpiece, a center turn lane where their driveway is. There are various intersection improvements proposed but the consultant felt very strongly that, for access management and safety reasons, that a center turn lane should be considered in a number of different places. The idea was to advocate to the DOT that they could do that when they resurface. So, the current plan is that the DOT has had this resurfacing project getting ready to go and they will be doing a resurfacing of Route 236 from downtown South Berwick to Arc Road this coming summer. It also looks like they will be putting a traffic light at the 91 intersection because it is a high-crash intersection.

Everyone was glad for that.

Mr. Brubaker said that, then, the resurfacing for Arc Road to I-95 will occur in the summer of 2023. We expect in the next two to three weeks to go out to bid for the first phase of the Route 236 Water & Sewer Project. Then, we have also gotten some ARPA funding to start moving forward with the Town Walk & Bicycling project so we will be looking over the next few weeks to procure an engineer consultant to begin this.

ITEM 9 – CORRESPONDENCE

There was no correspondence.

ITEM 10 – SET AGENDA AND DATE FOR NEXT MEETING

Mr. Latter will not be at the March 15th meeting.

The next regular Planning Board Meeting is scheduled for March 1, 2022 at 7PM.

ITEM 11 – ADJOURN

Mr. Latter moved, second by Ms. Bennett, that the Planning Board adjourn.


VOTE

4-0

Motion approved

1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588

The meeting adjourned at 9:46 PM.



Lissa Crichton, Secretary
Date approved: 4/25/22

Respectfully submitted,

Ellen Lemire, Recording Secretary