

SUPREME JUDICIAL LAW COURT
SITTING AS THE LAW COURT

YORK, SS

STATE OF MAINE

Law Docket No. Yor-24-548

MARK MORIARTY et al,

Appellant,

V.

TOWN OF ELIOT,

Appellee.

On Appeal from the York County Superior Court
York County

THE BRIEF OF APPELLANT, MARK MORIARTY et al.

PATRICK S. BEDARD (ME Bar #:3813)
Attorney for the Appellant
Bedard & Bobrow, P.C.
9 Bradstreet Lane
P.O. Box 366
Eliot, Maine 03903
(207) 439-4502
psbedlaw@bedardbobrow.com

TABLE OF CONTENTS

Statutes, Cases and Authorities	3
Short Introduction to the Case	5
Facts	6
Issues	9
Summary of the Argument	9
Argument on Issue I	11
Argument on Issue II	21
Conclusion	26
Certificate of Service	27

STATUTES, CASES AND AUTHORITIES

<u>Rules:</u>	<u>Pages:</u>
M.R.Civ.P. 80B.....	8
<u>Statutes:</u>	<u>Pages:</u>
32 M.R.S.A 1201	19
32 M.R.S.A 1201-B	19
<u>Ordinances:</u>	<u>Pages</u>
Eliot Zoning Ordinance, Section 45-456.1	5, 7, 8 9,10,11 12-13, 15, 16
Eliot Zoning Ordinances, Section 45-49	11
Eliot Zoning Ordinance, Section 1.2	18
<u>Cases:</u>	<u>Pages:</u>
<u>Ass’n of Am R.R. v. Costle</u> , 562 F.2d 1310, 1316 (C.D. Cir. 1977)	15
<u>Cope v. Town of Brunswick</u> , 464 A.2d 223 (Me. 1983).....	17
<u>Cumberland Farms, Inc v. Town of Scarborough</u> , 688 A.2d 914 (Me. 1997).....	14
<u>El Comité Para el Bienestar de Earlimart v. Warmerdam</u> , 539 F.3d 1062, 1070 (9 th Cir. 2008)	15
<u>Jade Realty Corp v. Town of Eliot</u> , 946 A.2d 408 (2008).....	14

<u>Lewis v. Town of Rockport</u> , 712 A.2d 1047 (Me. 1998)	14
<u>Mills v. Town of Eliot</u> , 2008 ME 134, paragraphs (15), (16)	11
<u>Natale v. Kennebunkport Board of Zoning Appeals</u> , 363 A.2d 1372 (Me. 1976).....	14
<u>Oliver v. City of Rockland</u> , 710 A.2d 905 (Me. 1998)	14
<u>Town of Union v. Strong</u> , 681 A.2d 14 (Me. 1996)	14
<u>Wyoming Outdoor Council et. al. v. United States Forest Service</u> , 165 F.3d 43, 53 (D.C. Cir. 1999)	15
<u>Yazoo & Mississippi Valley R. Co. v. Thomas</u> , 132 U.S. 174, 188 (1889)	14

SHORT INTRODUCTION TO THE CASE

The Appellants, Kathleen Moriarty and Mark Moriarty (hereafter the Moriartys) appeal a decision of the Town of Eliot Planning Board and Zoning Board of Appeals denying their application for a Home Business pursuant to the Eliot Zoning Ordinance. Appendix at 21-27. Mark Moriarty is a licensed electrician and owner of Moriarty Electric. Appendix at 149. The Moriartys met all the twelve criteria in the Eliot Zoning Code for a Home Business in the Rural Zone. Appendix at 21-23, 150-153. However, the York County Superior Court held that they did not meet the preamble of Section 45-456.1 of the Eliot Zoning Code because they were not a “commercial activity that is in scale and character with neighborhoods and areas that are primarily residential.” Appendix at 13, 16-17. The Planning Board at the end of the May 7, 2024 meeting unanimously held that this was the reason for denial of the application. Appendix at 105, 107. If the Moriartys’ application is for a Professional Office there is no argument that the Moriartys failed to meet any of the twelve criteria governing Home Businesses. Thus, the Planning Board’s decision denying the Home Business should be overturned as the criteria for a Home Business does not include the preamble to the Home Business ordinance stating that the intent is to create Home Business uses that are “in a scale and character with neighborhoods and areas that are primarily

residential”, but instead only includes the twelve criteria that the drafters of the Home Business ordinance required the Moriartys to meet.

FACTS

Kathleen and Mark Moriarty reside at 324 Goodwin Road, Eliot, Maine (hereafter the property). Appendix at 21. Mark is a licensed electrician and owns and operates Moriarty Electric. Appendix at 149. 324 Goodwin Road, Eliot, Maine (hereafter sometimes referred to as the property) is located in the Rural Zone in the Town of Eliot. Appendix at 23. On or about November 22, 2023 the Moriartys filed an application for Site Plan Review for the approval of a Home Business as both a professional office and equipment storage. Appendix at 149-153. Home businesses are governed by Section 45-456.1 of the Eliot Zoning Code. Appendix at 99-100. The application was initially to be heard by the Eliot Planning Board on or about February 20, 2024 and March 19, 2024. Appendix at 21. The recommendation was that this would not go forward as equipment storage and instead would just be reviewed as a professional office. Appendix at 151, 157. (Identified on the application as a Professional Office the Town Planner indicates there was extensive discussion at the March 19, 2024 meeting and he recommended the Planning Board review this as a professional office, but that the business-related materials allowed to be included inside the barn be limited. Appendix at 157.) The Moriartys agreed that this was a Professional Office and

not equipment storage. Appendix at 163. The Eliot Planning Board held a final hearing on May 7, 2024. Appendix at 21. The Moriartys met all requirements for a Home Business set forth in section 45-456.1. This is also detailed in the Town Planner's review of their application as the Moriartys reside on the same property, the use is no greater than 1,500 square feet, they would screen their use even though there is no storage of outside equipment, and they would conduct their business Monday through Friday during working hours. Appendix at 156-157.

The Planning Board denied their application. Appendix at 21-24. The Planning Board held that this was not an appropriate use in the Rural Zone, explicitly citing the preamble that any use had to be a "commercial activity that is in scale and character with neighborhoods and areas that are primarily residential." Appendix at 105, 107. (The Eliot Planning Board in its written decision changed its asserted reasoning and claimed the application was for "equipment storage, trucks, three or more" and held this was not permitted, but never ruled on whether the Moriartys met the definition of Professional Office, which is how this was presented.

Appendix at 151, 157.) The undisputed evidence presented (and discussed briefly in the argument section) proves the Moriartys met each and all of the twelve criteria for this use.

The Moriartys appealed the Planning Board's decision to the Eliot Zoning Board of Appeals. Appendix at 142. It held a hearing on July 18, 2024 and by a 3-

2 vote upheld the denial by the Eliot Planning Board. Appendix at 25-27. Their decision, like the Eliot Planning Board, does not cite any part of the Code that the Moriartys failed to meet. The closest the Zoning Board of Appeals came to a conclusion was that three members believed that a Professional Office is not consistent with the above stated purpose of the Rural Zone, and that this was somehow an expansion of Moriarty Electric's business from across the street into a barn on their home. Appendix at 26. The conditions set forth by the two Zoning Board of Appeals members voting to approve the Moriartys' Administrative Appeal about what could be stored on the site of the Professional Office were agreed to by the Moriartys who indicated to the Zoning Board of Appeals they were willing to abide by such conditions. Appendix at 26, 127, 132. After this denial the Moriartys timely appealed this denial to the York County Superior Court pursuant to M.R.Civ.P. 80B. Appendix at 18-20.

By a decision docketed on November 15, 2024 the York County Superior Court (Mulhern, J.) held that the Moriartys failed to meet the preamble of Section 45-456.1 of the Eliot Zoning Code because they were not a "commercial activity that is in scale and character with neighborhoods and areas that are primarily residential." Appendix at 13, 16-17. The Superior Court did not dispute the fact that this was a Professional Office which was allowed in the Rural Zone. Instead,

the Superior Court held that one criteria of the Home Business was in the preamble and the Moriartys did not meet it.

The Moriartys filed this timely appeal to the Maine Supreme Court.

ISSUES

- I. THE ELIOT PLANNING BOARD COMMITTED AN ERROR OF LAW BY INTERPRETING THE ELIOT ZONING ORDINANCE GOVERNING HOME BUSINESSES TO HAVE A THIRTEENTH STANDARD WHICH WAS CONTAINED IN THE PREAMBLE TO SECTION 45-456.1 WHICH THIRTEENTH STANDARD WAS ADDED TO REQUIRE THAT A HOME BUSINESS BE A “COMMERICAL ACTIVITY THAT IS IN SCALE AND CHARACTER WITH NEIGHBORHOODS AND AREAS THAT ARE PRIMARILY RESIDENTIAL”
- II. IF THE PLANNING BOARD DID DENY THE MORIARTYS’ APPLICATION BECAUSE IT WAS CONSIDERED AN APPLICATION FOR EQUIPMENT STORAGE THEN THE PLANNING BOARD IS NOT ALLOWED TO CHANGE AN APPLICATION FROM SOMETHING PERMITTED, A PROFESSIONAL OFFICE, TO SOMETHING PROHIBITED, EQUIPMENT STORAGE, AND THEN DENY THE APPLICATION

SUMMARY OF THE ARGUMENT

The Moriartys applied for a Home Business in the Rural Zone. This Home Business included a request for a Professional Office, a permitted use in this Zone. An electrician is a professional office as that term is defined in the Eliot Zoning Ordinance. The Moriartys satisfied all twelve criteria for establishing a Homes Business, including that the use be permitted in the zone. However, the Superior Court and the Planning Board held that the preamble to the Home

Business ordinance, Section 45-456.1, created a thirteenth criteria that the Moriartys must prove that their Home Business was a “commercial activity that is in scale and character with neighborhoods and areas that are primarily residential.” Appendix at 13, 16-17. Having established a thirteenth criteria the Superior Court held that this criteria in the preamble was not met and that the Planning Board properly denied the Moriartys’ application for a Home Business.

This is an incorrect interpretation of the ordinance. The preamble of the ordinance sets forth the purpose of the ordinance, and it is not part of the criteria, nor part of the interpretation, of the ordinance. Instead, the twelve criteria set forth by the Town of Eliot in the ordinance, and in their application for a Home Business, controls. Court cases have been clear that the preamble to a statute is not used to interpret the statute and does not become part of the criteria of the statute. It should likewise not be part of the criteria for a zoning ordinance. The preamble in the ordinance is only to establish the purpose of the Home Business ordinance, and the criteria following the preamble articulating what must be met to get a permit is what must be satisfied-not the preamble.

Lastly, if the Planning Board changed the Moriartys’ application to one from a Professional Office, a permitted use, to Equipment Storage, not a permitted use, in order to deny the application this was not allowed by the Eliot Zoning

Ordinances. The Planning Board could determine what items could be stored as part of a Professional Office, but could not change the Moriartys' application to one for storage so that it could deny it.

ARGUMENT

- I. THE ELIOT PLANNING BOARD COMMITTED AN ERROR OF LAW BY INTERPRETING THE ELIOT ZONING ORDINANCE GOVERNING HOME BUSINESSES TO HAVE A THIRTEENTH STANDARD WHICH WAS CONTAINED IN THE PREAMBLE TO SECTION 45-456.1 WHICH THIRTEENTH STANDARD WAS ADDED TO REQUIRE THAT A HOME BUSINESS BE A "COMMERICAL ACTIVITY THAT IS IN SCALE AND CHARACTER WITH NEIGHBORHOODS AND AREAS THAT ARE PRIMARILY RESIDENTIAL"

As part of any review the Court must first determine whether the decision of the Zoning Board of the Planning Board is the operative decision. This Court has previously held that Eliot's Zoning Ordinance makes the operative decision that of the Planning Board. Mills v. Town of Eliot, 2008 ME 134, paragraphs (15), (16). An Administrative Appeal of the Planning Board's decision heard by the Zoning Board of Appeals is a review of the Planning Board's decision and not a de novo appeal. This is set forth in the definition of Administrative Appeal:

"Administrative appeals. The board of appeals shall hear and decide where an aggrieved person or party alleges error in any permit, order, requirement, determination, or other action by the planning board or code enforcement officer. The board of appeals may modify or reverse action of the planning board or code enforcement officer by a concurring vote of at least three members, only upon finding that the decision is clearly contrary to specific provisions of this chapter."

Eliot Zoning Ordinances, section 45-49. Appendix at 95. The Superior Court so held and all parties agree to this. Appendix at 10-11. Thus, this is a review of the decision of the Planning Board.

This is an issue about the interpretation of a zoning ordinance. The Home Business ordinance provides the following criteria for establishing a Home Business:

“Home business are uses that provide space for commercial activity that is in scale and character with neighborhoods and areas that are primarily residential. Home businesses must comply with the following requirements:

- a. Home businesses must be clearly secondary to the residential use of the property. This means that there must be a dwelling unit on the property, and the dwelling unit must be occupied by an owner of each permitted home business during the months of the year that the business is in operation. (As used in this paragraph, the term owner includes a principal of a corporation, limited liability company or other legal entity that owns that business.)
- b. A home business is not permitted in conjunction with a home occupation on the same lot. However, more than one home business may be located on the same lot as long as in the aggregate and cumulatively the home businesses on the lot comply with the requirements of this section.
- c. Home businesses cannot exceed 1,500 square feet in total area. The total area includes all portions of all structures used to support or conduct home businesses.
- d. All structures used as part of a home business must meet minimum yard and set back requirements for principal structures.
- e. Any use that is not listed in the table of land uses, section 45-290 may be permitted as a home business provided both of the following requirements are met:
 - (1) The applicant must provide a rationale, acceptable to the planning board, substantiating that the proposed use is similar to a permitted use as allowed in the applicable zoning district.
 - (2) The application must be approved by a concurring vote of at least three members of the planning board as being similar to a use listed in the table of land uses as allowed in the applicable zoning district.

- f. At least one person engaged in the each permitted home business use must occupy the dwelling unit.
- g. No more than two persons not occupying the dwelling unit shall be employed on site in the home business. If more than one home business is located on the lot, the total number of employees not occupying the dwelling unit is still limited to two persons.
- h. Home businesses may engage in selling of merchandise and products as follows:
 - (1) On-site sales of merchandise and products that are created, grown, built, or substantially altered as part of the home businesses.
 - (2) On-site sales of merchandise and products that are customarily incidental to the services or products provided by the home businesses.
 - (3) Off-site, phone, mail, and internet, or similar sales of merchandise and products.
 - (4) On-site wholesale distribution of merchandise and products to dealer/sales representatives who sell the merchandise and products off site.
- i. In addition to the spaces required for parking by occupants of the dwelling unit, home businesses may provide customer and non-resident employee parking spaces, not to exceed four such additional spaces per lot. All requirements of article X of this chapter shall apply to all parking spaces on the lot, with the exception that a maximum of two parking spaces may be located within the front setback.
- j. Sign dimensions must meet section 45-405 residential (non-commercial) requirements. Only one sign is permitted regardless of the number of home businesses located on the lot.
- k. Storage of material associated with the home business use and any other external evidence of the business, must be located or screened such that it is not visible from the street or neighboring residences. Signage, lobster traps, boat storage (in accordance with home businesses, water dependent) and one business related vehicle with a gross vehicle weight rating of 10,000 pounds or less shall be exempt from screening requirements.
- l. Application must identify how all fluids, solids, and gases unique to the business are going to be used and stored. Location and quantity of highly flammable or explosive liquids, solids, or gases shall be identified on the application and referred to the Eliot Fire Chief for review and comment. Material safety data sheets (MSDS) shall be provided by the applicant as required by the planning board.”

Appendix at 99-100.

Zoning ordinances are to be construed reasonably with regard to the objects sought to be attained and to the general structure of the ordinance as a whole. All parts of the ordinance must be taken into consideration to determine legislative intent. Town of Union v. Strong, 681 A.2d 14 (Me. 1996); Oliver v. City of Rockland, 710 A.2d 905 (Me. 1998). To determine the purpose of the ordinance each section of the ordinance must be interpreted to be in harmony with the overall scheme envisioned by the municipality when it enacted the ordinance. The assumption is that the drafter would not have included a provision that was clearly inconsistent with the rest of the ordinance. Natale v. Kennebunkport Board of Zoning Appeals, 363 A.2d 1372 (Me. 1976); Cumberland Farms, Inc. v. Town of Scarborough, 688 A.2d 914 (Me. 1997). Undefined terms used in a zoning ordinance shall be given the common and generally accepted meaning unless the context indicates otherwise or there is express legislative intent to the contrary. Jade Realty Corp. v. Town of Eliot, 946 A.2d 408 (2008); Lewis v. Town of Rockport, 712 A.2d 1047 (Me. 1998).

There are numerous court opinions holding that a preamble is not part of a statute and at most aids to the interpretation of the statute if the language is doubtful and ambiguous. Yazoo & Mississippi Valley R. Co. v. Thomas, 132 U.S. 174, 188 (1889). (In rejecting a claim based on the preamble the U.S. Supreme Court held that “(b)ut, as the preamble is no part of the act, and cannot enlarge or

confer powers nor control the words of the act unless they are doubtful or ambiguous, the necessity of resorting to it to assist in ascertaining the true intent and meaning of the legislature is in itself fatal to the claim set up.”) In the Ass’n of Am. R.R. v. Costle, 562 F. 2d 1310, 1316 (C.D. Cir. 1977) the D.C. Circuit Court of Appeals rejected the Environmental Protection Agency’s interpretation using the preamble of a statute:

“The EPA argument based on the language in the preamble is based on an erroneous perception of the operation and significance of such language. A preamble no doubt contributes to a general understanding of a statute, but is not an operative part of the statute and does not enlarge or confer powers on administrative agencies or officers. Where the enacting or operative parts of a statute are unambiguous, the meaning of the statute cannot be controlled by language in the preamble. The operative provisions of statutes are those which prescribe rights and duties and otherwise declare the legislative will.”

Id. See also El Comité Para el Bienestar de Earlimart v Warmerdam, 539 F.3d 1062, 1070 (9th Cir. 2008) (The preamble should not be considered unless the regulation is ambiguous.) Wyoming Outdoor Council et. al. v. United States Forest Service, 165 F.3d 43, 53 (D.C. Cir. 1999). The preamble of section 45-456.1 is not part of the Home Business ordinance.

Section 45.456.1 of the Eliot Zoning Code lists no less than 12 specific standards the applicant must meet to get approval for a Home Business, from the square footage allowed, sign dimensions, disposal of waste, employees, and how merchandise can be sold. Appendix at 99-100. Not one of these standards involves the applicant proving that the commercial activity is “in scale and character with

neighborhoods and areas that are primarily residential.” Why not put that in the criteria? Because it would effectively delegate legislative authority to the Planning Board. Now the Planning Board could reject any Home Business if it believed it didn’t belong in the neighborhood. This could mean ALL Home Businesses could be rejected pursuant to this criteria. The drafters of the Eliot Zoning Code never intended this and it likely would have been an unlawful delegation of legislative authority to allow the Planning Board to decide what Home Businesses were appropriate in a neighborhood and which ones weren’t. The drafters of the Code took care of that by placing at least 12 clear criteria that an applicant needed to meet.

The Town of Eliot itself acknowledges that determining whether a Home Business is “in scale and character with neighborhoods and areas that are primarily residential” is not a criteria to be met to obtain a permit for a Home Business. The Town of Eliot Planning Board put forth an application and detailed checklist for any applicant wishing to have a Home Business approved. This is contained in the Appendix at pages 149-153. Nowhere in the form provided by the Town of Eliot does it list a criteria the applicant must meet that the Home Business is “in scale and character with neighborhoods and areas that are primarily residential.” Just the opposite. On page 2 of the application, page 150 of the Appendix, the application provides that Home Businesses must comply with the following requirements and

lists the requirements the applicant must satisfy, copying the entirety of section 45-456.1 of the Code. This is clear on the heading when each section 45-456.1 requirement is listed on one side, then on the other side the applicant is required to “explain how your proposal meets this requirement.” Appendix at 150-153.

Nowhere in this application is the applicant required to prove the use is “in scale and character with neighborhoods and areas that are primarily residential.”

Nothing could be clearer than the Town of Eliot’s own form which directs the applicant to present evidence proving he or she met each criteria listed. It was error to add the preamble to the Home Business ordinance as additional criteria.

The Moriartys met all requirement of a Home Business. The Moriartys’ paperwork document that they meet these requirements, and by the Town Planner’s review of this application he confirms they meet the requirements. Appendix at 156-159. Thus, if the Moriartys meet the requirements of a Home Business, which they did, then this is a permitted use and cannot be denied by the Planning Board. Cope v. Town of Brunswick, 464 A.2d 223 (Me. 1983) (When a use is conditional the legislative body has made a decision that the uses are ordinarily not injurious to the public health, safety and welfare or detrimental to the neighborhood.) Any use that is conditional but allowed only needs to meet the conditions set forth in the ordinance and it becomes an allowed and permitted use. All the Home Business

requirements are met by the Moriartys (see Appendix at 150-153, 156-159 for evidence that the Moriartys met the Home Business requirements):

Section 45-456.1(a)-The Home Business must be a secondary use and that means there is a dwelling occupied by an owner of each permitted home business during the time the business is operated. Both Mark Moriarty and Kathleen Moriarty work in the Moriarty Electric business and reside in the dwelling on the property.

Section 45-456.1(b)-There cannot be a home business and home occupation on the same lot. There is no home occupation on this lot.

Section 45-456.1(c)-A home business cannot exceed 1,500 square feet. This home business uses 1,500 square of the barn.

Section 45-456.1(d)- All structures used as part of the home business must meet minimum yard and set back requirements for a principal structure. For the Rural zone that is 30 feet front and rear setback, 20 feet side setback, and the barn meets these setbacks.

Section 45-456.1(e)-A professional office is permitted in the Rural Zone. Appendix at 33. In the Eliot Zoning Ordinance, section 1.2, definitions, professional office means “an office used as a place of business by licensed professionals, or persons in other generally recognized professions, which primarily use training or knowledge of.” Appendix at 75. An electrician is a

licensed professional. See 32 M.R.S.A. 1201 requiring a license from the State of Maine to be an electrician. An electrician is in a profession which “primarily use training or knowledge of” in doing his or her work. Electricians are trained and must use training and knowledge to do their work. See 32 M.R.S.A. 1202-B outlining the education and training requirements for an electrician. Thus, this definition of professional office would include an electrician, a plumber, someone who did HVAC work, an appraiser, surveyor, and others who sell their services and/or goods. There is no doubt that an electrician is a licensed professional, and certainly someone who uses training or knowledge to conduct his business. The fact that the electrician also has items stored as part of his electrical business, such as generators, lights, wiring, and tools used in the electrical trade, does not change the fact that this is a professional office. It is no different from a lawyer who might use computers, photocopy machines, paper, and other products as part of his or her trade. A plumber would be the similar to an electrician in that the plumber would also use products, such as piping and plumbing fixtures, as part of his or her business. Like an electrician a plumber also is a licensed professional who relies on his or her knowledge to make a living.

Section 45-456.1(f)- Both people living at the residence are engaged in the home business so this provision is met.

Section 45-456.1(g)- The total number of employees at the home business will be no more than two so this provision is met.

Section 45-456.1(h)-There will be no sales at the home business so this provision is met.

Section 45-456.1(i)-There are no parking spaces for customer and non-resident employees, so this provision is met.

Section 45-456.1(j)-There is no sign on the property for the business so this requirement is met.

Section 45-456.1(k)-Any business equipment or inventory will be stored inside the home business and not outside, but the Moriartys have installed at 6-8' high fence to block the sight of anything related to the business, so this standard is met. This business operation will not be visible from the street.

Section 45-456.1(l)-There are no fluids, solids and gases unique to this business which are going to be used or stored, so this standard is met.

The Moriartys met all criteria for a Home Business. The preamble to the Home Business is not one of the criteria and it was error for the Planning Board and Superior Court to hold that it was an additional criteria and deny the Moriartys' application for a Professional Office by applying this preamble criteria.

II. IF THE PLANNING BOARD DID DENY THE MORIARTYS' APPLICATION BECAUSE IT WAS CONSIDERED AN APPLICATION FOR EQUIPMENT STORAGE THEN THE PLANNING BOARD IS NOT ALLOWED TO CHANGE AN APPLICATION FROM SOMETHING PERMITTED, A PROFESSIONAL OFFICE, TO SOMETHING PROHIBITED, EQUIPMENT STORAGE, AND THEN DENY THE APPLICATION

The Planning Board in its written decision based its decision on an assertion that Moriartys' Home Business is "equipment storage, trucks, 3 or more" and therefore it is not a permitted use in the Rural Zone. Appendix at 23, 30. This changed the Moriartys' Home Business Application from a Professional Office. See Appendix at 149, 151, clearly stating the permitted use is for a professional office for licensed electrical professionals. When the Moriartys were asked by the Town Planner in writing for details about their application and what they would store on site they responded on a March 5, 2024 e-mail that "(t)he proposed use was submitted as a Professional Office, no equipment storage..." Appendix at 163. The Moriartys listed in detail what would be stored at the Professional Office, which included paperwork, customer information, office equipment materials, desk, chairs, table and computers, seasonal decorations, lawn maintenance equipment, and some electrical/mechanical/generator related products and maintenance kits. Appendix at 163-164. (Furthermore, Moriarty Electric agreed to conditions set forth by the Town Planner regarding the items being stored in its 1,500 square foot Home Business professional office, including outside and inside

use conditions. Appendix at 156-159.) None of these items Moriarty would store at its office were inappropriate for a Professional Office of an electrician installing generators. The only way to disapprove this application was find that it was equipment storage, trucks, three or more, and not a Professional Office. This is something the Planning Board is not allowed to do-change the application into something not requested so it can deny it. While the Planning Board can place conditions on the approval about what equipment can be stored at the Professional Office it cannot change the nature of the application into something the Moriartys did not request and then deny it.

This written decision disapproving the Moriartys' application is sharply contradicted by the minutes of the meeting which give a different reason for not approving the Home Business application. This reliance on the preamble as creating an additional criteria was the reason the Superior Court relied upon and is challenged by the Moriartys in the first part of this Brief-that this was not an activity that is in scale and character with neighborhoods and areas that are primarily residential. Appendix at 105, 107. The decision on May 7, 2024 to deny the Moriartys' Home Business Application echoed this finding and a misreading of the Home Business ordinance:

“Mr. Leathe moved, second by Mr. Shiner, that the Planning Bord deny the PB 23-22 (,) 324 Goodwin Road Home Business application, Professional Office and Equipment Storage, on the grounds that it is not an appropriate use in the Rural District.”

Appendix at 107. (Mr. Leathe also stated that this was not a use that was “in a scale and character with neighborhoods and areas that are primarily residential.”

Appendix at 105.) This was the decision the night of the meeting which was changed when the written decision changed the application from a Professional Office to Equipment Storage, stated that Equipment Storage was not allowed, and denied the request based on this fact.

The Planning Board sent signals throughout its decision and minutes that it disapproved of the Moriartys plan for a Professional Office because it would place a burden on the Code Enforcement Officer to make certain this was used as a Professional Office. (Planning Board members also thought this was creep or spilling over from the Moriartys’ business across the street and onto their property. Appendix at 23, 106.) The Planning Board did not believe the Code Enforcement Office could monitor this Professional office to make certain it did not become equipment storage:

“Placing additional, more stringent conditions on application approvals could seriously impact code enforcement.

- I. Adding these types of conditions on permit approvals add to code enforcement inspections during the term of the permits for purposes of permit compliance.”

Appendix at 23, fact finding 17. This is not a proper consideration as any permit can be denied by claiming the Code Enforcement Office is too busy to ensure

compliance. This is not a valid grounds to deny the permitted Home Business use of a Professional Office.

The Superior Court apparently struggled with this as it acknowledged that if the Moriartys were a professional office and therefore they could use their property as a Professional Office so long as the other Home Business standards were met.

Appendix at 14. The Court held that some storage was allowed. Appendix at 16.

The Moriartys requested a Professional Office, not equipment storage, and any items stored at the professional office would be consistent with the use of this as a Professional Office. Instead, what the Moriartys agreed to is consistent with what the Town Planner requested and what they agreed to before the Zoning Board of Appeals-they would not store any generators, generator maintenance kits or business -related equipment that can only be moved with the assistance of machinery, and instead would only be allowed to store “paper records and documents, typical office supplies, furniture, office equipment, small parts, tools that can be carried by hand, and seasonal decorations and other similar items.”

Appendix at 26, 157-158. (The Moriartys stated that any storage or generator kits and like parts would be temporary and they would be moving them to storage at 327 Goodwin Road and these items were not part of the Professional Office.

Appendix at 157-158.) The Town of Eliot in its Rule 80B brief acknowledges that

“the storage of material associated with the home business use is permitted as part of the use.” Defendant’s Brief at 2.

The Eliot Planning Board is not allowed to turn an application for a professional office into equipment storage, three or more, just because it doesn’t like the use in that neighborhood. (Assuming this is really the reason for the denial which is contradicted by the reasons stated at the meeting and minutes of the meeting.) The Eliot Planning Board could not deny an attorney a Home Business by holding it was equipment storage because the attorney had a copy machine, fax machine, and ten computers and printers (some used at the time and some not) but claiming this was equipment storage, three or more (I count 22 pieces of equipment in this example). This type of reasoning would allow the Eliot Planning Board to deny permitted uses by recharacterizing them into something they are not being presented as (probably every Home Business has at least three pieces of equipment stored at the office and this reasoning would allow the Eliot Planning Board to deny any Home Businesses it did not like by recasting it into the storage of business equipment.) It is legal for the Eliot Planning Board to follow and enforce ordinances, and illegal for the Eliot Planning Board to deny applicants who meet all the criteria of an ordinance by recharacterizing their application into one that is not allowed by the zoning ordinances. The Court should reject the Eliot Planning

Board's attempt to recharacterize the Plaintiffs' permit from one for a Professional Office to anything else, including equipment storage.

CONCLUSION

The Moriartys have met the standards for a Home Business and should have received a permit. The preamble does not contain a condition the Moriartys must meet. Therefore, the Moriartys met the criteria for a Home Business as a Professional Office and the Eliot Planning Board acted "clearly contrary to specific provisions of" the Eliot Zoning Ordinances in denying their application for a Home Business because they met the ordinance criteria to receive approval for a Professional Office and storage of any items associated with a Professional Office used by an electrician.

RESPECTFULLY SUBMITTED
MARK and KATHLEEN MORIARTY
By Their Attorney
PATRICK S. BEDARD, ME Bar No. 3813
LAW OFFICE OF PATRICK S. BEDARD, PC.
P.O. Box 366
9 Bradstreet Lane
Eliot, ME 03903
207-439-4502

Date: 03/13/2025

/s/ Patrick S. Bedard
Patrick S. Bedard, Esq.

CERTIFICATE OF SERVICE

I certify that on this date I mailed, postage paid, two copies of the Appellant's Brief to Gray Louis, Esq. attorney for the Town of Eliot.

Date: 03/13/2025

/s/ Patrick S. Bedard
Patrick S. Bedard, Esq.