

**Town of Carroll
Zoning Board of Adjustment
92 School Street
Twin Mountain, NH 03595**

**Meeting Minutes
February 11, 2021
7:00 P.M.**

“These minutes of the Town of Carroll Zoning Board of Adjustment have been recorded by its Secretary. Though believed to be accurate and correct, they are subject to additions, deletions, and corrections by the Board of Adjustment at a future meeting when the board votes its final approval of the minutes. They are made available prior to final approval to conform to the requirements of New Hampshire RSA 91-A:2.”

Due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu’s Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically and did so through Zoom.

Members Present: Chairperson Aaron Foti, Vice Chairperson Andy Smith; Janet Nelson, Ken Mills, Sandy Pothier and Selectperson’s Representative Rob Gauthier.

Alternates Present: Diane Rombalski and Karen Moran

Public Present: Heather Brown, Jeremy Oleson, Dick Harris, Sean Monahan, Jenny Monahan, Attorney Randall Cooper of Cooper, Cargill, Chant, P.A., Dave Scalley, as a member of the public, Drew Kellner, Attorney Charles Cleary of Wadleigh, Starr & Peters, PLLC., Richard Gould, Alex Foti

Minutes Taken by: Judy Ramsdell, Recording Secretary

Meeting called to order at 7:00 p.m. by Chairperson Foti

Chairperson Foti stated the reason for the remote meeting tonight is COVID.

Chairperson Foti asked that everyone present could hear and clearly understand what is being said—everyone confirmed they could.

Chairperson Foti confirmed that the board will do Roll Call votes. We will keep people muted to avoid background noise/interference.

Pledge of Allegiance

Chairperson Foti reviewed the rules for alternates, as we have not traditionally had alternates. We need to be sure who is voting on what. The two alternates are here tonight, Karen and Diane. Alternates need to be activated by the Chairperson. Alternates may still participate to some degree. The alternates may view documents, listen to testimony, ask questions and interact with other board members, the applicant, abutters, and the public. Alternates shall not be allowed to make or second motions. Alternates will remove themselves from the table once deliberations

begin. Non-activated alternates will not participate once the deliberations begin. We will fully inform the status of the alternates and who is voting on the applications.

Ken Mills noted that there is a raise hand feature on zoom, and would suggest we incorporate the raising hand feature into our meetings and try not to rush and we will methodically go through the process. Ken said he feels it will be less confusing, and he throws it out for consideration. Jeremy Oleson said that he can identify when people raise their hand, and he can also make the chat available. Chairperson Foti said that we need to make sure the chat is available to everyone.

Chairperson Foti asked that each member identify themselves and if anyone is present at their remote location.

- Foti – home, Alex Foti is present as well and logged into the meeting
- Smith – home office by himself
- Pothier – Home with Ken Mills
- Mills – Home with Sandy Pothier
- Nelson – Home and her son is downstairs
- Moran—home alone
- Rombalski – alone at work office

Item 3 of the Agenda: Approval of Minutes of the January 14, 2021 Meeting

Chairperson Foti said that all five members were present at the last meeting and are allowed to vote on the minutes.

Vice Chairperson Andy Smith made a motion to approve the meeting minutes as presented, Aaron Foti seconded the motion. There was no discussion on the motion. ROLL CALL VOTE: Foti—AYE, Smith—AYE, Nelson—AYE; Mills—AYE; Pothier—AYE. Motion carries, minutes from January 14, 2021 are approved.

Item 4 of the Agenda: Special Exception Application – concerning the Harris Family Trust for a Special Exception to Article III, Section 301(a) of the zoning ordinance. The applicant proposes an expansion of the existing non-conforming use by the addition of a third storage building for the property located at: Map/Lot 206-107-000-000, #150 Route 3 South, Twin Mountain, NH, 03595 in the Residential-Business (R-B) Zone.

Chairperson Foti officially opens the public hearing portion of the meeting. The applicant is the Harris Family Trust. As far as the purpose of the hearing is to potentially grant or deny a special exception, as provided by the ordinance, for expansion of this non-conforming use. Chair Foti asked that participants wait until their microphone has been turned on and have been recognized to speak.

Attorney Randall Cooper said he is in Cumberland Maine, and he is an attorney with Cooper, Cargill, Chant, P.A., and he is representing the Harris Family Trust. In the file is a letter signed by the Harris Family Trust. He is here at the hearing tonight, and we filed an application for a special exception. He said the application details when he was here 20 years ago when there was another application for an expansion for three buildings along the left-hand side of the property,

which was denied, in addition to the two that were already approved. This application is a substantially different application as it is for one building directly behind the other two and not near any of the other properties. He has gone through each of the criteria. He would be glad to answer any questions, try to clarify anything they have. He doesn't want to waste everyone's time by repeating what is in the application.

Chairperson Foti said we have gone through who the applicant is, purpose, and rules governing the hearing. Chairperson Foti asked for the secretary's report, and Heather Brown confirmed all required application parts have been submitted, notices were submitted, and all fees paid.

Chairperson Foti wanted to confirm that all members seated are qualified to be present and no reason to recuse themselves.

Ken Mills said Sandy Pothier and he are abutters. They own the property across the street, the Busy Bee Bakery Bistro. Ken said he saw at one time according to NHMA that abutters are automatically disqualified, but it looks like that has been modified in determining abutter criteria. The board may want to vote on that. Is disqualification required in this case? Generally, it is left up to the board to make a group decision unless it is obvious. Chair Foti asked Ken and Sandy do you feel you can judge this without prejudice as abutters? They said they do not feel they need to recuse themselves. Andy Smith feels it would be appropriate to let the applicant and applicant's attorney weigh in and state if they feel there is a conflict. Do Attorney Cooper or Mr. Harris have any comment on that? Attorney Cooper said he has always thought abutters by the nature of their interest are disqualified to vote on it. He trusts everyone, but since you have two alternates there it makes sense to Attorney Cooper you have the alternates sit and let the abutters have their say one way or another. Attorney Cooper said he is not going to object to what the Board wants to do and make a court case out of it. Ken said that he has the document for the ZBA members from 2014. Chairperson Foti said that RSA 673:14 says no member shall participate in deciding or shall sit upon the hearing of any question which the board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens. Attorney Cooper said that by being an abutter, they are an automatic interested party and has the right to appeal any decision. A normal citizen does not have a right to appeal but an abutter does. Attorney Cooper said it may come up later if we didn't do it right. Jenny Monahan said that they are abutters to the west and are in attendance tonight. Ken Mills said as we do have two alternates here tonight and for the purpose of clarity and to have no confusion or questions, it would make sense to make use of our resources. Andy Smith said he would request that we err on the side of caution and he would suggest that Ken and Sandy recuse themselves. Chairperson Foti verified that Ken Mills and Sandy Pothier have officially voluntarily recused themselves as abutters.

Chairperson Foti said he will appoint the two alternates Karen and Diane, and we will have a full, five-member board with no abutters.

Chairperson Foti asked if anyone feels the need to have him read the application. He said he feels it best to allow the applicant to present the application.

Jenny Monahan asked if you are going to review what Mr. Harris has submitted.

Applicant's Presentation will be done by Attorney Cooper.

20 years ago storage businesses were a permitted use in this zone. Mr. Harris went ahead and went through the process that was there at that time and built two storage units. The town, by a zoning change, eliminated that as a permitted use and it became a non-conforming use which would require him to meet the requirement for a non-conforming use. An attempt was made by Mr. Harris to do that 20 years ago and that was denied. Since then, Mr. Harris has been operating these two units for the past 18 years. Mr. Harris has said that there really has not been any problems with the town or with others. Mr. Harris tells him for the most part it is members of the local community or at least taxpayers or people using the park across the street who use the units to store materials. It is actually an asset to the area. Attorney Cooper showed the plan that is intended to place a 3rd building of the identical size and shape of the other two units and everything would be directly behind the other two buildings. Only thing that will be visible is maybe the roof of that building from the road. There is a good series of trees that protects the Monahan property. Attorney Cooper showed some photos of the units and site. There is plenty of room between the trees and what will be the side of that building that bank which is going to be the end of that third building. There will be no impact on that particular buffer. Just putting a third building behind the other two. This is not paved.

Attorney Cooper reviewed the three criteria for a special exception to Article III, Section 301(a) of the zoning ordinance.

Criteria #1 – Will the proposed use adversely affect the capacity of existing or planned community use?

Attorney Cooper said no it will not adversely affect because there is no impact. The building doesn't do anything, and will not have electricity, heat, or water. There have been no requirements for fire or police services or additional requirements since the current ownership and construction of the current two buildings. There will be no additional requirements.

Criteria #2 – Will the proposed use adversely affect the character of the area affected?

Attorney Cooper said the original buildings were constructed over 20 years ago and only 4 of the 84 units are for snow machine storage. The other units are for all purpose storage by community residents in the area. The issue back 20 years ago was: "Is it going to turn into a snowmobile paradise?" As part of the project the salt resistant maple trees will be installed to replace current fir trees along the highway.

Criteria #3 – Will the proposed use adversely affect the traffic on roads and highways in the immediate vicinity?

The current NH DOT driveway permit is for five buildings, of which only two have been constructed, with this being the third. There is very little traffic generated by its nature of a storage facility. People don't go to it every day. They bring stuff in and leave.

Section 301(a) – Does it create a greater nuisance or detriment after consideration of factors such as, but not limited to, the nature of the use itself, volume and types of traffic, noise, vibration, odors, lighting, glare, hours of operation, building size and mass, and impervious area?

It is somewhat the same answer as the other criteria. He does bring up that since 22 years have passed, and we should be able to get some feedback from abutters or others. The applicant is agreeable to a condition that existing fir trees along the highway will be replaced with maple trees that will withstand the salt for highway maintenance. Mr. Harris has been using a scoop snowplow technique to retain all snow storage to the rear of the property.

There has not been a problem with traffic as there is little traffic.

Noise – We don't think there is anything unusual. Is there any impact?

Lighting – The on-site lighting is for security and access. Are there complaints from abutters with respect to the site lighting? We would like to address them if there is. Don't know of any issues with glare. If there are valid complaints made, we will address them.

Hours of operation – normal business hours – at least two abutters here – have there been issues? The current buildings have been in existence for over 20 years without problems.

No other impervious area. Most of the lot remains gravel or lawn.

Bottom line – We are prepared to listen to see what problems there are. It was noted that the abutters do not have a copy of the application packet.

Chairperson Foti said it has been stated that there are currently four units which are in use for snowmobiles. Is that hard data or an estimate? Dick Harris said as far as the four units for snow machines at this time is hard data. Very few snow machines come and go there. When Twin used to have snow it was possibly an issue but that never materialized into one. If anything, it is going the other way. He doesn't have much call for snow machine storage. What he does have is very little.

Aaron said it was mentioned that most of the units are in use by residents of Carroll—any numbers to put on that? Dick said he would say the greater majority are taxpayers to Carroll and a lot of permanent residents use it. A great percentage of the people are from the general area, i.e. Bretton Woods.

Aaron asked about normal business hours--does that mean a person cannot access their unit after a certain time? Dick said they have 24-hour access. There are very few people who ever go there at night. It is not convenient at night because there is no lighting and people cannot see inside their units at night. No activity at night.

Aaron said in reference to electricity and the statement about impact on public services? It talks about lighting and cameras – is there some electricity in use for the storage units? Dick said that there is no heat and no lights in the unit. Electricity is to serve the outside lighting. It is climate controlled so when it is cold outside it is cold in the units and when it is hot outside then it is hot inside the units. No electricity or heat in the units.

Jenny Monahan: We are mainly in disagreement with everything Mr. Harris and Attorney Cooper said about the facility as abutters. It was a permitted use at the time, but that was immediately remedied by the planning board with a 141-19 vote at the next meeting so that use would not happen again. She was told that the Board was made aware that the reason the zoning ordinance was changed was because of Mr. Harris's application. Is the Board aware of that? Chair Foti said that he was not aware of that. She was told they had reviewed the previous documents. Aaron said he has not reviewed the history of town votes on this. Jenny said that the reason the ordinance was changed was because of Mr. Harris's storage units. Aaron said that is conjecture based on intent of the public. She said it was stated in the minutes. Aaron said that the Town voted not to allow something, and he is not sure of the reasons for that. Sean Monahan said when this went to Superior Court that is part of the reason why Article 3 was created. We took this to court 20 years ago, our mother, and the town, and Kathy Saffian and won this argument. There is not supposed to be any expansion next door. There are a lot of negative impacts next door that need to be addressed. Dick Harris asked what they were? Sean said just because people don't have power doesn't mean that people will pull up with their headlights shining. How many snow machines does it take to fill up our yards with blue smoke? They said hundreds of snow machines have done this in the past 20 years. They have had altercations with people who let their dogs run on their property, and almost get in a fight with their dog. There are all kinds of little things living next door to this place. It is an unsupervised business. There are no controls. There is zero supervision and they wonder how Mr. Harris is aware of what goes on over there?

Aaron said to ask questions through the chair. Jenny asked: How is Mr. Harris aware of what happens over there? Mr. Harris said in regards to their complaints they originally complained about the snow which has been mitigated many years ago. There is no snow that goes near their property anymore. Mr. Harris said he gave them permission to go on his property and his road and they use it readily to go on their property behind their house because they don't have access to it. Mr. Harris said he saw Mr. Monahan a week ago and talked about what he wanted to and Mr. Monahan was all for it and wanted to make it wider to go on his property. He said he was going to be taking over the property from his sisters very soon. He said he would like to be able to use Mr. Harris's property to access his rear property. Jenny said it is what he feels now is what matters. Sean said what he said to Mr. Harris was we needed to talk more about this. The other thing is we did have an access down there until you came on our property and started an argument with our parents about where the property line was. He cut the trees down on our mother's property and changed the lay of the land. Water drained onto our property from your property due to your engineering. Mr. Harris moved the trail closer to our property, and the drainage was terrible. When you saw how bad it was, you or your son offered to fix it. Our backyard was 2 feet deep in water. You have not been that great of a neighbor. You haven't been there, and you don't really know what goes on there. With the pandemic going on now there is a lot less snowmobiling and activity going on. In the past, there has been groups of 20 to 30 snowmobiles idling down there. It is not how late they are there, it is how early they get there. They get there at 5:30 to 6 am, and it is an inconvenience. We can't sleep with our windows open in the summer because we hear the tradesman unloading their tools and equipment into their trucks. It has affected us greatly. It is not as nice as it used to be.

Aaron said going forward we need to make sure we address comments through the Chair. Do not make unkind comments to each other. We are not here to decide on private matters. We are here as the Zoning Board to decide if this special exception is allowed and is legal. We want to hear your concerns and comments which allows the members of the board to understand the exact concerns. There is too much rambling going on over 20 years. It needs to be a more controlled discussion, without insults going back and forth.

Andy Smith: Directs this to Dick or the Monahans, or both - Is there direct snowmobile access off there that is being used to access the trails?

Dick said he had permission in the past when it was pertinent to have it and when the snowmobile club in Twin Mountain asked if I could give them permission to access his property to get to Hogan's and access those businesses and he gave them permission to access his property. They gave him permits so he was insured with the state's insurance policy, and they were using his property and he allowed them to come on his property and go to Hogan's store. They are still able to do that. The few people who use the area and his units for snowmobiles access the trail the minute they get in and go to the trail. They don't ride in his fields. They want to ride on the trails in Twin Mountain and the surrounding area. They don't come from Massachusetts to ride in his parking lot.

Andy asked the abutters if there is trail network that abuts your property? They said the snowmobile trail runs parallel that runs down back parallel to their property. Sean said that Dick is right when he opens that up to other snowmobilers, who don't use the storage units, cut across the property to use the trail to get over to the store. They don't really need that. They have Foster's. It just adds more snowmobile traffic.

Aaron asked if they used to use Mr. Harris's property to go to Hank's and Hank's doesn't operate anymore so what are they using Mr. Harris's property for now? Sean said he is not saying they are using it now. Not as many active snowmobilers with pandemic. We are in unusual times. Right now in particular the storage units are marginally quieter than they have been in past years. It is slower times.

Jenny had a question for Chairman Foti. She would like clarification on how the past is not relative to the case when there was precedence set by prior boards and a Superior Court case? Chairman Foti said that there are private matters being discussed here, and he is trying to make it clear that there is a jurisdictional issue. All we have to say is can this person have a storage unit here or not? Trying to clarify what our purview is and is not. We want to do this in a respectful manner that is based on facts not past history. Jenny said that it doesn't sound like the board members have reviewed the history of this case. This has been denied three times, and there was a significant ruling and significant precedence at the Superior Court. She finds it disturbing the board is not familiar with this and should this be tabled until the board can familiarize themselves with this paperwork?

Andy Smith said he has one technical question. He sees that Lorraine Monahan is the abutter? Jenny said she is our mother, and she passed away in March, and it is in probate. We are the beneficiaries as her children.

Andy said he has seen the paperwork on the two ZBA meetings and the court case. Andy said there is an issue that we will have we have to address before we vote on this. This is an opportunity for Mr. Cooper and Mr. Harris to present their case and hear both the pros and cons from the abutters and members of the community. We will go through it as deliberately as we can. One of the issues he wants to bring up as a board member that we will have to decide before we deliberate and vote – Is this a new hearing? Mr. Cooper did bring this up, and is this a substantially new application? His presentation was that the last application was for three new buildings and this is for one. Does that clarify itself as a new application? There are some rules that say you can't come back to the well over and over for the same request. As a board we do need to address this, and we either have to agree or disagree with Mr. Cooper's request if this is a new application. This goes back to Chairman Foti's statement that if this is a new application, we need to give everyone their due course before we deliberate and vote.

Mr. Cooper said the facts are true. Mr. Smith nailed it. Mr. Harris got his approval, built two buildings, the zoning ordinance was changed, variance was requested and denied, which was the first application, a request for a site plan approval was denied, Mr. Cooper said he came back again with Mr. Harris with an application for those three units which was denied and the Superior Court agreed with that. Mr. Cooper said he is glad to share the Superior Court decision with the Board. There is nothing there that says you can't honor appropriate applications that are substantially different to grant an exemption for an expansion. Attorney Cooper said he agrees with Mr. Smith that you have to look at it, especially since the Monahans are here objecting you should make a finding. Are you precluded from deciding on this? Mr. Cooper said he thinks you are saying go on with the comments and see if anyone has anything else to say. He said that is the right move and the right way to go.

Janet Nelson said that she does have a lot of the paperwork here but does not have the information on the zoning ordinance change. She only moved her in 2008, and is familiar with the people involved and she is looking at the court ruling and had some questions.

When the zoning ordinance changed, had Kathy or your mom filed complaints with the town at that time? Were there additional complaints filed in the past few years with noise and things you are talking about?

Jenny said that she honestly doesn't know. That was 20 years ago, and she is pretty sure there were complaints filed. They went to court because of significant complaints filed. It is like beating a dead horse—we learn to live with stuff—didn't want to burden the taxpayer-funded police department with nuisance complaints. It did impact the enjoyment of our property. It would be abundantly clear that it did affect her property. Jenny thanked Janet for familiarizing herself with that court ruling. Jenny hopes we can visit that more in-depth. Janet said she does remember that area and seeing things growing in the town. Janet says she asks about the noise complaints because there have been other issues in town and debating on what are the rights for

our police to work with noise complaints. She would advise them to still go ahead and file those complaints because that is something people are looking at.

Janet has a comment on the State of NH Coos Superior Court Notice of Decision, on Page #12, section 2, it says “the ZBA erred in its September 8, 2003 Decision when it found and ruled that Petitioner’s Revised Application was not material different from the previous application and therefore should not be addressed on its own merit. Then it says the petitioner argued that because the ZBA acknowledged the right to come back that this somehow bound the ZBA to consider the reapplication on the merits. The Court does not agree.” Janet said she is not sure if we really do have a new application here from what she is hearing and reading in this document? Andy said as board we haven’t addressed that question yet but as a board we need to as part of the deliberation.

Attorney Cooper said he is not sure if Bernie Waugh still represents the town or not. There would be no doubt in his mind if he came back with Mr. Harris and wanted to build three buildings on that property we would have no right to have that reheard. He came and said I want to put in one building, and Mr. Cooper feels that is a materially different application. Mr. Cooper said he does this for others and people will try something that doesn’t work, then they will come and say will this be accepted? The Board needs to make a call. If you take a look at the ZBA handbook you can find things about how to determine if this is a materially different application. That is your call. He would not be here, or would he be ethically allowed to be here, if he thought it was not materially a different application. Mr. Cooper said he is glad it was acknowledged that the Monahans have not been making complaints for the past 20 years. Any other comments from the public? We know they have an issue with the snowmobiles using the trail at the end of their property. Is there traffic coming from Mr. Harris’s property to their property? Or are they complaining about snowmobiles coming from the trail to Mr. Harris property to the Monahan property? If there has been trespassing, we should address it.

Aaron Foti: What elements of the application do you feel makes it substantially different, besides the quantities of buildings? Is there anything else?

Attorney Cooper said where the building is proposed to be located. The other buildings were right along the Monahan boundary. Dick said that is not correct. Dick said that the original application back 18 years ago was along Don Monahan’s property line. It was a long building on that side and it was an additional two buildings, exactly the same what he is asking for one now but behind the current two buildings. That original request was for two buildings identical to the one we are asking for now. We were also asking for a 150-foot building on the Monahan side which ran parallel on Gadbois side. It ran parallel to Don Gadbois apartment building. It was originally three buildings in that request, and now we are talking about just one building. In the previous request 18 years ago, we also came for a setback less than the required 25-foot setback. At that time, he was requesting a variance and special exception. Attorney Cooper said it is basically size the number of people coming there and the size of the buildings.

Jenny said that she disagrees with everything Mr. Cooper has asserted. She didn’t get to go into the detail of the criteria when he addressed it. A lot of this is detailed in the former minutes. She

believes it is in the Mitiguy statement, and she feels it is pertinent. She doesn't know if the Board has looked at that. She really wishes they would. She thinks we should look at tabling this and meeting another time.

Aaron suggested that she submit a list of documents that they would like the Board to review pertaining to this. Aaron said she continues to allege that this Board is not prepared. It would be more productive for her to share what she would like this Board to read, and we will take it upon ourselves to be prepared.

Jenny said she would suggest that the land use secretary send to you what she sent to her. She asked her today if this Board had reviewed those documents? It was her understanding that the Board had.

Aaron: Have you learned the board has not?

Jenny said it does not seem like the majority of the Board has reviewed those previous findings and the court record. Is that not true?

Aaron said he is here to ask questions and understand the situation. Making accusations of the people on this Board is not a healthy way to go.

Jenny said she is not making accusations. Has the board reviewed those documents? Aaron said yes many members of the Board have. Aaron said he has not asked people to turn in their homework. This is a public board. Jenny said that it seemed earlier that the Board said that they have not except for Mrs. Nelson. Aaron said that did not happen.

Jenny: So the board has reviewed those documents? Should she send them?

Aaron said yes the board has reviewed those documents. Is there more material you want us to review? She has mentioned multiple denials, court cases, complaints. At the end of the day, we are trying to build documents for our file that supports our decision. We are looking for factual information. If you feel that he is not prepared, we are asking questions to understand the positions of multiple parties. He has not stated anything relative to his understanding of the case. Sometimes we need to ask questions that are obvious to you to understand the positions of multiple parties and that is not always most possible with multiple readings. She has said it enough times that people are not prepared, and it is starting to frustrate.

Jenny said she didn't say people were not prepared. She simply asked if people had reviewed those documents. She does understand what is going on here. She is the secretary/clerk with the Franconia ZBA. She is familiar with the process and what needs to happen here tonight.

Andy proposes we continue to have any public comments either from other abutters or members of the public. Andy would like personally to set up a site visit and see the proximity to the Monahan property and any other abutters. If any of the sitting board members have not reviewed the prior two cases and the court ruling, please do review them. If we do determine this is a new application, having the past history is important but not relevant. What was said and done 20 years ago is not relevant to this application. Relevant comments on the application in front of us

is what we should have. Andy did read those and found them interesting. If we have a new application before us, they are nothing more than historical data and not relevant

Sean Monahan: If he only applies for one building instead of three but one of those buildings goes in the same place as one of the three then basically is it the same thing?

Andy said that is an issue we will debate and whether this is a new and different application we will proceed. If we determine as a Board it is the same application that was denied 18 to 20 years ago then that will be the end of it. Andy said we have not had that discussion yet, but we will after taking public comments.

Janet Nelson said in the court papers on page #10 it says "Ms. Mitiguy's comments filled 2 ½ pages. Janet said she doesn't see the 2 ½ pages. She doesn't know how to get to that testimony. She said that it would be interesting to see more detailed reasons not just what we have in the minutes. Realizes taking minutes can be difficult and challenging. Does not know how that was all done or how that was exactly written and how we can find that information.

Jenny: Mr. Cooper said there was no complaints made. Jenny said that is not at all what we said. We don't have records of making complaints over the past 20 years. We didn't write down the dates and times. She said she can assure that complaints have been made. She said she can assure that there have been many nuisances with noise, odors, vibration, and she would like to point out she would consider this a significant expansion of a non-conforming use. Look at the two buildings we have now and add another building, that is a 33% expansion. That is a significant expansion. She would like to remark that the access road itself should be considered part of that facility. It is not a driveway. It is an access road that accesses those buildings and goes directly to the edge of our property

Sean said you can't move vehicles around those units without driving on to our property and despite what Dicks says he can't plow without putting snow on our property.

Jenny said she would like to add that it is pretty evident in the historical data that the Town spoke loud and clear about amending the zoning ordinance. It should never have happened and expanding the non-conforming use would be another wrong. Two wrongs don't make a right. The truth is this facility should never have been allowed in this part of town. It has detracted from their property value and enjoyment of the property. It has been a bane on their existence and on their property for 20 years, and that is why they are so passionate about this tonight.

Dick Harris: Being the owner of the property for 20 years, he would assume that anyone who had a complaint with the fire department, police department or Selectboard, he would have heard about it. Dick remembers probably 15 years ago or when it first went in there were complaints from the Monahans about the lighting shining toward their property and Dick said we mitigated it with shields on the lighting so the light would not shine on them. Any written complaints have never come to his attention. There has never been any police activity there other when the police come there to look for people to see if they have storage with him. Never have had any written correspondence with the town and never received complaints of authority on his units for 20 years and he believes that speaks for something

Jenny: What are the size of the proposed units?

Mr. Cooper said the size of the building is the same as the other buildings.

Jenny: What are the size of the units inside the building, individual units?

Dick: Two existing units consist of 42 storage units, new building only consists of 30 storage units, exact measurement of the building is the same size as the existing buildings, which is 150 feet x 30 feet wide.

Jenny: What will the individual size of the units be?

Dick: 10x10's's, 10x15's, 10x20's, 10x30's all in the new proposed building.

Jenny: Those units are intended for OHRV vehicles and snowmobiles and louder, more fume making more vibration, exactly what the problems have been, and in my estimation what Mr. Harris's intention is, is to create a lot more units with a lot more snowmobiles. More units for a lot more snowmobiles. It is evidenced by the size of the buildings.

Sean: If this passes at some point, is this setting precedent to go ahead with more buildings? When I spoke with Dick two weeks ago, he didn't say one building, he said it was for two buildings, yet he only applied for one. Probably because once the precedent is set it will be easier for him to get more buildings. That needs to be considered as well.

Ken Mills: Member of the public, not on the board. He did read all that data and he remembers that well because he was here when it was going forward. Familiar with the situation. Our police do not mind being called they appreciate it. They get hounded about their budget. That is not a reason not to call. They want to do their job and keep the peace. If you have got problems, take it up with them because that is what they are there for. Last summer Ken said when he was spending time across the street at the Busy Bee, anecdotally, from his own observation, the traffic was more than he would have thought given what was going on with the pandemic. He said it was mostly during the day, but they do have monitors. He said people do go there at night. To the Monahan's point, there is a variety of traffic and vehicles going there. He can empathize and wondering what it might be like. Anecdotally that is the data he has been exposed to personally, speaking as a member of the public. Appreciate the Chairman keeping it on task. Jumping to conclusions has no place in this body. State the facts. Section 301 (a) non-conforming use is very important to look at this. Ken has been reading it a few times. He would encourage the board to focus on that part of this. This would be an expansion of a non-conforming use to take into consideration along with all the other data.

Dick Harris: This whole conversation seems to be about snow machines of which there is very little there now and in the immediate past. Everyone keeps talking about covid, and the housing market is very active and people are coming up here from down below. They are all looking for storage for their belongings. Snow machines is a very small portion of his business compared to the housing and storage of people's belongings. The majority of this business is people looking for storage. The Town of Carroll is experiencing expansion as well. People need and place to store, and he is here for that. He can't expand. He is full. He bought an expensive piece of

property to be able to do his business and expand it. Snowmobiles is very irrelevant with what is going on now.

Aaron: What about a condition of approval that you would not allow snowmobiles to be stored in these units?

Dick: Are you say you can't store snow machines or can't ride snow machines out of there? A lot of people store snow machines. Garneau's has a whole big garage of snow machines they store over there. This snowmobile trail is a NH state railroad right of way, which is the main trail for snow machines. That is what runs behind the Monahan's property just as well as Dick's property.

Mr. Cooper said he would be glad to discuss this with Mr. Harris. It is a good question, and he was actually going to go there. Mr. Mills brought up that the Town made a point 18 years ago to make a non-permitted use a non-conforming use. It was mentioned not to amend the ordinance for a non-conforming use. He can tell us right now that our ordinance in Section 301(a) is above and beyond what is allowed by the common law of the state of New Hampshire. That is because your town along with a lot of other towns created a zoning ordinance and at the same time created non-conforming uses. It was unfair that those people wouldn't be able to expand and wouldn't be able to expand if you didn't have it and that is why you have it and haven't changed it for 20 years. Yes, it is an expansion of a non-permitted use but it is permitted if we can meet these criteria. He suspects this is not the first one we have had.

Aaron: Seems like the chief complaints from the Monahans are related to snowmobiles. Noise and other things seem to be the core. He would appreciate if they could think about what sort of things they would be open to if the snow machines are the issue can you mitigate that with a condition.

Jenny Monahan: One of the things they are thinking is doesn't the town have an industrial park where Mr. Harris could put this type of facility that is appropriate to the town's zoning. Sean: Isn't that exactly where all future storage units were supposed to go? Jenny: The lack of documented complaints really doesn't think it is relevant. It doesn't fall on us to document complaints over 20 years. It falls on this board. Mr. Cooper references the zoning ordinance which is pretty clear. The expansion of this non-conforming use, a significant expansion of use goes directly against our zoning ordinance and it is pretty clear.

Andy Smith: Appreciate the Monahan's position and we have heard from abutters across the street. There are a couple of different issues. Andy would try to put them in order to make a motion and to proceed with that. The sitting members do access themselves if they have not already to the previous two hearings and the court case. We can put that issue to bed. A site visit is scheduled for some time next week so we could meet on-site to review the scale of the proposed expansion and to view proximity to the abutter's land. Before we have any more debate on this, we will need to have a vote if this application is significantly different from previous other applications which have already been denied. Andy said his motion would be that we table this until the next monthly meeting, but schedule a site visit and review those documents and have everyone get a little more comfortable on the previous hearings so we can

vote on whether this is a significantly new application as Attorney Cooper has presented. The motion was seconded by Karen Moran.

Aaron: We can now discuss the motion just to clarify for everyone the motion is we will table until next month, and we will schedule a site visit in the meantime and Andy added that all board members will familiarize themselves with the previous applications so we can determine if this is a substantially new application. It is important and incumbent on us as Board members to do that. Aaron said that he is hesitant to add that to the motion, however, correct it is.

Janet said that she is unable to go next week. Can she just go on her own at a different time? Could we get permission from Mr. Harris that any of us can visit the site on our own time? Dick said it is a public facility and anyone is welcome. Aaron said it sounds to him like we have permission from Mr. Harris to walk his property sometime in the next month to see his relationship to abutting properties as well as the current set up in reference to the map. Aaron said he doesn't think we need to schedule that. If any two boards members want to do that, but he suggests doing it on their own. Andy said he does not mind going independently. Would the Monahans be willing to provide a phone number to send out the members so if they wanted they can meet individually on site with them to understand what your situation is? Andy said he would like to set up an appointment with them to walk the property. Janet Nelson asked if we are allowed to do that.

Aaron: Do we have to a right to meet with a party with standing in the case outside of a meeting? The Board members have concern with that. Aaron said he does not know that answer 100%. He would have to review the statute. Aaron said what we can do is have a public meeting and at that point we can as long as it is noticed we can have it at the property site. Would it behoove us to meet with potentially both Mr. Harris and the Monahans at the property at a public meeting? Andy thinks it would make sense we get to hear the Monahans and see their proximity. Andy said he would like that if we can set up a time for the majority of the board and Mr. Harris. Karen Moran said she would prefer to go with a group and with Mr. Harris as well just to see the potential layout and where things are going to be located. Looking at it on a map is not the same as looking at in person. It would be more helpful to her. Janet said she has reservations of doing that because then we are talking and meeting with someone. Aaron said in order to do that it would have to be a public noticed meeting. It would need a 48-hour notice in the newspaper. It is not a hearing. Diane said she is fine going as a group as opposed to going on her own. She is a little concerned if we do try to set something up that it is quite a passionate subject and a less controlled environment. Aaron said maybe can propose there is a site visit with the Monahans and a separate site visit with Mr. Harris. Diane said she is concerned about having a walk through with multiple parties present. Aaron said as a public meeting, both parties would be allowed.

Mr. Cooper: There is absolutely no problem with you having a public meeting and being able go there. Mr. Harris could put out markers. Taking testimony from anybody would be inappropriate unless it is a hearing and it is documented and there is a record of what is being said. Big difference between the Monahans saying this is where our property is and this is where the snow machines drive all over the place. There is a big difference between you noticing what is there and from somebody telling you what has occurred. Site visits are to see the site not to

hear testimony. Particularly with covid, he is not going to be there from Cumberland. He would normally expect them to ask to have it staked out so we can see it and if the Monahans want to put a flag on something on their property so you can say the red flag and talk about it at the next hearing is appropriate but having discussions is not appropriate and he would object to it.

Jenny Monahan: It is absolutely appropriate, and it is done all the time. Site visits with petitioners and abutters is common place. She doesn't understand why Mr. Cooper is disputing that. Jenny said in closing that Mr. Harris has asserted that 95% of his units are rented by taxpayers of town, and she doesn't know how that would be proven without a subpoena. The board should also consider his statement that only four units are rented out for snow machines. We are all for doing a site visit with the Board, and we would be happy to schedule at different times from Mr. Harris, possibly one at 3:30 then one at 4:00 p.m. We think it is an important thing to do and we would like to talk to the Board on site.

Rob Gauthier said he is making a suggestion as a selectman's rep to possibly table this and get some advice from legal.

Aaron: We have had a lot of discussion on this motion. We need to move in a direction.

Andy Smith said he is going to modify his motion or withdraw it and make a new one. Continue this hearing until our next scheduled monthly hearing and ask that the members do become familiar with the past cases so we can vote on whether this is a new application or not. And that he would remove the request for an organized site-visit and he will make his own effort to get out to the property. He would request that Mr. Harris stake out the site for the proposed building so the members can look at their convenience, in the next month, where the buildings are going to go. Aaron stated the motion points are as follows:

--Table to next meeting

--Familiarization with the past content for the sake of reviewing and determining if this is significantly new

--Mr. Harris will stake out building location as soon as possible so board members can take their own site visits.

Andy has amended his original motion. Karen Moran seconded the amended motion. We now have a newly seconded motion. No discussion from the Board on the motion as presented. Mr. Harris said he would like to request that any site visits, he is available 24/7. He will meet anybody there, but he does not feel it is appropriate for site visits with abutters without him being there. Andy said he would agree that we not have meetings with abutters. The amended motion is to clarify that the board members go there themselves and that they don't meet with anybody. Dick said he can tell anybody anything they want to know about the property, but he would like the opportunity to be there.

Mr. Cooper said he wanted to clarify to Dick that the amended motion is that you will stake it out and they will go and see it by themselves so the Monahans understand that they are not talking to them and they are not talking to Mr. Harris. Is that ok with Dick? Dick said that he would prefer to show every individual member, if they prefer, exactly where the lines are because he knows exactly where the lines are. Attorney Cooper said he understands that, but he thinks it is

important that Dick just stake it out if people want to look at it because we have to get over this new application hurdle because if we get over that hurdle and the vote goes against Dick then the vote goes against him. If the vote goes for you, then we will get in the nitty gritty of the application. Dick said a vote has to be taken if this is a substantially different application, but his point is they are not going to see a rock in 3-4 feet of snow. Aaron said we are at the point we have to work with what we've got. The Board has expressed concern with meeting with either party on-site. There are several organizational issues with that, right-to-know considerations that we are not able to be definitive about at this time. Andy said to Dick to do the best you can with spray paint. Janet suggested using stakes, anything that can stick out of the ground that will show in essence where that will be. The motion on the table still stands and we are discussing the motion which is to table until our next regularly scheduled board meeting, for members of the board to make sure they are familiar with past history to discuss the merits of whether this application is significantly different from the prior applications, and finally for Mr. Harris to stake out the location of the proposed building on his property.

Jenny Monahan: We just would invite the board to access our property as well if that is helpful to them. Also, Mr. Smith had mentioned consulting town counsel. Is that part of this motion? If that does indeed happen, are we privy to that counsel opinion? Aaron said that no, they are not. Aaron said that legal counsel to a town board is protected by attorney client privilege. Aaron said he as the chairman has a right to share the information but he is not required to is his understanding.

Dich Harris: Why isn't the board asking for legal advice because this is a pretty legal opinion you are asking for?

Andy: We haven't precluded ourselves from doing that. We certainly have the right to do that in the meantime. By not including it in the motion doesn't mean we are not going to do it.

Aaron said he would like to take a roll call vote on the motion to table this hearing until the next regularly scheduled ZBA meeting, which will be via zoom and be taking place on March 11th. Request for the board members to be prepared enough to discuss the relevance of this application to the prior applications and for Mr. Harris to stake out the property. We have received approvals from both the Monahans and Mr. Harris to access their properties for the sake of viewing them. ROLL CALL VOTE: Foti-AYE; Smith-AYE; Nelson-AYE; Moran-AYE; Rombalski-AYE. Motion carries. This application has been tabled until our next meeting.

Chair Foti to the Monahans and Mr. Harris: Members of the Board will be coming by the Harris and Monahan properties. It is not our intent to meet with you at that time. We request that you respect that space because it puts us in an awkward position so please allow the members to do that as needed. We will be sure to bring up any questions that come up from that site visit at our next public meeting. No further questions from the applicant or abutters.

Item 5 of the Agenda – Appeal from Administrative Decision – concerning the Town of Carroll Select Board's Appeal of the decision made by the Town of Carroll Planning Board on January 7, 2021 to grant a waiver of the definition of a driveway so that a driveway may serve a third lot, specifically, Map/Lot 316-023-000-000, Route 3 North, Twin Mountain,

NH, 03595. The Appeal involves the minimum frontage required along the principal route of access in the Rural (RU) District required by Article IV, Section 403.6 of the zoning ordinance.

Chairperson Foti opened the hearing on this application. It appears that the member of the Selectboard representing this would be Rob Gauthier, at which point he would have to recuse himself as a member of the ZBA. Rob said he is not a voting member of the ZBA. Andy said that Rob is not a voting member. Recusal involves more than just voting. If everybody is comfortable moving past that, Aaron is fine with it.

The applicant in this case is the Selectboard and the purpose of this hearing is for us to decide if this appeal should be denied or approved.

Heather confirmed all required parts of the application have been submitted, notices were submitted, and all fees paid.

Aaron: Starting the new hearing we have Ken and Sandy seated. Having said that are all members seated qualified and able to vote on this matter? Andy said he is glad that Ken and Sandy are back because he removing himself from the table as a ZBA member and will be a member of the public as he represents Mr. Gould as his agent in the prior planning board application. He needs to recuse himself from the ZBA at this time. Andy has recused himself unless there is major dissent from anybody.

Rob Gauthier: Dave Scalley is present, here as a member of the public. Two members of the selectboard are here.

Aaron: Andy has recused himself so we are here with a four-member board, anyone have an issue with participating as a member?

Rob said he would ask Aaron to recuse himself from this. Aaron asked why? Rob said that based on Aaron's partnership with Peabody & Smith and he feels that per 673:14 Aaron should recuse himself. We have talked about recusal before. Rob said he feels with the partnership involved with Peabody Smith that Aaron should be recused from this. Andy said he has no ownership interest in the vacation rental business, and they have no interest in Peabody Smith, They are a tenant in his building that he owns with other partners. Rob said he is reading from Bretton Woods Vacation that says through our partners at Peabody Smith Realty. Andy said we do marketing together just like we market with the Omni Hotel, partner with a lot of other companies, title companies, lots of people without ownership or interaction. That is our marketing. We send them our vacation rental referrals, and they send us buyers and sellers. Other than that, they pay rent in his building. Rob said he has asked and requested.

Aaron said he would add that the applicant in this case is the Goulds and Andy is acting as an agent for the Goulds, and Aaron said that he has no relationship to the applicant. He does not personally feel that his relationship with Andy would constrain him from voting on this correctly and without influence. Based on that he will ask other members to weigh in. As Andy is recused, he has four other seated members:

Ken and Sandy: Sandy said she has no issue with Aaron, and she does not feel he needs to recuse himself.

Janet Nelson said she does not feel he needs to recuse himself either

Aaron: Given the request has been made, he will put it to a vote. Aaron said he will recuse himself from this vote but he doesn't feel the need to have an alternate for this recusal motion.

Show of hands if you feel that Aaron Foti, Chairperson should recuse himself due to his business partnership with Peabody Smith. Ken, Sandy, and Janet do not feel that Aaron needs to recuse himself. Consensus is that Aaron stays on the Board and does not need to recuse himself.

Rob said Aaron just said it himself the partnership with Peabody & Smith, and the issue is with the partnership part. You are in partnership with the applicant's agent.

Ken Mills said for a point of information, they have no pecuniary interests or financial obligation, with Peabody Smith Realty. They are tenants in the building. They have zero influence or ability to influence each other. Aaron said they have no power over another.

Aaron needs to appoint an alternate: He will appoint Karen Moran to sit in Andy's seat for the remainder of this public hearing.

Chairperson Foti said that the appeal involves the minimum amount of frontage for Map 416, Lot 023. He said he will now turn it over to the applicant.

Rob Gauthier: The Selectboard is bringing it to the ZBA because the planning board granted a waiver as part of the site plan for a driveway. We are bringing it to the ZBA because the Zoning ordinance was not addressed in regards to frontage and the waiver was granted. The zoning ordinance was not addressed in the waiver, and we just want to make sure so when the property owner then comes to build on that site we are not setting a precedent. We just want to be sure that everything is done properly.

Aaron: What was not done properly?

Rob: The zoning ordinance was not addressed in regards to the frontage. It goes against the zoning ordinance,

Aaron: In Section 302 it talks about non-conforming lots and Mr. Smith can you please tell us when this lot was created.

Andy: can't tell us exactly, but he is going to turn that question over to Attorney Charlie Cleary who is representing Mr. Gould. Certainly 302 says this lot was created well before zoning. We have gone back as far as we possibly can. It was a range lot that was created long before the zoning. The zoning does clearly say any use that was in affect when the zoning was created can continue. This is certainly a lot that falls into a grandfathered use. The planning board, in Andy's opinion, acted completely legitimately because they could not have dealt with a zoning ordinance that has anything to do with this lot. This lot is a permitted lot and was permitted as a

single-family home site. Andy said for a point of order, Rob mentioned a site plan, but we actually brought a new subdivision to the town to annex one lot into this. The only thing the Planning Board, he believes, was challenged with was whether this lot could be accessed off a driveway that already serves two lots. Andy said in his opinion it was addressed correctly. He is going to turn this over to Attorney Cleary.

Chairman Foti read the letter received February 8th from Attorney Cleary addressed to the Carroll Zoning Board of Adjustment.

Attorney Cleary: This old range lot because of the fire in the Coos County Registry of Deeds, we can't determine when it was exactly created, but it was created before 1979 when the zoning was adopted, as most range lots were created after towns were incorporated. Surveyors tried to take the easiest way to create lots. This one is designated as Range 13, Lot 7. The rest of this is really about the terms of the ordinance and what the Goulds were trying to do was a subdivision application that Mr. Smith mentioned, therefore, the planning board regulations apply. The issue before the planning board wasn't a frontage issue because the lot existed and because other sections of the ordinance allowed the planning to waive frontage anyways. The issue was can this lot be annexed to an existing sub-division that the Goulds had approved some time ago, and how to access this particular lot. It was the driveway definition in the subdivision regulations that was being addressed by the Planning Board, and they, perfectly within their right, granted a waiver to the applicant and granted access to this existing lot and agreed it could be part of the Ledgewood Subdivision. To summarize: understand the selectboard's appeal in that there is a section in the zoning ordinance about frontage, but it is inapplicable to this lot and it is not inconsistent with granting a waiver to the sub-division regulations. You could have both. Either way we don't think the appeal should be granted.

Chairman Foti asked for questions or comments from the public.

Rob Gauthier: It was a landlocked parcel of land and we do feel because the road frontage issue wasn't addressed, which is an issue. That is why we are appealing it. Rob said he could repeat it over and over, and he understands their position, but that is why we are appealing it because the road frontage issue was not addressed and we don't want to set a precedent. That is the Selectboard's concern.

Aaron to Rob: Can you speak to the board's concern with the relevance of Section 302, which talks about non-conforming lots

Rob: Not extensively but basically this was a landlocked lot so can you give me the definition of a non-conforming lot? Does this fall into a non-conforming lot? This was not even a lot, and it was not part of the subdivision. And you are saying it was a minor addition to the subdivision. Wouldn't you say this was a major addition to the subdivision? Just note the town would certainly enjoy the benefits of having another house built up in this beautiful area. It is just a matter that we feel it wasn't done correctly because it goes directly against the zoning ordinance. That is why we are bringing the appeal forward.

Aaron: would that mean that the selectboard doesn't feel this was a lot when the ordinance was written?

Rob: Yes, basically, we are just saying the zoning ordinance was not addressed when the waiver was granted. We feel because of the frontage issue that it needs to be dealt with.

Andy Smith: Section 302 is perfectly clear, and this is a grandfathered lot and does not have any need to have required frontage. It is still a lot. You can't make it disappear. It is a 100-acre parcel of land that is an allowed building site. The only issue before the planning board was not whether this was an existing lot, it clearly was. The issue was how to get there. That was the issue the Planning Board clearly approved.

Attorney Cleary: The definition of lot of record is in your ordinance, and it is pretty broad. It is any lot that is either described in a deed or a plan. This particular plan was described in both.

Rob: It was not part of the original sub-division so that is why we felt it should have gone through zoning.

Aaron said we are talking about Section 302, which doesn't mention subdivision. Section 302 talks about lots and "where a single lot of record at the time of passage of this ordinance or amendment does not conform to the area and the frontage requirements of the district in which it is located, such lot may be occupied by any use permitted in that district provided the use conforms to front, side and rear yard setbacks and all other applicable provisions of this ordinance."

Any further comment? This is the last opportunity for comment from members of the public and the applicant.

Rob said he just wants to make sure that the Zoning Board understands why we are bringing this appeal forward. The road frontage was not addressed. He understands what he is saying about Section 302, but it doesn't address the zoning ordinance issue with the road frontage. If we are going to do this, it is going to set a precedent later on down the road. Not sure how the homeowner is going to get a permit to build on that lot. They may run into issues if it is not following the zoning ordinance. It clearly violates the current zoning ordinance.

Attorney Cleary: Understands the precedent argument and it makes sense to him because you are not often going to have a person buy an entire range/lot and annex it to a nearby subdivision. It is going to be pretty rare. He doesn't think we have to worry about this, but this does not violate your zoning ordinance.

Andy Smith said that he appreciates the selectboard's obvious concern that the zoning ordinance is followed and we not setting any precedent. Andy said he is very concerned with the comment that is a clearly a grandfathered lot that has been paying taxes forever and now does have an approval to get there by a driveway with a comment you might not now issue a building permit. Andy is concerned by that. This is an existing lot by subdivision. Are you arguing that this is not an existing lot? He is concerned by the comment that you might not issue a building permit on this lot.

Rob Gauthier: All he is saying is that this lot violates the zoning ordinance because of the road frontage issue, and a waiver granted by the Planning Board was done so not addressing that. Don't want to see any issues come out of it with setting precedent and have any homeowner or landowner run into any issues with that. Rob said he is not the building official to do that. The appeal is simply that it is violating the zoning ordinance, and he appreciates the Attorney saying he understands that, and that it is very rare but certainly could be precedent setting. Rob said that was not his intent and he appreciates Andy's concern.

Andy asked Rob if it was the selectboard who issues the building permits in the town of Carroll. Haven't you said you apply to the Board of Selectmen for a building permit?

Rob said what he said was he has no knowledge of what goes into approving a building permit, what is put in front of us by the building inspector. That is all he meant by that.

Aaron was asking the building inspector what the challenges one would find with this lot and getting a building permit approved for this lot?

Alex Foti says he hears a lot about precedent. The Selectboard is setting a very dangerous precedent. There is a lot that already exists. Whether this lot was grandfathered in or approved by a prior planning board, this lot did not come to the planning board for creation. This lot existed. What we are essentially asking now is to ignore this lot existed. The owner has paid taxes on this lot. The planning board never considered whether the lot existed. We just needed to figure out a way to access the lot in order to leverage the lot. This is the dangerous precedent that is being set.

Janet said she wants to clarify what we are being asked to do or not to do before she makes other comments. Are we being asked to with this appeal from our selectboard to uphold planning or deny planning?

Aaron said we are being asked to overturn the planning board decision as it violates the zoning ordinance. Janet said she drove up there today because she has never been up there to see how it is laid out and she went through the planning board minutes. It seems like it was very well discussed as far as the lot was already existing, taxes were paid. She looked in the NH Planning Land Use to see what it says for planning and zoning and 674:17 says for the purposes of our zoning, she didn't see anything that would limit what we are doing. Section II says every zoning ordinance shall be made with reasonable consideration of the character of the area and its uses. Janet said as she reads through this and drove up to that area and saw what Jeremy had concerns with for the roads and those concerns were addressed, she believes. Not sure how this is in violation of zoning. Jeremy was asked if he agrees that concerns he addressed have been met? Jeremy said not at this point. He wasn't at that meeting. He will still see when the building permit comes out. It will be something that has to be reviewed, and not necessarily deny on it. We had a definition of what a driveway serves and then we changed the definition then it could be problematic.

Aaron said we are only really here to hear to this actual appeal. If the appeal had more directions and angles, then we look at it, but we are not. The job of the Zoning Board is to provide substantial justice. However, in this case, the jurisdiction of the subdivision from RSAs is given to the

planning and within the zoning ordinance gives the planning board the ability to waive elements of the ordinance. As far as we are talking about two buildings on one driveway is simply not part of this application. That is planning board jurisdiction and they gave a waiver is his thought. Aaron's other concern is was frontage brought up at all at the prior meeting? Andy said in the general discussion it was discussed this lot did not have frontage. It was in the minutes that it was discussed that this is only way to access that lot. There was never a discussion or any concerns that this was an existing buildable lot in the Town of Carroll. Correct to say what is before you is whether or not the selectboard's appeal on whether or not the planning board erred is limited to whether or not they were required to deal with that frontage. They appealed whether or not the planning board made an error in not dealing with the frontage on an existing lot.

Attorney Cleary said the few times the planning board's decisions get referred to the Zoning Board as opposed to getting appealed directly to Superior Court are when the planning board, like a building inspector, has misinterpreted or misconstrued a section of the zoning ordinance. Since we have already pointed out two things: one the zoning ordinance allows this lot because of prior existence and two the planning board was dealing with its own subdivision regulations, the reason is not applicable to this situation. It is not that the planning board misconstrued, it was that the planning board decided, as Mr. Foti said, that it wasn't relevant and didn't need frontage because it was pre-existing, non-conforming lot.

Rob Gauthier said it says in the zoning ordinance that the minimum frontage required on a route of access should be 200 feet. It does violate that part of the ordinance. Aaron asked about the relevance to that statement? Rob said it refers to Section 403.6. Aaron said that Section 403.2 refers to section 403.6. Aaron asked Mr. Gauthier how does that apply to 403.6, and Mr. Gauthier did not have an answer.

Jeremy let Aaron know that Dave is unmuted now.

Aaron said it was brought up earlier by Rob that there was a concern due to this situation that there could be a challenge or an issue with the building permit. Can you see any reasons that approving or denying this application would have any effect on denying or approving the building permit?

Attorney Cleary said that he can answer that question. If the zoning board were to decide that this appeal does not have merit, then it would find that the planning board did not misinterpret the zoning ordinance and therefore you are the final approval for this. Then he feels that a building permit would have to be issued. Aaron said he would agree with Attorney Cleary, but since it was said that there was a concern with issuing a building permit based upon this application, Aaron would like to hear from the building inspector what that concerns would be since it was stated that a permit may not be issued.

Dave Scalley said he thinks the zoning board is here tonight to meet to discuss the appeal and not to get any jurisdiction of what or what not the building inspector will review on the permit. He is here as a citizen of the town, not as the building inspector. He thinks the board should stick to what the appeal is.

Aaron said he as a member of the Board would like counsel from the building inspector because a member of the selectboard who is responsible for issuing building permits alleged that it is possible that a building permit may not be issued based on the outcome of this hearing.

Dave Scalley said that the the selectboard does not issue the building permits. They only issue the certificate of occupancy. The building inspector and fire chief issue the building permits. Aaron asked if the Building Inspector and Fire Chief are appointed by the selectboard and Dave said that they are.

Ken Mills said they are appointed. They are not combined. They are separate authorities. Aaron said but the selectboard has authority over them, and they can also remove them. Ken said the building inspector is a stand-alone entity.

Aaron said he agrees with Andy that he is uncomfortable with a statement made that uses building permits as a secondary outcome to this decision.

Rob Gauthier said that he wants to try to clarify that for the second time. Perhaps he misspoke in that sense and didn't mean to imply that in any way other than the fact that setting a precedent by violating the zoning ordinance. If he made a misstatement or mislead, he is sorry for that. He does not issue building permits so he does not know. Just to clarify that.

Andy said he is comfortable with that, and he knows that he tried to clarify that as well.

Ken Mills said that the ZBA is the first stop then comes the court as far as ordinances. We are the first stop for appeals then it goes to Superior Court. Second of all, no one is denying it is a lot. It has been a lot forever. No one is questioning that. The question is access to the lot. Just because it is a lot doesn't mean you have access to the lot. The subdivision is all planning board and has nothing to do with the ZBA. To get to the lot doesn't really matter, there is no guarantee that you have access to something you buy if you don't comply with the by-laws and ordinances. The planning board has waived enough to give them access in their view so that is what this board has to determine and then we have to act on that. It goes back to the appeal, and the appeal is all that we are dealing with. This body will either grant or deny that appeal. That is it. That is what this is all about. He does not care about all this extraneous stuff that people keep bringing up because it is not relevant to what we are trying to do. That is just his opinion.

Aaron said that he is going close up public comment if there is nothing more to be said.

Ken: Show me where the frontage is they are not in violation of? If they are not going to be in violation, where is that frontage going to be?

Diane said with this lot being grandfathered in, Section 302 of the ordinance says it doesn't, based on if the size, rear and frontage setback are upheld to the ordinance then the frontage doesn't need to be considered. We established that it came into existence before the ordinance, therefore she feels the argument over the frontage is non-existent because it has been grandfathered in. She thinks there is enough proof that it existed before the ordinance and is grandfathered in and the frontage is not relevant to this appeal.

Ken asked someone to define what grandfathered means. Aaron said grandfathered in this case is referring to something that existed before that rule was inserted in the ordinance in 1979, but our ordinance in Section 302 and 301 defines non-conforming use and it is based upon the initiation of that rule and when it was placed in the ordinance. Something can be grandfathered in if that rule didn't come into place after that. Ken said if we are going to use grandfathered like it has purposeful meaning he would like to know the RSA or statute that defines grandfathering. He wants something to grasp to why this applies. Aaron said Section 302 is the grandfathering context we are referring to. Ken said he doesn't see grandfathered in there.

Dave Scalley said, as a member of the public only, so you are telling me if I have a lot with no road frontage, I am allowed to subdivide that because we don't need road frontage anymore. Aaron said that no one is subdividing any lots. Aaron said it is being annexed onto a subdivision, nothing is being subdivided. Dave said so if I come in with a subdivision and I have a lot annexed but I still want to access it that I can agree that the board is going to allow that. Aaron said the precedent we may set today is that we follow Section 302. If something existed prior to that rule it is allowed to exist as it lays out. This is in the context of a lot. It is also meaning the building or use as defined in section 301. Aaron said we are not setting a precedent. We are just reading what the ordinance says. Aaron said nobody from the applicant's position has provided a reason why Section 302 does not apply. The applicant has said repeatedly that it violates the ordinance, but when asked about sections of the ordinance that are clearly relevant there is no answer.

Dave Scalley said as a member of the public only, he remembers someone coming through the planning and zoning boards for a building and if doesn't meet the rural setting of the 200 foot setbacks and it has no road frontage, you are saying I can get a waiver from the planning board and the zoning board to build a house in a rural section with zero frontage if I make a subdivision. Aaron said you are talking about access and numbers of driveways which we are not here to discuss. That is part of subdivision regulations which are not in the jurisdiction of the zoning board. The RSA is clear about that as well as the subdivision regulations. We are not talking about that. What we are talking about right now is whether or not frontage matters as that is what has been appealed. Frontage is discussed in Section 302. He hasn't heard any argument yet why Section 302 doesn't apply. Last change to defend why Section 302 doesn't apply. Everyone on this board seems to be in agreement that it does apply from what he can observe. We are not trying to set any precedent. We are just reading what it says. It is pretty clear.

Ken Mills said in Section 302 he does not see where is it mentioning anything about frontage. Aaron and Janet said in the second line. Ken said he is looking at Section 302, non-conforming lot. Aaron said that say a lot does not conform to the area and the frontage requirement of the district. When it does not do that such lot may be occupied by any lot in that district as long as it follows all the other provisions excluding frontage and area. That is what that section says.

Dave Scalley said as a member of the public only: Are we basing everything on section 302 for his future knowledge? Aaron said that he is basing everything on the appeal that was made. Dave said he will ask the planning board at the next meeting. Dave said he would read Section 302 if it does not conform to the area and frontage requirement and the frontage requirement along the principal access should be 200 feet. Aaron said let's agree it doesn't conform. It doesn't conform to the principal form of access of 200 feet. Aaron said that is what this clause is about.

Aaron said he wanted to point out just for the record that he did request legal counsel on this point from the selectboard, but he is comfortable moving forward however he did not get the legal counsel he had hoped to get however he tried just to put that in the record.

Rob said in much like we discussed in the previous case we heard this evening, town counsel communication is privileged, and Rob said Aaron tried to contact him several times and it should be heard in front of the whole board. There shouldn't be any type of communication without the full board. Aaron asked if it is possible to share the legal advice on Section 302? Rob said he has gotten several emails and town counsel communication is privileged.

Ken said that we have a legal counsel budget of over \$100,000 because we are using it too much. We can and should use NHMA legal counsel. Ken said he would like to see us get away from using legal counsel and use NHMA because we already pay for it. They are very helpful. For the entire board they do prefer just board members contact them. They get right back too. \$100,000 a year for legal counsel—let's rethink this.

Andy Smith said he appreciates the good dialogue and appreciates the selectboard's concern that it is done right. He thinks the appeal was pretty narrow. Section 302 in itself says you can use a lot for whatever it is allowed for. Such a lot may be occupied for any use in that district. There has never been a question that it didn't have any frontage. Andy thinks Section 302 is very applicable and it is even amplified when you go back to Section 301 Non-Conforming Uses; Any lawful building, or use of a building, or land or parts thereof in existence at the time of the adoption of this Ordinance, or any amendment thereto, may be continued although such building or use does not comply with the provisions herein. He doesn't disagree that the lot doesn't have the provisions for frontage, but in 301 and 302 clearly deal with that and that those lots can continue.

Diane: We have Mr. Cleary who stated the lot was in existence before March of 1979 which is what we based our ordinance on. We have a lawyer who says this lot was already in existence before 1979, therefore, section 302 is the basis of what we can go by. We already have legal counsel on that. Aaron said it is only one legal opinion.

Attorney Cleary said he thinks we have consensus all the way around on that point now.

Aaron Foti announced that the public section of this hearing is now concluded. At this point the board will deliberate. At this point non-seated alternates may no longer participate. Karen will be participating as a fully-voting member as Andy has recused himself.

Janet said she would like the information on the NHMA legal site.

Ken said his understanding from what he read from reading the appeal, it is 403:6, that is actually what the selectboard brought up by the way of appeal. Sections 301 and 302 were not mentioned. Aaron said 301 applies to 403.6, and 302 is a caveat to 403.6. Aaron said you are right they are appealing based on not meeting 403.6, but our ordinance also gives an out in the rural zoning is where the frontage requirement exists. There is also Section 302 which tells you what to do in a situation when you have an existing parcel that already doesn't meet that requirement. What do you do? You give it a bye from frontage and area, but still make sure it complies to front, side and rear yard setbacks and all other applicable provisions of this ordinance.

Karen said it seems clear to her we have two sections of the zoning ordinance that appear to contradict each other. The selectboard has only appealed on one part. Can we as the zoning board say you are right it doesn't have any road frontage however it complies with this other zoning requirement. This is the first time she is seeing a vote, yes your appeal is exactly right with 403.6 doesn't apply, however.

Aaron said that they are not in conflict with each other. Section 302 supports 403.6 because it tells you what to do with something that doesn't match the ordinance. Aaron said he doesn't see it as a conflict. He doesn't understand why this is this not being considered by the selectboard. Karen said she agrees the two sections of the zoning ordinance exist for a reason.

Janet said when we were doing this and going over this with the woman and went through all this when we rewrote the ordinance. We really hashed it out and spent a lot of time and money. She doesn't believe there was an oversight in setting something up for a conflict. They are in order as far as Section 302 is there as the precedent or the foundation for that other stuff. If you are a non-conforming lot that is what we should be based on because that would come before the other.

Aaron said he can't make a motion but he will entertain a motion. Janet made a motion that we are done discussing. Karen seconded the motion. Aaron said he is not sure it is a necessary motion.

Ken Mills said he appreciates Atty. Cleary's take on no precedent, however it doesn't matter that you are going to have another 100-acre lot coming forward. The precedent is who is going to get it interpreted this way and who is going to get it interpreted another way next time. The concern he has if every time these non-conforming uses come forward, we will address it with 301 or 302 and say you are out of here. Ken said he is leaning towards we have got this hole and let's get this square peg in there. Doesn't like that part of it. That is his opinion.

Aaron requests that the motion be withdrawn to end discussion. Janet withdrew the motion.

Aaron said it would be helpful to present a motion that deals with the application and our handling of it. Ken said the motion we want is to grant or deny the appeal brought by the selectboard.

Ken Mills moved we grant the appeal to the selectboard regarding the decision of the planning board and overturn the planning board decision. There was no second to the motion, and the motion fails without a second.

Janet Nelson made a motion that we deny the appeal as written by the selectboard. Aaron Foti second. Open for discussion on the motion to deny the appeal. Aaron said he sees the concern from Ken in a broad sweeping sense. This condition that is written into our ordinance is written in for a reason. It applies to this very exact scenario. It does not mean we like the ordinance. It is simply what it says. What it says to Aaron is if a lot that pre-dates the ordinance, but you are right, it is setting a precedent, but the precedent is already set. We are upholding the ordinance having heard no arguments going in the other direction. Aaron has heard concerns and fears what this precedent may set but we need to be worried about what Section 302 does. Section 302 is already saying that. We are not setting precedent. We have been told in the past year we may not have done something right this time, but doesn't mean we will not do it right the next time. Aaron said we should be reading this as closely and directly as possible. Aaron said it so clear to him what it says based on the scenario we have. We have an existing lot that existed at the time of the passage of the ordinance. It does not conform to the frontage requirement of the district but it may be for any used permitted. If we deny this, we are not allowing them to occupy that lot. We would be in exact disagreement with our ordinance if we did not agree with this motion. Ken said can we find an area we have better clarification, especially since this ordinance was voted in by the public. Ken said the existence of a lot doesn't guarantee you access to that lot. If we are going to use this one over this one every time why do we even have this one. Aaron said it depends on the timeline. The ordinance says you can't place guidelines on things of the past. We can only apply rules on people for the future. Karen said she located a reference to grandfathered, but it is thanks to the storage units. If you look at page 14 of the Superior Court judgement it says right in there the two original buildings have been grandfathered in. Aaron closed discussion on the motion.

The motion is to deny the application for appeal which would result in upholding the planning board decision. ROLL CALL VOTE: Foti-AYE; Nelson-AYE; Mills-AYE; Pothier-AYE; Moran-AYE; the decision is unanimous, motion carries. The Selectboard appeal is denied.

Chair Foti said that the applicant can continue to follow the planning board ruling. Keep in mind that zoning board decisions are appealable for 30 days. If this decision is appealed it would not come back to the zoning board, it would go to Superior Court. They still have 30 days to appeal the Zoning Board decision.

Andy Smith thanked the Board for work on this.

Public Hearing is concluded.

Item 6 of the Agenda – Review/Update Forms and Checklist

Aaron said that he received a note from Heather that we don't have all the information we need from legal to proceed with these checklists, and it is also 10 p.m. so he would move that we continue this item until next month.

Andy Smith made a motion to continue the Review and Update of Forms and Checklists until the next meeting. Janet Nelson second. ROLL CALL VOTE: Foti-AYE; Smith-AYE; Mills-AYE; Pothier-AYE, Nelson-AYE, motion carries, review and update of forms and checklist will be continued until the next meeting.

Item 7 of Agenda – Adjourn Meeting

Janet Nelson motion to adjourn, Chairperson Foti seconds. ROLL CALL VOTE: Foti-AYE; Smith-AYE; Mills-AYE; Pothier-AYE; Nelson-AYE. Motion carries, meeting is adjourned at 10:02 p.m. The next meeting is March 11, 2021.