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

Meeting Minutes
March 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, and Selectperson's Representative Rob Gauthier.

Alternates Present: Diane Rombalski and Karen Moran

Public Present: Heather Brown, Imre Szauter, Dick Harris, Sean Monahan, Jenny Monahan, Attorney Randall Cooper of Cooper, Cargill, Chant, P.A., Dave Scalley, as a member of the public, Scott Sawicki, Katherine Bettencourt

Minutes Taken by: Judy Ramsdell, Recording Secretary

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

Pledge of Allegiance

Roll Call

Chairperson Foti reviewed the remote attendance rules:
--Reason we are having this meeting remotely is due to Covid and the town hall is closed.
--Every part of this meeting must be audible or discernible to the public. If anyone is not able to hear in some way, please let us know via chat or in some way.
--All votes must be taken by roll call vote, and we need to identify anyone present at their remote location.

Andy Smith in his office by himself
Aaron Foti is home with his family, his family is not with him
Janet Nelson is home, her son is downstairs
Karen Moran is home alone
Diane Rombalski is at her office alone

Ken Mills is at the Fire Department with Imre.

As of town meeting on Tuesday, Janet and Aaron were both re-elected to the Zoning Board. Ken Mills was voted in as a new selectperson for the Town of Carroll. Congratulations to Ken. Aaron said he wants to put it out in the open that Ken submitted a letter of resignation pending his election on Tuesday. That letter was given to Aaron on Wednesday. Aaron was not able to find any statute to prevent a selectperson from being on the ZBA, while the statute does prevent two selectpeople to serve on the ZBA. The statute has a provision for the planning board to have an ex-officio member, ZBA does not. Rob Gauthier is a representative to the ZBA but not a member thus the provision to not have two members from the Board of Selectmen is not violated. Aaron discussed this with Ken, and Ken decided to rescind his resignation. Aaron said he appreciates that, and believes Ken's term expires next year. A lot of guidance from N.H. OSI says it is possible for this to occur but it is not optimal. We should be trying to find members of the town who would serve. Because we don't have those people know, Aaron feels it is appropriate for Ken to stay on. The reason for that is often times a selectperson has to recuse themselves and the alternate ends up filling the seat. In the meantime, until we find other members, it is important to have Ken's voice here. Ken is still a seated member of the Zoning Board. Karen: Was that the OSI that gave you guidance? Aaron said he looked at articles on line, but he did not call legal counsel from NHMA. Dave Scalley asked to speak, but Rob Gauthier was next, and Rob said we are here not in a selectman capacity, but Rob is the selectperson rep to the ZBA and Ken is a member of the ZBA. Dave Scalley is also on, but we are not meeting in an official selectmen capacity. Dave Scalley said when he and Paul Bussiere were both selectmen and on the zoning board they checked with legal and it was alright that they both serve on the zoning board. Aaron said he did not find that to meet the statute, but that is fine. Andy Smith thanked Ken for continuing to serve as a ZBA member.

Aaron said normally we would do officer elections now, however, he looked our rules of procedure that were adopted in December and it does say that officer elections are in April so we will not be doing that tonight. He has two questions does anybody have a desire to amend the rules of procedure so that we have officer elections at whatever meeting is immediately after town meeting? Andy said he does not see a need to change that. Janet and Karen agreed. Aaron said he disagrees with that. The reason for that is the reason officer elections are close to town meeting is because the membership changes. In theory, let's say somebody else ran and Aaron was not elected. All of a sudden you are at a meeting and don't have a chairman. There is process to fill that. There is a logical reason to have the elections right after new members are seated. He does not see a statute that requires it either. He is open to an amendment or leaving it alone. Andy is not prepared to amend it at this time. If anyone is interested in the chairman or vice chairman position, please let him know. Aaron is interested in staying on. Andy is interested in staying on in the Vice Chairman position. We will be voting on these at our April meeting on April 8th.

Item 3 of the Agenda: Approval of Minutes of the February 11, 2021 Meeting

Aaron asked for any comments from the members on the February 11, 2021 minutes. Andy said they are lengthy, and he has gone over them. Andy made a motion to approve the minutes as

presented. Janet seconded the motion. Aaron said he agrees we have had a massive amount of material to look at for this meeting and due to that he doesn't feel he has given the minutes the total attention he should have. He is willing to vote on it tonight, but he is open to table the minutes until the next meeting. Karen Moran said she can't vote as an alternate, but she has not had a chance to go through the 28 pages of minutes given the volume of other information we got. Andy said he is willing to withdraw his motion if there is a general feeling that people want more time. Andy withdrew his motion. Janet Nelson made a motion that we table the approval of the minutes of the February 11, 2021 meeting until the April meeting. The motion was seconded by Aaron Foti. No discussion. ROLL CALL VOTE: Foti-AYE; Smith-AYE; Nelson-AYE; Mills-AYE. Sandy is not here tonight. Motion carries, the approval of the minutes of the February 11, 2021 meeting is tabled until the April meeting.

Unfinished Business from the last meeting:

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, 03575 in the Residential-Business (R-B) Zone.

Back into our public hearing. We have not closed public discussion as there was a lot to go through and look at. We have reopened the public hearing.

Andy Smith asked if we need to appoint Karen as an alternate as Ken and Sandy recused themselves from this hearing because they are abutters. Aaron said it has already been done, but it is important to put it out there. Both, Karen Moran and Diane Rombalski, our alternates, were both asked to fill Ken's and Sandy's seats. The five seated members for this application are: Aaron Foti Andy Smith, Janet Nelson, Karen Moran, and Dane Rombalski.

Aaron wants to review any new information.

Janet just wanted a point of clarification as she thought we were tabling this because we had to determine if we actually had a new application or not. Do we hear these other things first? Aaron said there is a process we need to follow, and we will make that decision in deliberation. We will now take public testimony and allow members of the public to help us understand their point of view.

New communications as they pertain to this application. Jenny has asked to read her statement and Aaron allows here to read her statement. She said they were having technical issues with their laptop camera. Jenny said she had forwarded a copy of her statement to the land use email less than an hour before the meeting. Jenny read a statement which is attached and is a part of these minutes. Chair Foti said it would be helpful to have a copy of that statement tonight. She has forwarded a copy of the letter to Chair Foti as well, which he will send to the members. Attorney Cooper said he has no objection to that coming after the meeting and being part of the record.

Aaron reviewed other communications received:

On 2/12 a letter was sent via email to land use from Jenny Monahan stating that Mr. Harris is currently cutting down on the vegetative buffer that is mandated to stay and she asked to send this email immediately to Chair Foti to distribute to all board members, which was done. On that day another letter was sent stating that they called the police for a civil standby in order to ask him for a cease and desist until we can determine if the vegetative buffer is mandated. On that same day a third message was sent that stated Mr. Harris drove in inaccurate property pins today and to please share this with the board as it is pertinent to their site visit. Aaron said that he is just reading these into the record, and he is not agreeing or disagreeing with them. He is just reading them into the record.

"Owner" was identified as Scott Sawicki for attendance purposes on Zoom.

We have a significant addendum to the application sent by Attorney Cooper. Invite Attorney Cooper to present the addendum to us. Attorney Cooper said he is at this hearing to act on behalf of the Harris Family Trust. The question you were asked earlier, from the last meeting was to take a look at what were the limitations that were imposed back in 1999, and as he understands it at the public hearing on February 11, 2021, the heirs of Lorraine Monahan raised was could this application could be considered in light of the May 29, 2003 ZBA decision which was addressed by the Superior Court. He understood that the issue before the ZBA is to make a factual determination if the new application, whether by changes to the plan itself, or by offering proposed conditions, addresses the concerns of the May 29, 2003 decision. Can we get to the merits of the application? It has to be determined first that we can get to the merits. Is it the same application? That is why he put together the addendum to address this. He wants to give us all the original documentation so we are not taking him on his word or any abutter's word as to what was said. On the 21st he provided 7 copies of everything so the board would have time to read it before this meeting. He hopes the board has had an opportunity to review this and if they have not and need to go another month that is fine. Want to get it right, and his client would like his day in front of the board in order to get an application accepted, then reviewed and approved. He doesn't want to read the addendum to them tonight. He said Heather went back and found the original approved site plan which never got recorded. It was folded up and in a file. Had a survey after that which was incorporated into that. Aaron asked the members how they would like this presented or if any member has questions. Andy said he has read and reviewed it and suggested Attorney Cooper give us his cliff note version of it would be appropriate. Janet said she read it and took some notes. For edification, a high-level overview would be fantastic.

Attorney Cooper said he gave us some historical analysis and he tried to pull out what were the findings of the June 2, 2003 decision by drafted by Atty. Ward, which was voted on and adopted by the Board. What were the points that they found? He has addressed those points on page 4 under discussion. Your zoning ordinance requires for a finding of a special exception there are three general categories of every special exception needs these things. Then for an expansion of

a non-conforming use there are some other things. They concentrated on the original three. The court case, which doesn't matter because it lost, came down to what they said in paragraph 15 of the decision: "*We now apply the special exception criteria to the proposed new plan. We do not find any adverse effect on the capacity of existing or planned community facilities."* That one went for Mr. Harris. *They, however, found that the plan as presented would have an adverse effect on the character of the affected area. They then went on to say they have issues with adverse aesthetic effects of the buildings.* This was for an expansion from the two buildings to now five buildings. That is important as this is the controlling decision. Mr. Cooper shared Exhibit 4. This is the plan that was decided, which the adverse decision came out of. There was going to be the original two buildings that were approved. Phase II building which is in essence this application is for. There was going to be a building behind it for Phase III. A Phase I building over on the other boundary. It was a large expansion to the full capacity of the lot. Going back to the addendum they decided at first the adverse aesthetic affect of the building severely clashing with the area. Mr. Cooper's response to that is that 22 years have passed since the denial of expansion for three additional buildings. Much has changed in the neighborhood and the community, and the community has been able to observe the actual effects of this business over this time period. The neighborhood has changed as well. The density and scale of the project has changed. Mr. Cooper shared Exhibit 5, which shows how this has changed. The fir trees are going to be replaced with maple trees. Mr. Harris has replaced those fir trees three times already. If we ever get to an application, we can discuss what would you prefer to have here. There is some outside storage presently, and we will be moving it to a different location. He is providing snow storage in three locations and one of the defects in the plan was parking. There has been a reduction. A couple building of buildings, and it is now down to one additional building of the same size to address the defects that came up. This is a substantial and material reduction in size, and that one additional building will be screened.

Secondly, they said *the existing adverse effects from the lack of any landscaping or buffering would be exacerbated by the expansion.* Mr. Cooper said that is correct. The new buildings are proposed to be placed virtually right at the edge of the 20-foot side setback areas. All of the trees are on the applicant's property. Mr. Harris staked the boundary line. Although there is an email from Ms. Monahan saying this not correct, it is the correct boundary line. We have a survey of that boundary line. Exhibit 7 is standing on the sidewalk directly in front of the property. You can see the first building, hardly see the second building. You will see what the top of the outside storage. No impact from sitting in a car. From the Monahan property, they will be able to see that building, and there is not much we will be able to do about that.

Exhibit 10 shows the two maple trees at the end of the property on either side of the entrance. The applicant proposes a condition that all current trees will remain and that the existing fir trees along the highway are replaced with maple trees that will withstand the salt. All trees currently there will remain. Proposed plantings and sizes will be provided and agreed upon when the board determines it has "accepted" the application. We have to get beyond tonight or this vote before we can talk about reaching agreements.

One of the findings of the board back in 2003 was *similarly the existing problems with snow removal would be exacerbated. Again, virtually the entire lot, with the exception of the very rear.* Attorney Cooper is saying the removal of the two buildings and technological changes have eliminated this area of concern. Exhibits 5 and 6 identify the proposed locations for snow storage. The applicant uses "v" plows with the wings forward so that the plow acts more like a scoop which allows the plowing and removal of snow to the rear of the property. On Exhibit 8 you see very little banking, and it identifies the small amount of snow remaining to the side, and the large snow piles at the designated snow storage area to the rear. The snow storage going over the line does not occur. We believe we have addressed these issues. All the trees are on the subject property.

Mr. Cooper said he feels that the big issue of 2004 is *the Board also finds that the existing periodic nuisance from the noise and fumes of loading, unloading, idling and revving snowmobiles and similar equipment and the use of this property as a "snowmobile depot" is likely to increase, given that the Applicant's specific intent is to attract and encourage more of this type of business. By marketing this project to snowmobilers, Mr. Harris has distinguished this storage facility from others. Enforcement of the snowmobile curfew is inadequate currently, and the addition of another 90 storage units will only exacerbate the situation.*

Part of this application is for the last eight years the applicant has not been advertising on his on-site sign for on-trail snowmobile access or the inclusion of a picture of snowmobiles to signify snowmobile storage or use. Furthermore, to the best of the Applicant's belief the abutting corridor, which goes along the rear of the property, does not permit OHRV use except snowmobiles. Attorney Cooper said he could be wrong with that, but this is the applicant's belief. Trespassing by snowmobiles has not occurred from the subject land onto the Monahan land. When they complain, at least over the last 8 or 9 years, the snowmobiles are coming from the snowmobile trail located at the back of their property. Exhibit 11 is a copy of the current contract for all storage tenants that includes on the last page the rule providing that OHRV use is not allowed between 11:00 p.m. and 7:00 a.m. The applicant has not received any complaints since this contract went into effect over seven years ago. If the applicant had received notice of any violations, he would have addressed the issue and if need be evicted the tenant. But in any event, the applicant is willing to restrict the number, location, time or even eliminate all snowmobile use on the property, since the fear of a snowmobile depot was the most significant issue in 2003. The extent, wording, and term of any conditions or restrictions would be discussed at a public hearing at such time the application is formally before the board. This is a significant change. The Chairman asked us at the last meeting if we were prepared to make that change, and we are prepared, if necessary, to go the whole yard. We don't think we will get there, and we may be able to test it out. The contract with the snowmobile club allowing use of the property has long since expired, and the applicant proposes a permanent condition that snowmobile traffic from the trail system will not be permitted over the subject property to Route 3. If a store does come back across the road, they will not be able to traverse his property to get there, which was what they wanted before. No traffic will be allowed from the RV park. No snowmobile traffic will be allowed across his property.

Lastly the applicant is unaware of any other sources of noise, and again, if brought before the board he will be willing to address. All outdoor lights not complying with Section 507.3 of the Zoning Ordinance will be brought into compliance, which is screening it from going onto abutting properties. While the hours of operation are 24 hours a day to permit flexibility for customers, particularly taxpayers who reside out of state, those hours are certainly open to discussion and negotiation of a reasonable condition. From their point of view, trying to make everything open for community input. They are looking for input as to what the community thinks ought to occur.

The applicant's plan for open storage, a use to which the property is not currently put, will introduce a new and different effect which is likely to increase the adverse aesthetic effect. Exhibit 12 shows where some open storage exists both on this property and as well as on the Garneau property on US Route 302 on the other side of the river. The applicant is proposing to move the open storage so it is along the tree line so that you can't see it. We will put it where you would like us to put it. He can imagine the Monahan's are saying they are doing it to screw with us, but we are not. If you want us to leave it, we will. If it is moved to this new location, it is blocked from everyone's view by the trees.

The last thing that was addressed was *the Board finds that there could be an adverse effect on roads and highways if the plan as presented was approved in its entirety. The Applicant's proposal to have all open spaces available for "open storage" leaves no clearly designated space for customer parking or for snow removal.*

Attorney Cooper showed us on Exhibit 5 that there are now places for snow removal, eliminated two of the three buildings. We are asking for one building and there is room for parking and snow removal. They are asking that the Board finds that this is a different application, and to make a factual determination that this new applications by changes to the plan or by the offering of proposed conditions addresses the concerns of the May 2003 decision significantly enough so that we can proceed and get to the merits with it. He is prepared to answer any questions, go over any pictures, or the history of it. He provided the decisions that he could, and Heather provided him some as well. Our addendum which we think addresses the issues has been submitted. Chair Foti thanked Attorney Cooper.

Andy Smith asked Attorney Cooper about the snowmobile curfew and if that is something that is already in place. Attorney Cooper said that something that was in that decision. Attorney Waugh had drafted into that they think the snowmobile curfew is not working. Attorney Cooper is not sure what it is all about. Attorney Cooper asked Dick if he knew what it was about. Was there a snowmobile curfew someone or the town had back in 2003? Dick said yes it was in place back in 2003 because his contracts have always been the same. Dick said he believed the curfew was 7 in the morning to 9 or 7 at night. Attorney Cooper said we don't know what it was all about, and we don't know if it was a town ordinance. Not sure if Attorney Waugh would remember or not, but he may have some notes in his files.

Karen said going back to the Superior Court ruling the application that was denied was for building two identical storage units to what is there and an application prior to that was for three

units with the perpendicular buildings, which was denied without appeal. That stands one so that one is irrelevant. Attorney Cooper said the procedure here is important. This application presently now is for one additional building. There was an application for three additional buildings that went forward to the merits, which the zoning board denied. It was denied for three reasons. We came back a month and half later and filed another one for four units, and they never got to the merits because they said it wasn't a big enough change to allow us to go forward. We aren't even going to consider it because it wasn't a big enough change. We hadn't adequately addressed these other things. It is important that the Superior Court was saying that the zoning board was ok with them saying they are not going to take it up because there wasn't enough change. The three building one was what that denial was about, and has this been a big enough change now? You may want to go back to Attorney Waugh. It is confusing as hell and Attorney Cooper said he even had to go back and look at it carefully. Aaron wanted to add there is a lot of different things that the planning board and zoning board brought up at that time. There were a lot of reasons that the zoning board gave and that needed to be remedied. Their reason for not taking up the case was because it was not materially different. Aaron said he is looking at the board's reason on page 2, #7, from the notice of decision of 9/8/2003 and it says: *A primary reason for the disapproving the prior plan was that the adverse effect of the already-existing facilities on the scenic character of the Town and its recreation/tourist economy, which is caused by the bulk, density, scale and crowdedness of the buildings, and their industrial-appearing, clashing architecture, would be exacerbated by the new buildings. The Board finds that the reduction in the number of buildings does not materially alter this conclusion.* Aaron said that the Board then, and this was upheld by the Superior Court, that a reduction in the number of buildings in itself is not significant enough to alter the material of the application.

Karen Moran: She did go over and followed all the directions from the last meeting and has reviewed all the materials. When she did go over to look at the footprint and only 2 of the 4 ends of the building were marked. We were asked to look at four corner markers and there were only two. She gets why it appeared that way and why it was done that way so it wasn't helpful to her. She has all sorts of questions on this entire proposal and we can stay as long as we want to go over all the questions.

Diane Rombalski said she wanted to speak about the question of the snowmobile curfew. It is posted on the Twin Mountain Snowmobile Club website that there is a curfew that no snowmobiles can be ridden in inhabited areas past 11:00 p.m. Did not see it was an actual law or statute in place. Aaron is wondering if it is part of the noise ordinance we put in place.

Attorney Cooper wants to clarify what he thinks the issue is and that is can we get to the special exception application. It doesn't necessarily mean that if the Board agrees to proceed to look at the application that they grant the application. In the first application for five buildings the board got to the application and denied it for certain reasons. The second application, and because they didn't think it was a big enough change, it never got to the application being accepted. It was pointed out because of that case, and Jenny is right to bring it up, that there is a procedural thing the board has to do, and that is to determine if there is this a big enough change to allow the board, between not only a reduction but also the conditions we have proposed, to get to even

considering the application. He wants to get us to the point that we will allow for consideration of the application.

Jenny Monahan said she is confused with some of Mr. Cooper's statements. It looked like he was referencing a part in the court decision, unless it was own written statements, that she doesn't see in the current zoning ordinance. She thinks it was Section 301(b) on the screen share. Aaron said in the addendum it references both the old section numbers which are crossed out because those section numbers have changed and the new section numbers cited. She thinks it says Section 301(b) on page 5. Should those conditions in the former zoning ordinance really be considered at all? Not entirely sure. She thought she saw a section that was 301(b). Aaron said it seems the intent was to identify the applicable section what were in place at the time of the original application. It is titled "Material Change from the application of May 29, 2003." Aaron said he did not cross-section the items. This discussion section was to point out what was then and what is now. The intent of the section is to corelate the old with the new. Jenny said that she wanted to point out that the section appears to no longer exist, and shouldn't be applicable to any decision making by the board now.

Jenny said in regards to the boundary lines, can we ask Mr. Harris what he used in order to drive in those stakes? Was a marker used? It appears that it was just by eye as he was observed doing it. We are asking about the accuracy, as it appeared he was just driving those stakes in with no reference point at all, no pins, except his visual. Chair Foti asked Mr. Harris how did he determine the boundary line that was staked out. Mr. Harris said that he knows where the trees are in regards to the property line and he knows they are on his property, and the line goes behind the trees. At the time he did it there was two to three feet of snow there. No stakes available other than the corner stakes. Other than brining out his surveyor to do again in the snow, we gave him a day or two to put them there. He put them where he knows they are. Chair Foti asked Atty. Cooper if the survey that was done way back is in our evidence at this point? Atty. Cooper said it is the original plan that was submitted with application shows the boundary line that was stamped by an engineer and shows where it is and where it is with relationship with the shed at the far end. Exhibit 4, Site Plan was shared by Attorney Cooper. You can see the line to the left of the shed. Look at the photo to see these pins go straight down and off the edge of the trees and well to the right of the shed. That is what the surveyor was referring to, plus or minus one foot in the snow. This is the same plan which you can see a surveying company who did the perimeter. That is what he is referring to. Aaron said in looking at Exhibit 4 it appears the tree line may go over the property line on the side closer to the road. Andy Smith said that is a contour line.

Andy Smith said this is a data filled application. Two hearings, a court case, and a new application before us. He agrees with Attorney Cooper's request that our first order of business should be to determine if this is a significantly new application then that was applied for in 2003. Andy said his brief synopsis is in 2003 the applicant came and asked for two new buildings and outside storage. That was denied and not appealed. He came back for two buildings and that was what the court case was about, whether or not that was a significantly different application. We could debate whether this new application for one building and attempts to address the

concerns brought up in the 2003 application have been adequately addressed to make this significantly different. Andy said his personal feeling is this is, no bias one way or another whether the application will be approved or denied. The town should air on the side of allowing a property owner to come to the town board with a reasonable application and be heard. If it is the same application and there has been no effort to change it, absolutely we don't want to waste the board's time, the applicant's time or the public's time to hear the same thing over and over again. Andy said it his opinion that the initial application in 2003 for three buildings and the current application we have in front of us for one building attempts, justified or not, that this is significantly different. We owe it as stewards of the town's zoning and representatives of property owners of the town to at least give them a fair hearing. He is not telling us that he is bias one way or another. He does personally believe that a one building application addressing the things the abutters and others had for concerns with the 2003 application that was denied have been met to his satisfaction and that this is a significantly different application. We owe it to the applicant to have a fair hearing.

Andy Smith said he would make a motion that the zoning board accept this application as a significantly different application and move on to hearing the merits of the case. Diane Rombalski seconded the motion.

Aaron said he would like to allow Jenny Monahan to finish what she was going to bring up. Andy said we have already crossed over all sorts of lines and he is not trying to shut anyone down. We are already hearing the merits of the application. We need to decide, as a board, whether we are hearing the application or whether we are hearing if this is a new application or not. He would like to restrict the discussion to that if possible.

Janet said that goes back to her very first question when we started this an hour ago. She feels very differently after reviewing all this material and she is not feeling that this is a new application, but she would like to hear what everybody else has to say and she would like to hear what the abutters have to say specifically. If we are going to go into details why we should hear it then it could be closed to public comment. We should first listen to the public then address the motion. She is not ready. Aaron is for restricting the comments at this point to the first issue at hand whether this application is significantly different. He thinks it is tricky because there is a degree that goes into the merits. They come into play as you are comparing the merits. He does agree for charting a course for us that this is the initial question and it doesn't bind the board to any particular decision on the application. This is a big question, and it is fair to answer that question before we proceed further, as it has an impact on the outcome. He wants to give the abutters opportunity to continue, and he would like to keep that towards the question of whether this is materially different. Andy is not trying to limit discussion, but if we can at least focus it on the procedure without hearing the application before the application has been accepted. This has been a productive couple of meetings, but we need to take it in some semblance of order. Are we hearing the case before we decide if it is an actual case?

Chair Foti asked Jenny Monahan to continue and if she can separate her comments from the merits versus the material difference from this application to the one that was submitted in 2003. Chair Foti said he doesn't want to take away the platform for her to say what she was going to

say. There are two things that have to happen in a certain order. The first thing the board needs to decide is if this application is materially different from the first application in 2003 that was decided May 29, 2003. That is what we are comparing against. The application that came after that for a special exception in July, 2003 is the one that was not substantially different so we are not actually comparing to that one. We are comparing to the first one that was submitted in May, 2003. As much as possible focus the comments on whether this application is materially different. He realizes this is a challenging request, but if everyone can do their best. He wants to give the members of the public their opportunity to speak.

Jenny said we just want to comment that the screen shot that Mr. Cooper shared does not appear to be taken by any person who is taller than 2 feet or maybe the person was sitting down. It was stated in the ZBA September 2, 2003 meeting minutes that once the additional buildings are added, it will look like a solid metal roof the size of a large Wal-Mart or a very large industrial building definitely out of scale in our community. It seems like the angle that the photo was taken did not give an accurate depiction and doesn't match up with what the former board thought or decision was based on.

Sean Monahan said for them there is Route 3 and then there is what they have to look at every day. Every east window of their house stares at storage units. The only thing we have left is a beautiful back yard. The lights at the storage units have not been on for the last two nights for whatever reason so we are not looking at lights in the front yard. Even driving into the yard it is easier to do because there is no light contamination from the storage units. When he was talking to his mother about this and George Saffian over a decade ago. they had made mention that Mr. Harris had gotten his original site plan approved by the town and immediately went against his own plan and didn't tell anybody and moved those buildings 8 feet closer to the road. If he didn't, he would not have had enough room for the second part of his expansion. He thinks maybe part of the whole consequential thing of moving the building against your own site plan that has been approved by the town and moving it too close to the road he would not have had enough room to go ahead with the rest of the plan. Isn't there a consequence for blowing off your own site plan? That is the whole game played, someone pushing and pushing and trying to take more and more. Even the drainage on his property drains on to their property, especially where the storage units are. The ones with no trees to block them. You couldn't put a swale in to mitigate the drainage issue because you definitely wouldn't have room to drive around. This whole thing needs to be intensely researched because little things that have been done. Mr. Harris said he would put in plantings and preserve green area, and none of that was done. Of all the abutters, they are most impacted, weatherly, visually. They are the ones taking the brunt of this. They had to put in new windows so they wouldn't be looking at the storage shed lighting. There is a lot to be said of the opinion of people who bought this house 50 years ago and lived here peacefully. We have suffered from the impact of this. Don't see that in other places in Twin Mountain where they have lost value or lost the value of a dark sky, and you are not staring at those big industrial monstrosities. There is no escaping that. Nothing has ever helped them out by putting in those units. There is a foot and half stack of papers at the town hall that has all of this in Attorney Waugh's brilliant comparison with other cases, and describes where he got his decision-making process from reviewing other cases. This needs a very stringent review.

Appreciate it if we put the effort in to review this. It will affect them for a very long time and now the back yard will be affected by the storage units.

Andy Smith said to bring it back we as a board owe it to all the property owners to give them the platform and same voice, and he understands and has heard Sean and Jenny's concerns as abutters. We have a motion and a second on the floor. Discussion should be limited to that motion, which has the applicant, as a property owner and taxpayer in town, come to the board and said I would like to do this may I at least have a fair hearing. We have not gotten to that point. The discussion has crossed over that line. More discussion is better than none. Wants to bring it back to the process. There has been a court case where the applicant has brought one plan before the town which was denied. They brought a subsequent plan before the town which the town said this is not substantially different from the other one, which we already denied. There was a court case that said we agree that it was not significantly different therefore the Town did not err. That was a long time ago. There were issues raised why this first request was denied. That request had parking, snowmobiles, snow storage and a lot of other things. The motion Andy made is simply not to hear the case but to determine if the 20-year old case to build three new buildings in a significantly different site plan and the site plan they have requested today and with the amended application that says we heard you and have made some changes to our application and does that at least deserve a fair hearing? That is the motion. There was a second. We need to limit the discussion to that. We should not be discussing the merits of the case. We need to decide if we are even going to hear this case. Andy said his motion stands and he would love to limit discussion to that. We do not want to limit the abutter concerns that are valid and should be heard, just as the applicant's request should be heard. Limit the conversation to the motion and call it for a vote. The abutters should be included in the discussion as long as it relates to the motion. We want to give Mr. Harris the right to use his land as much as the law allows him to use it. We also want to protect the abutters and any citizens of the town against anything that goes against their rights, but we are not there yet. Discussion on the motion should be limited to whether this is a substantially new application and whether we should hear it. Aaron said he is in support of this. Any further discussion from the public whether this application is materially different from the first 2003 application? Atty. Cooper said he has no problem with other members of the public wanting to speak. He just wants to point out there are a lot of things that were said about building a building too close or moving it 20 feet are all based on pretty substantial accusations against his client. You have building inspectors who look into that. He can't let an abutter make all kinds of accusations against his client, which is not fair. That abutter did not show up at the site plan hearing that originally approved the two buildings, when they would have had an opportunity to discuss boundaries, screening, etc. Atty. Cooper sees nothing in those minutes and that was never appealed from. They got two buildings built beside them from a site plan approval that was allowed to occur. All of a sudden now they changed the ordinance three months later. He did what he was allowed to do then. It is fair to determine if this is a substantial change? Something occurred in 1999 that never go appealed.

Aaron: any other comment on the motion on the floor which is to accept this application as materially different from the prior application? Aaron would like to go to a discussion by only the board on this motion then conclude with a vote. We are voting on not the merits of the

application but whether we feel this application is materially different from the application previous which is not the denied second one of 2003 but the first one in 2003 for three additional buildings. Is it even substantiated to hear this application? Andy Smith said we owe it to the applicant and abutters to give them fair opportunity to hear their case and the difference from the three buildings to the two buildings. Andy said he would ask for support on the motion. Aaron said he thinks context is important here. There are elements that the prior zoning board felt the reduction in the number of buildings in itself was not substantial enough. In comparison to the application that we are comparing to, we are going from three buildings to one. The fact that ordinances, laws, and precedence have changed in 20 years. Support the idea it is deserved to be heard again since so much of the information that supports these decisions that the board makes has changed. He does not think it is a detriment to the board to move forward with that. It still allows us the leeway to do what we need to do to make conditions, all of that is secondary and for Aaron it is about the fact that 20 years is long time and a lot has changed. The abutters have changed, and we have a lot of evidence and past documentation of abutters and townspeople writing letters about their support and non-support and here we are 20 years later where we really only have one person of the town speaking up in opposition. Aaron said he would echo he thinks it is reasonable given all the factors to look at the merits of the case rather than not hear the application. Aaron said he has seen a hand up from the Monahans, but we are in a discussion with board members only. He is going to keep it as it is. Jenny said they need to make an important distinction about the applications. Jenny said she feels there is one additional item. Aaron said that opportunity was given. The Monahans said they were having audio issues. Jenny said that the last application was for two buildings and not three. That is significantly different. Aaron said this is not the time for public discussion. Jenny said we are incorrect about the number of buildings. It was not for three buildings, his last application was for two buildings, 4 and 5. Aaron said it was decided that application was not substantially different from the prior application so it didn't make it to the point of merit so we are comparing against the first application of 2003. There were two special exception applications in 2003, the first one was denied and the second one was never heard. It is Aaron's opinion we are comparing against the first one because the second one never made it because it was not substantially different.

Janet Nelson said she feels it is not a new application when she looked at the Superior Court decision and all the minutes and her own observances from when she moved up here in 2008. She understands giving everyone a fair hearing. She does not recall from us going to any of our other meetings down in Concord showing major things should change. It is her understanding that when you have a Superior Court make a decision then that was the final decision. She thinks when we look at what we have in our town in 2003 minutes the town's master plan maintain the rural character of the town and protect the town's natural beauty and tourist-based industry. That has not changed. As she looks through the notes and minutes, Mr. Hallquist had a concern with the looks of the town with the storage units being built there. There was concern from 1999 on that there were conflicts. Mr. Harris had an excavator on the property and he was told he was not supposed to have it there. There were signage issues and other issues, so when she hears them say we are going to make this different because we are going to do these things. She is not hearing from somebody who was going to necessarily follow through on that. This raises a huge concern for her. She looks at the fact that on page 2 of the State of NH Superior

Court decision it states that immediately following its decision to approve the petitioner's site plan as a permitted use, and in consequence of that decision, the Planning Board proposed amendments to the Town's Zoning Ordinance. The amendments restricted storage in the residential-business district where the petitioner's storage units are located. The amendments proposed that the only storage permitted without a special exception in that district should be storage incidental to the businesses otherwise allowed in that district. She understands this was a warrant and voted on at town meeting. If the town actually went through a warrant article and the vote was 141 to 19, it was quite clear then. The statement about other abutters not commenting, some of the abutters are actually on this board and with the Covid issues and not having the meetings being simple to get to, perhaps more abutters might have objected. She sees concerns about flooding. That has not changed. He was asked about putting vegetation there before and that does not seem to be in compliance. She is not seeing anything that this is something different. On page 9 it says the plaintiff has burden of proof, and she does not see that has been met. Looking at page 12 of the Superior Court decision, she is not 100% familiar with this but it says the petition argues that because the ZBA acknowledged his right to come back and resubmit a further application when they denied his first application this somehow bound the ZBA to consider his reapplication on the merits. On page 14 of the Court decision in the end it states it may be pertinent to reiterate that the only reason the petitioner can continue to use the two self-storage buildings that he has already constructed is because their legal nature is of a nonconforming use which lawfully existed at the time the restriction went into effect and because they have continued to exist without legal abandonment since that time. In colloquial terms, the two original buildings have been "grandfathered" in. But the petitioner cannot expand by building more self-storage units without bringing the expansion into compliance with the special exception requirement. For those reasons, she does not see this as a substantially different application. She feels this has been heard and heard and heard. She feels this issue has been put to bed and she personally believes that with the warrant article that this was obviously strongly felt by people who are not here today. Many of these people involved have passed on and she believes in the things they were talking about. It was not to restrict someone from having a business, it was because they wanted to make sure we have rural character in our town and maintain the natural beauty we have in our community.

Karen Moran: Based on the court order she is really struggling with trying to determine if going from a 5-storage facility to a 3-storage facility is a substantial difference. That is really a subjective term--what is a substantial difference? Based on what the previous ZBA found from the two units that exist now to four rather than five was not substantially different enough. She is leaning more towards agreeing it is not substantially different although she understands having a record to support the decision that is made. She wants to be sure the record is clear about the decision made.

Diane Rombalski: She is not having the easiest time with this decision. She thinks a business owner has a right to operate the business, and the abutter has the right to enjoy their property. Is this a substantially different application? This is a storage business. What is substantially different? What is already existing? What is proposed? He can't magically change his business. How are we supposed to think along the lines of substantially different. We are still going to be

discussing the fact this is a storage facility. She is struggling with the substantially different application. He can't apply for another business. It would have to consider what he has to work with and what he is changing it with. Going over the original application, she is leaning towards that she sees a substantial difference in his application. Aaron said to summarize, it is because of the limitations of what could be substantially different in the scope of what is being looked at. There is already storage units so if you are going to expand on that they are going to be a challenge to change. Maybe the Board can look at what is materially different for the board to look at this application? Aaron said he thinks Diane raises a good point. It is hard to be substantially different in the scope of an existing use. There was a special exception made and denied. Is it substantially different enough to reconsider it?

Janet: Just wants to reiterate again, that after all this came about, taking it to 2004 a warrant article was put in place that was overwhelmingly in favor of restricting certain things. It is clear from 1999 on that people were still concerned about this and where it was located. We can't go back and change what zoning said. Janet thought that Superior Court does override a lot of stuff or a lot of our local things. If this was already grandfathered in, and the town voted to limit things and we owe it to the town history. This is not a significant change enough to her that this should be considered a different application. How could it be presented as something different? It is somebody who wants to expand their business. There were these restrictions and they just want do whatever they want to do. She feels it is unsightly and the problems addressed before are not any different. The issues with flooding, trees, etc. have been issues for a long time. Aaron said he understands the town vote on the warrant article. His understanding is that the town voted to restrict the ability to do this, and they restricted it via the zoning board. They asked the Zoning board to be the one standing in the way to decide whether this is worthy of being approved. He doesn't want to add an additional voice beyond what the voters approved on the warrant article, which Aaron believes was to create this special exception. Aaron said it is our duty to hear this special exception as that town vote asked us to do. The town could have had a warrant to say no further expansion but they didn't. They put it as a special exception. Aaron agrees that did happen. He feels strongly what did happen was they did say the zoning board should hear cases where this is desired and make a decision. Aaron thinks some of the concerns are more suited for the merits than they are suited for substantially different. Those are her arguments. There was heartfelt concern about this topic from day one from 1999 and it seems clear there was an on-going resistance to this, which is clear and has been documented. They worded it to have the ZBA hear it.

Chair Foti called for a Roll Call vote on the motion to accept the application as substantially different form the application in 2003, the January application, in order to allow us to discuss the merits of the special exception.
Karen Moran – Nay
She is struggling with this, and has been listening to the discussion from both sides and doing her best to have a reasonable and logical conclusion. She does not see it as substantially different. When she walked the property that solidified it for her. After looking through all the documentation that has been submitted and seeing the physical location of the property she does not see it as substantially different.

Diane Rombalski – Aye
Mr. Harris is bound within his property boundary and within his business to make substantially different changes. She does feel based on what Mr. Cooper presented as an addendum addresses some of the main concerns. She also does feel that only a certain amount of change can be made so when we are dealing with substantial change in the application, she thinks it is good to remember that there are already boundaries in place, property boundaries and business boundaries. This is where substantial changes are made and she does feel it is a substantially different application.
Janet Nelson – Nay
She too went by the property and looked around and she felt there is no difference to her in her way of thinking and this has too much of an impact within that space.
Andy Smith – Aye
Aaron Foti – Aye
Motion carries with 3 aye votes. The Board has decided to continue with this application and accept it as substantially different with 3 aye votes and 2 nay votes.

Karen Moran made a motion to continue the hearing to April 8, 2021 to discuss the merits. The motion was seconded by Diane Rombalski. Discuss the motion. Attorney Cooper said his only question is he doesn't know if we have given it any thought how we want to approach this next month. Any particular order? There is a lot of stuff we have covered tonight. He will give it some thought and will come prepared to at least start the process and see how far we get. Aaron said the addendum was thorough but it was towards whether this was substantially different. Might be additional information needed at the next meeting. At this point it is public record that we have decided to move forward with the application so if others have letters or concerns about this application, they are welcome to submit it. Andy Smith said there is a motion on the floor. We have crossed a lot of boundaries and have great and robust discussions. To respect everyone's time and input, we ask anybody who has comments or input to limit it to new information only. We have heard a lot of valuable information that we don't need to rehash. There is a motion on the floor to continue this hearing so that would conclude discussion and want to make sure everyone has the chance to say anything about the upcoming hearing. Anybody wishing to add additional information to this case please keep it to new information. The Board has already shifted through a lot of material, but we want to evaluate all pertinent information. Janet Nelson asked if other people want to come in from the public to have input are they still allowed to do that? Aaron said absolutely, we are continuing the public hearing and there will be public discussion at the next meeting. He thinks the request is for additional information that is supplied to the board, addendum or letters. There is a significant amount of overlap between what we discussed tonight and the actual merits we are discussing next time. It is difficult to disconnect things, and he is sure things will come up again. We don't want to rehash information that has already come in. In that meeting we should remember that it is a continuation like we took a 5 minutes break and came back so please familiarize yourself with the minutes of this meeting and remind yourself where we have been so we can spend more time on new information rather than where we have been. No further discussion on the motion.
ROLL CALL VOTE: Rombalski-AYE; Moran-AYE; Nelson-AYE; Smith-AYE; Foti-AYE.

Motion carries with an unanimous vote. We will continue this public hearing until April 8, 2021. It will be a zoom meeting as town hall is closed and is not scheduled to be open at that time.

Chair Foti noted that we added a stipulation to our Rules of Procedure that if it gets to 10:00 we will vote to continue or not, but it looks like we will be o.k. with that tonight.

New Business:

The Board received a request for a rehearing from the selectboard which was received on March 9th and already has been shared with members of the board. Aaron needs to correct the record. In his conversation with Heather about sending that he cited the posting requirement was why it was not on the agenda tonight. He needs to correct that it as it was actually the requirement in our rules of procedure that board members have materials 72 hours in advance. He felt given the amount of additional material that was supplied and given the complexity of that case and hearing it without ample time would not be a fair choice. We are required to have a public meeting to determine if we will approve that request for a rehearing. We need to do it within 30 days from March 9th so that would be April 8th our next meeting. Aaron would propose that we have that request for hearing be addressed at our April 8th meeting. Janet was wondering if there would be enough time to go over everything that night since this particular thing we are still working on takes quite a while. Ken Mills takes back his seat. Aaron said he would be open to a special meeting. Karen agrees with that as well. Andy said he is conflicted, as a recused member. As a representative of the applicant, he would say that he does respect the challenges of time and if there is a special meeting that would be possible the applicant would appreciate it. Ken said there is a concern you all did a lot of work tonight. If the reconvening for tonight's activity comes in, he made up a flow chart and what he came up with was the application complete, substantially different was done tonight, so now you are going to the hearing, close the hearing, deliberate and vote. Some of the work has been done. Ken has to recuse himself from that. Ken does not feel he will be able to participate in the rehearing request, as he is a selectperson now. Aaron said he thinks he will be able to participate. From what he has read you have already voted on this issue so what will be required is that Ken will sustain from discussion on this issue at selectmen's meetings until closure of the case. For continuity of the case and if it is plausible with legal, it would be appreciated if Ken would stay on. Ken said the budget did not pass so he wants to point out that legal counsel gets turned to more often than he is comfortable with in any capacity. In this case this is a great question to email to the NHMA in Concord. They will get right back to us and we will know exactly if this can occur. No cost to the town. We are looking at serious financial stuff going forward, and Ken said we can expect push back from him when money is requested to be spent on legal. Andy agrees with that. On the legal stuff, try to go through the NHMA as much as we can. Aaron will reach out to them. Due to complexity, legal counsel is already involved on both sides. Aaron said we will vote for the officers at the April hearing. We may want to amend our rules of procedure to change voting for officers to be held at the meeting directly after town meeting. Aaron said we will schedule the request for a rehearing to March 18th at 7:00 p.m. Seated members will be Janet, Aaron, Karen and Sandy. Ken will check with Sandy to be sure. The statute does also call it an application. For all useful purposes it is the same thing. The difference is the initial decision we

make is whether or not we will rehear it. We can deny the request for a rehearing, but if we approve it, we will need to have another hearing. It is potentially a two-step process. March 18th will be the first step to determine whether we will have the rehearing based on the merits of the request.

Other New Business:

We received an email, which was shared with the board yesterday, and it did not require a vote. It was just a request for information. There has been a request to continue a variance for a doggy day care at the same property, 491 Route 3 South. Mr. Foti read the following to be included in the minutes: "From Heidi Giampietro: We are opening a dog daycare, boarding, grooming and training facility at 491 Route 3 South. Our name is K9 Fund Town LLC. We are three professionals with over 30 years of experience. We will run a quiet cage free daycare with a small boarding area. Professional grooming run by our Certified Master Groomer. Training classes will be run by our certified trainers. Our goal is to be a part of the community helping out our four-legged clients and their families. Thank you from Heidi, Tracy, and Emmy, K9 Fun Town LLC." They wanted to clarify whether the variance that was given is still valid. This is really a consultation, and they will get their information via the minutes. This is not binding on the ZBA. It is someone who needs some help. Alternates can participate as we are not voting.

Aaron said our ordinance states in Section 804.5 that any special exception or variance shall be valid for only two years, unless it is extended. This notice of decision was signed by Aaron on March 27, 2019. We are just about 16 days away from that. A secondary question is what is defined as an abandoned use? Has the non-use of that variance thrown it out as a use?

Karen asked when the last place closed their doors? Aaron said he is not sure. Aaron is thinking it probably doesn't matter if it was within the two-year time frame. Abandoned uses require some amount of time for that abandonment.

Dave Scalley asked if the variance you accepted as the ZBA two years ago, did that include training? Dave heard him mention training. Dave said he believes if the use isn't used within a year it stops and has to come back and he is not sure when it closed. Janet is wondering about the time frame because of the year of covid—does that change anything?

Andy said reading from 674:33, he feels it is valid if it was exercised within two years from the date of final approval unless further extended. He would read it as two years from the date of approval it has the right to be exercised. Janet pointed out that it was exercised. Andy thinks the one year Mr. Scalley is referring to is for a non-conforming use for one year they can't claim grandfathering or existing uses. They have two years to institute the variance that is approved. David pointed out that they need to abide by what the variance says. There was discussion if the date was the day the board voted or the day the Notice of Decision was issued. Andy thinks it is the date of the vote. Karen agrees. Janet thinks it was approved at the March 14, 2019 meeting. Ken said the Notice of Decision is an actual document the Board would have issued. That notice of decision is what the applicant had in hand to move forward. Janet is wondering about the training question. When dogs go to day care they work on certain things anyways so does that count as training?

For purposes of this consultation, we don't have an application here. They are asking for a non-binding sense of what the zoning board sees here. The best advice is that the variance is valid and would need to be exercised by such and such date and they are required to meet all the stipulations within the variance. It is then up to them. We are not an enforcement board. Notice of Decision always refers to when the decision was made. Decision was the date the ZBA made that decision. Person requesting this consultation has already shown that is their intent. They have two years from the date of decision to use that property as the variance allowed. How does signing a lease and not using it yet come into play? Not sure.

Karen asked if they can they ask for an extension. It follows the ordinance. That would be a safe route. They are asking if they can exercise the variance. We can provide as much guidance as possible. We can tell them that the variance needs to be exercised in two years, and the business needs to conform to the variance. Diane asked about the training component. Aaron said it is their adherence to the variance. We should not be making a binding choice. They are asking if they can exercise the variance. In the board's interest to provide as much guidance as possible. Would recommend we tell them the variance needs to be exercised within two years from the date of decision, your business would need to conform with the existing variance, and our ordinance provides for the zoning board to extend such a variance, but there would need to be an application.

Heather said that she talked to this woman and she is looking to exercise this sooner than later as she is signing a lease this weekend and she is planning on starting the business itself then. In all the research, this was a doggie day care and it stopped being used in the fall of 2020 and it hasn't been used because of covid. It is no longer a business. There is no web site for the doggie day care that was there before. Found reviews from a year ago. It looks like it was fall when it shut down.

Andy said that it was used within the 24 months. There is nothing in the RSA that says about a hiatus. Andy thinks sending a letter reiterating the decision, and if you comply with all the necessary zoning ordinances and RSA's and comply with the decision. Aaron suggested pointing out to them the relevant RSA's as much as possible. Consultations are not meant to be binding.

Aaron would like to stick with what he proposed to recommend that these are the dates and this is the variance you need to adhere to and this is section that allows you to get an extension

Dave said he can't find the one year. He believes it was shut down last fall due to Covid and it was difficult in making it work. It is a tight window here, and as a citizen he would like to see a business continue on Route 3, whatever we have to do to help the business. He doesn't think the zoning board should be giving advice on this. Andy said he things we should reiterate what the decision was that was made. Here are the RSA's. Andy thinks the year is for non-conforming uses, but it has been less than a year so it doesn't matter. We don't want to be giving advice. The point of the board is to decide on questions. People come for consultations. Aaron said he wants to give information that is factual and precise. Leave them to find further advice themselves. Ken said he agrees with that for the information for signing a lease this week. Less

than year for a Hiatus in a business operation doesn't alter that. The variance was there and runs with the property. The business was operating within the two years. This is just a Segway into another person operating it. Ken said he doesn't think the two years come into play because it was used. As long as nothing is changing, it is just another person coming in to run the business there shouldn't be an issue with it. Andy said he agrees with that. Non-conforming use has a specific definition. They did open and operated the business. Ken doesn't want to hang their hat on the training issue. Just say it is our opinion you can operate under the conditions of the variance. Karen said do they have the variance? They called and they were doing that to learn about these things. He assumes they knew a variance was in existence. Ken thinks the two years doesn't come into play because they did have a business there. No actual decision made in a consultation. It is the content of the discussion. We are not supposed to be decide on anything here. Let the minutes speak for themselves. Most relevant points have been made. Andy said he would agree it would be appropriate for the Chairman to ask the secretary to send them a copy of the actual variance, notice of decision and refer them to the minutes of this meeting for further information. The board felt this would be an appropriate movement. It is in the applicant's lap to decide to move forward. They wanted to make sure they were o.k. The variance is still in effect for the purposes they are asking for from the board. Dave Scalley said he would not have the board make any consensus or votes. The applicant knows the variance goes with the property and they are within their two years and have the right to continue. He doesn't think it is a good idea to give a consensus. The applicant should already have this information as it is public knowledge, and he is sure the owner has already given the applicant the variance because he is very aware of it. Andy said he looking for consensus to send a letter stating here is the variance and point them to the minutes for this discussion. The Board was in consensus with this.

5. Review/Update Forms and Checklists

6. Adjourn Meeting

Heather has not received the legal information on the checklists yet.

Andy Smith made a motion to table the discussion on the forms and checklist until our April 8th meeting and to adjourn the meeting. Aaron seconded the first part of the motion. ROLL CALL VOTE: Moran-AYE; Nelson-AYE; Mills-AYE; Smith-AYE; Foti-AYE. Motion to table the discussion on forms and checklists passes.

Aaron Foti seconded the motion to adjourn the meeting. ROLL CALL VOTE: Moran-AYE; Nelson-AYE; Mills-AYE; Smith-AYE; Foti-AYE. Meeting is adjourned at 10:12 p.m.

Next regular meeting is April 8, 2021, and a meeting to consider the Selectboard's request for a rehearing on the ZBA's denial of its appeal will be held on March 18, 2021 at 7:00 p.m.

STATEMENT FROM JENNY MONAHAN ATTACHED TO ZBA MINUTES OF 3/11/2021

March 11, 2021

Chairman Foti
Zoning Board of Adjustment
Town of Carroll, NH

Re: Richard Harris application for Special Exception

Dear Chairman Foti and Members of the Board:

We are here today to formally request that you deny Mr. Harris's application for a Special Exception for an expansion of his non-conforming use with the addition of another 150' x 30' building directly next to our property. Our request for denial is rooted in our desire to prevent any further detriment to our abutting property located to the west of Dick's Self Storage facility. As detailed by the former board members during historical denials of Mr. Harris's previous applications, the construction of these units had a profoundly negative effect on our ability to enjoy our property as well as a negative impact on our property value, and our property's appearance, and on the appearance and character of the neighborhood. As stated at the previous hearing on February 11, our property now has a tendency to flood in the spring due to the increase in impervious area and the many tons of additional fill Mr. Harris used to elevate the lay of the land causing more water to be dispersed onto our backyard. These are undeniable detriments imposed on our family as the closest abutters to the storage unit facility, and are also the findings of the former Zoning Board of Adjustment members; findings that were supported by Superior Court Judge Timothy Vaughn in 2004, when Mr. Harris tried unsuccessfully to sue the town for being denied the right to expand the facility the previous year.

While we feel that the town failed to protect our family property by not having adequate zoning in place to protect the rural character of the neighborhood and residents property values back in 1999, we are grateful that the members of the Planning Board at that time realized an egregious error had been made and immediately changed the Zoning Ordinance to prevent it from happening again---and the voters overwhelmingly supported that amendment by vote of 141-19 at town meeting in 2000. The language of section 301 - Non-Conforming Use and Non-Conforming Building, part a, was obviously crafted with this facility in mind, as it outlines the many issues that come with having an 84 unit storage facility that is open 24 hours a day, seven days a week, a mere stone's throw from your front door. The Planning Board members at that time were wise to include below bolded language in the amended ordinance about expansion of non-conforming use such as:

Any building or use existing on the effective date of this ordinance shall be allowed to continue indefinitely, but it **shall not be:**

Expanded, unless granted a Special Exception by the Board of Adjustment, which, for non-conforming buildings, shall find such expansion of extension does not increase the degree of nonconformance, ***and for uses, does not create a greater nuisance or detriment after consideration of factors such as, but not limited to, the nature of the use itself, volume and type of traffic, noise, vibration, odors, lighting,***

glare, hours of operation, building size and mass, and impervious area.

The nuisance and detriment of each of these factors *will* be increased with the addition of another building next to our property. Every single one of them.

We would also ask the board to consider that at the hearing on February 11th, although Mr. Harris stated that he only had four of his units currently rented for snowmobile storage, he disingenuously made no mention of the multiple snow mobile trailers and the tractor trailer size storage trailer he has in the "open storage" area of the property. As the members of the ZBA saw during their site visits, these open storage trailers alone add a dozen or more snow machines to the property and conflict directly with Mr. Harris's misleading claim of having only four units rented to snow machines at the time of the original hearing. This area is also used for storage of unsightly junk snowmobiles and old tires-refuse that is more suited to a junkyard environment.

Furthermore, granting this special exception would expand the non-conforming use by 50% for the additional building, increasing the impervious area with the 4,500 sq foot concrete footprint in addition to adding hundreds of more linear and square feet of impervious gravel driveway to the property. We also ask you to consider that in order for Mr. Harris's facility to be permitted in the town's industrial zone, where it is a legal use, the setback requirements would more than double, from 20' to 50' for the sides and 100' for the road frontage, and the size of his parcel would have to increase by 66%, to 4 acres, in order to be compliant.

For us, the bottom line is that the existing, grandfathered facility has already damaged our property value, drainage, view, enjoyment and tranquility, and caused our mother, Lorraine Monahan, years of stress and distress as she fought to protect her home and property, alongside her neighbors and the hundreds of other residents opposed to the storage facility being sited directly in the center of town. The installation of the proposed third building would compromise the portion of our property that is a sanctuary to us: our backyard. Truly, the best part of the property.

Finally, we ask that the board consider the statements of former Planning Board Chairman Paul Cormier, who was chair when the Zoning Ordinance was amended in 2000, to only allow Personal Storage by Special Exception. Mr. Cormier stated the following in a letter to the ZBA in 2003:

"The Board believed there is a huge difference in the impact of a small facility vs. a large facility regardless of its use. For example, both Foster's Store and Walmart are retail businesses. Yet, their impacts on the neighborhood are vastly different. It was to address this issue of scale, that we made it clear there were to be only two construction phases for Dick's Self Storage as approved in September, 1999. This was the reason the board proposed the amendments which were overwhelmingly approved by voters in March, 2000."

Thank you.
Sean Monahan
Jenny Monahan