

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

**Meeting Minutes  
March 18, 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:** Karen Moran

**Public Present:** Heather Brown, Imre Szauter, Dave Scalley, Michelle Palys, Drew Kellner, Alex Foti, Attorney Charles Cleary

**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 is at house upstairs by himself

Aaron Foti is home with his family, his family is not with him

Janet Nelson is home, her son is home but not with her

Sandy Pothier said she is home in the kitchen and Ken is in the office

Ken Mills is home in his office and Sandy is in the kitchen  
Karen Moran is home alone  
Imre is at the Fire Department Training Room alone

### **3. Request for Rehearing of Zoning Board Decision on Ledgewood Subdivision**

Rob Gauthier said he would ask everyone to mute and when they want to speak to unmute then. He has something he would like to make part of the record, he said this would be a supplement to their request based on some information that he learned this afternoon. He said that there was an email that was sent out at 3:27 pm question for Gould attorney. He wanted to read the email chain. On March 17<sup>th</sup> at 10:03 am Chairman Foti emailed the land use secretary and subject question was question for Gould attorney. Andy Smith said he needs to recuse himself before Rob continues. He is stepping aside as a board member and recusing himself. Chair Foti said before Mr. Gauthier continues, he would like to get the record created. Karen Moran said that she was appointed to take Andy's place on this case at the February meeting.

Chair Foti wanted to do a quick review of what we are doing tonight based on the RSA's. Motions for rehearing need to be requested 30 days from the Notice of Decision. This motion for rehearing is governed by RSA 677. According to 677:2 it goes on to say "specifying in the motion for rehearing the ground therefor; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefor is stated in the motion." According to 677:3 "a motion for rehearing made under 677:2 shall set forth full every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. When such application shall have been made, no ground not set forth in the application shall allow the appellant to specify additional grounds. Upon the filing of a motion for a rehearing, the board of adjustment, a board of appeals, or the local legislative body shall within 30 days either grant or deny the application, or suspend the order or decision complained of pending further consideration. Any order of suspension may be upon such terms and conditions as the board of adjustment, a board of appeals, or the local legislative body may prescribe."

Chair Foti said that he has gone through the history and wants to create a bit of a record because there is a lot that goes into this and a lot of history. He would like to highlight how we got here. He asked if anyone else has anything to add, please let us know. He assumes the members of the board have read all the requisite material starting back in December with the planning board meeting. The subdivision application was submitted on 10/20/2020. Richard & Nancy Gould/ Ledgewood Sub-division Annexed Lot, Map 416-023, agent name is Andrew Smith.  
Description of Project: The purpose of the application is to add Map 416, Lot 023 to the Ledgewood Sub-division and allow access to this lot off a driveway which already serves two homes. The lot will carry all the Ledgewood covenants and become a member of the HOA. No further sub-division will be allowed. This lot has no other access. An appointment of agent letter was also received from Richard and Nancy Gould to allow Andy Smith to act as their agent in all matters before the Town of Carroll Planning Board, which was signed on 10/16/2020.

On 12/3/2020 it was brought before the planning board. Chair Foti is going to add relevant points from the meeting to the record. As stated in the minutes, Ledgewood was created in 2004 with 25 lots. A boundary line adjustment was approved a few years ago that allowed two lots to be accessed off of one driveway. It was purchased in 2004 by Richard and Nancy Gould. It is Map 416/Lot 23, a 106-acre lot requesting to be part of the Ledgewood sub-division. This lot has never had any road frontage. Mr. Smith stated that the initial idea was to do a variance, but there is no zoning ordinance that prohibits more than two lots off of one driveway. Only mention of this is a definition of a driveway in the subdivision regulations. The agent went on to state that they have worked with the road agent and the fire chief to make sure the driveway is something they are comfortable with to get emergency equipment up to. The applicant is willing to agree to pave the driveway to the lot as well as to put a condition for the driveway within the lot to be completed prior to a building permit issued. This driveway is accessed off a private road maintained by the Ledgewood HOA. As part of this application's conditions, the lot will be subject to all the covenants of the Ledgewood sub-division, including that there is no further subdivision. Chief Oleson spoke at this meeting and said that if it is paved to that lot it is great. There is a driveway easement over the Von Wallenstein and the Plage property as shown on the map, both deeded and recorded. Donna asked about covenants and Andy said that they have recorded an amendment to the Ledgewood subdivision on Monday at the Coos County Registry of Deeds so this lot is subject to the Ledgewood covenants and the developer had the right to do that. The situation has been precipitated by a change in plans for access to a completely different lot based upon the location of the home site as it has changed since 2004. This is a unique development with very large lots which are not allowed to be subdivided. Dave Scalley contended that annexing an additional lot is changing the original subdivision. Mike Finn said there were no conditions placed on the 2004 approval limiting the number of lots they could have. This lot does not have any other access at this time. This application was accepted as complete unanimously. Dave Scalley asked the planning board members at this meeting to review RSA 673:14 about disqualification of a member. Anything to add for the record from that meeting? Karen Moran asked for clarification about the easement discussed in that Planning Board hearing. Two lots referenced, Von Wallenstein and Plage, and there is reference to no access. Either you have an easement or you don't? Not sure it is relevant if we decide on a rehearing or not. Wanted to make that observation that there was access by an easement rather than a driveway. Chair Foti said that schematics here are important.

The Planning Board met on 1/7/2021. To add to the record from the minutes of that meeting. The Planning Board voted unanimously to accept Terry Penner, an employee of Peabody and Smith and Andy Smith, as they did not feel there was a strong conflict of interest. That has not been appealed. Dave asked the applicant if they were going to the zoning board for the three homes off of one driveway. Andy replied that there is no zoning ordinance that says you can't have more than two homes off of one driveway. Dave said as a select board representative, he is here to protect the town from things that planning and zoning have done in the past that were mistakes. He doesn't believe the planning board has the authority to put a waiver on it. RSA 674 or page 19 of the subdivision regulations was referenced, which gives the authority to the planning to grant waivers to its own documents. Donna Foster stated that waivers should be granted in cases where, in the opinion of the board, being the planning board, compliance with

the regulations would place an unnecessary burden on the applicant. The motion to approve the application was accepted with one no vote, five yes votes, and one abstaining, Terry Penner.

1/13/21 a waiver to the definition of driveway was requested with a request for a waiver for a driveway as required by the subdivision regulations was given by Andy Smith on the grounds it has no other access and requires a driveway to serve three homes.

1/14/21 The Notice of Decision with conditions was signed, so that is the date of record for that notice of decision by the Planning Board. None of the conditions are relevant tonight.

1/14/21 Letter from the office of selectmen requesting a rehearing on the planning board decision. The grounds stated in that appeal were that the planning board failed to consider the road frontage requirement in the zoning ordinance and granted a waiver that conflicts with the zoning ordinance. The waiver the Planning Board granted was to the driveway requirements.

2/5/21 we received an objection to the administrative appeal of the planning board decision, on behalf of Richard and Nancy Gould by Attorney Cleary. That was entered into the record verbally. A lot of material has come in and he is not going to read it all.

At the planning board meeting on 2/4 Terry Penner expressed in regards to the select board overruling what the planning board did, he does not agree and according to what he read and what the board has looked at, it is in the board's purview and modification of a subdivision to grant a waiver, which he believes what the board did in this case. He stated the board granted a waiver for those specific restrictions for having three parcels served off the same driveway. What was the objection here? We made a very pointed specific separate waiver for this particular property where right of ways are already in place. The abutters or the impacted parcels agreed that they had no problems with it and granted easements to access it and it is the understanding that we were in our purview to grant a waiver in this particular situation. Donna Foster asked if in the event they made changes, and they said when only one driveway can handle two lots, what happens if someone comes up in the future, like they did now and bought a landlocked piece of property and we deny them access to that property. How do we help them move forward with getting a driveway? Aaron said he feels it is our job is to help people move forward. We are here to help make decisions, and sometimes it is not the decision everyone wants. We are all here to help. Terry Penner also confirmed that it is Section 9.02 of the subdivision regulations the right to approve a waiver for any other requirements in the site plan regulations. Vice Chair Finn asked if he was correct in understanding the appeal the select board made was on frontage and pointed out that what the planning board was making a decision on was getting access to the lot. He felt those were two different things and the planning board decision has nothing to do with the frontage. It had to do with getting access via driveway.

2/11/2021 ZBA held a public hearing on the appeal from the select board. Things presented in the minutes: Rob Gauthier asked Aaron Foti to recuse himself based on his partnership with Peabody & Smith per RSA 673:14, Andy said they have no ownership interest in the vacation rental business and Bretton Woods Rentals has no interest in Peabody & Smith. They are tenants in his building that he owns with other partners. After Rob read a statement off the Bretton Woods Rental Website, Andy explained that we do marketing together just like we do with other

companies without ownership or interaction. Aaron stated he has no relationship with the applicant and does not feel his relationship with Andy would constrain him voting on this correctly and without influence. Board members Ken, Sandy and Janet voted that they do not feel Aaron needs to recuse himself. Ken also pointed out that there is no pecuniary interests or financial obligations. (It was pointed out later in this meeting that Ken was asking that as a question not stating it). They are just tenants and have zero influence or ability to influence each other. Attorney Cleary said this lot was created before 1979 when the zoning was adopted as most range lots were created after towns were incorporated. This was designated as Range 13, Lot 7. Andy stated this is a permitted lot and the only thing the planning board is challenged with is if this lot can be accessed off a driveway that already serves two lots. Rob reiterated the reason for the appeal was because the frontage issue wasn't addressed and didn't want to set a precedence. Rob then said this was not even a lot. Aaron asked if that means the select board doesn't feel this was a lot when the ordinance was written? Rob replied yes. Cleary pointed out the lot of record as defined in our ordinance as any lot that is described in a deed or plan. Rob also stated he is not sure how the homeowner is going to get a permit to build on that lot and clarified he has no knowledge what goes into approving a building permit and what is put in front of them is by the building inspector. He attempted to further clarify that it may be misleading or misstated. It was also stated that the planning board didn't need to consider the road frontage because Section 302 clearly exempts this lot from the frontage requirement. and 301 as based on the information provided. That appeal was denied unanimously by the zoning board.

3/9/21 a request for rehearing was received from the select board. We have also received a request for rehearing rebuttal. We received a letter from Dave Scalley today to be entered in the record and we received a rebuttal from Attorney Cleary to Dave Scalley's rebuttal to be entered into the record.

Rob Gauthier had items he wants to add to the record: One point that Aaron made was that Ken stated that he didn't feel there was any financial interest. Rob said he asked a question if there was any, and he doesn't think he made the statement that there wasn't any. He knows the minutes stated that. Ken said if you look at the minutes it was a point of order and it was to ask a question, if there is no pecuniary interest the rest was what was stated. Statements and questions are different. Ken said that would be more accurate on his part. Ken said he wants to point out that he doesn't have any knowledge of that. He wouldn't be making a statement about anything he didn't know a lot about. Aaron said that we can make a modification to those minutes when we do approve them.

Rob said Mr. Scalley has his hand up, and Aaron said that this is a public meeting not a public hearing. It appears a number of select board members want to make comments. Aaron said because it has already been started, Aaron said he will add to the record that he did make a request through the secretary to the board to ask Atty. Cleary to supply us in writing with any information about whether this lot was a lot of record. He did this in hopes of having in writing something that would help us to understand the element of this case about when we knew this lot

was created. He did make this request through the secretary. He does not believe that we have actually received anything back on the request.

Ken Mills: Point of order: when do you address the issue of recusal? Ken is here as a zoning board member, and that needs to be addressed, Rob is representing the select board and Dave Scalley is here as a member of the public, if Ken is not mistaken. He wants it to be very clear what is going on here. He wants to make recusals sooner than later. Ken said he is not recused yet, and he would like to hear what Rob has to say. Think it is worth to hear. He has not recused yet until the Board decides that may be appropriate.

Karen said when he met last, Ken identified himself as a new selectman and he thought he had to recuse himself from the ZBA, but then it was clarified that he did not have to do that. So, he can remain as a ZBA member. She is not sure how does that play into any of this? Aaron said that was his recollection as well and it was walked through quite thoroughly what went on and Ken agreed to stay on the board.

Ken said he plans on staying on the board. He is talking about recusal right now. Aaron asked NHMA about this question. Aaron said the gist of it is was NHMA did not feel that the selectperson who was just elected would need to recuse himself from this. Aaron would agree with that decision. Ken needs to refrain from conversation about this with the select board. Ken has own feelings about this and may feel the desire to recuse himself. The advice Aaron has gotten from NHMA is it's not necessary as long as Ken keeps those boundaries on this particular case not to mention he was a voting member on the appeal and it would preserve continuity on the case and this board.

Ken said he did research by email and he did not hear back. He had a phone conversation today with Steve Buckley, attorney at NHMA, and his last question was, have you been sworn in? Ken told him that he had been and Steve told Ken to recuse himself. That is from the NHMA and he has done other legal research. He had originally thought he was going to resign from the board. This is a somewhat unusual situation that you don't often find yourself in. All things considered, Ken said for the integrity of everybody involved in all the boards, his remaining as a participant on this case does not serve anybody in any way. One way or another it goes sideways. He doesn't want to be in the middle of it or a part of it. If he recuses himself, it is clear cut and he knows he voted on the other one. That was then and this is now, and he has done more research. He is recusing himself from this evening's meeting. He is staying to listen. Somebody needs to get this cleaned up and clear. Aaron wanted to set the record and go through the rules and recusals for tonight. Ken has recused himself so let's keep it that way.

Rob Gauthier wanted to add to the record that this is a supplement to the select board's request for a rehearing, based on information he learned this afternoon. There was an email that was sent out on 3/17 by the chair of the ZBA, Aaron Foti to the land use secretary that the subject was a question for the Gould attorney, Attorney Cleary. *"Do they have any evidence of this lot being a lot of record prior to 1979? I know there was the fire, but any in-writing explanation of what we do know about the history of that lot prior to 1979 would be helpful. I don't need a*

*historical write up, just hoping for something that confirms the status of this lot prior to 1979. Thanks, Aaron”.*

On 3/18 at 8:04 a.m. the land use secretary forwarded this, Question for Gould Attorney to Atty. *“Attorney Cleary, Please see the below message I was asked to forward to you from the ZBA Chair.”*

On 3/18 at 3:27 p.m. Attorney Charles Cleary sent back to the land use secretary re: Question for Gould Attorney Cleary. *“Heather: Please advise the Board of the following: Re Carroll Tax Map/Lot 416-23 Lot 7 Range 13. We have researched title on the subject lot back to 1979, the year the Carroll Zoning Ordinance was adopted. James River Corporation owned the Lot, among other large acreage, and on 12/8/1980 recorded a Deed to Boise Cascade Corporation at Book 635, Page 399; which then conveyed to Oxford Paper Company, then to Meade Paper, then to Bayroot. The deeds in between Boise Cascade and Bayroot simply describe the land as set forth in various deeds at various books and pages, without any change. The deed at Book 635, Page 399 has the same exact language as the Deed from Meade into Bayroot. We found no plans of record for this land. The Goulds purchased from Bayroot and surveyed the subject Lot. Based on the Registry records, Lot 416-23 is the same now as it was in 1979, and likely for many years before that as Range Lots date back to very early times; therefore our conclusion is that it is a pre-existing non-conforming lot of record at the time the first Zoning Ordinance was adopted by Carroll. Regards, Charles F. Cleary, Esq.”*

Mr. Gauthier would like this entered into the record as part of our supplement requesting a rehearing. Because we feel that Chairman Foti’s recusal is big part of this especially if he is having improper, ex-parte communication with the applicant’s lawyer through the land use secretary instructing her to communicate.

Aaron said his notes said we will retain the current members of the board who decided on the appeal. Being: Aaron, Janet, Sandy Ken and Karen. Ken has recused himself. This brings us to four-person board, and we don’t have an alternate to add. Aaron is not sure as we are not voting on an application, do we need to give an applicant the right to wait until we have a full board. Does the applicant wish to delay this until we are able to hear it with a full board? Rob Gauthier said that he is fine with that.

Karen Moran: all of the information we are being provided tonight is information. Things such as emails that Rob just provided are new to what he filed on March 9<sup>th</sup> and if we are always going to have a moving target that makes life very difficult for the rest of the board. We need to have a fixed appeal, fixed application, fixed whatever. Understands information comes in at random times, but she can’t be trying to base information on emails read to her over zoom. It just doesn’t fly. Aaron asked Karen if she is suggesting that we potentially table this agenda item until she has more time to review? Karen said, no, she thinks we should consider the original motion for rehearing. Does any other seated member feel there is a reason to table this discussion until a later date so we have time to review this new information?

Janet Nelson: She agrees with Karen. We need to move forward.

Aaron said he wants to reiterate this is a public meeting, leave it to other members of the board if we want to accept more information or comment from the public or should the discussion should be limited to the seated board members.

Chapter 677 says we may grant such rehearing if in its opinion good reason therefor is stated in the motion. What we are deciding tonight is if there is a good reason stated in the motion to grant the rehearing.

Does anybody have a desire for Chair Foti to read into the record the pieces of information he mentioned, i.e., rebuttal from Atty Cleary, as well as the letter from Dave Scalley, and as well as the rebuttal from the attorney to Dave Scalley's letter? There were no requests to do that.

Aaron said we need to tackle the actual motion for the rehearing. At this point the request for a rehearing we should look at the three points that are made, discuss them, and we don't need to vote on them individually as that is not our practice with past applications. We will entertain motions after we have discussed the three issues.

First issue: Conflict of Interest

Janet: When she reviewed this material, she still does not believe there is a conflict of interest with Mr. Foti being on the board while we process this. In her opinion, Mr. Foti's business does not directly affect Mr. Smith's business and vice versa. If there is a financial gain or loss, one does not directly affect the other. She also feels this applies to Ms. Rombalski, in her opinion.

Karen: She went through the rules of procedure and the terms that are required to disqualify yourself from any case. She agrees that Aaron does not fall into those categories because of the relationship the two businesses have with each other. It has nothing to with the applicant, who are the Goulds. Diane works for BW Rentals has no bearing on the Goulds at all. There is no risk for pecuniary loss for either Aaron or Diane. Bullet #1 is simply a restatement of facts we already knew.

Sandy: She agrees with Karen and Janet. Does not see any issue with Aaron being here tonight. Not a problem at all.

Aaron: The select board states a conflict of interest with both the applicant and Andy Smith. Aaron said he does not know the applicant. He does know Andy Smith, but he does not hold any power over him and does not sway his decision at all. The Board already voted on this, and he doesn't feel any additional information has been supplied that changes the discussion we already had on this in the appeal hearing. The word partners was also discussed at the last meeting and yes, we are affiliated and we refer business and Aaron leases space from his building. The communication goes on to give a scenario between neighbors. It is severely lacking in detail to complete the corollary. Who is on trial? It seems to say the neighbor of the juror is also the defendant. In our case the juror would be Aaron and the defendant would be Andy. Andy Smith is not the defendant here, the Goulds are. If members of this board can't work with situations that not only involve our own business relations, but also the secondary business relationships that business partners have relationships with, then we would have to recuse ourselves all the time. This corollary does not describe the situation, and is not a relevant argument to this



request. It says specifically that Mr. Foti and Ms. Rombalski would not be allowed to sit as jurors on Mr. Smith's court case. It is important to distinguish the applicant, the Goulds, from Andy Smith, an agent acting on behalf of the Goulds.

Second Issue: Section 302 does not exempt the lot from frontage requirements

Karen: She looked through the planning board meeting minutes, the opinions and all of the legal interpretations of what the ZBA can do and not do understanding why and how the planning board made their decision. She agrees the ZBA is not supposed to second guess what the planning board did as far as they understood what the subdivision should be.

Janet: She just wanted clarification from Karen are you specifically talking about the grandfathering in or are you talking about what we as zoning are supposed to enforce or interpret?

Karen: In reference to the appeal talking about the sub-division having to comply with the zoning ordinance and when the planning board made its decision about the third driveway, knew the lot had no frontage and knew it was in existence before 1979 and that wasn't part of the appeal itself. The appeal was for the ZBA to consider the road frontage, not whether the planning board understood its job as far as approving or not approving the lot to be included in the subdivision.

Aaron: Section 302 does not exempt the lot from frontage requirements which we are talking about. The Goulds did purchase the lot without any road frontage, however, he doesn't know of any law that the purchase of the property relates to the use of the property. Purchase does not change the status as a non-conforming lot, neither does annexing it to a subdivision. The subdivision of a property is an act. Nothing here is being divided. The lot remains the same before and after. It gets to maintain its non-conforming lot status. There is nothing changing about this lot, it is just being annexed onto a HOA, Ledgewood Property Owners Association. No property is being subdivided here. He believes that allows the lot to maintain its non-conforming status, which would exempt it from the frontage requirements based upon Section 302 of the ordinance. Article 403.6 means exactly what the ZBA interpreted it to mean. The clause is called a lot of record savings clause. It is meant to specifically call out scenarios when a non-conforming lot is allowed be exempted from certain dimensional rules and frontage requirements. We have this kind of clause in our ordinance. That is what it is there for.

Janet: Section 302 does not exempt a lot from frontage requirement, and Aaron mentioned about the 1979 lot of record. What she is trying to say, not sure if it should be here or not, but looking at the nhma.org on the information on grandfathering what she understands is, grandfathering is supposed to be protecting lawfully pre-existing non-conforming uses of land verses the public needs to regulate land use. If we don't see anything substantially different from the use to which it was originally put forth. It also talks about the purpose, for use on the zoning, which is we are to protect the constitutional rights of the owner by preventing them from being deprived of the viable economic use of the property.

Third Issue: There was no basis for a waiver

Janet: Has a question if we are allowed to bring in information from the letter from Mr. Cleary. It talks about on the third page of this Objection to Request for Rehearing via email dated March 16<sup>th</sup>. It talks about no basis for the waiver. In this letter he talks about the planning board's decisions to waive a subdivision regulation do not involve the zoning regulations and/or are appealable to Superior Court not to the zoning board of adjustment. She is not sure how this plays out for us as we pursue this. Aaron clarified that Janet just wants to add to the record what is says about the planning board being responsible for the interpretation/application of its own subdivision regulations. Janet said yes. It also says has the express right to waive regulations pursuant to its regulations per NH 674:36.

Aaron said he first wants to point out that in the request for rehearing the select board misquoted the RSA. The RSA has the word "or" in it, which requires the planning board for the waiver to meet one or the other requirement. The insertion of the word "and" instead of "or" is a pretty major error, which completely changes the meaning of that sentence. Important to point this out.

Section 18 of the site plan regulations says upon written request from the applicant, the Planning Board may at their discretion waive or modify any part of these subdivision regulations other than those provisions required by state or federal law. The basis for any waiver or modification granted by the board shall be recorded in the minutes of the board. Pursuant to NH RSA 675:36, II (n), the planning board may only grant a waiver if the board finds, by majority vote, that: 1. Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations, or 2. Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

Aaron said he thinks there has been and it has already been stated that there has been a lot of conflation between the waiver and Section 302. Aaron said he believes this appeal calls out the section of the subdivision regulations that say it needs frontage requirement. Aaron does not know that the planning board specifically dealt with that element of the subdivision regulations. Again, it is subservient to the ordinance, which has the same regulation and that the zoning board already decided on that. He does believe the subdivision regulations give the right to the planning board to grant this waiver from the driveway requirements. The planning board decision did not grant a waiver from any frontage requirements. That is something that would come out of the ordinance as well and the zoning board made it quite clear at the last meeting that we felt that Section 302 allowed this lot not to abide by the frontage requirements based upon its non-conforming lot status. Aaron said he does not think that it is in our jurisdiction to be ruling on things that are clearly for the planning board to rule on. Of course, we can be asked or called upon to review any decision made by any municipal board or official. The jurisdiction over this waiver is specifically given to the planning board, and the planning board made that decision. Aaron said he believes we have come to the end of the road on this application.

At this point the Board needs to have a motion and discussion whether to grant or deny a request for a rehearing. We are not agreeing or disagreeing with the content of this, we are deciding whether or not we feel that there is substantial reason to rehear this case at a public hearing.

Karen Moran made a motion that we deny the request for rehearing based on the lack of new information. These are the facts we knew when we discussed the case back in February. There is nothing new for a request for a different outcome, nothing based on new facts. Janet Nelson seconded the motion. There is a motion on the floor to deny the request for a rehearing. There was no discussion on the motion. ROLL CALL VOTE: Moran-AYE to deny request; Pothier-AYE to deny request, Nelson-AYE to deny request; Foti-AYE to deny request. Motion carries, the request for a rehearing is denied.

Ken and Andy are back on the board. Karen is now an alternate.

#### **Section 4 – New Business**

There is no new business.

#### **Section 5 - Adjourn**

Andy Smith made a motion to adjourn, seconded by Ken Mills. ROLL CALL VOTE: Pothier-AYE; Mills-AYE; Nelson-AYE; Smith-AYE; Foti-AYE. Motion carries, the meeting adjourned at 8:00 p.m.