

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

**Meeting Minutes
April 8, 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.

Alternates Present: Diane Rombalski and Karen Moran

Public Present: Heather Brown, Imre Szauter, Dick Harris, Sean Monahan & Jenny Monahan (arrived at 7:06 p.m.), Attorney Randall Cooper of Cooper, Cargill, Chant, P.A., Holly Benson, Keith Moran, Annette Marquis, M. Cami, Allan

Minutes Taken by: Judy Ramsdell, Recording Secretary

Meeting called to order at 7:02 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 alone

Janet Nelson is home alone

Karen Moran is home alone

Diane Rombalski is at her office alone

Ken Mills is home alone

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

We have tabled approving the minutes of the past couple of meetings as we have had a lot of material to cover. Any discussion on those minutes? Karen said the minutes are great because they are so detailed, but they are troubling as well as they more like a transcript than minutes. She is not sure it is completely accurate. Appreciate all the work going into the minutes being done that way. Had a question on the first page at the bottom where it says alternates will remove themselves from the table once deliberations start. Is that actually how it was communicated? Aaron said he imagines that he was reading the rules of procedure at that time as they do reference a table. Aaron pointed out that we do have a responsibility to review and approve the minutes, but minutes are contemporaneous notes taken by a secretary. They are not read as directly accurate 100%, words or interjections are possible. Please make any corrections you like so we can be sure the record is as accurate as possible. Karen said on page 18, the third line down references “Janet said she does not need to recluse (should be recuse not recluse) herself”. Aaron said he can select an alternate to vote on this so will have five votes. Karen will be appointed to be the 5th voting member for the approval of minutes as she was present at all three meetings.. There is one amendment to record, recuse instead of recluse. Andy Smith made a motion to approve the February 11, 2021 meeting minutes as amended. Karen second. ROLL CALL VOTE: Foti – AYE; Smith – AYE; Moran – AYE; Nelson – AYE; Mills – AYE. Motion carries, the minutes of the February 11, 2021 ZBA meeting are approved as amended.

Item 4 of the Agenda: Approval of Minutes: March 11, 2021 Meeting Minutes

Any amendments to propose to the minutes? Karen said on page #2 it is about half way through the first paragraph on the line that starts “we should be trying to find members of the town..... should be now not know”. No other amendments. Andy Smith made a motion to approve the March 11, 2021 meeting minutes as amended. Janet second. ROLL CALL VOTE: Foti – AYE; Smith – AYE; Moran – AYE; Nelson – AYE; Mills – AYE. Motion carries, the minutes of the March 11, 2021 ZBA Meeting are approved as amended.

Item 5 of the Agenda: Approval of Minutes: March 18, 2021 Meeting Minutes

Any amendments to the minutes? Ken Mills said that you don’t amend minutes, and minutes are taken contemporaneously with the meeting. Ken attended a NHMA seven-hour new officials workshop last weekend and they went into extensive discussion on minute taking. You don’t go around changing minutes. You don’t even have to approve them—that is an optional thing. This is just a suggestion to the board. Aaron said he is open to any feedback to our process. Andy Smith made a motion to approve the March 18, 2021 meeting minutes. Aaron second. ROLL CALL VOTE: Foti- AYE; Smith – AYE; Moran – AYE; Nelson – AYE; Mills – AYE. Motions carries, the minutes of the March 18, 2021 ZBA Meeting are approved as amended.

Item 6 of the Agenda – Variance Application – Gerald & Annette Marquis request for a Variance to the residential minimum lot size of one acre concerning Article IV, Section 403.2 of the zoning ordinance. Applicant requests to use the current lot size of 0.92 acres to build a single-family home. The subdivision/lot was approved/established prior to the current ordinance requiring lots to be a minimum of one acre. The property is located at:

Map/Lot: 417-083-000-005, 133 Little River Road, Twin Mountain, NH, in the Residential (Res-1) Zone.

Annette Marquis is present tonight. Aaron said we do need a full five-member board for this tonight. Any recusals on this application? Andy said if we can do it with his recusal, he should recuse himself as they were the selling broker for this lot that the Marquis' purchased. Andy said he would like to step aside as long as we can have a hearing without him. Any discussion on that from Andy? Aaron likes to get the Board's input on this especially as recusals can be tricky in different times, sometimes they are clear and sometimes they are not. Aaron said he feels Andy is capable of handling the application, but because we have alternates present it would be prudent to have them participate. Karen said for perception and arm's length, it would be better if Andy did recuse himself from this one. Andy is recused. Aaron said he would like to duly appoint Diane and Karen as alternates for this application, and they will be voting members for this application. The five members participating in this application are: Aaron, Janet, Ken, Diane, and Karen. We feel that all members seated for this application are qualified to vote and consider this application.

Aaron reviewed the rules for the public hearing: Not a lot of banter. Make comments and try to be to the point. Focus on what you are trying to convey. Don't repeat the same information over and over. Don't want to restrict comment. Let everyone present their opinion. Be mindful of the time.

Heather Brown gave the secretary report: Everything was noticed, mailed and posted.

Applicant's presentation of their application: Annette said she and her husband have sold their house on Paquette Drive, and they have housing through August and after that will have nothing. They are banking on this application being approved. When they purchased the property, they did ask at the town office at that time if this would loosely grandfathered, as this subdivision was approved as a residential subdivision, and they were told this would not be a problem and this would be a formality to move forward. She is really hoping this can be approved tonight.

Chairperson Foti reviewed the application:

A variance is required from Article IV, Section 403.2 of the zoning ordinance.

--Granting the variance would not be contrary to the public **interest** because: They would still have plenty of setbacks from the boundaries.

--If the variance were granted, the **spirit** of the ordinance would be observed because: The lot is .08 acres shy of the ordinance requirements, and well within the boundaries

--Granting the variance would do substantial **justice** because: The other three lots abutting this lot are the same size.

--If the variance were granted, the **values** of the surrounding properties would not be diminished because: It will be developed in like manner as neighboring properties.

Unnecessary Hardship:

Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary **hardship** because:

--No fair and substantial relationship exists between the general public purposes the ordinance provision and the specific application of that provision to the property because: They have sold their home and have no place to live. Their current rental is only available until fall.

--The proposed use is a reasonable one because: We wish to put a single-family home on this lot.

Comment from any abutters? None. Aaron said we received one letter from Edward Martin, an abutter that read as follows: Be advised that I have no objection to the request by Gerald & Annette Marquis to use their current lot, lot size 0.92 at 133 Little River Road to build a single-family home.

Attorney Randall Cooper asked why doesn't Section 302 protect this because it is a non-conforming lot? Chair Foti he plans to address that in deliberation. Attorney Cooper said he doesn't think they need a variance.

Annette anything else to add? She said she had to make an unexpected trip, taking care of her mother. She is hoping they put in enough information in the application. Her husband is a known builder. It will go along with the rest of the street. They know the neighbors, and hopefully they will be just as much of an asset to the community as they were on Paquette Drive.

The public hearing is now closed to the public. Only members of the board will now be participating. Need to deliberate about the application. Aaron said as Attorney Cooper pointed out, for Aaron's part he actually looked up when the property was actually subdivided. It appears that looking at this plan this was done in 1976 that was when this lot was created. The zoning ordinance was created in 1979. Aaron referred to Section 302, Non-Conforming Lot of Article III-Existing Uses: Where a single lot of record at the time of passage of this Ordinance or amendment does not conform to the area and frontage requirements of the district in which it is located, such lot may be occupied by any use permitted in that district provided the use conforms to front, side and rear yard setbacks and all other applicable provisions of this ordinance. Aaron said it is his feeling this should be considered by the Board. Aaron said he actually feels we don't need to vote on the variance. The use is allowed.

Karen asked as far as the other lots go, were they all purchased and houses built before the ordinance went into effect? Because based on the other discussions we had in other meetings, the frontage does meet the 300-foot requirement. Aaron said that would be quite a research project to determine that, and not sure it really matters. This application is about a specific parcel. It does meet the frontage requirement. No objection to that nature. It is the area and frontage, and we are talking about the acreage of the parcel. This clause is about dimensional requirements, which specifically calls out your lot size and frontage. Karen doesn't know who the proper board or authority would be to understand when the subdivision was established it was long time ago, were things like water availability considered because we are going to be looking at a lot of different application for variances because the town is growing exponentially. Aaron said that is a great question for an applicant, but we are beyond that now. Aaron said he doesn't know the answer to that. Janet said she is looking at the plan that Aaron sent. It looks like it shows the water line and was recorded at the Coos County Registry of Deeds on May 24, 1976. Looks like they already had that there. They have town water.

Karen looking at it more from a planning board perspective, can the town water system accommodate all the projects being proposed? She understands it is not part of this application. Ken said point of order: these are the discussions that allow this board to go off task. We need to stay on task with the application before us. Get it done and go on to the next item. Otherwise, this board finds itself way into the deep hours and it is use of time. Ken said he would indulge the board to stay on task and move forward with this application.

Aaron said he feels if there is a consensus that we vote to deny the application, in light of the fact that it doesn't need it.

Karen asked when the Paquette Drive property was sold? Annette said the actual closing was March 25th, but the actual purchase and sales was done on January 25th.

Does this board feel the variance needs to happen in the first place? Janet said she doesn't think it needs the variance. It falls under Section 302-Non-Conforming Lot and meets all the other setback requirements. It does meet the frontage requirements. Aaron said that it is not meeting the area, which the ordinance requires a minimum of 1 acre. Janet said that their house plan meets the requirements. She thinks it falls under 302, and she doesn't think we need to further pursue the application for a variance. It is already allowed.

Ken said he would move that the ZBA render a notice of decision that the applicant doesn't require a variance or a special exception for this application and consider it closed. Karen second. Aaron said that they would have our blessing to at least continue as far as the lot size is concerned. Ken Mills said he wants to be sure that his motion includes both variance and special exception. No further discussion on the motion. ROLL CALL VOTE: Nelson: AYE; Mills: AYE; Rombalski: AYE; Moran: AYE; Foti: AYE. The motion carries. Chair Foti wanted to clarify that this vote means this board doesn't feel you needed a variance in the first place. This might be frustrating, but we feel that you do fall under Section 302 of the ordinance for a Non-Conforming Lot. You are free to move forward with any approved use in that zone. Aaron said they can move forward with the normal process. The Board determined that they did not need a variance so they can move on as they normally would. They will receive a written Notice of Decision to that affect that says this in writing that you do not require a variance or a special exception for any approved use in your zone. Appeal window is 30 days to rehear the decision. Do they need to go before the planning board now? Ken said the building permit should allow for whatever they want to do. We have eliminated the area issue, and she has that documented. Building permit will walk them through that issue and Ken said the planning board issues have already been taken care of when the subdivision was approved. They need to show up with desire to build house and get the building permit. Should the questions come up, you now have a Notice of Decision, and there should be no further issues moving forward. Annette thanked the Board for their help.

Item 7 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.

Chair Foti said that this is a continuation of two prior meetings. We are also not just in deliberation. There will be more opportunity for public input. The Board established that there was a substantial difference in this application from the prior application on a 3-2 vote. We will now be hearing the merits of approving this 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. Heather Brown, Secretary, confirmed that everything that was received was delivered to the Board members. The application fees and notices were done correctly. Chair Foti wanted to remind everyone that we are looking specifically at the special exception itself tonight, not whether there is substantial difference. Our ordinance Special Exceptions Criteria is on Page 69, Section 804.3. In some cases, but not all, there are additional criteria or different criteria within the ordinance. In this case, Section 301-A has criteria for this special exception. We will be looking at multiple areas within the ordinance. We already have our seated members who will be voting on this application: Aaron Foti, Andy Smith, Karen Moran, Diane Rombalski, and Janet Nelson. Ken is recusing himself as an abutter on this application in accordance with past protocols. He is going away from the table. If Sandy does return tonight, she will not be joining either.

Aaron wanted to remind everyone that a lot of comments have already been made on this application, and he would request that we try to focus on new content and new materials. Try to be focused as possible. Make points one time so we can get as much information as possible to go to deliberation. The applicant or applicant's representative can reassert what they need the special exception for. Then we will give abutters a chance to comment and then members of the public. Give a limited focus opportunity.

Attorney Randall Cooper is here on behalf of Mr. Harris. He did file and he thinks we all have three documents: an amended application, a second addendum to that application, and there are some proposed findings and conditions, which basically follow along with what that second addendum does to try to put out a road map on how we would do things and impose conditions agreeable to the applicant in order to comply with criteria. In the first few pages of that addendum there is discussion of the zoning ordinance history that basically Section 301 was never considered a "special exception" up until this last amendment. That is where things get confusing. As Chair Foti just stated, there are special exception criteria and then the 301 criteria and the two of them are absolute contrary to each other. One is one way, and the other is something different. Chair Foti asked Attorney Cooper to point what the two are that are in conflict.

Table of Use Special Exception which is 804.3 says the proposed use shall not adversely affect the character of the area affected including, but not limited to, then it gets very similar. This is the proposed use will not adversely affect the character.

In the expansion under 301.4 the expansion of the existing non-conforming use does not create a greater nuisance or detriment. As long as you are not making it worse, is the 301 fold.

804.3 is shall not adversely affect the character. There has been a lot of discussion back 20 years ago if this was a permitted use and if this particular use adversely affected the area. At the time was constructed it was a permitted use so some may claim it still adversely affects the area, which certainly could lead to that it doesn't require a special exception. You can get caught up in that because the intent of 301.4 is to allow expansions if it does not create a greater nuisance or detriment. He has gone on that assumption. Randall is proceeding on the idea that we have to establish what we can do with the conditions we can impose. It will basically keep the same impact or better. This is what we are trying to do. He gets into the discussion and refers to all the previous exhibits. We have a modified application, and a plan has been to add on Exhibit 3 – what was the approved and constructed units 1 and 2. Major problem has always been with the Monahan property to the side of it with the banking that comes down and the Driveway that goes around it. Exhibit 5 is now the modification they have proposed. This is the one that we brought up last time. This is the third building, identical size of the other two buildings and lines up with the other buildings. It shows a proposed outside storage area, snow storage area and parking.

Exhibit B is what his client has also proposed a little different than 5. If there is any need for parking, outside storage where it presently is behind the third building. He plows two areas for snow storage and additional parking could be moved over the other side. Whether it be Exhibit 5 or B, it shows what he would be doing.

The real impacts are going to be the building and the light. They can discuss what the board would prefer and how to get there. Something came up about drainage issues on to the neighboring property. That occurred a number of years ago after this was done. As you can see it goes along the build-up and a swale was put in to retain all the water on the property so it drains to the rear and does not go on the neighbor's property anymore. If this does get beyond here, there is still site plan review where drainage issues can be discussed. Exhibit D1 and Exhibit D2 shows this as well. Swale is dug in that collects the water and brings it down.

As we noted last time, the objecting abutter at the February 11 meeting said there were a lot of negative impacts that need to be addressed. Those negative impacts came up in the minutes of the planning board meeting of 9/2/99, which he provided before and copies today. Those negative impacts he synopsized as basically visual impact of current buildings; snow machine noise, headlights, and smoke, water draining on the back yard of the abutting property, early arrival of snowmobile uses from 5:30 to 6:00 a.m.; tradesman loading tools into their trucks and making noise, and plowing snow on their property. The addition of the third building is the only expansion that is occurring. In every other proposal or condition, they are suggesting is being made to mitigate issues that have been grandfathered from the fact that this was a permitted use before it became a non-conforming use. The applicant is attempting to address what is perceived to be in the past as detrimental effects to the Monahan property. Mrs. Monahan had notice of the site plan review hearing in 1999, we should look at those minutes, and she did not attend that meeting and that was when a lot of these things should have been hashed out at the 1999 site plan hearing that Dick Harris attended with the planning board. All abutters were notified, and

only one abutter showed up. Mrs. Monahan did not show up. There were no negative comments. It got approved and from that a lot of problems arose with zoning changes and the like and that is why there are public hearings and why there are notices. That was beginning of this particular problem. The genie was already out of the bottle, and the time to address those concerns should have been then. We are trying to do it now 22 years later. We have been able to see what these buildings have been like for 22 years. Attached as Exhibits c1 and c2 photographs of much taller steel buildings in this particular area. His client pointed out that not in this district but just up the road, the UPS building is another big steel building. So, there are three steel buildings in this district that are two story high, and Dick's building is only one story high. Neighborhood has changed. Karen asked if he could let us know which dated amendment or revision he is referring to. He is working on the second addendum to the application which was dated March 16th. He is now up to page #5. With that should have been those exhibits. Showed exhibits of the boundary and pictures of the Monahan property from his client's property. First exhibit is Exhibit 8. He is showing the boundary line and see the stake that runs out between the trees and the building. In the back are the large evergreen trees are toward the rear of the property, but would block the slope goes up and then is their driveway. Look at 9 is photographs of their property as shown between the first building and the highway. You can see the banking. Mr. Monahan talked about raising windows. The third building is where the trees are. Sean Monahan said they are not seeing anything. Attorney Cooper showed the exhibits again. Nothing was done in 1999 about this. Attorney Cooper said he will review his client's proposed findings & conditions that were sent on April 5th. He thought they were sent on March 16th, but Heather let him know she did not have these. She only had them electronically.

Attorney Cooper said the proposed expansion of that use by a third storage building identical in size, height, construction and appearance directly behind and at the same distance as the second building will not create a greater nuisance or detriment subject to the following conditions:

--His client is proposing to install a 100-foot, vinyl six-foot high privacy fence at the top of the banking on the land of the westerly abutter, as long as the abutter consents, and he will take responsibility for maintenance of that fence once it is installed. It could be at a lower height if so desired. It would still allow them to have the view they have over the buildings at the mountains. It is something that can be worked out.

--The drainage ditch along the westerly boundary will be maintained in such a manner to prevent any drainage from the property onto the abutting property to the west.

--Exhibit 10 shows the trees on either side of the entrance, the maples have survived the salt and the evergreen trees did not survive the salt. They have suggested in their proposal that x# of maple trees xft in height shall replace the dying fir trees along the property on U.S. Route 3. These trees will be maintained and replaced if necessary. Prepared to discuss what should start along there.

--The current trees (two inches or more in diameter two feet from the ground) along the westerly, southerly, and easterly boundaries will be preserved and maintained, and only removed if dead or damaged by acts of god. The neighborhood photograph shows the trees. Not going to touch or remove any of these. We can have a condition for that to protect you in that regard.

--All access driveways will remain gravel with no impervious materials. That allows water to return to the ground.

--All areas other than the storage buildings, on-site manager residence and the access driveways will remain green space planted with conservation mix and maintained as mowed fields. The caretaker does mow that whole area, but will replant again. It is a field. It is not lawn. There can be grass and wildflowers, basically vegetation on it.

--Areas for snow storage, to be confirmed and established by the Planning Board during Site Plan Review, will be located at the far end of each access drive running along the ends of the buildings at which snow will be stored while using "best practices" snow removal methods to minimize accumulation of snow along the westerly boundary and accumulate it in the snow storage areas. Attorney Cooper said the Monahan's complained that the snow was plowed on their land. Mr. Harris does contest that, but he will use the v-shape plows and leave as little as he can on the Monahan side and plow it to the rear of the property.

--Snowmobile storage and operation on the property is restricted as follows: Attorney Cooper said that there were issues with 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". For at least eight years Mr. Harris has not been advertising on his on-site sign for on-trail snowmobile access or the inclusion of a picture of a snowmobile to signify snowmobile storage or use. His current contracts state that OHRV use is not allowed between 11pm and 7am. The state snowmobile trail has restrictions only allowing snowmobiles on their trails. He has not received any complaints since this contract went into effect. He 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. Attorney Cooper said to go back to the conditions for snowmobile storage and operation he can go to none, or storage only and only operated between the hours of ___ and ___ for the purposes of loading on a trailer, or storage only, no operation allowed on the property except to traverse to the trail between the hours of ___ and _____. The hours can be determined. He would like to continue to be able to store snowmobiles, but he realizes this is a sensitive subject and he is prepared to have none if the board requires that.

--They understand that there was an issue with hours of operation, currently it is year-round, 24 hours a day. He doesn't think it is much of a problem but maybe it is. He doesn't object to set hours of operation of the facility. Would like to talk about and see what the board thinks.

--All lighting will be brought into compliance with the current requirements of the Site Plan Review regulations.

--Area for open storage, to be confirmed and established by the Planning Board during Site Plan Review, will be to the rear of the third building on the far side of the access drive along the rear of the third building.

--Area for additional parking to be established as required by the Planning Board during Site Plan Review. He has to go to Site Plan Review as that is where it is normally done. He is just

saying he put it here and they may want to require it or they may find it is not required because people park in front of their unit to load and then leave. Don't stay there for long.

Bottom line he can go through these if people have questions. They believe with the imposition of these conditions for the addition of a third buildings, the conditions actually eliminates and reduces some of the detriments of this site. It is up to the Monahan's if they want to allow a privacy fence on their property or not.

Aaron thanked Mr. Cooper.

Abutter input at this point:

Sean & Jenny Monahan said they sent an additional letter today. Chair Foti was not checking his email at 6:50 p.m., when this was sent. Chair Foti said he has forwarded the letter to the ZBA members. It will be attached to the minutes as last time. Jenny read her letter, which will be attached to these minutes.

Sean and Jenny had some screen shares which they said included documentation from DES and DOT that state that gravel roads and drives are impervious, Attorney Cooper stated the impervious area would not be increased because the majority of the property will remain gravel. It is well documented that gravel driveways and roadways are impervious. Gravel does not mitigate and drain water. Sean has some photographs as well.

Jenny said the conditions that Atty. Cooper suggested are not acceptable. Putting up a 6-foot-high privacy fence is a nice idea but it basically concedes 15 feet of their property to Mr. Harris. That is not acceptable to them. It will also change their viewpoint and ability see what is going on next to them. Sean said this goes back 20 years ago when certain things were supposed to be done, and they weren't done or weren't maintained. Dick raised the height of his property, and every bit of the water on that property percolates onto their property. Dick came over and put in his own property line to fit how the snow is plowed onto their property. He took photos of that. He gave them 2 ½ feet in the front and took more than 3 feet in the back. This has been going on for 20 years. He didn't just try to fix it. The mud is inches deep down there and collects water that runs on to their property. He started to degrade their property, and Sean said he was the one who actually changed it. Never seen a caretaker or Dick do anything on that property except right around on a red OHRV or their kids riding on it. Never seen the caretaker out there doing any mowing. Most of the brush cutting on Dick's property was done by Sean as well. Keeping that ditch open is proof of that. Neighborhood changed because of these storage units. Can't live here. They are the only affected property. It is just no fun. Mr. Harris turned his lights off at the storage unit 31 days ago, the day before the last ZBA meeting. They have been off a month now and it is like those storage units are not even there. We can actually see the stars again. They realize it is not permanent and their question to Mr. Harris is why did he turn the lights off? Are you trying to fool someone?

Jenny said in summary the conditions that Mr. Harris is offering do not and will not mitigate the detriment to their property. Yes, it was 1999 when this was approved, and here we are 22 years later and none of these issues have been addressed. None of the things that were required of him to be done by other boards were ever done. Unable to share some photos they have. It looks like

a muddy Nascar racetrack with open water. The outside storage area looks like a junkyard area with old tires, litter and refuse, rotten pallets, and old, burned-out snowmobile. What they want to show is what Atty. Cooper showed it very well was a google earth picture that shows the character of the neighborhood. There are no other facilities like this in the neighborhood at all. She is thinking there are no other complexes like this anywhere in town, even the UPS complex is smaller. They understand there are a lot of conditions being offered but those conditions don't at all satisfy their issues. Those conditions were made 20 years ago and were never followed through on. When this is over, Sean is going to ask the Town to appoint some oversight. There is no existing enforcement at all. It is the vindictive nature of the applicant and what has happened in the past that is unnerving for them. None of the conditions offered are really going to change the addition of the third building. It is going to effectively infiltrate the only remaining sanctuary on their property. This house was built so they can see Mt. Washington. They had an incredible view of the Presidential's, and now they look at storage units and that can't be fixed. They are just asking not to increase the detriment that is very well documented. It was actually in the Superior Court decision that our property values were affected and our property was affected and the enjoyment of our property is affected by anyone who comes to their property and looks at it. Mr. Harris's addendum last time showed a picture of the lot before, and it was like a little meadow that they rode their horse in. None of those things are going to change, but please don't increase this. It has been very hard for them to endure living next to this facility. They have gotten used to it. Didn't make complaints when they should have, and that will change going forward. Was the letter forwarded to the members about having our property surveyed, and we put down rebar to mark it? Dick came over the other day and pulled them all up and threw them behind their shed. Their property is now posted. That is just an example of the retaliative gestures that will be made. It has happened in the past. The property line that Dick eyeballed out was inaccurate. It is impossible for Mr. Harris to prevent the snow from his snowplow to go on their property. The drainage as well.

Andy Smith: appreciate the passion and diligence in the letter they presented and the same to Attorney Cooper. We have a lot of data in front of us. We have a limited scope on what we can and will hear. Property line disputes is not one of them, and boundary lines are not in our purview. There are setback requirements. Unless we have new information, he appreciates the passion, but we need to stick to the relative information and new information at this point.

Jenny said what we consider to be the relevant information they would like the board to consider is in the letter that was presented today and they are asking for that to be considered.

No further abutter comments.

Open for comment from the members of the public. There was none.

Any questions or comments from the board?

Aaron said there was one abutter letter that was received that Aaron will read so it is in the record. It was received February 11th and should have been read at the last meeting. It was from Jules & Ellen Marquis, owners of the Ammonoosuc Campground. The letter which was read will be a part of the minutes of the meeting.

No public comment at this point

Limited rebuttal by the applicant and any abutters with a two-to-three-minute time limit.

Attorney Cooper: a lot of passion there and a lot of accusations, but when it comes down to it unfortunately this was a permitted use when it was approved. Now whether the town should have allowed the use in that zone at that time, Attorney Cooper doesn't know. But as Ms. Monahan says there was a meadow there that was for sale for a while. The Monahan's didn't buy it. His client bought it. Anyone could have bought it. He built a business that was a permitted use. He attended site plan review. Mrs. Monahan did not show up. It got approved and from there on it was downhill. They disagree that he has not done what he was asked to do. PB and Board of Selectmen have enforcement rules. If the town did not think Mr. Harris was complying with what he was approved to do in 1999, there was a lot of time to deal with Mr. Harris about it. They have provided what they believe is sufficient conditions for the board to apply to allow the expansion, which another businessperson in town would like to see happen.

Abutter Rebuttal: Jenny asked is there any enforcement? Who is the enforcement officer over the last 20 years? What starts the enforcement process? Whether the trees he planted did well or need to be replaced or survived? Who is going to do it in the future? Chair Foti said that the building inspector is not in his purview. Attorney Cooper is leveraging that someone would have enforced if it was enforceable. She said they don't believe that is true. Disappointed they can't share their photos, and she hopes they have viewed the property. It is an eyesore directly through the town that goes against the master plan. It is fairly nice of Mr. Harris to offer a bunch of contingencies, but none of them mitigate the issues. None of the conditional offerings they are leveraging change anything about it. None of the other abutters live next to this property and are not affected by it. Reggie Stone does not live in the property next door. It is a rental property. We don't know the people across the street, but we do know the main person that fought against this to begin with was the owner of the Ammonoosuc Campground at that time Kathy Saffian. When this went to court and decided there would be no more expansion unless certain criteria were overcome, those were just left for over 20 years. Dealt with it the best they could because it was a done deal. Happy it was at least not in the back yard. If this building gets approved, does that create a path for a fourth one? It then just ends up with the same thing that the town already shot down. It would just create an easier path for the fourth one. Sean said he was told this application was for two buildings not one. He thinks the plan is to get this building and within weeks or months to apply for the next one. Does this make it easier to get the fourth building? This is going to increase all the detriments and make matters worse. Anyone who looks at Atty. Cooper's addendum at the last meeting can see what they have lived next to before and what they live next to now. It is undeniable that this will increase the detriment to their property. Their property values will be further affected and that is how they feel.

Public session of the public hearing is now closed. Only Board members are allowed to participate at this time. Chair Foti said we are deliberating special exception criteria, which is often the case there is not as much clarity as we would like as it pertains to the difference between Section 301.a and 804.3.A-4. So far the focus has been on section 301.A, and as Aaron

reads it the intent of that it have that be the criteria for this consideration. As it says in the ordinance which, for non-conforming buildings, shall find such expansion or extension does not increase the degree. It does not ask us to find anything else. Aaron would offer that we can focus our efforts on 301.a of Article III.

Andy: appreciate everyone's input. Applicant has done a lot of work with the initial application and three addendums. Heard from a couple of abutters. Issues are pretty clear from the abutting standpoint. Andy says he looks at any application personally on how we can help a property owner use their property to the fullest extent that the zoning allows. It is clear Mr. Harris was allowed to build the storage units as they currently exist. Those units are no longer an allowed use, and he is covered by a non-conforming use and can continue to do that as long as he wants. We have a pretty narrow window of what we have a purview over. Section 301 does state that a non-conforming building may be continued but not expanded. You can use it as long as you want, but it can't be expanded unless the following things are met. They have been introduced several times: a greater nuisance, the nature of the use obviously a storage unit, it speaks to non-conforming buildings which is not applicable because we not talking about expanding a non-conforming building, we are talking about expanding the non-conforming use. In order to approve this application, we have to agree the expansion of the use would not create a greater nuisance by either the nature of the use which is expanded by 33%, the volume, a bigger use, type of traffic, noise, certainly increasing the mass. Andy said he cannot get there. The proposal in front of us could be construed to meet the criteria that is necessary to think this is a special exception we can grant. He believes the traffic, noise, volume, impervious area, and we are expanding the use by 33%. There are lots of other things about boundaries and other things, but those are issues for site plan and planning board issues. He appreciates the issues and maybe should have been dealt with over the past 20 years but doesn't really come into our decision making. For that reason, Andy is not going to support this application or motion at this time. Aaron said he did not believe we had a motion yet. Andy wants to hear from the other board members.

Karen: agree with Andy that an expansion by a third is bigger than it should be, and she wouldn't support the expansion as well.

Diane: She has heard the passion from both sides and has heard both sides present their facts and wants both sides to know it has not gone unnoticed how both sides are affected. She is wondering if there might be a way especially since Attorney Cooper said they would be willing to concede, is there a way to mitigate some of these issues brought up by both sides? Aaron said he heard that she was requesting feedback from other board members about a middle ground to satisfy both parties via the conditions.

Andy said he appreciates Diane's comment and gave it a lot of thought because he believes the applicant is making a good faith effort to address any concerns. He can't get over though that even with the restrictions all those things can be part of a decision, but he can't tie those into the greater nuisance of the volume, the traffic, things that are pretty clear in black and white in the zoning ordinance that need to be addressed and he doesn't think that any of those meet it. We are increasing the mass, we are increasing the impervious area, the traffic, the noise. You can't

increase a business by 30% and not have that. Appreciate the efforts in Diane's comments even with those in place, Andy said he is not there.

Aaron said he thinks several of the conditional offerings of the applicant he appreciates them. Certain options that could mitigate some of the issues, but he agrees the way he reads the ordinance and provision we are looking at that it can't expand on any of these properties and it goes on to say not even limited to those things. Doesn't say you can ignore any of these things. There are things that are listed looking at Section 301.A that are not addressed. Appreciate the effort of the applicant to make some concessions to mitigate the issues, but Aaron does feel all of these concerns as listed in 301.A were not addressed. There is a struggle with the abutter appreciation for having this next door, but at the end of the day we are ruling on what the ordinance says. Aaron said he agrees with Andy that he doesn't feel certain things like building size, mass and impervious area are going to be expanded and the ordinance says it can't do those things. If these things had been part of the initial application, trying to make solutions to all of these issues provided for in the ordinance, we would be making conditions for a long time. Appreciate the element we need to be helping the property owners. The ordinance is different now, and we don't get to change the facts of the timeline of the ordinance. The Town voted to restrict that use and approved it can't be expanded on any of these factors. In Aaron's opinion it would be. Aaron said he wants to allow businesses to grow and support our town and be a big part of the town, but they all need to equally follow the ordinance, and Aaron does not believe this application will meet those requirements.

Karen: Reading of the ordinance is correct, but as everyone else said we have all put a lot of time and effort into this and appreciates that. If you read, Section 301.A, there is almost a clause that says there are all of these factors such as but not limited to so even if they addressed all these factors, it still may not fit in with the ordinance. Aaron said he agrees, what is a nuisance? It could be these things but it could be other things. Nuisance could be defined as what the people who are here share their experience. We don't have a lot of members of the public here or abutters here, but we do appreciate their viewpoint.

Andy Smith made a motion that the ZBA deny the request by the Harris Family Trust for a Special Exception for the expansion of an existing non-conforming use based on the fact that the proposed use does not meet the necessary criteria listed in Section 301.A. Karen Moran second.

Janet said everyone said what she was going to say. Back in March when we were discussing if this was a different application, she was frustrated we would have to meet again on this. Appreciate the opinion and workload to come up with the fairest decision. Not only because of 301.A and all the points everyone has made, the solidification for her has been we had that warrant article, 141-19 when these things were further addressed. That shows very clearly that is what the town wanted. There were certain things the town realized we don't really like this and obviously active to get the vote out at that time to put these restrictions in.

ROLL CALL VOTE: Nelson - AYE; Moran – AYE; Rombalski - AYE, Smith - AYE, Foti - AYE. Motion passes. The application has been denied.

Chair Foti stated that the appeal period is 30 days so keep that in mind. A Notice of Decision will be sent to the applicant.

Item 8 of the Agenda: New Business

No new business

Item 9 of the Agenda: Adjourn Meeting

Karen Moran made a motion to adjourn the meeting at 9:02 p.m. Aaron second. ROLL CALL VOTE: Nelson - AYE; Moran – AYE; Mills - AYE, Smith - AYE, Foti -AYE. Motion passes. The meeting adjourned at 9:02 p.m.