

Town of Farmington  
Planning Board Meeting Minutes  
Tuesday, July 21, 2020

**Board Members Present:**

Charlie King, Chairman  
Gerry Vachon, Selectmen's Rep.  
Bill Fisher, Secretary  
Bruce Bridges  
Stephen Henry  
Ann Titus

**Others Present:**

Kyle Pimental, Interim Planner  
Larry Major, Pike Industries  
Augustus Rainone

**Board Members Absent:**

Rick Pelkey, Vice Chairman, excused

**BUSINESS BEFORE THE BOARD:**

**Call to Order:**

Chairman King called the meeting to order at 6 p.m.

**Pledge of Allegiance:**

All present stood for the Pledge of Allegiance.

**Review of Minutes:**

January 9, 2020 – No errors or omission

**Motion:** (Fisher, second Bridges) to accept the minutes as written passed 3-0-3 (Henry, Titus, Vachon-abstained).

**Public Input:**

Resident Blanche Tanner called in and said she has been following the Master Plan situation and was shocked to hear that a professional company in business for 14 years didn't know the difference between policies, goals and actions. She thanked Mr. Pimental for the tremendous amount of work he has done with this and Mr. Pelkey for the word-smithing he did on it because it needed a lot of work.

She said she is glad to have people in town who can bring this together and make up for the errors that this company obviously did and that maybe they weren't up to the challenge that Farmington expected. She then thanked the board for all their hard work and Mr. Henry for answering the phone.

**Review of Fee Schedule Analysis:**

Mr. King said Mr. Pimental compiled a summary of the Planning Board and Zoning Board fees from area communities for comparison to the fees in Farmington. He said Farmington's fees are pretty much consistent with the fees in other towns but there are some differences.

Mr. Henry recused himself from the board and sat in the audience during this discussion.

Mr. King asked if any of the area towns have different fee schedules for the areas where they want to incentivize development.

Mr. Pimental said he didn't see anything where the fee schedule was different based on the district but he did see that some communities calculated their fee schedules differently. He said Newmarket and Dover calculate the fee for a commercial use based on sq. footage and Barrington uses a flat fee and they charge \$150 for a major or a minor site plan review.

He said the comparison was requested by the Selectmen for discussion purposes and he hasn't been asked to make any recommendations. He said he would provide recommendations to the board at the August meeting if they would like him to do so.

Mrs. Titus said Farmington's fees are higher on some things and that the variance, special exception and appeal fees should be reduced. She said Dover's fees are less because they have more businesses coming in and that maybe Farmington doesn't have a lot of businesses coming in right now because the prices are higher here and that the fees could be cut by \$25 or \$50.

Mr. Fisher said it is hard to say what the fees should be if you don't know exactly what is involved and what it costs for them to look at it. He agreed that the variance and special exception fees should be reduced but there should be no cost to appeal a decision.

Mr. King said if they want to incentivize development in the Village Center he would consider going to \$25 for a minor site plan and \$50 for a major site plan review in the V C with no surcharge on sq. footage. He said he would leave the subdivision fee alone and suggested making the special use permit part of a minor or major site plan review, the fee for special exceptions and variances should be reduced to \$50 and there should be no charge for appeals because all the person is doing is questioning a decision. An applicant still has to pay all of the abutters' fees and legal notices so it's not free he said.

He asked Mr. Pimental to make some recommendations about the fees to the board.

Mr. Bridges said Farmington's fees are pretty much in line with the other communities so he is satisfied with it the way it is. He said he didn't think saving a company \$25 or \$50 will make a difference in them opening a business and putting the fees on the taxpayers is not right.

Mr. King said it's reasonable to expect some of the services to be provided through taxation. He said he is trying to incentivize small business in the V C and we still have the Planner fees of 2 hours that are covered so depending on what it is the staff may not spend more than 2 hours on an application for something that may be in an existing building.

Mr. Pimental said there are some things that could be addressed in the zoning ordinance that would eliminate some reasons applicants have to come before the boards such as putting the conditional use permits under the umbrella of the Planning Board to remove the requirement to go before the ZBA and to remove the requirement for a site plan review for a change of use if the new use is allowed there and nothing is changing with the building or the site. He said other communities allow the staff to handle that review unless they are adding a certain

percentage of impervious cover or the building will be enlarged to a certain square footage. Mr. King asked if they are doing that for the entire town or just in certain zones.

Mr. Pimental said they do it throughout the town.

Mr. King said they did something similar by allowing the staff to review applications in the VC a few years ago but they were still getting applicants they didn't need to see and it makes sense to consider this town-wide.

Mr. Pimental said they can discuss this as they move forward with warrant articles for Town Meeting and really look at what projects deserve site plan review. A change of use doesn't always need a site plan review but the way that it's written automatically triggers it he said. He asked the board to keep in mind if they remove the requirement for some applicants to come before the board they will be concentrating on larger developments or something where a forested land is being converted to a developed site and these prices may make more sense. Mr. Bridges asked about someone wanting to change a use from an office to a club and then suddenly there is a parking problem.

Mr. Pimental said for example the decision could be worded so that if building is adding 1,000 sq. ft. which will add "x" amount of parking it must go for a site plan review by the board. Consensus of the board was to ask Mr. Pimental to review the fee structure and make recommendations at the next meeting.

Resident Stephen Henry said this question was forwarded to the Planning board because of a request he made to the Selectmen. He asked the board to keep in mind that what other towns are doing with their fee schedules doesn't always work and noted that the City of Rochester has been buying properties downtown so they can try to redevelop it and it hasn't been working. He said that he doesn't write a 2<sup>nd</sup> check when he calls the Police or for plowing and asked why we have to write another check to the Planning Dept. when using a reasonable level of services. Mr. Henry said variances don't just apply to new businesses but also apply to the business owner who wants to move her business from one side of the building to the other side of the building and to the business owner who wants to add another service to an existing business who have to pay the fees and evaluate if there is enough demand to make it worth doing. He said as we look at the comparison to other communities and use it to inform what we do here he wondered if those communities outlaw computer stores, bike shops and mobility products dealers in their downtown. Those are all things that should be considered when you decide how much you should charge people to use their property he said.

**Motion:** (King, second Titus) to table the next 3 items on the agenda-discussion of a legal opinion, Master Plan update and any other business before the board until after the public hearings;

**Discussion:** Mr. Pimental said he could give the Master Plan update in 2 minutes.

Mr. King tabled his motion and asked Mr. Pimental to update the board on the Master Plan.

**Master Plan Update-** Mr. Pimental said chapters were forwarded to the following groups for

review: the natural resources chapter went to the Con Com, the cultural and historic resources chapter went to the Historical Society, the recreation chapter went to the Rec. Dept. and the economic development chapter went to the Economic Development Committee. The deadline for comments is 07/28 and a list of the comments will be provided at the Aug. meeting he said. Mr. Henry rejoined the board.

**Motion:** (King, second Titus) to table the discussion of the legal opinion and any other business before the board until after the public hearings passed 6-0.

**Motion:** (King, second Fisher) to recess the meeting until 6:30 p.m. passed 6-0 at 6:28 p.m. The meeting reconvened at 6:30 p.m.

### **PUBLIC HEARINGS**

#### **NEW CASES:**

**Public hearing for consideration and possible vote to record the revocation of excavation permit on Tax Map R14, Lot 12.** The current excavation permit was issued on April 19, 2011 however it has since been determined that the appropriate paperwork was filed to be considered a grandfathered operation. As such, the Planning Board is utilizing the process set forth in RSA 676:4-a to formally revoke the permit.

Mr. Pimental said at the May 19, 2020 meeting the board passed a motion to acknowledge that the excavation operation owned and operated by Malcolm Bradsher on Tax Map R14, Lot 12 to have grandfather status and therefore is exempt from needing a permit.

He said the board also passed a motion to acknowledge that the Town received written correspondence from Mr. Bradsher dated August 6, 2019 requesting the revocation of his existing excavation permit and will utilize the process set forth in RSA 676:4-a to formally revoke the permit.

He said on May 20, 2020 the Town of Farmington gave notice to the public, the applicant and all abutters in the form of a letter that explained the reasons that the board was considering the revocation of the permit as well as providing an opportunity for anyone that wanted to request that a public hearing be held to discuss this matter. One request for a public hearing was received at the Town Office within 30 days of the notice he said.

Mr. Pimental said at the July 7, 2020 meeting the board passed a motion to set July 21, 2020 as the date for the public hearing for consideration and possible vote to record the revocation of the permit. He said on July 8, 2020 the Planning Dept. sent out another notice to the public, the applicant and all abutters explaining that tonight's meeting (07/21/20) would be the public hearing for the potential vote to revoke the permit.

Chairman King opened the public comment portion of the hearing at 6:35 p.m. and advised it would be left open during the discussion from the board.

No one came forward to speak and Mr. King asked if the person requesting the public hearing gave any reason why they wanted the hearing to be held.

Mr. Pimental said he did not have any contact with the person requesting the hearing and they contacted the Land Use Assistant Sarah Morse regarding this matter. He said he thought it was the same landowner that had some questions about the proximity of the excavation to their property line. He said she explained to him that what was before the board had nothing to do with that issue which was a civil issue between the 2 landowners that was resolved.

Mr. King said he was on the board when this application came before them in 2011 and Mr. Bradsher met all of the requirements to get an excavation permit because the previous operator either had a permit or was operating based on grandfather status. He said he was not aware of any previous issues with the permit based on the compliance hearings and if there was an issue he resolved it to the satisfaction of the Town. He asked if the person requesting the hearing had an underlying issue he was not aware of.

Mr. Pimental said that he was not aware of any issues.

Mr. King asked if the Town has put forth any notice of any non-compliance issues.

Mr. Pimental said the only issue they are aware of was the proximity to the property line.

Mr. King said there would need to be something substantial to not grant the grandfather status. If he has paperwork that shows that he's grandfathered there would have to be some mitigating issue for us to consider and that is not before us he said.

Mr. Pimental said a legal review done of this case showed that he should have been given grandfather status and there is nothing on-going to prevent that from happening. He has been in compliance with the 2011 permit which means he has been doing more than what should have been required under the grandfather status he said.

He said there are a few things that should be noted for the record and in the motion and the Notice of Decision which include: the excavation activities cannot expand without a permit, it must comply with RSA 155-E even as a grandfather status and the site must be reclaimed upon completion of the operation.

Chairman King then asked if there was any public input on this matter.

Not hearing any, he closed the public portion of the hearing at 6:40 p.m. He asked if there was any discussion by the board.

Mr. Henry asked if they had any legal opinions they needed to review.

Mr. King said there were no legal opinions regarding this matter to review. He said everything has been reviewed and is public information and there were no confidential legal communications for this case.

**Motion:** (Henry, second Titus) to record the revocation of the April 19, 2011 excavation permit owned and operated by Malcolm Bradsher on Tax Map R14, Lot 12 at the request of the property owner with the following conditions:

1. Any expansion will require a permit;
2. Must comply with the express operational and reclamation standards outlined in RSA 155-E;
3. Must reclaim site upon completion of operation.

**Discussion:** Mr. Henry asked that it be recorded that this is at the request of the property owner and the Town is not taking people's rights away.

**Vote:** The motion passed 6-0.

**Public hearing for consideration and possible vote of a minor site plan for Rainone Electric, Tax Map U-12, Lot 9-** The parcel is located at 83 Charles Street and is within the Urban Residential zoning district. The proposal is to convert the existing convenience store/pizza shop to an office and contractor space.

Augustus Rainone told the board he is looking to relocate the structure currently within the setback out of the setback. He said originally they hoped to renovate the existing structure and use that as office space but once he began to review it he found the building was more structurally deficient and he felt he could get a bigger bang for his buck by building a new structure in its place and pull it out of the setback to make it a conforming structure.

Mr. Pimental said the applicant is requesting a waiver from Section 27 of the Site Plan Regulations for storm drainage requirements. He said the Planning Dept. has been working with the applicant for several months on this and it has evolved from a change of use for the existing building to a new structure which will be located outside of the setback. There are not any major changes outside of the building being rebuilt as the existing gravel area in back of the building is staying the same and the existing parking lot is staying the same. He said they have determined that the application is complete and asked the board if they wished to discuss his recommendations for some small revisions to the application.

**Motion:** (King, second Titus) to find the application is substantially complete passed 6-0.

Mr. King asked Mr. Rainone if he received a copy of Mr. Pimental's 7/15/20 memo containing his comments on his application.

Mr. Rainone said he did see and receive a copy of Mr. Pimental's memo.

Mr. Pimental recommended the following revisions be made to the application/site plan:

**Page 2** - indicate this is a Minor Site Plan Review; check the Yes box next to New Application; #3 - the application indicates there are no water bodies but there are 2 man-made ponds within 250' of the high water mark of a body of water on neighboring properties;

**Page 3**, Business Info, #3 - correct the square footage from 2,004 sq. ft. with 58 x 42 dimensions to 1,740 sq. ft. with 58 x 30 to match the plan

**Site Plan** -indicate a location for snow storage or note that it will be removed from the site.

He said because the proposal does not add any impervious cover to the site he is in favor of granting the waiver with the caveat that the gravel portion of the back lot remains as gravel. If the applicant wants to pave that area that would be a significant difference to the site and storm water runoff should be addressed but there is nothing that he is doing now that requires a full storm water management plan he said.

Mr. Bridges asked if some portion of the lot behind the building is currently asphalt.

Mr. Rainone said there are some concrete sections back there that they plan to remove.

Mr. King asked if the total impervious area would be reduced or if just the building envelope is dropping.

Mr. Pimental said the impervious cover is not substantially changing (less than 1% change) as the building footprint will be smaller than what is there now, they plan to replant the side area that is currently concrete and the current gravel portion of the back lot is remaining as gravel.

Mr. King said some of the impervious materials will be removed and the areas will be replanted so he is not so hung up on not allowing Mr. Rainone to pave it in the future if it is currently for parking and there will be less roof area and he is making improvements to the runoff for that. He asked what portion of the back area has concrete and pavement now.

Mr. Rainone said some 8' x 10' concrete chunks cover about 10% of the back of the lot near the existing shed which will also be removed as it is not needed.

Mr. Pimental said the reason he recommended that it not become fully paved is the proximity to a drop off that discharges into a wetlands area with no treatment. He said it is doing that now but it will be worse with pavement than what it is now with gravel.

Mr. Bridges recalled that most of the back portion is either concrete or asphalt now.

Mr. Rainone said it is about 90% covered in the back and the front of the building is all paved.

Mr. King asked Mr. Rainone if he intends to pave the back portion of the lot at some later time.

Mr. Rainone said that with the new building he couldn't afford it currently.

Mr. King said he would have to have an engineer do a drainage study and design treatment areas so the runoff from the parking lot could be treated such as with a rain garden or a swale. He asked if the motion to approve this application could include that if paving was to be considered in the back that the drainage study would be approved by Town staff and he would not have to come back to the board for an amended site plan.

Mr. Pimental said it would only trigger if that section gets paved and they would only look at the drainage as the rest of the site would be already built. He said if the rest of the board was comfortable with the staff reviewing the drainage plan he thought it would be fine to not require another public hearing for an amended site plan.

Mr. Henry asked if that would be changing zoning in a decision.

Mr. King said it is parking now and he is proposing parking there so if the board approves it the recommendation to the staff is if he goes to pave it he has to have a drainage calculation and a professional engineering done for that area and it doesn't need to come back to the board. The Town could hire an engineer to make sure we agree with the engineer he hired he said.

Mr. Pimental said a motion is needed to grant the waiver to move forward without having to do a storm water management plan but the condition is it would have to remain as gravel.

He suggested the board may want to add to the motion that the paving has to stay within the confines of the existing gravel area per this plan without coming back to the board because once you go beyond that you are altering what this plan was approved for.

Mr. Henry said the term "staff review" means you're asking permission for something. If we're

approving the pavement today with certain conditions its staff making sure the conditions we approved today are met. We've already reviewed the site plan he said.

Mr. King asked if someone came in with a plan with a storm water management plan if the staff would check to see that it makes sense and was done by a licensed qualified professional or if they would send it for outside review.

Mr. Pimental said if it's relatively simple like this application the staff would look to ensure that the storm water management plan meets the site plan regulations and isn't discharging into the wetlands without some form of treatment but something like a Target parking lot drainage analysis would go to outside review.

Chairman King asked if the board had any questions about this site plan.

Mr. Henry asked if a building exists on a footprint that couldn't be built today and encroaches on a setback and the building is deficient so it is being taken down if the new building could be rebuilt on that same footprint.

Mr. King said by code it can be improved but couldn't be totally torn down and start over there.

Mr. Henry asked if you could take it down to the slab/foundation and rebuild on that footprint.

Mr. King suggested he ask the Building Inspector about that. It's currently non-compliant and it can stay that way but if you did a tear down I don't think you can build it back in place he said.

Mr. Pimental said the threshold is something that's a "substantial improvement" however that is defined.

Chairman King asked for a motion to approve the waiver request.

**Motion:** (Fisher, second Henry) to approve the waiver request for relief from Section 27 of the Town's Site Plan Regulations with the following condition: the site cannot convert the existing gravel parking lot shown on the approved plot plan into a more impervious surface (i.e. pavement, asphalt, etc.) without needing a storm water management plan;

**Friendly Amendment:** by Mr. King: if in the future the applicant wants to pave that they will have to supply a storm water management for the Town to approve and this will not trigger an additional site plan review;

Mr. Fisher and Mr. Henry accepted the amendment.

**Vote:** The motion passed 6-0.

**Motion:** (King, second Titus) to approve the plan as presented conditionally upon the corrections being made from Kyle's staff memo passed 6-0.

### **Review of Legal Opinion:**

Mr. Pimental asked if the board wanted to have this discussion in public or non-public session.

Mr. King asked him to hand out the Attorney's opinion and let the board read it and then they will decide from there. He asked who asked for the legal opinion.

Mr. Pimental said the Attorney's memo was sent to the Town Administrator and it was not requested by the Planning Dept.

Mr. Henry said he had no desire to keep this out of the public and is a great topic for public



conversation.

Mr. Fisher said it would enhance the public's understanding of what "grandfathered" is.

Mr. King said he has heard this point about the type of ordinance that we have before and he is fine with making this memo public.

Consensus of the board was to make the contents of the Attorney's letter public information.

Mrs. Titus advised that they keep the discussion general and not specific to any cases.

Mr. King said the information provided by the Attorney is not case specific.

**Motion:** (King, second Henry) to release the privileged and confidential memo and make it a part of the record as an addendum to the minutes of this meeting passed 6-0.

Mr. Pimental also gave the board copies of his e-mail correspondence with legal counsel with some follow up questions he had after reading the Attorney's memo.

Mr. King said the Attorney's memo is dated June 18, 2020.

Mr. Pimental said the June 18<sup>th</sup> memo was received from the Town Attorney providing an opinion on "Is there a legal issue with Section 3.23 of the Farmington Zoning Ordinance regulating temporary/permanent storage units and the prohibition against unapproved storage units being applied to a property on which a storage unit was located prior to 2016?"

He said the memo was shared with him on July 10 and after he reviewed it he followed up with more questions on July 14. He summarized that the legal answer to the original question about having a storage unit on a property before 2016 and whether or not they should still exist is that Farmington has permissive zoning and that means that if something is not listed in the Table of Permitted Uses it is not allowed.

Mr. King said that is why there is a section for uses not specified in the table.

Mr. Pimental said in order for something to be grandfathered it had to have been an allowed use beforehand and so if the zoning allowed for a temporary storage unit to be in place and then the zoning changes to not allow it that can have grandfather status. He said because storage units were not anywhere in the Table of Permitted Uses the legal opinion in the memo says therefore it is not allowed and because it was never allowed it cannot be grandfathered. He said the memo does a really good job of providing information on how permissive zoning functions and it is good for people to understand what that means. He said he asked if accessory uses could be a response to the impossibility of putting every use in the Table of Permitted Uses and under permissive zoning if something is not explicitly allowed can an accessory use be permitted.

Mr. Pimental said the Table of Permitted Uses is found in Section 7 of the Zoning Ordinance and that accessory buildings/structures are permitted, some by review and some by right, in all zoning districts. The ordinance defines a structure as anything constructed or erected on or in the ground or an attachment to something having a fixed location on the ground including permanent and temporary buildings, carports, porches, other building features and doesn't include sidewalks, driveways and fences, etc. He asked the Attorney if a determination could be

made that a ground level storage container could be viewed as an accessory structure which is different from the determination being made by the Town.

He said the memo says a site plan review is required for anything that is a permanent use but there isn't anything in that section of the ordinance that requires site plan review but only that an applicant would need to obtain a temporary permit. He said he asked the lawyer how the Planning Board would go through a site plan review if it was on a residential property as the Planning Board doesn't have the authority to require a site plan review for a residential property that is not a commercial or multi-unit use.

Mr. Pimental said the board needs to look at the way the current zoning is written and decide how to address this going forward. He said the Selectmen raised the issue of how to deal with these units that have been there for a long period of time. If it is on vacant land it is a non-starter as it could not be an accessory structure if there is no principal structure he said.

Mr. Henry said the Town just voted to allow accessory structures on vacant lots in March.

Mr. Pimental said the Attorney's response was the definition of a structure is broad enough that the ordinance may be interpreted to include box storage containers and they could be viewed as an accessory structure if a container was used in conjunction with the principal use on the lot such as storage for a business or as an accessory use to the primary use such as a home occupation on a residential lot then perhaps a storage container could be considered an accessory structure. He summarized that the legal determination is yes, it could be but he didn't ask about the determination made by the Town.

Mr. King said the Attorney's original opinion was a black and white interpretation that it was not in the Table of Permitted Uses so it is never permitted. He agreed with Mr. Pimental's argument about the broad definition of accessory uses.

Mr. Pimental said he argued that you can't make a black and white distinction where if it is not in the Table of Permitted Uses then it's prohibited because you'd have a Table of Permitted Uses that is 100 pages long to account for everything. This allows the flexibility to be considered an accessory structure and if that is determined it does meet the grandfather clause so anything on there now is grandfathered. The language needs work and the 2 issues before the board are dealing with the existing grandfathered ones and how to regulate this in the future.

Mr. King said the pivotal date for this is 2016 when the ordinance was put in place and after that you had to have a permit for a storage container or it wasn't permitted.

Mr. Henry disagreed and that it points to when they went to permissive zoning.

Mr. King asked the board to consider a work product to put forth a zoning change to the voters proposing that grandfather status be given to anything before 2016 for the conditions that existed for 2016 on both residential and other lots that may not have a primary residential dwelling because there may be situations where someone had a storage container on a lot used for farming, tree harvesting, etc.

Mr. Pimental said he didn't know if they could do that legally as grandfather status is defined.

Mr. King said they could say everything there before 2016 is permitted.

Mr. Henry asked if it would have to say those units that were there before the March election.

Mr. King said the date they became not permitted is 2016 and because of the concern about interpretations they are putting forth to the voters to clarify that to what the voters want.

Mr. Bridges said if they are considered an accessory building that is already permitted.

Mr. King said that is an opinion that somebody could challenge.

Mr. Pimental said the Attorney didn't say whether they are or aren't an accessory use but that the Town could decide if they are accessory uses or not.

Mr. King said the board can't do that but they can propose to the voters that the ordinance be changed to make everything from 2016 back grandfathered.

Mr. Pimental suggested they think about it because the other side of the Attorney's argument says if it's not in the Table of Permitted Uses it's prohibited so if they were not considered as accessory then they were always prohibited. You can't say they were grandfathered prior to 2016 because they were never allowed he said.

Mr. King asked if the zoning ordinance always said you couldn't have an accessory use without a primary use or if it did not touch upon it.

Mr. Pimental said he did not know how far back it goes and that by definition you need a principal use for something to be an accessory use. He said this past year the town took some accessory structures and made them principal structures when barns, garages, gazebos/pavilions and storage sheds were approved for use on a vacant lot and didn't necessarily say any accessory use could be on any lot on its own.

Mr. Henry asked if "shed" is defined in the ordinance.

Mr. Pimental said they are defined in the ordinance.

Mr. King said if a farmer kept his tractor in a storage container on a lot adjacent to his residential lot for 35 years and the Town never called it into question and then decided to take him to court to make him remove it there may be case law based on the time that has elapsed that he has a case for continuing the use of the structure.

Mr. Henry pointed out the lawyer's last paragraph says that is not the case.

Mr. King then gave the example of a campground turned some of the units into year round residences which were not allowed and when the Town took them to court the judge decided to grant the property owner additional units than allowed by zoning because the length of time they were there gave them vested rights. In essence it was grandfathered because no one ever disputed it he said.

Mr. Henry said the Attorney's response is similar to other legal opinions in that you can look at it one way and give the property owner what he wants or look at another way and tell the property owner he is out of luck. It talks about permissive zoning which means you're not allowed to do anything with your property unless the Town deems it allowable so you are not assumed to have private property rights until the Town gives them to you he said.

Mr. King noted that permissive zoning was enacted in the 1970's.

Mr. Henry asked where the burden falls to prove that a use did not exist before zoning came into place and who has to prove it isn't grandfathered because when it was done it wasn't legal.

Mr. Pimental said he didn't know the answer to the question and that it goes back to how the Town decides it wants to handle this. If the Town views the storage units as accessory uses then a lot of this is a moot point but if they want to enforce this and any unit that didn't have a permit must come off they may have to be the ones that have to prove it he said.

Mr. King asked if they could put forth 2 arguments- the first being if there is a principal use these storage units would be considered to be grandfathered if they were there before 2016 or add storage units as an accessory use with the caveat they had to be there before 2016.

Mr. Bridges said they are already allowed and you have to get a permit for it and they are just harassing people that already had them and making them go through extra steps.

Mr. Pimental said the new zoning would be for moving forward so that any storage unit going onto a lot would need to get a permit. He asked how they would handle the units on site now.

Mr. Bridges asked why they would bother if they can get a permit to get one and bother the people who already have one and make them get a permit when they didn't have to get one when it was put in. They would get a permit for 6 months and then it has to be looked into be considered permanent he said.

Mr. Henry there is no guarantee you would be allowed to keep it and it is up to the Code Enforcement Officer to decide if you are allowed to keep it.

Mr. King said to change how it is being interpreted you need to change the ordinance. He said there are 3 things to consider: storage containers on a lot without a primary use; the use of a storage container with a primary use and the grandfathering of units in place before 2016. He suggested Mr. Pimental could ask questions about what the board wants to do and get their thoughts on how to accomplish it and see if that is right.

Mr. Pimental agreed the section needs more clarity on what the intent was and how the board wants to move forward with it. He said he didn't know if they could allow a storage unit as a principal use on a vacant lot similar to what was done with barns, garages, etc. this year.

He said moving forward they could allow that but he didn't think it would address the issues of having something on a property prior to zoning and unless its determined by the Town that they are accessory uses he didn't know if legally they could just change and say now we are grandfathering them in.

Mr. Henry asked if he had a shed on his vacant lot prior to March 2020 and had been dragging his feet on tearing it down like he was told to and it was still there when the vote passed in March if he still had to tear it down and rebuild it. I would think not unless there was a court order specifically instructing me to do that he said.

Mr. King said that if the proposed new ordinance passes next March and it is now allowed it could be worded so that everything before that date is allowed.

Mr. Henry said if they say they are not allowed to the people who have them there has to be some record of when they went in and the units put in in 2016 would have a record from the permit application.

Mr. King said if the unit has been there for 20 years and the owner has been getting a tax bill for it for 20 years the Town has in essence known about it, permitted it and charged him for it. He said he wanted to see a clear and reasonable interpretation that's fair and reasonable to property owners that have had them on their property for a long time.

Mr. Pimental said he didn't want the board to lose sight of what was brought to the board in 2016. There obviously was a reason for why the Town needed to regulate these storage units and I wouldn't want for us to dismantle everything and throw it all out he said.

Mr. King said if they put a proposed amendment before the voters that by law from the 3 months before Town Meeting until the vote has happened the issue is in limbo. He said it's not up to the board to tell the Selectmen or the Code Enforcement Officer what to do and if they feel the interpretation should be changed it is their job to propose zoning for taxpayers to approve.

Mr. Henry said that unfortunately for those that already have the units the CEO has already made a decision.

Mr. Pimental said they learned that legally they could be viewed as an accessory just last week and he didn't know if a determination that whether or not they could be viewed as an accessory has been made by the Town yet.

**Motion:** (King, second Vachon) to take this up as a work product for this year passed 6-0.

Mr. Henry asked that they request an opinion on where the burden of proof lies on whether something existed before or after zoning.

Mr. King suggested Mr. Pimental ask other Planners how other communities handle this issue.

Mr. Pimental said he is drawing up a list of questions for legal counsel and if he is unable to get an answer from other Planners he will add that question to the list.

Mr. Fisher read from the definitions that a storage shed is a structure that is 120 sq. ft. or less and a barn is at least 120 sq. ft. and that they may want to change one of those definitions. If I have a 120 sq. ft. building in my backyard I can say it's a shed or a barn he said.

Mr. Henry said the word trailer has been used several times and asked if they can regulate registered trailers on private property.

Mr. King said that an interpretation has been made that if it has a currently registered tag it is a registered vehicle and falls under motor vehicle regulations and if the tag is expired it is not a registered vehicle.

#### **Any Other Business before the Board:**

Mr. Pimental said he spoke with PLAN NH Executive Director Robin LeBlanc about the Town submitting an application for a Municipal Technical Assistance grant. There is a minimum of \$5,000 and a maximum of \$25,000 potentially available with a 15% match requirement which

can be cash or in-kind and would be used to look at addressing some zoning issues. The primary focus must be housing related and would involve hiring someone to look for barriers in the zoning that don't allow the town to meet its housing goals. There could be other things in the zoning that get looked at like inconsistencies or contradictions for other issues he said.

Mr. King asked if they could target a specific area such as the Village Center to find out why we are not getting reinvestment in the current units and improvement of the housing stock.

Mr. Pimental said yes and they are looking for towns to apply for this grant. He said there are communities where everything is currently frozen and he hasn't spoken with the Town Administrator about this yet as wanted to run it by the board to see if there is enough support for it for him to take the time to put together an application to see if it's an eligible project.

Mr. King said some changes were made to incentivize redevelopment in the VC and they should look at making it more attractive to invest in and rehab the existing multi-unit housing stock in the surrounding area.

Mrs. Titus asked if this would bring more multi-units or section 8 housing to town.

Mr. Pimental said it would look at more housing options and make recommendations on how to achieve them. He said the recommendations from the Master Plan would also be used to ensure the zoning isn't prohibiting what the town wants to accomplish. He said the town could use his time as the in-kind match so the cash portion of the match would be relatively low.

Mr. Henry asked if the town has zoning that discourages the creation of housing and how you could encourage the redevelopment of the existing stock with zoning.

Mr. King said the grant would allow us to get some additional paid help to provide another set of eyes and an opinion.

Mr. Henry said he didn't need a fancy degree to tell him if we made our house lots smaller we could fit more houses and he didn't need to hire someone to tell him that.

Mr. Pimental said they will do an analysis of the current housing stock and be able to tell if people wanted to live in a certain type of housing if Farmington offers that and if not what you could do. He said they would look at what the town wants, what it has and if the current zoning prohibits any of those things. He said the application has a rolling deadline so they don't have to make a decision by a certain time and could submit an application when they want to. He suggested if they are going to do it to do it this year before they run out of funds.

**Adjournment:**

**Motion:** (Titus, second Bridges) to adjourn the meeting passed 6-0 at 8:17 p.m.

Respectively submitted

Kathleen Magoon, Recording Secretary



Charlie King, Chairman