

Town of Farmington
Planning Board Meeting Minutes
Tuesday, January 4, 2022
356 Main Street-Farmington, NH

Board Members Present:

Charlie King, Chairman
Gerry Vachon, Selectmen's Rep
Stephen Henry
Jeremy Squires

Board Members Absent:

Rick Pelkey, Vice Chairman, excused
Bill Fisher, Secretary, excused
Bruce Bridges, excused

Others Present:

Richard Ellis, abutter
Blanche Tanner, resident
Philip Trombley, Surveyor
Lisa Rocheleau, applicant
Eric Salovitch, Surveyor, Northam
Survey LLC

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:

December 21, 2021- No minutes were received.

Public Comment: None

Public Hearings:

NEW CASES:

Public Hearing and Possible Vote on Minor Subdivision for Lisa Rocheleau, Tax Map R-5, Lot 6.

The applicant is proposing a minor subdivision of the parent lot which is approx. 12 acres into two lots 5 acres and 7 acres respectively. The proposed project is located on Ten Rod Road and us within the Agricultural Residential (AR) Zoning District.

Mr. King disclosed to the board that he was the one time owner of this property two owners ago. He said he has no interest in this property currently and did not feel that he has any conflicts and asked if the board wanted him to run the meeting and abstain from the discussion that way there would be enough membership of the board to hear this application.

Mr. Henry asked if he abuts this property.

Mr. King said no.

Mr. Henry said he was comfortable with Mr. King participating in the hearing.

Northam Survey LLC President Eric Salovitch introduced himself, Surveyor Phillip Trombley and applicant Lisa Rocheleau to the board. He began by walking the board through the property how it exists today with the existing conditions sheets and by reading the deed description as follows: the property is bounded on the east by Ten Rod Road, north by the land of an abutter to the stone wall turning and running by said stone wall to the west and on the south by the private way Melody Lane and this meeting is intending to convey approx. 10 acres of meadowland. He said he found it interesting that the meadowland as defined is a piece of grassland specially used for haying and he would have more on that later.

He said the existing lot as it is today is roughly 12.25 acres, there is 878 ft. of frontage along Ten Rod Road and the lot is impacted by flood zone A and does not have a base flood elevation. He said that's addressing one of the comments that their application checked off that it wasn't impacted by a flood zone but it is. He said he didn't bother resubmitting the application because he knew he would be here before the board and it was a check box that was missed. Mr. Salovitch said there are some changes coming to the flood zone and he wanted to address any concerns that there may be with that. He said the dotted lines on the plan labeled Flood Zone X and Flood Zone A come across some of the building area on the lot and then back down around. He said FEMA uses Lidar (3-D laser scanning) so they have much better elevation data when determining flood zone areas so he suspects that the flood zone in the natural shelf area of the lot will be pulled back. He said all of the proposed development is outside of the flood zone now so it's really not a problem.

He said the soil information shown is another dotted line and pointed out the soil tabs surrounded by a box with the type of soil it is and there is a soil legend below showing what each of the tags mean. He said the majority of the lot and the buildable area of the lot are SUB and HDB soil types and that information is per the Natural Resources Conservation Service. He said these soil types are moderately drained/well drained soils and the test pits that were done on the lot confirm that it's well drained soils and there was a septic design completed in 2013 for Mr. King prior to him selling the lot for some construction that never happened. We have a copy of the septic design if anyone is interested in seeing it he said. Mr. Salovitch said the test pits are suitable and they don't foresee any issues with resubmitting the design or submitting a design for the proposed Lot B.

He said the proposed 2 lot subdivision is designated as Lot A and Lot B. He said Lot A is the parent lot because that is where the existing driveway is located and is the area where the septic design was completed in 2013. This lot is just over 5 acres in size, there is 251 ft. of frontage, approx. 27,000 sq. ft. of buildable area and the lot will be serviced by an on-site well and septic system he said.

He said the proposed Lot B abuts Lot A and is 7.2 acres in size, has just over 30,000 sq. ft. of buildable area, 627 ft. of frontage and will also be serviced by an on-site septic system and well. Mr. Salovitch said there are some waiver requests he would like to discuss and asked if the

board had any questions at this point.

There were no questions from the board and Mr. King asked him to discuss the waivers they are asking the board to consider.

Mr. Salovitch said they are requesting 3 waivers and the first one is from the Subdivision Regulations Section 6 F (1) Stormwater Management and Erosion Control which reads the applicant shall submit a stormwater management plan and erosion control plan when one or more of the following conditions are proposed and that letter A is the condition they do not meet when the cumulative disturbed area exceeding 20,000 sq. ft. He said he was pretty sure 20,000 sq. ft. would be disturbed with the construction of 2 residential homes by the time you add a driveway, clearing, leach field and traditional construction.

He said the other 3 constraints to this regulation are if the applicant is constructing a road, a subdivision of 3 or more dwelling units and the disturbance of critical areas and wetlands. He pointed out that this is a minor 2 lot subdivision and they are not constructing a road, having more than 3 lots or disturbing any critical areas.

He said there may be more than 20,000 sq. ft. disturbed and they discussed the engineering costs for a stormwater management plan plus the added construction costs to develop those rain gardens for stormwater management. It was pretty apparent to us while reviewing this plan that any added impervious area from the houses or the driveway would flow downhill into a wetland area that is already acting as a stormwater system he said.

He said in their opinion that subdivision regulation is in place to protect against major subdivisions and that is why they believe the spirit of the ordinance would be maintained.

Mr. Salovitch said waiver #2 is from Section 6 B Lots (f) and they are seeking relief from the 40,000 sq. ft. buildable area requirement. He said both lots have well over a half acre of buildable area, closer to $\frac{3}{4}$ of an acre and the proposed home, well and septic fit very comfortably within the space and both proposed lots have over 40,000 sq. ft. of upland. He said on a typical lot the rear setback is 15 ft. and with the wetlands at the bottom of the hill that 50 ft. requirement takes up a lot of the space.

He said historically it is not his belief that the property was always wet and the deed describes it as meadow, the soils are moderately to well drained and there is a dug well and an old foundation within that wetland area that indicates prior use.

He said waiver #3 is from Section 9 I (4c) Non-Sewer Area System Site Requirements which reads in no case shall the Planning Board grant final approval of a proposed subdivision until the following state approvals (if necessary) have been met (received) with regard to DES subsurface disposal systems. He said with the lot having a previously approved septic they don't foresee any issues getting 2 approvals on these lots with the test pit data they have so they are requesting a waiver to make this a condition of issuing the building permit vs. signing the plans.

Mr. Pimental asked if the board wanted to accept this application as complete.

Mr. King said yes but asked what happens if the board doesn't accept the waivers. He said the

board the board could consider it as substantially complete but if they don't accept the waivers it's not complete. He said he was okay doing it either way if the board wanted to accept it as complete and then consider the waivers.

Mr. Pimental said he would recommend doing it that way because the application is complete whether the board votes to accept the waivers or not.

Motion: (Henry, second Squires) to accept the application as substantially complete passed 3-0-1 (King abstained).

Mr. Pimental said Mr. Salovitch has addressed a few of his comments already with the first one being the application needs the check box to be checked showing that he identified that both properties are in the flood plain.

He said his second comments were about the 3 waivers. He said in the first one (Section 6 B (f)) the applicant has shown a minimum buildable area of 40,000 sq. ft. that encroaches in the 50 ft. wetland buffer, the special flood zone areas and the front and side setbacks which is why a waiver is being requested. He said in the past this board has granted these types of waivers with lots of this size not being able to meet the 40,000 sq. ft. minimum buildable area. In this case because of the conditions of the site showing that it's wet at the back part of the lot they are constrained and the applicant has done the best job that they can to move the development of the sites as far out of those areas as possible and the minimum buildable area does spill over into some of those areas he said.

He said in terms of the cumulative disturbed area exceeding 20,000 sq. ft. he agreed that for a 2 lot subdivision with 2 single family homes that does not require a road and is not more than 3 or more units requiring a stormwater management and erosion control plan is not necessary and he supports this waiver request.

Mr. Pimental said he also had a few other comments before getting to the third waiver. He said they need to ensure that the proposed monuments on the plat plan be set in the field prior to the recording of the plan at the Registry of Deeds and recommended that Lots A & B be changed to R-5, Lot 6 (A) and R-5, Lot 6-1 (B). He said both of those have been reviewed by the Assessing Clerk and those numbers work. We're putting proposed Lot A as the parent lot because that is the one with the existing driveway on it he said.

He said they need to show all the test pits on the plan and there are a couple of them missing and that a new driveway permit will be needed for both proposed lots. The permit for the existing driveway on Lot A has lapsed and the staff would like to see 2 new driveway permits. That is not a condition of approval for this but would be a condition of the building permit he said.

Mr. Pimental said a NH DES Subsurface permit will be needed for both lots as there was a previously approved septic system design but the state records show that it was approved on July 1, 2013 for a 3 bedroom dwelling with a one bedroom in-law apartment but there was no operation date. He said according the state's rules if construction approval for an individual

septic system has been issued but the approval to operate hasn't been issued then the construction approval lasts for 4 years. Once the 4 years has passed the design approval expires and a new septic design for Lots A & B will be required he said.

He said because they don't have those now this is where the third waiver comes into play and it is up to the board on whether they want to make that requirement a condition of the building permit. He said that is fine in this scenario and that septic system design shouldn't hold up a subdivision because they don't have to get that prior to getting a building permit.

Mr. Pimental said Mr. Salovitch mentioned the old stone foundation and the Town's regulations ask if they have any historical significance and the board may want to discuss that.

He said Mr. Salovitch already discussed the FEMA new flood plain data that will be coming in and that flood plain is likely to change. Whether it gets larger or smaller I don't know but it will be based on Lidar topographic data so it will be more accurate and so it's on the record that the applicant knows there will be new FEMA data in the next couple of years he said.

Chairman King opened public hearing at 6:22 p.m. and asked if there were any abutters with any questions, comments or concerns.

Richard Ellis said he is trying to develop a campground directly across the street from this property and he wanted any potential buyers to know that. He said he didn't have any problem with the subdivision and what they're doing is fine and they are going to be directly across from the campground.

Mr. King said his prior meetings with the board were publically noticed as part of his application and that Mr. Ellis wanted to make it part of the record to put people on notice that he is planning a development across the street. He then asked for questions from the board.

Mr. Henry asked if they approve the subdivision and then something is changed and they can't get a septic system approved if they would have an orphan lot that can't be used for anything.

Mr. Salovitch said they have a copy of 2013 septic design that was approved and the test pit data from proposed Lot B is very similar to proposed Lot A so he didn't foresee that being an issue. He said the 4,000 sq. ft. area is substantially larger than what it actually takes to build a septic so if they had to do additional test pits or move it around there is plenty of space on that lot to do so.

Mr. Henry asked when the test pits were done and if they were something he had done or was done in 2013.

Mr. Salovitch said the new test pits were logged this past year sometime during the summer.

Mr. Henry said they run the risk of creating an unbuildable lot.

Mr. King asked how often the board has accepted a waiver on this requirement.

Mr. Pimental said they have required the state approval to be in hand when they had lots that were less than 5 acres and if it is over 5 acres it doesn't need state subdivision approval. He said they require that state approval prior to signing the plan but he didn't recall them requiring a septic design for a 2 lot subdivision. He said he was okay with it because they would need to do

it for a building permit or it's not going to be issued.

Mr. Henry asked if septic standards have changed since 2013.

Mr. Salovitch said he didn't believe so but he is not a septic designer.

Mr. Pimental said he didn't know. He said if the applicant wants to take that risk he didn't think this board should hold him up for the subdivision. If they've done their due diligence and gotten their test pits and if there was no issue with the one that was designed in 2013 I support the waiver for this he said.

Mr. Salovitch said Randy Orvis of Geometres Blue Hills LLC did the initial design in 2013 and he did the test pits this summer so there was an experienced guy doing the test pits.

Mr. King said the plan shows a delineation of the wetlands and asked who did that.

Mr. Salovitch said that was done by Randy Orvis.

Mr. King said he would leave this public hearing open until the board makes a decision. He said he couldn't recall the first waiver coming up in recent history where there is a requirement regarding (a stormwater management plan) for the 20,000 SF disturbed area on a small lot subdivision.

Mr. Pimental said the regulations do say that and it may have been something he missed for the last subdivision. He said the other bullets in that regulation that say if a road is being built or it is 3 or more units is when a stormwater plan is necessary and he didn't think it was necessary for a 2 lot subdivision but it is the regulations.

Mr. Henry said it looks the land is generally sloped down towards the wetland.

Mr. Salovitch said that is correct.

Mr. Squires said he was good with all 3 waivers.

Mr. Henry said he would rather do them one at a time.

Mr. Pimental said the first waiver would be from Section 6 B (f) i of the Subdivision Regulations requiring that the applicant show a minimum buildable area of 40,000 sq. ft.

Motion: (Squires, second Vachon) to approve the waiver for Section 6 B (f) i;

Discussion: Mr. Henry said that Lot B barely has 75% of what is expected or required.

Mr. Salovitch said Lot A is just over 27,000 sq. ft. and Lot B is just over 30,000 sq. ft.

Mr. Henry said that is quite a bit smaller than what the regulations call for and he didn't know how often they waive this one or by how much.

Mr. Pimental said they have definitely waived this before but he didn't know by how much. He said several developers have said 40,000 sq. ft. of buildable area is a massive area and that most residential homes would fit well within that. He said 27,000SF and 30,000SF are more than enough for what they are proposing for the size of these homes and their septic systems. He said if they were proposing a much larger home that might be a different story but what they are proposing fits within that area.

Mr. Salovitch said the typical rear lot setback is 15 ft. and they have a 50 ft. wetland setback and that is a substantial amount of space on the back side of that buildable area. It's not like

their buildable area is squeezed and they're also impacting the neighbors. There's not someone living right behind them he said.

Vote: The motion passed 3-0-1 (King abstained).

Mr. Pimental said the second waiver is for Section 6 F (1) of the Subdivision Regulations requiring a stormwater management and erosion control plan for cumulative disturbance over 20,000 sq. ft.

Motion: (Henry, second Squires) to approve the waiver for Section 6 F (1) a ;

Discussion: Mr. . Henry said it runs downhill into a wetland.

Vote: The motion passed 3-0-1 (King abstained).

Mr. Pimental said the last waiver is for Section 9 I (4) c of the Subdivision Regulations requiring a NH DES Subsurface Disposal Permit be obtained at the signing of a plan and instead making it a requirement of a condition of a building permit.

Mr. King asked if this should happen in 2 steps, approving the waiver of the requirement and then the condition would be put on as a condition of approval for the application.

Mr. Henry asked if that is already a condition of a building permit.

Mr. King said they should specifically call out any exceptions or any differences to this than a normal one so it gets picked up at application.

Mr. Pimental said it also makes it cleaner for the Notice of Decision.

Motion: (Vachon, second Squires) to approve the waiver for Section 9 I (4) c passed 3-0-1 (King abstained).

Mr. Pimental then recommended that the board approve the subdivision with the following conditions to be met prior to the signing of the plans: 1. Authorize staff to revise the application to correctly indicate that the parcel is within the special flood hazard area (Zone A); 2. The applicant shall revise the plat plan to reference R-5, Lot 6 (proposed Lot A) and R-5, Lot 6-1 (proposed Lot B); 3. The applicant shall revise the plat plan to show all test pits; 4. The applicant shall submit a certificate of monumentation form ensuring all monumentation referenced on the subdivision have been accurately installed; 5. Add a note to the plan that identifies the 3 requested waivers and date of approval.

He said conditions to be met prior to the issuance of a building permit include: 1. the applicant shall provide a new driveway permit for both proposed lots; 2. the applicant shall provide a NH DES Subsurface Disposal Permit for both proposed lots.

Mr. Salovitch said all the test pits are shown on the plan because originally they were looking at developing the upland area on the northerly corner of the site so there are 2 test pit symbols over there that are actually outside of any proposed development because the setbacks are too tight up there.

Mr. Pimental said they could remove that condition from his recommended conditions.

Mr. King asked if the flood zone is the flood zone for Baxter Lake.

Mr. Pimental said in their application they checked no and the back part of the parcel is actually

in Zone A.

Mr. King asked what else is in Zone A.

Mr. Salovitch pointed out on the plan where the flood line enters and exits the property and the location of Zone A.

Mr. King asked how big Zone A is and if it is adjacent to another flood area.

Mr. Salovitch said he didn't know and it must come off of the watershed for Baxter Lake.

Mr. King said they are only not even 1,000 ft. away.

Mr. Salovitch said there is development on a peninsula out behind the property.

Mr. King said there are 3 residences on Melody Lane.

Mr. Salovitch said they would be in Zone X.

Mr. Ellis said his pond drains into that too.

Mr. King said he obtained a driveway permit in 2013 and installed the driveway and it has been the access to the lot ever since then and asked why they need a new driveway permit. He said it is just bank run gravel but it has been used as the access to that lot since he installed it after getting the application so it's not like it's ever lapsed.

Mr. Pimental said the board doesn't have to have the requirement and that it was just a suggestion. He said it is needed for Lot B and if the board chooses to not have a new driveway permit reviewed by the Road Agent for Lot A that is at the board's discretion.

Mr. Henry said that unless it's overgrown he would not be inclined to require another permit. He said it's a functional driveway that is access to the lot and asked if they have to have a house in order to have a driveway.

Mr. King and Mr. Pimental said no.

Mr. Pimental said if they are comfortable making the assumption that the driveway was done correctly 8 years ago and they don't want to have them review it then don't add it to the conditions and just do it for proposed Lot B.

Mr. Henry said he would have to assume it was reviewed if it was approved however many years ago and the staff did their job then.

Mr. Squires said the location may change based on where they have the house and asked why not have them do it over. He said the location of where it comes in off the road probably wouldn't change but it could be added to or the direction may change.

Mr. Henry said the driveway permit is about the curb cut.

Mr. Squires said there are standards for the whole thing not just the curb cut.

Mr. Vachon said anything on private property is not their responsibility. He said anything in the right-of-way they would have to make sure is done to the correct standards because that's on Town property. Anything past that property line if it falls apart is not our problem he said.

Mr. Squires said he would beg to differ but whatever they want to do, driveway permit or not, he would accept the plan the way Mr. Pimental said with the exception of the test pits.

Chairman King then asked if there were any more public comments before closing the public

hearing for deliberation.

Mr. Henry asked if they charge money for driveway permits.

Mr. King said he was sure they do.

Mr. Henry said then he did not want to require another driveway permit.

Mr. Vachon said they're probably going to upgrade the driveway and if they're going to do any work to the driveway in right-of-way they are going to require a permit anyway.

Mr. Pimental said his take was there is going to be some additional work on that site and they may have to make some changes to the existing driveway.

Mr. King asked if he has a gravel driveway if he has to get a permit to pave it.

Mr. Vachon said yes if you are doing work in the right-of-way. You can't perform work on Town property without having a permit to perform work on Town property he said.

Mr. King said he would say Mr. Vachon was incorrect and if you pulled the last 10 driveways that were paved in Farmington there wasn't a driveway permit gotten for any of them.

Motion: (Squires, second Henry) to approve the application with the conditions of approval as listed by Kyle with the exception of the test pits because they are there on the plan;

Friendly Amendment: by Mr. Henry to not require the driveway permit for proposed Lot A.

Mr. Squires did not accept the amendment to his motion.

Discussion: Mr. Vachon asked if the Code Enforcement Officer sees driveway permits or if they are only seen by the DPW Director.

Mr. Pimental said it goes to the DPW Director and then back to the CEO.

Mr. King said typically the Road Agent approves the location, site distances and if a culvert is required and then it goes to Code Enforcement.

Mr. Vachon asked if the DPW Director or the CEO does the inspection.

Mr. King said from his experience the Public Works Dept. does the inspection.

Mr. Vachon asked if the CEO goes up there for a plumbing inspection and notices the driveway has been paved he would know if there is driveway permit in place to perform that work.

Mr. Pimental said he should because the permits are kept here in this office.

Mr. Vachon said the CEO should notice if there are any changes during the 4 inspections that he does and they don't need to require a driveway permit for that one property because he is going to notice if something changes on that driveway and a permit is needed.

Mr. Squires asked if he wanted to leave it to the last line of defense.

Mr. Pimental said by putting it in the Notice of Decision it lets the applicant know they have to do it. He then showed the board a map of Baxter Lake, Mr. Ellis' lot, the flood plain/wetland areas on his computer and noted that sometimes Google Maps will show a large wetland area as open water but it is not open water.

Mr. King said there are 2 major runoffs that run into that area-Mr. Ellis' pond and what's known as the Ten Rod Road swamp which is over 5 acres and runs through his property, over Ten Rod Road through this property, under Melody Lane and down across the Town line to the Ten Rod

farm.

Vote: The motion passed 3-0-1 (King abstained).

Public Hearing to Present and Discuss Proposed Zoning Amendment to the Farmington Zoning Ordinance. Proposed Amendments include: 1). To amend Section 1.14, Definitions to add and revise several definitions to provide additional clarity during zoning interpretations; 2). To amend the Table of Permitted Uses in Section 2.00 (C) to reduce restrictions on commercial and industrial uses in designated commercial areas as well as allow additional flexibility with said uses in other surrounding residential areas; 3). To amend Sections 2.07 (D) and 2.08 (E) to remove the Commercial/Industrial Business Overlay (CIBO) District to reduce confusion and existing barriers on permitted uses and promote additional commercial and industrial businesses in these areas; and 4). To amend Section 3.23 to provide additional clarity on the use of temporary and permanent storage units. In addition, this revision makes the existing permit process clearer.

Warrant Article #2: Amendment #1: Section 1.14 Definitions- Mr. Pimental said for the last 1-2 months the board has taken up several zoning amendments the first being to clean up some of the definitions which includes adding some definitions that were needed as well as clarifying some of the existing definitions.

Warrant Article #3: Amendment #2: Section 2.00 (C) Table of Permitted Uses-He said the second amendment is to revise the Table of Permitted Uses. He said they consolidated the commercial and industrial business to be treated the same for all commercial and industrial uses as well as providing more flexibility in allowing more uses in more zones with less restrictions.

He said the zoning amendments they are putting forward are less restrictive in conjunction with what the board has heard in terms of being more business friendly and what they are proposing is moving in that direction. We're removing some barriers for special exceptions for permitted uses and to allow more uses by right in certain areas and cleaning up some of the redundancies. He gave the example of restaurant and drive-thru, restaurant fully enclosed and restaurant take out which was changed to just restaurant. He said the definitions that were a little ambiguous have definitions associated with them and added electric vehicle charging stations to the table.

Warrant Article #4: Amendment #3: Sections 2.07 D and 2.08 E -Mr. Pimental said amendment #3 is to remove the **Commercial/Industrial Business Overlay District**. He said that ties to making them essentially the same and allowing those uses in both the **Commercial Business** and **Industrial Business** zones.

Warrant Article #5: Amendment #4: Section 3.23-He said the fourth amendment is regarding the use of temporary storage units and was put forth last year but the voters voted it down. He said it sounded like that had to do with it not being clear what the board was trying to do and we're going to try to make the language simpler when it goes on the ballot. He said the board recommended that he do the write-up for it and to try to simplify the language and then have

legal counsel look at it to make sure it's legal because they were trying to be more flexible and people didn't understand it.

Mr. King said not only were they trying to make it a permitted use for people to have them with minimum standards but also with some flexibility in temporary use and only with limited restrictions when it's permanent.

Mr. King opened the public hearing at 6:59 p.m. for questions or comments from the public. Resident Blanche Tanner said the Table of Permitted Uses says that electric vehicle charging stations would be permitted in all zones and asked if there are specific guidelines for installation and placement of the stations that people will have to follow.

Mr. Pimental said the charging stations have their own national standards and electrical code that they would have to follow. He said depending on what kind of charging it is-it could be direct current that can charge a vehicle in 45 minutes or the ones that charge a car in 8 hours which are more of what you see in commercial buildings that allow employees to charge their cars. You are not going to see them someplace where you would be there for an hour or less because there's no real benefit there he said.

Mr. King asked if they would require a permit process to make sure it gets done correctly. The Selectmen would have the final say whether to add that as a permit requirement he said.

Mr. Henry said he thought all electrical work requires a permit.

Mr. Vachon said not for verifying the location on the property and asked if he wanted 5 of them in somebody's front yard within the 50 ft. setback or back in the garage.

Mr. Pimental said they are allowing this as an accessory use under the commercial and industrial section in the Table of Permitted Uses and the intent is if there are commercial and industrial uses before the board as part of a site plan review and they wanted to have an electric vehicle charging station in their parking lot that we would allow it.

He said it would be an accessory use to the principle use and the principal use would have to be allowed in that zone and you can't have a standalone accessory use.

Mr. Henry said he brought this up at the last meeting because the only place that recharging stations were mentioned was along with the retail sale of gasoline and he didn't think that a recharging station would have the same impact as a gas station and didn't want them to have to have to meet those requirements. He said he could see restaurants and apartment building developers would add these things for their customers or their tenants and he wanted them to be able to have them and not have to meet gas station requirements.

Mr. Pimental said currently the zoning doesn't speak to this and if someone wanted to do it, it's likely they would need additional approval and might have to go to the ZBA because it would be determined an unspecified use. By calling it out we're making it clear they are allowed he said.

Ms. Tanner said under Laundry Services, 4th line down it says "All dry cleaning shall provide drop-off and pick services..." and should say "pick-up" and that "the" before "receive" should be changed to "that receive".

Ms. Tanner asked for an example of something that would be considered a specialized contractor.

Mr. Henry said a plumber or a home builder would be specialized contractors.

Mr. King said gutter and siding installers are specialized contractors.

Ms. Tanner asked if Motor Vehicle Junkyards (Amendment 2) are not permitted in town.

Mr. King said that is correct and the only ones they have are the existing junkyards that go through an annual review and re-approval.

Ms. Tanner asked what "Commercial uses not specified" in the Table of Permitted Uses refers to and asked for an example of that.

Mr. King said it means a use not on the list of uses and doesn't fit any of the categories already created because they couldn't always think of everything.

Mr. Pimental said an example of that would be a solar array.

Ms. Tanner asked if Part B Accessory Uses, outside storage of materials, equipment & products is talking about temporary or permanent storage units and if that could be a shed or a trailer.

Mr. Henry said the outside storage of materials could be lumber, fire wood, gravel or rocks, etc.

Mr. Pimental said it has to be with an allowed principal use and you can't just have outside storage.

Ms. Tanner then asked for the definition of abbreviations used for the zoning districts.

Mr. King said AR is agricultural residential, SR is suburban residential, RR is rural residential, UR is urban residential, VC is village center, CB is commercial business and IB is industrial business.

Ms. Tanner said (the public hearing notice) says the removal of CIBO District in Amendment #3 would reduce confusion and existing barriers on permitted uses and promote additional commercial and industrial businesses in these areas and asked for an example of a business and a place in town where if the overlay was gone the business would be allowed there.

Mr. King said the CIBO was added several years ago and the intent was to allow more mixed use businesses but in some of it they didn't speak to enough of the requirements of the overlay to make it understandable to Code Enforcement. We have removed the overlay and made the zones function as if they are the same. There is other area not in the overlay that would now be treated as if it was because now the zones are now zoned the same he said.

Mr. Henry said the CB and IB columns in the table should match now.

Ms. Tanner said in Amendment #4, 1(A), 4th line it mentions zoning setbacks and asked if the setbacks are the same in all zones.

Mr. King said no and there are front, side and rear setbacks and they are different in each zone and the smaller the zone the smaller the setbacks.

Mr. Henry said the Village Center has small setbacks.

Ms. Tanner read in 1B that temporary storage units don't need a building permit but must comply with the standards set in Section 3.23 (2) and asked what happens if they don't comply with those standards.

Mr. Pimental said if they are not in compliance the CEO would take certain measures that usually starts with a letter and a follow-up and if they do nothing the Town can impose a fine or take civil action. He said most of the time they try not to let it get that far and work with the landowner to address any compliance issues before it gets to that point.

Ms. Tanner said in Section 2 Permanent Storage Units (A) it says the applicant must demonstrate to the board a solution to mask its appearance through creative design, landscaping or other means and asked if that applies to temporary storage units as well.

Mr. Pimental said no and it's just for permanent storage units.

Mr. King said a temporary unit may be for construction or demolition.

Ms. Tanner asked if someone could have a temporary unit and for a year it would be visible to the whole world.

Mr. King said that is right.

Ms. Tanner said when somebody comes before the board one of the questions usually asked is how they are going to screen their rubbish container and the big storage containers sitting on someone's lawn or driveway are not screened. She asked what the difference is between having a trash dumpster or storage unit unscreened and if it is because it is on private property.

Mr. Henry said a business is private property too and they don't go through site plan review.

Mr. King said its part of their requirements for a new site or changing a site so if it doesn't come before the board for site plan or subdivision review they would impose the requirement for it to be screened. If it's a residential use they don't come before us to get a driveway permit or to put a dumpster on their property he said.

He said in this town you may see some that are larger than in other towns that might be visible from the road and the only way to make a change to that would a Town ordinance requiring it but he didn't know of any other towns requiring screening on trash dumpsters at residences.

Mr. Vachon said in Somersworth all dumpsters must be screened so it's not an eye sore and it's usually a picket fence or a chain link fence with the slats.

Mr. Squires asked if that is required in all zones in Somersworth.

Mr. Vachon said yes and asked if driving through a neighborhood if they would want to see a dumpster overflowing with trash.

Mr. Pimental read that a temporary storage unit is a transportable unit including but not limited to shipping containers, converted truck bodies, school buses, box trailers or other portable structures with or without wheels designed and used primarily for temporary storage of building materials, etc.

Ms. Tanner asked if people who have these box units that are visible from the street are grandfathered so they don't have to be screened.

Mr. King said their requirement for permanent storage units is to be out of the front area so depending on the size of the lot and the location of the home, it could be in a rural zone where the lot is 5 acres and the house sits 3 acres back with an existing storage trailer that now

becomes non-conforming if this is approved and asked what their stance would be on this. Mr. Pimental said this was an issue because the language was not clear enough in the zoning and they are trying to clarify it. He said the CEO said this isn't allowed now but they were having a hard time enforcing it. There is an existing process that's clearer for getting a permit and the owner is supposed to get a permit for it to be in compliance and then it is allowed he said. Mr. King said this was spurred by a legal opinion obtained by the Town that said they were never permitted or allowed so there is no grandfather status. He said the legal opinion said because there is no grandfathering if you had one for 30 years it doesn't count and the board said that wasn't right and they needed to come up with an ordinance that would allow somebody to get a permit with reasonable requirements. We have permissive zoning so if it is not permitted it's restricted so we have been trying to address it so it can be applied reasonably and this solidifies it he said.

Ms. Tanner said if this passes somebody who has storage units and they are visible from the road they need to do something to mask their appearance through creative design no matter how long they have been sitting there.

Mr. Pimental said if there is a trailer is on someone's front lawn that shouldn't be there but they want it to stay they have to come in and get a permit which will ensure that it is out of the setbacks and if it's going to be permanent they have to follow the regulations.

Mr. Henry said that is not what this says.

Ms. Tanner asked if that only applies to the residential districts or is for all districts.

Mr. King used his prior example of a lot with 5 acres of lawn and the house sits in the back and from the road you can see the storage container next to the house that is 500 ft. off the road and asked how they would be reasonable and consistent.

Mr. Henry said if it is 500 ft. off the road that is not the front portion of the lot and not readily visible.

Mr. King said this needs to be a clearer interpretation for the public.

Mr. Pimental said the front portion of the lot is almost right up against the roadway and if you are 500 ft. back he wouldn't say that is the front portion of the lot or that that is readily visible.

Mr. King said on a 100 acre lot 500 ft. is the front portion. He suggested they add some language that will be more consistent from generation to generation of staff interpretations.

Mr. Henry asked if they should define the distance for readily visible.

Mr. Pimental said they asked the CEO if there had been any problems in the last year and there have not been any and wondered if they should leave it the way it is and see how it shakes out.

Mr. Squires said at the last meeting he said this would be their last attempt to pass this so either they get it right now and it passes or they don't talk about it again.

Mr. King said this board is considering that but the board could change and they could pick it back up again. He said if it is clear to the taxpayers and they vote no then its no.

Mr. Pimental said if someone has a trailer now all they have to do is come forward and get a

permit whether this passes or not. That's the way we have been handling it he said.

Mr. Henry asked how they can get a permit for something that is not permitted.

Mr. King said based on the legal opinion that was furnished to the Town the staff is taking the approach as if this was in place but it's not in place so in a challenge it could go back to that legal opinion.

Mr. Pimental said the more important piece of this is the permitting piece on actually having some screening and they have no control over that right now. He said for a permanent storage unit this allows them to require they put some stuff up so they are protecting adjacent homeowners and the esthetics of the neighborhood.

Mr. King said Amendment #4, 2 (A) "not to be located on the front portion of the lot where it can be readily visible from the roadway in any residential or commercial zoning district" needs additional staff interpretation after this amendment passes.

Mr. Pimental said in the commercial zones they want them to be in the back part of the lot but if they can't be we give them the opportunity to have it in the front but they have to screen it. He said if they put it in the back part of the lot they don't have to screen it and this is trying to be as flexible as possible.

Mr. Vachon said it says permanent storage units must adhere to additional criteria and shall: (2B) "include appropriate fencing or screening around the unit". He said it doesn't say if it's out back they don't have to and you have to screen it no matter where it is.

Mr. King asked if it should say "where applicable" or "when not in the rear of the lot" at the end of 2(B).

Mr. Henry said you can't have a storage unit out front and screen it in a residential district but that would be allowed in a commercial district. He said 2(B) is unnecessary and can be stricken because it's not allowed in the front in a residential zone and you don't have to screen it in the back and they address it for commercial zones in 2(A).

Mr. Pimental asked what he would say to a neighbor that wants to have one in his backyard that was close by and if he would want them to have a screen or if he was only worried about the view from the road. The person living next to them is going to see it more often than someone driving by he said.

Mr. Squires said he is more concerned with the neighbor who has to look at it every day.

Mr. Henry asked how they would determine which ones need to be screened and which ones don't or if everything residential needs to be screened.

Ms. Tanner asked if there would be a second public hearing on the amendments.

Mr. King said yes.

Ms. Tanner said maybe somebody else will bring up the topic and if they have time to take a look at this. She then thanked the board for their time and left the meeting.

Mr. King asked if the board wanted to strike 2 (B).

Mr. Henry said he comfortable with striking 2(B) and added that it doesn't accomplish their

goals to apply this visual in all zones and to treat the AR and VC the same as far as storage units doesn't make sense. He said the expected esthetic in the VC and in the UR is different than the expected esthetic in the AR and is different in the CB and the IB.

Mr. King said there is more land area in the larger zones where it could be closer to the front of the property and not be well screened and not be offensive and he would put that in writing. He asked how they would put it into words that would get a reasonable interpretation of what is acceptable in the codes.

Mr. Pimental said they need to have the language ironed out tonight because they are going to vote on it to go to the second public hearing. He suggested if they want to strike 2(B) he would incorporate some of that language into 2(A) and add "fencing" to where it says "creative design, landscaping or other means" so it is captured there as an option.

He said he would not break this up and have different standards for each zone but would put it together to say that for residential and commercial zones it is encouraged that the unit be located in the back of the lot however if that is not feasible the applicant must demonstrate a solution.

Mr. Henry estimated the height of a shipping container is about 9 ft. and asked if you could put one in front of your house if you put a 10 ft. tall fence in front of it.

Mr. King said in some ways it may come down to a case by case basis depending on if it is in front of Code Enforcement or the Planning Board and they need to make that determination depending on the distance, the location and if the screening they are proposing is acceptable. Somebody has to make a judgment call he said.

Mr. Henry asked if he put his 10 ft. fence up how they could make a judgment call and say he can't do that. He then asked if we want 10 ft. fences in front of the houses in the Village Center.

Mr. Squires said that wouldn't be much different than a 10 ft. box that acts like a fence.

Mr. Henry said he thinks this all started because containers were popping up in compact urban developed areas.

Mr. Vachon said his concern was for the people who can't afford to do anything to get rid of their container and then the Town would go through the steps and put a lien on their house and then take the house they lived in for 80 years because they had a storage container there for 60 years.

Mr. Henry returned to temporary storage units 1(D) and read that it says upon request by the CEO an owner or user of a temporary storage unit shall provide proof to the CEO through documentation or inspection that the unit is not being used to store said materials. He then read "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall be issued but on probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized". I see some conflict between those 2 and if you show up at my place and say let me see what's in your storage unit you're not getting in he

said.

Mr. Vachon said and he would not get another permit.

Mr. Henry asked if he loses his Fourth Amendment rights because he has a storage unit and if he thought that would hold up in court. He said he didn't think having to prove his innocence is how it's supposed to work.

Mr. Vachon said if wants a storage container he will let the CEO look.

Mr. Pimental said that language was already there and hasn't changed and the only thing was added to it was the "or hazardous" waste piece (in 1C).

Mr. King asked if D should be part of C or change it to say "above said materials" so it references the materials listed in C. He said to Mr. Henry's concern he has to prove to the CEO that he is not storing hazardous waste.

Mr. Henry asked if he wanted him to keep reading the Constitution and about how the burden of proof is on the state and it requires warrants and things like that.

Mr. Vachon said an innocent man doesn't need a lawyer if you have nothing to hide and not doing anything illegal.

Mr. Pimental said being realistic in a town like Farmington with 1 CEO the reason he would ever want to look in someone's storage unit is if someone called to complain. He said he didn't think he has the capacity to be driving around looking to look inside random storage units unless there is a reason.

Mr. Squires said to let the legal counsel decide if they're violating the Constitution as that is what they do for us. We pay people to make sure we're not violating that stuff let them do their job he said.

Mr. Henry said he is not sure they're violating it by writing it but try and do that.

Mr. Pimental said legal counsel has reviewed all of these and that didn't come up but it probably won't until it gets challenged.

Mr. King said right now it is just a request and asked if there is a complaint or evidence requirement to ask for an inspection and he should get a search warrant. He said they should strike D and if the CEO has a concern and any evidence of hazardous waste they could get a search warrant. If someone is suspected of a crime like storing a stolen vehicle or hazardous waste they would get a search warrant he said.

Mr. Vachon said the problem with hazardous waste is the definition includes gasoline and asked if he wouldn't be able to put his jerry can in there next to his lawnmower. He asked how far they want to take this and oil based paint is a hazardous material and it has to be taken in on household hazardous waste day.

He said they could nit-pick everything in this but if they get into that you can't store anything in it. You can't use it to store solid or hazardous waste which could be any number of things, or construction or demolition debris and in my eyes C and D should be stricken he said.

Mr. Henry added that a storage container is enclosed and the materials would be more hidden

than in a dumpster. He said he agreed with striking C and D from this section and if they strike C, D is unnecessary.

Mr. Pimental said the definition of a temporary storage unit says the purpose is for the storage of building materials, household goods, personal property of any kind and other such materials for use on a limited basis and shall not include storage of hazardous or toxic materials.

Mr. King said it is already in the description and suggested they strike C and D.

Mr. Pimental recommended they keep the definition the way it is to allow for some coverage for hazardous and toxic materials.

Motion: (King, second Henry) to strike (C) and (D) under Warrant Article 5: Amendment #4: Section 3.23 Temporary Storage Units;

Discussion: Mr. Squires asked if they are confusing hazardous waste with hazardous materials and asked if they intended to throw away the items they mentioned (can of gas, paint, oil, etc.) before they used them.

Mr. Vachon said if you intend to throw it away it's a waste and you can only dispose of those things on the first Saturday in May so you have to store them until Household Hazardous Waste Day.

Mr. Squires said they should leave the amendment as it is.

Vote: The motion passed 3-1 (Squires opposed).

Mr. King said the description still includes shall not include the storage of hazardous or toxic materials.

Mr. Squires said that is worse because now he can't have gas in a can in there because it is a hazardous material. It's not a waste until I throw it away he said.

Mr. Henry said this is still prohibiting having a generator and a gas can in there.

Mr. King suggested adding language to say shall not include the storage of hazardous and toxic materials not normally used in the maintenance or construction of the property and not to exceed 55 gallons. So a guy can have 5 gallons of waste oil, 5 gallons of kerosene and some paint he said.

Mr. Pimental suggested taking the size out and leave it as not normally used in the maintenance or construction of property. He said #2 (A) will become "It shall be encouraged that any unit be located in the back portion of the lot however if that is not feasible the applicant must demonstrate to the Planning Board or the Code Enforcement Officer a solution to mask its appearance through creative design, fencing, landscaping or other means". That would strike (B) and part of the first half of (A) he said.

He said that "Not be located on the front portion of the lot where it can be readily visible from the roadway in any residential district. In commercial zoning districts" would be stricken from (A) and would begin with "It shall be encouraged..." as stated above. We're treating residential and commercial the same and encouraging them to all be in the back but if they can't they have to prove why they can't and they will have to come up with some way to justify it he said.

Mr. Squires asked if they need another motion to make this change.

Mr. King said they could make one more motion to approve all the changes they made.

Motion: (Squires, second King) to accept all changes in Warrant Article 5: Amendment #4: Section 3.23 passed 4-0.

Mr. Pimental said he also found a couple of typo's that he will correct. He asked the board a motion to send this to a second public hearing on Jan. 18 and he will post it tomorrow morning.

Motion: (King, second Henry) to move proposed zoning amendments forward to a public hearing on January 18 passed 4-0.

Any Other Business before the Board:

Photo for Annual Town Report- Consensus of the board was to wait until the next meeting so more members would be present.

Update on Former Fire Station Site Assessment- Mr. Pimental said he included the scope of work from the Nobis Group in the board's packets for review. He said the contract is set up (\$5,474) and they could read what a Phase 1 brown field environmental assessment would be. Mr. Henry asked if they were concerned there was hazardous material in the ground there or there was a grant available so we grabbed it.

Mr. Vachon said it is a commercial property so it needs a level 1 site assessment before it can be purchased and transferred.

Mr. King said if he was going to purchase this property and put up a building using commercial financing they would require a level 1 site assessment because there was construction and previous use there. He said they are loaning money on it and want to ensure that the responsibility for any waste is put on the prior owner not the new owner because the bank is financing the new owners. He added that it could be part of the negotiations between the buyer and seller as to who pays for the assessment.

Mr. Henry asked how long the site assessment would be good for.

Mr. King said it good until the site is re-developed or re-used.

Mr. Pimental said because it is a former fire station there is a potential issue with fire fighting foam. He said depending on what they find they may recommend a Phase 2 or it's a Phase 1 and that's it. It's good marketing that the site doesn't have any issues he said.

Mr. King said there may be issues from any other uses of the site before it was a fire station.

Mr. Henry asked why now and why did we wait if it was something we knew we had to do.

Mr. Vachon said it's because he's been bugging the Town Administrator about it and that property is just sitting there and if they can get it back on the tax rolls it would help the town.

Mr. Pimental said SRPC has also applied for another round of funding and Farmington would be on that list for Phase 2 funding if it's required and he will keep the board posted.

NH Bureau of Economic Affairs- Mr. Pimental said there is a statute that requires any Economic Revitalization Zone to submit that the designation of that zone is still valid. He said the former Collins-Aikman site on Davidson Road which is in an ERZ zone is up for renewal and the Town

Administrator asked him to do a write-up for the BEA to certify that zone for the next 5 years. Mr. King asked if the NH Custodial Trust is still in charge of that site.

Mr. Pimental said yes and the history of the site is interesting reading.

SRPC Presentation to BOS- Mr. Pimental said if the board would like to know more about the Nobis Group, any economic development and some potential transportation funding the SRPC is meeting with the Board of Selectmen on Jan. 24 at 6 p.m. He said SRPC Executive Director Jen Czysz, Economic Development Planner James Burdin and Transportation Planner Colin Lentz will meet with the Selectmen to discuss what the commission does, what services they provide and potential funding for things the Town wants to accomplish this year such as the sidewalks and downtown improvement plans.

Joint PB/BOS Meeting- Mr. Pimental reminded the board that the joint Board of Selectmen/Planning Board meeting will take place on Jan. 31 at 6 p.m. to discuss the formation of the Leadership Group for the implementation of the Master Plan.

Public Notice on Bylaws Revisions- He said the public notice was sent out that morning for the public hearing on the Planning Board Bylaws revisions to be held on Jan. 18.

Route 11 Property – Mr. Pimental said they received a copy of the letter from the state notifying the property owner on Rte. 11 about their compliance issues. He said the letter was sent to the owner on Dec. 28 putting the owner on notice and he has 20 days to respond. Mr. Henry asked what the alleged violation was.

Mr. Pimental said the alleged violations include impact to the wetlands and disturbance in the bank of a stream in excess of 100,000 sq. ft. without a permit or proper authorization from NH Dept. of Environmental Services. He said the 100,000 sq. ft. disturbance requires an Alteration of Terrain Permit as well as impacts to wetlands.

Mr. King said the 100,000 sq. ft. disturbance is a little less than 2.5 acres. He asked what the next steps are in the process.

Mr. Pimental said the DES has the authority to take enforcement action but he didn't know what that is. He said the letter from David Price of the Water Division was copied to Code Enforcement Officer and Conservation Commission but it doesn't say what the enforcement would be. He said the matter now just be between the property owner and the state and he did not know how often they will be notified and they will have to wait and see what happens.

Adjournment:

Motion: (Vachon, second Squires) to adjourn the meeting passed 4-0 at 8:18 p.m.

Respectively submitted

Kathleen Magoon, Recording Secretary



Bill Fisher, Acting Chairman