ITEM 1 - ROLL CALL

Present: Bill Hamilton - Chairman, Charles Rankie – Vice Chair, Ellen Lemire - Secretary, John Marshall, Cabot Trott, Rosanne Adams – Alternate, Jay Meyer – Alternate.

Also Present: Shelly Bishop - CEO, Jeff Brubaker – Planner, Maggie Catanese – Recording Secretary.

ITEM 2 –PUBLIC COMMENT PERIOD

There was no public input.

ITEM 3 – PUBLIC HEARINGS

Mr. Hamilton took a moment to review the rules and etiquette of holding this public meeting through the online Zoom platform.

Mr. Hamilton stated the first request is from ENI 114 HLD HWY LLC, for property located at 114 Harold Dow Highway, Tax Map 23, Lot 11, Commercial/Industrial Zone, for a Variance from dimensional standards requesting a 73.5-foot reduction in the rear setback where 100 feet is required, in order to construct a "pole barn."

The voting members tonight will be the regular members of the board. We have two alternate members and five regular members.

None of the five voting members of the board had a conflict of interest with the above-mentioned Variance request.

Mr. Hamilton provided a brief summary of how this meeting will be conducted. The voting members have been determined. The jurisdiction is from the Eliot Code; Section 45.49, giving the authority to review variances. The issues of standing and timeliness are the next two issues to be dealt with. Timeliness meaning if it were an appeal of a decision by either the Planning Board or the Code Enforcement Officer, there would be a 30-day time limit. In this case, since it is a request to the Board of Appeals for a variance, there is not a time limit. Regarding standing, the standing is verified by a Deed of Record.

Sandra Guay, attorney for ENI, verified standing. A letter was also received that acknowledged that ENI is represented by an attorney and engineer.

7:11 PM Public Hearing opened.

The appellate, Ms. Guay, began testimony. She first ensured that all members had the application included in their meeting packets. This application is for a proposed 40 x 72-foot pole barn. It is located over an existing gravel parking area towards the rear of the

ENI property. Property is located at 114 Harold Dow Highway in the Commercial/Industrial District; the Jenkins Fuel site. There are currently fuel delivery vehicles parked along the back on this gravel surface. The application seeks a 73.5-foot reduction in setback from the rear property line. The request is for the installation of a fully open-sided pole barn used to cover the fuel delivery vehicles to allow for mandatory safety inspections of the vehicles that are required in all weather conditions. There is a letter included in the packet from ENI Safety Director, Tab 5, explaining this request. There is also an illustration of what this pole barn would look like, Tab 7. The structure would have a flat roof with poles holding it up. There are no sides to it, which is why it is being classified as a pole barn. This allows the drivers to get up on the vehicles, walk around it, inspect the vehicles safely, which is required by DOT. Also, with this flat roof (Tab 2, aerial photograph) this side is surrounded by trees, especially in the rear, which is why they are requesting a reduction in setback. It is heavily treed between there and the abutting property in the back. The proposed pole barn is reduced to the smallest size structure that would abide this safety measure. ENI looked at the property to determine whether it was possible to locate this property somewhere else. They concluded that the sides of the structure between existing building and sides of structure there was only 30 feet between that structure and the pole barn structure and the existing structure, which is not enough to safely maneuver the vehicles around. That left the rear side, which is the only safe place to do this. It will allow for the vehicles to move around the site the way they need to, especially in the winter months. Written justification was provided for the variances for the four criteria. #1: DOT currently requires vehicles to be inspected daily. This means walking around the vehicles, lifting, and opening hatches, climbing on top of the vehicles. This has to be done in all of the conditions, rain, sleet, snow, shine. Meanwhile, falls from snow covered vehicles each year had led to significant injury for the drivers and a lot of cost. To successfully operate and establish fuel delivery service, safety for the drivers, these mandated inspections have been provided and a pole barn is the most minimal form of protection available to provide this kind of safety. #2: if looking at Tab 2, ENI property is the smallest Commercial parcel in the C/I District. The existing building has been in existence for a number of years in its present location, with the packed gravel in the rear, which has been used for many years for parking. #3: the property is located in the C/I District, positioned in rear with wide and dense tree growth. An open structure providing roof coverage for commercial parked vehicles located to the rear of existing building, located in the C/I District, would not alter the essential character of the location. #4: the need for adding the safety improvements changes over time. Due to the size of the structure/building, this business has been around for many years. But, because of the size of the parcel, this project is unable to meet the setbacks in order to make the necessary safety improvements. Neither the appellant nor prior owner created a change to create this hardship. To summarize, the variance request is to allow for safety improvements. ENI is not asking to ask for an enclosed structure or enclosed barn to work in. A pole barn is the most minimally-sized, minimal solution available to them to provide these safety measures for their drivers. It is located in an area that is already surfaced with hard-packed gravel where vehicles are already parked. There will not be negative impacts. If you look at site plan, Tab 6, ENI is proposing to loam and seed a section of parking that is currently gravel. This will reduce impervious surface on-site.

They are hopeful the Board will grant this request and are available to answer any question the Board may have.

Ms. Lemire asked if it is mandated at the State level?

Ms. Guay deferred that question to Peter Kropp (Director of Supply, Training. Energy North).

Mr. Kropp stated that he can't say if at the State level that it is required. The requirements are from the company, where vehicles must be inspected on a daily basis and cannot drive with snow on top of the vehicles. Therefore, all snow must be removed from the top of trucks. It puts drivers in a dangerous situation. Early in the morning, it's usually dark, and drivers are attempting to shovel trucks.

Ms. Lemire asked if this was a DVIR? Driver vehicle inspection report.

Mr. Kropp would like to refer to the Transportation Manager on that.

Ms. Lemire questioned whether the height of the structure is as high or higher than the existing structure?

Chris Tymula (project manager): the new structure will be comparable. The existing building, the peak is 22ft 5in. The pole barn would be no taller than 18-20ft.

Mr. Trott referenced Section 11, vehicle inspection from the State of Maine, daily truck checks. He understands the safety aspect, but to say it is required that the driver has to climb on top of the truck, it is not in this section of that part of the CDL licensing requirements, in the daily truck checks. He understands the safety of it, but to answer Ms. Lemire's question, it is not part of the actual requirements of their daily truck checks to climb up and look at hatches, etc. That is listed in your handbook.

Ms. Guay stated that this information came from the Safety Director and it was unclear whether it's stated this was federal or a State requirement. This misinformation was not intentional.

Mr. Trott stated that CDL drivers are federally regulated license.

Mr. Kropp highlighted that this was a safety issue, stating that in inclement weather, the concern is drivers being on top of their trucks because they do need to get up there and clear the tops of their trucks.

Ms. Lemire asked if the vehicles in the pole barn (if built) would be parked under it at the end of the day.

Mr. Kropp said yes.

Mr. Rankie objects to this being called a pole barn. He feels this is a free standing structure and questions what will keep the applicant from closing the sides in the future.

Ms. Guay stated that what prevents that is the approval and the way the approval is written, and it is enforced. If something is done that is not included in the variance that is approved, that enforcement issue would be addressed. They are not going to do that, but she understands his concern.

Mr. Rankie also questioned what the existing lot coverage is and what the allowable coverage for the lot is.

Mr. Kropp stated that the existing lot coverage based on the structures existing is 8.7% lot coverage and with the addition of the pole barn would be at 15%. The maximum allowed is 50%. The existing building is 3,900 sq ft. The proposed building is approx. 2,900 sq ft. In total it is 6,790 sq ft, which equates to a lot coverage of 15%. 50% is allowed.

Mr. Rankie asked if the Board is able to grant this much, whether a set back would allow for this.

Mr. Hamilton stated this was not the time to ask that question.

Mr. Trott recalls that there are two bays located on existing lot that Jenkins performs the same operations.

Mr. Kropp stated those bays are used for mechanical. One bay has storage for HVAC service company. The amount of trucks, they are unable to fit in bays. To have a snow-covered truck, then move it indoors, those operations could not be performed. There are currently 4 trucks on the property. It would not be feasible to use existing bays.

Mr. Hamilton asked when the property was purchased.

Mr. Kropp stated it was purchased January 2019.

Mr. Hamilton asked when the safety inspection became federally required. This year, last year, 5 years ago?

Mr. Kropp needs to refer this question to the Safety Director and can reply with an answer.

Mr. Hamilton asked if it was recent.

Mr. Kropp stated these requirements have been in place for some time. Requesting this variance to enhance the business they have. This is a new business and they are trying to make improvements and make is safer for drivers. Drivers are doing daily inspections as they are supposed to be doing. They are trying to make it safer. It is easier to do this

inside, especially during inclement weather. He wants drivers to feel safe and comfortable.

Mr. Trott wanted confirmation that these types of inspections are also performed at their other locations.

Mr. Kropp stated yes. However, the other locations have indoor parking, and drivers are not exposed to the elements. This is something they are trying to bring to the Jenkins location.

Ms. Lemire asked if the proposed structure could be moved closer to the existing structure than has been requested?

Mr. Tymula stated that if it could be moved, it would only be by a few feet. The turning radius and accessibility is confined. Once many vehicles are in there, it becomes a lot more difficult. Ideally, 50 feet is the best solution. They might be able to reduce it down to 45 feet.

Mr. Rankie asked what the proposed distance from the new free-standing structure to the existing structure is.

Mr. Tymula said it is 50 feet from the front of the new structure to the rear of the existing structure.

Mr. Rankie asked if they are trying to avoid backing up.

Mr. Tymula said no. This is a 40-ft by 72-ft wide structure. If you have one vehicle in there, and another is trying to enter, or leave the pole barn, by reducing that 50ft by any substantial amount, it makes it difficult to physically make that turning movement in there. They did look at another option of locating the new structure, parallel to the left side of the existing structure, that only provided 30 ft of clearance. This was not enough room to safely get more than one vehicle in at a time.

Mr. Hamilton asked if there were any abutters that would like to respond to any of the testimony that has been submitted tonight.

There were no abutter responses.

Mr. Hamilton asked if there were any interested parties that would like to testify.

There were no interested parties that responded.

Mr. Hamilton clarified that this is a de novo review of the information being presented. Meaning this is fresh, there is no record to review as would be in a normal administrative review. This is a variance request.

Ms. Guay provided final words. She has a question about something that was stated earlier. This was the question regarding the Boards' ability to approve a 50% reduction. She does not see this in the ordinance under the Board of Appeals. She would like to discuss this while she is present.

Mr. Hamilton asked her to rephrase this question.

Ms. Guay stated it was Mr. Rankie that brought up a question and the Chairman stated this was not the time to discuss and it would be discussed during the Board's discussion. It was a comment about approving more than a 50% reduction. It seems to infer it was something in the ordinance that would prevent that. Ms. Guay has not located this in the ordinance. She would appreciate it if the Board would state which part of the ordinance this is stated.

Mr. Hamilton asked if Mr. Rankie could ask his question again.

Mr. Rankie asked if the Board could approve more than a 50% reduction. He asked if this was a standard lot.

Mr. Hamilton stated this is a non-conforming lot of record and would like to look into this further. This would fall under non-conforming lots of record.

Mr. Rankie stated that the Code Enforcement Officer can grant 25% and the Board can grant 50%. He believes the authority is 50%, which equates to 50 ft.

Mr. Hamilton read Section 45-194 C, Non-Conforming Lots of Record. "All setback, yard, residential density, lot coverage, height, use, and other basic requirements shall apply to nonconforming lots. In cases where it is not possible to comply with these and other zoning requirements, the following rules shall apply: 1) On lots smaller than 10,000 square feet, permitted lot coverage shall be at least 2,000 square feet or a maximum of 25 percent, whichever is greater in applicable cases. 2) The code enforcement officer is authorized to permit a 25 percent reduction in frontage, setback, and yard requirements only. Any other deviation in frontage, setback or yard requirements to a maximum 50 percent reduction may be permitted as a waiver after public hearing by the board of appeals. Any further reduction in frontage, setback or yard requirements shall be considered a variance. This section shall not apply to setbacks from the high water mark which is provided in section 45-195(c). In the Shoreland Zone, the code enforcement officer shall not authorize reductions in frontage, setback or yard requirements. Such reduction can only be granted through the board of appeals."

Mr. Hamilton said to answer the question, the Board may authorize more than 50% as a variance. They are in the process of changing that section of the ordinance to make it conform with State statutes because it mentions the fact that Code Enforcement Officer has the ability to grant waivers. He does not feel this affects the ability for the Board to approve a variance beyond 50%. He did not see that in the reading.

Ms. Guay stated that this answers her question.

Mr. Hamilton would like to hear from the two alternate members before he closes the hearing.

Ms. Adams says this seems as though this is one of the smallest lots in the commercial district. Looking at it, she cannot see that it could be put anywhere else on the property. She has no questions for the appellant.

Mr. Meyer is curious about the barn structure. He asked how the trucks enter this building, if they are backed in or if they come from the back of building through the front. He would like them to explain that. The site map on the packet is very small, so he is having a hard time figuring it out on his own.

Mr. Tymula stated that the pole barn is an open structure, so vehicles would be accessing through the front. They would egress from the front. They would enter from the front whether it was in forward or reverse and would exit the same way they came in.

Mr. Meyer asked if they needed to expand the existing parking lot to construct the facility.

Mr. Tymula said no. The entire parcel is either covered by existing building and pavement along the front and sides, the rest is hard-packed gravel. They are putting this structure within the hard-packed gravel area. They are removing a substantial portion of the gravel between the building and surrounding property. That would be loamed and seeded with a concentration of a wild seed mix to reestablish the natural vegetation in the area. There would be no new pavement or gravel.

Mr. Meyer asked if they anticipated having to truck any fill or gravel into the site.

Mr. Tymula said correct.

Mr. Meyer asked if the wetlands behind the building would be affected.

Mr. Tymula said they would perform geotactical explorations to determine what the ground conditions are below the hard-packed gravel. If there were additional fill that would be needed to bring in, they would remove existing material and bring in new material to be brought back to existing grade.

Ms. Lemire referenced the site plan and asked if they are trucking into the side of the existing building and between the two structures and pull into or under the pole barn.

Mr. Tymula said that is correct.

Ms. Lemire can understand why it would be hard to get more than one vehicle in there at a time. She asked if they could turn the structure.

Mr. Tymula said they looked at multiple options. They said the best accessibility point of view would be if the front of it is open-facing the highway. It is going to provide the best straight-in shot for the trucks. This seemed to make the most sense from an accessibility point of view.

Mr. Rankie asked what the side setback requirement is and what is the side setback of the standing structure on both sides.

Mr. Tymula said the required side setback is 20 ft and they are at 36.7 ft at its closest from the left-hand side. From the right it is probably close to 75+ ft.

Mr. Hamilton said they are within the side setback standards.

The public hearing closed at 7:46 PM.

Mr. Hamilton would like to begin deliberation. He reads what the Board is charged to do about a variance. Under State Law Title 30A, paragraph 43.53 section 4, there are four standards that must be satisfied to grant an undue hardship variance. A) the land in question cannot yield a reasonable return unless the variance is granted. B) The need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood. C) The granting of the variance will not alter the essential character of the locality. D) The hardship is not the result of action taken by the appellant or a prior owner. He stated that the applicant has stated these four issues.

Mr. Hamilton said the hardest thing when granting a variance is the first standard. A letter was received in 2009, the town attorney saying simply, and all four answers need to be answered affirmatively. The Board has to approve all four criteria. Under the reasonable return, the court has defined reasonable return as the practical loss of all beneficial use of the land without regard to maximum possible return. Increased value of the land of the variance is irrelevant. It is whether or not the land has any benefit/beneficial use without the requested variance. Measuring beneficial use requires accessing any permitted use, not just what the property owner seeks. The case (1997) of Brooks vs. Cumberland Farms was referenced.

Mr. Hamilton stated that a variance request should typically be the exception and not the rule.

Mr. Rankie begins the discussion. He does not see a hardship and asked if the Board could go through the four items and discuss.

Mr. Hamilton said yes.

Mr. Rankie said his discussion points would be that he doesn't know of any regulation that states a driver must get on top of vehicle to clean. He understands where the applicant is coming from because he has vehicles that he needs to clean off in the winter.

Getting pulled over by State Police and injury/fatality caused by not cleaning off your car is a serious issue and commendable that they want to do something about it, however, does not see this as a hardship.

Mr. Trott referenced the first standard. He feels the safety standards the applicant stated have been in place prior to coming to the Jenkins Oil location and they can yield a reasonable return without the addition of this building.

Ms. Lemire agreed with Mr. Rankie and Mr. Trott on the reasonable return. They can get a reasonable return for this property without a variance.

Mr. Hamilton feels the same way. It is an issue with the land, not the requirements. He believes this can be operated without this large structure being added. He then asked if there was discussion for the other three standards.

Mr. Marshall stated that the issue is not the inspections and that it is the ice/snow that falls on the trucks and the liability that that is put on truckers to remove such things and the liability you face if ice falls off your vehicle. That is the bigger issue to him than the inspections (daily). These can be done one way or the other. If these vehicles are parked inside, we have made the community much safer and doesn't feel that is unreasonable.

Mr. Hamilton would like to go through the four criteria starting with Mr. Rankie.

Mr. Rankie says the land can yield a reasonable return as it is and votes that it does not meet that requirement. With respect to the second standard, he doesn't believe they need the 70 ft. He doesn't agree. He does not agree with third standard. He agrees with the fourth criterion and votes Yes.

Ms. Lemire asks if it is appropriate for her to request a question about the monetary impact for the liability for this particular company in this location.

Mr. Hamilton asks how that relates to any of the criteria.

Ms. Lemire said if the revenue they bring in is significant enough, this could harm their reasonable return.

Mr. Hamilton said that is true, but the requirements are if they have any sort of reasonable return on the property than the variance shouldn't be granted.

Mr. Lemire said no on the first standard and yes for the second standard. She agrees with the third and fourth standard.

Mr. Trott does not agree with the first standard, but agrees with the second, third and fourth.

Mr. Marshall said that since this is a small lot, the applicant needs flexibility to make it reasonable. He doesn't feel it is unreasonable for them to provide a facility that would make the trucks safer every day on the road by keeping the ice and snow off. Mr. Marshall agrees on all four items.

Mr. Hamilton feels the land in question can provide a reasonable return, his vote is no. The second, third and fourth items, he votes yes.

Mr. Hamilton reviewed the votes. Item #1, there were 4 no and 1 yes. That question has been defeated. #2, there were 4 yes and 1 no. That carries and will be approved. #3, there were 5 yes and will be approved. #4, there were 5 yes. The only problem the Board had was with #1. It is required by the statute that all four must be satisfied.

Mr. Rankie would like to explain why he said no. The reason he said no is because trucks have reverse. There are two bays in the existing building now. The 50 ft between exiting building for convenience for the trucks to get in those two bays, his no is if 50 ft between it were next to the building, he wouldn't be a "no" on that. He felt the need to explain that.

Mr. Rankie moved, second by Mr. Trott, that the Board of Appeals deny the variance request.

No further discussion.

Voting members: Bill Hamilton, Charles Rankie, Ellen Lemire, John Marshall, Cabot Trott.

Roll Call Vote:

Mr. Hamilton - Yes

Mr. Rankie - Yes

Ms. Lemire - Yes

Mr. Marshall - No

Mr. Trott - Yes

The vote is 4-1 in the affirmative, so the motion carries. The application is denied. Within seven days, a notice of decision will be issued. The applicant has 45 days to appeal to Superior Court.

The Board recessed from 8:06 PM until 8:11 PM.

The next item on the agenda is a request from Terrie Harman and Terrie Harman Revocable Trust, 6 Oak Street, Exeter NH for an administrative appeal of decision regarding a property located at 21 Foxbrush Drive, Tax Map 50, Lot 19 in the Shoreland Zone, Suburban District.

Mr. Hamilton has read the material and asked if there were any conflicts of interest with any of the five Board members.

Mr. Rankie stated that Ms. Harman worked for him on a legal matter in the early 2000s. He feels no conflict, however, moves Ms. Lemire to stepdown because of her involvement with the Planning Board. In the packet provided, there is a courtesy copy that went to Ms. Lemire.

Ms. Lemire asked Mr. Rankie to clarify courtesy.

Mr. Rankie stated that Ms. Lemire sat through the whole process that is being appealed. She has knowledge about this that probably isn't advisable to participate. He isn't questioning her integrity or ability, but because she sat through multiple meetings with the Planning Board during this, it would be a good idea if she step down.

Ms. Lemire disagrees with Mr. Rankie's reasoning. She agrees that there is work in the packet that was provided by her through her work to the Planning Board.

Mr. Trott would like to understand past practices.

Mr. Hamilton states he received an opinion from the Town Attorney and the Maine Municipal Association that advises that any Board member that has information that the rest of the Board doesn't have, whether it be in the case of a Recording Secretary to the Planning Board that particularly involves a case that is being heard in front of the Board of Appeals that it is advised strongly that the person be recused. We have had this situation in the past and feels it still applies. He asked how Ms. Lemire feels.

Ms. Lemire stated her position is the same as it has always been, and she will step down if the Board says so.

Mr. Marshall stated he has no problem with her situation.

Mr. Trott said it sounds like it fits, having knowledge that others do not. If the attorney says it, then we need to abide by that.

Mr. Hamilton said if this is challenged in court that this is a conflict of interest, it doesn't sit well with the town. He has been advised it shouldn't happen. He would like to have a vote.

Mr. Rankie moved, second by Mr. Trott, to recuse Ms. Lemire from this appeal.

Voting members: Bill Hamilton, Charles Rankie, John Marshall, Cabot Trott, and Rosanne Adams (appointed to replace Ms. Lemire for the second appeal).

Roll Call:

Mr. Hamilton: yes.

Mr. Rankie: yes.

Mr. Marshall: no.

Mr. Trott: yes.

The vote was 3-1 in favor of recusing Ms. Lemire.

Mr. Hamilton appointed alternate member Rosanne Adams as a voting member.

The public hearing opened at 8:24 PM.

Mr. Hamilton stated that the appellate is an abutter and under guidelines this qualifies as standing. Timeliness, the Planning Board decision was 7/21/2020. The appellant application was received 8/20/2020 which was within 30-day time limit under section 45-50. He feels that timeliness has been met as well. Standing and timeliness has been met. This is an appellant review. Shoreland Zone. Usually completed by Code Enforcement Officer, but because this was a Planning Board decision in the Shoreline Zone, it is an appellate review. He referenced Section 44-47 C, "When the board of appeals hears a decision of the planning board, it shall hold an appellate hearing, and may reverse the decision of the planning board only upon finding that the decision was contrary to specific provisions of the ordinance or contrary to the facts presented to the planning board. The board of appeals may only review the record of the proceedings before the planning board. The board of appeals shall not receive or consider any evidence which was not presented to the planning board, but the board of appeals may receive and consider written or oral arguments. If the board of appeals determines that the record of the planning board proceedings are inadequate, the board of appeals may remand the matter to the planning board for additional fact finding."

Terrie Harman, appellant, owner of 26 Foxbrush, abutter to 21 Foxbrush. Mailing address is 6 Oak Street, Exeter NH. Husband Tom McCarron also joined. Engineer Warren Gerow also joined through Zoom. The appellants owned 21 Foxbrush in 1993 after the individual who owned it went to jail. The Government seized the property and they bought it from the Government. Mr. Tewell submitted the application in mid-May of 2020. The town did not send certified notice of that application to 26 Foxbrush. They (the appellants) didn't receive any certified mail of the application. Ms. Harman is not now an owner, part owner, tenants, etc. of 21 Foxbrush. A neighbor, Mr. Dan Smith, walked down her driveway and delivered a paper to her about July 5, 2020. This paper said there was going to be a hearing on 7/7/2020 regarding 21 Foxbrush. She had no idea

what this was. That was the first notice she received (7/5/2020) from the neighbor. She did attend the hearing by Zoom on 7/7/2020. That is when she learned about the application. At the 7/7/2020 hearing she learned about a site walk that was announced by the Planning Board to be happening on 7/15/2020. On 7/13/2020, Ms. Harman did receive a certified mail regarding the site walk. Ms. Harman attended the site walk on 7/15/2020 with other people, but the Planning Board did not attend. The Planning Board then scheduled another site walk for 7/21/2020. Ms. Harman did attend. Ms. Harman pointed out then what she owned at 26 Foxbrush. She also stated that when she owned 21 Foxbrush there was not a patio, steps, or brickwork. It was simply a fishing shack. Ms. Harman attended the hearing via Zoom on 7/21/2020. She did not get certified notice of the application. She feels the Planning Board decision has to be invalidated due to failure of notice. The Planning Board has not hired a surveyor to stake the centerline of the right-of-way for the 7/15 or 7/21 site walk. The application, she feels, is deficient because it doesn't comply with town regulations. The Planning Board approved a 20-ft setback for the front. The Town Planner admits the 20-ft setback for the front is more non-conforming regarding 21 Foxbrush. In the package is the copy of an email that discusses that. Ms. Harman is aware that Board of Appeals will look at the Planning Board materials. This 20-ft setback for the front, she received a copy of the email referencing a conversation with Ryan McCarthy and the CEO and Mr. Albright and the Town Attorney discussing this 20-ft setback. In this letter it talks about the 20-ft setback being more nonconforming regarding 21 Foxbrush. The CEO indicated that she had reviewed the application when filed. She noticed a deficient/irregularity of the 20-ft, not 30-ft, setback. As a result, she told Ms. Harman that she decided to refer the matter to Appeals at that time. She then met with Dave Albright (Planner) and was shown a document in the Eliot file that stated a 20-ft setback was okay. She said that because she had seen this 20-ft setback document that she relied on that. 8/13/2020 is when Ms. Harman learned of that. She then asked at the Town Office for a copy of that 20-ft setback letter and the CEO could not find it. That prompted a letter from Ms. Harman to the CEO that she would like to see that document that the CEO relied on and that she didn't refer to the Appeals regarding the 20-ft setback. So far, she has not received that document. With respect to the footprint, in 1989 the building was 669 sq. ft. Some time prior to 1993, the person who went to jail added a front deck of 345 sq. ft. 345 is 51.6% of 669. The building is now 51.6% expanded beyond what it was in 1989. In 1993, when Ms. Harman purchased 21 Foxbrush, she looked at the appraisal that the Government had commissioned and saw the appraisal showing an illegal deck on the waterside and the front existing deck on the front. The town officials made the Government remove the riverside illegal deck. The town allowed the front existing 345 sq.-ft.-deck to remain. Tom McCarron spoke with a former CEO. Prior to 1993, Tom met with former CEO and discussed the nonconforming and unpermitted riverside deck at 21 Foxbrush. They also discussed the 345-sq.-ft. front existing deck. In 1995, the Harmans sold 21 Foxbrush to Sam Howell. In 1995, Mr. Howell added a full basement. Mr. Howell constructed a patio and stairs on the riverside in 1995. The town issued a building permit allowing a foundation under the shack but also permitted removing the deck (porch) then permitted adding a deck. There is a right-of-way that provides 10 ft over the 600-ft driveway. The existing driveway for 26 Foxbrush is wider that 10 ft. The finding of facts from the 8/4/2020 Planning Board decision. #8 says the Planning Board

reviewed the application at the meetings 7/7/2020, 7/21/2020. #9 says in accordance with Section 33-130 a public hearing was advertised in the Portsmouth Harold, Seacoast Online 7/10/2020 and held on 7/21/2020 that abutting landowners were notified via certified mail. 7/10/2020 is 3 days after 7/7/2020 and the problem is 26 Foxbrush did not receive certified mail of the application, as required. #12 says the Planning Board held a site walk on 7/15 with a follow-up site walk on 7/21/2020. On 7/15/2020 Ms. Harman was there, but no Planning Board member was there. #18 says the existing front deck, which has no recorded town permit, is not used in the expansion calculations. That is not accurate. The existing front deck has a recorded permit, 95-91. #19 the Planning Board determined that the existing steps and patio would be included in the expansion calculations. Ms. Harman doesn't feel this is the legal standard that should be used. She stated these steps didn't exist in 1993, but added in 1995. #20 says that existing structures are allowed to expand by 30% under section 34-32 C. Letter H says that existing deck structure was not used as part of expansion calculation. The existing front deck was permitted between 1989 and 1993 by the prior owner that went to jail. If Ms. Harman hadn't spoken with neighbor on 7/5/2020, she may have never known of this project. She is asking that the Appeals Board invalidate the Planning Board's decision for failure of notice. The 20-ft front is supposed to be 30 ft. It is not rational to have a building with a back and three sides. By allowing front to be 20 ft rather than 30 ft, the Planning Board granted a variance. That is not the Planning Board's job. Only the Board of Appeals is allowed to grant variances. The lot is landlocked except for the waterfront. The lot is accessed by a right-of-way and must have frontage on the Right of Way. There is no hardship for changing that 30-ft setback. That building can be relocated within the building area that is 25 ft from the river, 20 ft from the sides and 30 ft from the front.

Mr. Harman stated the setback. When you think through the property it is like a pendant on a string. At the end of this 600-ft string (which is the right-of-way) there is this .23-acre parcel, therefore space is limited. Parking is noticeably short. That is significant because if 2-3 cars parking there, there is a safety issue. You cannot come in or out of that lot without backing up the driveway. This creates a hardship on 26 Foxbrush spilling into the Right of Way, which is only 10 ft wide. You cannot turn a car around in there. Truly is a safety issue, especially with snow and ice. It is a small lot. They are not opposed to a building there; it just has to be in scale with what is a realistic and practical.

Warren Gerow (associate design partner, engineer) stated that the appellants hired him in this process. He looked at the setback on the East side on front set back. He also looked at the expansion of the property. Based on information he was provided, primarily site plans, it does look like the presence of a front lot line was essentially ignored. The plan had been approved based on having three sides of the property and there is no front line. Mr. Gerow provided the definition of a front lot line. This property does not abut a public roadway, but it does plot on a Right of Way for access. That is the East side. In his opinion, that East side would be considered the front lot line. The difference being the setbacks for a front lot line is 30 ft and a side lot lines are 20 ft. The designer, Tidewater, received guidance from the town that allows wiggle room and there's different ways to look at this and to go ahead and consider that as a sideline. Mr. Gerow feels this doesn't meet the definition. In this case, Mr. Gerow feels the front lot line is

the East side that bounds on the Right of Way. Using the 20-ft setback that is giving the project more space and room for the dwelling. The other piece is the expansion. Over the years, this property in 1989 the footprint was 669 sq ft. That is indicated on the Tidewater plan. The State expansion rule is 30% or up to 1000 sq ft. The application proposes expanding it to 1085 sq ft. This is 85 sq ft over State-allowed expansion.

Ms. Harman stated that as it sits it can be expanded. It will be torn down and replaced, limiting it to 1989 x 30%, which is 850 sq ft.

Mr. Hamilton asked if there were questions from the Board to the appellant.

Ms. Adams asked the appellant if she received a certified letter 7/15 & 7/21 Planning Board regarding the site walk.

Ms. Harman said no.

Ms. Adams asked if she received any notice of the site walk.

Ms. Harman said she received no notice of the 7/15 or 7/21 site walk. She stated she was told.

Ms. Adams doesn't see in the packet that the Board Members received the plans from the owners of the property. She cannot tell which lot she should be looking at. Without the plan or proposed building, she cannot grasp, other than what Ms. Harman said about the Right of Way, she can't picture this lot.

Ms. Harman provided clarification. Lot is to the far left on diagram.

Ms. Adams said she understands now.

Mr. Trott questioned if Ms. Harman received a certified letter. If it was for the walk, or prior to the meeting.

Ms. Harman said she received a certified mailing telling them of the 7/15 site walk. That was the only certified mailing they received.

Mr. Trott asked if the new building is going where the old one currently is. Same foundation?

Ms. Harman, while referring to the map, stated that they are going to tear it down and it will be built 25 ft from the river, to the right, only 20 ft from the front line.

Mr. Trott confirmed it is going easterly.

Ms. Harman said yes.

Mr. Trott asked if this permit was included in the packet of materials.

Ms. Harman stated it is 3-4 pages after what Mr. Trott was just talking about. 9/21/95 signed document that says "application is approved."

Mr. Hamilton stated that we do not have an application for a building permit from the current owner nor do they have a site plan or any sketches that indicate where the building is going. The diagram provided was from 1995.

Mr. Trott clarified we are talking about the expansion going more than 30%. There isn't anything in the packet materials to show that.

Mr. Hamilton said correct.

Mr. Rankie asked if there was going to be a presenter for the 4-page rebuttal that the Planning Board provided. Is there someone to present? Has the appellant received this?

Mr. Hamilton asked if the appellant has received this.

Ms. Harman said yes.

Mr. Hamilton asked if anyone was going to explain this tonight.

Mr. Jeff Brubaker (Town of Eliot Planner) stated that he was happy to answer questions regarding the written argument.

Mr. Rankie has no questions for the appellant.

Mr. Marshall has a question for Mr. Hamilton. There isn't a lot of information on the proposed project. It is difficult to make an informed decision on what the proposed project is. The Board does not have the permit or any further documents.

Mr. Hamilton stated that what the Board does have is the Notice of Decision that the Planning Board provided. There is also the Planning Board's 4-page rebuttal explanation to the appellant's appeal. He agrees that they don't have anything else.

Mr. Marshall stated the site plan map is insufficient because it is small and illegible.

Mr. Hamilton agreed.

Mr. Gerow stated that the town approved the project and asked why doesn't the Board have the document to support this. It is public record, so why doesn't the Board have these documents to review?

Mr. Hamilton stated that sometimes they struggle with a complete application. Sometimes additional documents need to be requested. He believed the documents would be included in the package, but it was not.

Mr. Gerow stated if he were on the Board, he would feel at a disadvantage if he weren't provided with the required documents.

Mr. Rankie stated that the appellant should have provided these documents. Regardless, he is directing to the appellant, that there are two things to be decided. 1) to decide if the Board send this back to the Planning Board, 2) if the Board agrees that there are 3 sides and no front, therefore the Planning Board did not serve our authority by determining the setback decrease.

Ms. Harman is asking the Board of Appeals to invalidate the Planning Board decision because of the failure of notice and the 3 sides issue.

Mr. Rankie stated in the absence of a building permit, all the Board needs to decide on that is the Planner to tell what they are lacking.

Mr. Trott asked if the Planner could say what the requirements are to notify or attempt to notify.

Mr. Hamilton stated it is part of their ordinance and states clear. Section 33-130 Planning and Development, Scheduling of hearing; notification of interested parties; representation by agent. Section C, "The abutters or owners of property shall be considered to be those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the planning board."

Ms. Adams stated in the past that the Planning Board had a problem with improper notification. She asked if the CEO or Planner have verification that the notice was sent to the abutters for the site walk. She would like verification that these mailings were sent and also verify the correct dates as well.

Mr. Brubaker stated he wasn't employed yet as the Town Planner. 7/30/2020 was his first day. He cannot speak to actions that occurred prior.

Ms. Adams asked if there's verification that certified mail was sent out.

Mr. Brubaker stated it was before he was employed as Planner but again referenced Section 33-130.

Ms. Adams asked if we can ask the CEO.

Mr. Hamilton said that we can ask, and that Ms. Adams is right with wanting to check in.

Mr. Trott agrees that the failure to receive notification does not invalidate a decision. However, he is concerned about the 3 sides and asked if a front needs to be designated.

Mr. Hamilton questioned the appellate, asking if the Planning Board was aware of the 669-sq-ft footprint in 1989; whether they had that information or not. Since this is an appellant review, we can only go over the material in front of them to make their decision.

Ms. Harman referenced page 8 of the Planning Board meeting minutes from 7/21/2020 where Ryan McCarthy said "I don't think Ms. Harman and I are disagreeing very much on that footprint, maybe 9 sq ft. We're all in agreement that that existing footprint, as of 1989, of the building was right around…well, we say exactly 669 square feet."

Mr. Gerow stated that this number is also on the site plan.

Mr. Hamilton asked if the public right-of-way meets the minimum standards of the town?

Ms. Harman said that she doesn't know.

Mr. Rankie stated it is testified that the right of way is 10 feet. Therefore, it cannot meet the town requirements.

Mr. Hamilton said correct. He asked if there were any other questions for the appellant. (no answer) He also asked if there were any other abutters that wanted to address this appeal. (no answer) He finally asked if there were any interested parties that wished to speak. (no answer)

Mr. Rankie asked if it was appropriate to have the Planning Board rebuttal presented at this point.

Mr. Hamilton said it would be appropriate.

Mr. Brubaker stated that the primary section of the written argument that addresses the setback question starts on the bottom of the 3rd page. "The approved minutes of the July 21, 2020, Planning Board meeting do not support this statement. Mr. Galbraith, Interim Town Planner during this meeting, states that after discussing with the Code Enforcement Officer, it was determined that the lot's "three other sides are side yards". Mr. Galbraith further states that "The lot [21 Foxbrush Drive] doesn't have any street frontage on a Town-accepted roadway." "Section 1-2 contains the following definition: "Front lot line means, on an interior lot, the line separating the lot from the street: on a corner or through lot, the line separating the lot from either street." The lot line in question does not separate the lot (Map 50, Lot 19) from a street. It separates the lot from another lot (Map 50 Lot 20, 26 Foxbrush Drive). Furthermore, the definition of "street" in the Town Code (Section 1-2) clearly relates it to a "public way": "Street, town way or public way. The word street shall embrace streets, highways, avenues, boulevards, roads, town ways, lanes, bridges, and all other public ways dedicated to public use." While other language

in Section 1-2 uses the qualifier "private" where the intention is to refer to a "private street", the definition of "front lot line" has no such qualifier. The appeal has not demonstrated that the lot line in question meets the definition of a front lot line, when Section 1-2 of the Town Code strongly suggests that it is not, and rationale was presented and accepted by the Planning Board that it did not meet the definition of a front lot line. Therefore, there is a preponderance of evidence that the Planning Board was correct in refraining from identifying the lot line as a front lot line and was correct in applying the 20-ft. setback requirement rather than the 30-ft. setback requirement.

Mr. Hamilton asked if the appellant would like to respond.

Ms. Harman said no thank you.

Mr. Hamilton understands the rationale as far as the frontage on the street. He is having a problem with the 3 side yards. He asked the Town Planner how the town approved a lot that has 3 side yards and a back yard.

Mr. Brubaker referred back to the 7/21/2020 meeting minutes. He was not at that meeting because he was not yet employed by the town, but quoted "states that after discussing with the Code Enforcement Officer, it was determined that the lot's "three other sides are side yards". Mr. Galbraith further states that "The lot [21 Foxbrush Drive] doesn't have any street frontage on a Town-accepted roadway."

Mr. Gerow asked the Town Planner for clarification. When establishing a new lot, what are the requirements?

Mr. Brubaker said that there is nothing in the town code that mandates any particular lot must have a front lot line. He referred him to the town code and how the front lot line is defined.

Mr. Gerow asked if he were developing a new lot on a private way, is there a minimum requirement of frontage for that lot?

Mr. Brubaker referred him back to the definition of front lot line in the town code.

Mr. Gerow asked when new lots in the town of Eliot are created, is there minimum road frontage required.

Mr. Brubaker stated that there are minimum road frontage requirements listed in Chapter 45.

Mr. Hamilton stated that Mr. Gerow presented his case well and that it is time to move on.

Ms. Shelly Bishop, Eliot Code Enforcement Officer, stated that the plot we are speaking of is a nonconforming lot of record. She then read from Section. 45-194.

- Nonconforming lots of record. "If a single lot of record on the effective date of the adoption or amendment of this chapter does not meet the area, road frontage or setback requirements of the district in which it is located, it may be built on provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, that all other provisions of this chapter are met and it conforms with all state laws and regulations."

Mr. Hamilton stated this doesn't preclude the fact that a lot needs a front, rear and side setback according to our ordinance.

Mr. Gerow stated that the section cited by the ordinance doesn't have provisions that mandate a lot that doesn't meet the minimum requirements. It may also not have a front lot line. Is that true?

Ms. Bishop stated that new lots moving forward today must meet the lot requirements in the Code of Ordinances.

Mr. Hamilton asked if there were any interested parties that wanted to weigh in at this point.

Mr. Ryan McCarthy, Tidewater Engineering and Surveying (representing the applicant). He wanted to know if it was appropriate for him to provide any input prior.

Mr. Hamilton said yes.

Mr. McCarthy said he wanted to address a few things. The first is regarding the public notice. The applicant submitted the application back in May, right in the middle of COVID. They didn't go to the Board until July 7, 2020. As far as public notices or certified mail to abutters, Rosanne is correct, an abutter would not be notified or sent certified mail of the application until the Planning Board approves the application. That happened on July 7th. He cannot speak to whether certified mail was sent out properly. We are bound by the ordinance which states failure of an abutter to receive notification does not mean the Planning Board decision is invalid.

Mr. Hamilton said correct.

Mr. McCarthy said the second thing he wanted to point out was that the appellant was at the 7/7, 7/21, and 8/4 meeting, as well as the 7/15 and 7/21 site walk and was an active participant at all of those meetings and was allowed to talk. He said the other major question is related to the front setback, front lot line vs. side lot line. He understands that this is a unique situation that requires direction from the town. This has been a work in progress for Tidewater for close to 4-5 years with a previous lot owner and the current lot owner. Through that whole process they have been very transparent with this question to the town. They asked for direction from the town. At that time, Heather Ross was the CEO, Kate Pelletier was the Planner. Kate's position transferred to different planners and interim planners. The response from all was to treat this as a side lot because there is

no frontage on a town way. This lot was created in 1931. There were no regulations back in 1931. This lot is not the only lot in town that doesn't front on a street. There are lots of lots in rural areas that don't have street frontage. This lot, when created, was granted a right-of-way across the appellant's property. That right-of-way was from the applicant's property across the appellant's property to the public way (River Road). The definition clearly states the front lot line is the lot line that separates it from a public way or street. The definition of street goes back to public ways. In this case, it doesn't have that, which is why it has a side setback. Which is why this has a setback if 20 ft, and not 30 ft. They did not request a variance from the Planning Board. No variance was needed to be granted because everyone agreed this is a side property line, therefore the side setback is 20 ft, not 30 ft. As far as the expansion goes, we all agree the existing footprint of the building is 669 sq ft. It can expand 30% in footprint. When you do that it comes up short of 1,000 sq ft. The shoreline regulation says 30% of all combined nonconforming structures. When you do this, you include the building, patio, deck, porches, etc. There is a discussion about the front deck on this property and whether it was permitted or not. The appellant is trying to make a case it wasn't permitted and therefore it has already been expanded. There is no documentation of building permits that says it was actually permitted. There was no permit to construct. The porch is included in the 669 sq ft. The question is why are we allowed to go to 1,085 sq ft vs. the maximum of 1,000 sq ft. They excluded the deck because they wanted to be on the conservative side. The question was whether they should include the patio, composed of bricks and steps. This is something the Planning Board and Tidewater discussed extensively. He thinks the abutters are correct that these went in after the foundation was installed around 1995. The Board said they should include the patio area in the expansion area. 669 sq ft + 166 sq ft (the area of the patio) = 835 sq ft. 30% to 835 sq ft brings a total allowable footprint of the new building to 1,085 sq ft. Tidewater is proposing to construct a new building that is less than this. It is 1,058 sq ft. It amounts to a 26.7% expansion, which conforms to the regulations today. Whenever the structure is demolished, all setbacks need to be met to the greatest practical extent possible. This is now more conforming to the river setback, the shoreline setback of 75 ft by pulling it back as far as practical, roughly 25 ft from the water. The existing structure is right on the edge of the water. The side setback was also nonconforming to the existing structure. They are shifting this more north. Overall, the proposed structure is more conforming than previous structure in both those ways.

Mr. Hamilton asked if there were any questions for the interested parties?

Ms. Adams asked what side the entrance is on.

Mr. McCarthy stated the front door would be facing the east side, where the driveway comes in, where the parking spaces are. This is where Foxbrush comes in.

Mr. Rankie said, to clarify, it is the driveway to Foxbrush and not the road.

Mr. Hamilton stated the confusion is with the notion of having 3 side yards and a rear yard. The front door is facing the right of way, which to him would be the front of the property.

Mr. Marshall mentioned that a few years ago there was an applicant that had 3 front yards.

Mr. Hamilton didn't recall that.

Mr. Marshall said it was because it met the definition of the town code. It was between his lot and the road.

Mr. Hamilton asked if there were any other questions to either the appellant or Mr. McCarthy or CEO. He asked if any board members had questions to interested parties.

Mr. Jay Meyer (alternate board member) had a question about the dates for Ryan McCarthy, 5/30 – 7/7. Did nothing occur in that period of time with the Planning Board?

Mr. McCarthy stated that during a month, nothing happened and that when David came into the picture, it was his review time about another month.

Mr. Meyer asked if the July meeting was the first time this was presented.

Mr. McCarthy said it was the first time it was presented to the Board.

Mr. Meyer asked if the appellant was at the meeting in July.

Mr. McCarthy said he was correct, and the appellant was able to speak.

Mr. Meyer's other question was regarding the building being expanded or replaced. How does this change the allowable size when a building is either expanded or replaced?

Mr. McCarthy said, whether or not you are expanding or replacing the structure, the amount that the allowable total footprint of new structure or the existing structure is limited to 30% of the total of existing structure as they existed in 1989. If you expand a structure and the value of the expansion exceeds 50% of the appraised value of the structure, you are required to relocate it further back on the property. In this situation, the applicant chose to demolish the structure and relocate it further back so it would be more conforming with the plot it sits on.

Mr. Meyer thought about the 10-ft right of way, was it a concern with the Planning Board? Were they going to allow the structure to be replaced with only a 10-ft right of way?

Mr. McCarthy stated that because it is an existing nonconforming structure, that was not an issue. Since it is a nonconforming structure on a nonconforming lot, the section of the

ordinance sets limitations for what they can and cannot do. As far as the 10-ft width, in 1931, the right of way when the lot was created, it only came up when the road maintenance agreement specifies the 10 ft.

Mr. Hamilton asked if there were any more discussions.

Ms. Harman asked if she could have closing remarks.

Mr. Hamilton apologized and said yes.

Ms. Harman said the right of way in the driveway is physically wider than 10ft. The meets and bounds described the actual right of way permissible passage over the driveway. One person asked what happened between May and July 7th. In the packet there an email copy June 12th from David and it says "Ryan, Shelly and I discussed this…" She said the Town Planner admits the lot is less conforming on the east side. There was no porch, it has always been a deck. You will find in the September 28, 2012 letter from Jim M (CEO) page 2 at the top of the page.

Mr. Hamilton asked Ms. Harman if she said the footprint is 669 sq ft in 1989.

Ms. Harman said yes.

The Public Hearing closed at 9:49 PM.

Mr. Hamilton stated the Findings of Fact.

1. The appellant is Terrie Harman and Terrie Harman Revocable Trust and is an abutter to the property in question.

2. Board of Appeals meeting was held September 17, 2020 as a ZOOM platform.

3. The property is located at 21 Foxbrush Drive in the Shoreland Zoning District, identified as Assessor's Map 50, Lot 19.

4. The Planning Board's decision was dated July 21, 2020.

5. The appeal was submitted and dated August 20, 2020.

6. The appellant therefore has standing and has met the timeliness standard.

7. The Board of Appeals has jurisdiction to hear this case under section 45-49 as an administrative appeal.

8. The property is a non-conforming lot of record comprising of .24 acres where 2 acres are required.

9. The current structure is a non-conforming structure located less than 75 feet from the normal high-water mark of the water body.

10. The proposed project calls for the demolition of the existing non-conforming single-family dwelling and construction of the replacement single family dwelling.

11. The current dwelling is14 feet from the shoreline, and it was testified that the proposed dwelling would be 39 feet from the shoreline, an additional 25 feet back from the shoreline.

12. According to the Notice of Decision of the Planning Board, the height of the dwelling is 20.65 feet and the height of the proposed dwelling would be 20.5 feet, where 20 feet is allowed by ordinance.

13. It was testified that the footprint of the dwelling in 1989 was 669 square feet.

14. It was testified that the proposed footprint for the new dwelling would be 1,058 square feet.

15. The original application was submitted in May and was reviewed by the Planning Board during the July 7, 2020 and July 21, 2020 meetings and site walks.

16. The appellant testified that no registered letter was received regarding the Planning Board meetings and asked that the Planning Board decision be vacated.

17. It was testified that the appellant attended both Planning Board meetings and site walks and spoke during those meetings.

18. Section 33-130 (c) of the Eliot Code states that "failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Planning Board."

19. Section 44-32 (c) (1) in the Shoreland Zone states that for "structures less than 75 feet from normal high water mark of a water body the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989; whichever is greater".

20. Section 1-2 defines street frontage as "the horizontal distance between the intersection of the side lot with the first lot line that abuts a town way or private way meeting minimum standards of a town street." The lot was created in 1939 with a right-of-way testified to be 10 feet wide and does not meet minimum town street standards.

Mr. Trott asked if the testifying of the explanation of side line vs. is included?

Mr. Hamilton said he is trying to find out how to word that. He then stated, "It was testified that because this lot is not on a town street, but rather on a right-of-way, no front

lot line could be established. Therefore, it was concluded by the Planning Board and the Town Planner that there were three side lot lines, and one shoreline setback, allowing a 20-foot setback where a 30-foot front setback is required if on a town street."

Mr. Hamilton asked if there was a motion on this application.

Mr. Rankie moved, second by Mr. Marshall, that the Board of Appeals deny the appeal.

DISCUSSION:

Mr. Trott said the biggest part being the first point of the notification 33-130 clearly explains that even though we don't know if the letters made it out, failure to receive the letters doesn't necessitate another hearing. So, he feels this was the strongest point made clear. He said we could go on and on about the three sides and that it didn't make a lot of sense.

Mr. Rankie said that the appellant was able to attend the meetings and was able to speak, so he doesn't see it to be a valid point. With respect to the three side setbacks, by making the nonconforming lot with the nonconforming setbacks more conforming to the greatest extent with the exception of the appellant, to put it more centered on the lot and further back from the rear, he feels this was good planning by the town officials. He feels they worked hard on this.

Ms. Adams recalled another case that was in front of the BOA. Riverside Drive. It was the same issue, what was the front, side, and rear. The lawyer clarified that with the plan, that where that drive comes into that property, that becomes the front of the property. She mentioned the June 12, 2020 email and how a front side was identified. She stated she was confused of the lot lines as different people were stating different things. She said it looks expedient to put it down to 20 from 30 rather than abide by the ordinance. She believes even a private residential property has a driveway in the front. A front door identifies the front of the property.

Mr. Marshall agrees this makes sense. He said even Mr. McCarthy mentions a front door. He states there is a description for a front line that this property does not meet. When Mr. McCarthy testified with the Planning Board, it kept coming back to that description of front lines and it does not meet the description of a front line. That is what is in the ordinance. That is the strange part.

Ms. Adams said with Riverside they did give it a front.

Mr. Hamilton said we cannot use Riverside to make a decision this evening.

Mr. Marshall said that the town has done a good job on this and they've done their due diligence.

Mr. Hamilton has a problem with the front and the designation of three side yards. It does seem expedient rather than common sense. The ordinance doesn't necessarily provide common sense definitions. In this case it is not in the ordinance that it meets the standard front lot line. His other concern regarding the notification is clear in the ordinance that not receiving it doesn't negate the action of the Planning Board. His last concern is the interpretation to expand beyond the 30% footprint. He feels that the limits are being pushed constantly. He feels they are maxing it out, which is fine and allowable and within the ordinance. His biggest sticking point is the expansion to 1,058 sq feet where it should only be 1,000 sq ft. In the Shoreland Zone it is very clear that the expansion should not be greater than 30% or 1,000 sq ft based on 1989. The appellant testified 669 sq ft and the engineer Mr. McCarthy used that number and added additional sq footage which he isn't clear was actually there in 1989. He said that was an issue for him that it is being expanded more than the code allows. He asked if there were any other thoughts or discussion prior to taking a vote.

DISCUSSION ENDED

Motion has been made to deny the appeal.

Roll Call:

Mr. Hamilton - No

Mr. Rankie - Yes

Mr. Marshall - Yes

Mr. Trott - Yes

Ms. Adams – Yes

Motion approved 4-1.

The vote was 4-1 to deny the appeal. Appellant will receive the Notice of Decision within 7 days. Appellant has 45 days to appeal to Superior Court.

Mr. Hamilton thanked everyone for putting up with the format that we are dealing with.

ITEM 4 – REVIEW AND APPROVE MINUTES

Mr. Trott moved, second by Ms. Lemire, to approve the minutes of January 29, 2020, as amended.

The vote was 5-0 to approve the minutes.

ITEM 5 – CONTINUED DISCUSSION OF WAIVER AMENDMENT REVISIONS

Not addressed tonight.

ITEM 6 – OTHER BUSINESS

There was no other business.

ITEM 7 – ADJOURN

There was a motion and a second to adjourn the meeting at 10:32 PM.

Bill Hamilton, Chair
Date approved: 12/15/20

Respectfully submitted,

Maggie Catanese, Recording Secretary