

**Town of Mount Desert Planning Board
Regular Meeting Minutes
Meeting Room, Town Hall
6:00 PM, November 13, 2019**

Public Present:

Tom Benson, Jon Rolfe, Zach McNally, Dylan Harig, Jessica Harig, Lynne Raimondo, Cheryl DuLong, Todd Stanley, Bruce Tripp, Steven Piecuch

Board Members Present:

Christie Anastasia, Tracy Loftus Keller, Chair Bill Hanley, Dave Ashmore, Meredith Randolph, Joanne Eaton

I. Call to order 6:00 p.m.

Chair Hanley called the meeting to order at 6:00 PM. Board Members were noted. Tracy Loftus Keller is an Alternate, non-voting member.

II. Approval of Minutes

October 9, 2019: Voting members were noted. MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, APPROVAL OF THE OCTOBER 9, 2019 MINUTES AS PRESENTED. MOTION APPROVED 4-0-2. (HANLEY, ASHMORE IN ABSTENTION)

October 23, 2019: Voting members were noted. MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, APPROVAL OF THE OCTOBER 23, 2019 MINUTES AS PRESENTED. MOTION APPROVED 3-0-3. (ANASTASIA, LOFTUS KELLER, ASHMORE IN ABSTENTION)

III. Subdivision Approval Application(s):

A. Subdivision Application #002-2019

OWNER NAME(S): Bruce L. Tripp
& Melanie Mace

AGENT: Thomas W. Benson, PLS

LOCATION: Corner of Beech Hill Road, and Beech Hill Cross Road
93 Beech Hill Cross Road, Mount Desert

TAX MAP: 010 **LOT:** 020 & 020-001 **ZONE(S):** Residential One (R1)

PURPOSE: Divide a lot, in a previously approved Subdivision (Blaine W. Haynes, et als (File 14 Page 176))

Ms. Eaton confirmed adequate public notice. Abutters were notified.

Mr. Benson pointed out the Lot 2 well was added to the survey.

Chair Hanley opened the discussion to the Public. There were no public comments. The Public Hearing was closed.

There were no further comments from the Board.

MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, TO APPROVE THE APPLICATION. MOTION APPROVED 5-0-1 (LOFTUS KELLER IN ABSTENTION).

Completeness Review:

B. OWNER NAME(S): David J. Ashmore
Ann M. Ashmore

LOCATION: 16 Ashmore Way, Mount Desert

TAX MAP: 019 **LOT(S):** 014-004 **ZONE(S):** Rural Woodland 2 (RW2)

PURPOSE: Divide a lot, in a previously approved Subdivision (Phase II Sound View Estates File 42 No. 80)

CEO Keene confirmed adequate Public Notice.

Mr. Ashmore stated he had a conflict of interest.

MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, RECUSAL OF DAVE ASHMORE. MOTION APPROVED 5-0-2 (ASHMORE, LOFTUS KELLER IN ABSTENTION).

Mr. Ashmore recused himself from the Board.

MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, TRACY LOFTUS KELLER AS A VOTING MEMBER. MOTION APPROVED 4-0-1 (LOFTUS KELLER IN ABSTENTION).

Ms. Loftus Keller joined the Board as a Voting Member.

Ms. Eaton asked Mr. Ashmore to review the list of concerns received in a letter dated November 5, 2019 from abutter Paul Douglass.

The list in the November 5, 2019 letter included:

1. *Do rights of way (easements, roads, driveways) cause the lot size for Lot 4A or 4B (or any of the lots) to fall below the required minimum two acres?*
It was noted that easements and driveways do not affect lot size. Roads do not count towards minimum lot area, however there are no roads on either Lot 4A or 4B.
2. *Why isn't the septic field for Lot 1 shown? Does it have one?*
There is a septic field for Lot 1, and it is shown on the Plan.
3. *The "easement for common area" is marked as wetlands, but isn't that contrary to Maine environmental law?*
This wetland is not contrary to Maine environmental law. A wetland can be in a common area. Additionally, this is not a regulated wetland.
4. *Why have trees marked in the September 26 Plan (e.g. "32' Pine," "24' Pine," etc.) disappeared from the October 18 Plan?*

Mr. Ashmore stated that the Planning Board requested, for clarity's sake, to have those items not pertinent to the subdivision plan removed from the survey. The trees on the plan were removed from the plan due to that request.

5. *The applicant has clear-cut a large number of trees up to (and perhaps over) the eastern boundaries of Lots 4A and 4B. is that consistent with Subdivision Ordinance 5.1, which requires a buffer "along property lines, to shield various uses from each other"?*

All the property is currently owned by Mr. Ashmore and the trees cut were all on his own land or on adjoining property on which there are easement rights. A buffer is required only if the Planning Board requires one.

A Completeness Review ensued.

4.2.1 Information on the Applicant:

- 1. Name of applicant (owner) – found to be Complete**
- 2. Name of agent (if other than owner) with attached authorization for agent by owner. – found to be Complete**
- 3. If Applicant is a corporation, state whether the corporation is licensed to do business in Maine and attach copy of Secretary of State's Registration. – found to be Not Applicable**
- 4. Name of Applicant's authorized representative and authorization. – found to be Not Applicable**
- 5. Name, address, and number of Registered Professional Engineer, Land Surveyor, or Planner. – found to be Complete**
- 6. Address to which all correspondence from the Board should be sent. – found to be Complete**
- 7. What interest does the Applicant have in the parcel to be subdivided (option, land purchase contract, record ownership, etc.)? – found to be Complete**
- 8. What interest does the applicant have in any property abutting parcel to be subdivided? - found to be Complete**
- 9. State whether preliminary plat plan covers entire, contiguous holdings of owner. – found to be Complete**

4.2.2 Information on Parcel to be Subdivided:

- 1. Location of property: Map and Lot (from Town Tax Maps.) – found to be Complete**
- 2. Survey maps of tract to be subdivided, as well as contiguous property of the owner of the tract, certified by a Registered Land Surveyor, tied to established reference points (attach to application). – found to be Complete**
- 3. Current zoning district(s) of property. – found to be Complete**
- 4. Acreage of parcel to be subdivided. – found to be Complete**
- 5. An SSWD, by a licensed soil engineer identifying soil types and a map showing the location of soil test areas, unless the parcel will utilize public sewer. Based on soil test results, certain modifications of the Preliminary Plat Plan may be required (attach copy of soils report to application). There shall be at least one satisfactory soil test per lot. – found to be Complete. It was noted test pits and existing leach fields are on the survey.**

6. Names of property owners within 1,000 feet from the parcel to be subdivided, and on opposite side of any road from parcel to be subdivided (show on Plat). – found to be Complete
7. Any restrictive covenants to be placed on the deeds. – found to be Not Applicable
8. Proposed soil erosion and sedimentation control – Found to be Not Applicable
9. Water supply. – found to be Complete

4.2.3 Information on Subdivision:

1. Proposed name of subdivision – found to be Complete
2. Number of lots – found to be Complete
3. Date, north point, graphic map scale (show on Plat). – found to be Complete
4. Proposed lot lines with approximate dimensions and suggested location where known of buildings, subsurface sewage disposal systems, and wells (show on Plat). – found to be Complete
5. Location of temporary markers so located as to enable the Board readily to locate lots and appraise basic lots layout in the field (show on Plat) – found to be Complete
6. Location of all parcels to be dedicated to public use, the conditions of such dedication, as well as the location of all natural features of site elements to be preserved (show on Plat). – found to be Complete
7. A location map, consisting of a USGS Topographical Map, showing the relation of the proposed subdivision to adjacent properties and to the general surrounding area. The location map shall show all the area within 2000 feet of any property line of the proposed subdivision and shall be attached to application. – found to be Complete
8. Location and size of existing buildings and other essential existing physical features (show on Plat). – found to be Complete
9. Location of all wetlands, regardless of size, all water bodies and areas within the State Shoreland Zone (show on Plat). – found to be Complete
10. Location of all drains which shall provide adequate storm water management. – there is no new development proposed at this time.
11. Location and size of any existing and proposed sewers and water mains, and culverts and drains. – found to be Complete
12. Location, names, and widths of existing and proposed streets, highways, easements, building lines, parks, and other open spaces (shown on Plat). – found to be Complete
13. Names of abutters (show on Plat). – It was noted the abutters across the street must also be on the plan. Mr. Ashmore noted the people across the road do not abut those across the road. He questioned whether the abutters needed to be listed. Discussion ensued. Abutters on all the immediate sides of the lots were included. The Board agreed that Mr. Ashmore would add the abutters' names to lots abutting Lot 4 in the original subdivision.
14. The Subdivider will determine, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps, whether the subdivision is in a flood prone area. If the subdivision, or any part of it, is in such an area the subdivider will determine the 100-year flood elevation and flood hazard boundaries within the subdivision. – found to be Complete
15. Other information not indicated above, as specified by the Board. – No other information was specified by the Board.

Section 5:

5.1 Buffer Strip - Buffering elements or screening in the form of architectural and/or landscape design – there are no buffering requirements.

5.2 Conformance with other Laws, Regulations - The proposed subdivision shall be in conformance with all pertinent local, State, and Federal Ordinances, statutes, laws, and regulations. – found to be Complete

5.3 Construction Prohibited - No utility installations, no ditching, grading or construction of roads, no grading of land or lots, and no construction of buildings shall be commenced on any part of the proposed subdivision until a Final Plat Plan of the subdivision has been prepared, submitted, reviewed, approved, and endorsed as provided by this Ordinance, nor until an attested copy of the Final Plat Plan so approved and endorsed has been recorded by the subdivider in the Registry of Deeds. – No construction planned at this time.

5.4 Ditches, Catch Basins - The Board may require the installation of ditches, catch basins, piping systems, and other appurtenances for the conveyance, control, or disposal of surface waters. – found to be Complete

5.5 Easements - The Board may require easements for sewerage, drainage, utilities, or public access. – found to be Complete, information is in the deed provided.

5.6 Dedication for Year-round housing Reserved – found to be Complete

5.7.1 The lot size, width, depth, frontage, shape and orientation and the minimum setback lines shall be in accordance with the Land Use Zoning Ordinance. – found to be Complete

5.7.2 Where individual, on-site sewage disposal systems are to be utilized, the size of each lot shall be based on soil characteristics, and shall, as a minimum, conform to M.R.S.A. Title 12, Section 4807- A as amended. – found to be Complete

5.7.3 The Planning Board shall determine if a division of land will be reviewed as a Cluster, a Workforce or a Conventional subdivision. – found to be Complete

5.8.1 Where any part of a proposed subdivision is located within 1500 feet of a public sanitary sewer line, the subdivider shall connect with such sanitary sewer line by means of a main not less than 8 inches in diameter, provided however, that the appropriate municipal agencies shall first have certified that extending the services will not be an excessive burden on the system. – found to be Complete

5.8.2 Where private subsurface sewage disposal is to be utilized, the subdivider must conform to all State of Maine Plumbing Code and LUZO requirements. Furthermore: 1. Disposal sites shall be totally contained within the lot being serviced. 2. Systems shall be designed to the highest standards for the specified use. 3. There shall be no contamination of existing or proposed wells, or any other water source. – found to be Complete

5.9 Land not Suitable for Development – found to be Complete

5.10.1 The Board may require that a proposed subdivision design include a landscape plan that will show the preservation of existing trees (10" or more in diameter), the replacement of trees and vegetation, graded contours, streams, and the preservation of scenic, historic, or environmentally desirable areas. The street and lot layout shall be adapted to the topography. Extensive grading and filling shall be avoided. – found to be Complete

5.10.2 The Board may require that the subdivider reserve an area of land as an open space and/or recreational area for use by property owners in the subdivision. – found to be Not Applicable.

1 **5.11 Wells** – found to be Complete

2 **5.12 Performance Bond** – Found to be Not Applicable. The Board does not require a
3 Performance Bond.

4 **5.13 Plan Revisions After Approval** – found to be Complete

5 **5.14 The approval by the Board of a subdivision plan shall not be deemed to constitute or be**
6 **evidence of any acceptance by the Town of Mount Desert of any street, road, or right-of-way.**
7 – found Not Applicable, there are no roads.

8 **5.15 Access to Direct Sunlight** – found to be Complete

9 **5.16 Cluster and Workforce Subdivision** – found to be Not Applicable.

10
11 **6A – General Performance Standards**

12 **6A.1 Compatibility** – found to be Not Applicable

13 **6A.2 Erosion and Sedimentation Control** – found to be Not Applicable

14 **6A.3 Highway Safety** – found to be Not Applicable

15 **6A.4 Impact on Town Services** – found to be Not Applicable

16 **6A.5 Land Suitability** – found to be Complete

17 **6A.6 Lighting – Outdoor** – found to be Not Applicable

18 **6A.7 Stormwater** – found to be Not Applicable

19 **6A.8 Vegetation** – found to be Not Applicable

20 **6A.9 Dust, Fumes, Vapors, Odors and Gases** – found to be Not Applicable

21
22 **6B – Specific Performance Standards for Activities and Land Uses** – All of Section 6B was found
23 to be Not Applicable, with the exceptions of the following:

24 **6B.11 Lots** – found to be Complete

25 **6B.15 Sanitary Standards** – found to be Complete

26
27 **6C – Shoreland Zoning Standards** – the subdivision is outside the Shoreland Zone.

28
29 MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, TO FIND THE
30 APPLICATION COMPLETE, CONTINGENT UPON THE NAMES OF THE ABUTTERS
31 BEING ADDED TO THE PLAN, AS REQUESTED. MOTION APPROVED 5-0.

32
33 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, TO RETURN MS.
34 LOFTUS KELLER TO ALTERNATE, NON-VOTING STATUS. MOTION APPROVED 4-
35 0-1 (LOFTUS KELLER IN ABSTENTION).

36
37 MS. EATON MOVED, WITH MS. EATON SECONDING, TO RETURN MR. ASHMORE
38 TO THE BOARD. MOTION APPROVED 4-0-1 (LOFTUS KELLER IN ABSTENTION).

39
40 Mr. Ashmore returned to the Board.

41
42 **IV. Nonconformity** – Sections – 4.3.6, 4.3.5 & 4.3.2 – Reconstruction or Replacement,
43 Relocation and 30% Expansion of a Non-Conforming Structure.

44 **OWNER(S):** Lynne M. Raimondo, Trustee

45 **AGENT(S):** Todd Stanley

LOCATION: 572 Sound Drive, Mount Desert

TAX MAP: 010 **LOT(S):** 170 **ZONE(S):** Shoreland Residential Two (SR2)

PURPOSE: To demolish, reconstruct, expand and relocate, an existing Non-Conforming Structure

SITE INSPECTION: 4:00 PM

Ms. Eaton confirmed adequate public notice. Abutters were notified. No conflict of interest was found.

Ms. Eaton reported on the Site Visit. The existing garage is on the road side of the house, to the left as one drives in. There are large pine trees in the area. The garage is within the setback area. The proposed garage will be moved closer to the driveway, making it less non-conforming. There has been minor clearing, and the site is staked out. The proposed replacement garage will be 10 feet from the large pines. The existing garage is still standing.

Agent Todd Stanley provided some additional information. CES Engineering located the high-water line; an observed elevation they noted as 7.5 feet. This site is closer to the Southwest Harbor data station, which sets highest annual tide line at 6.7 feet. This moves the setback. Mr. Stanley provided a new drawing with the both high tide lines, the lower tide line changes the setback, making the building almost completely in compliance.

Trying to shift the building so it's completely in compliance moves it closer to the house and makes maneuvering the vehicles more difficult. Additionally, this would move the building closer to the pine they are hoping to preserve.

A second piece of new information is septic design. There are two potential locations. One near the building. There are test pits near the building. The second potential location is out by the road, and there are test pits there as well. Nearer the road is the preferable spot. Expanding the existing septic by adding a pre-treatment tank was considered. The system is currently designed for a single bedroom. It was deemed the building could potentially be expanded into a second dwelling. The state would not sign off on a simple expansion of the septic, when there was potential for a second dwelling there. Therefore, a new septic site was required.

Chair Hanley noted the northeast corner of the structure makes it non-conforming. Ms. Randolph suggested rotating the building a little. This would pull the corner out of the setback area and make it easier to get the car into the driveway. Chair Hanley agreed, and noted the project would not require Planning Board approval, and a Planning Board decision would not be attached to the property moving forward. It was noted a small move would allow the building to remain within the height requirements as well.

Ms. Raimondo agreed to this suggestion.

No Action was necessary with this compromise.

V. Other: Remand from the Zoning Board of Appeals to the Planning Board for the purpose of a further hearing to allow the submission of any additional evidence and to deliberate in order to provide specific findings of facts and conclusions of law in the matter of Dylan A. & Jessica A. Harig's application for a Change of Use of a Non-conforming Structure.

Ms. Randolph stated she had a conflict of interest.

MS. EATON MOVED, WITH MR. ASHMORE SECONDING, ACCEPTANCE OF MS. RANDOLPH'S RECUSAL. MOTION APPROVED 4-0-2 (LOFTUS KELLER, RANDOLPH IN ABSTENTION).

MS. EATON MOVED, WITH MR. ASHMORE SECONDING, TO NAME MS. LOFTUS KELLER A VOTING MEMBER. MOTION APPROVED 4-0-1 (LOFTUS KELLER IN ABSTENTION).

CEO Keene reported that the Zoning Board of Appeals met on October 10, 2019 on the Harig appeal. The Planning Board received copies of the Zoning Board of Appeals Minutes. The Zoning Board of Appeals felt that more clarity was required on how the Planning Board came to their decision; a full review is not expressed in the Planning Board Minutes. The only issue that appeared to be addressed was adverse impact to adjacent properties. The Zoning Board of Appeals did not feel the Planning Board's review of adverse impact was relevant, with regard to addressing noise and the placement of windows. The Zoning Board of Appeals remanded the Application back for Findings of Facts on all sections of Ordinance Section 4.3.7.

Attorney for the Harigs, Jon Pottle, noted the Harigs did not attend the initial Planning Board meeting addressing their Application. They are in attendance at this meeting. Attorney Pottle presented several pictures of the garage. The Harigs want to renovate the second floor of the garage to make it a better space for their children. Their children already use the space. They plan to insulate the garage. They will not change the size of the garage. Windows on the front of the garage facing the street will be replaced with a sliding door. Others in the neighborhood are building accessory structures. Across the street from the Harigs is another garage. Pictures of the interior of the second floor were shared. Two windows face the McAndrews property. The bathroom will be built where the window on the left is. The window will have privacy features added, such as glazing and curtains. Stairs will be installed along this wall, and the placement of the stairs will not allow a view from the second window. There is a fence facing the McAndrews property. A tree was recently removed from the McAndrews property. Facing the Zirkilton property, there is a wooden stockade fence and trees. Towards the Holmes property, there is existing vegetation with a fence. Google Earth images were provided to show the context of the neighborhood.

Attorney Pottle provided a survey of the property and pointed out the setback that makes the garage a non-conforming structure.

Attorney Pottle reviewed Land Use Ordinance Section 4.3.7. The building is an accessory structure. The Harigs propose to change it to an accessory dwelling unit. The

1 Land Use Ordinance provision has language similar to the shoreland zoning language.
2 There are provisions that apply to both within and without the shoreland zone, and some
3 that only apply to within the shoreland. The Ordinance lists the criteria to utilize in order
4 to make a determination.

5
6 Ordinance provisions that are vague can be deemed void for vagueness. The Board
7 must use specific objective criteria to make their determination. The Applicant feels
8 objective criteria from the Ordinance were not used to make a determination. If they had
9 been used, Attorney Pottle felt the Board would have found the Application does meet
10 the no greater adverse impact standard.

11
12 Attorney Pottle referred to a memo he submitted which listed the specific Ordinance
13 criteria. He read for the Board the list of criteria and offered reasoning why the Applicant
14 believes there is no greater adverse impact on adjoining properties in relation to these
15 criteria.

16
17 Attorney Pottle recalled discussion regarding privacy during the earlier meeting. He did
18 not believe it legally permissible to include privacy in the criteria because it is not listed
19 as part of the criteria. Insulating the garage will dampen noise. The windows were a
20 privacy issue focus. The two existing windows offer less privacy than what the Applicant
21 is proposing. One window will be in a bathroom and will be limited visually so people
22 outside can't see in. The second window will not be usable for viewing once the
23 staircase is in place. Fences and mature vegetation already in place screen the property
24 from three sides.

25
26 Applicant Dylan Harig stated his family has lived in the area for generations and he's
27 owned and used the property in question for four years. He felt his intentions were
28 misrepresented at the initial Planning Board meeting and the Planning Board denied the
29 Application based on that misrepresentation. The Harigs do not intend to rent the space.

30
31 Attorney for the neighbors Zachary McNally reported his clients' concerns. The first is
32 the creeping nonconformance of the structure. In 2003 a nonconforming single-story
33 garage was expanded into a two-story, two-bay garage. The permit was approved
34 without a Planning Board hearing. This proposed change is changing an empty space to
35 what is essentially a dwelling. What is being created, even if the Harigs only use it for
36 their children, is a separate residential unit for potential full-time use, with bathroom,
37 bedrooms, and kitchenette. This is what is being created, regardless of the Harigs'
38 intended use, and such a use is a considerable change. Additionally, this change is
39 permanent. The fact that a separate residential unit will be within the setback area of the
40 McAndrews property remains in perpetuity, through current and future ownership.
41 Attorney McNally argued that with regard to the LUZO standards, if the criteria in Section
42 4.3.7 are the only criteria allowed to be considered, it effectively tells the Board they
43 cannot consider the actual change of use itself.

44
45 Attorney McNally's interpretation of the Ordinance is that the standards listed by
46 Attorney Pottle apply to Section 4.3.7B, which addresses water and the shoreland zone.

1 Using only the criteria previously referred to sets precedent that the Board cannot
2 consider what the actual change of use is when a change of use is applied for.

3
4 Setback requirements are for proximity issues, for crowding, and privacy. None of those
5 issues are addressed in the criteria previously listed. The criteria presented does not
6 address the impact of a nonconforming structure on an adjacent property owner, and
7 adjacent property owners have no opportunity for input.

8
9 Regarding pictures of other structures in the neighborhood being built and presented by
10 Attorney Pottle, Attorney McNally noted the first one presented is a structure being built
11 to attach to the residence. The Harigs are creating a single dwelling structure. The
12 second picture is of a conforming structure.

13
14 If the eleven criteria are the only criteria to be considered, the Harigs' original Application
15 did not include any of these criteria, therefore, the written documentation of the impact of
16 these criteria as required in the Ordinance was not met.

17
18 Attorney McNally did not see in the Zoning Board of Appeals Minutes that the eleven
19 criteria were what were required to be addressed by the Planning Board. His
20 interpretation was that the Planning Board was directed to show the findings that led to
21 their decision. Their decision was not necessarily made in error.

22
23 Attorney Pottle stated the garage is an accessory structure. The change being proposed
24 is from Accessory Structure to Accessory Residential Dwelling Unit. "Accessory" makes
25 the unit subordinate to the principle use and not completely stand-alone.

26
27 There are many uses allowed in the residential district that would create much more
28 potential impact from intensity of use.

29
30 Looking at the Nonconformity section on structures, those crafting the Ordinance knew
31 when to differentiate between shoreland zone and not. Such a thing is not mentioned in
32 this section of the Ordinance. Therefore, it is wrong to pick certain criteria on the
33 premise that others apply only to the shoreland zone. The Planning Board must take
34 what criteria they have and apply it.

35
36 Resident Cheryl DuLong wished the Harigs had been at the last meeting. What is being
37 described by the Harigs is what she'd previously been told, but others in the
38 neighborhood told her about the additional uses mentioned. Ms. DuLong stated she had
39 no concerns with the project as described.

40
41 Chair Hanley noted this hearing is different from the last meeting, and there were more
42 people in attendance at the last meeting. Ms. Anastasia added that the site visit also had
43 more people than usual.

44
45 Ms. Randolph hoped the process would solve the issues the neighbors have with the
46 project. She opined that the problem the neighbors have might be with the original
47 owner who built the non-conforming structure. She pointed out that this building could

1 be moved four feet to be within the setback and at that point the Harigs would not need
2 Planning Board approval for their plan.

3
4 Chair Hanley noted the presentation at the last meeting seemed focused on the potential
5 for rental use. This meeting is focusing on residential use.

6
7 Mr. Ashmore pointed out that the Planning Board is being asked to approve a residential
8 accessory structure in a non-conforming building. Ms. Eaton wished the building could
9 be moved slightly to one side, as occurred during the last Agenda item. As long as the
10 building is located within the setback, the Planning Board must review the Application.

11
12 Ms. Eaton suggested the Board start with the Board of Appeals' direction.

13
14 Chair Hanley read the Board of Appeals' Motion:

15
16 *"Mr. Walls moved, with Mr. Coombs seconding, that the decision be remanded back to*
17 *the Planning Board for clarity and for acceptance of new evidence if deemed necessary*
18 *for review of Section 4.3.7. Motion approved 4-0."*

19
20 Ms. Eaton pointed out that the Motion does not direct the Board to list out the criteria.
21 She recalled that the Planning Board did not review Section B of the Ordinance because
22 it appeared to pertain to water. Chair Hanley felt the Board of Appeals stated the
23 Planning Board did not identify specific findings of fact or conclusions of law based on
24 review criteria for Section 4.3.7.

25
26 Chair Hanley read the Planning Board's decision in the Minutes of August 14, 2019.

27
28 *"Ms. Anastasia moved, with Ms. Eaton seconding, that the change of use of this property*
29 *from primarily storage to a permanent living area will cause an adverse impact on*
30 *adjacent properties."*

31
32 Mr. Ashmore asked if the decision can be reversed. It was felt the decision could be
33 reversed. Mr. Ashmore suggested beginning the review over.

34
35 MR. ASHMORE MOVED WITH MS. EATON SECONDING TO ACCEPT THE NEW
36 INFORMATION PROVIDED BY THE APPLICANT. MOTION APPROVED 5-0.

37
38 Ms. Eaton agreed with Mr. Ashmore that the use has changed from a playroom to a
39 living area. This is a significant change of use. Ms. Eaton read part of Section 4.3.7 of
40 the Land Use Zoning Ordinance:

41
42 *"The use of a non-conforming structure may not be changed to another use unless the*
43 *Planning Board, after receiving a written application, determines that the new use will*
44 *have no greater adverse impact than the existing use on: a. the subject or adjacent*
45 *properties and resources..."*

46
47 Making the area a living space is a change.

1
2 Ms. Eaton reiterated that the building could be moved. A move of five feet would result
3 in the Planning Board not having to be involved. Other similar garages are being built in
4 the area. However, this one is non-conforming, which changes the circumstances. The
5 new submittals make even more clear the fact that this change will create a year-round
6 livable residence.

7
8 Chair Hanley agreed that a non-conforming structure does create issues. He asked the
9 Harigs if they've considered removing the section of building within the setback and
10 avoiding the problems inherent in the non-conformity.

11
12 Mr. Harig noted the price to move the building is \$27,000. To remove the back of the
13 building feels like an additional adverse impact, making the building less attractive. He
14 reiterated their intention to create space for their children. Mr. Harig felt there was no
15 greater adverse impact associated with their proposal and the garage is a grandfathered
16 non-conformity. Other uses are pure speculation.

17
18 Mr. Ashmore reiterated that while he did not necessarily disagree with Mr. Harig's
19 assessment, the Planning Board is being asked to approve an accessory dwelling unit.
20 Theoretically, the day after the Planning Board approved such a change, the property
21 could be sold as having the additional asset of a second dwelling. Mr. Ashmore
22 suggested that the corner of the building could be rendered isolated and not used – it
23 could be a closet or storage, but something the family would not be using. Such an
24 option does not involve moving the building, or physically removing a corner.

25
26 Ms. Anastasia thought back to the site visit. The garage as it currently stands appears
27 to be clearly storage space. There is currently no infrastructure (i.e. the capability to
28 cook food or shower) in place to allow for living on site. The proposed is a change in
29 use. Some neighbors feel this is a dramatic change.

30
31 Attorney Pottle felt the question at hand is whether there is a greater adverse impact and
32 how, specifically, is it a greater adverse impact.

33
34 Chair Hanley noted that with non-conforming structures there are potential limitations
35 and liabilities that come with owning them and potential value considerations. While the
36 Board is not tasked with advising an Applicant, Chair Hanley felt that if the property were
37 his, he'd strive to make it as conforming as possible. The possible use of the building
38 increases once it can be deemed conforming.

39
40 Discussion ensued regarding how to proceed.

41
42 It was agreed the Board should review the items listed in Paragraph 2 in Section 4.3.7,
43 change of Use in a Non-Conforming Structure and create Findings of Fact and
44 Conclusion of Law for each.

45
46 MS. EATON MOVED, WITH MS. ANASTASIA SECONDING, THE BOARD WILL USE
47 THE CONTEXT OF SECTION 4.3.7.A AS THE APPLICABLE SECTION IN MAKING

1 THE DECISION. SECTION 4.3.7.B IS DEEMED NOT APPLICABLE AS THE
2 PROPERTY IS NOT LOCATED ADJACENT TO OR ABUTTING A WATER BODY,
3 TRIBUTARY STREAM, OR WETLAND. MOTION APPROVED 5-0.

4
5 MR. ASHMORE MOVED, WITH SECONDING, IN THE CONTEXT OF A REVIEW
6 OF SECTION 4.3.7.A THE BOARD WILL REVIEW FOR FINDINGS OF FACT AND
7 CONCLUSION OF LAW FOR THE REVIEW CRITERIA AS FOLLOWS:

8
9 The Motion died, for lack of a second.

10
11 The following Findings of facts and conclusions of law were determined –

12
13 MS. EATON MOVED, WITH MR. ASHMORE SECONDING -
14 **PROBABLE EFFECTS ON PUBLIC HEALTH AND SAFETY –**
15 **FINDINGS OF FACT -** INTERIOR RENOVATIONS OF THE GARAGE ARE
16 EVIDENCED BY THE APPLICANT TO BE INTERNAL. ALL ARE CONTAINED WITHIN
17 THE CONFINES OF THE EXISTING STRUCTURE WITH MINIMAL EXTERIOR
18 IMPROVEMENTS

19
20 **CONCLUSION OF LAW –** FOR WHICH THE STANDARD HAS BEEN MET.

21
22 MOTION APPROVED 5 - 0

23
24
25 MS. EATON MOVED, WITH MR. ASHMORE SECONDING -
26 **EROSION AND SEDIMENTATION –**
27 **FINDINGS OF FACT –** THE BULK OF ACTIVITIES INVOLVE INTERIOR
28 RENOVATIONS. MINIMAL DISTURBANCE WILL OCCUR FOR SEWER/WATER
29 HOOK-UPS. BEST MANAGEMENT PRACTICES TO PREVENT AND CONTROL ANY
30 EROSION IN SEDIMENTATION WILL BE EMPLOYED. (SEE HARIGS' PURPOSE
31 STATEMENT, EXHIBIT B.)

32
33 **CONCLUSION OF LAW –** FOR WHICH STANDARD HAS BEEN MET.

34
35 MOTION APPROVED 5-0

36
37
38 MS. EATON MOVED, WITH MR. ASHMORE SECONDING -
39 **WATER QUALITY –**
40 **FINDINGS OF FACT –** THE HARIGS' PROPERTY IS NOT LOCATED CLOSE TO ANY
41 WATER BODIES, AND THEIR PROPOSED ACTIVITIES INVOLVE INTERIOR
42 RENOVATIONS APART FROM MINIMAL DISTURBANCE FOR SEWER/WATER TO
43 BE HOOKED UP. (SEE HARIGS' PURPOSE STATEMENT AND LOCATION MAP,
44 EXHIBIT B AND EXHIBIT D.)

45
46 **CONCLUSION OF LAW –**
47 FOR WHICH STANDARD HAS BEEN MET.

1
2 MOTION APPROVED 5 - 0
3

4
5 MS. EATON MOVED WITH MS. LOFTUS KELLER SECONDING -

6 **FISH AND WILDLIFE HABITAT –**

7 **FINDINGS OF FACT –** THE HARIGS' PROPERTY IS NOT LOCATED WITHIN OR
8 CLOSE TO ANY FISH OR WILDLIFE HABITAT. AS NOTED, PROPOSED ACTIVITIES
9 INVOLVE INTERIOR RENOVATIONS, APART FROM MINIMAL DISTURBANCE FOR
10 SEWER/WATER TO BE HOOKED UP. (SEE HARIGS' PURPOSE STATEMENT AND
11 LOCATION MAP, EXHIBIT B AND EXHIBIT D.)
12

13 **CONCLUSION OF LAW –** FOR WHICH THE STANDARD HAS BEEN MET.
14

15 MOTION APPROVED 5-0.
16

17
18 MS. EATON MOVED, WITH MS. LOFTUS KELLER SECONDING -

19 **VEGETATIVE COVER –**

20 **FINDINGS OF FACT –** NO DISTURBANCE OF EXISTING VEGETATIVE COVER IS
21 PROPOSED; PHOTOGRAPHS OF VEGETATIVE COVER ARE PROVIDED IN
22 EXHIBIT D.
23

24 **CONCLUSION OF LAW –** FOR WHICH STANDARD HAS BEEN MET
25

26 MOTION APPROVED 5-0.
27

28
29 MS. EATON MOVED, WITH MR. ASHMORE SECONDING -

30 **NATURAL BEAUTY –**

31 **FINDINGS OF FACT –** THE HARIG GARAGE PROJECT ONLY INVOLVES INTERIOR
32 RENOVATIONS AND MINOR EXTERIOR EXPANSION OF THE EXISTING NON-
33 CONFORMING FOOTPRINT AND VERY LIMITED DISTURBANCE TO EXISTING
34 LAWN AREA (FOR WATER INSTALLATIONS); NO DISTURBANCE OF
35 SURROUNDING VEGETATION IS PROPOSED; AND NO INCREASE OR EXPANSION
36 OF THE GARAGE.
37

38 **CONCLUSION OF LAW –** FOR WHICH STANDARD HAS BEEN MET.
39

40 MOTION APPROVED 5-0.
41

42
43 MS. EATON MOVED, WITH MS. LOFTUS KELLER SECONDING

44 **FLOODPLAIN MANAGEMENT –**

45 **FINDINGS OF FACT –** THE HARIG PROPERTY IS NOT LOCATED IN A
46 FLOODPLAIN. (SEE EXHIBIT D, WHICH INCLUDES A COPY OF THE TOWN'S
47 ZONING MAP.)

1
2 CONCLUSION OF LAW – FOR WHICH STANDARD HAS BEEN MET.

3
4 MOTION APPROVED 5-0.

5
6
7 MS. EATON MOVED, WITH MR. ASHMORE SECONDING -

8 **ARCHAEOLOGICAL AND HISTORIC RESOURCES –**

9 **FINDINGS OF FACT –** CEO KEENE HAS CONFIRMED THERE ARE NO
10 ARCHAEOLOGICAL OR HISTORIC RESOURCES IN PROXIMITY TO THE HARIG
11 PROPERTY ON THE MAINE HISTORIC PRESERVATION MAP. (SEE EXHIBIT D.)

12
13 CONCLUSION OF LAW – FOR WHICH STANDARD HAS BEEN MET.

14
15 MOTION APPROVED 5-0.

16
17
18 MS. EATON MOVED, WITH MS. LOFTUS KELLER SECONDING -

19 **COMMERCIAL FISHING AND MARITIME ACTIVITIES –**

20 **FINDINGS OF FACT –** THE HARIG PROPERTY AND PROPOSED USE DOES NOT
21 INVOLVE OR IMPLICATE ANY COMMERCIAL FISHING OR MARITIME ACTIVITIES.
22 (SEE HARIGS' PURPOSE STATEMENT AND LOCATION MAP, EXHIBIT B AND
23 EXHIBIT D.)

24
25 CONCLUSION OF LAW – FOR WHICH STANDARD HAS BEEN MET.

26
27 MOTION APPROVED 5-0.

28
29
30 MS. EATON MOVED, WITH MR. ASHMORE SECONDING -

31 **OTHER FUNCTIONALLY WATER DEPENDENT USES –**

32 **FINDINGS OF FACT –** THE HARIG PROPERTY DOES NOT INVOLVE OR IMPLICATE
33 ANY FUNCTIONALLY WATER DEPENDENT USES. (SEE HARIGS' PURPOSE
34 STATEMENT AND LOCATION MAP, EXHIBIT B AND EXHIBIT D.)

35
36 CONCLUSION OF LAW – FOR WHICH STANDARD HAS BEEN MET.

37
38 MOTION APPROVED 5-0.

39
40 It was determined that the Board now must determine that the proposed use will have no
41 greater adverse impact on the subject or adjacent properties and resources.

42
43 Ms. Eaton felt this was a difficult decision to make, with respect to a quantitative
44 decision. There are shades of gray.

45
46 Chair Hanley noted that in the context of the new information received it's been
47 reiterated that the intended change of use is for family use. He hoped that this intent

1 could be added to the Findings of Fact, to provide proof that the Board is aware of the
2 intent. Chair Hanley added that setting conditions on use or intent of use is not the
3 purview of the Board. It is relative to the context of the decision to be made.
4

5 Ms. Anastasia felt it had been made clear by Ms. Randolph at the previous meeting that
6 family use was the intent of the changed proposed, however neighbors' fear of potential
7 uses became the point of discussion. Other Board Members agreed.
8

9 Ms. Eaton cautioned that the building is non-conforming. Making it a living unit now,
10 creates a living unit into the future and for any future owner. Because this is non-
11 conforming, the change is significant.
12

13 Mr. Harig asked if the fact that it was a grandfathered building carried any weight. The
14 building is a pre-existing legal non-conforming structure. Attorney Pottle noted it was a
15 pre-existing structure. Both the current and proposed uses are allowed under the
16 Ordinance. Chair Hanley noted the Board deals on occasion with non-conforming
17 structures. The issues surrounding most non-conforming structures involve moving it so
18 it becomes conforming.
19

20 Ms. Eaton asked if someone could add to a non-conforming structure by getting a
21 neighbor's approval. CEO Keene confirmed the Town has approved such the ability to
22 do this, but a change of use cannot be created through simple approval from the
23 neighbors.
24

25 Ms. Anastasia noted that if this building was a conforming structure and they wanted to
26 change the use, the CEO would be able to issue the permit, after determining the
27 Application was complete. The neighbors could appeal that permit should they have an
28 issue with the change. Those appealing a permit would have to justify their appeal by
29 stating how the CEO issued the permit in error. Adverse impact cannot be a reason for
30 such an appeal. Compatibility can be grounds for such an appeal, however there are
31 other similar structures and projects in the area. Chair Hanley noted that modifications
32 to this non-conforming structure would still be a change of use, even if it were modified
33 into a conforming structure. The potential for change of use remains. The use will likely
34 change, if not now then eventually, and the use proposed exists in the neighborhood.
35

36 Ms. Eaton maintained her position that changing a storage area to living space is
37 concerning and will impact the nearest abutting neighbor. She could not approve such a
38 change in use. It's important to recognize the non-conformity.
39

40 Mr. Ashmore pointed out that the kitchen makes it an accessory residential dwelling
41 once it's approved by the Board.
42

43 CEO Keene reviewed the section of the Ordinance addressing kitchens. "*A cooking*
44 *facility, with a stove, microwave, hot plate*" – anything facilitating cooking within the
45 structure makes the structure a dwelling unit. Items such as dishwashers, refrigerators,
46 or sinks do not carry the same weight. Chair Hanley asked the Applicant how they
47 would feel if they pulled the cooking facilities from the proposal. Ms. Harig argued that

1 the microwave planned was not really cooking facilities, and she did not believe
2 removing the microwave would allay the concerns of the neighbors. She felt noise was
3 the issue the neighbors voiced concern over. Mr. Harig noted there is no Town noise
4 ordinance.

5
6 Mr. Ashmore felt an appeal would not stand if the Applicant was simply adding a
7 bedroom. An appeal for adding a second residential unit will carry more weight. It would
8 be wise to remove the cooking facility. Attorney Pottle protested that the existence of a
9 microwave should not make a difference. Mr. Ashmore stated that the inclusion of the
10 microwave is exactly what renders the building a residential dwelling unit.

11
12 The Applicants disagreed. They did not feel the presence of a microwave should create
13 an adverse impact.

14
15 Chair Hanley noted the microwave allows the landowner to rent the space as a living unit
16 moving forward.

17
18 The Town does not have an ordinance for rentals.

19
20 Chair Hanley pointed out that the neighborhood residents at the last meeting seemed
21 most concerned over the potential for renting the property, and the adverse impact that
22 would cause, with regard to noise and potential traffic. Mr. Ashmore maintained that the
23 presence of cooking facilities creates a major change in the use. It creates two dwelling
24 units on the property, impacting the value of the property. By comparison, the addition
25 of a bedroom without a cooking facility does not create the same change. Ms. Harig
26 argued that even without the microwave, the proposal is still a change of use. CEO
27 Keene agreed. Mr. Ashmore noted that change is the addition of a bedroom – but not
28 the addition of a dwelling unit. Ms. Anastasia felt the addition of just a bedroom may
29 have resulted in a different response from those in the neighborhood.

30
31 Ms. Randolph asked for clarification that if the Harigs remove the microwave from the
32 application, then the Board would approve the amended proposal. The proposal still
33 requires Planning Board approval. Chair Hanley believed such a compromise would
34 satisfy the neighbors.

35
36 Mr. Ashmore stated removing the cooking facility was not an attempt at making the
37 neighbors happy. This change would satisfy him as a Board Member that the Board was
38 not creating a permanent dwelling unit out of a non-conforming building.

39
40 It was reiterated that without the microwave in the proposal, the use changes from an
41 accessory dwelling unit to an accessory structure that is not a dwelling unit or rentable.
42 Ms. Eaton stated that if the kitchen facility was removed from the proposal, she could
43 vote for it. Mr. Ashmore agreed. Ms. Eaton felt it would make a difference in the impact.
44 Mr. Ashmore suggested that if it's later decided that a kitchen is wanted or necessary,
45 then the Applicant can return to apply for the additional change.

46

1 Attorney McNally opined that because a different use is being discussed from what was
2 applied for, it should be re-presented by the Applicant, as opposed to the Board setting a
3 condition of approval.

4
5 MR. ASHMORE MOVED, WITH MS. EATON SECONDING TO APPROVE THE
6 APPLICATION, WITH THE CONDITION THAT THE PLAN BE CHANGED TO OMIT
7 THE COOKING FACILITY.

8
9 Ms. Anastasia read from Section 8 of the Ordinance the definition of Cooking Facility: "A
10 stove, microwave, or other cooking device."

11
12 Attorney Pottle felt the reasoning behind such a condition should be included in the
13 record.

14
15 MOTION APPROVED 5-0.

16
17 The Findings of Fact and Conclusion of Law for the question of whether there is greater
18 adverse impact on the subject or adjacent properties and resources, as stated in
19 Ordinance Section 4.3.7 were found to be:

20
21 MS. EATON MOVED, WITH MS. ANASTASIA SECONDING, THE FINDINGS OF FACT
22 TO BE:

23 #1 - PICTURES PRESENTED SHOW THE STRUCTURE IS CURRENTLY AN OPEN,
24 UNFINISHED PLAY AREA/STORAGE.

25 #2 - THE APPLICANT IS PROPOSING TO ADD NEW EXTERIOR SIDING, A CHANGE
26 OF STAIRWAY, FULL BATHROOM, KITCHENETTE, AND BUNK AREA WITH BEDS,
27 WHICH MAKES IT A SIGNIFICANT CHANGE OF USE.

28 #3 - THE APPLICANT INTENDS THE PROPOSED FOR FAMILY USE.

29 #4 - REMOVING THE COOKING FACILITY PREVENTS THE STRUCTURE FROM
30 BECOMING AN ACCESSORY RESIDENTIAL DWELLING UNIT.

31
32 MS. EATON MOVED WITH MS. ANASTASIA SECONDING, THE CONCLUSION OF
33 LAW TO BE AFTER RECEIVING THE WRITTEN APPLICATION AND FURTHER
34 INFORMATION THE BOARD DETERMINES THAT THE NEW USE WILL HAVE NO
35 GREATER ADVERSE IMPACT THAN THE EXISTING USE ON THE SUBJECT OR
36 ADJACENT PROPERTIES AND RESOURCES AS LISTED IN SECTION 4.3.7,
37 PROVIDED THE COOKING FACILITIES BE ELIMINATED FROM THE PROPOSED
38 USE.

39
40 MOTION FOR THE FINDINGS OF FACT AND CONCLUSION OF LAW WITH REGARD
41 TO THE QUESTION OF WHETHER THERE IS A GREATER ADVERSE IMPACT ON
42 THE SUBJECT OR ADJACENT PROPERTIES AND RESOURCES, AS STATED IN
43 ORDINANCE SECTION 4.3.7. APPROVED 5-0.

44
45 Attorney Pottle felt the Findings of Fact should include the reasoning behind omitting the
46 cooking facility.

47

1 Mr. Ashmore reiterated that the building without a cooking facility is an accessory
2 structure. Inclusion of a cooking facility creates a residential accessory dwelling unit,
3 which increases the dwelling units on the property, creates a significant change in use,
4 and affects future use of the nonconforming structure as well. Ms. Anastasia added that
5 potential for density increases, vehicle traffic increases, turnover increases impacting the
6 area. While this use occurs elsewhere, it is occurring in conforming structures. Such a
7 use must be shown to have the least amount of adverse impact.

8
9 MS. ANASTASIA MOVED, WITH MS. EATON SECONDING TO RETURN MS. LOFTUS
10 KELLER TO ALTERNATE MEMBER STATUS. MOTION APPROVED 4-0-1 (MS.
11 LOFTUS KELLER IN ABSTENTION).

12
13 MS. ANASTASIA MOVED, WITH MR. ASHMORE SECONDING TO RETURN MS.
14 RANDOLPH TO THE BOARD. MOTION APPROVED 5-0-1 (LOFTUS KELLER IN
15 ABSTENTION).

16
17
18
19 A discussion was held about the Hall Quarry quarry hearing, and the role of Attorney
20 Collier in the process. Discussion was held on the legal standing of discussing the
21 issue without appropriate public notice. It was noted this was a quick discussion,
22 recorded for the record, and included under "Other Business" on the Agenda.

23
24 Ms. Randolph voiced concern about the clarity of the Planning Board's legal advice as
25 the Board heads toward a decision on the quarry. She would like to be confident that
26 the Board is hearing all potential legal avenues and options available to them on any
27 given question that arises, and she is concerned the Board is only hearing from Attorney
28 Collier his personal opinion on the matter being discussed. Chair Hanley recalled a
29 similar situation, where the Board vetted their concerns to the Board's Council, in the
30 presence of Town Manager Durlin Lunt. Perhaps a similar action would help.

31
32 Ms. Randolph additionally voiced concern that she has had trouble hearing testimony
33 due to Attorney Collier loudly flipping through papers and writing notes. She worried that
34 during those times Mr. Collier is focused on his own thought process and not fully
35 engaged in listening to the meeting. Chair Hanley felt this was appropriate to bring up in
36 an Executive Session discussion.

37
38 Ms. Eaton felt there was a chance the Board was at times being led, and she wondered
39 if interpretation of the Ordinance is being made more complicated than necessary.

40
41 Mr. Ashmore felt that no one on the Board was comfortable saying they were unhappy
42 with Attorney Collier's work. He asked what Attorney Collier's area of expertise was.
43 CEO Keene thought he was a Municipal Attorney.

44
45 Ms. Randolph wondered if a third-party sound expert is used, could it be a legal sound
46 expert?
47

1 Ms. Anastasia felt perhaps a discussion on clarifying roles and responsibilities was
2 needed, for both the Planning Board's attorney and the Planning Board. Ms. Randolph
3 hypothesized Attorney Collier's thinking to be to find a legal path forward. So, he
4 searches for that single path, rather than explaining all the available paths forward for
5 the Board's review.

6
7 Mr. Ashmore felt there might be other attorneys who specialize in this type of issue. At
8 this point perhaps the Board needs an expert. Ms. Randolph felt that hiring a different
9 attorney with more experience does not necessarily have to involve a full review of the
10 entire hearing, but perhaps someone with experience in sound. This could be an
11 attorney in addition to Mr. Collier.

12
13 CEO Keene stated that an additional sound expert is someone the Applicant should be
14 paying for in accordance to the Quarrying Licensing Ordinance. Ms. Keene recalled that
15 the last time this issue was discussed, attorneys for the Applicant stated they would not
16 pay for that expense.

17
18 Ms. Randolph hoped any expert could be an expert in both noise and law.

19
20 CEO Keene felt a third noise expert would be helpful to review the submittals from the
21 previous noise experts and make a finding.

22
23 Chair Hanley felt the Board needs to talk with Attorney Collier about his role as advisor
24 to the Planning Board. Additionally, the Planning Board needs to request another sound
25 expert to help with navigation through the technical submittals and to offer noise
26 remediation suggestions.

27
28 Ms. Eaton wondered if the Town Tax Assessor could provide an explanation on how the
29 area is assessed. Chair Hanley agreed such a thing can be requested.

30
31 It was agreed that if an Executive Session was held with the Planning Board Attorney,
32 discussion would include his role. Executive Session is part of a meeting and as such
33 would have to be advertised.

34
35 Ms. Eaton wondered if moving Attorney Collier's seating would help.

36
37 Ms. Randolph mentioned as an example her question of setting a moratorium until a
38 noise ordinance could be crafted. Attorney Collier's answer was no. However, she is
39 not confident this is truly legally impossible, or only Mr. Collier's opinion that such a path
40 is not the way to proceed.

41
42 Chair Hanley and Mr. Ashmore both wondered if handling a situation as it comes up
43 during a meeting might be the way to proceed. Mr. Ashmore wondered if Mr. Collier had
44 the expertise to answer some of the questions coming up. Ms. Randolph felt Attorney
45 Collier should be listening to the meeting, instead of the paperwork and writing he often
46 engages in.

47

1 Mr. Ashmore wondered if there was an attorney with noise experience. CEO Keene
2 informed the Board that the Board of Selectmen approves the attorneys that can be
3 used. There are approximately four approved attorneys to use. Going outside that list
4 would require Board of Selectmen approval.

5
6 Chair Hanley asked CEO Keene to ask Town Manager Lunt to find out how to proceed.

7
8 Ms. Ashmore suggested just Ms. Randolph and Chair Hanley to discuss concerns with
9 Attorney Collier. This could be done prior to the meeting.

10
11 **VI. Adjournment**

12 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, TO ADJOURN.
13 MOTION APPROVED 5-0-1 (LOFTUS KELLER IN ABSTENTION). MEETING
14 ADJOURNED AT 10:19PM.
15
16