

ZONING BOARD OF APPEALS HEARING MINUTES FOR THURSDAY, JANUARY 5, 2017

Minutes of the Board of Appeals Hearing held January 5, 2017 @ 7:00 p.m. in the

Selectmen's Conference Room

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TOWN OF LUDLOW

ONE MEETING SCHEDULED

ONE HEARING SCHEDULED

Board Members Present were:

Anthony Jarvis Alan Aubin
Paul Kessler Kathleen Bernardo
Paul Zielinski Manuel Lopes
Joseph Wlodyka

Also Present were:

Attorney Michael Schneider, Town Council
Jaime Goncalves, 90 Green Street, Ludlow
Paulo Gomes, 373 West Street, Ludlow
Doug Stefancik, Town Planner

FIRST MEETING SCHEDULED IS DISCUSSION WITH TOWN COUNCIL, ATTORNEY MICHAEL SCHNEIDER, REGARDING LUDLOW TOWN BYLAWS.

Anthony Jarvis called the meeting to order at 7:00 p.m.

Pledge of Allegiance

Mr. Jarvis: Please be seated. Our 1st item on the agenda this evening is Town Council, so if you could please come forward.

Atty. Schneider: Hello everyone, how are you? I might be new to some of you but our office isn't, Dave Martel was Town Council for what? Nineteen, twenty years?

Mr. Jarvis: Quite a while, yes.

Atty. Schneider: And then Mike Callahan took over after Dave retired, and now Mike's become a

judge so Doherty Wallace is still here and we've been transferring these files over the past year or two.

Mr. Jarvis: This is Attorney Michael Schneider, for those who don't know.

Mr. Jarvis: Ok, our main topic this evening is, well two, one is were going to discuss the issue of the minimum size lot according to the Mass state law and the other one is section 3.4 the twenty-five percent issue.

Atty. Schneider: Right.

Mr. Jarvis: So why don't we touch on the smallest lot allowed in Mass General Law, I believe it's 5,000 but...

Atty. Schneider: So tonight is all about, probably one of the more difficult sections of the zoning act that they drafted. There's a lot that goes on in it and both of tonight's topics touch on it. So, if you want to discuss the minimum lot size, this is, did people bring copies of the statute with them?

Ms. Bernardo: We have Section 6.

Atty. Schneider: Section 6? This is the one, two, three, four, five... this is the fifth paragraph of the section, it begins "any increase"

Ms. Bernardo: Yes.

Atty. Schneider: Alright, so, the minimum lot size, there's a few things that go on here. Regardless of what the statute says, if for whatever reason, Ludlow and its Bylaws said in a certain district, you can have a lot size that's 4,200 feet, there's nothing in this act to stop that. I don't think that's probably a very good idea from a planning or building perspective, but the Bylaw is still going to control, if it sets a lower standard. I doubt it does. Then if you get into the statute itself, and the protection it offers people, it offers people a limited protection to use lots for single or two-family uses. So, it doesn't apply to a business type user, it's only for residences. The lot needs to also be zoned for residential use so, there's still that underlying use analysis you have to go under.

Atty. Schneider: Then, if that lot has at least 5,000 feet, and fifty feet of frontage, it can be used for a single or two-family residence. So, it's not an up or down answer, but for the most part, it's a 5,000 square foot answer, but you do have to run the analysis through the facts of what the underlying zoning is and what the use is going to be.

Mr. Jarvis: And that was my interpretation of it, as long as we followed Section 6, and the outlying areas that the minimum size lot is 5,000 with 50 feet of frontage, 5,000 square feet.

Atty. Schneider: Provided it's for a home, yes. But, for example, if you know about this tiny house movement that people are going through, where they've got homes that are maybe half the size of this room, their lot might only need 1,500 square feet. I know some towns are experimenting with that idea, I think Greenfield had at least an ordinance up to do that. So if you had a situation, for whatever reason, and you want to make the lots smaller, you can do that.

Mr. Jarvis: Would it therefore be up to the Town to accept?

Atty. Schneider: That would be a non-conformity. Right.

Mr. Jarvis: Which would make something less non-conforming. You're Mr...

Mr. Gomes: Gomes

Mr. Jarvis: You're the one looking at the lot situation?

Mr. Gomes: Yea, I've owned a lot on Clarence Street, which is off Holyoke Street, for about fifteen years, it's 4,750 square feet, which is just a hair short if you really think about it from the 5,000 state minimum. It's obviously much smaller than the Town minimum, I think the Town's standards are a little bit higher, but the Town frequently analyzes situations and can either accept or deny anything under the Town literature. So I've owned it for about fifteen years, and we bought it from a neighbor that lived on Belmont Street. So basically the lot that we bought was their backyard. And, at the time, obviously I didn't do a lot, or all of the research that we have been doing since then, but my intention was, I was getting married at the time, I was going to build a house and that was going to be my starter home. Well when we went through all of those hurdles, I was told that it would get denied and then I would have to go to the Board of Appeals where we would go through that process. Then the Board of Appeals is where they told me, as much as we would love to do something for you we can't go under the State minimum of 5,000, so I'm sorry.

Mr. Gomes: So I've been, for a lack of better terms, stuck with that lot for fifteen years and nothing's being done on it. There's really nobody that's is gaining from this. I'm paying a really small amount of taxes on it, but it's still a waste of money because I'm not using it for anything. And the Town's not getting any gain out of it because obviously they could produce some revenue from the real estate taxes. Um, I've recently started to look into it again, I don't know if it was just good timing but my understanding was within the last year or so that some rules or laws have changed where it made certain situations a little more appealing to build on houses that may have not been as conforming as they used to be. So to make a long story short, my lot is 4,750 square feet, I would like to build on it, it sounds like you're saying that there's no State hurdles as long as the Town is willing to accept it?

Atty. Schneider: That's not what I'm saying.

Mr. Gomes: No, well, the literature says 5,000 but if somebody had a situation, that made sense to build on a residential lot and they met all of those requirements that it might be acceptable to build on a lot that was under 5,000.

Atty. Schneider: I think you'd have to make a dimensional variance finding to do that.

Mr. Gomes: Yea, as long as I do whatever the Town says is required, the State, Section 6, would not interfere with that. Is that?

Atty. Schneider: I think the better way to think about it unfortunately for your situation is that Section 6 doesn't afford you any protection right now.

Mr. Gomes: Okay.

Mr. Jarvis: Just to kind of put another piece of information or plateau, through our research we did find a plan of the subdivision plan when that area was developed, the problem is they were all 50 x 100 foot lots.

Mr. Gomes: Which would be 5,000, they were all or they were not all?

Mr. Jarvis: They were all.

Mr. Gomes: Okay, well there is a bunch of lots on that, either Belmont or Clarence Street that are about, they show at least, on the Town records, at 4,750 which is the same size that I have.

Atty. Schneider: Have you had it surveyed?

Mr. Gomes: I haven't had their lots surveyed.

Atty. Schneider: No, have you had your lot surveyed?

Mr. Gomes: I have not done that yet, that would have been my next step if that was the route that made sense.

Atty. Schneider: The facts have to come first, if it's 5,000 feet and a quarter inch, you might be protected.

Mr. Kessler: Well because something else, the question is, whenever the person that owned the other part of that lot built on their lot, if they cut into your section of your lot to give them room for their shed or, I'm saying what if, a shed or whatever, to infringe on yours and then just said okay well were shortening yours so we can put this here, correct me if I'm wrong anybody, but if it's pre-existing, non-conforming and it shows that that was subdivided and you have previous deeds down through the, what do you call the department of deeds?

Ms. Bernardo: Registry.

Mr. Kessler: Registry of Deeds that shows that that was pre-existing, non-conforming prior to 1954, then that might be another thing Michael? Or not, that would fall into the plan? In other words, something else, I can't remember the exact section, but the 1976 Bylaw that went into effect that was grandfathered until 1981. What year did you actually buy that? It was after 1981, right?

Mr. Gomes: Yes, it was about 2001.

Mr. Kessler: Okay. So that lot should not have been able to be sold as a building lot.

Atty. Schneider: Well did your sellers make any representations to you about what it could be used for?

Mr. Gomes: The sellers lived on Belmont Street, different street, which I don't even know if that's relevant, so according to, this is just a screenshot of what the Town records have, it shows that that particular lot where their house is has a garage, a separated garage, is 4,750, and then what used to be there, back there, which is now my lot, is the same size. I don't know if that used to be one lot and it was separated into two for the sale, or if it was always two separate ones, I'm not even sure if that matters.

Mr. Kessler: Well does it show it on yours as separate?

Mr. Gomes: It shows mine is separate, well this was recently printed.

Mr. Kessler: Can I see the printed...

Mr. Jarvis: That's the new electronic one...

Mr. Kessler: Well I know, I'm just looking to see because what they did is, the Town...

Mr. Gomes: But it sounds like you were trying to make a point, which is valid, why would they let me buy this if I can't do anything with it?

Mr. Kessler: Well, you can buy anything.

Ms. Bernardo: It happens all the time.

Mr. Kessler: The Town will not keep you from buying property.

Ms. Bernardo: No. It happens all the time.

Mr. Zielinski: What lot number are you?

Mr. Kessler: Lot number 50, oh no, you're number 13.

Mr. Gomes: So there's three houses on Belmont Street that, without being surveyed, are showing on record 4,750. The one right behind me and then the two next to it.

Mr. Zielinski: Are they built on?

Mr. Gomes: Yea. So I mean, it's not like building a house on Clarence is going to stick out like a sore thumb, it's going to fit right in. And I would make a house that was, you know, on the smaller side, two floors, and it would like nice.

Mr. Kessler: What I'm referring to even though this is, according to the 76' change of Bylaws, if this lot and this lot were owned by the same person in 1981, okay? Or even 76', in 1981 they had to do something with this or prior to that, and they could be grandfathered up to 81'. After 81', this owner of this house, these lots combined and made it one lot.

Mr. Gomes: Ok, so they owned that in 81' because they sold it to me in 2001.

Mr. Kessler: Well, again that comes back down to deeds and what have you. I'm just trying to give you some background in case it goes, so you'll know what paperwork you have to pick up.

Mr. Gomes: So it sounds like if they owned this in 1981 it became one lot?

Mr. Wlodyka: Correct.

Mr. Kessler: According to the law, yes.

Mr. Gomes: Okay, so then according to that, they were allowed to make a non-conforming lot even more non-conforming.

Mr. Kessler: Well, in your paperwork like Michael brought out, you don't mind me using your first name?

Atty. Schneider: No, no. Please.

Mr. Kessler: What he brought out is... you need to have, on your deed that they sold it to you in your bill of sale as a building lot, am I correct Mike?

Atty. Schneider: Or in the agreement, but I doubt it got into that kind of level of detail on representations, right?

Mr. Kessler: But I'm just saying, in order to cover him, as far as going back legally,

Atty. Schneider: Yea, and you bought this fifteen years ago?

Mr. Gomes: It was 2001 or so, yea.

Atty. Schneider: I don't think you'd even have a way, quite frankly, to sue those people for misrepresentation because it's been more than seven years ago.

Mr. Gomes: Well, those people unfortunately are deceased, they're not even owners of that lot anyways, so they've already sold their property to somebody else.

Ms. Bernardo: If that lot was subdivided there should be a subdivision plan, yes?

Mr. Gomes: So the point that you made is you can buy anything you want, except... Shouldn't there have been something in place that said we won't let you, previous owner, sell it because you're violating this non-conformity rule?

Ms. Bernardo: But that's the original plan, if that particular lot was then subdivided to shave it here or there, there should have been a subdivision plan on record. So is it a matter of just surveyor error? Or is it a matter of somebody actual creating a larger non-conformity, I guess is my question.

Mr. Jarvis: It's going to take a lot of research.

Atty. Schneider: I think that ship has sailed on the existing building.

Ms. Bernardo: But there is no structure on this lot right?

Mr. Kessler: On his, but there was on the other one.

Mr. Wlodyka: There's three houses right around you?

Mr. Gomes: There's three lots on Belmont Street, they're all adjacent to each other. That lot, which I think is 16 Belmont, and then the two right next to it.

Mr. Wlodyka: Well, how big are the houses that are on the other lots?

Mr. Gomes: They're on the smaller side, they were built in the 40's.

Mr. Wlodyka: So 1,500 square feet, 1,200 square feet?

Mr. Gomes: It's possible, yea. Definitely under 2,000.

Mr. Kessler: On his print it shows a double line here, and I always questioned what that double line is, because on some of the Town's prints, if you combined the two lots, what they did in 1981, is the Town drew a zigzag line, a double zigzag line between the two lots to indicate that they were now one lot. And then on that one there, I was just wondering if that's, do you know off hand, or is that something the DPW does?

Mr. Gomes: This was a print off that I think I got from Joe at Town Hall.

Mr. Kessler: You know what I'm referring to Doug?

Mr. Lopes: If it was done in 1981, the Town did it on their own, but a lot of those lots and changes weren't recorded at the Registry of Deeds.

Atty. Schneider: There were no plans recorded?

Mr. Lopes: That's what I'm asking, if these two lots were previously two separate lots, you're saying in 1981, if an owner had two non-conforming lots together, that the Town automatically combined them and drew that zigzag line on the Town plans...

Mr. Jarvis: I don't believe the Town combined them.

Mr. Kessler: I think it was the State, wasn't it?

Ms. Bernardo: Well by law they should have been combined if nothing was done with them.

Mr. Kessler: Right.

Ms. Bernardo: The problem is 98% of the people in Massachusetts had no clue that this was going on and didn't know that they had to do something.

Mr. Kessler: Nobody told anybody.

Ms. Bernardo: So over the years these lots remain vacant.

Mr. Lopes: Right, and nothing was recorded.

Ms. Bernardo: No, of course not. No.

Mr. Gomes: So I don't know how many lots in Town are under this same situation...

Mr. Jarvis: None that I know of.

Mr. Gomes: Well, I'm obviously here because there's at least one.

Mr. Zielinski: On the GIS, you're the only one on the street with 4,750, however if you go to the next street over to Belmont there's several that are 4,750.

Mr. Gomes: Yea, the one right behind me and the two right next to me as well.

Mr. Zielinski: Right.

Mr. Kessler: Mike brought up something again, it's going to cost you I'd say a minimum of \$250 if you have it surveyed, and if the surveyor stamps 5,001 square feet...

Mr. Gomes: Okay, so what if, obviously if that happens, everything's great, we don't have to go any further with this conversation, but what if it comes under the 5,000? Is there something that I can still do to build it?

Atty. Schneider: I don't believe so.

Mr. Gomes: Okay, so I mean obviously I'm going to have to get it surveyed, will I be able to reach out to an adjacent neighbor and potentially buy a little strip of their lot?

Mr. Zielinski: That's what I was thinking.

Ms. Bernardo: If they have it to give.

Mr. Zielinski: Yea, if they have it without giving up the setbacks.

Mr. Lopes: As long as they're not making their lot more non-conforming.

Mr. Jarvis: Well, they will be.

Mr. Gomes: Well they will be, but that's how I got this lot in the first place.

Mr. Lopes: So they can't do it.

Mr. Jarvis: Yea, they can't make their lot more non-conforming.

Mr. Gomes: In theory, but that already happened one time. That's how I ended up with my lot.

Mr. Lopes: But it was originally drawn that way, so it was done that way at the inception of the subdivision. It's just like that, it wasn't changed.

Mr. Kessler: The subdivision was before 1954, the law changed in '76, the bylaw. Bylaw or State law?

Ms. Bernardo: State law.

Mr. Jarvis: State law.

Mr. Kessler: The State law changed in '76. So the State law changing in '76 automatically voided your blueprint per say, okay, or your plans, so it made it too small. Now where they come out now and say it has to be a minimum of 5,000 square feet. It's so a person isn't putting up a mansion inside that lot. You can meet all the setbacks but there's nothing leftover.

Mr. Gomes: Right, no, and I must have misinterpreted what you were reading or paraphrasing earlier when you said, you used the example of if someone wanted to build on a lot that was 4,250, it sounded like you said that they could under certain....

Atty. Schneider: Oh, that's if.... If that's what the Bylaw provided.

Ms. Bernardo: If the Zoning Bylaw...

Atty. Schneider: I was just trying to say that...

Mr. Gomes: If that's what the Town Bylaw provided?

Atty. Schneider: Yes, this statute doesn't require the lot be 5,000 feet.

Mr. Gomes: So can I do what a lot of people do where they kind of appeal the general Bylaw and then they typically get accepted under the Board of Appeals as long as it's above or meets certain standards, I mean can I still go through that process?

Atty. Schneider: I don't understand exactly what you're asking.

Mr. Gomes: It sounds like you're saying if the Town Bylaw said you can build anything, 4,000...

Atty. Schneider: It doesn't.

Mr. Jarvis: It doesn't.

Mr. Gomes: Right. If it did, then I would be allowed to do that even though the State rule says 5,000?

Atty. Schneider: Right.

Mr. Gomes: So the Bylaws, I don't know exactly what it is but it's above 5,000, maybe ten or fifteen...

Mr. Jarvis: Right now it's fifteen.

Mr. Gomes: Okay, so there's a lot of houses that have been built in the last fifteen years that have been under fifteen, actually probably most of them, but they go through that

process where they get denied and go to the Board of Appeals, whatever steps they have to do, so I'm just saying can I go through those same steps?

Atty. Schneider: I don't think it would be fruitful for you. It doesn't look like you have enough square footage.

Mr. Lopes: The ones that have been approved met the laws of being 5,000 square feet.

Mr. Gomes: But is that in the Town Bylaw?

Ms. Bernardo: No, the statute.

Mr. Gomes: They're only approving that because it's a State Bylaw, but the State Bylaw is basically saying we won't interfere with what the Town wants to do. If the Town thinks it makes sense.

Ms. Bernardo: So if there was an amendment to the Zoning Bylaws in Ludlow that said you could have, in any given zone, a parcel, a building lot, less than 5,000 square feet...

Mr. Gomes: Right, but the intention of the appeal, is to appeal something that doesn't meet the minimum, or the initial standards, right?

Ms. Bernardo: True, but we have basic, bottom line sort of requirements, but if the Town itself was to pass an amendment to deal with that issue permitting such construction on such lots, then we would have the flexibility than to say...

Mr. Zielinski: Home rule in this case applies, so if we in Ludlow say we need 10,000 minimum square feet, but the State says it's five, it goes to the local law in this case to take precedent. So right now our requirement is fifteen.

Mr. Gomes: But it wouldn't be the same if the Town minimum was 4,000. The State would not interfere?

Ms. Bernardo: Correct.

Mr. Gomes: This might be a little outside the scope of this meeting, but can I appeal to the State? Or will they just defer to the Town? I mean is it a circular reference?

Atty. Schneider: The State has no role in this, other than administration...

Ms. Bernardo: You can come to us and we can deny you and then you can appeal it to the court system. That you can do.

Mr. Gomes: Which is at the State level?

Ms. Bernardo: Well, yes.

Mr. Kessler: State land court.

Ms. Bernardo: You can go to land court, you can go to housing court...

Mr. Gomes: Well it sounds like it's just checking the box, which I'll do if that's what I need to because I'll go to them and they'll say, well there's nothing in here that says that we're going to stop you, so go talk to them. And then I come to the Town and they're going to say well we can't because of the State. It's like, I'm not going to get anywhere.

Mr. Jarvis: We've got a tough road to hoe if you go that route.

Mr. Gomes: I'm okay going to the State level, I'm fine with that, but I'm thinking that they're just going to say, well, we're okay with it as long as the Town's okay with it.

Atty. Schneider: The Town's not okay with it.

Ms. Bernardo: You're going to end up in front of a judge who will decide it.

Mr. Jarvis: The thing is, the way I interpret the regulation is the Board right now can't even look at it because our minimum requirement is 5,000 square feet.

Mr. Gomes: What if I got a letter from the State saying we're okay with it as long as you're okay with it?

Mr. Zielinski: That's not how it works, the Town's requirements are higher. It's a larger requirement than the lot size unfortunately.

Mr. Gomes: And the biggest hurdle is the State minimum, so if I got something from the State which could be the judge's ruling or maybe some other piece of paper that says...

Mr. Jarvis: But we can't hear it for you to appeal it.

Mr. Gomes: What's that?

Mr. Jarvis: I said we can't hear it for you to appeal it.

Ms. Bernardo: Why can't we?

Mr. Gomes: No I'll appeal at the State level. I'll get something from the State.

Ms. Bernardo: You're going to take it on as an undersized lot? Under 5,000 square foot?

Ms. Bernardo: Well he can petition us for anything whether it's justified or not justified...

Mr. Zielinski: He can petition us but it wouldn't be approved...

Ms. Bernardo: Exactly, so we would deny it and it would give him the ability to appeal it to the courts.

Mr. Zielinski: Right.

Ms. Bernardo: We've heard a lot of things that didn't make any sense and we had to render a judgment.

Mr. Gomes: I mean right now we're sitting with a lot that's not being maintained there's just grass and hay growing, nobody's gaining from this. I mean you guys are getting five dollars a quarter from me, which big deal.

Mr. Zielinski: Trust me, we feel your pain

Mr. Jarvis: I think your first criteria is to get the lot surveyed and find out exactly what you got, because you may wind up with more and one of your neighbors might lose a little depending on where the stakes go.

Mr. Zielinski: I was looking at the GIS map and I don't know how accurate that is Doug but it looks like you may have an encroachment from a garage at the rear of that property.

Mr. Gomes: There is a garage on that property. So what happens if that garage is on my lot?

Mr. Zielinski: Talk to your attorney.

Mr. Gomes: It has to get torn down?

Mr. Jarvis: That's a whole other issue.

Mr. Gomes: If it turns out that it's mine that's the next step.

Mr. Zielinski: Get a survey done. That will be your first step.

Mr. Gomes: I'm going to get that survey done, I'm just preparing for the worst.

Mr. Jarvis: So, with that being said...

Mr. Gomes: Okay, well I appreciate your time.

Mr. Jarvis: We'll move onto our next issue which is the 3.4.2, twenty five percent issue.

Atty. Schneider: How did this get by the Attorney General's office back in 1994?

Mr. Jarvis: I have no idea.

Ms. Bernardo: No idea, but we want to get rid of it.

Mr. Zielinski: We have questions with this all the time. That's what makes our job interesting.

Atty. Schneider: I've had other conversations about this statute with Mr. Jarvis including the role the Building Commissioner has been playing, so what would you like to address first?

Ms. Bernardo: How do we get rid of it?

Atty. Schneider: Well as a Planning Board you know you have the statutory right to initiate amendments, right?

Mr. Jarvis: Well that's why we have Mr. Doug here to see, he's on the Planning Board so he can get an idea if we need to have a meeting say with Planning, Building Commissioner and you to try and resolve this thing or how we're going to address it because every time we turn around we get a different opinion and I just want to put this to bed. I'm getting tired of going around in circles.

Atty. Schneider: We need to draft an amendment that makes opinions unnecessary. Right.

Mr. Jarvis: Correct.

Atty. Schneider: Alright, so right now it's crossed purposes with itself, it's saying you can enlarge a non-existing, or excuse me, a pre-existing non-conformity by 25% greater in volume or area. So, right there, and then there's an "and" clause, and to a greater extent when approved by the Board of Appeals. So right there it's not limited, and then again it is limited to one 25% increase.

Mr. Jarvis: And that was kind of one of the big stepping stones on one of the cases we just had because it was one 25%, the property owner already had done I think one or two extensions to that property and so he came in for another huge expansion, almost doubling the size of the place. And that went back and forth and you know, trying to find loopholes in this whole thing to allow him to do it and that just

put the frosting on the cake, so that's it. We're not going to be running through all these hoops and whatever to try to figure out how somebody can...

Atty. Schneider: So he was stacking his permits to eventually just keep building?

Mr. Lopes: Well, you know, many times it happens where the previous owner has already used up that 25%, the property gets sold, new owner comes in and wants to increase and that 25% has already been used.

Ms. Bernardo: And not to mention, if we have people who have agricultural property, they put a house on there that's 2,000 square feet, right, but they have eight acres, and then they put a porch on which is another 100 square feet, and then all of a sudden they want to put on this other addition and it's like, oh no, no, no... it's ridiculous. This whole concept is ridiculous. And I understand that other Zoning Bylaws in the area have the same issues so I don't even know where this originated from in Boston where they thought this was a good idea. But, for us it's just awful, it keeps us from doing what needs to be done, and it keeps people from actually doing the right thing.

Atty. Schneider: It limits your ability to use sound judgment, especially in that example with the farm.

Ms. Bernardo: Absolutely.

Mr. Jarvis: Well one of the things that we have tried in the past that we started to discuss but couldn't get it off the ground was total lot coverage. Some type of total lot coverage thing so that would allow people with larger pieces of property a little more expandability but we couldn't get that moving so... I think the crunch on this 25%, the way that it's written now is that limited to one 25%, we could not find out the reason for that one 25% or how it got there.

Atty. Schneider: I would get rid of both objective percentages if I were you. Then you can tailor the project, because this is going to be in the context of a building permit so the project that comes through the Building Commissioner and he says, his one role, although he shouldn't be approving non-conformities, is identifying them. And then sending these people to you.

Mr. Jarvis: Which he does.

Atty. Schneider: Okay. Um, but I think like the example of the farm that Ms. Bernardo gave is perfect. I mean, a 25% square footage cap might not make sense in certain factual scenarios.

Ms. Bernardo: You build a house in 1940 it's going to be a lot smaller than what you want to have in 2017.

Atty. Schneider: So I see a few problems with this, first in the administration, the Building Commissioner should just be identifying this issue, he shouldn't be issuing building permits until you guys decide or not decide to allow it. I think tying a ceiling that's subjective like this could cause problems. And the statute doesn't require that there be any such ceiling like this, so it will really free you up to make decisions. I would also get rid of this idea of an objective number tied to area because there could be other kinds of non-conformities that aren't area non-conformities, like the hours of a business. If, you know, there's a convenience store or something, farm stand, or some other use that isn't presently allowed but it's valid in existence and they want to sell corn for an extra hour during the

summer months in the evening, I think this sort of Bylaw doesn't give you the tools to address that.

Mr. Jarvis: Well that would be part of yours right Doug? Planning Board.

Mr. Stefancik: Um, yea. If we do get rid of this though, with the pre-existing, non-conforming, some people don't have to come if they're under that one 25%. Is this going to be anyone who is pre-existing, non-conforming is going to be coming to the Zoning Board of Appeals to get everything approved? Because they'd be seeing everybody instead of just certain select people, or anyone that is over the one 25%. Anything under you don't see.

Atty. Schneider: I think that administration, if it's been going on by custom, is not what the statute contemplates. You're supposed to decide each and every non-conformity that gets expanded. Not just ones of a certain size.

Ms. Bernardo: Which is maybe where that came from.

Atty. Schneider: A desire to get it off your table?

Ms. Bernardo: Maybe. Maybe that's where it came from.

Mr. Jarvis: We inherited it so...

Ms. Bernardo: Yea, is so that everything didn't have to go to the Zoning Board of Appeals. Maybe they tried to cut us some slack by doing that. And somehow that one time 25% thing got thrown in there but there just has to be a better way because this is just too restrictive, it's...

Mr. Jarvis: We need a common sense approach to this.

Mr. Zielinski: Are you aware of any other towns who's Bylaws address total lot coverage?

Atty. Schneider: Sure. That's a different, there's no total lot coverage Bylaw, or a section here?

Mr. Jarvis: Not in Ludlow.

Mr. Zielinski: Not here, no.

Atty. Schneider: I think it would need to be in the Table of Uses or Table of Dimensional Controls, what that needs to be, I think um...

Ms. Bernardo: Maybe another column?

Atty. Schneider: I think it would be, right?

Ms. Bernardo: Just another column in the Table of Dimensional Uses.

Atty. Schneider: I think there's probably a lot of work on the Planning Board in order to have that make sense. Especially for different neighborhoods and the character that already exists.

Ms. Bernardo: Right.

Atty. Schneider: And what the Town wants going forward. So it's possible to put it in there but that's a, I think if it were on the Spring Meeting Warrant, you should probably get started now.

Mr. Jarvis: Well, that was the reason to try and get this thing moving early. Just to see if we could do something in time for the annual meeting, if not it would have to go to next October.

Mr. Kessler: Can I open up another can of worms?

Atty. Schneider: Sure, that's what this section of the statute is for.

Mr. Kessler: Rather than do away with the limited one 25% increase, if the one 25% increase per decade? So if you build something now, if you want to build something again you've got to wait ten years before it can be done, would that make any sense?

Ms. Bernardo: No.

Mr. Kessler: Ok, alright.

Atty. Schneider: I think you're probably running into that problem now, without it being explicit.

Ms. Bernardo: Right.

Mr. Kessler: That's what I'm saying, so if you threw that in there of ten years, than a person's not going to say, oh I want to add an attached garage and the three years later I want to put a swimming pool up...

Ms. Bernardo: So let me give you a scenario, people put a porch on, then all of a sudden their parents are infirmed and they have to come and live with them so they have to put on a bedroom, an in-law apartment or something five years later. We're going to say no?

Mr. Kessler: No, that's what we have grave yards for. No, I understand what you're saying.

Mr. Zielinski: You might want to contemplate taking the 25% rule and amending it to say 25% or total lot coverage, whichever is greater.

Ms. Bernardo: Yea but we've got to come up with total lot coverage in order to do that.

Mr. Zielinski: Well that's it.

Ms. Bernardo: And I have a lot of faith in everybody in Ludlow, I don't have a lot of faith that that's going to get done for Spring so if nothing else, before I leave this Board, this limited one time 25% increase has to go. It's been twelve years of fighting that and now we're at the point where if people are trying to get things done they're circumventing, their going all the way around and it puts us in an even worse position which I do not like being in. Accessory buildings, they're not really structures, I don't like going through that route. So if we just, you know, cut off the head of the snake...

Atty. Schneider: I don't think you have to tie it to an objective number under the statute that both empowers you and requires you to make certain findings in order for people's projects to go forth.

Ms. Bernardo: I mean Mass statute only ties us to coming to the conclusion that whatever is being proposed is not substantially, is not more substantially detrimental to the existing non-conformity or the neighborhood. That is the standard of the statute. The rest of this is all self-inflicted.

Atty. Schneider: I like to think of it as sort of a limited Special Permit finding. You could, you know, it's perfectly passable to track this language of the statute here.

Mr. Lopes: We could just add language to that limit to one 25% increase. Add language to that stating unless otherwise approved by the ZBA.

Atty. Schneider: I think you're there now.

Mr. Lopes: We are yes but it's not in the language. I think that's where people might be getting confused.

Mr. Kessler: If you have the Building Commissioner that is okaying it because it's not one time 25% before it gets to us...

Atty. Schneider: He's got to end his help in this at identifying the non-conformity. Regardless of the extending, it would be altered. You all are charged by statute with making this finding not the Building Commissioner.

Ms. Bernardo: So, in your opinion, even though we have this language in our Zoning Bylaw, any alteration to a pre-existing non-conformity should be coming to us?

Atty. Schneider: Right from the statute, no such extension or alteration shall be permitted unless there is a finding by the permit granting authority, which under your Bylaw is you, or by the Special Permit granting authority designated by ordinance or Bylaw that such change, extension or alteration shall not be substantially more detrimental.

Mr. Kessler: Could the Planning Board, the way you just read that, could the Planning Board say oh, we have the right to do Special Permits too? From what you just read would they have that same right?

Atty. Schneider: That would depend on what the Bylaw says, it would be the Town Meeting that would make the decision of who can make...

Mr. Kessler: Other than the ZBA?

Atty. Schneider: Correct.

Mr. Jarvis: Well originally just to give you a little background, we did not have the power to do Special Permits up until two years ago. We were just restricted to Variances and the Planning Board was the Special Permit granting authority per Bylaw. We kind of finally got it petitioned to put through the Town Meeting a few years ago to allow the Zoning Board of Appeals to also do Special Permits. We kind of try to stay away from Planning's area and just deal with our own issues. We're not looking to take over any of their business.

Atty. Schneider: So is it split that you have jurisdiction on certain Special Permit applications and they have it on others?

Mr. Jarvis: Correct.

Atty. Schneider: Okay. That's not uncommon.

Mr. Jarvis: So, I mean, and that was the thing is that everything was coming to us as Variances, and the applications were coming in and when we put out the Variance...

Ms. Bernardo: Section 6 findings...

Mr. Jarvis: You know so were saying there's nothing wrong with the soil, shape or topography so we can't help you. You know, you're dead in the water. And so that was the thing was if we wanted the Section 6 finding and the Special Permit

we could, as long as it was not more detrimental for the neighborhood then we could look at it in a different view, so that's why we tried to get the Special Permit. And then all along is this 25% thing that's been...

- Atty. Schneider:** I think the place to start is just to track the existing language in the statute and think of some scenarios where that wouldn't work. This just seems unwieldy and not always rational.
- Mr. Jarvis:** You tell us, we beat ourselves up..
- Atty. Schneider:** I'm here to help, believe it.
- Ms. Bernardo:** It's just confirmation of what we all feel. We appreciate that.
- Mr. Jarvis:** That's why we were looking at that one 25%, if there was some way that we could look at it in a different light rather than say okay, it's hard in stone, you had one 25%, you're dead, that's it, nothing more is going to happen.
- Atty. Schneider:** Also by having an objective ceiling almost, not in a legal way, but almost in a moral way or human way limits your ability to say no, what you're asking for doesn't make sense. We could envision a project that looks like this as working. But if it's there, and the custom has been to allow it, it puts you in a tough bind politically, in my opinion.
- Mr. Jarvis:** Basically that's what we've been looking at with the one 25%, if you used it you're dead in the water and we aren't going any further.
- Ms. Bernardo:** And if we don't like it because it's just 24.9% we have nothing to say.
- Atty. Schneider:** You could but it doesn't look like that's been the history of it.
- Ms. Bernardo:** Right.
- Mr. Jarvis:** Well especially with this last case that came, fortunately I wasn't on it. It boiled me just to watch it because you know, there was so much manipulation with the Bylaws to get that thing up there. I would have called it dead in the water that was it, walk away and leave it. You know, the guy had a business and it's growing and growing, if it's too big where it is go find another location. I would have never gave him that thing but...
- Ms. Bernardo:** But again, our Zoning Bylaws tied our hands.
- Mr. Jarvis:** One giveth and another one taketh away. So, you know...
- Ms. Bernardo:** Exactly. We were told to look at that particular section, and that particular section allowed it so there was nothing we could do.
- Atty. Schneider:** That's not the section in play tonight?
- Mr. Jarvis:** No.
- Ms. Bernardo:** No, that's a whole other one, you want to come back?
- Atty. Schneider:** What do you need?
- Mr. Kessler:** Can I get on another section real quick? When I attended the school in Worcester for the ZBA, attended the classes over there, they said that you cannot make a non-conforming structure, you cannot extend a non-conformity. If you follow where I'm coming from? I'll give you an example on a drawing here.

There's a building, this is a fence line and the setback is ten feet. This building is only eight and a half feet. So it doesn't meet, so it's non-conforming. Then, to put an auxiliary structure or any structure, you can't continue that line down through here and add on. You have to come back to the 10 feet and add on. Do you agree with that or do you know where I'm coming from?

Atty. Schneider: I know where you're coming from, I think, I mean, I don't always agree with the Attorney General believe me.

Mr. Kessler: Okay, no that's why I'm asking you because I, if it's not ten feet and you're building a new structure, to me you have to build it here, and if you're losing one and a half feet out of this new building that you're building then you lose one and a half feet. Am I wrong in my thinking?

Atty. Schneider: I don't think you're wrong, but I think there are other possibilities, I think if someone just goes to the Building Department and said I'd like to put a new garage up, here's my building permit application. And he says okay fine but it's got to be here because of this setback issue, fine, that's what he's got to do. I don't think you'd be running afoul of what you're allowed to do in the statute if he comes to you and says I'd like to continue the lines that exist on the property now, but I understand it would be increasing another conformity.

Mr. Kessler: Which they told me over there, you can't do. You can't increase the non-conformity.

Atty. Schneider: I don't know of a case with those facts.

Ms. Bernardo: Is that more of an extension or an increase? If you start playing with words...

Mr. Kessler: No that's what I'm saying, I'm not a lawyer but, that's what my thought was is you cannot make, and that's the way they stated it, you cannot increase a non-conformity. And if you're increasing the length of that non-conformity you're increasing it.

Atty. Schneider: I don't see how an extension of a non-conformity is an increase of a non-conformity.

Mr. Kessler: Alright.

Atty. Schneider: And I don't think the Town, if they granted that relief, would... I don't think it would be too detrimental in any subsequent case. Kathy what do you think?

Ms. Bernardo: That's how I feel, I agree.

Mr. Jarvis: Going on that, probably the difference would be increasing the non-conformity if it was five feet and you wanted to go four feet. Then you would be increasing the non-conformity. But as long as you're keeping the straight line...

Ms. Bernardo: To me that's an increase.

Atty. Schneider: Yea, if I was forced to have one of our litigators defend this decision I would say it's an extension of the lines.

Mr. Kessler: Okay and that's the reason why I wanted to know because...

Atty. Schneider: I think that would be a good faith argument. But I really doubt you would get served with that one.

Mr. Jarvis: So, what's our plan? Or what do we need to do?

Ms. Bernardo: So is the process that we would draft the proposed amendment now for the Planning Board to take into consideration?

Atty. Schneider: Yep, I think I can, I didn't look at the section of the statute tonight but I believe you would submit, the ZBA is allowed sort of a special status on Zoning Bylaw amendments, like the Select Board and Planning Board, I think you need to get a draft with the amendment to the Select Board and then they distribute it to the Planning Board for review and comment. But, I can't give you chapter numbers on that right now but it's some process like that.

Mr. Zielinski: We would have to research the nature of that amendment for the 25% increase, first.

Ms. Bernardo: We do? Why?

Mr. Zielinski: We would have to research what the nature of that was, where it came from, why it was changed.

Ms. Bernardo: Why? I mean this goes back to 1994.

Mr. Zielinski: Right, what was it prior to that?

Ms. Bernardo: We have to research that? Are there archives and notes and legislative intent notes?

Mr. Jarvis: Well...

Atty. Schneider: The Town Clerk should have the older version, right?

Ms. Bernardo: Yea, but it's not going to tell us why.

Mr. Zielinski: There might be notes on it.

Atty. Schneider: I don't think you're required to, you might want to, to satisfy the rationale moving forward. But you aren't under a duty to investigate the earlier legislation.

Mr. Jarvis: So what would be our intent at this point? Looking at, you want to get rid of the one 25% issue or you want to get rid of the whole 25% thing or what?

Ms. Bernardo: Well it's not consistent with Section 6, number one, because as I understand it and as Michael has explained to us, all of these issues should be coming to us. So this is actually circumventing the intent of the statute. And maybe that was the intent of the original amendment, I don't know.

Mr. Jarvis: You don't have anything in your archives?

Mr. Stefancik: I probably do because the Board has to make these changes, at least with the 1994. With the 25%, just going back to Bylaws 20, 30, 40 years ago that 25% has always been there, with anything I've seen anywhere in the Bylaws. But that one 25%, that was put in 1994.

Mr. Jarvis: Yea because that's what I was looking at, it looked like there was a 25% thing there but the limit to one came in 1994.

Atty. Schneider: Doug, do you know how many of these are being handled right at the Building Department level? How many of these non-conformity projects are getting passed here?

Mr. Stefancik: I think they just come up on a case by case basis and usually it's either a lot size or they don't meet the setbacks and I think the Beachside Drive case was the case that really got things moving with who the Special Permit granting authority is and whether the Board could go above the one 25% because they tore the whole house down and built it probably about 100% of what they had existing.

Mr. Kessler: Sorry he was just changing the tape.

Mr. Jarvis: I was just changing the tape. I always back up that thing, because twice we've had it fail.

Mr. Zielinski: So essentially that 10/3/94 revision was just simply adding that single sentence: limited to one 25% increase?

Mr. Jarvis: Correct, that's how I see it.

Mr. Zielinski: Okay.

Mr. Kessler: If we submitted at that time the example she made where a person has a porch they add on and come back later, death in the family or what have you or they're aging and they want to build, would you use an example like that to justify more than one 25%?

Atty. Schneider: Better than I could have thought of. I mean it makes sense, that's what...

Mr. Kessler: That's what I'm saying, paperwork like that would that help to show why we want to get rid of the one timer?

Atty. Schneider: I think that helps at Town Meeting, it helps with explaining the rationale to the Planning Board and the Select Board, I think it helps politically, certainly, because it just makes sense.

Mr. Jarvis: I'm looking back and my thought process on it is that the way that one 25% came in is, it got touched on earlier, it was to limit people coming back for one after the other after the other, similar to that?

Ms. Stevens: Just because I'm taking the notes I just want to make sure I have it right, so if it's a non-conforming lot, the owner of that house isn't going to be gifted a one 25% increase through the Building Department anymore? If it's non-conforming at all it has to come to the ZBA? The Building Commissioner cannot grant a gift of a one 25% increase.

Atty. Schneider: Under that statute, no.

Ms. Stevens: Okay, so what if they wanted to do a 30% increase? Can the ZBA not allow them to go past 25%?

Atty. Schneider: Well then you get into the ambiguity that's just right on the face of Subsection B. it says it's limited to 25% and to a greater extent when approved by the Board of Appeals.

Mr. Zielinski: As long as it's not substantially more detrimental.

Atty. Schneider: I don't know what that means, I mean my interim advice is don't go over 25% because greater than 25% is, I mean 25% is allowed and it doesn't get into the problem of...

Ms. Bernardo: Coming to us.

Atty. Schneider: Or if it were you, it wouldn't get into the problem of what exists in the face of the Bylaw. That it's 25% but it's not 25%; it's actually more; but it's limited to 25%.

Mr. Jarvis: So, basically everything is limited to 25%.

Atty. Schneider: I think in the short term that's the way you should handle it. So you don't get into that issue.

Ms. Stevens: So essentially anyone who comes to the Building Department and they want to do an addition that is larger than 25% we basically have to tell them to go to the Zoning Board of Appeals but they're going to deny you?

Atty. Schneider: No I don't think you should give any advice like that, I think...

Mr. Lopes: But I thought you just said earlier that we as a Board have the authority to circumvent the language in here.

Atty. Schneider: I don't think it's circumventing the language at all, I think it's an ambiguity that's right on the...

Mr. Lopes: Not circumventing, I'm using the wrong term possibly, we have the authority to approve larger than the 25%.

Ms. Bernardo: As long as we find it's not substantially more detrimental.

Atty. Schneider: But at the Building Department level I don't think you should be giving any advice like that at all, other than identifying the issue and telling them what the next step should be.

Mr. Kessler: But we can go over the 25%, that's what they're coming to us for... you're saying don't do it? The ZBA?

Atty. Schneider: I think that in order to avoid a possible problem with having this Bylaw examined in a case, I would say limit it to 25%. Because is it limited to 25% or is it allowed over 25%?

Mr. Kessler: But if you're limiting it to 25% there's no reason for them to come to us because we can't approve it.

Mr. Zielinski: No we can, and to a greater extent.

Atty. Schneider: You can, that's the problem with the statute.

Mr. Kessler: I thought you said we couldn't. Okay I got lost.

Mr. Aubin: He's suggesting.

Atty. Schneider: No, I'm suggesting that you don't go over that in order to avoid that problem.

Mr. Kessler: Don't go over what?

Mr. Aubin: The 25%.

Mr. Kessler: That's what I'm saying, if we can't approve 30%...

Atty. Schneider: You can.

Ms. Bernardo: He's not saying we can't...

Mr. Kessler: But you're advising us not to.

Atty. Schneider: I'm advising you not to.

Mr. Kessler: Okay, okay, I'm thinking wait a minute I'm getting old but...

Ms. Bernardo: See but that makes it even worse. Then I come back to my eight acres of agricultural land when they had a tiny little farmhouse, now these new people buy it, they want to put on an addition that is twice the size of the itty bitty little farmhouse, they definitely have the room for it, they are in compliance with every dimensional requirement in the agricultural zone, I find it absolutely insane that this provision would keep us from permitting that. Insane, insane.

Mr. Zielinski: They've got a 40,000 square foot lot and they want to put a 36,000 foot building on it and right now it's only 5,000 square feet.

Ms. Bernardo: That's totally different than my agricultural situation.

Mr. Zielinski: Could they put a monstrosity on that property? Or does that now come in where it says that the enlargement is not substantially more detrimental.

Ms. Bernardo: Well that's up for us to decide.

Mr. Kessler: Exactly.

Mr. Wlodyka: That's where that comes in.

Mr. Kessler: Because agricultural, the only land you would have left to grow your hay is the setbacks.

Ms. Bernardo: That's if you're growing anything.

Atty. Schneider: May I reiterate, the administration of these extensions of non-conformities at the Building Department level should not be going on. Under the statute it's any extension needs to come to you.

Mr. Jarvis: Any non-conforming property.

Atty. Schneider: If there's a project on it that will be increase, yes.

Mr. Jarvis: There's no decision made by the Building Commissioner?

Atty. Schneider: Not under this section of the Zoning Act.

Ms. Bernardo: Well then the whole section should be changed so it mirrors Section 6 then, because that leads everybody to believe that as long as their under 25% then they can go to the Building Department, get their building permit, they don't have to come here and we have no say about it.

Mr. Jarvis: Which I'm going to go back on my thing from the last ten years, the only answer that I see is, if you want to get rid of that thing, is total lot coverage.

Atty. Schneider: I think the issues are related but the administration and the language of this Bylaw is a problem in and of itself, regardless of the lot coverage.

Mr. Zielinski: Definitely should get rid of that last sentence.

Ms. Bernardo: If that's the extent and nothing else, please god in the spring get rid of that sentence.

Mr. Jarvis: Will that straighten much of it out by just getting rid of that last line?

Atty. Schneider: I don't think so. My suggestion would be to start with an exercise to draft something that's workable and follows the statute. Is to delete all of Subsection B and then begin the new section to read something like this, and I don't think this is lazy drafting to track the statute.

Mr. Jarvis: Unless there is a finding by the Board of Appeals that such change, extension or alteration shall not be substantially more detrimental to any existing non-conforming use to the neighborhood.

Ms. Bernardo: Looks good to me.

Mr. Aubin: Similar to Palmer.

Mr. Lopes: And it follows the State law.

Mr. Aubin: Right.

Mr. Jarvis: So we would have to put together a draft and then present it to the Board of Selectmen?

Mr. Kessler: He was going to check into that.

Atty. Schneider: I believe so, I can look into that for you and I can draft it for you. I mean I think this follows the law and most importantly it gives you the flexibility you need.

Mr. Jarvis: If you would be so kind as to do that.

Atty. Schneider: Of course, yea.

Mr. Jarvis: And then we will put our heads together and follow the chain and see where we go.

Ms. Bernardo: If nothing else, an in term step to the whole lot coverage issue, I mean we can always take that up, but I think that's going to take far more time for us to come into an agreement with...

Mr. Jarvis: Well yea...

Ms. Bernardo: Other Boards and...

Mr. Jarvis: We would hit a major road block.

Ms. Bernardo: We tried that how many years ago? Five years ago?

Mr. Jarvis: More than that.

Mr. Zielinski: More than that.

Ms. Bernardo: Seven? Eight? Nine?

Mr. Jarvis: About eight.

Ms. Bernardo: Eight? That didn't go so well so.

Mr. Kessler: Doug, from your opinion from what they just read in there, do you think, can you foresee any problems with the Planning Board? I know it's just your opinion, but do you see a problem with what we're proposing?

Mr. Stefancik: No. I think from a business' perspective when it comes to businesses that want to expand and if they're pre-existing, non-conforming that might be a problem if they

don't get the approval from the Zoning Board of Appeals. I mean only because the Town is very business friendly. People don't want to hear they can't do anything with their property if they either want to do an addition or something like that. You know they want to do it yesterday and now they'll have to go to the Zoning Board of Appeals with the one 25%.

Ms. Bernardo: Well they do anyway. That's how we got into that whole situation on...

Mr. Kessler: That's how we got Miller Street.

Ms. Bernardo: That's right, because the Planning Board said well the site plan looks great, we're okay, but you have to go to the ZBA and we can't give you final approval unless you get approval through from ZBA, so I don't see what difference it would be, quite frankly, because we will still have to work in concert with the Planning Board, and they would still be kicking it to us on that particular issue. Cause that's what happened with Miller Street.

Mr. Stefancik: But if the one 25% is gone now everything that's pre-existing, non-conforming is now going to be coming here. You're going to be seeing more of a workload and be busier. Then you have the whole East Street that's all pre-existing, non-conforming and we don't have anything in our Bylaw to allow those uses, so anyone who wants to expand, they're going to automatically be coming to see you. All over town we have pre-existing, non-conforming businesses. If you go out in agriculture you have oil companies, you have construction companies, and these are all people who will be seeing you.

Ms. Bernardo: Well you could also divide it up, could you not? We could be the special authority for residential purposes and they could remain the special permit granting authority for commercial properties.

Mr. Kessler: Or we could be residential and agriculture and they would be business, or would you want the agricultural too? No, I'm asking...

Mr. Stefancik: I think anything business-wise.

Mr. Kessler: Okay, agricultural or business and we just handle the residential.

Mr. Jarvis: That's what I thought, basically, we set out at the beginning to try to do...

Mr. Kessler: Well I did too until we got Miller Street.

Mr. Stefancik: Well you do on occasion see pre-existing, non-conforming. But, if you change this and take out anything over the 25%, you're seeing everything. And again that would include businesses because we have pre-existing, non-conforming businesses. What are they going to be allowed to do? How much are they going to be able to expand the business or the building?

Mr. Kessler: Well again that comes to the not more detrimental because it could be that we're not disapproving it because of the size you're asking, it's detrimental to what you want, to the neighborhood, for what you want to do because of the size or this or this, not necessarily the 25% it's because it's more detrimental, we're not turning down the 25% or because it's 30%, we're turning it down because it's more detrimental to the neighborhood. I mean, does that make sense?

Ms. Bernardo: Well it does but I think what Doug is saying is, the question is do we want to be inundated with both residential and commercial property for any little increase that comes along for these pre-existing, non-conforming uses and structures?

Atty. Schneider: I think that's the way the Bylaw and the section of the Zoning Act read regardless of how it's being administered.

Ms. Bernardo: Regardless of what it's...

Mr. Jarvis: Is what?

Atty. Schneider: I think you should be hearing them all now, presently here. The way the Bylaw and the Zoning Act read.

Ms. Bernardo: And again, if that was the case why did we get stuck with Miller Street? Why wasn't that decided at the Planning Board level?

Mr. Kessler: Do you still have the right to do Special Permits?

Mr. Stefancik: Yea, we do. Anything for non-conforming. All non-conforming has to come to you first.

Mr. Kessler: Okay, all non-conforming has to come to us first. So would it be feasible in your mind to take, when we do this change here, to separate it where you could take the business non-conforming? At the same time, in other words, change both sections to make it where Planning Board handles the business and we handle the residential.

Atty. Schneider: I think it's possible to draft that you'd have two different bodies making the findings.

Mr. Kessler: Do you think the Planning Board would go along?

Mr. Stefancik: I think the Planning Board would go along with that.

Mr. Kessler: Okay. I mean because we've said from the beginning, we're not trying to steal from you, we just, we felt bad we couldn't approve something that made sense because it didn't meet the three criteria and that was with a variance. It was killing us here, everybody that comes in is kind of like, well why go there, they're not going to pass you.

Mr. Jarvis: So if we could work on that aspect, kind of draft something up where we can stick with residential and they can have business. Is that what your idea is?

Mr. Kessler: For non-conforming.

Mr. Stefancik: Yea, I think that would...

Mr. Jarvis: We want to help you. We don't want to make your Board unhappy.

Mr. Stefancik: I don't know if that's feasible only because under State statute, can you do that?

Mr. Zielinski: If Planning goes and disapproves a plan, under the statute, does the petitioner still have the right to seek relief from the ZBA in that case?

Mr. Stefancik: That's a good question in itself, I mean...

Atty. Schneider: I think of these problems; the non-conformity extension problems is coming in the context of whatever someone needs to get or not get to get a building permit or not. I don't think it's a jurisdictional question like that.

Mr. Zielinski: In the case of where they're hearing just the business petitions, if they're denied do they have the right to come to the ZBA, which supposedly has residential jurisdiction, to hear their case and get relief?

Atty. Schneider: I think that's a drafting challenge.

Ms. Bernardo: I would say that our limitations should only, as far as residential, should only be in the pre-existing, non-conforming. I think the ZBA as a Code Enforcement Board shouldn't relinquish any of that other review ability and authority. Regardless if it's commercial or residential. Do you see what I'm saying?

Mr. Zielinski: It's under my impression of the State statute that the ZBA has final say in all matters.

Ms. Bernardo: That's what I'm saying, I don't think we should restrict ourselves from being able to hear an appeal from the Planning Board if it's commercial.

Atty. Schneider: No, you're the final step before going to court.

Mr. Zielinski: We're the final step, right. Exactly.

Ms. Bernardo: Right.

Atty. Schneider: You've got to retain that under the Zoning Act.

Mr. Jarvis: So if they disagree with the plans...

Mr. Zielinski: They have the right to come to us for relief.

Mr. Jarvis: And that's what you've done in the past.

Mr. Kessler: Ok, so if it did come down to that, where you're handling the businesses, and you turn it down, then you would refer them to us?

Mr. Zielinski: No. They don't refer.

Ms. Bernardo: No.

Mr. Kessler: Who would refer?

Ms. Bernardo: They would just have that ability.

Mr. Kessler: Ok.

Mr. Jarvis: Well, they probably would have...

Mr. Kessler: Well I was just thinking of the documentation of whenever we get paperwork for somebody that you guys turned down, then it comes to us and it's kind of like we're sitting here like why is this coming to us? This belongs... you know if there's not any documentation following saying that the Planning Board turned it down but now they're appealing to us, so we get all the paperwork that they saw. They turned it down because of this piece of paperwork so they go to the ZBA and say don't show them this piece of paperwork, set it aside and show them all the rest of it. Am I making any sense? Where we get all of the information they

have. Is there anyway of the Planning Board agreeing to let us see the paperwork they're turned down?

Mr. Jarvis: We have the right, the minute we get the application, to request all pertinent information from every board involved. We can go to anybody.

Atty. Schneider: The applicant would have their own reasons to make the record complete.

Mr. Lopes: Or not.

Atty. Schneider: It's possible.

Ms. Bernardo: It doesn't help when you get to court though.

Mr. Lopes: But we have the ability to go to the other Boards to get the information.

Mr. Kessler: Ok.

Atty. Schneider: So, going back to the non-conformity, do you want me to draft a Bylaw that's going to split up who makes that finding amongst the two Boards?

Mr. Jarvis: Sure. If that works.

Ms. Bernardo: Yes.

Atty. Schneider: Ok. I mean I don't see why it has to be one Board or Commission for every non-conformity.

Mr. Jarvis: Because basically up until a couple of years ago we didn't have nothing to do with it. For the most part we were just stuck with variances, period.

Mr. Goncalves: Can I make a comment as a resident?

Mr. Jarvis: State your name please.

Mr. Goncalves: Jim Goncalves. I have a property that I'm going through, this is a good example for this discussion going on. I'm actually trying to increase by doubling the size of the home. It's a non-conforming lot, it meets all of the square footage, the size, the setbacks, but because the lot is not a 90 foot minimum, it's an 86 ½, I have to get a Special Permit. And I'll show you the detail of the home, but it's not going to be detrimental to the neighborhood, it's going to match all of the other homes on the street. It's going to have a 2-car garage, and add, I think, 500 square feet of additional living space. But the lot is 400 feet deep, it's a really big lot, so being 25%, as a resident, that is way too restrictive. They should change the language to say maybe 80% of the structure should not exceed the size of the lot, or something like that. And then if it is, you would have to go to the Zoning Board of Appeals to get a special approval. But the 25%, that's ridiculous, because this project here I can only put on 250 square feet because the house is only 1,000 square feet. The house is a tiny little house on a big lot.

Mr. Jarvis: That's coming up next.

Atty. Schneider: I'll stick around.

Mr. Jarvis: Didn't mean to set you up.

Mr. Goncalves: But I just had to make that comment as a property owner in Town, the 25% is way too restrictive. The language needs to change.

Mr. Jarvis: We're trying.

Mr. Kessler: That's what we're trying to do tonight.

Atty. Schneider: I've got an initial draft.

Mr. Goncalves: I hope I didn't shoot my chances down.

Ms. Bernardo: For efficiency purposes that's even better because the Planning Board you're looking at a site plan, you know you can get it all done that night, if they're able to do it, instead of kicking it up to us. I think that just makes much more sense.

Atty. Schneider: If it's also in the context of other relief they need to grant....

Ms. Bernardo: Right. So they don't have to be going back and forth.

Atty. Schneider: I think the businesses will appreciate that.

Mr. Jarvis: And that's what we're going to do.

Atty. Schneider: Ok, I'll get cracking on that.

Mr. Jarvis: Any other questions, comments whatever? If not...

Ms. Bernardo: Do you want to talk about the accessory buildings?

Mr. Aubin: I think we should do something with the accessory buildings. Even if we add it to this, the attached accessory building as to a non-attached accessory building.

Ms. Bernardo: You may want to just look at that first. We don't want to blindside you.

Mr. Zielinski: Then you start going into definitions.

Mr. Jarvis: Yea, I think it's partially in our four hundred category on the next section over....

Ms. Bernardo: 3.3 if you want to just take a look at it.

Atty. Schneider: Alright, Section 3.3. I have done two or three Annual Town Meetings, and three or four Special Town Meetings now, and there's usually a Zoning Bylaw change at least one in each of them, so the Town is well versed in doing the amendments.

Mr. Jarvis: And that's what we're looking to do. If we can get it ready for the May Town Meeting that would be great, if not we'll have to do it in the October, but we want to at least get the ball rolling and try to straighten this out.

Atty. Schneider: When does the Select Board close the warrant? Customarily?

Mr. Stefancik: I think February.

Mr. Jarvis: Yea.

Ms. Bernardo: Is it February?

Mr. Zielinski: The first week or something?

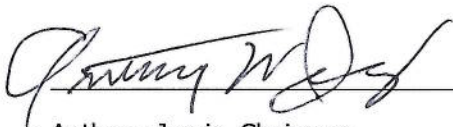
Mr. Stefancik: Usually, I think around the middle of February they get all the warrants together...

Atty. Schneider: I've got to talk to Ellie just about every day now in order to get the warrants up and going so this will be part of the list.

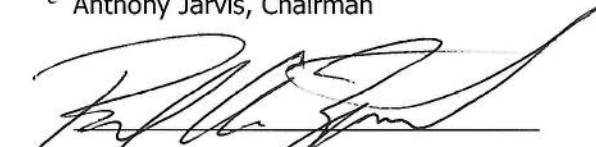
Mr. Jarvis: Very Good.
Atty. Schneider: Thank you all.
Mr. Jarvis: Thank you.
Ms. Bernardo: Thank you.
Mr. Kessler: Thank you Mike, appreciate you coming.
Mr. Jarvis: Thank you, Doug.
Mr. Kessler: Thank you Doug, you can stick around if you'd like.
Mr. Stefancik: I'm going. I'll see you.
Atty. Schneider: Would it be helpful if I stuck around for the next matter?
Ms. Bernardo: Yea, sure.
Mr. Jarvis: Sure!

Meeting adjourned at 8:12 p.m.

Respectfully Submitted,



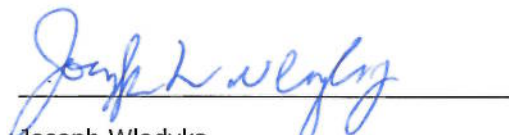
Anthony Jarvis, Chairman



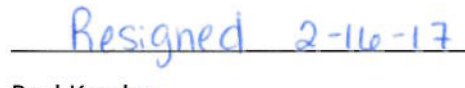
Paul Zielinski, Vice-Chair




Manuel Lopes



Joseph Wlodyka



Resigned 2-16-17
Paul Kessler



Alan Aubin



Kathleen Bernardo