



**Stratham Zoning Board of Adjustment**  
**Meeting Minutes**  
**February 6, 2024**  
**Stratham Municipal Center**  
**Time: 7:00 pm**

**Members Present:** Drew Pierce, Chair  
Bruno Federico, Member  
Frank MacMillan, Member  
Brent Eastwood, Vice Chair  
Jameson Paine, Member  
Lucy Cushman, Alternate

**Members Absent:** Nicholas Garcia, Alternate

**Staff Present:** Mark Connors, Director of Planning and Community Development  
William Dinsmore, Building Inspector and Code Enforcement Officer

**1. Call to Order/Roll Call**

Mr. Pierce called the meeting to order at 7:01 pm and took roll call.

**2. Approval of Minutes & Finding of Fact:**

a. December 12, 2023, and January 9, 2024

**Mr. Pierce made a motion to approve the December 12, 2023, and January 9, 2024 meeting minutes. Mr. MacMillan seconded the motion. All voted in favor and the motion passed.**

b. Case #673 (3 Apple Way) Findings of Fact

c. Case #674 (13-15 Stoneybrook Lane) Findings of Fact

**Mr. Pierce made a motion to approve Case #673 and Case #674 Findings of Fact. Mr. MacMillan seconded the motion. All voted in favor and the motion passed.**

**3. Old Business:**

a. **Case #675: Gregory Gavutis (Applicant & Owner), 62 College Road, Tax Map 21, Lot 154, Zoned Residential/Agricultural.** Request for a variance from Section 12.6.1, Shoreland Protection District, to permit the installation of a ground-mounted solar array 123-feet from the edge of a tidal marsh where a minimum setback of 150-feet is required. *This application was postponed from the January 9, 2024, meeting at the request of the applicant.*

Mr. Gavutis introduced himself to the Board and noted that he was joined by Jay Arslanian from

Harmony Energy Works who would be installing the proposed ground-mounted solar project. He stated that his property is constrained due to having a narrow piece of land and having wetlands that occupy the entire rear edge of his property. His roof is not adequate for solar or wind and wants to establish solar on his property. Mr. Gavutis stated that he will not have to remove any trees and that where he wants to mount the solar is 123 feet from the wetlands. Mr. Gavutis indicated that a wetland scientist from the Rockingham County Conservation District visited the property and measured the distance from the proposed solar location to the end of wetland.

Mr. Gavutis stated that he would like to build the solar array to be carbon neutral and to be self-sufficient. Mr. Gavutis presented a video and maps that he took to show the markers from the wetlands to the area where he wants to mount the solar and to show the vegetation around his yard. Jay Arslanian from Harmony Energy, who is the installer, mentioned that he will be installing a 3 foot by 6 foot tube that isn't anything massive that will be going in on the lower left-hand side of the of the area of the solar panels.

Mr. Pierce asked if the unit was going to be located left of the driveway before you reached the end of the house and Mr. Gavutis confirmed. Mr. Gavutis mentioned that it will run parallel with Route 108 and there is enough tree cover that the unit will not be visible from the road. He stated that the reason he wants to install the unit in that location is that he does not want to cut down any trees on his property and run a long electrical trench which would call for larger project cost to be beyond the 150 feet requirement.

Mr. Eastwood asked if there was a minimum setback from the road. Mr. Connors stated that the minimum front setback is 30 feet. Mr. Paine asked if the structure will not take away from the natural use of the land and Mr. Gavutis confirmed that it will not. Mr. Paine asked if the town has a vegetation buffer and Mr. Connors stated that for tidal wetlands, it is 75 feet from the shoreline. Mr. Gavutis stated that no significant vegetation would need to be taken down in order to construct the solar array, including no disturbance to the wetland buffer or the vegetation along the road. Mr. Paine asked if you would be able to see the array from the road. Mr. Gavutis confirmed that it would not be visible from the road. Mr. Gavutis mentioned that some of the trees were undercut and would be filled with some type of spruce tree. Mr. MacMillan asked if there was a grandfathered encroachment into the setback area already that preceded the setback requirement. Mr. Gavutis responded that the house was built around 1974 and the house is about 100 feet from the wetlands. Mr. Paine stated that the back yard has been cleared for an extended period of time and that buffers are usually intended to help protect the water quality and to shade the water body. Mr. Paine went on to ask that since it was already cleared, he wanted to get clarification that there would be no further clearing beyond what was proposed. Mr. Gavutis stated that there would be no further clearing. Mr. Arslanian stated that they will not disturb any land from the wetlands to the 123-foot mark of where the structure will be installed. The electrical trench will be beyond the 123-foot mark. Mr. Paine asked if the trenching would have a temporary impact on the ground and will be put back to its original state and Mr. Arslanian answered yes, it will be dug up for a day then put back to original state.

Mr. Federico asked if the solar unit will be stationary or movable. Mr. Gavutis responded it will be stationary with Mr. Arslanian stating that the panels can tilt and would be able to move from 45 degrees in the summer to 35 degrees in the winter to assist in the production of power. The structure would stand 16 feet tall. Mr. Federico asked if it would be mounted on one pole or two and Mr. Arslanian replied that it would be mounted on two poles that would be 18 feet apart. Mr. Pierce asked if there were any other locations on the property that would be usable but outside of the

wetland setback. Mr. Arslanian stated that there are no other locations possible that would not require cutting down trees. Mr. Pierce stated that there was a letter from the Conservation Commission submitted that seemed to be in favor of the application assuming that the distance from the shoreline was confirmed by a certified wetland scientist. Mr. Connors confirmed that the applicant agreed to pay for a wetland scientist from the Rockingham County Conservation District to validate the distance from the shoreline. Mr. Pierce asked if there was anything else that needed to be shared on the application and Mr. Gavutis stated that all the information had been presented.

Mr. Paine made a motion to open the public hearing and Mr. Pierce seconded the motion. No questions or comments were received from the public and Mr. Paine motioned to close the public meeting. Mr. Pierce seconded that motion.

Mr. Pierce announced the Board would move into deliberations and determine if the application meets the variance criteria.

*Criteria 1: The variance will not be contrary to the public interest:*

Mr. Paine replied that the array's location will be well screened by evergreen trees and is not likely to be perceptible to members of the public who would most likely be traveling by vehicles on Route 108. He also states that solar panels and renewable resources are encouraged under town planning documents. Mr. Eastwood agrees that the location is well screened, and it minimizes disturbances to the natural environment.

*Criteria 2: The spirit of the ordinance is observed:*

Mr. Pierce said that the solar panels don't eliminate any protected resources and it will not result in increased runoff to those protected resources. He states [the proposal] is less destructive than some of the other alternatives. Mr. Paine states that there will not be any removal of trees or other plants that will possibly slow down stormwater runoff or anything like that within a wetland buffer. He also added that the same amount of water would theoretically be processed through this area and wouldn't be changing the flow in this area.

*Criteria 3: Substantial justice is done:*

Mr. MacMillan stated he agrees that with this is a unique piece of land, there are no other options and believes that this property has some hardships that the variance would address.

*Criteria 4: The values of surrounding properties are not diminished:*

Mr. Pierce said he doesn't see how this would affect the surrounding property values especially with no abutters present for the meeting to object. Mr. Pierce agrees that Criteria 4 is satisfied especially when all mature trees are maintained, values are maintained. Mr. Paine agrees and states that the visual impact is not present.

*Criteria 5: Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:*

Mr. Pierce said that without relief, there would be more disturbance to the property and more cost. It wouldn't really make the application any better; it would just make it more disruptive to develop

the property. Mr. Paine stated that moving forward without relief would require removal of the existing trees. The loss of mature trees will reduce the visual protection currently offered. Mr. Pierce mentions that the proposal is reasonable since adding solar to one's home is a common practice in Stratham. Mr. Paine stated that Mr. Gavutis has sought out other alternatives and solar in the proposed location is the option that will most minimize the impact on the property. Mr. MacMillan added that Mr. Gavutis worked with the Conservation Commission on the proposal, and they agreed with the application as presented. I think that that strongly supports Section B, he said.

**MOTION by Mr. Paine that the Zoning Board of Adjustment grant the variance application from Section 12.6.1, Shoreland Protection District, consistent with the materials submitted by Gregory Gavutis to allow the siting of a single ground-mounted solar energy array 123-feet from the shoreline of a tidal tributary where a setback of 150-feet is required at 62 College Road, Zoned Residential-Agricultural, as the Zoning Board of Adjustment has determined that the variance application meets all of the variance criteria subject to the Board's deliberations, subject to the following binding conditions:**

- 1.) There shall be no disturbance to the site apart from what is required to install the solar energy system. No large equipment may be staged at the site for more than three days in order to install the panels.**
- 2.) No trees shall be removed from along the College Road frontage or from within 75-feet of the shoreline with Jewel Hill Brook.**
- 3.) The Applicant shall apply for and be granted a Conditional Use Permit by the Planning Board to construct the solar energy system.**
- 4.) This decision shall be supported by a written Findings of Fact with a written Findings of Fact to be drafted by the Chair in consultation with the Town Planner to be considered by the Board at its March 5, 2024 meeting.**

**Mr. Pierce seconded the motion. All vote in favor. Motion passed.**

Mr. Pierce advised Mr. Gavutis, please be aware that there is a 30 day appeal period where that decision can be appealed by a number of different parties. He suggested that work not begin within that time and noted the application would need Planning Board approval as well.

## **2. New Business:**

- a. Case #676: Jonathan Nichols (Applicant) Jonathan Nichols & Kim Tessier (Owners), Tax Map 22 Lot 126, 'Rear Lovell Road,' Zoned Manufactured Housing.** Request for an appeal from an administrative decision to grant an exception from NH RSA 674:41, which prohibits building on lots without road frontage, in order to construct a single-family home and associated improvements on a parcel without road frontage.

Doug MacDonald introduced himself as an attorney from Keane & MacDonald, PC and stated that he represents Johnathan Nichols. Mr. MacDonald states that he knows that Mr. Pierce mentioned in reading the notice that the property was owned by Jonathan and Kim Godfrey, Kim has since conveyed her interest to Jonathan, and Mr. MacDonald put that deed in the packet. So just as a point of clarification, Mr. Nichols is the sole owner. Jonathan is here with us tonight, he said, as is Eric Weinrieb from Altus Engineering, just in case you have any technical questions about the application. This application is a request for relief from the requirements of NH RSA

674:41 and that statute allows this board to grant reasonable exceptions from the prohibitions contained in the RSA.

Mr. MacDonald said that the history of this property is a little bit convoluted. He said he tried to explain some of those issues in the memorandum that accompanies the application, but he thinks it's probably worth reviewing because you (the Board) may have some questions. He became involved with this property when Bob Godfrey Sr. hired him in 2012 or 2013 relative to the subdivision being developed by Cabernet Builders. Cabernet Builders had proposed well had purchased most likely a four-lot subdivision that have been approved by the Town. The town - I don't think based on my research and the litigation - had knowledge that that subdivision and Mr. Godfrey's property lines were kind of an issue. Mr. Godfrey entered upon the property for the first time in 1973. He rented the property from a gentleman by the name of Richard Crosby. Mr. Crosby had a rent-to-own style agreement with Mr. Godfrey. When Mr. Godfrey rented the property, they walked the property lines, they walked point-by-point from Lovell Road. Mr. MacDonald discussed the dimensions of the property as understood at that time. Mr. MacDonald said that Mr. Godfrey raised his family there; they use that area as the property consistently throughout the years.

Mr. MacDonald explained in 1988 there was a lawsuit because Mr. Crosby and Mr. Godfrey did not agree on the terms of the rent-to-own contract. The only aspect of that litigation relevant to this application was that Mr. Crosby was directed to convey the property to Mr. Godfrey. Mr. MacDonald stated that the court's order suggested that the property to be conveyed to Mr. Godfrey is a six-acre lot, which was discovered during a later litigation to not be the case. Mr. MacDonald stated he does not believe that testimony was provided, or title research was done during the 1988 lawsuit or when the property was conveyed in 1996. Mr. MacDonald described a plan submitted as part of the application that shows what the Crosby deed actually conveyed to Mr. Godfrey. The conveyance starts on Lovell Road, goes along the swamp back to Stratham Hill Park, up to the next stonewall, and then comes across and goes down to the swamp, cuts through its own property line, and turns around and cuts back through it up to Lovell Road. Mr. MacDonald stated that this effectively created two Godfrey lots, a front and a rear lot, and the triangle that's in the swamp is a property believed to be owned by Michael Nichols who owns the abutting lot. Mr. MacDonald described the location of Michael Nichols' property and referenced an area of land that was provided to the Godfreys pursuant to an easement that was taken care of at the same time the lawsuit was resolved. He stated the lawsuit was a quiet title case by the developer and an adverse possession claim by Mr. Godfrey that was resolved. Part of the resolution was the creation of an easement to connect the two properties. Mr. MacDonald stated that the easement is detailed and its intent is to allow for the development of a single-family residence on the backlot subject to approvals. The easement also provides for access by a paved driveway and has other items and requirements that provide sufficient notice as to what the intent of the developer was in granting that easement. He continued that the easement crosses the southernmost lot, which was Lot 4 of the subdivision at the back of the property. Mr. MacDonald asked if the Board has any questions before he reviews the criteria.

Mr. Eastwood asked for clarification on who owns the triangular piece of land. Mr. MacDonald replied that it belongs to Michael W. Nichols and Catherine Nichols.

Mr. MacMillan asked if the easement is on the existing gravel driveway. Mr. MacDonald stated there is a corner of Lot 82 that dips into the marsh area that is Lot 4 (on the plan). Mr. Eastwood stated that part is owned by Andrew DiBlasi.

241  
242 Ms. Cushman asked if the honeycomb area was the right of way. Mr. MacDonald directed Ms.  
243 Cushman to the plan submitted as Exhibit D. He explained that shows the 25-foot easement  
244 except for a small portion which is slightly outside that honeycomb. Ms. Cushman asked if the  
245 property owners have an easement across Lot 4 and across the front lot. Mr. MacDonald replied  
246 yes. Ms. Cushman asked if the honeycombed area that connects to Lovell Rd is Mr. Nichols'  
247 property. Mr. MacDonald replied that it is Michael Nichols' property and that the Godfreys have  
248 the right to use it by easement. Ms. Cushman reiterated to help clarify, that the easement or the  
249 right of way where it connects to Lovell Rd is on Michael Nichols' property. Mr. MacDonald  
250 confirmed. She stated that it crosses Lot 4 and asked if it crosses again on Michael Nichols'  
251 property. Mr. MacDonald replied that a portion is in the honeycomb area and a portion is outside  
252 of it. Ms. Cushman asked if the rest of the easement is on Jonathan Nichols property. Mr.  
253 MacDonald replied that it is a 25-foot easement that connects the front lot to Jonathan's property  
254 in the back. Ms. Cushman asked for confirmation that the easements are on Michael Nichols  
255 property and Lot 4 and if they are recorded easements. Mr. MacDonald replied yes.  
256 Mr. Pierce asked if the gravel drive exists now. Mr. MacDonald replied yes and described the  
257 location of the existing gravel drive.  
258

259 Mr. Paine asked Mr. Connors for clarification on regulations for porkchop lots. Mr. Connors  
260 replied that the Town eliminated porkchop lots a couple of years ago.  
261

262 Ms. Cushman asked if the subdivision was created by a court order. Mr. MacDonald replied no,  
263 the Godfrey property was a result of Marlborough Carter's deed to Richard Crosby. Mr. Crosby  
264 apparently did not understand the conveyance when he walked the property with Mr. Godfrey  
265 and then he conveyed the same lot which the court identified as a six-acre lot. He clarified that  
266 the court order did not create the subdivision. It was created by the prior owner who owned the  
267 large area of land when it was subdivided. Mr. Pierce asked what year that happened. Mr.  
268 MacDonald replied, the subdivision for the four lots was done in 1974. He directed the Board's  
269 attention to a plan showing Crosby owning the property, but the plan does not show the bounds  
270 of that property. Mr. MacDonald explained there would be no way for the Board to know that  
271 there was a title issue, or there was a conflict between what was believed to be the Godfrey  
272 property and the Crosby property at the time, and the subdivision. Mr. MacDonald clarified that  
273 the prior landowner created this situation and the court order was just an order accepting the  
274 stipulation for the parties to enter an easement agreement. Ms. Cushman stated that the diagram  
275 appears to show that the 1974 subdivision also subdivided the Godfrey property. Mr. MacDonald  
276 replied no, that they confirmed the metes and bounds with a survey and directed her attention to  
277 a plan. Ms. Cushman stated that's two lots and asked if they are two lots of record. Mr.  
278 MacDonald replied yes. Ms. Cushman asked for confirmation that these have been two separate  
279 lots since 1974, unbeknownst to the owners. Mr. MacDonald replied that is what the adverse  
280 possession claim was based on, because it has been used as a larger parcel since 1973 and  
281 possibly before 1973 because Mr. Crosby obtained the property prior to that.  
282

283 Mr. Pierce described his understanding of the location of the three lots – that one lot is at the  
284 corner of Lovell Rd with a utility easement and pointed to and described the location of the other  
285 two lots. Mr. MacDonald confirmed. Mr. Pierce asked if a single-family house with a garage  
286 currently exists on Lot 80. Mr. MacDonald replied yes. Mr. Piece asked if Lot 82 currently  
287 contains a wood framed metal shed and a home. Mr. MacDonald replied yes, and Lot 82 has  
288 access to Lovell Rd. Mr. Pierce asked if Lot 123 on Lovell Road is impacted by the easement.  
289 Mr. MacDonald replied no.

290  
291 Mr. Federico stated there are houses on the first three houses and asked if there is a house on the  
292 fourth lot. Mr. MacDonald replied no, that it is vacant and owned by a company called Whogas.  
293 He stated that Whogas was initially involved in negotiations with Bob Godfrey and acquired the  
294 property and then engaged Cabernet Builders to build out the subdivision. Mr. Federico asked  
295 for confirmation that they built on three lots but not on the fourth. Andrew DiBlasi stated from  
296 the audience that he is the owner of the fourth property, 12 Lovell Road and he also owns 14  
297 Lovell Road.

298  
299 Mr. Pierce asked if the markers are clearly visible. Mr. MacDonald replied that he has not walked  
300 the entire property but when Hislop last surveyed the land he identified that the pins were there.  
301 Mr. Paine asked for clarification that the backlot does not currently have access even though  
302 there is an easement to the property. Mr. MacDonald replied that the easement allows access,  
303 but the statute they are asking for relief from doesn't allow development of a residence on a lot  
304 without road frontage.

305  
306 Ms. Cushman asked if they have a deeded easement. Mr. MacDonald replied yes.

307  
308 Mr. Federico asked if the site plan would be reviewed by the Planning Board. Mr. Connors  
309 replied yes, that the Applicant will need a Conditional Use Permit because the proposed driveway  
310 will encroach into the wetland buffer. Mr. Federico asked if it would be reviewed by the fire  
311 department for life safety issues. Mr. Connors replied the Planning Board review would be  
312 specific to the wetland buffer encroachment. Mr. Federico stated concerns with fire truck access  
313 and asked what type of road would be built. Mr. MacDonald replied that a full depth 12 foot-  
314 wide gravel driveway is proposed and whatever is designed has to be approved through life  
315 safety and the Conditional Use Permit. He continued that that he tried to contact the fire  
316 department early this process and stated that they may require sprinklers as that has been a rear  
317 lot requirement in the past. Mr. MacDonald stated that the Applicant will cooperate with the fire  
318 department as to whatever they need. Mr. Federico stated that sufficient space to get a vehicle  
319 down the road and to turn around to get out is important.

320  
321 Mr. MacDonald asked if there are any other questions before he moved forward with the criteria.

322  
323 Mr. Connors asked when the driveway meets Lovell Road is the intent for it to be on Lot 81 or  
324 the other lot. Mr. MacDonald replied on Lot 81 as shown on the current plan. Mr. MacDonald  
325 replied that it is currently within the honeycomb and would partially extend onto Lot 80.

326  
327 Mr. Pierce stated that there are no more questions and asked Mr. MacDonald to move on to the  
328 criteria review.

329  
330 Ms. Cushman asked for clarification that the right of way easement for the back lot is not the  
331 access for the front lot. Mr. MacDonald replied there is a gravel driveway for the front lot that  
332 exists partially on the front lot, and partially in the honeycomb easement. Ms. Cushman asked if  
333 they are proposing a shared driveway. Mr. MacDonald replied yes.

334  
335 Mr. Federico asked if the tree in the middle of the driveway was going to be removed. Mr.  
336 MacDonald answered yes.

337  
338 Mr. Paine asked if the same owners owned the property within the red property lines as well as

the property to the south and southwest. Mr. MacDonald replied that the front lot is owned by Kim Godfrey and Jonathan Nichols and the rear lot Kim conveyed to Jonathan, so he is the sole owner of the rear lot. They own the front lot as joint tenants with rights of survivorship. Mr. Paine asked if the lot to the south that's not part of the request, is owned by the same family or the same group. Mr. MacDonald replied it is owned by Jonathan's father, Michael.

Mr. MacDonald stated the relief being requested is governed by the statute and the Zoning Board is the appropriate body to consider relief under the statute. The analysis and the considerations are not the same as what's required to an actual variance from the zoning ordinance. Its criteria that is set forth in the statute.

*Criteria 1: Enforcement of the minimum frontage requirements in the statute would entail practical difficulty or unnecessary hardship:*

Mr. MacDonald stated the first criteria is the enforcement of the minimum frontage requirements in the statute would entail practical difficulty or unnecessary hardship and that is the case. This is a recognized 1.75 acre back lot for residential use in this neighborhood and is surrounded by residential uses, so it is a reasonable use. The easements allow legal deeded access. A new code compliant single-family home will be fitting to the neighborhood and without relief, the property cannot be put to productive use. It will remain as a 1.75-acre lot that is on interesting topography and next to wetlands so agricultural or timber harvesting use would not be consistent with the neighborhood. Without relief, there is a practical difficulty that the lot cannot be developed for a reasonable and productive use and that would be a hardship for the owner.

*Criteria 2: Circumstances of the case do not require the building structure or part thereof to be related to existing or proposed streets.*

Mr. MacDonald addressed the second criteria of whether the circumstances of the case do not require the building structure or part thereof to be related to existing or proposed streets. He stated that like other rear lots, there is no need to be located exactly on the street. There are ways to address concerns with the Fire Department, for example, provided that it's code compliant and receives the approval from boards and inspectors, there is no real need to have it on the street. There are examples of this in Stratham and all over New Hampshire. Mr. MacDonald stated the property has legal access across easements and the Applicant will comply with any fire department and Planning Board requirements of having a Conditional Use Permit for the driveway given the wetlands issue. He added there is no circumstance that would require the property to be related to an existing or proposed street.

*Criteria 3: Erection of the building will not tend to distort the official map or increase the difficulty of trying to carry out the Master Plan.*

Mr. MacDonald addressed the third criteria that the erection of the building will not tend to distort the official map or increase the difficulty of trying to carry out the Master Plan. He stated it is a lot of record. He does not believe any town maps would have to change. The project has no significant impact on the Master Plan as it is just the development of a single-family residence. The increase in value of the lot will increase the taxes payable to the Town and it would not add any additional services or burdens on infrastructure beyond anything that the town wouldn't be able to absorb with any other new single-family residence.

*Criteria 4: Erection of the building will not cause hardship for future purchasers or undue*



388 *financial impact on the municipality.*

389  
390 Mr. MacDonald addressed the fourth criteria that the erection of the building will not cause  
391 hardship for future purchasers or undue financial impact on the municipality. He stated that the  
392 easements run with the land, so future purchasers will have access to the same as exists today.  
393 The property will be developed in accordance with the approvals, so that should not be a problem  
394 for a future landowner. There will be a private well and septic system, so there won't be any  
395 burden on that count for either of those two items. The house and the septic systems will be  
396 located outside the wetland buffer. The driveway will be approved through a Conditional Use  
397 Permit and the home would not require any special or unique services from the Town. There will  
398 be no real hardship on any future purchasers of the property.

399  
400 Mr. MacDonald summarized that they believe they satisfy the criteria of the Statute that would  
401 allow the Board to consider the request for relief and they respectfully request it be granted. He  
402 asked if the Board has any questions on the criteria.

403  
404 Mr. MacMillan asked if electrical access would go through the easement. Mr. MacDonald replied  
405 yes.

406  
407 Mr. Pierce asked if there were any other questions for the Applicant from the Board. There were  
408 none. Mr. Pierce opened the meeting to the public.

409  
410 Andrew DiBlasi of 12 Lovell Road spoke. He stated that he also owns Lot 4 and that the intent  
411 of the developer when he created the four lots was to build four homes. Mr. DiBlasi's  
412 understanding from Cabernet builders was that nobody could ever build in the back lot because  
413 it doesn't have road frontage. Mr. DiBlasi asked the builder specifically about that in the past  
414 back because he knew there was a road running through there. Mr. DiBlasi stated that the builder  
415 told him that there was no road and there were wetlands, and the builder's response influenced  
416 Mr. DiBlasi's decision to build his home. He then asked the builder about purchasing Lot 4 and  
417 Mr. DiBlasi stated that the builder said he can do that, but it was in litigation at the time because  
418 there was a dispute over the easement and that Kim, the owner of Lot 80, had a shed and a couple  
419 of old junk cars on Lot 4 that shouldn't be there because it wasn't her property. Mr. DiBlasi  
420 waited a few months for the litigation to be completed. He stated the decision was made to build  
421 an easement and a stipulation in that easement was to clearly mark the property lines with pins  
422 and that they had to take down the shed, clear it out, and that nothing could be placed there or  
423 stored there, that it is just an easement for utility and for them to access their back property. Mr.  
424 DiBlasi added that the plan doesn't show the topography of the land. He stated that all of the  
425 driveways are approximately a 35-degree angle that goes up to the houses that are all built at the  
426 peak and then the rear goes downhill. His concern is with the safety of his family and home. He  
427 stated that Mr. Nichols occasionally lights camp fires and approximately six years ago there was  
428 a fire lit that was not put out properly. The fire spread from the lot, up the hill to the rear of both  
429 12 Lovell Road and the neighboring home. He stated that the fire got dangerously close to the  
430 house and the whole land was on fire. Mr. DiBlasi continued that when they called the fire  
431 department there was confusion and a degree of difficulty that they were discussing with regards  
432 to whose driveway to access to attack the fire. Mr. DiBlasi's concern is that the proposed  
433 driveway is about 750 feet long and 12 feet wide. He stated if Mr. Nichols isn't diligent in  
434 clearing snow from the driveway, how will emergency vehicles access the property? What  
435 happens if a fire truck has to get back there, he asked. He noted that if there is ice, he doesn't  
436 know if he trusts a fire truck to get back there. Mr. DiBlasi expresses his other concern if that

437 driveway now becomes an active driveway and it's crossing over his lot for my easement if  
438 somebody gets injured there or something to that effect will he be liable? He added that the  
439 attorney stated that the land was not even good for logging. Mr. Nichols has been cutting down  
440 a good portion of that land due to the fact that he no longer has the view he had and now he has  
441 sunlight blaring through his kitchen he never had before. And every now and again a truck comes  
442 through with firewood and he doesn't know if it's business or what's going on with just selling  
443 the wood using the trees as inventory. He states that that's clearly defined for driving and wants  
444 to know of the one and three quarters of land is wetlands. He added if given the topography for  
445 this land to be cleared for a driveway, can a fire truck can get back there.

446  
447 Mr. Federico said that it's up to the Planning Board to review that. Mr. Connors said he believes  
448 those concerns should really be considered as part of the Zoning Board review. The Zoning  
449 Board is deciding whether to grant an exception to make the lot buildable. It is already a lot of  
450 record so the Planning Board does not have the authority to review these items, he said. He added  
451 that the Planning Board's review is limited to the wetland buffer encroachment issue.

452  
453 Mr. Eastwood said that a condition could be that they obtain approval from the Stratham Fire  
454 Chief to ensure an adequate emergency response. Ms. Cushman added that condition that is  
455 recommended in the staff memo that the applicant obtain approval from the fire chief and a fire  
456 suppression system may be required. Mr. MacDonald adds that the applicant is comfortable with  
457 that condition and that they have already reached out to the fire chief and are waiting to hear  
458 back from him. Mr. Federico states a concern that this should go to a planning board to be  
459 discussed in depth and that this board is only here to discuss the variance to build not where to  
460 build. Mr. Pierce said that the structure that is built on this property meets all applicable codes  
461 and zoning ordinances and maybe conditions for setbacks. Mr. Macdonald stated that the 911  
462 address could potentially help with any confusion if there ever was any a need to help identify  
463 the property.

464  
465 Mr. Paine asked if there currently is a well on the property or if there is a plan proposed yet. Mr.  
466 Weinrieb replied that he has done a full-on grading plan site plan on knowing that everything  
467 can be compliant. What he didn't want to do was to confuse everyone with all the grading and  
468 stuff. So, the septic, and outside that buffer, and the well fits entirely on the site and outside the  
469 buffer as well. The well radius does extend into the buffer and just for clarity. It's already been  
470 said, we're not impacting anyone. We're just working within the wetland buffer, which does  
471 require the conditional use permit. Mr. Paine asked approximately where the well would be  
472 located. Mr. Weinrieb points to an area on the map and states that it's close to the house and  
473 close to the driveway and far enough away from the septic. Mr. DiBlasi noted that RSA 674:41  
474 requires both practical difficulty and unnecessary hardship.

475  
476 Mr. Pierce asked if there was anyone else that would like to speak. Daniel Mello stated that he  
477 was the owner of 10 Lovell Road and noted that his property backs up to Mr. Nichol's property.  
478 He said we decided to purchase our property partly based on the understanding that the back lot  
479 couldn't be developed, and that it was just undevelopable. That was one of the key consideration  
480 in purchasing the property. He stated that he developed his backyard and had a substantial  
481 amount of landscaping put in. We have invested a lot in our backyard, he said. He said it's a little  
482 troubling that now behind his property can be developed. From his perspective, if the board  
483 decides to grant this, the things he would ask for are some sort of buffer. The other thing that  
484 would be appreciated is if a number of the 'No Trespassing' signs that are bright yellow that are  
485 clearly visible from his porch, back windows and firepit were removed. Mr. Mello said that all

of the abutting property owners know where the property lines are, and the trespassing signs are overkill. Mr. Mello said his final request is that with the road already cleared would there be a way to stop the tractors and four wheelers from driving close to his property due to safety concerns.

Mr. Pierce asked Mr. Mello and Mr. DiBlasi when they bought the properties was it mentioned to them by the Town or the builders that the back lot was undevelopable. Mr. DiBlasi stated that Cabernet Builders mentioned that to Mr. Godfrey.

Jennifer Hobin, of 10 Lovell Road, stated that due to the topography the homes [in the four lot subdivision] are backed right up to the edge of the property. There was no option to build the homes further down because of the slope, she said. She said that at the time, the tax map described the lot as unbuildable. Mr. Mello said that when they purchased the house their realtor mentioned the same thing that Mrs. Hobin stated and asked for the Board to maintain the integrity of the property. Ms. Hobin added that retaining their property value is a concern if this was to be approved. She requested that a condition for screening be added between the properties to help mitigate their hardships.

Mr. DiBlasi said that the 'No Trespassing' signs that Mr. Nichols posted were set on four by fours every so often along the property and not what everyone else does and tacks them to a tree and because of that, questions what really is happening on that lot. Mr. Mello stated that there are four signs on his property line. Mr. MacDonald stated that the yellow trespassing signs could either be removed after construction or changed to something more tasteful and also asked about keeping the stakes for the property lines and all agreed that they could stay. Mr. Weinrieb mentioned that he already intends to put up some type of buffer and doubts that he would be clearing up to the property line as he's developed. He pushed the house down as far as the slope to stay out of the buffer is possible but because it has a steep slope he has to work with the grades and so forth and so he has no intention to build a house right up against the backdrop a climb even up against the back or side setback. Mr. Federico asked if the topography of Mr. Mellos and Mr. DiBlasi's lots are higher or lower than the back lot and Mr. DiBlasi said that his was higher. Mr. Federico asked if their properties were at what height higher than the back lot and Mr. DiBlasi didn't really know for sure. Mr. Dinsmore stated the information was just for questions about the building code. The State of New Hampshire has adopted NFPA one, which is going to dictate that all structures have fire lane access, so the fire department will have jurisdiction to say whether or not a driveway to what they're proposing will be enough to access a building. Mr. Dinsmore noted that access needed to be provided within 150 feet of all exterior walls. There is an exception if the building is sprinklered to bump that up fifty feet. Building code that dictates what they can do for this lot and you can't approve it if it doesn't meet NFPA one code.

Ms. Cushman asked if the driveway that they are proposing will be the same sort of construction for that code and Mr. Dinsmore stated that he didn't know because he hadn't seen the driveway for himself. Mr. Weinrieb that a 5% maximum grade on the driveway is going up the slope and that it's going to need a long gradual slope because of how long the driveway is. He also mentioned that the back lot is at a much lower point than 8 or 10 Lovell Rd and it's almost 30 feet of grade change from the back line to the driveway elevation. Mr. Connors asked for clarification of the maximum grade of the proposed driveway. Mr. Weinrieb responded 5% but depending on the Planning Board's review of the Conditional Use Permit, that might change.

Mr. Pierce moved to close the public hearing. Mr. Paine seconded. All voted in favor.

Mr. Pierce stated that they will move on to board deliberations. Mr. Pierce asked for clarification regarding the criteria for approving an appeal from the administrator. Mr. Connors replied that the applicant is requesting an exception from the requirements of RSA 674:41 and the RSA states that the mechanism for requesting that relief is to file an appeal from an administrative decision. Mr. Federico asked Mr. Connors if his administrative decision was applying the state rule. Mr. Connors replied yes, it was stating that the applicant could not file for a building permit for this property because this state law prohibits that. Mr. Eastman questioned if they should be deciding on this. Mr. Pierce replied what they are deciding is if they have the ability to make exceptions under the statute. Mr. Connors directed the Board to the language in the statute and in the staff memo that discusses potential exceptions and the ZBA's authority to grant such exceptions. Mr. Connors said it is similar to a variance in that the Board cannot grant an exception unless it finds the application meets all four of the criteria, although the criteria are different from the variance criteria. Mr. Federico states that they have the authority to grant that exception. Mr. Pierce adds, in passing on such appeal or application, the board of adjustment local legislative body or Board of Appeals may make any reasonable exception. So, any reasonable exception, they do have the authority to make that determination.

Mr. Pierce noted that the statute provides the ZBA the discretion to place conditions on granting the exception. Mr. Pierce asked that they discuss some conditions the abutters had of concerns and agreements. Mr. Federico said that there needs to be a condition that this application be reviewed by the Planning Board as a site plan. Second, the safety issue with the driveway and the Fire Department being able to get down the driveway needs to be addressed. Finally, vegetative screening in the form of evergreen trees should be required. Ms. Cushman said that everyone wants their privacy and agrees the vegetative buffer is a reasonable condition. Mr. Paine mentioned this lot has access, it just doesn't have the frontage, a standard porkchop lot wouldn't typically have the same frontage requirements. Is there anything that they as a group should understand about why that wasn't allowed? Or are there rules that say it's not allowed and so then are they not only providing a frontage relief, but then been promoting pork chop really for anything. Mr. Federico replied that in a standard porkchop lot, you own the land that you traverse to get to the back and that the issue is there is an easement for a gravel driveway and not a paved one. Ms. Cushman stated that a pork chop was a one-time subdivision to allow people with a deep lot to have a new lot in the back if they owned a lot of acreage and they had approximately 200 feet of frontage and say 10 acres of land. The property owner could do a one-time subdivision and have a second lot in the back and many people have taken advantage of that. Only a single-family homeowner could do it and not developers.

Ms. Cushman stated she did not believe it was anyone's intention to create a lot of record that is not usable, that you can't build anything on. You own almost two acres in Stratham, and you can't do anything about it, except maybe harvest firewood once in your lifetime, she said. She said that property owners should not always believe realtors and developers; they should request proof if these kinds of statements are made. Mr. DiBlasi said that he didn't think he was lied to and with the wetlands there was almost no room to build. Ms. Cushman stated the people who make these statements don't own the land, they don't have control of it, and you don't know what could happen in the future. They're always developing new ways of being able to use land creatively and things are always changing and over many years engineering will evolve. She said she understands that [the abutters] believed it, and it's an unfortunate thing. Mr. DiBlasi asked if he was going to be liable for his part of the easement if there was personal injury. Mr. Pierce replied that is for his legal counsel to answer that question and not for the Board to answer. Ms.

Cushman asked Mr. DiBlasi what his easement was on his lot, and he replied that to make it accessible to the back lot and for utilities to run through. Mr. MacDonald added that all parties should seek out legal counsel for that question. Mr. Pierce mentions that they should stay within the bounds of the public hearing for everyone's interest and if anyone wants to open that back up to the public or to continue deliberations. Mr. Pierce noted if you have an easement that is for running utilities through it then then it's reasonable to conclude the land may be conveyed as a buildable lot.

Mr. Dinsmore read aloud Section 4.1.2 of the Zoning Ordinance, which reads (in part): *A lot having frontage or an area less than required by Table 4.2 may be considered to be in compliance therewith provided that: a) The lot had received final subdivision approval prior to the enactment of this Ordinance or was shown on a recorded plan or deed filed before the Planning Board that was granted jurisdiction to control the subdivision of land ...*

Mr. Pierce asked Mr. Dinsmore if he thinks the lot in question is in compliance with that Ordinance and Mr. Dinsmore said so as long as it meets those three criteria, but he really doesn't know the answer to that question because he doesn't know when that ordinance went into effect and when the planning board approved the creation of the lot. Mr. Federico mentioned it was created back in the 70's but not 100% sure at the exact date. Mr. Dinsmore stated he didn't know when the ordinance was written for the frontage requirements and Mr. MacDonald added to clarify that the 4-lot subdivision was created back in 1974 and had references to Mr. Crosby. Mr. Dinsmore stated, barring any error, obviously, there was a regulation in place that suddenly broke front of the crop acquire. There was a need to get a variance to subdivide a lot the way and simply trying to give clarification that the ordinance regulates these types of things.

Mr. Connors said he wanted to revisit one of the comments from Mr. Federico about the site plan; because this is for a single-family lot in New Hampshire, single-family properties are typically exempt from site plan review and it would be difficult to enforce that requirement. Mrs. Cushman asked what a site plan would accomplish that they are already trying to accomplish. Mr. Connors replied that Mr. Federico was concerned about the driveway and the fire department access to the driveway. Ms. Cushman stated that it was going to be a condition of the permit. Mr. Dinsmore stated that the Fire Department will have say on certain aspects of the permit. Mr. Connors read the suggested condition language: *"Prior to the issuance of a building permit, the applicant shall obtain approval from the Stratham Fire Chief to ensure adequate emergency response to the structure in the event of a fire. The Fire Chief may require additional measures by the applicant including, but not limited to, construction of a turn-around area for fire apparatus and/or a partial/complete sprinkler system to serve the building."* Ms. Cushman asked, wouldn't that be a prerequisite though, for building anything there, that you would either have to have an accessible driveway or a fully sprinklered building and there doesn't seem like there would be any relief from that. Mr. Federico asked what the distance is from the road to the house. Mr. MacDonald replied it is approximately 400 feet. Mr. Dinsmore stated that if you don't put a condition of approval for the fire department to set a design year for fire access of fire sprinklers, then you're allowing the building code to handle it. And the building code is only as strict as the building code is and there won't be any exceptions as far as making things stricter by the Fire Department.

Mr. Connors stated that another potential restriction which would be easy to address is the buffer concerns raised by the abutters. The ZBA could include a condition to address that. The ZBA could require a no cut buffer some distance from the property line. Mr. Pierce asked if the

633 applicant was open to that and Mr. MacDonald mentions that the easement from Whogas to Mr.  
634 Godfrey indicates that as condition one deals with the access and the utility, two is about  
635 interference and three is an agreement between the parties that certain things won't happen like  
636 livestock, unregistered vehicles, similar storage on the parcel and led development of partially  
637 restricted to a single family home with typical accessories i.e. shed, driveway, garage, etc. He  
638 said there is a requirement that any building be at least 30 feet from the easterly boundary of the  
639 parcel. It's somewhat a condition that's already on the property. Mr. Paine said that [restriction]  
640 is a setback, it is different than a no-cut requirement. The Board discussed the potential for a.  
641 Mr. Pierce suggested that a 30-foot non-disturbance area would be reasonable and that some  
642 evergreen trees be installed for screening. The Board agreed.

643  
644 The Board discussed whether adding a condition related to obtaining the approval of the Fire  
645 Department was necessary. Mr. Pierce said he believed that the code addresses the fire concerns,  
646 so the condition is not necessary. Mr. Dinsmore said if he was making an error interpreting the  
647 codes, then the Town would lose its chance to regulate this. Mr. Connors said it would not hurt. It  
648 would add an extra level of protection if the Fire Department has concerns. Ms. Cushman said it  
649 wouldn't hurt anything. Mr. Pierce said it could hurt in that it would place an undue financial  
650 burden on the applicant to put in a sprinkler system. Ms. Cushman said that the condition does not  
651 require a sprinkler system, it leaves it to the Fire Department to make a determination regarding  
652 improving the driveway or installing a sprinkler system in the building. Mr. MacMillan noted that  
653 the condition reads the Fire Chief may require a sprinkler, not that it will be required. Ms. Cushman  
654 said the Fire Chief would make that determination. Mr. Pierce said that is correct, but my concern  
655 with that, placing myself in the applicant's position, is that if we are asking the Fire Chief to make  
656 a decision above and beyond what the actual Fire Code requires, there's a lot of subjectivity that  
657 comes into play. Ms. Cushman interjected to inquire if the condition was above and beyond the  
658 code. Mr. Connors said for example typically in New Hampshire it is very difficult to require a  
659 sprinkler system in a single-family home - there is an RSA that restricts municipalities from  
660 requiring that - however this is a unique situation because the home will not have frontage along a  
661 road, so access is more difficult, so I think it could be required here. Mr. Paine said this is more of  
662 a site specific situation. Ms. Cushman said that it is actually protecting the applicant as well  
663 because if it's not feasible for the fire truck to get up there, he doesn't want his house to burn down.  
664 Mr. Pierce said he feels that is the applicant's decision if they want to make that additional  
665 investment. Sprinklers can increase the insurance costs of a home in the event the sprinklers  
666 accidentally go off and cause damage. Mr. Pierce said the code is in place and the code takes into  
667 consideration the length of the driveway and access to the building, then that should be sufficient  
668 instead of leaving it up to the Fire Chief. Mr. Pierce added that sprinkler systems require additional  
669 water capacity and that could require drilling another well. Mr. Pierce reiterated that he personally  
670 opposed including the condition in the decision.

671  
672 Mr. DiBlasi asked if the Fire Department might require additional width of the driveway. Mr.  
673 Dinsmore said that the Code requires that the Fire Department needs to be able to access the  
674 structure. And if the driveway is more than 150-feet, it would have to meet the requirements of a  
675 fire lane. Mr. Pierce said those requirements are in the Fire Code. Mr. DiBlasi stated the reason he  
676 asks is because the other side of his easement is marsh, swampy water. You can't even walk  
677 through it, he said. He said it appeared to him that the proposed driveway is already right on the  
678 property line, and might be encroaching on to his lot, so he doesn't think it could be made wider  
679 without going into the wetland. Mr. Pierce said he thought that issue was outside the jurisdiction  
680 of the Zoning Board. Ms. Cushman inquired if the issue was with access and trucks getting up to  
681 the lot or if it was an issue of not having enough space for staging large equipment and fighting a

682 fire. Mr. Pierce said it sounded like trucks were already accessing the lot. Mr. DiBlasi said the  
683 trucks were not as large as fire trucks.

684  
685 Mr. Paine said they have laid out a potential plan. If it has to change, then they will have to pivot  
686 and pursue a land swap or something to address that. Ms. Cushman said they will have to stay  
687 within the easement area, isn't that right? Mr. MacDonald said yes, but the easement is 25-feet.  
688 He said that 12-foot or 16-foot wide driveways had been discussed and both could be  
689 accommodated within the easement area.

690  
691 Ms. Cushman inquired what we have for conditions. Mr. Pierce said that the Fire Department  
692 condition has not been resolved. Ms. Cushman asked for Mr. Connors' recommendation. Mr.  
693 Connors said that he included the condition in the staff memo because he did not think it was a  
694 bad thing to provide the Fire Chief some additional discretion in this case because it is an unusual  
695 circumstance, but it is obviously up to the Board. Mr. Federico said that he thought it was  
696 appropriate to leave it up to the Fire Department to determine what is needed. He noted that fire  
697 trucks are getting bigger and not smaller. Mr. Pierce said if we are concerned about access, maybe  
698 we should limit the condition to access. He said he has concerns because sprinkler systems are  
699 ridiculously expensive. Mr. Federico said if a fire truck cannot get up there, then that is an issue.  
700 Mr. Pierce said that is an access issue, not one specific to sprinklers.

701  
702 Mr. Paine suggested that the Board strike the last line of the recommended condition language, so  
703 the condition simply read *"Prior to the issuance of a building permit, the applicant shall obtain*  
704 *approval from the Stratham Fire Chief to ensure adequate emergency response to the structure in*  
705 *the event of a fire."* Mr. Pierce said he was agreeable to that.

706  
707 Mr. Pierce described the proposed conditions of approval. Mr. Connors said he drafted a condition  
708 related to the screening that was discussed earlier: *"The plan shall be revised to show a 30-foot*  
709 *no-cut buffer along the property boundary with Lots 124, 125, 123, and 82 where no existing*  
710 *vegetation shall be disturbed. The easement area for the construction of the driveway shall be*  
711 *excluded from the no-cut buffer. A minimum of ten evergreen trees shall be planted within this*  
712 *area."*

713  
714 Mr. MacDonald noted that screening for Lot 82 could not be implemented because it's within the  
715 access easement area. The Board agreed to remove the reference to Lot 82 from the condition. Mr.  
716 Paine noted that the additional evergreen trees could be planted outside the no-cut area for  
717 screening.

718  
719 Mr. DiBlasi asked if language could be added to address the 'No Trespassing' signs. He said he  
720 feels as though if he tries to sell his property, [the signs] raise a question. Potential buyers may  
721 suspect a conflict between the neighbors. He asked if the signs could be removed or made less  
722 obnoxious. He said they were very noticeable and are placed right on the property line. Ms. DiBlasi  
723 said that people already bring up the signs when they come to visit. Mr. DiBlasi said it is awkward  
724 to host just a backyard barbecue. Mr. Connors said it would be hard to enforce because the property  
725 owner has the right to post his property. Mr. Connors said the Town may be able to limit the size  
726 of the signs if they are very large signs. Mr. Paine noted that the applicant has already offered to  
727 remove the signs after construction of the home. Mr. Paine said he didn't think the Zoning Board  
728 could enforce anything on our side, but it is a neighborly thing to do. Mr. MacDonald said that the  
729 signs can be removed or modified. Mr. Mello asked so they can or will? Mr. MacDonald said they  
730 will be changed. Mr. Mello said perfect.

MOTION by Mr. Paine that the Zoning Board of Adjustment grant the exception from NH RSA 674:41, II, consistent with the materials submitted by Jonathan Nichols to allow the construction of a single-family home and associated improvements on Map 22, Lot 122, as the Zoning Board of Adjustment has determined that the application meets all of the exception criteria subject to the Board's deliberations, subject to the following binding conditions:

- 1.) Prior to the start of construction, the Applicant shall apply for and be granted a Conditional Use Permit by the Planning Board, as provided under Section 11.4 of the Zoning Ordinance, in order to allow the construction of a driveway within 100-feet of very poorly drained soils.
- 2.) Prior to the issuance of a building permit, the applicant shall obtain approval from the Stratham Fire Chief to ensure adequate emergency response to the structure in the event of a fire.
- 3.) Prior to the issuance of a building permit, the applicant shall obtain an address number for the property from the Stratham Assessing Department.
- 4.) This approval shall be exercised within two years or expire on February 6, 2026.
- 5.) This decision shall be supported by a written Findings of Fact to be drafted by the Chair in consultation with the Town Planner to be considered by the Board at its March 5, 2024 meeting.
- 6.) The plan shall be revised to show a 30-foot no-cut buffer along the property boundary with Lots 124, 125, 123 where no existing vegetation shall be disturbed. The easement area for the construction of the driveway shall be excluded from the no-cut buffer. A minimum of ten evergreen trees shall be planted to supplement screening.

Mr. MacMillan seconded the motion. All voted in favor. Motion passes.

Mr. MacDonald, Mr. and Ms. DiBlasi, and Mr. Mr. Mello thanked the Board for their patience. Mr. Pierce noted that there is a 30-day appeals period.

Mr. Connors introduced Mike Lamb, the Planning and Building Coordinator for the Town. Mr. Connors said he recently started and he is a veteran of the Coast Guard. Mr. Connors said that Mr. Lamb will be working with the Board, compiling minutes and processing applications. Mr. Lamb said it was nice to meet everyone. Mr. Pierce thanked Mr. Lamb for his service.

Mr. Pierce thanked Ms. Cushman for joining the Zoning Board. The Board entered into applause. Mr. Eastwood said Ms. Cushman was very impressive. Mr. Pierce said his understanding is that you have a lot of experience on these boards and it's going to be a pleasure to work with you. Ms. Cushman noted that she had 30 years of experience as a title abstractor doing land research, so that may come in handy. Mr. Pierce said it already has.

Mr. Pierce said he did want to inform the Board that he did have a conversation today with Michael Houghton, Select Board Chair, about our decision on the Stoneybrook application and about the decision we made as a Board. He said that he did not think the Select Board was in agreement with how [the ZBA] ruled. Mr. Pierce said he discussed the basis of how they came to their decision which is all in the minutes and recordings. Mr. Pierce said that [Mr. Houghton] feels as though they rezoned a district. Mr. Pierce said he disagreed with that. Mr. Pierce said Mr. Houghton's basis for that opinion is that this one parcel constituted the only undeveloped parcel in the District



780 in 2009 when that zoning district was created and it is the largest parcel in the district. Mr.  
781 Houghton feels the zoning was drafted with this particular parcel being developed in the future in  
782 mind. Mr. Pierce said he did not believe that was accurate because the other parcels in the district  
783 could be redeveloped. Mr. Pierce said he does not believe the Board typically compares the mass  
784 of the property to the size of the district when they make decisions on applications.  
785

786 Ms. Cushman asked if the Select Board would appeal the decision. Mr. Pierce said that [Mr.  
787 Houghton] did not say. He did not know. Mr. Federico said that he spoke to a Selectman and he  
788 agreed with me, he was very appreciative of what we did. Mr. MacMillan noted that the Board  
789 spent a significant amount of time reviewing the application. Mr. Pierce said Mr. Houghton's  
790 comments were similar to those made by Mr. Goddard at the hearings.  
791

792 Ms. Cushman inquired about the length of time the Select Board had to file an appeal. Mr. Connors  
793 said that they would need to file a Motion for Rehearing with the Zoning Board first and they have  
794 30 days to do that and then the Board has 30 days to respond. Nothing has been filed as of yet, but  
795 I will keep you informed, he said.  
796

797 Mr. Pierce noted that he mentioned that [the ZBA] had quite a long deliberation about the  
798 application. And we all had a lot of comments that were entered into the record. So, I think if you  
799 really review those materials, you will have a better understanding of how [the Board] reached the  
800 decision.  
801

802 Mr. Eastwood said he read the minutes since he missed the meeting and he felt the Board was very  
803 thorough.  
804

#### 805 **4. Adjournment**

806

807 **Mr. Pierce stated that the meeting adjourned at 9:31 p.m.**