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February 9, 2016 Continuation of the Appeals Board considering an appeal of Barbara Fifield of the Planning Boards decision to grant a conditional use permit for a used car lot to Steven Mclean.

Members Present:

Kimberly Oliver, Co-Chairman
Deborah Stitson
Kathy Ward
Steven Mclean

Members Absent:

Michael Carroll, Chairman

Public Present:

Barbara Fifield – Appellant
Dorothy Richard
Francis Carroll Sr.
Denise Benton
Joanne Andrews
Ilene Dashner
Edward Duffy
Dr. & Mrs. Hously
Dean LePage
Lisa LePage
Steven Malmude
2 unknown (to me)

Kimberly Oliver, Co-Chairman welcomes everyone to the February 9, 2016 Board of Appeals meeting. She called the meeting to order and stated that it was a continuation from the February 2, 2016 of which the board is hearing an administrative appeal by Barbara Fifield in regards to a conditional use permit granted by the Limerick Planning Board. The public hearing portion was completed on February 2, 2016 and has been closed and this meeting will continue with the decision portion of the appeal. She states that this is a public meeting, but not a public hearing. Barbara Fifield, has met the standing requirement for the Appeals Board to hear her appeal by providing her deed which confirms that she was an abutter. She also provided documentation, which included the zoning ordinance, specifically section 7 with regards to conditional use requirements, a conditional use application submitted by Steven Mclean, letters from nearby landowners as well as her own written statement. The Planning Board provided page 26 from the MMA manual, which is the basis for the board's decision with the 2nd and 3rd section of the general rules section, highlighted and information regarding civil rights. Also a page on vague ordinances standards and the findings of facts from 2 previous conditional use permits. The Planning Board chair stated the findings and facts and minutes specific to this case will be discussed at their next Planning Board meeting which was held on February 3, 2016. If approved by the Planning

Board these documents would be given to the Appeals Board, she stated that she received both the minutes and the findings of facts on Friday February 7, 2016 by electronic mail from the Planning Boards Secretary which were forwarded to the members of the Board of Appeals for hearing this appeal. Deborah Stitson and Kathy Ward confirmed that they had received both documents. Kimberly Oliver asked if either of them had any questions regarding the documents and they both answered no. 3:00

Kimberly Oliver wanted to discuss the one page that the Planning Board submitted was on the vague standard ordinance which is the delegation of legislative authority on page 40 in the Planning Board manual and page 37 of the Appeals Board manual states, a permit or an approval of a plan requires the zoning ordinance to contain fairly specific standards for review. Standards need to be more than, just, as the board deems to be in the best interest of the public or as the board deems necessary to protect the public health, safety and welfare. It is also very important to have language in the ordinance instructing the board as to the action which the board must take. It is not enough that for the ordinance to state the board must consider or evaluate certain information. She states that we have a zoning ordinance that is very specific. It has standards that she feels is more than, just, as a board deems in the best interest of the public. The zoning ordinance has zoning districts, specific uses for all types of businesses that would be allowed in any of these districts. There are specific instructions on whether the Planning Board and Appeals Board and what they have to do to follow the whole process. Deborah Stitson replies that she thinks the ordinance is specific enough. The Planning Board is supposed to take certain steps, that are outlined in the ordinance and she doesn't feel that it took the steps required.

Kimberly Oliver said that she thinks this vague standard is for when you have a small town in Greenbush or Township 12345 way up on route 9 somewhere, where there are only 10 or 12 people. And somebody in that town is being required to do something when they don't have a zoning ordinance. So it is like the guideline that says if you want to do something with specific requirements. In other words these are the rules you follow when you don't have a zoning ordinance. Deborah Stitson and Kathy Ward both agreed with Kimberly Oliver felt that the vague standard is not a valid defense.

Kimberly Oliver laid out the steps that a board needs to take to make a decision. The board needs to prove that it has a scope of authority to make a decision. It also has to determine the applicant has met the burden of proof. The board needs to determine there is sufficient evidence to support a decision. The board has to compare that information to the Limerick zoning ordinance, specifically in this case section 7, "conditional use permits". She went on, what the board should not do is base a decision on public opinion either for or against. The board should not base it on a personal, general opinion of the project. The decision should be based solely on whether the applicant has met the burden of proof and complied with the provisions of the ordinance or statute. If the applicant does not meet each of the requirements of the ordinance based on the evidence in the record then the board should deny the application. The other requirements for the board of decision is ex parte communications, which means the board's decision, whether it approves, denies or conditionally approves an application it must be supported by substantial evidence in the record. She states that you must have physical evidence to back up the decision. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate support or conclusion. When the board denies an application, that the records must show the purported project would have specific adverse consequences in violation in criteria, and the

criteria is, whatever is in the zoning ordinance, and is not being met, that the court would uphold that decision.

She asked did the Planning Board have substantial evidence to meet the requirements of the zoning ordinance, or did the applicant meet the burden of proof for his conditional use permit?

Kimberly Oliver states that she believes there is a difference between a conditional use permit and its requirements and requirements that are permitted in a district. She gives an example in Farm and Forestry you can cut trees, you can build a house. She continues that in Farm and Forestry you decide you want to cut down some trees and your abutter is upset now because he can see the highway, but you're allowed to do that on your property, you can do it even if your neighbor is upset. In other words it is a permitted use. The zoning ordinance is a manual for anyone who buys property and spells out what you can do in a certain district. She goes on to say, if you want to put in a subdivision and have met all the requirements you can do it. If you are on the Planning Board and you don't approve of the subdivision because it is across the street from you, as a Planning Board member you cannot say no you can't put in a subdivision. It is permitted in that district. 11:58

She continues that all requirements must be met for permitted uses within specific district zones. Conditional use permits are not viewed the same. Deborah Stitson stated that, in her opinion, conditional uses should be granted if they are allowed and fit in with the neighborhood and it must meet the conditions.

Kimberly Oliver stated that when the CEO or the Planning Board is looking at a permit and you are doing things that are allowed in that specific zone, then the two sections that were highlighted by the Planning Board, basing the decision on public opinion or on your own general opinion, would not come into play. However, with a conditional use permit she feels that doesn't apply. When it comes to conditional use permits and she reads 3 conditional use permit definitions in the Limerick zoning ordinance. The first one; a conditional use permit is a use permitted only after review and approval by the Planning Board. A conditional use is use that would not be appropriate without restriction, but which, if controlled under the provision of the Ordinance, would promote the purpose of this Ordinance. In the Planning Book Manual it reads; a conditional use permit is a request by an applicant for a proposed use on a conditional basis in that district that the applicant has an interest in. She further states that the Limerick zoning ordinance section 7 is used to determine whether the application complies with each of the standards of review whether to approve or deny the application. In the Board of Appeals book the definition for a conditional use reads; a conditional use provision in a zoning ordinance deals with uses which the legislative body generally has decided to permit in a particular area of the town. The purpose of the conditional use is to review procedure to allow the board to determine whether conditions should be imposed on the way the use is conducted or constructed in order to insure that the use is consistent with and has not adverse impact upon the surrounding neighborhood. She also reads further automobile graveyards; junkyards and new/used car lots are permitted in this district after issuance of a conditional use permit by the Planning Board. The Planning Board must conduct the public hearing on each such request and must insure compliance with the Limerick Zoning Ordinance which include article

7 performance standard section E, article 6 and article 7 under conditional uses and there are four conditions listed in the zoning ordinance.18:46

Kimberly Oliver explained how at one time the Appeals Board would decide on a conditional use with only four conditions and then the legislative body voted that the Planning Board would review it and would use the 16 conditions that we now have in our Zoning Ordinance. She continues that the zoning ordinance also contains a paragraph that states; any purposed use shall provide ample parking space on the property to accommodate all such vehicles attracted by the business, but in no case shall there be less than 1 parking space for each 200 square feet of building floor area used for the business. She goes on to say that those are the 4 definitions in this appeal that the Appeals Board should use for the basis of their decision. She doesn't believe the two sections that the Planning Board highlighted; basing a decision on public opinion applies for a conditional use permit. She continues that if you have a permitted use and the Planning Board or CEO does not allow them to do that until they have met all of the conditions then the argument that Wendy Farrand had of violating someone's civil rights that would be correct, but in this case it does not apply. If you are putting a business in a non-permitted district you would need to take into consideration the opinions of the abutters because you are affecting their civil rights. It must be acceptable by everyone involved. Other applicants have had to meet the conditions of a conditional use permit before it could be granted.

She asked Deborah Stitson and Kathy Ward if they agreed with her explanation of the definitions. They both agreed. She summarized the evidence that the appellants used to support her case; she presented, in her opinion, an incomplete application, the property is listed in S.A. Mclean and the application was in the name of his business, S. A. Mclean, Inc., there was no evidence of a State of Maine license which is one of the requirements on the application. There was also no evidence of S.A. Mclean's standing with that piece of property. She also presented that the Planning Board did not have evidence to meet the sections of article 7 conditional uses of the Limerick Zoning Ordinance. First one is section A; no evidence was presented to the Planning Board that reflects service to the community or for the benefit of the town's general welfare. The standard of this provision are designed to insure that the adequate control of the location design and operation of conditional uses. Section B; that not all 16 conditions were met or have substantial evidence to meet the conditions. There was no evidence meeting the conditions of a used car lot and specific requirements that were set forth as a used car lot in the zoning ordinance. No. 2; the detrimental effect on the use and enjoyment of adjacent or nearby property and the spotlight was her biggest issue, because the light is reflecting in her home. No. 3; was the concern of decreased property values that were not addressed. No 10; no evidence or provisions for the flow of traffic into and out of the property, no evidence of MDOT right of way to the state road or meeting the parking requirements as stated in the zoning ordinance. Kimberly Oliver stated that there were more, but these were the ones she chose to highlight.

Kimberly Oliver stated that they are now in the decision making mode. The question is did the applicant provide relevance as a reasonable mind might accept as adequate support in conclusion that the Planning Board did not have enough supporting evidence in the record to meet each of the requirements of the ordinance. She stated that she felt the Planning Board did go through the 4 requirements in the zoning ordinance with regard to the used car lots. She stated that she did not feel

that no. 3, decreased property values, was valid. Deborah Stitson replied that she did not have a problem with that because the applicant could have obtained a statement from a real estate agent to say it would not decrease property values and he did not. Kimberly Oliver, in reply, said in her defense would it have a decrease in value? Deborah Stitson said that she did not necessarily believe it would decrease the value, but that the Planning Board didn't require an evidence to verify that it would not. Kimberly Oliver states, in comparison this is minimal to other things that could be put in that zone that would affect the property values.

Kimberly Oliver states that she was concerned with the flow of traffic and parking. She did not feel this condition was met. Deborah Stitson replied that the Planning Board notes had addressed that in their minutes, but they did not put it in as a condition. The Planning Board notes said that there were DOT permits. The Planning Board asked if the permits were for a business or residential and the applicant stated to put this as a condition for approval. However, the Planning Board did not put it as a condition of approval. 29:33

Deborah Stitson asked if they were going to go through the 16 conditions as mentioned in the previous meeting, but didn't feel they had to. Kimberly Oliver stated that her concern was that it is important to consider the abutters information to verify everything is conducive to everyone because a conditional use permit is not the same as a permitted use. At the previous meeting she was hearing that the Planning Board felt they could not listen to anyone else's concerns. This is what they had based their decision on and Kimberly Oliver felt it was taken out of context. She feels it should go back and the Planning Board needs to look at the civil rights of the abutters as well. The Appeals Board members did not feel it was necessary to go through all 16 conditions. Deborah Stitson wanted to make it clear that she has nothing against Steve Mclean or the project if it meets all the conditions, but was concerned how the permit process was handled by the Planning Board. She feels that the Planning Board needs definitive information as to lot size and placement of the project that is specific to the conditional use. Kimberly Oliver was in agreement with this.

Kathy Ward states that she does not have a problem with this project either; however, there are a couple of items that she does have issues with and that there may not be enough evidence to say these conditions were met. She mentions the light that is going to be illuminated. She stated that the light is going to be on a Central Maine pole and that she rode by and with the light that is there now and she hates it, it blinds her completely. If there is going to be a second light up there she has a real issue with that.

Deborah Stitson feels there are more areas that need to be addressed, and not just the ones the appellant focused on. Kathy Ward replies that she thinks it can be fixed easily enough.

Kimberly Oliver confirms the authority that the Appeals Board can reverse the decision of the Planning Board and then remand the case back to the Planning Board and review the condition use permit process to provide substantial evidence that the applicant has met all the conditions of the ordinance. Deborah Stitson made a motion to reverse the Planning Boards decision for the Board to re-review the

conditional use permit process and have adequate evidence on record to meet each of the requirements of the ordinance. Kathy Ward seconded it. All were in favor. 3-0

Kimberly Oliver stated that she will provide written decision to both the Planning Board and to the appellant, Barbara Fifield. With no other business to conduct Deborah Stitson made a motion to adjourn, Kathy Ward seconded it and all were in favor. 3-0

Minutes respectfully submitted:

Laura L. May