



Town of Jericho
Development Review Board
Jericho Town Hall
Thursday, August 27, 2015

Minutes

Members Present: Barry King, Christopher West, Joe Flynn, Stephanie Hamilton, Jeff York
Members Absent: None
Guests: Michelle Patrick (Zoning Administrator), Katherine Sonnick (Planner)
Public: Philip Sharpsteen, Scott Hallock, Carolyn Hallock, Martha Frost, Linda Campbell, Stephen Hibbs, William Desautels, Conor Lahiff, Mary Lahiff, Kevin Mahar, Laura Mahar, Joseph Mahar Jr., Don Foote, Jean Ellen Sausville, Will Hibbs, Julia Blake, Daniel Hibbs, Susan Bresee, Darrell Meulemans, Belva Meulemans, Jim Carroll, Tucker Shaw, Charles Lacy, Stuart Alexander, Karen Vesosky, Leif Botzjorns, Susan Jaynes, Bruce Jacobs, Bonnie Destakasi, Scott Simpson, John Shullenberger, Diane Shullenberger, Bill Butler

MEETING AGENDA

- An appeal to the DRB by Mary and Conor Lahiff of the Zoning Administrator's decision to approve Zoning Permits 2015038 (accessory apartment) and 2015039 (accessory structure). The parcel is located at 225 Nashville Road in the Agriculture Zoning District (property of Kevin Mahar).
- Minutes from August 13, 2015.

Mr. West called the public meeting to order at 7:00 p.m. He read the warning. He asked the members to disclose any conflicts of interest. There was none. Mr. West read the Interested Persons Law. The public was sworn in at 7:04 p.m.

- 1. An appeal to the DRB by Mary and Conor Lahiff of the Zoning Administrator's decision to approve Zoning Permits 2015038 (accessory apartment) and 2015039 (accessory structure). The parcel is located at 225 Nashville Road in the Agriculture Zoning District (property of Kevin Mahar).**

Applicant's Presentation

Mr. King explained the order of the hearing. Ms. Lahiff said she had spoken with Ms. Patrick about it previously, but wanted to make sure that it would be okay if she read a letter on behalf of someone else during her presentation, noting she has the information written as well. Mr. King said normally a member of the DRB would read written testimony into the record, but either way it would be entered into the record.

Ms. Lahiff stated she is not claiming anything untoward toward any of you, but she would like to make a statement on record that she is uncomfortable with the format of this hearing. She said she understands that it is Jericho's policy to have the DRB listen to this appeal; however, she thinks that policy is inappropriate in that it allows a governing body to have the ultimate decision on whether or not an appeal is valid for the decision that that same governing body previously made. She said she

has reviewed the Conflict of Interest Policy in Jericho and there is no explicit statement against this scenario, but she does believe it is not in the spirit and intent of that policy to have the DRB decide on this appeal instead of having an outside body to decide on the appeal.

Mr. King explained this is different than a regular hearing, so they will treat her comments as public comment and will respond to any questions at the end. Ms. Lahiff said she is speaking for herself and on behalf of her husband, Connor; her two young kids; and she also feels that she represents a large number of the people in the room who are immediate neighbors. She noted that many of them have also provided written testimony. She said in regards to building permits 2015038 and 2015039 it is their contention that numerous zoning regulations and Town guidelines have been either broken or stretched too far to allow what is effectively a completely separate residence on a lot clearly defined to only allow one.

Ms. Lahiff stated that both the accessory apartment and the accessory structure are being appealed for the following reasons. She said with regards to the accessory apartment permit, they argue that the following regulations broken, stretched too far, or misinterpreted:

- 1) The well and footings for this structure will be placed in the River Overlay District, which does not allow for any construction excepting any very specific conditional uses. This construction does not qualify for any of the conditional uses.
- 2) The size of the structure exceeds the maximum size detailed by the definitions section for an accessory apartment. While she concedes that the wording is confusing in the guidelines, it clearly indicates that the accessory structure in this example shall be no larger than 750 square feet, noting she has a handout for the DRB to demonstrate that point.
- 3) This development is in direct opposition to the intended purpose of the Agricultural District, which is to “provide dedicated land for agriculture, silviculture, and rural housing. Prime forest and agriculture land should be protected while allowing for limited, compatible development”.
- 4) The Conditional Use Review that took place did not fully factor in adverse impact to adjoining properties. As this is the stated intent of this process, more weight should have been given to the public comment as to the impact of these permits on the adjoining properties and the surrounding comment.
- 5) This development is in direct opposition to the primary goals set forth in the comprehensive Town Plan, which is the will of the people, ratified.
- 6) By definition accessory structures, including those built for accessory apartments, must be incidental and subordinate to the primary dwelling. This structure is neither incidental nor subordinate. Incidental indicates clear relationship/ownership. Subordinate indicates smaller in size and presentation. The footprint of the structure is larger than the footprint of the primary dwelling. Additionally, the cost assigned to this structure per the permit cannot be reasonably considered subordinate.
- 7) Per previous minutes, Planned Unit Development (PUD) was the initial avenue for building, but the DRB steered Mr. Mahar away from this. The recommendation made is contrary to the recommendations in the zoning regulations. Regardless of the development path pursued, the definition of the Agricultural District states that new residential and other development should follow PUD provisions. These provisions include evaluating open space, density plans, wildlife corridors, and scenic resources. There is no evidence that these provisions were reviewed in conjunction with the permit applications.
- 8) “10.4.1 Curb cuts shall be limited to one per residential property”. The pre-existing curb cut was put in place by the Highway Department as that lot was used as a parking area during road construction. That curb cut should not be used to allow a second gravel driveway. By having a

second curb cut with driveway leading to garage and house, it is a clear second dwelling, not permitted in this zoning area.

- 9) This area is a sensitive ecological environment. Jericho has made leaps and bounds in the past four decades to conserve these sensitive lands. This corridor is home to and frequented by bear, bobcat, moose, deer, beaver, and numerous other mammals. Pileated woodpeckers, herons, geese, and a multitude of other birds are also residents. The actions to subdivide this property and build multiple additional, sizeable structures will have a negative impact on this corridor, fly in the face of the conservation effects taken to date, and are swinging the pendulum dangerously back in the wrong direction.

Ms. Lahiff said with regards to the accessory structure permit, they argue that the following regulations have been broken, stretched too far, or misinterpreted:

- 1) By definition, accessory structures must be incidental and subordinate to the primary dwelling. This structure is neither incidental nor subordinate. Incidental indicates clear relationship/ownership. Subordinate indicates smaller in size and presentation. The footprint of the structure is larger than the footprint of the primary dwelling. If a second floor is built, as has been indicated to neighbors, the square footage will match or exceed that of the primary dwelling. Additionally, the cost assigned to this structure per the permit cannot be reasonably considered subordinate.
- 2) The permit application is incomplete. It does not indicate the type of development, with the exception of “proposed barn” on the map. The dimensions of the structure also do not include building height.
- 3) The permit for this structure was intentionally excluded from the DRB hearing on May 28th, there were no maps displayed during the hearing which included this structure and no discussion took place. While conditional use review was not required for this structure independently, it was inappropriate to omit it from the hearing, as the positioning of this structure further indicates that this entire development is an attempt at circumventing the one on ten regulation, and not an incidental structure.
- 4) Section 11.14.1 states: “No land or structure in any zoning district shall be used or occupied in any manner that creates dangerous, injurious, noxious or otherwise objectionable conditions which adversely affect the reasonable use of adjoining or nearby properties”. The very existence of this structure adversely affects the reasonable use of adjoining property. Both aesthetically and financially, through a 20% reduction in property value by blocking the “better than average” view.
- 5) “10.4.1 Curb cuts shall be limited to one per residential property”. The pre-existing curb cut was put in place by the Highway Department as that lot was used as a parking area during road construction. That curb cut should not be used to allow a second gravel driveway. By having a second curb cut with driveway leading to garage and house, it is a clear second dwelling, not permitted in this zoning area.

Ms. Lahiff stated they firmly believe that landowners should have the ability to develop their property, so long as it not only suits their purposes, but also meets all of the guidelines set forth by the Town government. She said it is also completely understandable that there are times for exceptions; however, when these are made, more intense scrutiny to the broader impact to the neighborhood and the environment is warranted. Ms. Lahiff said for these reasons, they implore the DRB to revoke the previously approved permits. She said they also want it to be known that they are resolute in this opinion and will continue to fight the permits as far as they are able.

Ms. Lahiff provided handouts to the DRB, as follows:

- Relating to the maximum size of the structure.
- Before and after photographs of impact to the neighbors.
- Article on the role landowners have in being the key to protecting the State's wildlife.
- Itemized property cost for Linda Campbell and Steven Hibbs land.

Ms. Lahiff posed the following questions to the DRB:

- 1) Per the site map attached to the permit, the well and deck are clearly in the River Overlay District, when the regulations clearly state that this area shall be untouched by any construction. Why has Mr. Mahar not been required to hire a licensed surveyor and engineer to establish base flood elevation and clear the construction in that area? By everything she has read the well and the footings for the deck should not be allowed in that zone.
- 2) Will the garage or the proposed barn have any septic lines run to it? Is there any intent to have a bathroom in the proposed structure?
- 3) What is the intended function of the accessory structure?
- 4) If construction of this second residence continues, will the DRB put a covenant in the deed prohibiting dividing the property into two at any point?
- 5) Do you honestly believe that this development passes a straight-face test? It seems so clear to her and to most of the people in this room that extreme actions have been taken to circumvent the one on ten zoning that is at the core of our community, to the point where questions were raised by attorneys we spoke with as to whether something untoward was happening. It seems very clear that something like this shouldn't happen in this zone. While she is sure that is not the case, the alternative explanation is that the approving board is not working to make decisions that are in line with the will of the people and the stated regulations. She would like to hear comments on that topic.

Board Questions

Mr. West said his question is why this appeal is not being heard by the environmental court, saying he agreed with the testimony that the DRB shouldn't be hearing this appeal. He stated the DRB made a decision and it is not for them to reopen something that has already been decided. He said the response from staff is that this is being heard as an appeal of the permit; however, the permit is being given based on the DRB's conditional approval of this, which is why he thinks this should go to environmental court.

Mr. King said his understanding of what is warned here is an appeal of the Zoning Administrator's decision to approve these zoning permits, particularly the one for the accessory structure, which the DRB had nothing to do with. Mr. West clarified whether Mr. King was talking about the apartment or the barn. Mr. King stated the proposed barn. Mr. West agreed that if we are talking about the proposed barn, that is something the DRB should hear since it is something that the Zoning Administrator has approved and is exactly in line with what the DRB would hear. He said he doesn't think we should be talking about the apartment because we already made a decision about that, noting a lot of this testimony is about the apartment.

Ms. Sonnick said she admits that some of this seems contrary or confusing with the process of how this all works. She said in looking at our regulations, which are essentially coming from what State statute permits, when you have a decision made by the DRB that is issued, there is a certain date to appeal that decision. She stated there was no appeal made for the DRB's decision for the accessory apartment, so the permit was issued. Ms. Sonnick said a permit is based on a bunch of information.

She discussed what a traditional permit is based on, noting additional information is considered. She said in this case there was a DRB decision, so when Ms. Patrick reviewed that and found it to be complying with what the DRB said, she felt comfortable issuing the permit.

Ms. Sonnick said the questions that have been raised are valid questions, but are questions that go with the DRB decision, not the issuance of the permit. She said the way they have interpreted the regulations, this process is working how it is supposed to work. She stated there is an avenue to appeal an Administrator's decision and that is to the DRB. Ms. Sonnick said it does not skip from that process to go to environmental court. She noted the next process if someone doesn't like the DRB's decision, they can appeal that to the environmental court, saying that would be the next step.

Mr. West said the way he is interpreting the question, the way she laid it out, is whether we as the DRB feels that Ms. Patrick, as Zoning Administrator, has been given the authority by the DRB to give this permit with conditions. He stated he would say the DRB has already made that decision, saying yes; therefore it should go right to environmental court. He said if the time has elapsed whereby that appeal can be made, then there is no recourse. Mr. West said he is not sure he is reading that right. Ms. Sonnick said that is not what she meant to say. She stated Ms. Patrick issued the permit based on the conditions in the zoning, noting the permit was also based on the condition of the DRB approval. She said the Lahiff's have appealed the zoning permit, not the decision.

Ms. Sonnick said within the zoning permit there are the conditions and the time to appeal those conditions was at the time after the decision was made, not at the time of the zoning permit. She stated that this time the DRB is looking at whether she issued the permit the way she was supposed to issue the permit, not are the conditions the DRB put on the decision right, but did she issue the permit based on the information she had before her. Mr. West said however most of the testimony we have heard and questions to the DRB directly are related to the decision we have already made. Ms. Sonnick said she would argue that they should have appealed the decision.

Mr. King said this is a little unusual because this is not a common process for us, so we want to make sure that everyone on the DRB understands the distinction that the DRB and staff are trying to make here. He explained that someone followed the process and filed an appeal of the zoning permits, which is the correct process. He stated that now the question is do we hear it, or is there nothing to appeal. Mr. King stated there is an appeal here, of two things, saying that two building permits have been issued and they are both being appealed. He said one of those zoning permits is for the accessory structure, for which there was an extensive conditional use review of and the only question at appeal there is whether the zoning permit was issued for that correctly with respect to the conditional use. He said the second question is whether the second zoning permit for an accessory structure, this barn that we have been talking about, that was issued by the Zoning Administrator was issued properly according to the rules.

Mr. King said we are being asked to hear whether the two zoning permits were issued correctly with respect to the rules and with respect to the conditional use permit which has run its course for appeal, which is now on that project for the 180 days of that conditional use approval. He stated let's be clear that no one can appeal to the DRB to change our decision on the conditional use; that is not what is at issue here, that is done. He said if someone wanted to appeal that, they could have, but they did not. Mr. King explained that what is at issue here is an appeal of the Zoning Administrator's work to issue zoning permits, some of which were affected by that conditional use review, some of which were not. Mr. West agreed.

Mr. King said at this point he needs to get a feel from the DRB whether they feel there is a procedural error here that we shouldn't even be hearing this, or if they agree with staff that the relatively narrow issue about the zoning permits. He asked the DRB members if they understand the distinction and what we are being asked to decide now. The DRB members said they understand. Mr. King said the appeal tonight is not about the conditional use permit, that stands and the conditions stand; the question is whether the zoning permits that have been issued are proper. He said on the accessory apartment, with respect to the rules and the conditional use conditions, and the second permit is it proper according to the rules. He stated that is the question being asked.

Mr. King said we have gotten testimony from the appellant on a wide range of issues, some of which are relevant to what we are being asked to decide and some of which isn't, but we give people free range to say what they need to say. He said there is no question that it is proper for them to bring up any issues that they want, but what we need to do is decide the appeal. He asked the members if everyone is clear on that and they agreed they were. Mr. King said he thinks we answered one of the questions. Ms. Lahiff asked if there was a formal warning for the DRB decision and what is the timeframe for appeal after that warning for the conditional use review. Mr. King stated the conditional use hearing was warned the way they always are. He asked Ms. Patrick to discuss the timing. Ms. Patrick stated it is 30 days after the decision has been issued is the appeal period.

Mr. King clarified they are talking about the warning before the hearing. Ms. Patrick stated it has to be warned at least two weeks in advance. She said we submit it to the Mountain Gazette, who publishes it, noting that all of our hearings are published in the Mountain Gazette. She said we also post them around Town, noting the standard locations including Front Porch Forum; saying we do not post them on the website. Mr. King said there are notifications to abutters. Ms. Lahiff said the conditional use review was not posted on Front Porch Forum because we are on there all the time. She said if they had seen the decision before the permit was issued, they would have appealed that. Mr. King clarified they do not publish the decisions; they publish the warning of the hearing. He discussed what is required by statute.

Ms. Lahiff asked how any other interested person was made aware that there was a decision. Mr. King stated there is always a decision, explaining the process further. He stated there is no process in statute to warn a decision. He asked if the decision goes to abutters. Ms. Patrick stated it does. She said everyone who attends the hearing should get a copy of the decision in the mail. A number of people present stated they did not receive the notice in the mail.

Mr. Flynn asked what an abutter is. Ms. Patrick said an abutter is direct abutter or across the road. Mr. Flynn clarified if the Lahiff's are located across the road. Ms. Lahiff said the corner of their property abuts the property across the road. Ms. Patrick stated they would have gotten a notice in the mail regardless because they attended the hearing. Ms. Lahiff stated she did not and their neighbors did not either. A member of the public stated she was an abutter and did not receive notice either. Ms. Sonnick clarified that abutters receive notice of the hearing and if they attend the hearing they would receive notice of the decision. A number of people restated they did not receive notice. Ms. Lahiff stated that is why they are appealing the only thing they could appeal, which is the permits. She stated they received notice of this hearing because they are the appellants, but that is the only notice they have gotten. Those present discussed who did and who did not receive notice. Mr. King explained the rules of procedure for the meeting, asking everyone to be patient.

Mr. West said he would like to try to understand the barn structure, which is something we have the authority to look at and to rule on. He said he was trying to find the testimony that was directly and only related to the barn. He stated that what he can find in here is: about curb cuts; the barn structure was not included in the original hearing; and a question about whether the barn will be getting septic. Ms. Lahiff gave the DRB members a written copy of her testimony. Mr. Flynn said in regards to the proposed structures, they have gotten poured, are those structures being built exactly where they were shown on the plan. Mr. Mahar said the surveyor confirmed that. Mr. Flynn clarified they were laid out by a professional. Mr. Mahar agreed.

Mr. West asked, regarding the testimony given in terms of pictures, which structure the tarp is supposed be. Ms. Lahiff responded the barn. Mr. Flynn asked if in the picture of the tarps being held up they are at their westerly property line. Ms. Lahiff responded it was the easterly property line, looking toward Bolton valley. She said it is about five feet from where the footings are, where the tarp was hung. Mr. Flynn said his question is about prospective and if you backed up farther away if they would be in the way. Ms. Lahiff said there is one from right on the edge of the property line and one from further back, on the back of the property line on the most westerly edge.

Mr. Flynn clarified one of the photos was taken at the extreme farthest limit on their property. Ms. Lahiff agreed. Mr. West asked for testimony as to whether the views they are claiming are being blocked, are being blocked from the house here, or just from the backyard. Ms. Lahiff responded from both the house and the backyard, noting not completely blocking the interior window, but it definitely encroaches on their window. Mr. Flynn asked if that is the height of the proposed building. Ms. Lahiff said it is the proposed height of the building.

Mr. West asked if we have a map that shows the location of the proposed barn in relation to the house. Ms. Sonnick stated it is on the back side of the permit. Mr. West said he sees the dwelling but not the proposed barn. Mr. Flynn indicated there is another map. Ms. Sonnick displayed the map for everyone to see. Mr. West indicated the location of items on the map, saying it looks like 50' to the back of the house. He asked staff if there is anything the permit was based on for the accessory apartment that was not a part of the DRB decision; is there any regulation we need to look at related to that. He clarified he is asking if there is anything outside of the decision that was used in making the decision to issue the permit for the accessory apartment.

Ms. Patrick stated zoning permits need to include: the dimensions of the lot; the location of footprint of proposed and existing structures; rights of way; property boundaries; proposed water and wastewater systems; surface waters; wetlands; overlay districts; and the applicant's site plan submission for the hearing, which included all of that. She said that is why you see the 22' by 40' structure, which is not a lot of information. She noted that on the back side it included the site plan, which is considered part of the permit.

Ms. Lahiff clarified dimensional requirements would indicate height, width, and depth; saying there is no height indicated on any of those papers. Ms. Patrick said she is correct, that is omitted. Ms. Lahiff said there needs to be an indication of height when approving a permit. Ms. Patrick agreed. Mr. King clarified you are not allowed to build something taller than the regulations allow. Ms. Lahiff said the permit displayed asked for the dimensions of the structure, which would include height. Mr. King said in the normal course of business that is not the way it is done, but yes, that is true that the height requirement does apply.

Mr. West stated the square footage requirement also applies, which would mean that based on what we received as testimony that would be a one-story structure as far as livable square footage. Ms. Patrick clarified for the accessory apartment that is true. Mr. King said he is not clear on what the site plans were for the two permits that are issue here. He stated the site plan that was part of the conditional use review, which was just for the accessory apartment. Ms. Patrick stated that did not include the barn. She said this is the same thing, but they added the barn. Mr. King clarified that the site plan that was subject to conditional use review didn't have the barn on it; it had the dwelling in the position that is shown on this one. Ms. Patrick agreed that is the same.

Mr. King said there was a zoning permit application for the accessory dwelling, asking if the site plan submitted with that application have the proposed barn. He said then there was the third step which was the permit application for the proposed barn, which is the drawing we are seeing now that proposes a barn in addition to the things that had previously been conditionally approved and permitted. Ms. Patrick agreed. Ms. Lahiff stated that the date of those maps is exactly the same. Mr. King asked which maps. Ms. Lahiff responded both maps, the two different maps attached to the two different permits were produced on the same date. Mr. King asked if both of the permit applications were made the same day. Ms. Patrick said yes.

Mr. West clarified a barn is not considered an accessory structure; a barn has a separate exception. Ms. Mahar said a barn has a very special classification according to the State. Mr. Mahar said he does not know why it says barn because he did not write barn on the application. He said it is not a barn, as the State declares an agricultural barn; it is an accessory structure. He stated it will not have a septic, it is for storage. Mr. Flynn said that is what the permit says, no septic and no water. Mr. Mahar agreed.

Mr. King asked if staff had any questions or anything they want to get testimony about. Ms. Patrick said with respect to a covenant in the deed that would tie both houses together, that was considered a given. She said that was at the hearing and we don't need to address it now. Mr. West said that is kind of an important question from the appellant. Mr. King agreed that the questions from the appellant could be addressed before going to public comment.

Mr. West said you cannot put a covenant on a piece of property because at some point the zoning might change. He stated that if at some point the zoning changed to three acre zoning, you would have a covenant that would stop someone from legally subdividing their property. He said as long as the zoning stays the same and the rules are the same for that zoning, that property cannot be subdivided. Mr. West stated that if, in the future, the Planning Commission decides that stretch of road should be Rural Residential and three acre zoning, the covenant would then prevent the owner of that property from being able to do so. He said the rules don't support a covenant.

Mr. King stated the answer to the question of whether the conditional use permit prohibits future subdivision is no, the subdivision rules prevent further subdivision. He said it can't be subdivided already, it couldn't before, and it can't now unless the rules change. Mr. King asked to look at the question about the River Overlay, saying there was testimony that the well is in the River Overlay. He asked staff if there is any data about whether in fact the well is in the River Overlay. Ms. Patrick stated it appears that way, yes. Mr. King said there was also a claim that there is a part of the deck in the River Overlay, asking if that is true also. Ms. Patrick said that also is indicated on the site plan.

Mr. King said there was also a question as to whether the proposed accessory structure would have any water or septic and the answer is no, it is not on the permit and there has been out of order testimony that in fact there would not be any. Mr. West said the question about the intended function of the accessory apartment. Ms. Patrick said to get back to the River Overlay, because it is mentioned in Section 6.5.1 that new dwellings should not be constructed in the district, she thinks it was the interpretation at the hearing that the dwelling was outside the district and that the seasonal deck would be within the district. Mr. West stated there was testimony that it would be a three season deck and would not be heated. Ms. Patrick agreed.

Mr. King stated there is a deck proposed in the River Overlay, in the Flood Hazard Overlay. Ms. Lahiff stated footings would be needed as well for that deck. Mr. King said the well is also placed in the Flood Hazard Overlay. Ms. Patrick said that was labeled incorrectly, it is the River Overlay District; it is not in the Flood Hazard Zone or a flood plain. She stated that was made clear at the last hearing. Mr. King agreed the drawing is mislabeled. He said there is a River Overlay that is at issue.

Mr. West said if he remembers correctly there was testimony from our point of view or at least statements that septic systems and well head protection is the purview of the Agency of Natural Resources in the State and they also take these things into account. He and Mr. King said the well specifically is within the State's purview. Mr. West said it is something the DRB looks at, but it is the State that is in charge of issuing permits for that.

Ms. Sonnick said she thinks it is unfortunate that the plan is mislabeled for what the district is because that is creating some confusion. She stated it is the River Overlay, not the Flood Hazard. She said the regulations are different for the overlay, as Ms. Patrick read. Mr. King agreed, saying we have clear testimony that the label is incorrect on the site plan. He said they believe that the line there is correctly drawn, but it is actually the boundary of the River Overlay District. Ms. Lahiff said they understand that.

Public Comment

Mr. King explained the rules for public comment. Mr. Carroll said he would just like to clarify what the facts are that are in evidence. He asked if there is in fact a complete survey for the original application that shows the whole property, which is this property here; as part of the conditional use review, or the subsequent two zoning permits. He said this is a difficult situation due to the rubics cube with two zoning applications and the previous unappealed conditional use. Mr. Carroll said in playing this game in multiple towns, as a Jericho resident, he thinks the Town and the Board is best served by placing the burden of notice, not on the staff and not on the Board. He said he believes it is the obligation of the applicant to determine who the abutters are according to State statute through a title search and to bring that information to the Zoning Administrator as part of the application. He stated the applicant is the burdened party to then ensure that notices went to all of the abutters, discussing an example.

Mr. Carroll said it is also on the applicant to produce accurate and properly noted surveys in order for them to be properly considered by the DRB and by the Zoning Administrator. He said he also believes that by statute you didn't only have to put it in the Mountain Gazette, etc.; that the applicant had to post the zoning warning notice on the property visible from the public road. He stated that he hasn't heard anyone here tonight say anything and when he glanced at the file a few weeks ago he didn't see any of what I just described. Mr. Carroll stated that he is hoping we can have a process in Jericho where we follow the State statutes, which he believes puts the burden on the applicant. He said he doesn't believe the staff has the time and he certainly doesn't think a volunteer Board has the capability of going to

check the land records. He said if he is applying for something in any other town, he is required to fill out the abutters list; he is burdened to make sure he does.

Mr. Carroll explained the rationale for burdening the applicant. He said the case here is trying to sort out a mess and it is so confusing to someone who spent years trying to do this; maybe we can sort it out. He stated he believes you can appeal a DRB decision back to the DRB for re-consideration and not go to the environmental court because it could be that the DRB didn't get all of the right information; there was an error of processing and to go to the environmental court would put an unfair burden on both parties. Mr. Carroll said he thinks if we do everything correctly it is beneficial to the applicant, beneficial to the DRB and the Town, and it is beneficial to the abutters. He said maybe we cannot fix it all here now, but maybe we can fix it for the future by putting the burden on the applicants because they are the one who wants something and they should make sure the notices go out.

Mr. Hallock said he has a fairly large piece of property across the road he purchased about 50 years ago, noting there was no zoning there when they purchased it and then along comes the 10 acre zoning. He said he does believe it works and the valley is very nice. He said his wife and he and their partner recently donated 78.68 acres of land to the Vermont Land Trust so that will never be developed and it is always open to everybody in the community and always has been. Mr. Hallock said he is summarizing his letter which he will provide a copy of to the DRB. He said they honestly believe the 10 acre zoning works and to him the accessory thing seems a way of getting around the 10 acre zoning. He asked what are we doing; he gives away land and you guys let them use it and it just doesn't make sense to him.

Mr. Hallock stated it seems like we are working against each other and he doesn't think we need to play games by tinkering with the 10 acre minimum zoning. He said if we don't agree with it, change it legally. He said don't play games like that. Mr. Hallock said they do have some questions. He said that well is under water at times in the spring and water runs across that field where it is located up there. He asked if we are going to have a second curb cut and why it was not added onto the original dwelling.

Mr. Hallock asked where it tells anybody that it can't be done. He expressed concern about the septic system, noting it is a traditional septic system which is not acceptable anywhere anymore; they are all set up as mound systems. He asked if we need to have somebody else look at this design. Mr. Hallock wondered what the use of the barn and the garage is supposed to be, saying it scares him that in a couple of years down the road it is going to be another dwelling. He said he has a map showing where everyone is around there. He stated they have given away almost 80 acres of land that can never be developed and now you guys are letting these guys subdivide a 10 acre lot, saying that is the way it looks to him. Mr. King asked for a copy of the testimony so that it is in the record for deliberation.

Ms. Campbell stated she lives next door and the accessory structure is so close to their house that people think they are adding on. She said she will try to confine this to the accessory structure, but she has a lot of comments about the apartment. She said she is on record at the last meeting saying that Mr. Mahar made an effort to protect their view which he knew was important to them, but that is no longer the case. Ms. Campbell said Mr. Mahar's latest plan calls for a two-story, 22' by 42' accessory structure as close to their eastern border as possible. She said on several occasions he came into their home to discuss his plans and he never once mentioned this additional structure, its considerable length, nor its height. She said the site plan and aerial photos he brought showed only a house, the garage and barn was omitted. She said she sees however that the plan submitted to the Town does include the accessory structure; she feels this omission was intentional, misleading, and an effort to garner their support until it was too late for them to do anything about it.

Ms. Campbell expressed concern that from the last hearing, even though he applied for two permits at the same time, the accessory apartment and the accessory structure, only the permit for the accessory apartment was brought up for public discussion. She stated there was no mention of this planned accessory structure; the only discussion was that hypothetically Mr. Mahar could decide to put up an accessory structure in the future. She said after the fact she was informed by the Zoning Administrator that this was done to simplify matters; she suggested that this was public information, it was deliberately withheld from them, it should have been made public and the hearing was the logical place to do it; it certainly would have engendered further questions, concern, and debate.

Ms. Campbell said she feels that by keeping this information secret it was impossible for those of us affected by this proposal to express their concerns until construction was underway. She said she also feels that if, in this situation, a larger property surrounds a smaller one, noting they surround it on three sides; it is so unusual that the regulations have to be stretched for this accessory apartment and the adjacent neighbors are so concerned. She said she has sent you a letter, which you have; why is it not usual and customary for the DRB to make a site visit for them to see for themselves what is at stake. Ms. Campbell said the aerials look very different at ground level, saying they even looked at the aerials and thought the house didn't look too close, but when the excavating began it was a different story. She said she would like to formally ask you to come for a site visit so you can see firsthand what is at stake.

Ms. Campbell said when she bought their home 28 years ago, she bought it for the open spaces around the house, the beautiful meadow and mountain views; her disappointment was only that the lot size was 1/3 acre. She said she was reassured by the fact that the Town zoning for this area was one house on ten acres; she thought this zoning would protect her. She stated as they outgrew their small house, they looked extensively for a larger place; however they realized that they loved their view and their spot on Nashville Road, so they renovated their home, doubling in size and increasing its value. Ms. Campbell said for the past 30 years they have made the most of our 1/3 acre, saying they have raised sheep, turkeys, ducks, and chickens; they have extensive gardens and a hoophouse; their family built an outdoor pizza oven with clay they dug from the Browns River; and her kids have enjoyed bike jumps, ski rails, tree house, pool, campfire, trampoline and half-pipe in the space at various times. She said in short they spent a lot of time living in their backyard and the placement of Mr. Mahar's accessory apartment and 22' by 42' two-story accessory structure will close in a major part of their yard.

Ms. Campbell said where they once gazed out on field and mountain views, they will look at the back of his garage; it will shade her gardens and hoophouse where she grows food for her family. She said it will dominate the view of their backyard and it will make a huge difference in their backyard life. She stated there is not another part of our property they can switch to in order to enjoy the openness and view, as they have only 1/3 acre. Ms. Campbell said it will no longer be the property that she purchased years ago; gone will be the openness surrounding them, the view of the mountain looming in front of them, the feeling of living in the country on a dirt road; they will be surrounded on three sides with a huge back of a building dominating their view. She said she would not have bought their property if there had been an adjacent structure so close by at that time.

Ms. Campbell said historically they have paid taxes on that view. She stated she spoke with the Town Assessor and learned how Jericho factors in the view. She said the average property view is rated 1.0 and ours is 1.2 with "above average" views, which translates into a 20% upgrade of their lot, which is about \$20,000. She said not only that, but replacing mountain view with the side of a large building will affect the curb appeal and salability of their home. Ms. Campbell said she thinks many people move to the rural parts of Town for the same reason they did, for the openness, the views, the feeling of being

outside, not to be closed in by adjacent houses. Mr. King asked Ms. Campbell to summarize her written testimony in respect for everyone's time. Ms. Campbell said she thought the zoning regulations were very clear in their efforts to protect existing property owners. She said that Section 10.9.1 states that Conditional Use Review is intended to prevent "adverse impacts to adjoining properties, the neighborhood, or the community at-large. She said if you permit the construction of a 22' by 42' two-story garage/barn along their eastern border, you are decreasing the value of their property by at least \$20,000; you are interfering with her ability to grow food for her family in their hoop house by drastically shading it, you are significantly changing the way they live in their yard, and you are negatively affecting their ability to sell their house.

Ms. Campbell asked if this is how the Zoning Administrator and Board protect Jericho longstanding property owners; is this fair or reasonable. She said at one point she asked about protecting the natural environment and preserving the rural and historic character of Jericho, as per the comprehensive Town Plan; the Zoning Administrator replied that she wasn't sure it applied to their area. She said according to our Town Report: "scenic resources are important, though difficult to quantify, features of communities. These features reveal the landscape quality and setting of the community and are part of the community's identity they offer aesthetic pleasure to residents and visitors alike." Ms. Campbell stated that in 1989 a Natural Resource Committee identified Nashville Road as one of several roads identified as scenic and Jericho Uplands Committee is committed to protecting this land. She asked if the comprehensive Town Plan aforementioned goals don't apply to their area of Nashville Road, exactly where are they pertinent; what parts of Jericho do qualify for this protection.

Mr. Stephen Hibbs indicated the area he lives and the location of their house. He said if this barn is here they will just have this tiny space to see their view. He said he won't read his whole testimony, which he will give to you. Mr. Hibbs asked each person in this room to imagine his favorite view from the vantage point of their yard; now imagine a 42' semi-trailer pulled up and parked across their view, as close as possible to the yard; what would your reaction be? He said instead of a scene of nature, mountains, forests, fields, and valley, they would be staring at the back of a 42' wall. Mr. Hibbs stated it would block the sun necessary for Linda's gardens; it would be a catastrophic negative affect for their use and enjoyment of their property. He stated their house is in the Agricultural Zone and they live here for the reasons stated above: their appreciation of their natural setting and their trust in the Town of Jericho to uphold its laws and protect them from exactly this type of degradation of their lives. He said they want to live in a beautiful rural Vermont, not suburbia. He provided some pictures and his written testimony.

Ms. Hallock said she wanted to read from the letter from her and Scott. She said this 78 +/- acre piece of property that they put in the Land Trust is across the road from 225 Nashville Road. She said there is a field, with another field in between it, then the Mahar property. Ms. Hallock said a lot of times when she goes to work in the morning there will be a car pulled over watching the deer cross the road from our land down to the brook, once a week probably. She said it just astounds her that we are going to interfere like that. She said a comment she heard earlier about the character of Nashville Road changed that they might change the zoning to three acres; this decision will make the character of Nashville Road change and we should not do that; it should not be allowed; it should not have been allowed.

Mr. Sharpsteen said he is a Jericho resident on Nashville Road for 39 years and President of Keeping Track, Inc., an educational non-profit whose mission is to identify and help conserve, through the training of citizen scientists, important wildlife habitat. He said he has driven by the property in question four times per day over 39 years; the property is one mile from the beginning of one of the

most important wildlife areas in Vermont. He said over eight thousand acres of this habitat have been conserved and the Rural Conservation District along the Nashville Road corridor is critical to help conserve this core habitat as it provides travel corridors between conserved acreage and the extensive acreage of the Jericho/Underhill Government Range. Mr. Sharpsteen said no dilution of the existing rural conservation zoning regulations should be allowed in this area. He said he feels that this additional use has essentially created two five acre zones. He said along with the Hallock's, he has 71 acres which he has just donated all the development rights, so it will never be developed. He said he believes firmly that the wildlife corridor across Nashville Road is very important.

Mr. Simpson said even if it meets the letter of the regulation, which he doesn't think it does, he thinks certainly this development doesn't meet the spirit of accessory apartment. He said it is separated from the house it is an accessory to by another house. He said he doesn't see how that gets to what we are trying to do by allowing it to be called a mother-in-law apartment; it doesn't make sense to him.

Ms. Blake said she lives just past this property and she goes past it daily. She said she doesn't understand all of the technical things but she agrees with Scott; it just seems like a travesty of ten acre zoning. She stated the word accessory to her means adjacent or part of, like a mother-in-law apartment; this is a completely separate dwelling, not even within sight of the original house. Ms. Blake said she doesn't understand that and she thinks it does affect neighboring properties because it sets a precedent. She said she moved here 36 years ago for the rural aspect of Jericho and she would hate to see Nashville Road become five acre zoning with houses everywhere.

Mr. Daniel Hibbs stated the mountain views in his backyard has been a signature part of his home since he can remember. He said he was born in the house they live in today and have many fond memories of playing games and sports in the backyard with his family through the years. He said their backyard is where his family has chosen to spend much of their lives; he is against the building of any structures. Mr. Hibbs said, as stated by others, building a house and a garage in this space will damage the value of his home, damage the local wildlife, damage the historic Vermont scenery, and will have a profound effect on the community. He said he believes that building in this historic place, where Snowflake Bentley lived, will make it easier for other places in Vermont to be built on and destroyed; paving the way for other historic places to be destroyed. He said he truly believes if a house or barn is built in the neighboring field it will damage the identity of his home; a Vermont paradise to an undesired suburbia.

Mr. Will Hibbs said he lives with his parents and have lived there for 21 years, saying it has been a very big part of his life. He said their yard is a work of art; you have to see it to really understand, but they have worked on every inch of it. He stated putting something like this up is really going to destroy the value of their home and the value of their yard to them. Mr. Hibbs said it will make it difficult for them to continue living there. He said he has had the best times in Jericho, the community is very strong; that is why he is still living here and something like this seems to really go against the values of this Town and his family. He stated he opposes this building.

Mr. Lacy said through the years he has been an advocate for adding the possibility of accessory apartments through planning and zoning regulations. He said when he was advocating for that, it never occurred to him that an accessory apartment could be two doors down from the house that it is associated with, with its own curb cut, its own well, its own septic. He said he is not a lawyer and doesn't understand the ins and outs, but through his advocacy for accessory apartments he never imagined something like this could happen two doors down and shade out neighboring people from the other side of the main house.

Mr. King explained the importance of the Rules of Procedure. Mr. Carroll stated he doesn't think you have any statutory support for the three minute time limit; people should be able to speak what they have to say. He stated he doesn't believe you have a complete application; in absence of a complete application, he thinks both building permit appeals should be affirmed in favor of the appellant and that is not meant to criticize anybody. He said this stuff is really complicated; it is easy to do it wrong and if you don't show on your application the intended parcels, you are not giving the full picture, particularly when you are trying to ask for an accessory structure. Mr. Carroll said if you don't show the primary structure and you don't show the other curb cuts and so forth, it is not possible for the Zoning Administrator of the Board to understand the application; that burden rests with the applicant, the application should be denied. He said from what he has read, they do not have the State wastewater permit; they shouldn't be constructing a building until they have gotten all of the attendant permits issued, he believes that is in Jericho statutes.

Mr. Carroll said he frequently hears within the four walls here that that is not our purview and he believes Jericho statutes require the applicant who is constructing in Jericho to in fact have conformed to State statutes. He said the State statutes are not necessarily presented by the issuance of a permit; in this case he doesn't believe a very significant attendant permit, so there shouldn't be any construction going on particularly while it is still under the appeal period for the construction permit. He said the applicant has put himself in a bad position again. Mr. Carroll stated you do not have the information to affirm the application that was submitted to the Zoning Administrator as we sit here tonight and you need that information in order to consider whether any of the structures are in fact incidental, subordinate, or accessory to the primary structure; therefore the application is incomplete.

Mr. Carroll said you also don't have the other State permits that are necessary and lastly he doesn't think you have topo, which in this sensitive area you should have. He stated you need an elevation certificate that says, not on an approximate basis; if you are going to build something you need an elevation certificate because it could be an obstruction or interference. He said the burden again is on the applicant. Mr. Carroll added for the whole group, he doesn't think this Board needs to hear all of these people bickering and people thinking the Board is responsible, the Zoning Administrator is responsible; he thinks the neighborhood should all get together with the applicant; the applicant should bring all of the information forward and try to work this out; move the building somewhere where it doesn't have an adverse impact on the neighbors, do this in the proper way. He said if you want an apartment; make it an accessory apartment, adjacent to the existing structure, not on a separate curb cut because they also have to get past the Selectboard to get a legitimate curb cut to get in there. Mr. Carroll said this can all be ended fairly quickly if everybody is fair; have a mediator and go to the meeting, step by the quasi judicial structure of a meeting like this, stop burdening the employees who have a lot of other stuff to do and the Board; get this resolved.

Ms. Jaynes stated she will submit a letter that repeats what a lot of other people have said. She agreed with Mr. Carroll that she doesn't see why a compromise cannot be formed here. She said when she looks at that site plan, it is shocking to her to see a barn, a house, a septic system, a well, a driveway, and a curb cut as "incidental and subordinate structures to a primary dwelling", it doesn't even abut it. She said she sees a barn/garage that is going to have an adverse affect on a neighbor's primary dwelling, not on a neighbor's accessory yard or structure. Ms. Jaynes said it just seems when she looks at this piece of property that there should be a way to compromise here. She said she thinks Mr. Mahar, of course it is his right to build, but there must be a compromise, a way to site the building so it doesn't affect the neighbor's views. She suggested perhaps the mother-in-law apartment could share the well so

it is not encroaching on regulations that are in place to protect our sensitive wetland areas. Ms. Jaynes urged the Board and whoever else is involved, in the spirit of the Town Plan which was just revised in 2014, to protect Jericho's rural environment. She said she knows that the Selectboard at that time deliberated and re-wrote the accessory structure rules with that spirit in mind, to really consider that; to hopefully find a way that we can all comment here and find an agreeable solution.

Ms. Mahar said she and her husband are the parents of Kevin Mahar, who is attempting to build them an accessory apartment on his property on Nashville Road. She said the news that they had to cease building came as devastating to them. She said when she received a small inheritance from my father's death last year, they gave it all to Kevin so he could buy his land and build his dream home even though they are on a fixed budget and could use this money. Ms. Mahar said they knew this property was almost perfect and that money allowed him to buy it. She said they are going to be right next door to him, but they will share their yard. She said they have been visiting Kevin in his new Jericho home for the past year and fell in love with the area too. She said Kevin convinced them to sell their home in New York and to come live with him in Jericho.

Ms. Mahar stated they have always been a close family and as Kevin expects to marry and start a family he wanted them to be nearby so after 23 years in their beloved home they decided to sell. She said back in April, Kevin applied to the Board asking to build a 1,600 square foot home because he wanted them to be comfortable; when that was denied, they were fine with the smaller home. She said they watched and waited as Kevin filled out all of the necessary paperwork and filed for State and Town permits, which seemed to take forever. Ms. Mahar said finally he received all of those permits and everything was in place, so at that point they put their home up for sale and quickly got an offer, which they accepted. She stated they close in September, but in July just as they began construction, Kevin told them that he received word the building could not proceed because a neighbor objected; we were incredulous; how could this happen.

Ms. Mahar said their only intention is to live quietly and immerse themselves in the community; they already had met two of Kevin's neighbors, Linda and Libby, and they were excited they were going to be living near them. She said her husband wants to join the West Bolton Golf Club and he wants to continue his work as an Elk Club member; she is a retired teacher and plans to volunteer at the elementary and middle schools. She said they look forward to planting a vegetable garden and shopping the local farmers markets; they wanted to raise chickens and maybe even goats; this was their dream, to live near their son and live as close to the land as possible. Ms. Mahar said she was hoping to get pointers from our neighbor, Linda, who seemed quite friendly when she met her. She said in building the home, they agreed to use local builders and craftsman and to purchase local materials whenever possible.

Ms. Mahar stated they are putting in solar panels and all energy efficient materials to lower their impact on the environment. She said Kevin already made arrangements with all of these people, promising them work and business and now none of that can happen. She said Joe's birthday was July 31st, he turned 65 and what should have been a joyous celebration was filled with dismay when they found out that a neighbor from another road was indeed holding up construction by questioning the authority of the Board and the decision that they reached months ago. Ms. Mahar asked what they are to do; they raised Kevin to honor authority and he has, following every rule and regulation the Town and the State has, yet, here they sit soon to be homeless with no answers about where they will live or what they should do. She said they don't know what is going to happen to them.

Mr. Daniel Hibbs stated he knows that there is a wonderful house for sale just down the road on Leary Road, with a nice view; it would be close to Kevin.

Ms. Frost addressed Ms. Mahar, saying that none of this is personal. She said from the people she has spoken with, it is about the community and we want to protect it. She stated it is not about you as individuals, they never intended to point a finger at them and say we don't want you; it is that we want to protect our community; we want it to stay the agricultural environment that it has been for the last 100 years. She said this is the process that we are allowed to use to protect that; it is not personal thing. Ms. Frost said we don't dislike you and you would probably make wonderful neighbors; we still feel the need to protect our environment.

Mr. Kevin Mahar read from Vermont State Law, Chapter 24, Section 4412(e), saying that anywhere in Vermont you can have an accessory structure like I am proposing and was approved for, as long as you meet the local regulations for the Town and have all the setbacks and everything. He said anywhere in Vermont, it is law. He asked for the map to be displayed. Mr. Mahar indicated the 25' setback as per code. He said when he had the survey done to make sure he was putting the buildings in exactly where he had proposed, he was told by the surveyor that there was a gross encroachment onto his property from Stephen and Linda, garden and garden supplies on two sides. He stated his first reaction to this was not let's go kick them off, but to research how to leave them and protect his rights as a landowner, finding that he could do a boundary affidavit. He said he went into their home and explained to them the reason for the paperwork, discussing the conversation.

Mr. Mahar said he is aware that they have gardens that encroach on his property and he is aware that they have a very tiny parcel. He said all the square footage of the proposed buildings and his building is a fraction of the percent of the land he owns, at 10.2 acres. He stated as far as nature goes, he is going to occupy less than 1% of the property, even with these two buildings constructed.

Mr. Shaw said if it is only 1% of your property, aside from what your current dwelling, you should have 99% other places to put it that wouldn't be so detrimental to the community of Nashville Road, which I frequent and I enjoy.

Mr. Lahiff read from a written statement from Gretchen Alexander who lives down the road, noting that she is a river scientist. He said part of what we are talking about is the proposed well which is situated in the River Overlay District. He stated this district is made up of three different layers, the Federal Emergency Management Administration (FEMA) flood plain maps that denotes the location of the base flood; you can actually see the line near the top; this is the boundary that the house is on and the deck and well are well within. Mr. Lahiff said the second part is the fluvial erosion hazard zone, a rattle area required by the river to accommodate river dynamics and achieve stable condition over time; a third part is setback from the top of the bank waterways this distance depends on the streams order or general size. He said as noted in the latest version of the Jericho Land Use Regulations, no development is permitted within the River Overlay District. He said although accessory structures are eligible for conditional use if they are located in the stream buffer area, but not in the flood plain or within 100' from its boundary.

Mr. Lahiff said the deck of the accessory apartment and well is proposed to be within the 100' setback; saying no development is permitted in this area, so the proposed location is not in compliance with the zoning regulations. He said this 100' setback that was put in place by Jericho, not the government and not FEMA, from the flood plain boundary was incorporated into the River Overlay District to acknowledge that the flood plain maps have limitations in terms of their accuracy and to put the onus on

the applicants to ensure that the new development proposed close to a mapped flood plain would be reasonable safe from flooding. He said this is especially important when the level of study is Zone A, which is the case for this site, because no base flood elevation has been established by a flood insurance study. Mr. Lahiff stated that Section 6.5.3 of the regulation outlines an avenue by which an applicant can hire a licensed surveyor to establish that location proposed for development above the base flood elevation because no base flood elevation has been established for this site, the applicants would also need to hire a licensed engineer to establish the base flood elevation. He said if the resulting study and survey show that the location is above the base flood, then the applicant could apply for a Letter of Map Amendment from FEMA to formally revise the flood plain map.

Mr. Lahiff said without this information in hand the DRB cannot evaluate whether the proposed location of the deck and well are outside the River Overlay District. He said at discussion of construction specifications, for example: concrete piers, elevation of the wellhead, etc. are irrelevant as no development and a deck and well constitute development, is allowed either permitted or conditional use within the flood plain portion of the River Overlay District. He said there is no proof that a survey was done to show the base flood elevation of this area. Mr. Lahiff noted you can actually go onto the FEMA flood plain map website and actually see that flood plain; it is pretty good considering it is not done by a person. He said knowing the July 4th flood from a few years ago, it is pretty good at showing where that flood plain is, but it is an approximate base elevation.

Ms. Lahiff requested that the letters she submitted from people who could not attend the meeting be read aloud. Mr. West clarified the letters are read into the record. Ms. Lahiff stated the people who presented them specifically requested that the letters be read. Mr. Flynn asked if they were in the same format as the letters that have already been read. Mr. West asked if they are in relation to the barn because the testimony we just heard is in relation to a decision that has already been issued by the DRB and we are not here right now to reassess that particular decision since it has already been made and the timeframe for appeal has already passed. Ms. Lahiff argued that no warning was given, so we are still within the timeframe for appeal. She stated on the record that she considers this hearing for the appeal of the original DRB conditional use review because we were not warned or given the opportunity to appeal.

Mr. King responded that the remedy for a defective DRB decision due to a bad notice would be at environmental court, I think. Mr. West agreed. Ms. Lahiff argued that it makes sense in the best interest of the community to open it for discussion and review. Mr. King stated their job is to follow the process, saying the DRB does not write the rules, the Planning Commission does that; the Selectboard adopts the rules; and the residents elect the Selectboard. He discussed the process, saying the answer to the question is no. He said the DRB has a limited job and they are trying to run it as best they can. Mr. King said they are trying to be fair to everyone and apply the rules. He said if they do not like the rules, the remedy is through the Planning Commission and the Selectboard; if they don't like the process, the remedy is in environmental court.

Mr. King said what we are being asked to rule on tonight is an appeal of the action of the Zoning Administrator to implement a permit based on a lot of information, some of which was a previous hearing we held. He said we established at the beginning of the hearing that we are not here to hear the conditional use permit. He said if a lawyer wants to advise otherwise, then he would hear it, but that is not the case. Mr. Lahiff stated they also established that there was not proper warning. Mr. King said there has been testimony that there was not proper warning for some previous thing, which we are not talking about tonight. He said there has been testimony about a lot of things about a previous thing that

we are not talking about tonight. He said he doesn't know whether any of that is relevant. Mr. King clarified the reason for the hearing tonight. He said any testimony about that is what the DRB will deliberate on tonight. He discussed the process further, including remedies and what the DRB will rule on regarding this hearing.

Mr. King reiterated that the DRB will decide on whether the permits that are in question tonight were issued correctly; if they weren't, the DRB will rescind them; and if they were, then the DRB will not rescind them. He said any decision the DRB makes can be appealed through a process, explaining the role of the DRB further. Mr. King returned to the question of whether the written testimony needed to be read aloud during the hearing, saying all of the information will be considered during deliberation. Ms. Lahiff said it would stress the points and get it recorded. Mr. King stated it is all public, including minutes and the recording. He said if people are interested, they can view it during the hours of the Zoning Office. He discussed further what constitutes participation in the hearing. Ms. Lahiff asked when the decision would be made and how people would receive notice. Mr. King said the decision would be made within 45 days. He stated everyone who participated will get copies of the decision. Someone asked for clarification on the process and about the site visit.

Mr. King said a site visit would be a public hearing, saying the DRB needs to make the decision whether to continue this hearing to hold a site visit. He further explained the process, including how testimony is considered, whether oral or written. Mr. West said there were a couple of questions that should be answered. He said the first question is whether there are complete plans for the whole property from the original conditional use application. Mr. King responded yes, there was a survey as part of the conditional use application, which is on file if anyone wants to refer to it. Mr. West said another question was whether the project has a State wastewater permit or not. Ms. Patrick responded yes. Mr. West said the other question was about having a site visit.

Mr. King asked where we are in the process with the curb cut. Ms. Patrick stated the curb cut was approved by the Highway Foreman in agreement with the Town Administrator. She said the language they referenced was that there is one curb cut allowed per residential property. She said they agreed that this was a separate entity. Ms. Lahiff asked how they made that decision. Ms. Patrick stated it was a question she asked while going through the process. She said the Highway Foreman decided, based on the clear sight lines in both directions on Nashville Road and based on the pre-existing character of that curb cut, that it wouldn't be a problem to allow it.

Ms. Lahiff argued that is not within the Highway Foreman's authority. Ms. Patrick stated the Highway Foreman approves all curb cuts. Mr. King explained that is the process for approving curb cuts. Mr. Foote asked about the process to appeal a curb cut decision. Mr. West suggested the Selectboard. Mr. King said the Selectboard is generally in charge of roads, but he isn't sure. Ms. Sonnick said they could find an answer by talking with the Town Administrator if that is something people are interested in. Mr. Mahar stated when he was going through the checklist of everything he needed for the accessory apartment; it was required to have an inspection of the curb cut as part of the approval process to make sure it was approved by the Town. He said it is actually included in the conditional use review that it has to be figured out and approved.

Ms. Lahiff said the zoning regulations clearly state only one per property. Ms. Patrick clarified it is one per residential property and because there were going to be another two people living there. Ms. Lahiff stated this is one residential property. Ms. Patrick said that is an interpretation that she did not make. Mr. West said there were some statements that could be a question about whether the initial application

for the zoning permit was complete. Ms. Patrick said when the application was submitted, she determined it was complete; the conditional use hearing had this same image showing the whole parcel. She said this was the only one attached to the zoning permit. Mr. King said the question remains whether we want to make a site visit in order to make our decision. The DRB members discussed whether to hold a site visit and the timing of a site visit.

On a motion by Mr. West, seconded by Mr. Flynn, the DRB unanimously agreed to continue the hearing of the permit for the proposed accessory structure to September 3, 2015 at 5 p.m. at 225 Nashville Road.

Mr. Mahar asked if the continuance impacts both of the permits, or only the permit for the proposed barn. He also asked about the liability concerns of having a public hearing on a construction site. Mr. King said they would research the rules before the continuance. Mr. Lahiff offered holding the visit in his backyard. The DRB discussed whether to continue the hearing for the accessory apartment also, or to move to deliberation on that separately.

On a motion by Mr. Flynn, seconded by Mr. West, the DRB unanimously agreed to continue the hearing of the permit for the proposed accessory apartment to September 3, 2015 at 5 p.m. at 225 Nashville Road.

The DRB explained the process for deliberations and responded to other procedural questions from those present.

The Development Review Board adjourned the session at 9:23 p.m.