

WALPOLE ZONING BOARD OF APPEALS MINUTES OF DECEMBER 21, 2020

A meeting of the ZONING BOARD OF APPEALS was held remotely via Zoom on MONDAY, DECEMBER 21, 2020 AT 7PM. The following members were present on the Zoom Webinar:

John Lee (Chair), Susanne Murphy (Vice-chair), Bob Fitzgerald (Clerk), Jane Coffey, Drew Delaney, Ashley Clark (Community Development Director); George Pucci (Town Counsel)

Absent: David Anderson

Case No. 20-25, Rob Truax, 300 Stone Street, Special Permit Request:

Lee opened the hearing, Rob Truax of GLM Engineering was present on behalf of the applicant. Truax explained that the application is for a special permit under Section 11 of the ZBL for the construction of a single-family dwelling in an area that is designated within the Flood Plane District. The lot is a 27,000 s.f. existing house lot, located across the street from Clarks Pond, with the entire site primarily in the Flood Plain. The property has a perennial stream running through it with a water depth of between 2-3 ft. (with 4-5 ft. in a flooding situation). It was explained that Stone St. acts as a dam for Clarks Pond, and if the water were to go over Stone St., the water would then go onto the property of 300 Stone St. into the perennial stream and into the back of the property. Existing conditions include two 36 inch culverts that are under Stone St., and a spillway that directs water onto the parcel located near the bottom right corner of the property. A Sediment basin and grass swale are proposed due to concerns from conservation and engineering regarding treatment of the surface runoff coming off of Stone St. The overall grading on site would not result in any loss of flood storage. Conservation has issued an Order of Conditions. Lee opened the hearing up to the board for possible questions and concerns, which included the following;

Fitzgerald: origin of Flood zones on plans?

Truax: taken from the FEMA Maps and also from the flood study itself. There is not one base flood elevation for the property. The property slopes from street to the stream in the back. Water will sheet flow across the property without standing water. The back of the proposed house has a 173.5 flood elevation, and cellar floor is at 174.

Murphy: date of the last culvert repair? Are there catch basins within area?

Truax: Date of last culvert repair is unknown. There are no catch basins within the area, however applicant is enhancing the discharge that is directed through the property with the spillway. Truax noted that the applicant is agreeable to work with town to create the swale and sediment basin to help treat and direct the runoff of Stone St with a sediment basin and swale to be maintained by homeowner.

Lee: stated that the increase in flood storage by approx. 500 cu.ft., when looking at the drainage area that goes thru the perennial stream is not significant when looking at the overall flood plane area. Lee noted that the elevation of Clarks Pond is 174, and the proposed basement is at the same level. Lastly, Lee stated that there is many square miles of drainage from Moosehill in Sharon downward to the pipe.

Delaney: how much of lot will be cleared?

Truax: approx. ½ the lot (10,000 s.f.) total will be cleared.

Lee opened the hearing up to the public for input, which included the following;

Glen Maffei: Concern that project may cause additional runoff to business at 290 Stone St.; request that the installation of a fence be a condition in the Decision to provide screening between his and the applicants property.

Truax: stated that the applicant has no intention to change the spillway that's paved, the applicant plans to create rip rap spillway to the end of the property, with the grass swale to prevent the water from going down the driveway of Dale, Toole & Dye.

Truax stated that no S&W extension is needed, just a connection would. Murphy stated that the letter submitted from the BOH to the ZBA expressed opposition to project. Lee expressed concern over building in a flood plane, particularly the drainage area. Fitzgerald expressed concerns over the elevation of the culvert. Murphy expressed

concern regarding the age and condition of the culverts, Delaney agreed that it would be beneficial to know how old the culvert is and when it was last repaired/serviced. Murphy motioned to close the hearing at the applicants request, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye. The motion carried 5-0-0. Murphy motioned to grant the Special Permit with conditions, seconded by Coffey, roll call vote: Lee-no; Murphy-no; Fitzgerald-aye; Coffey-aye; Delaney-no. The motion did not pass (2-3-0). Therefore the request for the special permit is denied.

Case No. 30-36, Nancy Webster, 52 School Street, Administrative Appeal:

Administrative Appeal of the Zoning Enforcement Officers Violation Notice & Cease & Desist under Section 3.2. of the Zoning Bylaws: Failure to secure a Certificate of Occupancy for the new use of metal & steel manufacturing; Section 5B of the Zoning Bylaws: Schedule of Use Regulations: Heavy manufacturing of steel not allowed in the LM District, resulting in a Noise Violation for the production of loud and offensive noise to the abutters of the business (KW Steel).

Chair Lee called the case forward. Board Member Murphy recused herself and Board Member Anderson was appointed to participate as a full voting member. Lee called upon Building Commissioner. Mr. Yanovitch stated that this is an Administrative Appeal under M.G.L sec 40A. He apprised the Board of the history of complaints related to the property related to noise and operation. He noted that while they have worked with the current occupant and the noise concern has subsided some, the Building Department continues to receive complaints. Mr. Yanovitch stated that the Building Department needs guidance from the ZBA on whether the use is an allowed use in the Limited Manufacturing Zoning District as the language in the Zoning By-law is ambiguous and it does not quantify in decibel readings what noise disturbance is; the bylaw just uses the standard of “injurious and annoying at the property line.” He noted this use abuts an existing residential neighborhood. Mr. Yanovitch stated that the definition in the bylaw of manufacturing is broken down in light and heavy but doesn’t discern between the two. He cited the uses in Section 5.B. Yanovitch noted that there is an issue with the noise which was not a concern brought up with prior occupants. He stated he understands the abutters concerns but his office cannot make the determination if steel fabrication is an allowed use in the LM district. Upon inquiry from Board Member Fitzgerald, Yanovitch stated that there are potentially two distinct issues: 1) is the noise level appropriate and 2) is the use permitted. He noted that the ZBA could find the use itself is permitted, however, the operation itself is injurious and therefore not permitted under a separate section of the bylaw. Lee then called upon Attorney Corner, representing the Petitioner, KW Steel Structures LLC and Nancy Webster to present.

Attorney Corner, on behalf of KW Steel, stated that a letter was sent to the Board that outlines his arguments with legal citations. He stated this is an administrative appeal and appeal from two discreet violations: 12/16/2020 violation and 10/13/2020 cease and desist order that alleges a noise violation and asserts that KW Steel should cease and desist based on being a heavy manufacture of steel in an LM zoning district. He stated there is also a violation of obtaining a certificate of occupancy. Mr. Corner stated that KW Steel performs project specific steel production and employs seven people in the Town of Walpole. He stated that 50-52 School Street is in a limited manufacture zoning district – not light manufacturing. KW Steel began at the site in March 2019 and noted that the previous tenant was Denmark Pump, which was in operation from 2015-2017. He stated that they also operated the same cranes in operation today. Mr. Corner stated that the Building Department became involved as the result of an incident 9/16/2020, 18 months into KW Steel’s occupation at 52 School Street. Mr. Corner stated that there was a single incident that forms the bases of the noise violation before the Board tonight. He described the incident to the Board. He stated that as materials were being loaded onto a trailer, a safety issue arose due to the discovery that some bolts were loose. To address this safety concern, he stated that KW Steel spent approximately 45 minutes tightening the bolts on the trailer. He noted this event took place outside at 1130 AM. Mr. Corner stated that the remedy requested was to cease outdoor fabrication and provide a plan to abate excessive noise. He stated in response, KW Steel changed the start of their day from 6 AM to 7 AM and made a requirement that there be no further outdoor fabrication. He stated no outdoor fabrication has taken place since. Mr. Corner described Mr. Yanovitch’s characterization as inaccurate

and reiterated that all fabrication operations take place indoors and stated that prior or subsequent noise complaint aside from 9/16/2020. He stated that as far as he can see, the single noise complaint and associated issues have been abated and not repeated. He stated that the cease-and-desist order of 10/13/2020 – that asserts a failure to comply with a previous order is inaccurate. Attorney Corner stated that it's a draconian measure to order the cessation of a business operation that employs people based on an ambiguous provision of the bylaw. He stated that the letter from the Building Commissioner stated that heavy manufacturing use as defined in the bylaw, however, Mr. Corner argued that heavy manufacturing is not defined anywhere. Mr. Corner argued that the use is an allowed use in the LM Zoning District. Attorney Corner shared the Zoom screen and presented the use table. He stated that the table does not distinguish between light and heavy manufacturing. He stated the steel industry American steel and KW is not certified by trade association to engage in what the steel industry would consider heavy manufacturing. He stated it's unambiguous that the use is allowed in the LM. Mr. Corner stated that the certificate of occupancy issue is unknown to KW Steel. And noted there has been no change in use from Denmark pump. Mr. Corner stated that they are happy to work with the Building Department to make sure no further noise violations.

Chair Lee then opened the hearing to public comment, which included the following;

Attorney O'Connell stated that he represents Dave and Stephanie Lynch, abutters at 12 Hawthorne. Mr. O'Connell referred to a letter submitted to the Board. He noted specific instances, videos and timeframe for the violations – both noise and operations that have been occurring near the storage area which abuts Mr. Lynch's property as well as the other abutters. Mr. O'Connell stated that videos and plans were submitted as part of his correspondence. He opined that there is plenty of evidence to support the violations that have occurred. He stated that the limited manufacturing definition in Section 5.4 of the Zoning By-law describes the purpose of LM as an area for low density wholesale and unobtrusive manufacturing uses. He stated there is no ambiguity with the uses and opined that the use is not allowed.

Mr. Lynch, an abutter, stated that the noise was an issue from day one and described the noise as a bomb going off from 5 AM. He stated that he filed a complaint with the Police and was not able to reach Nancy Webster. Mr. Lynch stated that Ms. Webster never responded. He stated that over the next several months he filed dozens of complaints due to the noise levels. He stated that things started to get really bad late May/beginning of June and noted that one of the employees was seen throwing debris into the yard of the private residences. Mr. Lynch stated that he spoke with a building inspector, Bob Dougan. Mr. Lynch stated that he apprised Inspector Dougan of additional concerns related to welding and paint fumes. He stated that videos were sent demonstrating the noise. Mr. Lynch stated that there was one particular incident that was shocking on 10/29/2020 when KW Steel was moving oversized I-beams and welding two I-beams together which were about 80' long. He stated that they put the beams on a trailer using two forklifts trying to "monkey" them out of the building. He stated they almost came into the fence between the properties. He stated when they were moving the load around the building, the I-Beam pierced the fence behind the Maffei's house. He stated it was lucky no neighborhood children were playing in that area or someone could have been seriously hurt or worse. Mr. Lynch stated that a more recent incident on 12/6/2020 he saw KW Steel lifting a heavy load with a fork truck, it fell off the fork truck and crashed on the bed of the trailer right at the fence at his property line. He stated again, luckily no one was injured and it didn't crash the fence. Mr. Lynch stated that the previous occupants of the building used it as a machine shop for reconditioning of pumps. He stated that all the shipping or most was done on the north side of the building where the loading docks are located. He noted that Walpole Woodworkers used as a storehouse of goods and loaded a box truck and flatbed truck. He stated that prior to that, Denmark Pump and noted the use was the same as the prior with daily activities were the same. He stated that they were very low, non-obtrusive operations. Mr. Lynch stated that when Denmark Pump moved in, a letter was sent to the town outlining the operation and described how the company worked to be sensitive to the abutters. Mr. Lynch stated that during the time of the previous occupants he does not recall any complaints and characterized them as good neighbors who were sensitive to the abutters.

Attorney O'Connell requested that the Commission uphold the cease-and-desist order and M.G.L. sec. 40A. He noted that Section 21 states that the burden is on the Applicant and this is a new use. He asked the Board to look at the issue of buffers and noted a storage area that abuts the neighbors to the rear. He stated that operations are taking place within the 40' setback. Mr. O'Connell stated that for those reasons, they are asking the Board to uphold the cease-and-desist order. He stated that the neighbors are trying to live in a safe neighborhood and as a result of the operations, different from previous uses, this use is not allowed. He stated that there is no occupancy permit. He asked the neighbors to be considered.

Kathy & Tom K., 11 Hartshorn Road, across the street, stated that they sent a letter to Mr. Yanovitch expressing their concerns. She stated that multiple times she's observed loud noises of metal banging. She described the noise like beams or dumpsters were being dropped from a distance. Ms. K stated that the noise was loud and repetitious. She stated that they have lived in the neighborhood for 34 years and while there have always been manufacturing operations at this location, they have never expressed a complaint or heard a concern. She reiterated that they have never had concerns previously and noted that the noises are not normal, that they are loud and are disruptive. She stated the bylaw states that limited manufacturing is for unobtrusive manufacturing and she noted that unobtrusive is "doesn't attract attention" or "be disruptive". She stated that is what is going on – attention attracting and conspicuous. She stated it is disturbing. Ms. K stated they have not made a complaint in 34 years and have never had to. Mr. K stated the previous users of the builders were steel fabricators – that is not true.

Mr. Maffei, an abutter, stated that he concurred with the previous statements. He stated that they have been there for over 50 years and they have never complained about the noise.

Jeffery Fisher stated that he grew up in the area and echoed the previous abutters and noted the previous abutters were always great. He stated he himself has not witnessed it but echoed this limited manufacturing district is not steel.

Jack Fisher lived in the neighborhood for 35 years and stated that what they are doing is considerably different than what has taken place over the previous 35 years. He noted performing heavy steel work is considerably different, and the previous occupancy permit is not appropriate. He opined that this use is no prohibited under the bylaw.

Matthew Lynch, 15 Hartshorn Road, stated that he has lived in the neighborhood for 10 yrs. and never had a complaint until this new occupant. He stated that it sounded like a bomb went off. He stated that he has two young children, and their virtual learning is made difficult by the noise. He stated that he never saw 50' I-beams with the previous occupants. Mr. Lynch stated that a concern is that the flatbed trucks that are coming out of the premises. He noted that they can barely make the turn out on to Norton Road or School Street and added that there is a bus stop nearby to the turns. He stated that is pretty concerning, especially with young kids in the neighborhood.

Joe Walsh stated that he leaves early for work and he does not hear the noise, but his wife hears it, and she has emailed and called the Building Commissioner several times. He stated on 11/6 he was walking by the corner of School Street and Norton Street and he could smell strong paint and noticed they were working inside and passing by the windows he noticed a man inside painting steel and he had on a hazmat suit with a full hood. He stated that the fumes were really strong, and he called the police because he didn't think that was right. Trish Walsh stated that the noise is concerning and stated in 26 years it's never been like this.

Denise Bretton, 3 Norton Avenue, stated that she has been there for 10 yrs. and has never had any issues in the past. She stated that the noise has woken her up in the morning and stated that the physical

location is an eyesore, it has become an eyesore as the parking lot is overridden with long grass and weeds and a car parked there that has never been moved.

Attorney Corner stated that he has not seen the complaints and would like time to respond to them.

Mr. Harry Webster apologized to the abutters about the noise. He stated that when the noise issues were brought up changes were made to the start times and KW Steel sought to minimize the noise. He stated that the north side parking lot is not used and noted that he does not know who the car belongs to, as it was there prior to their occupancy. He described the east side of the building as a storage yard which is used for storage of steel and shipping and receiving. He stated there was one time when bolts were tightened outside. He stated the only thing in that backyard is shipping and receiving. He stated that a couple of weeks ago, OSHA responded to a complaint and listed that a beam penetrated a fence and beams fell off fork trucks. He stated that he asked the inspector if he saw any penetration to the fence and the inspector stated he had seen none. He stated that KW Steel does the same type of work as the pump company, though they need different items that might be longer. He stated that they hire escorts sometimes. He stated that once the noise issue was brought to them, KW Steel worked to address the issue and have worked to try to be good neighbors. He stated that work used to start at 6 AM and, though an unpopular decision, that was changed. He noted that they don't open the back door unless they need to receive steel on the east side abutting the neighbors. He stated that they are receptive to minimize the noise, but they try to keep the doors closed. He stated that there are back up horns when they move steel.

Board Member Fitzgerald asked Mr. Harry to describe what is being done, and what type of machinery is used, and to describe the operations at the facility.

Mr. Webster stated that they back up into the shop and unload inside the shop when possible. He stated that the inside operation includes cutting steel with torches, drilling with a mag drill, and welding. He stated that many times they try to bring in processed materials to lower the impact. He stated that the operations are the same, but they have a different product than the pump operation. He stated that if the items are over length, they have an escort and sometimes if the beams are really long, they will hire a police escort. He stated that they make other things other than W-14s. He stated that they don't do 10' deep beams. He stated that they build some of the structural steel where the Celtics play. He stated they built a lot of railing either for MassDOT or private agencies. He stated they've built bus shelters for Rhode Island. He stated there are two 7 ½ ton cranes in each bay.

Lee inquired about other facilities. Mr. Webster stated this is their only manufacturing facility. Delaney inquired if the workers wear ear protection. Mr. Webster stated that hearing protection is standard safety. Upon inquiry from Delaney, Mr. Webster stated that they have not done monitoring of the decibels from their operation. He stated a grinder for example is a loud noise. Delaney asked about standard operations that have high noise levels.

Mr. Webster stated that grinding, air arching which can be a noisy operation, rolling a piece of steel over can be noisy. He stated that they require the hearing protection as a general instead of trying to plan when a noise will occur. Delaney inquired about painting on the premises and reference the person that was wearing full PPE. He also inquired if KW Steel measures the containments for airborne chemicals leaving the facility. Mr. Webster stated that painting is a minor part of the operation and employees wears property protection. He stated most things are galvanized and not painted and they do not measure the containments that are airborne that may leave the facility. Mr. Webster stated that they want to be good neighbors and have tried to make the effort to change the start time – which was not a popular decision. He stated they changed to 7 and made additional changes he stated beyond that they have to receive trucks the only way is through the one door at the facility. He stated that he did not know from 12 Hartshorn, he would take him through the facility. He stated that the noise is not bad with the door closed, and they try to keep closed as much as possible.

Dave Lynch stated that the nature of their business is inherently noisy and is excessive and aggravating and stated the building is not suitably sized for the work that they do. He stated that he sees them using

the cranes with forklifts trying to juggle the beam and trying to angle the beam out and dragging on the pavement before it gets on the flatbed truck.

Attorney O'Connell stated that one thing that is concerning is the description of the activities taking place in the outside areas and asked that the Board review the zoning regulations in reference to what should be occurring in setbacks. He noted that there is a paper street on Hartshorn, and the Applicant may be using the paper road and argued that it is part of the setback issue. He stated that this is an industrial offensive injurious use. He stated that the use is not expressly allowed. He stated that this use is not allowed and noted videos of the fence that shows impact to the fence.

Kathy T. stated that they have lived there for many years and it's a neighborhood and there is always been a manufacturing plant which they've been able to live with without issues until now.

Fitzgerald inquired about the certificate of occupancy. Commissioner Yanovitch stated that older certificate of occupancies are in the file but not for previous occupants of the building. He noted that that is not uncommon to happen when manufacturing replaces manufacturing. He stated that they would review the paper archives and will provide the Board with what they have. He stated that Denmark Pump was issued additional permits but noted that he was not sure if additional certificate occupancy was filed.

Fitzgerald reviewed the zoning bylaw, specifically Section 5-A.1.B that states "No premises shall be...used for any use that will be injurious, dangerous, obnoxious, or offensive to people in the general vicinity by reason of the emission of odor, fumes, dust, smoke, vibration, noise, heat, glare, or other nuisances observable at the lot lines or the immediate neighborhood." Mr. Fitzgerald noted that even if the Board finds that the use is allowed, the Board must also find that the use is not injurious to the neighborhood. He stated that it's both a question of is the use allowed but also if the use is a nuisance. He stated to the extent that the Applicant should be provided the materials submitted to the Board and provided an opportunity to respond.

Ashley Clark, Director of Community Development, suggested that the materials submitted to the Board be provided to KW Steel and the hearing be continued to January 20, 2021 to allow the applicant time to respond as well ask to try to work with the neighbors towards an amenable solution. Upon inquiry from Lee, Commissioner Yanovitch stated that yes there were noise violations prior to the September 16, 2020. He stated that noise is difficult to validate and he went out at 6 AM to observe and issue a violation when they could witness the noise disturbance. He stated that the complaints go out to almost a year ago, he stated that without evidence of a violation it is difficult to move forward. He stated that he felt that there was now enough to bring forward and noted there have been multiple complaints. Upon inquiry from Lee, Commissioner Yanovitch stated that whoever is in control of a property or has an interest in the property is enough to secure an occupancy with agreement from the building owner. Upon inquiry from Lee, Town Counsel Pucci stated that while Commissioner's comments about the bylaw being ambiguous actually have to do with not there being any definition of limited versus heavy manufacturing, but that the amount of material about definitional materials about what qualifies as a permitted use. He noted that it comes down to an affirmative decision the Board must make on the appeal before them. He stated that the Board is being asked to interpret the limited definitional language. He stated that the Board should get all the information to inform their decision about whether the use falls within the definition or not. He stated that the issue arises from the scarce definitional language which happens commonly in zoning bylaws. Coffey stated that there seems to be two sides – on one hand sympathetic to the homeowners who have had amicable situations with previous tenants and now it's not a match made in heaven. Coffey stated that it sounds like the present company is operating within the confines of a limited manufacturing zoning district with a business that is too large for the area it's in. She stated that she believed the owner who said they would do whatever they can but stated that it seems like the current operation is too big based on testimony of employees needing to slide and moving materials around. She stated that the shipping and receiving seems to be a bigger issue.

Attorney O'Connell objected to Ms. Clark's request to suspend any enforcement action under the cease-and-desist order. He objected to it and found it problematic. Mr. Pucci stated that it wouldn't be unheard of to suspend enforcement while there is an ongoing appeal. He stated that if it's a matter of interpreting whether the use is as-of right and a timely appeal filed it does make sense to stay the enforcement. He stated it is not unreasonable and has seen it done many times. Mr. Yanovitch stated that they have not sought to collect fines that are pending the decision of the ZBA. He stated there is a \$300 fine each day of a violation. Lee suggested continuing the hearing to 1/20/21. Attorney Corner agreed to grant a time extension as needed and stated if the Board may do a site visit if that would be helpful. Mr. Pucci stated that in the event that the Board overturns the cease-and-desist order, it would benefit the property owner to take some steps to see if complaints from the abutters can be alleviated. He noted that it would be of great benefit if those issues could be resolved as even if they find the use is allowed, there are still potential nuisance issues that need to be addressed. Fitzgerald stated that while the general "no nuisance condition" may not have been called out specifically in the violation, it appears that the company has been put on notice that is an issue. Coffey inquired about OSHA's findings. Mr. Webster stated that OSHA explained items cited in a complaint penetration of the fence and beams dropping off the fork truck. He stated that he walked the facility with the OSHA inspector and stated that they will receive an OSHA violation. He noted that it was a violation that he created because he has the backup horn disconnected on a backup truck. He stated they have put it back on but was trying to address the noise. Coffey motioned to continue the hearing to 1/20/21 at 7PM via zoom, seconded by Fitzgerald, roll call vote: Lee-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye; Anderson-aye. The motion carried 5-0-0.

Case No. 30-37, Paul Burke, 1 Winthrop Street, Variance Request:

Lee opened the hearing, present was applicant Paul Burke. Burke explained that he is seeking relief for a two car garage that is already built on the side of the property with less than 15 ft. of a setback, where 15 ft. of a setback is required in the RB District. When asked by the Board what issues the applicant encountered that warranted the garage to be built too close to the property line, Burke stated the following;

1. building the garage within the proper setback requirements would have made the garage too close to an existing willow tree that's located on his property.
2. the placement of the garage within the proper setback requirements would have created an awkward access point to the garage

Lee asked if the applicant hired anyone to perform the work of building the garage, in which Burke stated that he did not hire anyone to do the work of constructing the garage, and it was done by himself. Lee asked Mr. Yanovitch and Mr. Crowley for some insight and background information regarding this situation. Crowley stated the following;

The applicant came to the Bldg. Dept. with the intention of building a 24x24' garage located in back of the applicants home to the left of the property. The applicants site plan he submitted showed a 15.5 ft. side-yard setback and a 31 ft. rear-yard setback, which met the requirements in the RB District. Crowley stated that the applicant started to construct the garage, and during the rough inspection for the frame and foundation, the applicant to submit an as-built plan. Burke provided Crowley with an as-built plan approx. 4-5 days after it was requested, it was then that Crowley noticed that the as-built plan that the applicant submitted showed the side-yard setback of 13.3 ft., rather than the proposed original side-yard setback of 15.5 ft. It was at this time that the Bldg. dept. failed the applicant due to the structure being too close to the side-yard setback in the RB District, and notified Burke that he would now have to apply for a Variance from the ZBA. Burke acknowledged that he understands why a variance is now needed, however, he stated that he thought that he'd still be within the allowable setback even with tweaking the location of the garage. Fitzgerald asked the applicant if there was ever a garage that was previously on the property, in which Burke stated that there was not. Delaney asked Crowley if there's anything the applicant can do to meet the requirements of the ZBL regarding the already constructed garage without having to remove the structure and start over, in which Crowley stated that the only way the

applicant could come into compliance without taking the garage down, would be to cut the corner of the garage (re-framing of that specific section) to bring the structure back to the 15 ft. side-yard setback that is required. Lee stated that a letter was submitted to the board from a direct abutter expressing that he's in favor of the garage. Murphy asked Crowley if it is possible to re-frame the particular side that is not within the allowable setback, in which Crowley replied that it is possible. Lee stated to the applicant that he could request to continue the hearing to a later date and time in order to allow him to look at the possibility of making the structural modifications mentioned above. Clark suggested that a time extension from the applicant until 1/21/21 be submitted, in which Burke agreed. Murphy motioned to continue the hearing to 1/20/21 at 7PM via zoom, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye. The motion carried 5-0-0.

Case No. 20-24, Radke Associates, LLC, 270 Moosehill Road, Comprehensive Permit: (*opening of public hearing*):

Lee opened the hearing, Paul Cusson of Delphic Assoc. was present on behalf of the applicant, along with Rob Truax of GLM Engineering Consultants, Inc.. Lee stated that a peer review proposal from Tetra Tech was submitted to the board or the amount of \$8,270.00, Clark explained that the proposal includes civil/ site/utilities & document review and meeting attendance. Cusson stated that he is in favor of the proposed scope. Clark recommended that due to it being late into the evening, for the applicant to continue the hearing to a later date and time for the initial presentation of the project, and staff could coordinate with peer review to be present at the same time. Clark suggested that the board approve the scope of work, and continue to a time and date certain. Murphy motioned to accept the peer review proposal from Tetra Tech, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye. The motion carried 5-0-0. Murphy motioned to continue the hearing to 1/27/21 at 7pm via zoom, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye. The motion carried 5-0-0.

Minutes: Murphy motioned to approve the minutes of 12/16/20, seconded by Fitzgerald, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye; Anderson-aye. The motion carried 6-0-0.

Murphy motioned to adjourn, seconded by Coffey, roll call vote: Lee-aye, Fitzgerald-aye, Coffey-aye; Murphy-aye, Delaney-aye; Anderson-aye. The motion carried 6-0-0.

**The meeting adjourned at 10:40 PM
Accepted 1/13/21**