

Board Members:

Stephen McLean
David Coleman
Roland C LePage Jr (Sonny)
James Kent
Clifton Finch

Public:

Shawn Girard
Stan Hackett, CEO
Merrill Farrand
Brady Connors

Meeting:

Stephen McLean: Welcome to the Limerick Board of Appeals variance meeting of September 13, 2023. We have Election of Officers. Nobody jumping at the podium? David Coleman **nominated** Stephen McLean for Chair. Roland LePage **second**. **Four were in favor, Steve did not vote**. Mr. McLean: Vice Chair. Steve **nominated** David Coleman for Vice Chair. Sonny **second**. **All in favor**. Mr. McLean: And Courtney's our secretary. I said and Courtney's our secretary we all vote for that. With that being said we are here tonight for a variance for CIA for a setback on a non conforming lot. Shawn, do you want to go up and just give us a little. Shawn Girard: Hi, Shawn Girard, CIA Salvage. We bought the lot that used to be the little red schoolhouse, we are in the process of putting a new building there. The lot is 66.16, 64.97 the other way and 64.34 which is the non-conforming lot I guess you'd call it and the big building that was there before was out towards the road. So when you pulled up to the front of the building the tail of your truck would be sticking out. When we cleaned it out we had to make sure we had shorter trucks to make sure we could get in and out when we cleaned out the building for the Historical Society and brought down some of the bricks and stuff for them. The building was also within 5 feet of the back property line so we would like to take the building from being front to back to go left to right to make it more conforming to create off street parking and we've changed, looking at it, writing down, putting the measurements on paper. We had asked for a 5 foot lot variance on the left and right. We would like to make that change to have 10 feet which is the current code variant. We're not getting a variance on that, so on the left we'd have 10 feet from the lot line on the right you would have 16 feet from the lot line and instead of being 5 feet off the back line we would like to be 10 feet. That way if down the road something happens you can get to the back of the building to clean up or whatever you have to do to mow the lawn or whatever. So on the back of the building you would have 10 feet and you would have the current zoning of 10 feet on the left side and current zoning of 16 feet on the other and the building is a couple square feet less than what was there before. Mr. McLean: Jim, you got any questions? James Kent: Not to direct toward him. Mr. McLean: Okay. Mr. Kent: As far as policy goes. Mr. McLean: We can discuss that after. Mr. Kent: Okay. Mr. McLean: Bud, you got anything to ask Shawn? Clifton Finch: Not at this time no. Mr. McLean: Sonny? Roland LePage: Yeah, something about the sewer was mentioned while we were at the sitewalk. What was that about?

Mr. Girard: You know obviously at one time it was a schoolhouse from the 1830's they must have had septic stuff there. By shifting the building from being straight on the lot this way to being this way on the lot, it allows us to get septic on the 16 foot area. So the septic would be facing the route 5 section of the lot. Mr. LePage: So as there is no septic, correct? Mr. Girard: I don't know what the schoolhouse used as septic, no. There looked like there was an old stone, Mr. McLean: Outhouse. Mr. Girard: Outhouse in the back. We didn't go checking around for it. David Coleman: Do you have a Subsurface Waste permit for that now? Mr. Girard: We had it checked and it is approved for a septic system yes and we also, CIA owns the land all around the building. So if we need to we can give the I call it the schoolhouse lot or the variant. You know when they come in and say we want to move it this way 5 feet or this way 5 feet, we own the land we can give a variance or an easement to accommodate that as well. Mr. Coleman: Easement. Mr. McLean: Anything from the public? Before we go over to Stan. So you can go. Merrill Farrand: Stan first? No, no you go. Mr. Farrand: Good evening, I'm Merrill Farrand. I'm a taxpayer and property owner in Limerick at 106 Range E Road. A lot of you know my face from dealing with CIA's 41 Range E Roads property. First I want you all to hold onto your seats because my next comment is probably going to make you shocked. I support Mr. Girard building on this property, it complies with the laws of grandfathering and our ordinance of non-conforming use. Article 8 of our Zoning Ordinance and I support following the rules that always govern us but I want to read Article 8A any non-conforming use other than uses specified in B and C and I can pull that out but they are not really relevant to this situation below may continue in its present use except that use may not be and then number 1 that comes up under that section is change to another non-conforming use. That means this board or the CEO cannot grant the ability to build a house where a storage facility has prior existed because you could not build a house on that size property if you were to come into any board and say I want to do it at 65 feet give or take a square. In the case of existing non-conforming uses a structure may be rebuilt within the limits of the existing footprint and design. In other words the board and the CEO don't seem to have the latitude to grant a permit or variance for anything outside of the old schoolhouse foundation in its design as a one room building. Reading the town ordinance Article 10 which is your Board of Appeals Ordinance, your rules, subsection F, variances, this board does not have the authority to grant a variance for Mr. Carroll requested change of use because he is put on the application of 28X40, two story building, two beds even though the original permit was looking for three bedrooms, garage, stairs and deck outside the footprint of the building itself. Your rules state and this is Article 10 section F-1D, variances cannot and I'm going to stress this, under any circumstances be attainable for an establishment any use otherwise prohibited and I just read the town ordinance meaning Article 8A of non-conforming uses other than those specified in B and C below may continue in its present use except for the use may not be changed to another non-conforming use. Your operating rules state and this is in quotes, variances are attainable only for height, minimum lot size, structure size, setbacks, and open space requirements. The applicant, Mr. Girard, asked in his introductory application letter for a setback variance, that's it. Mr. Girard's appeal application records show that he knew of multiple changes to the property because he put them in the application. He knew the size of the building, change of use was going to happen to the building, it's going to become a residence, it's implied on there with tenant parking that it's going to be a rental. There's a change to the building's dimensions and placement, there's addition to the footprint being the

deck and the stairs. So those are additional knowledge when Mr. Girard decided to apply simply for a setback variance. Further this board's ordinance again I keep stating Article 10, now this is section F subsection E, the board should not grant a variance unless it finds all of the following criteria are met. I understand that it says all of the following criteria. I am going to read 1 and 4 because I don't want to bore you with ones that you won't find relevant. 1) that the land in question cannot yield a reasonable return unless a variance is granted. 4) That the hardship is not the result of action taken by the applicant or a prior owner. For these citations I have several comments for Mr. Girard knew what he was purchasing and it was his responsibility to research his property's potential uses before purchasing it. This board accepted a letter as adequate for 41 Range E Road from the real estate agent to talk about adequacy of whether value was influenced in properties nearby and that letter had stated something that is not exactly perfect but it said if you are concerning a purchaser about a possibility about buying a home you speak with the Code's office to find out what is or is not allowed by my neighbors before purchasing a home, that's quotes. So it's a little bit stated differently than may have sounded perfect but by inference you can even interpret that as saying the buyer of any property should be doing research of what they can do with that property before purchasing it. So it's difficult to call hardship when someone is supposed to have done that research, is supposed to have that knowledge. There's no value lost there's no hardship that exists that Mr. Girard builds a new storage building on the site of the old schoolhouse which is permitted and I even argue that it will increase his real estate value because it will be a new building instead of something that was really falling down or close to falling down from what I was told. So hardship is only because of Mr. Girard's actions, neglect, or oversight of our town ordinances or the state law. One final legal citation about non-conforming lots and structures in Maine that I had found when I was doing a little online research and it's decision by the Maine Supreme Court, the firm that had this on their site is Rudman Winchell a 27 attorney firm in Bangor and Ellsworth so it is Maine law that they are talking about. This is their statement, generally if you have a non-conforming structure use you can continue to use it as it's always been, but you can't change or expand that use unless you can meet the standards of whatever exceptions the Zoning Ordinance allows for changing, expanding, or relocating a non-conforming property. This general rule makes sense if you consider the competing policy goals at issue here which the Maine Supreme Court summed up succinctly in Day vs Town of Phippsburg and that judges decision the statement was the policy of zoning is to abolish non-conformities as steadily as justice will permit. In light of this policy zoning provisions that restrict non-conformities are liberally construed and zoning provisions that allow non-conformities are strictly construed. A grandfather clause which allows the limited continuance of non-conformities is included in zoning ordinances in order to avoid takings challenge. It is designed to strike the balance between. Mr. McLean: Municipality. Mr. Farrand: Municipalities interest in abolishing non-conformities and the interest of the property owner in maintaining land use that are allowed when they purchased their property, again he knew what he had when he purchased it. If my statements so far are not sufficient to deny this variance I'm obligated now because I have to state everything in order for it to be proper materials in the record today, it can't be unto later. Then I want to further help you understand the violations or conflicts that exist with our ordinance, state law, or town procedure. On the sitewalk the CEO indicated there was a permit issued for this property in late December of 2022. It's also true from what I understood is that if

you don't do some adequate efforts towards the construction within 6 months that would expire and you have to complete I think the project within 2 years. So really the permit that was there was not invalid though I have some questions about that permit they're irrelevant to what you're going to discuss tonight so we will skip them. The permit is to build a structure only on original schoolhouse footprint back in December of 22 as permitted under the non-conforming portion of our ordinance. I don't really see that was stated that it's going to be on that same footprint; the actual materials submitted for that permit did not have anything on it that absolutely guaranteed its placement on the schoolhouse foundation site only. So Article 6 section G subsection 1 prevents a home from being put on this property. I also want to say that Article 6G automobile graveyards and junkyards that's the one I'm getting to number 1 no structures or equipment shall be located within 50 feet of any property line, public way, or within 200 feet of any dwelling not on the premises, that's our ordinance. *Mr. Girard made a comment that could not be heard clearly.* Mr. Farrand: I'm sorry it's my opportunity to speak. Mr. Girard was granted a Conditional Use Permit for an automobile junkyard and graveyard based on this board's decision and vote in October of 2022. If I were a board member I certainly would want to ask Mr. Girard if he intends to move all his equipment and structures back 200 feet from this proposed building. Maine State Law statute 3754 section A subsection 4 public and private water supplies, "a permit may not be granted for an automobile graveyard or junkyard or automobile recycling business that handles junk, scrap metal, vehicles, or other solid waste within 300 feet of a well that serves as a public or private water supply." So if well contamination is a concern by the State of Maine in their structuring of this statute. How could a home be built and supplied safe water at the sight and at the public sidewalk today it was stated that the town attorney had no problems with water from the well that is on CIA a Conditional Use permitted usage of a junkyard automobile graveyard is somehow going to be appropriate to a property rented to someone else who I certainly if I were that person I would want to be concerned about whose checking the quality of my water. Remember on the site of the old schoolhouse and this is historical at one time it was a salt shed for the State of Maine across the road and towards the slight depression that followed on Range E Road if you went further out from Route 5, Ms. Goodhue, Lena Goodhue lives and she and her husband built a home back 20 or 30 years ago so I apologize I don't have the date in front of me and they saw contamination with the first well they drilled. We know what water does there. Everyone's talked about it over and over at other meetings. So how can you approve something where you can't have a well on the site that is 300 feet from a junkyard graveyard and there is no public water supply up on Range E Road. As 39 Range E Road is not accessible either to town sewage, how can a well on a subsurface waste system even be located on the same property if that's really it because this property could be sold. It's separately deeded at any time Mr. Girard or the owners of Sea something Apartments could sell this property it's not adjoined together forever. It could be sold is it going to be acceptable for the next party to have water coming off of CIA. A subsurface wastewater system is to be located 8 feet away, the septic tank from the properties building and 8 feet further is a leach field now most leach fields are going to be 15 to 20 feet by 25 to 30 feet look at that postage sized lot. I understand that there is a septic system design but that's not in the code office or it wasn't as of earlier today when I last checked as such a thing existed even though it was answered that he has a subsurface water permit. He doesn't, I believe, have a permit. Does he have a permit, Stan? *Stan Hackett made a comment from the audience that could not be heard.* Mr. Farrand: No he does not have a permit, he might

have had some plan created by someone and I don't know anything more about the specifics. Wells and subsurface water systems are supposed to be 100 feet apart and I understood because I asked these questions, Stan said he's able to give a minimal 75 foot distance between them. If you look at the diagonal distance of that lot it's 92.7 feet unless my math came out incorrect. It's really going to be a tight thing if it were to ever have its own well and subsurface water system. The burden of proof exists for the applicant stated throughout your paperwork. Mr. Girard was supposed to provide all the information required to show compliance with our town ordinances and state law. I believe that evidence is woefully absent and I believe it can never be provided based on our ordinance requirements. Mr. Girard by our ordinance can only construct another storage building considering the building's history as a salt shed or a schoolhouse if you wanted, single room classroom, or nothing on the site. It's not a logical decision this board is making, it's a decision that follows the direction of our town ordinance and the directions of state law. Thank you. Any questions? Mr. McLean: Anybody got any questions? Mr. Farrand: I'm just going to provide one copy of the materials, *the rest could not be heard clearly*. Mr. Girard: Shawn Girard again. Thank you Dr. Farrand for your input. The land all around that is owned by CIA Salvage we do have a current building permit for it which I believe is current to rebuild the building. I don't know where that goes from here I never heard anything about 6 months we've been working on it diligently between taking the building down, cleaning the site, getting it down to the ledge, and processing that and then we figured we had to come in for a variance to change where we wanted to put the building. So we've been working on it, it's a lot of wrecking. We currently own all the land around it. We own the land to the left so if there's going to be a problem with the septic or the well we can easily between us and the Brulotte yard give an easement for that. We could also just refuse to move forward with the lot of wrecking as the schoolhouse is and I could incorporate it into my current piece of property and then I could meet all the setbacks easily and still put a two story building in. I also have on the left of my driveway on the other side I currently have an approval for a duplex there which will be going in next year, at this point I don't plan on living there. I mean everything is there and Stan did issue a permit for it. Any questions on my end? I think the building that was there was non-conforming I think the building that I'm trying to put in is more conforming and owning everything around, obviously I mean I have a per-say junkyard license, I have nine cars and a bunch of wood. So it is something that I do have a junkyard license on the property behind it because I think that someday when I retire from CIA Salvage on Route 5 I want to have more than four cars in my yard. So I'm trying to maintain that license to be able to do repairs and stuff there because if not I can only have so many cars in the dooryard to maintain the license and to keep Stan off my back as far as, or the current Code Officer. I think it's four cars Stan and you're considered a junkyard. Is that what it is? Four cars and then you're considered a junkyard? *Stan Hackett commented but could not be heard*. Mr. Girard: So if I wanted to do something down the road and I wanted to fix some old cars or whatever that I have, I have to have a junkyard license which the town changes their zoning ordinance. We have to have a junkyard license to do what we want to do. I have nine cars on the property today. We have other Conditional Use Permits that's been put out there and that's not your guys' end of it, I understand that. There was a Conditional Use Permit a couple of weeks ago for 15 vehicles or tractor trailer trucks and there's no issues they can have them right on the lot line. We take care of everything we have a well there, we've had the soil engineer out before we started this and he says get everything done

and we'll come over and dig the final test holes and we'll design a system that will go there. I've done my due diligence, we bought the building because it was dilapidated and it abutted us and you know we've looked at it we've looked at the options we've talked to the Code Enforcement Officer as we bought on the contract and told him what we wanted to do, what our intention was and what we're allowed to do and they cited the permit. I don't know if there was anything else.

Mr. Coleman: How far back is the building on the salvage side? That building, how far back? Mr. Girard: The scale is correct I don't have a measuring tape but it is and we have a salvage yard license and Stan can vouch and I think he's the only that's probably been over and the only thing in that garage is dad's fourwheeler his golf carts, my father is 80 years old and that's where he goes over and plays. So the junkyard that we say is around this is wood and nine cars. That's the big junkyard we have in the neighborhood. Mr. Finch: So you're not processing any cars there or generating any hazardous waste or materials? Mr. Girard: Nothing. I have wood, I'm a wood addict. Mr. Finch: Okay. I was just asking. Mr. Girard: My integrity is to maintain that license so that when I retire from Route 5 and CIA, I'll be able to go over there and be able to have 40 cars or 30 cars or 20 cars and still be within my rights and I mean if I took and combined this lot with the land that I have here already I can build anything I wanted and meet the setback from the road, the 20 feet or 15 feet from the road. Mr. McLean: Yeah I'll get you up there. Are we all set? Dr. Farrand, let's let Stan go up there for a minute. No, no, no I wouldn't do that. Stan Hackett: Stan Hackett, Code Enforcement I wouldn't be doing my job if I didn't remind the Appeals Board we're here for a variance not to discuss 41 Range E Road in what may or may not be what is existing. There's a lot of information that you were given tonight, some of it's correct some of it isn't but that is aside from what the Appeals Board does. Tonight we are here to grant or not grant Seaview Apartments a variance for the setback in the rear and on the sides because he has changed the original footprint not the square footage to make it less non-conforming. I'd like to stay to that so we don't get polluted with other issues that are not pertaining to Shawn's or Seaview's building. The other stuff is all stuff that is ongoing, there are some things that Shawn and I need to talk about as he proceeds to build if there's obstacles we will get through those but we will do those by the law. Mr. McLean: Just as clarification to the rest of the members, our thing here is for a variance, what's built what's not built has nothing to do with us. Just so that's clear. Mr. Hackett: And the Conditional Use is pending the Planning Board so that's another issue there's no sense in. Mr. McLean: We are here for a rear setback variance so the non-conforming lot. Mr. Hackett: The original setback on the brick schoolhouse was 5 feet, Shawn's proposal is 10 feet and to have 16 feet on the sides and it looked like about 20 feet in the front. Mr. Girard: It comes to about 30 feet. Mr. Hackett: Yep, but that's what we're here for tonight and I appreciate all the information but a lot of that's relevant to the Planning Board and whatever may happen in the future. Mr. McLean: Right it's relevant to the Code Office not to us. Mr. Hackett: Yep. Mr. McLean: Dr. Farrand. Dr. Farrand: What is fact is that a Conditional Use Permit has been issued by the Planning Board at your direction. So it is junkyard automobile graveyard, the scope of that operation there's discussion that could be had at which I've hoped you've listened to all the materials many times about but that's what it is and this is the discussion of a variance not just in setbacks because it's a change of use and unfortunately a residence has a whole lot different risk with a junkyard graveyard next door then does a storage unit or a garage. Mr. McLean: And that would be up to the CEO. Dr. Farrand: The CEO has not issued a permit for the duplex on the other side and so

I just want to report that in error in Mr. Girard's statement. There is no permit that I've been able to find in that office or a duplex on the other side of the property and I do think it's relevant that what could be on that property that the Planning Board has been working hard on that and the scope of that operation has been continuously described by Mr. Girard as nothing but escalation of what will be stored there in time and if you issue a permit for it which it has already been done that's what you have to assume this lot will be exposed to and how the laws of the State of Maine and the ordinances would apply. Thank you. Mr. Girard: Shawn Girard again I would like to correct that there has not been a building permit pulled for the duplex. The duplex was approved by the Planning Board and it is on this paperwork here which is the original Brulotte that was submitted five years ago. This is the duplex that we had planned on putting on the lot to the left of the driveway like I said it's there it has been there and it's been all along people can get it in Code Enforcement but we did not pull the permit for it but on the schoolhouse we did pull the permit on it. Mr. McLean: Anybody have any other questions for Shawn? Mr. LePage: No. Mr. McLean: Alright, we can close the meeting but that will close the meeting. Mr. Coleman: The Public Hearing? Mr. McLean: Yeah that will close the Public Hearing and go into the discussion. Mr. Kent: Steve, I have one question it might be for Stan but I'm not sure concerning the variance. It says or say's constrictly construed by the Maine Supreme Court it says that a variance shall not be granted if the adjoining property is owned by the same person. Mr. Girard: It's not it's two different companies. Mr. Kent: Well that's another question I had I guess you can answer right now. Your name is on there on the application your name is on there for both properties. Mr. Girard: So yes that's how they contact me, I am the manager for both properties. Seaview Apartments owns the schoolhouse and I believe CIA Salvage owns the other property. So they're owned by two different equities or entities whatever you want to call it. Mr. Kent: Okay. I think that's the only question I had. Concerning variances. That's all I've got. Mr. McLean: Dave, what are your feelings? Mr. Girard: You know we can build this building back to the original that was there it just looks funny on the lot. You know it's a hazard to the road where the doors were as you can see in the picture that I had. You know the way it was here your backing out onto the main road, I guess that's your pleasure. I mean we spent a great deal of time and effort to figure out what to do to make it so it's more conforming, off-street parking. You know to make it look nice and pretty in the neighborhood so your not going to bring down value your going to increase the value compared to what was there. I mean 20 years ago the town owned the brick school building and it was so far gone they sold it for \$1560 to Mr. Rick Irons in an auction. So we turned around and we bought it for 20,000 because it abuts us. So I mean the value is there in the what's there and I mean we're just trying to make it look nice be more conforming to the neighborhood and it would look like a nice little residence and do that. That's our goal. Mr. McLean: Okay, let's come back to our discussion. Mr. Coleman: I like the idea that the applicant is willing to make it less non-conforming but at the same time it sounds that there are other options available, either from purchasing property from one end to the other. We're supposed to review the undue hardship on those four criteria and make a finding on that. Mr. Girard: I mean I don't have to put a garage there either. Mr. Coleman: I mean as far as this board is concerned, we've said it, finer point on it, we're reviewing the setback for a structure. What that structure is or becomes in the future is not for us to say. We don't have the jurisdiction to tell you what you can and can't build. All we do is we review where that line will be. The line is, it was grandfathered at 5 your within your right to put a brick schoolhouse or a storage

building or a salt shed within 5 feet of that line tomorrow and there isn't anything this board has to say about that. You're coming to us and asking us to say that we would approve 10 feet. Mr. Girard: And like I said once we asked for the 5 foot variance because we were looking at it trying to figure out where to go get it and once we had it all leveled out this week we sat down and we started looking at it and I called Stan and I said Stan I think that we can easily leave the variance, not the variant the code setback on this side and we can meet it on this side we'll meet it on the front and it would be nice if we could adjust the back of the building. Even then, if this was what the board said today we're not going to grant you that variance from 20 feet down to 10 feet we could still put the building on that it's just you have 20 feet behind the building and that pushes your parking out into the street which I think is a hazard. You know we have a lot of accidents down on Route 5, people going too fast and everything else. So you don't want anybody coming out of there backing out into the road. Mr. McLean: Sonny what is? You can sit down Shawn. Mr. LePage: Well I don't like changing setbacks very well one way or the other. In this particular case I think that we're gaining more than we're losing. Mr. McLean: Yes. Mr. LePage: It makes it better for the sewage system, it makes it better for the entrance in and out because now you're 30 feet away instead. I can remember back when the old building was there we used to put a Fire Truck in that old building and when you went out into the road, when you went out the door you were in the road. That's a good point. That's my thoughts. Mr. McLean: Bud? Mr. Finch: I would probably agree with what Sonny said. Mr. McLean: Okay. Jim? Mr. Kent: That's the only thing that I had was the back line variance, I had a question about that but also about the size of the lot itself which is not something we are discussing here but something else that I had a question about was is it actually illegal to back out into the street? With a new property? Can you build a new property that would require you to back out into the street? I don't think state law allows that. Mr. McLean: Yeah I don't think there is a state. Stan I know we're closed but the CEO can. Mr. Hackett: Under Maine Statute or Maine Criminal Law or traffic law the ones that should not be or restricted from backing out onto a highway is a commercial truck. So that's why most of them you will see will pull up and back into a driveway but somebody with a private vehicle can back out. That's what they call the risk management side of things. Commercial vehicles are more volatile than the passengers in a personal vehicle. Dr. Farrand: I have a process question, nothing to do with any of the testimony. Can I speak? Mr. McLean: Go ahead. Dr. Farrand: We have not yet discussed Conflict of Interest or bias and yet everyone is participating in a discussion currently. I want to raise this because I believe there are at least two board members that have Conflict of Interest or bias and I'm going by information that is how I read it is in the MMA's manual for local land use Appeal Board February 2017 edition and I'm using Mr. Sonny LePage, my concern is that Mr. LePage from historical time when I've taken a sitewalk when a sitewalk occurred 10-12 years ago at 41 Range E Road there was a conflictual moment when Mr. Girard said I'm going to fix this and he instantly got on the phone to talk to Mr. LePage, at the time fortunately or unfortunately for him I don't know Mr. LePage was unavailable; he had his phone with him and was off to make contact with him. I also believe that with a business that has scrap metal as one of its by-products that there's a financial potential, essential to follow more personal interests than community interests. Mr, Stephen McLean I have a similar concern about a potential whether any materials could be sold and the only way to find that out is that I have to bring it up here and in court but I can ask for a discovery to find what either has sold to CIA or what the pricing they are getting

but Mr. McLean at least rumor has it from the local coffee variety stop that as of two days ago or one day ago he has already announced that a decision was made in his mind that this would be granted today and tomorrows would not be granted. I have a problem even though its rumor mill I'm going to use the Appearance of Impropriety rule stated within that manual in quotes even though no legal Conflict of Interest exists a board member would be well advised to avoid even the appearance of a conflict by abstaining in order to avoid the Appearance of Impropriety and to maintain the public's confidence in the boards work and that's on page 26. Thank you. Mr. LePage: Well I'm not going to defend anything here but I can tell you that my decision one way or the other was straight down the line and I had talked to Shawn a week ago two weeks ago whatever it was and I told him at that point in time I hadn't seen any of the information, at that point in time and I said I'm going to be honest with you I don't believe this variance is going to fly. Did I not tell you that? So there's where I stand. Mr. McLean: Okay. Shawn we're all set. Mr. Girard: We're all set? I just want to make it known that I don't believe coffee shop talk should be, obviously we all don't have time for coffee shop talk and I don't believe coffee shop talk should be discussed and to badger you guys. You guys have a job to do whether it's right or wrong. I do business with some of you guys in town, no different than I go to the coffee shop in town and if they spend as much time in the coffee shop in town talking about things they should get done in town instead of behind everybody's backs this whole town would be a lot further. Mr. Coleman: Well like I said we do need to review those four criteria for the variance. We obviously had to go through Findings of Facts. Mr. Girard: Dave could you speak up. Mr. Coleman: Sorry I'm looking down while I'm doing it. We have to develop a Finding of Facts before we make a decision and to Dr. Farrand's point there is a procedure that we typically follow. I didn't develop an agenda for this meeting because I've been busy. Ordinarily we go through by determining a quorum. We do go through and view Conflicts of Interest, bias, timeliness, jurisdiction, standing, whether the application has been completed correctly and filed and the fees paid, and then we hear the case and then we review rebuttal statements and such and we go through the commentary and we make the decision. So with that the hearing is closed we obviously had a lot of people to speak which is our privilege. I think now we should go through and follow past procedures and review all this criteria and make a decision. So we've summarized the appeal, the appeal is for a variance of 10 feet on 39 Range E Road, Limerick, map and lot number. Mr. McLean: Stan, did you have the map and lot number? Map 30 lot 17. Mr. Coleman: In determining a quorum we have five members present, under Conflicts of Interest does anyone on this board feel based on the information presented tonight that they have a Conflict of Interest or that anyone else on the board does? Mr. Kent: No. **Clifton, James, and David were in favor, Steve and Sonny abstained.** Mr. Coleman: Bias does anyone, under Conflicts of Interests that fiduciary interest and under bias is anybody an obvious bias one way or the other on this application? Mr. McLean: And as I stated we are only here for a variance, the building is not our concern. Under timeliness of appeal, the appeal was filed on August 18th. Mr. McLean: August 18th. Mr. Coleman: And we advertised it within the 35 day period and here we are post hearing make a decision. Steve **motioned** that the appeal was timely. Sonny **second. Four were in favor, Steve did not vote.** Mr. Coleman: Under jurisdiction the Zoning Ordinance Article X Section E paragraph 1 allows us to hear appeals for Code Enforcement and issue variances under hardship. Steve **motioned** that was met. David **second. All were in favor.** Mr. Coleman: Standing, does the applicant have the right to appeal for a variance. Steve **motioned** that he

does. Sonny **second. All were in favor.** Mr. Coleman: Under completed application we have the dated application we received payment, is that correct? Mr. McLean: Yes. Steve **motioned** that the application is complete. Sonny **second. All were in favor.** Mr. Coleman: At this point we should be reviewing, I had it here a minute ago, variances may be permitted under the following conditions, variances are attainable for height, minimum lot size, structure size, setbacks, or open space requirements. An application for a variance may be filed directly with the Board of Appeals in accordance with the procedures below. Variance appeal, the applicant shall submit a sketch plan and a concise written statement of what the variance is requested and he has given that presentation tonight. Variances cannot under any circumstances be obtainable for an establishment for any uses prohibited. This is for a setback and not a use the board shall not grant a variance unless it finds that all of the following criteria are met. Number 1: that the land in question cannot yield a reasonable return unless a variance is granted, is there a motion on F,E number 1. Mr. McLean: Well it's certainly not going to be, the land is not going to be as valuable. Mr. Coleman: Is there a motion? We need to make a finding of whether or not. Mr. LePage: Right. Mr. McLean: Somebody other than me. Mr. Coleman: My feeling is that the land in question could yield a reasonable return regardless of whether or not we issue the variance and not to use Shawn's own words against him but he has the option to incorporate that into his other property owned by CIA and then there is the opportunity to build on that existing footprint which would be a reasonable return. So my personal feeling is that number 1 is that the land in question cannot yield a reasonable return unless a variance is granted is not correct. Mr. Finch: Why were you shaking your head, Stan? Mr. Hackett: I know Shawn on behalf of Seaview Apartments that he could take some property out of the junkyard but the ordinance prohibits that. So that is under legal review because I don't believe that it is an option. It creates a different side of issues in an ongoing thing with the Planning Board and that's why I recommend that Shawn approach the Appeals Board for the variance to stay away from the other litigation. Mr. Coleman: But you would agree, Stan, can I ask this question? You would agree that he is well within his right to put a building back on the existing footprint today as it stands without any intervention on our part. Doesn't that mean that there is a reasonable return on that parcel? Mr. Hackett: I do because the original was going to remain at 5 feet so he's increased it by 10 which is again making it more conforming then not. Mr. Coleman: Well I have no second, or do I have a second? I will withdraw my motion if someone wants to make a different motion. Mr. McLean: Do you have another motion Sonny? Mr. LePage: Well unfortunately you have now heard Stan say that it wouldn't or essentially wouldn't but I don't know what the details of that are. Mr. McLean: What that he gets more land? Mr. LePage: What was that? Mr. McLean: Well that he gets more land. Mr. LePage: Well that this doesn't yield a reasonable return this is what we're talking about. Mr. McLean: Bud do you have anything on that question? Mr. Finch: I guess my only question would be and I'm probably not well versed on this but could he grant an easement for the property that he needs for that footprint or for the variance that he needs? Mr. McLean: No. Mr. Finch: He can't. Mr. LePage: There's another problem on the other end where we're talking about there's also a right of way. That came out at the sitewalk. Mr. Kent: Well there's an issue where the turn fit. Mr. LePage: Where those poles came down through that's another right of way for the other. This only fits so good. Mr. Finch: It gets stickier as you go. Mr. Hackett: The question was on easement? An easement is a right of way that will forever exist unless the original person deeded the easement or the heirs change

it. So an easement is possible if he sells 39 Range E Road for whatever reason or his heirs do down the future if they share the well or subsurface system or anything they will have to deed an easement for that purpose but otherwise it wouldn't be practical for Shawn to do. Mr. LePage: So if that's the case that would make this lot worth less money, am I correct? Mr. Hackett: Yep. Sonny **motioned** that it will enhance the value of the lot. Mr. McLean: So you're saying that the land in question would not yield a reasonable return without a variance. Mr. LePage: Correct. Mr. McLean: All those in favor? Mr. Coleman: Is there a second to that? Mr. McLean: Oh yeah we need a second first. Anyone want to second what Sonny just proposed? That it cannot yield a reasonable return without a variance. Mr. LePage: Reasonable return. Mr. Kent: I guess what I would have to ask what you consider a reasonable return? Mr. LePage: Well is it worth less or is it worth more? Mr. Kent: Well that's not the question, the question is if it's reasonable. Mr. LePage: Well no it isn't the question it is the question. Mr. Kent: Right. Can he get a reasonable return with the property the way it is? Or any other way than putting a house there? Well yeah he can still get a good return out of it. He can get a good return from putting a parking lot there. Mr. LePage: He can get something but can they get as much the other way? Mr. Kent: Well no but that's not the question it's reasonable. What do you consider reasonable? Mr. LePage: I don't own it so I don't know. Mr. Finch: Yeah you wouldn't be able to put a house on the lot. Mr. Kent: We're talking about the difference in return, financial return on that property and if it can get a reasonable amount, well who defines reasonable? What are we calling reasonable? Mr. LePage: Again that's not our. Mr. Kent: Well that's part of the question though. Mr. LePage: Well we're not real estate agents. Mr. Kent: No but for a town that's having problems with being sued now for I don't know what we don't lawsuits down the road. I mean if we don't go by the book on this that's another lawsuit down the road and I don't know about you but property taxes are plenty high the way they are. Mr. McLean: Perhaps we don't have a second on that one either. Mr. Coleman: I will second it for the purposes of conversation because we have been discussing it. So the motion on the table with my second is that the land in question cannot yield a reasonable rate of return unless a variance is granted. I don't agree but that is the finding I guess. Mr. McLean: Any discussion? Bud anything? Mr. Finch: I think it's pretty cut and dry. Mr. LePage: I think we've been through it at this point in time. **Sonny was in favor, David, Clifton, and Jim were all opposed, Steve did not vote.** Mr. McLean: So that fails? Mr. Coleman: Well if we call opposed, I'm opposed. Mr. McLean: Just you, all those opposed. Mr. Coleman: Number 2 that the need for a variance is due to unique circumstances of the property and not the general conditions of the neighborhood. I think based on the fact that it is a grandfathered lot it has a set of unique circumstances and that it does meet that criteria. Sonny **motioned** that we accept that. Jim **second. Four were in favor, Steve did not vote.** Mr. Coleman: Article 3 that the granting of the variance will not alter the essential character of the locality. It does not, the residence is farm and forest and there was already a building there. So a building returning is certainly not out of the character of the locality. Sonny **second. Four were in favor, Steve did not vote.** Mr. Coleman: Number 4 that the hardship is not the result of action taken by the applicant or a prior owner. In reviewing the hardship I don't think that Shawn created the small lot or the unusual setbacks I think that's just something that has happened over time. Mr. LePage: Well I believe that we're better off with these new setbacks than with what we had in reality. Mr. Coleman: I don't disagree. Sonny **second. Sonny and Dave were in favor, Clifton and Jim were opposed, Steve did not vote.** Mr. Coleman: The board shall limit

any variances granted as strictly as possible in order to preserve the terms of the ordinance as much as possible, and it may impose such conditions to a variance as it deems necessary to this end. We reviewed those four criteria and it's meant that all four are met and we did not meet them. I think it's the decision of this board that we do not grant this variance as proposed. Mr. McLean: We need to vote on that. Mr. Coleman: We need a second. Unless someone wants to propose something different on that. Mr. McLean: Do we have a second on his motion? Mr. Kent: On not granting it? Mr. Coleman: Yep. Based on the fact that it does not meet. Mr. Finch: Based on the fact that it does not meet the literal law. Clifton **second**. Mr. Coleman: Based on two of the four criteria not being met. **All were in favor**. Mr. Coleman: Sorry about that Shawn. Mr. Girard: It was denied? Mr. Coleman: It was denied. *Shawn Girard asked a question that could not be heard*. Mr. Coleman: That is not something that this board can decide. Mr. LePage: What you can do is put the same size building back exactly where it was. If that's what you want to do 100%. *Shawn Girard made a comment that could not be heard clearly*. Mr. LePage: Correct. Mr. Coleman: Are we going to adjourn? Mr. McLean: I don't think we have any other business. Except we have to meet tomorrow at 6:00. Mr. Coleman: The Board of Appeals will meet at 6 at 10 Mowbray for a sitewalk for a setback variance for Linda Corbin and the meeting will reconvene here at the Municipal Building at 7:00PM.

Dave **motioned** to adjourn. Steve **second**. **All were in favor**.