

**Board of Appeals
March 15, 2022**

Members Present:

David Coleman- Chairman
Steve McLean
Brad Libby
Howard Burnham

Public Present:

Brad Morin
Shawn Girard
Cheryl Edgerly
Donald Edgerly
Gail Libby
Dorothy Richard
Merrill Farrand
Jabez Malmude
Mary Keasley

David Coleman: Good evening and welcome to the Limerick Zoning Board of Appeals regular meeting for March 15, 2022. On the agenda we have a continued motion for tabling a remand of a decision by the Limerick Planning Board regarding Farrand vs Limerick Planning Board Administrative Appeal. So with that I'll take our agenda out of order, I had Election of Officers in here but we can do that after the decision. Under correspondence today we received a letter from Attorneys at Law Bourque Clegg Causey & Morin, LLC I butchered that probably but Mr. Morin sent us an email late in the afternoon today and I printed it out for you guys to review now and then also under correspondence we received from Ben McCall the draft Notice of Decision by the Limerick Zoning Board of Appeals and you should have seen at least that in your email a couple days ago. Just to recap we did have our Public Hearing and determined we had a quorum and that the appeal was timely based on the remand from Superior Court on November 24 of 2021. We determined that we had jurisdiction and we made a vote of 4-0 affirming that we had the jurisdiction to hear the appeal and we found that we had standing and that the application was complete. So that leaves us now to review our conclusions, findings and make a decision. I have not had an opportunity to read this letter completely through. Brad Libby: Neither have I. Mr. Coleman: Would you care to make a statement on that at all Mr. Morin? Brad Morin: Yes it's really short, summarize it briefly. Steve McLean: Yeah go up to the podium. Mr. Morin: Just to summarize it I reviewed the draft findings that were proposed for the ZBA, the applicant's position is that we believe that there was substantial evidence for each of the three issues that the board at least discussed finding deficient. Including the fact that the Planning

Board voted to move forward without that realtor's letter which we argued the Planning Board must've determined they did not need and we believe that the Zoning Board of Appeals should deferring to that decision because they felt that neighborhood impacts would be minimized with screening conditions placed in the permit. I also cited some case law in there saying you don't always need outside experts if it's something that the Zoning Board could consider. We felt the same thing with regards to the other issues involving odor, vibrations, noise and all those other conditions, stormwater, that the Planning Board did have sufficient evidence in order to make those decisions. Mr. Coleman: Thank you. So I'm stretching my memory here, so Howard made the motion, is that right? And you second it? The remand? Howard Burnham: Yes. Mr. McLean: Yeah. *Comment from someone in the audience that could not be heard.* Mr. Coleman: I'm sorry. Mr. Farrand. Dr. Merrill Farrand: I apologize I realize the public meeting is over but since Mr. Morin had an opportunity. I appreciate the fact that you're giving me one. At the last meeting and I had just gotten some material from you, Mr. Coleman. So apparently Mr. Morin got a copy of something that he mentioned a reference to in his discussion a moment ago sounding like whatever the attorney provided to you folks he was provided a copy of and I have not received that. Mr. Coleman: That was that draft decision that I gave you. Evidently he must have sent that to you separately. Mr. Morin: I just asked him for it, yeah. Mr. Coleman: Okay. Dr. Farrand: So quickly reading and I am so sorry that I didn't have enough time to read everything that I just was given but quickly reading three things were in your potential Findings of Facts for tonight, but one that still remains missing is the Fire Department's review and all the fire safety issues which we talked about briefly during the end of the meeting but I really feel that that does represent a problem that needs to be addressed to insure safety of the neighborhood, safety of the rescue workers who might come in through the facility and in the prior discussion by Mr. McCall, he had indicated that not all the conditions needed to be reviewed there was some discussion of more global review of conditions. I want to remind you if you look at the 16 conditions, how many discuss water if there's not a discussion that they need to return some statement about what they mean for proper approval of each of those subcategories will the CEO have enough material to enforce if in one area you seem to have some restrictions but in another area it's left open. I could go through each of them but I don't really want to put you guys through that again. You did a great job listening the first time but I really found that only two conditions were likely not to be influenced by materials that I talked about and that's condition 4 and 14. Four is about vehicular traffic and whether it's going to be an influence upon or impacting the neighborhood and because of the amount of vehicles traffic and 14 was well water which he has a well but the remaining things have something that impacts either water, fire safety, value, noise, dust, etc and so it's hard to put specific conditions and I couldn't really get through that quick enough to be sure but if you only listed several conditions I think there 2, 3, and maybe 9 something like that. It's not really going to cover every single concern or risk that might exist. Thank you. Mr. Coleman: Thank you, Dr. Mr. McLean: So that being said the one about the fire one was supposed to be added and that's just a signature. Mr. Coleman: I agree. To your point Dr. Farrand we did send an email back to Mr. McCall reminding him that we had discussed the fire inspection letter but I have not heard back from him. So I mean if this board is prepared to move forward with reviewing these draft decisions and findings and such conclusions. I think it's appropriate that we would amend it to include subsection D on page four or five for a Fire Inspection Letter. Is there any other discussion regarding what Mr. McCall

provided us? Mr. Burnham: No. Mr. Coleman: Does it meet what this board feels that they expected to see or wanted? Mr. Burnham: One question I had on C was on the liquids. It mentions stormwater but it doesn't any other type of liquid. That's gonna have an impact on the environment. Mr. Libby: Howard did I hear you say you were concerned about other liquids? Mr. Burnham: Yeah. Mr. Libby: Okay my note on C is that it does indicate other drainage problems on site. Wouldn't you think that would include other liquids? Mr. Coleman: I mean he is actually quoting the Conditional Use Permit itself there. Mr. Libby: Okay. Mr. McLean: Yeah but we can't add stuff to the Conditional Use. We're gonna send it back. Mr. Coleman: Right. We're going to send it back and under that section they would review stormwater runoff. Mr. McLean: We can't add things to it. You know we're just saying that there wasn't enough information provided so whatever they do, they do. Mr. Burnham: That's fine. Mr. Coleman: Are there any other? Mr. McLean: I got one thing. Shawn on that, cause you've already applied for the next two years. Shawn Girard: Yes I have. Mr. Coleman: Can I have you go up there? Mr. McLean: So you already have your application for the next two years. Mr. Girard: I have applied for that, the deadline was March 4 that's when the Conditional Use Permit was up. So we applied for that Code Enforcement date stamped it and everything was set. Mr. McLean: In that packet did you get a thing from the Fire Chief? Mr. Girard: In everything they had the Fire Chief they had everybody done. We sent it out last year, you know two years ago we did it. If I can't get somebody whoever was there at the time cause everybody was busy, if I can't get them to sign it I've done my end of it I've presented it to them. I mean the new chief he's busy to and it took him a week and a half to get it about a week I guess but he did sign it and he went through the building and the trailers and he said there's nothing there that's hazardous. The only thing we have is waste oil. Mr. McLean: So we'll leave it in and he's got it but that's already been answered but for our point of view it wasn't there and it is now. So it's mute for that. Now I think the only one I have a hard time with is the realtor saying the property wouldn't be devalued, if he had got someone to do that two years ago the prices on everything went up, look kind of foolish. Mr. Burnham: There's still an issue there no matter how you look at it. Mr. McLean: Well the saddest thing was is he told them he'd do it and if he hadn't said that. We've tried this with everything else in town. I don't think that's a relevant question to be asked. If you're putting a house next door are you devaluating the other house next door? Mr. Burnham: You're comparing apples to oranges. Mr. Girard: If I could on the property value question, I'm the only one in all of the Conditional Use Permits anything that's gone in whether it's a subdivision whether it's a business down the street from me. Whether it's a business down the road, the mechanics, machine shops nobody else has been asked to do this. I tried everything I could to get different people to do it and I couldn't get a realtor to give me that because they didn't want the litigation from it. Mr. Coleman: At the risk of making this a Public Hearing I just want to warn you guys is that I'm going to let these folks speak because they deserve a rebuttal. I got you Jabez. Dr. Farrand: In response to the question about fire safety this meeting is about prior submitted material only. Mr. McLean: Right. Mr. McLean: What was said by Mr. Girard today is irrelevant, the decision of the review of this application because I was reminded and I did not provide any new information at the time of our last meeting. Mr. McLean: We're leaving it in there but I'm just saying now evidently that's done but that's nothing to do with this. Dr. Farrand: And there is an error in Mr. Girard's recent reporting cause immediately following his decision on March 4, 2020 the solar farm soon after had a Conditional Use granted for there site down

on Range E Road and in that application is a real estate letter. So that's an error in statement not that it's also not new evidence and I shouldn't be providing new evidence. Only correcting something that was stated. Mr. Coleman: Jebez do you have something related to. *There was a comment made by Jebez Malmude that could not be heard.* Mr. McLean: No new evidence Mr. Coleman: No, there's no new evidence. Mr. Libby: I just kind of have a comment on the property values. Mr. Morin indicated and I'm not so sure where it is on here where the Planning Board didn't necessarily need to bring outside experts into review that. I agree maybe they didn't need outside experts but it seems to me that I have to wonder what experience in setting property values or determining that do any of the Planning Board members actually have. I mean I can make a guess on how much my property is or yours but I'm not a realtor. I don't know anything about it as far as what someone else's property might have an effect on mine. I think the Planning Board may well be in the same position. Mr. Coleman: My issue is watching it they required it in one meeting and then in the next without really any explanation why they didn't and I kind of feel that's a bit of bait and switch and it's not fair that we keep doing it over and over either but I think it's something the Planning Board ought to be mindful of. Mr. Libby: I'd also like to state that Shawn mentioned that no one else had been required to get statements from realtors of property values, and I'm not sure as Mr. Farrand pointed out that that's actually true but I think a lot of the Conditional Use Permits that have been issued over the years the particular usage certainly is a lot more benign than Mr. Girard's potentially is. I believe that Shawn certainly isn't going to intentionally pollute the ground or air water or anything else on purpose but I think the purpose of the conditions is to make certain that it doesn't and I don't see that those things were met in the Planning Board's discussions of it. Mr. Coleman: Right. I mean for me I feel like remanding this back to the Planning Board really isn't going to change the validity of him having a permit the time has past and he's already working on the next one but I think it underlines the fact that in the next one that they need to review these things and have those completed items otherwise it's obviously opening it to an appeal. I guess at this point we have voted to table the remanding the decision to the Planning Board. Mr. McLean: For these four. Mr. Coleman: Right. So at this point I think I would entertain a motion to either accept or amend these draft Notice of Decision. Steve McLean **motioned** to amend it to the signature of the Fire Chief. Mr. Coleman: Article D, would read the Planning Board require a completed letter from the Fire Department for an inspection. Mr. McLean: Yes. Brad Libby **second. Motion passed 4-0.** Mr. Burnham: So we have to send this back down to the attorney. Mr. Coleman: No I can make that change with Ben and the last article 7 it authorizes the chair and the board secretary to distribute these findings after seven days but I'll have it amended and we'll will sign this so that I have the back page and then I think at this point I'd like to draft a letter to the Planning Board in kind of plain English to kind of say we're remanding this back to them for decision. Mr. McLean: Well not I don't think we're sending back for a decision, the decision was made these have to be answered. Mr. Burnham: They have to review them plain and simple. Mr. McLean: Because now you can't deny it. This is not a question of starting all over, just a question of getting the answers to those, which one is already done and I'm sure on the next application that's all done again. Mr. Coleman: So at this point it's the decision of the Limerick Zoning Board of Appeals, we remand this appeal to the Limerick Planning Board to clarify those four items. The next item on the agenda is the election of officers. As I've stated in the last three or four meetings I would really like the opportunity to not be Chair. So who among you would

like to be Chair? Mr. McLean: So you're going to be the Vice Chair? Mr. Coleman: Perhaps. Steve McLean **motioned** for Dave to be Vice Chair. Brad Libby **second. Motion passed 4-0.** Howard Burnham **motioned** for Steve McLean to be Chair. Brad Libby **second. Motion passed 3-0, Steve McLean did not vote.** Mr. Coleman: So your agenda. I spoke with Courtney and she happily or maybe not so happily went back and transcribed all of our meeting minutes but I noticed and it's my fault I didn't share it with her but in all of them where it says public in attendance there are a few people missing. She was only able to fill in the blanks when she saw people on camera and it's difficult up there because the cameras don't pan around and get the crowd so I will work with her to amend all these minutes so that that's correct and then we got correspondence. Remote Participation Policy I don't know what the feeling is of the Chair. It's on your agenda going forward if you guys want to discuss it some. Mr. McLean: Did you get a chance to read that at all? Mr. Burnham: No. Mr. McLean: So we'll do that at the next meeting. For our Board I think it's more critical as the Planning Board and all. Mr. Coleman: I will say I have been kind of like refusing to be in different places in order to be here. I'm not saying I'm going to use it or abuse it but it would have certainly come in handy more than once, even in Shawn's case, cause he spoke to me several times when I was in New Jersey and Dr. Farrand as well. I'm personally in favor of it myself. Mr. McLean: It's going to be a good policy. When we need it. Mr. Girard: So when I submitted my new application because my Conditional Use expired March 4 Dottie told me I should hold off on that and I said no I was going to submit it. So should the Planning Board start to hear that now? The new Conditional Use Permit? Mr. Coleman: This board really doesn't have jurisdiction to say one way or the other I mean I think it's wise that you put in for it. To show that you don't want to be out of compliance or have an expired permit but I would defer to them. Mr. Girard: Are you going to make a recommendation to them because that permit is sitting, somebody has it on their desk now. Mr. McLean: Well they'll have to act on this anyway right away. Mr. McLean: I know you're going to act on that. Mr. McLean: They have to. Mr. Girard: They have to act on this one but how about my other one? Mr. Coleman: I mean that is entirely on them. I mean if you take it up with them and run into a problem. Mr. Libby: I have a dumb question on this we've sent this back to the Planning Board now are the members of the Planning Board that were on the Board at that time going to be reviewing this or is it going to be the current board that is going to be reviewing it and does it matter? *Comment from someone in the audience that couldn't be heard.* Mr. Coleman: It would be the current board obviously. From a legal standpoint I suppose Brad. Mr. Morin: I believe what you signed tonight says that they are supposed to review those three criteria they don't have to reopen everything that he did before. Mr. Coleman: Correct. Mr. McLean: That's all it is. Mr. Coleman: They will re-review those four things. Mr. McLean: And probably with your new application you've already addressed those. Mr. Coleman: Exactly. Like in the case of the Fire Department. Mr. Coleman: Jabez can you go up? I'm still acting like Chair. What am I doing? Mr. McLean: Till the next meeting buddy. Jabez Malmude: You'll be seeing my three years from now just forgetting being oh I need to be on mic. So question would be under our current zoning and for the majority of our zoning policies Conditional Uses as far as this use and what it pertains to did not apply. So my question would be to the Selectboard how did the Conditional Use get aloud in the first place? Mr. Coleman: Well this is the Appeals Board but I mean as far as the Planning Board reviewing those 16 conditions what we've said tonight is we would like them to go back and look at those four. I think the only other new business we have is

Courtney's. Mr. McLean: Pay now. One question before we get off of that, you're gonna send that to the Planning Board. Mr. Coleman: Yes I will make that change and I will bring it down to Dottie tomorrow. Mr. McLean: Or maybe tomorrow night they can talk about it instead of waiting another month. *Comment from someone in the audience.* Mr. Libby: I like the way you're thinking Donald. Mr. McLean: It's going to go up. Now you were talking about Courtney's time card. Mr. Coleman: Yep. Mr. McLean: Dottie question for you what's the secretary pay up to now? Mr. Coleman: Administrative Assistant. Dorothy Richard: We haven't hired anybody yet. She was getting 16. Mr. McLean: But the work you're doing now is what 18 or something? *Dorothy Richard made a comment that could not be heard.* Courtney Davis: I just put the 16 because that's what you guys were paying me when I was doing them before. Mr. McLean: No, that's alright. Mr. Coleman: He's our budget hawk. Mr. McLean: That way there they can discuss it tomorrow night. Mr. Coleman: Yeah I'll make sure I come back tomorrow morning and work with Dottie on it. Can we edit a PDF? *Comment by Dorothy Richard.* Mr. Coleman: Otherwise I can have him do it. I believe it was a PDF. I'll have to look but whatever he sent me I can't imagine it's cheap to have him edit it for me. Okay I think if we can keep Jensen and Baird out of the expense part of it for making changes. Mr. McLean: Brad I'd just like to put Courtney's time thing here we have to approve but we ought to have her in line with the other secretaries at \$18. Mr. Libby: I would agree with that. Mr. McLean: We're only calling her once or twice a year. Mr. Libby: Well it's not like she's an entry level. Mr. McLean: No, that's fine she's been doing it. Mr. Coleman: Do you need a calculator to redo that? Mr Burnham: So we've got what 4 and a half hours. Mr. McLean: 4, 5 hours. 5 hours. Mr. Coleman: 126. David Coleman **motioned** to pay Courtney Davis for time spent on minutes and attendance for the meeting for \$126 Brad Libby **second. Motion passed 4-0.**

Howard Burnham **motioned** to adjourn. David Coleman **second. Motion passed 4-0.**

Respectfully Submitted

Courtney Davis