

UNAPPROVED MINUTES
Town of Auburn
Zoning Board of Adjustment
October 27, 2020

Present: Mark Wright, Chairman. Mike DiPietro, Vice-Chairman, Stephen Carroll, Kevin Stuart & Dennis Vieira, Members of the Board. Shawn Matte, Alternate. Minutes recorded and prepared by Denise Royce.

Also, Present: Carrie Rouleau-Cote, Building Inspector/Code Enforcement Officer. William Herman, Town Administrator. Stephen Bennett, Town Counsel. Attorney Brenda Keith, Counsel to the ZBA. Attorney Patricia Panciocco, Counsel to the Gramatikas'. Eric Mitchell, Engineer for the Gramatikas'. Todd Beddard (7:50pm), Keith Leclair and Michael Rolfe, Board of Selectmen. Marc & Jennifer Daneau, Christopher, and Amy Raychel.

Absent: Dale Phillips, Alternate.

Mr. Wright called the meeting to order at 7:03 p.m.

Mr. Wright began by reading the Meeting Preamble During COVID-19 Emergency which is as follows:

MEETING PREAMBLE DURING COVID-19 EMERGENCY

Good Evening, as Chairman of the Zoning Board of Adjustment, I am declaring that an emergency exists and I am invoking the provisions of RSA 91-A:2, III (b). Federal, state, and local officials have determined that any public gathering of people may pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19 and is reinforced by Emergency Order #16 issued by the Governor on March 23rd. In concurring with their determination, I also find that this meeting is imperative to the continued operation of Town government and services.

Governor Sununu issued Emergency Order #12 on March 23rd which provides local government boards the ability to conduct business using technology to hold remote meetings and not provide a public place of meeting, but provide for the public's ability to listen to the meeting.

As such, this meeting will be conducted without a quorum of this body physically present in the same location.

Please note that all votes that are taken during this meeting shall be done by Roll Call vote as required by RSA 91-A:2, III (e).

At this time, I welcome members of the public accessing this meeting remotely. Even though this meeting is being conducted in a unique manner under unusual circumstances, the usual rules of conduct and decorum apply.

Let us start the meeting by taking a Roll Call attendance. When each member is called please state your name, and also please state if there is anyone in the room with you during this meeting, which is required under the Right-to-Know law (RSA 91-A:2, III (c) and whether you agree to your voice being recorded.

Mr. Wright moved on to the roll call of attendees and began with the Board members as follows:

Mr. Wright moved on to call on Mr. Michael DiPietro. Mr. DiPietro indicated that no one else was in the room with him and that he consented to this meeting being recorded.

Mr. Wright called on Mr. Kevin Stuart. Mr. Stuart indicated that no one else was in the room with him and that he consented to this meeting being recorded.

Mr. Wright called on Mr. Stephen Carroll. Mr. Carroll indicated that no one else was in the room with him and that he consented to this meeting being recorded.

Mr. Wright called on Mr. Dennis Vieira. Mr. Vieira indicated that no one else was in the room with him and that he consented to this meeting being recorded.

Mr. Wright called on Mr. Shawn Matte. Mr. Matte indicated that no one else was in the room with him and that he consented to this meeting being recorded.

Mrs. Phillips was not available.

Mr. Wright called on Ms. Denise Royce. Ms. Royce indicated that she was with Mrs. Rouleau-Cote at Town Hall and consented to this meeting being recorded.

Mr. Wright called on Mrs. Carrie Rouleau-Cote. Mrs. Rouleau-Cote stated that she was at Town Hall with Ms. Denise Royce and that she consented to this meeting being recorded.

Mr. Wright moved on to the members of the Board of Selectmen. Keith Leclair indicated that he was alone and consented to his voice being recorded. Michael Rolfe indicated that he was alone and consented to his voice being recorded. Mr. Wright asked if there were any other Selectmen present. No more were noted.

Mr. Bill Herman, Town Administrator for the Town of Auburn stated that, he was at home by himself and that he consented to be recorded.

Mr. Wright moved on to counsel for the Board of Selectmen. Attorney Steve Bennett indicated that he was alone in his office and consented to being recorded.

Mr. Wright moved on to the applicant and asked if they were present this evening. Pamela Gramatikas commented that she was present with Attorney Panciocco and Eric Mitchell and consented to being recorded. Attorney Patricia Panciocco stated that, she was in a room with Eric Mitchell and Pamela Gramatikas and consented to being recorded. Mr. Wright asked Mr. Mitchell to announce his name and if he consented to being recorded. Eric Mitchell stated that, he consented to being recorded and was in a room with Attorney Panciocco and Pamela Gramatikas.

Mr. Wright moved on to the other applications and began with Christopher and Amy Raychel. Christopher Raychel indicated that he was currently alone but his wife is in the house as she just took the baby into another room so it would be quiet. Mr. Wright asked that, should someone enter the room to let the Board know.

Mr. Wright moved on to the last applicant, Bruce Gogolen. Mr. Gogolen was not present at this time.

Mr. Wright asked if there were any abutters present and noted that Jennifer and Marc Daneau had spoken before. Jennifer Daneau stated that she was with her husband Marc Daneau and that she consented to being recorded. Marc Daneau stated that he was present with Jennifer Daneau and consented to being recorded.

Mr. Wright asked if the Town of Auburn would be presenting their case first. Attorney Keith stated that, it would be the Town of Auburn that would go first. Then the Gramatikas' would go next. Mr. Wright asked everyone to hold their questions until the two (2) presentations were done and proceeded to explain to everyone the procedures that the Board would be going through. Mr. Wright pointed out that they had a full board along with one alternate. Mr. Wright asked everyone to please mute their phones if they were not speaking to eliminate background noise.

Mr. Wright explained that, they would proceed forward into their agenda by having Ms. Royce read the case into the minutes for the record.

Case #20-10
Gary & Pamela Gramatikas
20 Appletree Road, Tax Map 18, Lot 52
Zoned Residential One

Applicant is requesting an Appeal from decision made by the Town of Auburn Board of Selectmen (“BOS”) on July 13, 2020 (“Decision”) denying their Application for Restoration of Involuntarily Merged Lots Pursuant to RSA 674:39-aa (“Application”) to the Town of Auburn Zoning Board of Adjustment (“ABA”) as provided by RSA 674:39-aa(III). Article 14, Section 14.04 – Appeals to Zoning Board of Adjustment.

Mr. Wright turned the meeting over to Counsel for the Board of Selectmen. Attorney Bennett began by saying that, the BOS denied the Gramatikas’ to restore two (2) lots which are referred to as Lots 101 and 103. They wanted those lots restored to their premerger status pursuant to RSA 674:39-aa. Attorney Bennett went through the points of interest of what transpired throughout the years and the years that Mr. and Mrs. Gramatikas owned the lots and how they treated and managed their property. Under the statute a voluntary merger occurs either at the request of the lot owners and it’s clear that there was no request by the Gramatikas’ or any overt action or conduct that indicates that an owner regarded the lots as merged as such but not limited to abandoning a lot line. Since 1977, Gary and Pamela Gramatikas held themselves out to be the owners of the four (4) lots that he mentioned (Lots 101, 102, 103 & 104). Lots 102 and 104 were actually merged together by agreement by the Gramatikas’ as they built the garage on 102 that goes over to 104 so these two (2) lots are merged. Attorney Bennett explained that, the Gramatikas’ had ownership of lots 102 and 104 but did not obtain ownership of lots 101 and 103 until 1985 when Mr. Gramatikas’ father, the original owner of the lot passed away. At that time, according to the memo presented by Attorney Panciocco, the ownership of that lot passed to Mr. Gramatikas and his two (2) other brothers.

In 2020, Lots 101 and 103 were conveyed to Gary and Pamela Gramatikas from his two (2) brothers or their families. It is important for the ZBA Board to understand that, since 1985, the Gramatikas’ have had the possession and the sole control as well as a legal interest in all four (4) lots (101, 102, 103 & 104). The Board of Selectmen’s decision was based on a finding that the Gramatikas’ as well as other owners in the chain of title in these two (2) lots 101 and 103 had voluntarily merged the lots into what is now Tax Map 18, Lot 52. Attorney Bennett pointed out that, Tax Map 18, Lot 52 consists of Lots 101, 102, 103 and 104 (Exhibit #1 – Town’s Exhibit #1 – 4th page). Attorney Bennett pointed out that, the lots are approximately a half-acre in size of which the requirement in that zone is 2 acres and 200 feet of frontage.

Attorney Bennett moved on to talk about the deeds and whereby the physical description of the property is a single parcel of land. In the description there is no lot line separating lots 102 and 104. It also describes lots 102 and 104 being approximately 54,000 square feet in size which is the combined two (2) lots. This deed can be found at the Gramatikas Exhibit “E”. The deed for lots 101 and 103 again describes a single parcel of land with no lot lines between lots 101 and 103 and the square footage includes the entire parcel.

Attorney Bennett went on to talk about how lot lines were abandoned. Attorney Bennett talks about when the lots were conveyed to Gary and Pamela Gramatikas. Again, both deeds talk about one parcel of land. Attorney Bennett stated that, there were actually two (2) lots and not four (4) lots because each deed description was for one single lot.

Attorney Bennett explained that it was uncontested that, the town involuntarily merged all four (4) former Sun Valley Estate Lots as early as 1969 which can be found at the Town's Exhibit #5. While there was no agreement with the older Gramatikas', the Gramatikas' did not object to the merger for tax purposes of the lots and they never approached the town requesting that the lots be designated as individual parcels until this most recent request.

The Gramatikas' over the last 40 years on four (4) occasions represented to the town that they considered all former Sun Valley Estate lots to be one lot as did the town. On each of these occasions they have abandoned the internal lot lines between those four (4) lots during this land use actions. The Gramatikas' submitted a septic design which shows no lot lines between the former lots and that is the Select Board's Exhibit #10. Attorney Bennett explained that, when submitting a septic plan that, there is an obvious reason for showing lot lines as there are necessary requirements from lot lines and this plan shows no lot lines. Attorney Bennett went through the other request for permits whereby the Gramatikas' refer to the lot as being over two (2) acres. Attorney Bennett was pointing out how the Gramatikas' have been utilizing the property as a whole over the years. Attorney Bennett informed everyone that, those observations were made by the Select Board when they conducted a site walk. The site walk minutes can be found in the Board of Selectmen's Exhibits as Exhibit #16. At that site walk, a neighbor advised the Select Board that the storage facility had been removed the week before the site walk. The photos that were submitted prior to the site walk confirmed this. This structure was located on one of the lots that the Gramatikas' wish to unmerge. The photos are part of the Select Board's Exhibits as Exhibit #14.

In conclusion, Attorney Bennett stated that, the Board's decision to deny the request for unmerger was based on lots 101 and 103 had been conveyed on three (3) occasions as a single lot but mostly on 40 years of representations and the conducts of the Gramatikas' using those lots in conjunction with one another as one property. Particularly lots 102, 104 and 103 which were all merged as one property showing no boundary between them even up until the present day. Based on all that evidence, the Select Board's decision was again to deny the request to unmerge lots 101 and 103. Attorney Bennett would suggest that, there is sufficient evidence to support that decision. At this time, Attorney Bennett thanked the Board and ended his presentation.

Mr. Wright had one question and asked Attorney Bennett if he had any comments or input relative to the title issue that was raised when they opened the case last month that resulted in the Board Tabling it in order to obtain additional information. Mr. Wright further added that if title had effectively passed when the original owner passed away or were transfers made because there was not common ownership. Attorney Bennett stated that, he did not review the probate records and did not take issue on Attorney Panciocco's

memorandum. Attorney Bennett commented that, what the Select Board looked at and believed that the Zoning Board was the fact that there was a commonality of the management of the property and Mr. Gramatikas clearly in 1985 at the very least picked up interest in lots 101 and 103 and since then has acted as owner of lots 101 and 103 to the extent that they are reference on numerous applications. They have used lots 101 and 103 as an extension of their backyard for storage and the like and have paid the taxes on the property. There was no change in how the property was used.

Mr. Wright turned the meeting over to Attorney Panciocco, Attorney for Gramatikas'. Attorney Panciocco began by saying that, she would like to address a few comments that Attorney Bennett made. Attorney Panciocco believed that, there seems to be a suggestion that the Board of Selectmen's decision relies upon actions and over conduct that they claim Mr. and Mrs. Gramatikas engaged in. One of those was that they put a shed over the line, and they used part of lot 101 and 103 as if it were their own. This is not a merger by conduct, and he is suggesting that it was. The other concept that came out was that Gary had a commonality and control of lots 101 and 103. In the real estate title world, there is two concepts relating to title, there is legal title which is specifically what your deed says and then there is equitable title which is when someone has possession of the property.

Attorney Panciocco wanted to go back to the title question that Attorney Keith raised last time we met. Attorney Panciocco stated that, last time we met Attorney Keith advised the Board and she agreed that, to merge lots you would have to have common ownership. The name on the deed has to be exactly the same. Attorney Panciocco began to explain in chronological order that, in 1962, lots 102 and 104 went to Arthur and Marguerite, in 1964, lots 101 and 103 went to Arthur and Marguerite. Attorney Panciocco added that, she was given a tax map by Attorney Bennett dated 1969 that shows lots 101, 102, 103 and 104 as a single lot. Attorney Panciocco stated that, back in 1969, the town had already merged the lots as a single parcel. In the decision made by the Board of Selectmen, they admitted that the lots were merged by I don't know whom. In 1977, they conveyed lots 102 and 104 to Gary and Pamela Gramatikas. Marguerite died in 1979, leaving legal title to lots 101 and 103 to Arthur Gramatikas. Arthur died in 1980, and when somebody dies who owns real estate in their name, title vest immediately according to the Will as directed or as directed by the intestacy if there is no Will. Attorney Panciocco explained that the residuary went to all three (3) of Arthur Gramatikas' children. His Will was silent as to who owned lots 101 and 103 because it was if they did not own them. They were never deeded out of Arthur's name legally in the Registry of Deeds although they were owned by Gary, Dennis, and George together. There was no common ownership so they could not be merged them either. Gary and Pamela Gramatikas thought they owned these lots but did not have a deed to them. So, it wasn't until 2007, title vested in Gary, Dennis' heirs, and George.

Attorney Panciocco went on to say that, in the town's own file, after an inquiry from Mrs. Gramatikas, all of this information was explained to the town by the Wadleigh firm, but nothing was done. After Gary recovered because he was ill at the time they looked into this further. In 2019, Mr. and Mrs. Gramatikas asked Accurate Title to look into the title

to the lots and then Accurate Title prepared Corrective Deeds after coming to the conclusion that the Gramatikas' did not have title to the property. Attorney Panciocco stated that, Corrective Deeds were an incorrect title. Attorney Panciocco added that, in February 2020, Eric Mitchell submitted an application to unmerge the lots. Basically, Attorney Panciocco stated that, there was never common title until 2020.

RSA 674:39-aa expressly states "lots or parcels that were involuntarily merged prior to September 18, 2010 by a city, town, county, village district, or any other municipality, shall at the request of the owner, be restored to their premerger status" if the request is submitted to the "governing body prior to December 31, 2021" and "no owner in the chain of title voluntarily merged the lots". The Town admits it involuntarily merged the Lots by the early 1980's in its Decision and has produced no evidence to show any owner in the chain of title to the Lots requested the Lots be merged, requiring the ZBA reverse the BOS Decision. This merger by conduct argument has no relevance whatsoever to what the town did in the 60's, 70's or early 80's. Yes, the Gramatikas' put 2 acres on their permit because that's what their tax bill said. The town had already merged the lots and therefore it was written on their tax card. If the town cannot prove that Gramatikas requested these lots to be voluntarily merged, they must be unmerged. Attorney Panciocco believed that, the town has made a valiant attempt to defend themselves as far as not wanting to unmerge lots 101 and 103 but I think they are trying to prevent something that they just don't want to see happen. They don't have any defense or any evidence to support an denial and the merger happened long before any of us knew anything about this and under the terms of the statute I think this Appeal should be granted because I think the Board of Selectmen made an error and relied upon merger by conduct when it doesn't apply because it had absolutely nothing to do with the town's merger. At this time, Attorney Panciocco thanked the Board.

Mr. Wright thanked both the town's Attorney Bennett and the Gramatikas' Attorney Panciocco for their thorough presentation. The Board has been provided with all of the documents some of which are referenced by town counsel and counsel for the applicant. All of them have been provided the various exhibits and materials prior to the September hearing so all Board members have had that material to cross reference with the discussion and reference that has been made here. Mr. Wright stated that, the Board's authority from a Zoning Board of Adjustment's perspective comes from RSA 674:33, II, which says "the ZBA may reverse or affirm, wholly or in part, or modify the decision of the Board of Selectmen ("BOS"), and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official (BOS) from whom the appeal is taken." So, because the ZBA has the same powers as the BOS keeping in mind that, the town has the burden of proof to show the ZBA that anyone in the chain of title, voluntarily merged the lots in question. Mr. Wright pointed out to the Board members that, we want to make sure that they fully discuss and understand the law here in addition to any questions and facts. The courts have been very clear that they will look to the ZBA as having the first opportunity to path on any alleged errors in administrative decisions. Mr. Wright informed the Board that, if an Appeal is made on the ZBA decision that, the only Appeal is to the Superior Court. With that said, Mr. Wright turned the meeting over to Attorney Keith as counsel for the ZBA. Mr. Wright asked

Attorney Keith if she had any additional thoughts or comments that she has not already communicated to the Board relative to what she has heard this evening.

Attorney Keith believed she heard from the Gramatikas' attorney that they were in common ownership in January 2020. Attorney Panciocco said yes, they became commonly owned after the Corrective Deeds were recorded. Attorney Keith's question to Attorney Panciocco was that the two (2) deeds recorded in January 2020 which one was from Dennis' heirs and one from George to Gary and Pam with rights of survivorship. Attorney Keith believed that, there was another issue but did not believe it was dispositive of anything but she did not see where Gary who owned one-third from the estate going back to 1985, she did not see where Gary deeded his share to himself and Pam. Attorney Keith asked if there was a deed out there that was not recorded perhaps. Attorney Panciocco said that, there is another deed but was not absolutely positive and did not believe it was relevant for the issue that was before the Board. Attorney Keith indicated that, this was a question that she had and believed that the rest of her memo unless the Board had questions and she doesn't think it's appropriate to ask them in front of everyone as a question from her memo would be Attorney/Client Privilege.

Mr. Wright commented that, this is a Public Hearing and wanted to remind the Board to be mindful of the questions they ask and the references they make as they relate to advice from counsel. Mr. Wright reiterated that, the memo sent to the Board is Attorney/Client Privilege and to consider that before asking a question or making a statement as the Board is the only one that has seen that memo and it should remain that way

Mr. Wright moved on to ask if any abutters were present and wanted to speak. None were noted. Attorney Keith wanted to bring to the Chairman's attention that, she thought she heard someone else join the meeting. Mr. Wright asked if anyone else had called in since the start of this meeting. Todd Bedard stated that he was present, and he was alone and consented to being recorded.

Mr. Wright opened the floor up to any ZBA members to ask any questions. Mr. DiPietro commented that he has been looking through the deeds. Mr. Wright asked town counsel that, is there anything inconsistent with somebody who owns abutting or adjacent lots to use or store things on those lots whether it was mowing or storing something temporarily or having a bonfire to jump to the conclusion that there were enough overt acts that would have eliminated a property line but just someone that was utilizing the property that they own. They did not necessarily mean to merge the lots by using the property that way. Attorney Bennett believed that there seems to be some confusion on what RSA 674:39-aa does. First of all, counsel for the Gramatikas' suggested that none of these alleged acts really count because the town had involuntarily merged the lots prior to that for tax purposes. That kind of misses the point of what the statute says, what the statute says is, if there is an involuntary merger for tax purposes, as in this case, then the town has to unmerge it unless an owner in the chain of title has done acts which indicate that they have in fact voluntarily merged the property. Attorney Bennett spoke on behalf of the Select Board that, in their opinion, based on the various conduct of the Gramatikas' there was sufficient evidence to indicate that they had essentially abandoned the property line

between lots 104 and 103 as their backyard for their children to play in. Attorney Bennett also pointed out that, there have never been any monuments placed there. Mr. Mitchell did stake out the property and that was stated in the minutes of the site walk. When you look at the photos, it is clear that they were utilizing the property as a whole and as a continuation of their property. If that is not an act of abandonment of a property line, then nothing would be. There would be no merger ever. A brief discussion ensued between Attorney Bennett and Mr. Wright regarding what has been occurring on the Gramatikas' property. Mr. Wright asked Attorney Bennett that, what if someone put a pool in and it encroached into the other property, would that change your mind and secondly, what if a driveway or a means of egress or access came across an abutting property to join up and someone needed to go over that property to utilize that property, would that be different than what your describing. Attorney Bennett stated that, he wasn't sure it matters what improvements were made on the property, if the Gramatikas' put an inground pool on portions of lot 103, that would be an extension of their residential property. They didn't put a pool in but their sheds back there and they used that area for their kids to play on and they mowed it and they took care of it and used it as an extension of their backyard which is an extension of their use. Attorney Bennett believed it falls within the statute which indicates when you abandon the line and extend your use. Mr. Wright thanked Attorney Bennett. Those subsequent acts by the Gramatikas' is what the BOS decision was based on.

Mr. Wright wanted to ask Attorney Keith if there was ever a question that the town involuntarily merged these lots because there was no commonality or legal title at any point going back in time or was there a time title was a mirror image of these lots such that, the town could have involuntarily merged the lots. Attorney Keith stated that, Arthur and Marguerite owned all four (4) lots from 1964 to 1977 until they deeded lots 102 and 104 to Gary and Pam as joint tenants with rights of survivorship so there was common ownership from 1964 to 1977 and no other time. Attorney Panciocco pointed out Exhibit "G" of the Appeal, you can see all the lots all outlined in red. It is undisputed that this merger took place before Arthur even died. They do not really have a date of when it occurred but all they have is the 1969 tax map that shows they were merged in 1969. So, the conduct is really irrelevant.

Mr. Wright opened it up to the Board members and began with Mr. Vieira. Mr. Vieira wanted to ask Mrs. Rouleau-Cote, Building Inspector a question regarding the septic. Mr. Vieira asked, when they applied for a permit for the septic system and if the lot lines were in place showing all four (4) lots, would that permit have been given under the same circumstance. Mrs. Rouleau-Cote stated that, the septic plan would have been designed for the lot size that was presented so they would have to do all their loading calculations based on the square footage of the lot. The well radius and the septic leach bed placement would have setbacks to property lines. Mr. Vieira asked that, at the time of the application they listed it as 2.38 acres correct. Mrs. Rouleau-Cote said that, the septic that is shown in the file depicts it as one parcel and not four (4) parcels. Mr. Vieira said thank you and that it answered his question. Mr. Mitchell believes that, because the tax map showed it as one lot is why it is shown as one lot which is what the tax map shows. Mr. Mitchell agreed with Mrs. Rouleau-Cote that, the design of the system and the size of

the bed is based on the amount of acreage of the lot and where the well is and how that is placed. Any lot, the minimum requirement for a septic system, you can do a 2-bedroom house on a lot of record even if you do not meet the other requirement. This house is a 2-bedroom house.

Mr. Wright asked Mr. Stuart to comment. Mr. Stuart asked Attorney Bennett, is it the Select Board's position that, at the time of the merger there was unity of ownership of all the lots. Attorney Bennett reiterated what Attorney Keith had said that, the older Gramatikas' owned all four (4) lots from 1964 to 1977 and that Mr. Gramatikas had ownership of all four (4) lots from 1985 on. Mr. Stuart asked when was the Select Board saying there was an involuntary merger for tax purposes. Attorney Bennett believed that they would be able to show it back in 1969 which shows all four (4) lots as one lot. Attorney Bennett pointed out all the tax bills going back approximately 30 years which shows one bill. A brief discussion ensued with regard to the billing and the 1969 tax map.

Mr. Wright asked Mr. Carroll for comment. Mr. Carroll had the same question that if the lots were involuntarily merged in 1969, how can they be transferred anytime after that. Mr. Wright wanted to add to that and welcomed all three (3) attorneys to assist him. In 1969 they were involuntarily merged so how could there have been a deed for half of that property when lots 102 and 104 were transferred leaving lots 101 and 103 in different ownership and then with the ownership only becoming vested in Gary and Pam as recent as 2020. How can things that they have done before that be relevant if the lots were divided up by deed earlier and then only until recently title was transferred. Mr. Wright indicated that, to him it sounds like they are talking about different parcels and not one. Attorney Panciocco wanted to comment and again pointed out that, in 1969 the tax map showed the lots were merged and when the deed went out in 1977, that was an illegal subdivision by deed. That is the simple answer to that. Legal title of lots 101 and 103 were never transferred to Pam and Gary. When Arthur died, his three (3) sons were still alive as there was a residuary clause, everything was left to his three (3) sons in his Will. A brief discussion ensued with regard to common ownership.

Mr. Wright asked Mr. Matte if he had any questions. Mr. Matte stated not at this time. Mr. Wright asked Attorney Keith if there were any questions that they have not asked with regard to assisting our decision making. Attorney Keith did not think so. Attorney Keith commented that, obviously there is some legality between what Attorney Bennett is arguing and what Attorney Panciocco is arguing. Attorney Keith believed she touched on that in her attorney/client privilege memo to the Board. To the extent that, the Board still had questions that they may want to ask them offline or after the meeting. Depending on whether you are going to hold the record open if you had legal questions and were looking too attorney advice. Mr. Wright stated that, if there are legal questions then they would have the ability to go into a non-public session and then come out and there could be no deliberation within that non-public session as it would be strictly for legal answers for legal advice to the extent discussions would have to be in a public meeting and asked Attorney Keith if that was correct. Attorney Keith stated yes, but that, if the Board feels that her memo addresses the issue then they are certainly free to deliberate and go from there.

With that said, Mr. Wright asked the Board for a motion to enter into deliberation unless there are any other questions for the town or the applicant.

Mr. Vieira made a motion to enter into deliberations. Seconded by Mr. DiPietro. The Board entered into deliberations at 9:12pm.

Mr. Wright asked Mr. Vieira what his thoughts were. Mr. Vieira began by saying that, over the years basically from 1969 forward, this property has been treated as one property. There have been applications made for a number of things and that truck body was right on the line and then was dragged over to another property by the owner. In his view, they have treated this property as one property and does not believe there was an issue with the town merging this until now.

Mr. Wright asked Mr. DiPietro to comment. Mr. DiPietro stated that, he heard from the Gramatikas' counsel that the burden of proof was on the town to show that the Gramatikas' had voluntarily merged the lots after they were involuntarily merged. Mr. DiPietro was unsure where they draw the line on what actions constitutes a voluntary merge. It certainly cannot be having a bonfire or building a shed. Mr. DiPietro believed that, the question before them was if any action by the Gramatikas' enough to constitute a merger on their part. He did not see that.

Mr. Wright asked Mr. Stuart. Mr. Stuart commented that, he would not be opposed to obtaining advice from legal counsel and putting this off but that basically the burden was on the town, the Select Board and the other point that is meaningful to him is that if there is not commonality of ownership from 1977 until 2020, then if there is not full common ownership then the acts of potential merger. Mr. Stuart was unsure that the burden has been met based on the facts presented.

Mr. Wright asked Mr. Carroll. Mr. Carroll stated that, he was on the same page as Mr. Stuart. If there was no commonality of ownership, then it does not constitute anything.

Mr. Wright asked Mr. Matte. Mr. Matte said he did not really have any thoughts and thought they may need legal advice on this one.

Mr. Wright commented that, they are able to affirm, deny or modify the decision as they deem appropriate. It is clear that the town has the burden and there are absolutely arguments both ways and he commended the attorneys on both sides as they have argued their side well. Mr. Wright talked about references in various applications for septic, for a garage and for a shed and reference to 2.38 acres. Mr. Wright asked if things would've been different if there were references to lot lines and questions as to setbacks and things that might have had to of been met if whoever was looking at those permits or requests thought differently. Is it possible the applicant simply referenced what the tax card meant and really didn't understand that they were making some sort of assertion against their interest in terms of down the road arguing that there were really four (4) lots. Mr. Wright believed there was proof on both sides but there was one thing that he was struggling with which was the magnitude of the acts and Mr. DiPietro was getting at that

a little bit. There needs to be some line that you cross over that, what you are doing turns into the abandonment of the lines and something less than that. Mr. Wright moved on to say that, if there wasn't common ownership of the property from 1977 to 2020 and in fact at one point there were three partial owners of that property and since they were all family members, they probably were being used knowing that they were family members. Mr. Wright stated that, #1, the acts weren't overt enough or obtrusive enough, #2, there was no commonality of ownership in the period of time that those acts supposedly took place, and, #3, the parties certainly seemed to suggest that there was a recognition of three (3) lots is probably not enough to overcome the town's burden in his mind. Mr. Wright believed they had enough with the memos from counsel, there may be other issues with the title and things that need to be cleared up to do what needs to be done but in terms of the merger question, he believes he has enough to make a decision unless someone feels really strongly that there are other legal questions and not us discussing it. Mr. Wright asked the Board if anyone thought differently or want to discuss this further and if not, they can come out of deliberation.

Mr. DiPietro made a motion to exit out of deliberation. Seconded by Mr. Carroll. The Board entered into deliberations at 9:25pm.

Mrs. Rouleau-Cote wanted to make a couple points while she has the file in front of her and began by saying that, she had a question regarding the tax map labeled 1969 because, up until sometime in the early 1980's these were definitely two (2) lots. There was the lot that Pamela and Gary owned and the lot that Arthur and Marguerite owned which she believed were lots 52 and 53 back on the old maps so she's a little confused with this map that they are referencing that says 1969 because she was unsure it was truly a 1969 tax map. Some time in the early 1980's is when the lots had two prior tax bills and there was a tax bill for lot 52 and a tax bill for lot 53 looking at the property tax records. She just wanted to clarify that a little bit or try to get some clarification on that. Mrs. Rouleau-Cote went on to say that, there is an assumption that the town merged these sometime in 1969 and she did not believe that merger of the two lots were merged sometime in the 1980's whereby a tax bill was paid and something may have gone on there. One of the other questions that comes up and the BOS had this question was, when they do the unmerger, are they really unmerging to create four (4) lots or to create two (2) lots because she was not sure the burden has been shown yet that the town actually merged the lot that Gary and Pam owned and built their house on and the two (2) lots that Arthur and Marguerite owned and recently was transferred. Attorney Panciocco commented that, she believed that the BOS sent them the tax map of which someone hand wrote on it 1969 as they looked at the tax collector records. Attorney Panciocco stated that, the garage straddles lots 102 and 104 and they are not asking for these lots to be unmerged. What they are asking is for lot 101 and 103 to stand alone separate and apart from merged lots 102 and 104. Basically, three (3) lots. Mr. Wright understood what they were asking for was for three (3) lots.

With that said, Mr. Wright stated that, if there are no other questions, he would entertain a motion to vote on this Appeal. Mr. Wright explained that, what they are looking for is the applicant has appealed the BOS decision to reject the request to unmerge the lots so

the decision by the ZBA would be to either grant the applicants appeal and reverse the BOS decision to allow the unmerger of the lots or to uphold the BOS decision and to confirm and ratify the decision to have the lots remain merged. Attorney Keith stated that, that was correct but to remember that they could also modify. Mr. Wright further added that, the applicant is looking to keep lots 102 and 104 as a merged solitary and single lot and to unmerge lots 101 and 103. With that Mr. Wright stated that, he would entertain a motion.

Mr. DiPietro made a motion to grant the applicant's request for Appeal to unmerge the involuntarily merged lots 101 & 103, seconded by Mr. Vieira.

Mr. Wright asked if there was any further discussion. Mr. Carroll wanted clarification if this would be granting the appeal. Mr. Wright stated that, Mr. DiPietro's motion would be granting the appeal and reversing the BOS decision.

Mr. Vieira voted to Deny the applicant's Appeal to unmerge the lots and to affirm the BOS decision, Mr. Carroll voted to Grant the applicant's request for Appeal to unmerge the lots and to reverse the BOS decision, Mr. Stuart voted to Grant the applicant's request for Appeal to unmerge the lots and to reverse the BOS decision, Mr. DiPietro voted to Grant the applicant's request for Appeal to unmerge the lots and to reverse the BOS decision as he did not believe the BOS proved their burden, and Mr. Wright also voted to Grant the applicant's request to unmerge the lots and to reverse the BOS decision as he did not believe the burden was met by the town and did not believe the acts of the owner rise to the level of overt actions that would cause a voluntary merger and he also find the lack of common ownership from 1977 to 2020 problematic and does not support the merger of the lots. A vote was taken and, the Appeal was granted by a vote of 4 to Grant and one to Deny.

Mr. Wright believed the Board was through this case and indicated that, counsel was aware of procedure in terms of the ability to request rehearing's and appeals. At this time, Mr. Wright thanked everyone for their time and the discussion ended at 9:35pm.

At this time, Mr. Wright moved on to the next case and asked Ms. Royce to read the case into the minutes for the record.

Case #20-12

**Christopher & Amy Lynn Raychel
380 Manchester Road – Tax Map 28, Lot 3
Zoned Residential Two**

Reference: Article 4, Section 4.06(6) – Lot Size, Frontage, Yards and Height

Applicant is Requesting: A Variance from Article 4, Section 4.06(6) to allow the construction of a 12ft by 24ft addition (one bedroom and one bathroom) to be within the setback in a Residential Two zone.

Ms. Royce informed the Board that they were actually exceeding lot coverage and turned the discussion over to Mrs. Rouleau-Cote for clarification. Mrs. Rouleau-Cote began explaining that, the 12ft by 24ft addition does meet all of the setbacks. The relief that they are requesting is that this addition is going on a structure that is non-conforming on another angle of the house, but the addition will be conforming to the setbacks. They will also be exceeding their lot coverage as the ordinance allows 5% lot coverage and they will be at 5.75%.

At this time, Mr. Wright asked the applicant to read through his application for the minutes and asked Mrs. Rouleau-Cote that they do not need a Variance from setbacks. Mrs. Rouleau-Cote said that was correct. Mr. Raychel began by explaining what he was proposing to do and read his application into the minutes for the record. A brief discussion ensued with regard to the request. Mr. Wright asked what the total acreage for the lot was. Mr. Raychel commented that it was .56 acres.

Mr. Wright asked Mrs. Rouleau-Cote if she had anything to add. Mrs. Rouleau-Cote pointed out that, the property owner has gone through the process of having a septic design done for the extra bedroom and he does have state approval for that.

Mr. Wright asked if there were any abutters present. None were noted. Mr. Wright has if there were any questions from the Board Members. None were noted. Mr. Wright stated that, hear no questions or comments that he would entertain a motion to vote on this application as amended for a Variance to increase lot coverage to 5.75%.

Mr. Vieira made a motion to vote on the amended application not to exceed 5.75% lot coverage for 380 Manchester Road, Tax Map 28, Lot 3, seconded by Mr. DiPietro. Mr. Vieira voted to Grant as he believed all five factors have been met, Mr. Carroll voted to Grant as he believed all five factors have been met, Mr. Stuart voted to Grant as he believed all five factors have been met based on the lot size, Mr. DiPietro voted to Grant as he believed all five factors have been met, and, Mr. Wright also voted to Grant as he believed all five factors have been met. A vote was taken and, all were in favor and the motion passed.

Mr. Wright stated that, the Variance was Granted and informed Mr. Raychel that there was a 30-day Appeal period. Mr. DiPietro asked if they needed to make a motion to increase the non-conformity of the lot. Mrs. Rouleau-Cote explained that, she did put that in her Zoning Determination but in this case, it was really just increasing the lot coverage. Mr. DiPietro thanked Mrs. Rouleau-Cote for the clarification. Mr. Wright said that, that was a good question and thanked Mr. DiPietro for picking up on that and understands Mrs. Rouleau-Cote's reasoning and analysis. Mr. Raychel thanked the Board and Mr. Wright also thanked the applicant for his patience and the discussion ended at 9:50pm.

**Case #20-13
Bruce Gogolen
520 Dearborn Road – Tax Map 11, Lot 27
Zoned Rural**

Applicant is requesting a Variance a variance to permit construction of a residential garage to be 26 feet from the property line where 50 feet is required in a Rural zone. (Variance previously granted by the ZBA on September 26, 2013) (Article 4, Section 4.05(4) – Lot size, Frontage, Yards and Height)

Mr. Wright was unsure when he joined the teleconference if he stated if he was alone or not. Mr. Gogolen commented that, he was alone and that he consented to being recorded. With that said, Mr. Wright asked Mr. Gogolen to go through his application for the record. Mr. Gogolen read his application into the minutes for the record. Mr. Wright commented that, he recalled this application and asked Mr. Gogolen if the request was a mirror image of what was previously requested in 2013 and nothing has changed. Mr. Gogolen said yes, and nothing has changed.

Mr. Wright asked if there were any abutters present. None were noted. Mr. Wright asked Mrs. Rouleau-Cote if she had any questions or comments. Mrs. Rouleau-Cote said no, there are no changes from the first time, it was just to have him come through the process again because it did expire and at that time, it was only good for a year. Mr. Wright pointed out that, it is now two-years for substantial completion.

Mr. Wright asked the Board Members if they had any questions or comments. None were noted. With that said, Mr. Wright stated that, he would entertain a motion to vote on the application as presented.

Mr. Vieira made a motion to vote on the application as presented tonight for 520 Dearborn Road, Tax Map 11, Lot 27, seconded by Mr. Carroll. Mr. Vieira voted to Grant as he believed all five factors have been met and there are no changes from the Variance previously granted in 2013, Mr. Carroll voted to Grant as he believed all five factors have been met, Mr. Stuart voted to Grant as he believed all five factors have been met, Mr. DiPietro voted to Grant as he believed all five factors have been met, and, Mr. Wright also voted to Grant as he believed all five factors have been met and there are no changes from the Variance previously granted in 2013. A vote was taken and, all were in favor and the motion passed.

Mr. Wright reiterated what he had stated to the last applicant that, there was a 30-day Appeal period where abutters or interested parties could appeal the ZBA decision. Mr. Gogolen thanked the Board and Mr. Wright thanked Mr. Gogolen for his patience.

Minutes

Mr. Wright asked to take up the minutes of September 22, 2020.

Mr. DiPietro made a motion to accept the minutes of September 22, 2020 as written, seconded by Mr. Vieira.

Mr. Wright conducted a roll call vote to approve the meeting minutes for September 22, 2020.

Mr. Vieira voted to approve the minutes, Mr. Carroll voted to approve the minutes, Mr. Stuart voted to approve the minutes, Mr. DiPietro voted to approve the minutes, Mr. Matte voted to approve the minutes, and, Mr. Wright also voted to approve the minutes. A vote was taken and, all were in favor and the motion passed.

New Business/Other Business

Mr. Wright commented that, there was no prospect of meeting in person in the near future and believed this was going to be the new normal. Mr. Wright pointed out that, Ms. Royce had asked him what the cut off was for the number of cases that the ZBA wanted to take in and that he informed her to limit it to four (4) cases. Ms. Royce informed the Board Members that they had three (3) cases for November. Again, Mr. Wright stated that, they would not be meeting in person for the foreseeable future. Mr. Wright thanked the Board for a job well done on the first case as both sides did an awesome job.

Mr. Wright also pointed out that, they needed to do the Election of Officers and asked Ms. Royce to put it on the November and December Agenda and that they would take up the election in January 2021.

Adjourn

Mr. Vieira made a motion to adjourn, seconded by Mr. Carroll.

Mr. Matte voted to adjourn, Mr. Carroll voted to adjourn, Mr. Vieira voted to adjourn, Mr. Stuart voted to adjourn, Mr. DiPietro voted to adjourn, and Mr. Wright also voted to adjourn. All were in favor, the motion passed unanimously, and the meeting stood adjourned at 10.20 p.m.

Mr. Wright again thanked Ms. Royce and Mrs. Rouleau-Cote for putting this all together and being there to support the Board in making this process smoother. At this time, the meeting ended.

The Zoning Board of Adjustment will not be holding a meeting during the month of July and the next scheduled meeting would be for November 17, 2020 at 7:00 pm. Due to Governor Sununu's Emergency Order #12 on March 23rd, all meetings will be held via teleconference until further notice.