

**Town of Auburn
Zoning Board of Adjustment
February 25, 2014**

Present: Jim Lagana, Vice Chairman, Mike DiPietro, Peggy Neveu and Elizabeth Robidoux, Members. Jeffrey Benson, Robert Beaurivage and Kevin Stuart, Alternate Members. Minutes recorded by Denise Royce.

Also Present: Carrie Rouleau-Cote, Building Inspector; Chuck Joy, Jeff Porter and Allan Villeneuve, Conservation Commission.

Absent: Mark Wright, Chairman.

Mr. Lagana called the meeting to order at 7:03 p.m. Mr. Lagana informed every present at tonight's hearing that the Chairman, Mark Wright is not here this evening so he will be chairing the meeting in his absence. Mr. Lagana stated that there were three cases before the Board tonight of which one will be continued. Mr. Lagana began by introducing the Board members and asked Ms. Royce to read the case into the minutes for the record.

Case #14-01

Rehearing for Richard and Sharyn Ramos

530 Bunker Hill Road – Map 5, Lot 82

Zoned Residential Two

Continued from January 28, 2014

A Rehearing of the Zoning Board of Adjustment decision granted on November 19, 2013 for a variance from Article 3, Section 3.01 a use not defined to allow a second dwelling unit on a single lot in a Residential One zone and later amended by the applicant to request a variance regarding Article 2, Section 28 to allow a detached accessory dwelling unit in a Residential Two zone.

Mrs. Robidoux asked the Chairman if he wanted her to step down from the Board. Mr. Lagana said that in order to alleviate some of the confusion they had the last time, the very same members that voted on the original case and the continuance of the case will continue but there is no need for Mrs. Robidoux to step down. Mr. Lagana asked Mrs. Robidoux to stay seated with the Board and looked forward to her input on the matter. Mr. Lagana read the names of the voting members to everyone present tonight which are, Mike DiPietro, Peggy Neveu, Jeff Benson, Kevin Stuart and himself.

Mr. Lagana began by saying that the Conservation Commissions minutes for January 7, 2014 were included in their package and therefore asked Mr. Joy, the Conservation Commission Chairman to speak on behalf of the Conservation Commission. Mr. Joy commented that he did not have the minutes in front of him but that if they were presented with a plan that included an addition onto the existing plan than they would approve that because they have done that in the past. They would not consider suggesting an additional dwelling be placed on that lot but would go with an addition attached. To have two dwellings on the lot would create more disturbance than an addition to the existing building. Mr. Lagana's thought that by having the dwelling further away from the wetlands would create a much less disturbance than an addition would but wanted Mr. Joy to clarify. Mr. Joy stated that that was not the case because the

existing house is where the disturbance lies now where they mow the lawn, where the kid's play, where you park your car so by them placing an addition onto the existing structure where the septic system is now would make them move the septic system further away out of the wetland buffer. At this time, Mr. Lagana thanked Mr. Joy for his input regarding this case.

Mr. DiPietro informed everyone that he did attend the Conservation Commission meeting in January and wanted to make sure he understood that the Conservation Commission was agreeable to additional activity within the buffer. Mr. Joy reiterated that the activity is existing now on the site and that by adding an addition to the existing structure would not increase the activity because it is already occurring now.

Mr. Lagana asked Mr. Stuart if he had any questions. Mr. Stuart indicated that he had read the Conservation Commission minutes and it fills in some of the blanks. Mr. Stuart had no further questions.

Mr. Lagana asked Mr. Benson if he had any questions. Mr. Benson did not.

Mr. Lagana asked if there were any further questions from either the applicant or the appellant. Mr. Dingman had a comment that the existing septic system currently would not have to be moved until it is in failure which could be five or ten years. The presentation that the Ramos' felt it was the least impact to the property by placing it further away from the pre-existing structure which predates the wetlands ordinance. Mr. Dingman indicated that the Shoreland Protection Act where this is a body of water that is greater than 10 acres contiguous which is jurisdictional under the Shoreland Protection Act. The state does take the onus that the further away from a body of water you can be the happier they are. Mr. Stuart asked Mr. Dingman if they had conversations with the state. Mrs. Rouleau-Cote commented that this body of water is not a designated water under the Shoreland Protection. Mr. Dingman said no. Mrs. Rouleau-Cote pointed out that it was a dammed pond. Mr. DiPietro commented that he did look it up and it was not on the list.

Attorney Mitchell commented that unfortunately the Ramos' entered into this innocently and did not mean to suggest that there was any subterfuge but the bottom line is that the premise of the application was that this was going to be much better for the wetlands. The premise of underlying the Board's prior approval was that but now that the Board has taken a good step by sending it over to the Conservation Commission and now we have learned differently. What the Conservation Commission has brought to this Board undermines the Board's earlier findings on many of the variance standards.

Mr. Lagana asked if there were any further questions. None were noted. Mr. Lagana mentioned an article from the Union Leader that points out the challenges of either financing or selling one lot with two buildings on it and if anyone was interested in reviewing it they are more than welcome to it.

Mr. Cote commented that there was nothing in our zoning ordinance that allows two separate dwelling units on a single lot but we do allow an in-law apartment. Mr. Lagana added Accessory Dwelling Unit. Mr. DiPietro asked if they needed to go into deliberations. Mr. Lagana stated that he would appreciate it if someone would make that motion.

Mr. DiPietro made a motion to enter into deliberations. Mrs. Neveu seconded the

motion and the Board entered into deliberations.

Mr. Lagana asked the Board members if they'd like to offer anything. Mr. Benson began by saying that when they made the decision based on the least problems and talked heavily about the water and setbacks and referenced trying to think how Conservation Commission would perceive it and what the Board thought would be best based on the information that they had. Mr. Benson believed that by getting the input from the Conservation Commission that this Board thought these cases were reviewed automatically and they are not and with knowing that now believed that they would have acted differently. There is another option for the addition than what they proposed previously.

Mr. Stuart commented that he was also giving a great deal of weight on what the Conservation Commission had to say and one of the main premises on how he voted on this was working to protect the wetlands to the extent they could. The applicants were trying to do the best they could but unfortunately the way it's gone through the process hasn't been as smooth as it could but in the end like Mr. Benson said we've learned a little bit about getting input from everyone has been helpful. Again, getting Conservation Commission testimony and their minutes in telling us what we should be doing here.

Mr. DiPietro agreed with Mr. Stuart and informed everyone that he did attend the Conservation Commission meeting held in January and before this case there were other cases dealing with developers and that the Conservation Commission was very diligent about looking at the big picture. They were very conscious of wetlands through all the cases that night. Mr. DiPietro left with the impression that the Conservation Commission wished they could have been there on this case that night and that the encroachment has already been done and understood it to be that they would rather have an attachment to the existing house than a second dwelling unit. Mr. DiPietro stated that he had no problem giving them a variance for an attached dwelling unit.

At this time, Mr. Lagana wanted to thank the Conservation Commission for their input as they did appreciate it. Mr. Lagana stated that they believed that all cases were reviewed by the Conservation Commission and that in the future the Board would be certain to include the Conservation Commission with a package of each case presented to the Zoning Board of Adjustment.

Mr. Lagana spoke to the Board that they have had a couple of unwelcomed surprises on this case of which his disappointment was well recorded at last month's hearing that they found out about the appeal 9 hours before the December hearing and then they found out that the Board of Selectmen had retained outside counsel in their appeal. With that in mind, Mr. Lagana informed the Board how he would vote on this matter and that he would vote to grant the appeal and that he agreed with Attorney Mitchell after very careful consideration that the application does fail both the spirit of the ordinance and the hardship criteria. Mr. Lagana was also concerned that they even suggested that the applicant significantly changed their request without proper notice to the town's people and the abutters. So with that in mind, Mr. Lagana believed that their process was flawed and wanted to apologize to the applicant, the town and to the Board members.

Mr. DiPietro made a motion to come out of deliberations. Mr. Benson seconded the motion and the Board exited deliberations.

Mr. Lagana asked if there were any comments from either the Board or anyone present tonight. Attorney Mitchell wanted to know whether the appropriate motion going forward because the variance as a result of granting the motion for rehearing that the variance application is back on the table and believes that the appropriate motion now would be to deny the variance. Mr. Stuart agreed with Attorney Mitchell. A brief discussion ensued on what they were granting a motion for which the Board granted a motion for rehearing which then basically overturned, accepted the motion for rehearing which nullified the prior action which was to grant the rehearing. Now we are back at a rehearing which is basically starting over from scratch. Mr. Lagana stated that it was to grant or deny the variance.

Mr. Dingman asked if it would be in the best interest if the applicant withdraws his application and they will be back before the Board with an attached proposal. Mr. Lagana stated that they would prefer to act upon this variance especially considering that this variance was granted as a result of significantly changing the original request. Everyone agreed and the Board continued.

Mr. DiPietro made a motion that they vote on the application as presented for a use not defined to allow a second dwelling unit on a single lot in a Residential Two zone, 530 Bunker Hill Road, Tax Map 5, Lot 82, Case #14-01, seconded by Mrs. Neveu. Mrs. Neveu voted to deny as it is contrary to the spirit of the ordinance, Mr. DiPietro voted to deny based on the information given by the Conservation Commission, Mr. Benson voted to deny based on the information given by the Conservation Commission, Mr. Stuart voted to deny because he did not believe that they met the criteria on #2 and #5 and based on the information given by the Conservation Commission and Mr. Lagana also voted to deny based on the application failing the spirit of the ordinance and the hardship criteria. The application has been denied.

Mr. Lagana informed the applicant that the application has been denied. Mr. Dingman informed the Board members that they would be back before the Board with a plan showing an attached dwelling unit and that they would be going before the Conservation Commission as well. Mr. Lagana and the Board members thanked the Ramos' and Mr. Dingman and informed the applicant to attach a plan to the application to be reviewed by the Conservation Commission as well as the Building Inspector.

Case #14-02

Rehearing for Craig & Kathy Zamoida

563 Londonderry Turnpike, Tax Map 4, Lot 11-2-3

Zoned Residential Two

A Rehearing of the Zoning Board of Adjustment decision granted on December 17, 2013 for a variance from Article 4, Section 4.06(6), to allow a one lot subdivision with frontage to be ten (10) inches less than the 200 feet required in a Residential Two zone.

Mr. Lagana informed the Board and any interested parties that they were in receipt of a letter from the Zamoida's attorney and a letter from the attorney for EJS Trust which both are in agreement with the request for a continuance until the next hearing date which would be Tuesday, March 25, 2014. Mr. Lagana also informed everyone that Mr. Wright also informed the Board that he had a conflict with the case and would have to recuse himself from this case so he will be chairing this case.

Mr. Lagana asked who was sitting in on this case last time. Mr. Stuart recused himself from this case. Ms. Royce indicated that the voting members were Mrs. Robidoux, Mr. DiPietro, Mr. Lagana and Mr. Benson. Mr. Lagana elevated Mr. Beaurivage to full voting status on this case.

Mrs. Robidoux made a motion to TABLE this hearing until March 25, 2014, 563 Londonderry Turnpike, Tax Map 4, Lot 11-2-3, Case #14-02, seconded by Mr. Beaurivage. Mrs. Robidoux voted to grant, Mr. Beaurivage voted to grant, Mr. DiPietro voted to grant, Mr. Benson voted to grant and Mr. Lagana also voted to grant. The motion passed in the affirmative.

Case #14-03

Old Candia Road Properties, LLC

David Dulac

205 Old Candia Road, Tax Map 13, Lot 14-1

Zoned Commercial Two

Applicant is requesting a Special Exception to convert existing single commercial service establishment to a multi-unit commercial service establishment in a Commercial Two zone, Article 4, Section 4.07(5).

Mr. Lagana explained the rules of procedure for tonight's hearing. At this time, Mr. Lagana asked Mr. Dulac to read his application. Mr. Dulac read his application into the minutes for the record. Mr. Lagana asked Mr. Dulac if would be taking on a tenant. Mr. Dulac indicated that he was attempting to. At this time, the Board reviewed the plan presented with the application. Mrs. Robidoux asked Mr. Dulac if he had any set tenants going in. Mr. Dulac did not know. Mr. Stuart asked how many units. Mr. Dulac said three (3). Mr. DiPietro asked what the square footage of the building was. Mr. Dulac stated it was 8,200 square feet and right now it's only him at the location. Mr. Lagana pointed out that the request was permitted by special exception in that zone. Discussion ensued with regard to who the tenants would be. Mr. Dulac did not know but indicated that he would like possibly office workers in the front and maybe an electrician or a plumber in the rear. Mr. Stuart asked if there was office space there now. Mr. Dulac said yes there was 2,200 square feet of office space. Mr. Lagana commended Mr. Dulac on how well he kept the building as he drives by there often. Mr. Lagana asked how there would be no further impact to abutters. Mr. Dulac believed his business is probably the worst being there and believed that anyone else would be less intrusive.

Mr. Lagana asked Mrs. Rouleau-Cote if new tenants would require a site plan. Mrs. Rouleau-Cote stated that it would require Planning Board approval for the modification with discussion regarding parking and hours of operation and the like. Mr. Lagana asked Mrs. Rouleau-Cote if it was her opinion that this would be a safeguard to abutters. This would be another opportunity or layer of review at the Planning Board level because there will be some sort of outside activity with new tenants. Mrs. Rouleau-Cote pointed out to the ZBA that this might not always stay in the same ownership as he may sell so those provisions would be laid out in a site plan review. The Board understood.

Mr. Jennato of 185 Old Candia Road who is an abutter stated that Mr. Dulac's equipment is close to his back yard and that he does not have a bad relationship with Mr. Dulac but was concerned with noise and truck smell from the diesel and asked if Mr. Dulac was increasing the size of the building. Mr. Lagana said no there would be no increase in the size. Mr. Jennato did point out that they did find a good fit with the veterinary clinic.

Mrs. Robidoux asked Mrs. Rouleau-Cote if the town had a process for a change of use if a tenant left after site plan review. Mrs. Rouleau-Cote explained that if an electrician is in there and then decides to leave and then a plumber goes in, there is no difference but if it went from an electrician to an auto body then we would check to see if it was permitted in that zone and we would typically suggest that they go before the Planning Board for an informal meeting. If it's a like for a like it would not be a big deal and the Planning Board would designate a number of spots for unit A, unit B and unit C. Mr. Lagana believed they would all have to go back before the Planning Board and that this is allowed by Special Exception in that zone. Mrs. Rouleau-Cote indicated that if the Special Exception is granted then Mr. Dulac would have to go before the Planning Board to get a site plan approved for three (3) tenants and those tenants would have to comply with whatever uses are allowed in the zone. Any changes would have to be sent back to the Planning Board. A brief discussion ensued with regard to different types of tenants.

Mr. Beaurivage asked if he wanted to do condos down the road. Mrs. Rouleau-Cote informed Mr. Beaurivage that that would be a subdivision.

Mr. Benson pointed out that under uses permitted it has "Commercial Service Establishment" and under uses permitted by Special Exception it has "Multi-Unit Commercial Establishment" and not a "Multi-Unit Commercial Service Establishment" and believed it should be the same. A brief discussion ensued with regard to the Commercial Service Establishment.

Mrs. Rouleau-Cote and the Board members discussed the process of the ZBA and then the Planning Board procedure. Discussion also ensued with regard to outside storage and the like. Mr. Benson asked about the limit to the number of units. Mrs. Neveu pointed out that he has asked for three (3) so they could condition it to say no more than three (3). Mr. Lagana stated that they could say no more than three (2) and that the Board is allowed to condition it. Mr. Lagana indicated that if he was going to make the motion he would condition it on the application as presented with no more than three (3) units and conditioned upon site plan review with the Planning Board.

At this time, Mr. Lagana elevated Mr. Beaurivage to full voting status for this case. Mr. Lagana asked if they needed to enter into deliberations. Mrs. Robidoux reiterated that the use was allowed by Special Exception but would be more comfortable knowing what type of tenant would go in there. Mr. DiPietro stated that they could not control that.

Mr. DiPietro made a motion to vote on the application as presented conditioned upon Planning Board site plan review and approval and to limit the units to three (3) for 205 Old Candia Road, Tax Map 13, Lot 14-1, Case #14-03, seconded by Mr. Beaurivage. Mrs. Robidoux voted to grant, Mr. Beaurivage voted to grant, Mrs. Neveu voted to grant, Mr. DiPietro voted to grant and Mr. Lagana also voted to grant. The motion passed in the affirmative.

Mr. Lagana informed Mr. Dulac that there was a 30 day appeal period and that abutters or interested parties could appeal this decision within 30 days. Mr. Lagana also informed Mr. Dulac that he had two (2) years to act on this. If he is unable to complete this within two (2) years then it would be considered abandoned and he would have to come back before the Board. Mr. Dulac thanked the Board and exited the meeting.

General Business

Mr. Lagana asked Ms. Royce when the next meeting would be. Ms. Royce indicated that the next meeting would be held on Tuesday, March 25, 2014. Mr. Lagana reiterated that they had a case continued until March to be aware of.

Mr. Lagana asked the Board members if anyone had any new business. Mr. Stuart had new business to discuss and began by saying that he had drafted some proposed changes to the ZBA Rules of Procedures with regard to a request for a Motion for Rehearing and passed out copies of the current Rules of Procedures and the proposed changes suggested. Mr. Stuart believed that when the Board receives a Motion for Rehearing that the applicant should be granted the opportunity to know that there is a Motion for Rehearing regarding their case. So the only change in the regulations is Section 5.4 – Motion for Rehearing which change reads as follows: *“Within 30 calendar days after a final order or decision by the Board, any party to the action or proceeding before the panel may apply for reconsideration and rehearing in respect to any matter in the action or proceeding, or covered or included in the order. The Board may also reconsider a decision on its own motion. The 30 day period for filing a request for rehearing begins on the date following the date upon which the Board voted to approve or deny the application or appeal. Any non-applicant party filing a motion with the Board shall simultaneously copy the applicant with the motion”* also adding a section for Specifications and Action on Motion. This was taken from the Department of Labor regulations. Mr. Lagana asked Ms. Royce to copy the Chairman, Mr. Wright with this suggestion. Mr. DiPietro added that legal counsel should be included as well. Ms. Royce understood to copy Mr. Wright and legal counsel with the suggested changes. A brief discussion ensued with regard to the change. All the Board members agreed with the change.

Mrs. Robidoux believed that a section should be included on the ZBA application that includes, *“Any application seeking relief from wetlands shall be copied to the Conservation Commission upon submittal.”* The Board members were all in agreement with the above changes.

Mrs. Rouleau-Cote suggested that a discussion with legal counsel regarding the difference between “Appeal” and “Rehearing” because there is some confusion between the two. Ms. Royce agreed along with Mr. Lagana.

Mr. Lagana asked if there was any new business. None was noted.

Minutes

<i>Mrs. Robidoux made a motion to accept the minutes of January 28, 2014 with one change, seconded by Mr. Stuart. The motion passed in the affirmative.</i>
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Adjourn

<i>Mrs. Robidoux made a motion to adjourn, seconded by Mr. Stuart. All were in favor, the motion passed unanimously and the meeting stood adjourned at 8:20 p.m.</i>

The next ZBA Hearing is scheduled for March 25, 2014 at 7:00 pm and will be held at the Town Hall, 47 Chester Road.