

UNAPPROVED MINUTES
Town of Auburn
Zoning Board of Adjustment
June 28, 2016

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

Also Present: Carrie Rouleau-Cote, Building Inspector and Jeffrey Porter, Conservation Commission.

Absent: Mark Wright, Chairman, Peggy Neveu, Alternate Member.

Mr. Lagana called the meeting to order at 7:00 p.m. and introduced the Board members and explained the rules of procedure for tonight's hearing to those present. Mr. Lagana pointed out that Mark Wright, the Chairman of the Board was absent tonight and that he would be chairing the meeting tonight.

Mr. Lagana went on to update everyone that Mrs. Robidoux has given her resignation of which the Board regretfully accepted and wanted to thank her for her time on the Board and her contribution to the town. Mr. Lagana also informed everyone that Mr. Stuart, who had previously been an alternate will become a full voting member of the Board, however, it has not been fully confirmed yet but that he would be elevating Mr. Stuart to full voting status for tonight's hearing. Mr. Lagana also elevated Mr. Beaurivage to full voting status for tonight's hearing.

Mr. Lagana informed the applicant that in the event that their application is granted tonight that there was a 30 day appeal period where abutters or interested parties could appeal the Zoning Board of Adjustment's decision tonight. Once the 30 day appeal period is up and no one has appealed the ZBA decision that the applicant would then have two (2) years to have the project complete.

At this time, Mr. Lagana asked Ms. Royce to read the first case into the minutes for the record.

Case #16-07
George A. Chadwick, P.E.
Bedford Design Consultants, Inc.
On Behalf of Robert Merrill
391 Pingree Hill Road, Tax Map 2, Lot 18-1
Zoned Rural

Applicant is requesting a Variance from Article 4, Section 4.05(4), to create a non-conforming lot consisting of 50 feet of frontage instead of the required 300 feet as part of a two (2) lot subdivision in a Rural zone.

Mr. Chadwick presented on behalf of the applicant, Mr. Merrill, who is the owner of the parcel. Mr. Chadwick stated that they were before the Board tonight to request a Variance from Article 4, Section 4.05(4), which requires that a parcel in the rural zone to have 300 feet of frontage. Mr. Chadwick pointed out that they would like to subdivide a 56 acre parcel of land into two (2) lots of which one lot would have 5 acres with 300 feet of frontage and meeting all the zoning requirements for a rural zone and a 51 acre parcel of land with a substandard frontage of 50 feet. Mr. Chadwick stated that he has been involved with this parcel of land for a number of years now and that they were before the Planning Board with a conceptual plan back in March of 2015 with a cluster development of 14 lots with two (2) conventional lots. Since that time, there was a developer involved in the project and showed the Board members what was presented to the Planning Board at that time. Mr. Chadwick further pointed out to the Board that since that time, the town voted to eliminate cluster zoning and in doing so has put a hardship on Mr. Merrill on what he could do with land because it is very irregular in shape. Mr. Chadwick went on to say that the property has 364 feet of frontage along Pingree Hill Road and that it does have frontage on Silver Hill Road which is a Class VI road which does not constitute frontage in Auburn. What they would like to do is subdivide the parcel into two (2) lots. At this time, Mr. Chadwick went through the criteria and read the application into the minutes for the Board members and everyone present. Mr. Chadwick indicated that the home would be setback approximately 900 to 1,000 feet from Pingree Hill Road. Mr. Chadwick explained that they could get about four (4) lots out of it and maintain the three (3) acres and 300 feet of frontage but want to just subdivide it into two (2) lots. Mr. Chadwick further explained how it would be within the Spirit of the Ordinance and how it would be in the best interest of the public. Mr. Chadwick added that they would also be maintaining a 125 foot setback from wetlands for McDuffie Brook/Cohas Brook and talked about a small finger in the field that they would like to maintain a 75 foot setback for the new lot. In conclusion, Mr. Chadwick indicated that they also did all the detailed topo and flagged the wetlands with Peter Schauer and then asked the Board if they had any questions.

Mr. Lagana asked Mr. Chadwick to elaborate on Criteria #2 that the Variance would not be contrary to the public interest and where they stated that "the construction of this home will prevent additional homes to be constructed in the field as could be..." and asked if that was because the home would be sited in an area that would potentially block the rest of the parcel. Mr. Chadwick said yes and pointed out the edge of the wetlands and if there was a 125 foot setback that it would prevent them from going any

further moving forward. Mr. Lagana asked the Board members if they had any further questions. Mr. Stuart asked if they did a conventional subdivision could they get more than two (2) lots. Mr. Chadwick indicated that they could get four (4) lots and showed the location of the four (4) lots and that they would meet the minimum requirements with regard to frontage and acreage for each lot but that it would be very costly for four (4) lots.

Mr. Lagana explained that the approval of this subdivision would result in the Board creating a non-conforming lot and obviously that was quite a difficult hurdle to get over for a zoning board. Mr. Lagana then asked Mr. Chadwick what would be the approximate number of feet on Silver Hill Road that would need to be improved in order to go in off of Silver Hill Road. Mr. Chadwick stated that it would be 1,200 to 1,200 plus feet. Mr. Lagana asked what the rough estimate would be to improve Silver Hill Road. Mr. Chadwick said roughly \$400,000 to \$500,000 and that ledge would raise the price up a little bit.

Mr. DiPietro asked what the purpose was for showing the 14 lot plan to the Board. Mr. Chadwick said that if it were developed two (2) years ago it would show the number of lots that they could get with a cluster subdivision if the cluster had not been voted out. Mr. DiPietro asked if they were to do a conventional subdivision could they do six (6) or eight (8) lots. Mr. Chadwick said no and explained why. A brief discussion ensued with regard to the potential number of lots and frontage.

Mr. Benson asked when Mr. Merrill purchased the lot. Mr. Merrill stated that he purchased all three (3) lots in 2002. Mr. Chadwick showed the Board members the location of the three (3) lots that Mr. Merrill owns. Discussion ensued with regard to the frontage of all three (3) lots.

Mr. DiPietro wanted to make a motion to go into deliberation. Mr. Lagana indicated that he would prefer to hear from abutters and asked Mrs. Rouleau-Cote if she had anything to add. Mrs. Rouleau-Cote stated that she would like the abutters to comment first.

At this time, Mr. Lagana stated that he would like to hear from abutters and interested parties and reminded everyone that this was a public hearing and asked that they announce who they were and their location.

Mr. Brickley of Pingree Hill Road had a question for Mr. Merrill and asked if he would be taking down the existing house and if only two (2) houses would be built. Mr. Merrill said that he would not be taking down the existing house but would be selling it and that he would be building on the 51 acres for himself and his family. Mr. Brickley stated that he liked the field and asked where the house would be placed on that new lot that would be directly across the street from him. Mr. Chadwick stated that the house would be approximately 900 to 1,000 feet back from the road with one house in the front. No thought of blasting at this time.

Mr. Glynn of Silver Hill Road and asked about Silver Hill Road being a Class VI road. Mr. Chadwick explained that from where the sign is posted and back is a Class VI road. Discussion ensued with regard to where it was a Class V road and turns into a Class VI road was approximately 500 feet. Mr. Glynn asked if it would be setting precedence. Mr. Lagana explained that he had stated this before and was not sure if it would set precedence or not.

Mrs. Smith of Pingree Hill Road and she has lived there for over 50 years and that her backland abuts his backland and was unhappy to hear about the 50 foot frontage because she gave two (2) acres to her daughter and she needed to have 100 feet of frontage so she had to give her more land than she wanted to.

Mr. Lagana asked if there were any other abutters or interested parties that would like to speak. None were noted.

At this time, Mr. Lagana stated that Mrs. Rouleau-Cote was the town's Code Enforcement Officer and turned to Mrs. Rouleau-Cote for comment. Mrs. Rouleau-Cote started out by saying that she would be speaking with regard to her zoning determination and such. Mrs. Rouleau-Cote commented that, the fact that the cluster subdivision regulation has gone away is going to affect everybody in town from this point forward and not just this applicant and believed that this argument would be difficult to make this property unique. A few points she wanted to point out to the Board members was that she did not believe that this property was unique as there were several other properties within the Town of Auburn that were long and narrow. Mrs. Rouleau-Cote explained that the Land Use Coordinator as well as herself receives several questions about the possibilities of subdivision and that the Planning Board has seen several people on an informal basis about creating non-conforming lots so this is something that does come across quite often. Mrs. Rouleau-Cote indicated that, most of the time the Planning Board has pointed out the reasons why that these requests would not receive Zoning Board approval and historically anyone can go back and look. Mrs. Rouleau-Cote went on to say that, the fact that this lot has several other contiguous lots owned by the same owner believed that it made the hardship a little bit less because he does have other options that he could potentially do as well as having the frontage on Silver Hill Road that he could work with that could be another option. Mr. Lagana asked Mrs. Rouleau-Cote to elaborate on that a little. Mrs. Rouleau-Cote pointed out that Mr. Merrill does own three (3) contiguous lots with approximately 900 feet of frontage of which one lot has a horse barn on it with an apartment above it which is a two (2) acre lot and believed it was done when the rural zone did not have the three (3) acre minimum with 300 feet of frontage because it does have two (2) acres with 200 feet of frontage. Mrs. Rouleau-Cote went on to talk about the discussion of possibly putting an easement on the property and was unsure if this could be something that Mr. Merrill could be bound to or if it was put into a Conservation Easement which would possibly limit some of the activities on the property. Mrs. Rouleau-Cote stated that there were a lot of properties in town that come to us on a regular basis asking to create a second lot that would be non-conforming.

Mr. Lagana asked Mr. Porter of the Conservation Commission for comments. Mr. Porter stated that they have had this piece of property come before them several times and pointed out that there was a substantial amount of wetlands, steep slopes and ledge on this property and believed that there was a lot of room to work with in there.

Mr. Lagana asked Mr. DiPietro if he wanted to maintain the motion to go into deliberation. Mr. DiPietro said yes.

Mr. Chadwick asked the Board if he could submit something before they entered into deliberation. Mr. Lagana said yes. Mr. Chadwick pointed out that there were comments made with regard to steep slopes and wanted to submit a steep slope analysis of the property and stated that whatever was in red was the steep slope. Mr. Lagana thanked Mr. Chadwick and proceeded with the motion to enter into deliberation.

Mr. DiPietro made a motion to enter into deliberation, Mr. Beaurivage seconded the motion. The Board entered into deliberation at 7:36pm.

Mr. DiPietro began by saying that it was very interesting and that he remembered back a few years ago that a homeowner came in to subdivide a lot that was 580 feet and wanted to make one with 300 feet of frontage and the other one with 280 feet of frontage which would make one lot non-conforming. Mr. DiPietro pointed out that it was a large piece of land and that they denied it. Mr. DiPietro stated that he had a problem with this at the time but could go both ways on this as he can see the hardship. Mr. DiPietro that if Silver Hill Road were to go through to some of the larger lots in the back that it would be a shame to put one house on this parcel but understood that it was a lot of money to put a road in.

Mr. Beaurivage began by saying that Mrs. Rouleau-Cote's points were well taken and that the word precedence was a concern he had.

Mr. Lagana asked Mr. Benson and Mr. Stuart if they had anything to add to this. Mr. Benson wanted to know what the age of the existing house was and believed that it was difficult because there was other access even though it was a Class VI road that would have to be upgraded and reiterated what Mr. DiPietro said that there was no doubt that in time Silver Hill Road will be upgraded as there were some pretty big parcels of land out there. Mr. Benson further pointed out that 300 feet of frontage was put there for a reason and that 50 feet did not even come close and questioned if there was a true hardship considering that Mr. Merrill owned three (3) contiguous lots.

Mr. Stuart noted that he did hear both sides and that he did hear some testimony from abutters that he took to be concerned about having a 50 foot frontage lot and talked about the substantial justice and that the application is talking about these other abutting lots but that it was not formally a part of the plan. One of his concerns was if there were no contiguous lots of ownership it may be a little bit closer. Mr. Stuart talked about the deed restriction and believed if this were to go through that it would be an option but with regard to the substantial justice did not believe that there was evidence

that this was the only option. Mr. Stuart also pointed out that they did hear some comments from abutters voicing their concern with regard to the 50 feet of frontage which he took to be an impact on the neighborhood and values.

Mr. Lagana wanted to echo everyone's comments this evening and that to him a precedent is just another decision and it just happens to be the first time that they make that decision. Mr. Lagana stated that he was concerned about a precedent but no more than he was concerned about any other decision that they make and if it's defensible and the Board can stand behind their decision and if it's the first time then that is just the way the numbers go. Mr. Lagana further pointed out that he was only concerned about setting a precedence if it's an ill-considered decision and as they have heard from the Code Enforcement Officer and as Mr. Porter has mentioned a few minutes ago, that although having two (2) houses on 50 something acres was in keeping with the rural zone. Mr. Lagana stated that the fact is that there are other methods to achieve entrance in here without creating this 50 foot frontage on this unique parcel. Mr. Lagana went on to say that, precedence aside, he would have a hard time approving this application without exploring other opportunities going in through some of the other lots or even maybe going through the developed portion of Silver Hill Road. Mr. Lagana pointed out what Mr. Stuart had said about the contiguous lots which he believed made reference to that lot and would be relative thereto. Mr. DiPietro also agreed with Mr. Lagana.

Mr. Lagana asked the Board members if there were any other comments and if there were no further comments that he would entertain a motion to come out of deliberation.

Mr. Stuart made a motion to enter into deliberation, Mr. DiPietro seconded the motion. The Board entered into deliberation at 7:44pm.

Mr. Lagana explained to everyone present that they have heard what was discussed while the Board was in deliberation and if anyone had any questions or comments on anything that was discussed that they could feel free to make them at this time.

Mr. Brickley commented that on Silver Hill Road that a lot of that land was wetlands and that his concern was not the 50 foot frontage and it being only two (2) houses because he did not want to see 14 house development going in there because they bought their house there because it was rural. Mr. Brickley further commented that on Silver Hill Road was very marshy and did not believe that they could develop there. Mr. Lagana commented that two (2) houses on give or take 60 acres was certainly in keeping with the rural environment but that everyone has heard comments from the Board that there may be other avenues or routes to get into the property because of the common ownership of the properties. Mrs. Rouleau-Cote wanted it noted that there would only be four (4) houses and not 14 houses. Mr. Lagana thanked Mrs. Rouleau-Cote for clarifying that.

Mr. Merrill wanted to speak and explained that he had a personal hardship as he did his due diligence and that he went with the cluster and then his developer dropped out at the last minute and called that hardship but at the end of the day he has looked at every possible opportunity that he could and that this was Plan B and that was where he stood. Mr. Chadwick asked Mr. Merrill to explain why he wanted to move out of his existing house. Mr. Merrill began by saying that it was built in 1975 and that when he bought it, it was only him and there were no issues but that now his daughter and he both have bad allergies and the house is just a dust magnet and so his wife and him decided to sell the house and sell the lot in the front and build on the 51 acres and that's where they are right now and if he is denied then he would be back in a couple of months.

Mr. Glynn asked Mr. Chadwick to mark out the two houses would go so that people would know how far back the houses would be from the road. Mr. Chadwick showed everyone on the plan that the house in the front would be approximately 300 feet plus or minus and then the house in the back would be approximately 900 to 1,000 feet. Mr. Glynn asked if there would be one common driveway. Mr. Chadwick believed they could be amendable to doing a common driveway if the town will allow it. Mrs. Rouleau-Cote stated that it was not permitted in our subdivision regulations. Mr. Chadwick pointed out to the Board that this was not a developer trying to make a buck but was a guy trying to stay in the Town of Auburn and get out of a situation to help his family.

Mr. Lagana asked the Board members how they would like to proceed.

Mr. DiPietro made a motion to vote on the application as presented, Mr. Benson seconded the motion. Mr. Beaurivage voted to grant despite his concerns, Mr. DiPietro voted to grant as the hardship has been met but has some concern with setting a precedence, Mr. Benson voted to deny as he did not find a hardship that could not be overcome to use the land, Mr. Stuart voted to deny as the hardship has not been established and did not meet substantial justice, and Mr. Lagana also voted to deny as it did not meet the hardship and the spirit of the ordinance. The application has failed by a vote of 3 to deny and 2 to grant, therefore the application has been denied.

Mr. Lagana reiterated that there was a 30 day appeal period and if he were to make an appeal that they would have to submit evidence that was not submitted at this hearing. Mr. Chadwick and Mr. Merrill both understood and exited the meeting.

At this time, Mr. Chadwick thanked the Board and exited the Public Hearing.

Other Business

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

Minutes

Mr. Benson made a motion to accept the minutes of April 26, 2016 as written, seconded by Mr. Stuart. All were in favor and the motion passed.

Adjourn

Mr. Benson made a motion to adjourn, seconded by Mr. DiPietro. All were in favor, the motion passed unanimously and the meeting stood adjourned at 8:05 p.m.

The next ZBA Hearing is scheduled for July 26, 2016 at 7:00 pm and will be held at the Town Hall, 47 Chester Road unless otherwise noted.