

**UNAPPROVED MINUTES
Town of Auburn
Zoning Board of Adjustment
December 13, 2016**

Present: Mark Wright, Chairman, Jim Lagana, Vice Chairman. Mike DiPietro, Kevin Stuart and Jeffrey Benson, Members. Peggy Neveu, Alternate Member. Minutes recorded by Denise Royce.

Also Present: Jeff Porter, Conservation Commission Chairman. Michael Rolfe, Planning Board Member.

Absent: Robert Beaurivage, Alternate Member.

Mr. Wright called the meeting to order at 7:00 p.m. and introduced the Board members and explained that there were three (3) cases this evening and noted that the applicants or their representatives were present. Mr. Wright explained the procedure for tonight's hearing and asked if anyone had any questions.

Mr. Mitchell stated that he was before the Board tonight regarding two (2) cases in which one they would be requesting to be continued and did not know if the Board preferred him to announce it now or if it did not matter if there were no abutters present. Mr. Wright indicated that he was notified by Ms. Royce that the second case on the agenda was the one you wanted Tabled and stated that they would take the first case and then take the second case which will be read into the minutes and will then ask the Board to make a motion to Table the case until next month and then go onto the third case of which Mr. Mitchell was also here for.

At this time, Mr. Wright asked Ms. Royce to read the first case which was Tabled from October 25th into the minutes for the record.

**Case #16-13
Mirela & Muhamed Durakovic
111 Steam Mill Drive – Tax Map 2, Lot 9-31
Zoned Rural
Tabled from October 25, 2016**

Applicant is requesting a Variance to seek a reduction of the 125 foot wetland buffer as shown on the subdivision plan to expand and square off backyard for future kids to play in a Rural zone. (Article 5, Section 5.06(1))

Mrs. Durakovic began by going through her application for the record. Mrs. Durakovic added that they would be planting fruit trees and also informed the Board members that they have met with the Conservation Commission as well. Mr. Wright pointed out that

they have met with the Conservation Commission on several occasions of which were October 4th and November 1st. Mr. Wright asked Mr. Porter to summarize for the Board what the Conservation Commissions position is or if you have any recommendations or comments. Mr. Porter stated that they have had a couple conversations with the Durakovic's and conducted a site walk out there and what they were given was a sketch from the owners showing how the plan would be laid out. Mr. Porter explained the location of the wetlands and stated that, one of the biggest challenges they had when doing the site walk was that they really couldn't differentiate from the plan that was there it didn't have the well head in the right spot. Mr. Porter talked about identifying how much encumbrance they were going to be expecting to grant with this change. Mr. Porter went on to say that there was a substantial amount of area that is going to have to be reduced. They had concerns about the contours of the land and how the slope would change the direction of flow. Mr. Porter indicated that they were not opposed to the reduction but wanted to see a better set of plans and is willing to work with the homeowners. .

Mr. Wright asked Mrs. Dorakovic if they had a set of plans that maps out what the Conservation Commission is looking for. Mrs. Dorakovic indicated that they have a sketch of what they would like to do with the land but that they did not have an excavation company plan as of yet. Mr. Wright asked Mrs. Dorakovic what type of relief or reduction that they would be asking for here. Mrs. Dorakovic said that they basically decided that where the well is located that they were looking for a reduction of 50 feet. Mr. Porter talked about the location of the well and the fact that they did not have an idea of what the actual reduction was going to be and pointed out the location where the two (2) wetlands bisected and if they could identify where they join then they would have a better idea but we could not tell based on what they had before them. Mr. Wright saw in the application that they had stated that they wanted to square off the backyard for the kids to play and then in the Conservation Commission meeting minutes of October 4th reference was made to the fact that you would like to build a little barn or playhouse to use to store a boat. Mrs. Dorakovic commented that they do not plan to have a structure right now because all they wanted to do now was to level off the backyard and then possibly in the future if they wanted to build it they would have to come back. Mr. Wright noted the fact that Mrs. Dorakovic knew that she would have to come back if and when they decided to build a barn and the like. Mr. Porter talked extensively about the backyard and how it would be mapped out and the fact that there is a lot of ledge and blasting would be out of the question.

Mr. Stuart asked about the contour of the land in the back of the property. Mr. Porter explained what he visualized while out on the site walk and believed it was a challenging piece of property and talked about the berm area. Mr. Porter reiterated that the Conservation Commission did not have a problem with the reduction per say and understood what they wanted to do but the challenging part is to actually work that all in so that it works out well. Mr. Porter talked about trying to figure out the best way to make this work. Mr. Wright indicated that what he was struggling with was a lack of a visual and what the area is on a map relative to the well.

Mr. Wright asked if there were any other questions for the applicant. Mr. Lagana asked about the improvements and cultivation and possible fertilization in a setback kind of contrary to the spirit of having that setback. Mr. Porter said it is and when you look at the grading and talked about the topography and runoff and the reduction of all that and trying to minimize that by native plantings. Discussion ensued between the Board members and Mr. Porter about minimizing the impact and having a real thought out plan.

Mrs. Neveu commented about the Conservation Commission meeting minutes of November 1st, page 4, where the Conservation Commission approved as such “a reduction in the buffer to 100 feet going southwest finger of the wetland to transition to 75 feet at the intersection of the radius around both wetlands with maintenance of grade to maintain natural drainage” and if they can see that drawn up could tell us what’s happening and that the homeowner could work with the Conservation Commission. Mrs. Neveu indicated that if they could see this drawn up it would be helpful because right now they were blind as to what was there. At this time, Mrs. Dorakovic showed the Board members the plan that she had colored and explained what they were proposing to do with the backyard. Mr. DiPietro asked Mr. Porter if the Conservation Commission could work with the homeowner. Mr. Porter stated yes, they would definitely try to work with the homeowner to get the best plans out but their concerns were the amount of tapper and where that tappers going to start and what that grades going to look like and how that will all flow. Mr. Porter further indicated that the well shown on the plan is not where the actual well is. Mr. Porter pointed out to the Board members that if it’s determined that the wetland is not a Level One wetland then it may well be a moot point because if it’s a Level Two wetland then the buffer would be reduced down to 75 feet and if it’s a Level Three then the buffer would be reduced down to 25 feet. A brief discussion ensued with regard to the wetland. Mrs. Dorakovic stated that she measured the well location from the house and also the location of the shed which was a 10 foot by 10 foot shed that was there when they purchased the home. Mr. Porter believed that it needed to be part of the plan and if the Board could grant relief for the blue box on the plan which indicated that area of expansion.

Mr. Lagana asked if it was possible to determine if it was a Level One or a Level Two in the wintertime or would they have to wait until springtime. Mr. Porter believed they would have to wait until spring but asked Mr. Mitchell for his opinion. Mr. Mitchell commented that they could because nothing is frozen yet but it would be a little tougher in winter with two or three feet of snow. Mr. DiPietro believed if the homeowner could work with the Conservation Commission to design this then they could contingent it upon that. Mr. Porter informed the Board members that, for them as an advisory board that they were trying to give the ZBA the best information that they can.

Mr. DiPietro asked what relief Mrs. Dorakovic would be seeking. Mrs. Dorakovic indicated that it was anywhere between 75 feet to 100 feet. Mr. Wright noted that in the worst case scenario as it is 125 feet right now that they only thing a test will tell the applicant would be better for them that if they were granting relief that they are certain to say that it’s no closer than 85 feet if they were seeking 85 feet. Basically, Mr. Wright

informed Mrs. Durakovic to state the specific relief she was looking for to the current wetland assuming that it's a Level One wetland which is 125 feet. Mr. Wright went on to say that it seems like everyone is working together very well but wondered what kind of authority or conditions, does the Board place, with regard to any approval with regard to the dimensional relief. Mrs. Durakovic stated that when they had met with the Conservation Commission that they had agreed to 50 feet from where their well was and then from there it would be a 75 foot reduction. A brief discussion ensued with regard to the Conservation Commission meeting which can be found in the file. Mr. DiPietro believed this would be costly and suggested that Mrs. Durakovic possibly hire an engineer to help out with the planning. Mr. Stuart asked Mrs. Durakovic if they've had an excavator look at this to see if it could be done. Mrs. Durakovic said no.

Mr. Wright began by saying that he's trying to figure out how to grant relief but be comfortable enough that it's the minimum relief requested and that the applicant can utilize the land as they wish and the Conservation Commission gets some input by way of advice or direction as to what's best for the wetland and a fair compromise to allow the applicant to utilize that land and mitigating it at whatever reasonable level that makes sense. Mr. Wright further added that if they had some dimensions to work from and the Board's not hearing from the Conservation Commission that it can't be done.

Discussion ensued with regard to the blue box on the plan Mrs. Durakovic had and what the dimensions they were seeking for relief because this is what the Conservation Commission is having a hard time figuring out. Mr. Lagana commented that the Board has heard several times tonight that there is no plan in place and believed we needed a lot more information in place before we can move forward and totally understood that the applicant certainly deserved the enjoyment of their land and property that he believed there was too much grey area to vote on the case this evening. Mr. Lagana explained that the Board could condition it very heavily tonight but the fact is if something happens and something needs to be moved then they would have to come back before the Board again. Mr. DiPietro agreed with Mr. Lagana's comments.

Mr. Lagana commented that all three (3) cases before the Board tonight were dealing with wetlands.

Mr. Stuart asked whether or not the Board should go into deliberation. Mr. Wright wanted to ask if there were any abutters present first. One abutter was present but did not have any comments. At this time, Mr. Wright believed that they should go into deliberation because there were some discussions that may be helpful.

Mr. Stuart made a motion to enter into deliberations, Mr. DiPietro seconded the motion. The Board all agreed and entered into deliberations at 7:55pm

Mr. Wright began by saying that he believed it was clear that it's something that they are presented with that is less definite than what they've seen and required in the past and shared Mr. Lagana's concerns and was trying to see if there was a way to accommodate an applicant that was before the Board in good faith and has been open

and agreeable and working with the Conservation Commission. Mr. Wright went on to say that this is not something that happens all the time. Mr. Wright agreed with Mr. Lagana's comments that are fair and would like to see a plan that has very specific dimensions that would be coupled with some assessment of the wetlands in terms of what level the wetland is. Mr. Wright asked Ms. Royce why it was tabled from October because he could not recall why or if they simply requested it to be tabled. Ms. Royce indicated that they had requested it to be tabled in order to meet with the Conservation Commission again.

Mr. Wright believed that they should suggest to the applicant to table the case with some very clear instructions of what it is the Board would be looking for to make a decision and vote on it. Mr. Lagana wanted to know if they could table it indefinitely out of convenience to the applicant because he did believe that the applicant is trying to work with the Board and the Conservation Commission and if things can't be done within the next month when they normally table a case at least until April or May.

Mr. Wright explained that the Board could table it until the next month and if they need to table it for another month then they could open the case and then table it because if they table it for six (6) months then people forget so would rather continue it on a monthly basis. At this time, Mr. Wright explained what the procedure would be for the applicant so if they would need to table it for another month.

Mr. DiPietro believed they could give the applicant some direction with regard to what the Board would want to see by showing topography and show what exists now and what is proposed and to show dimensions. Mrs. Neveu also agreed with the need for topography and dimensions. Mr. Lagana believed that things could have changed because this plan was eight (8) years old and things in the area could have changed with regard to drainage and it could quite possibly be a Level Two wetland now and not a Level One and believed this would be something to investigate also. Mr. Stuart agreed and that it would be helpful to the Conservation Commission. Mr. Benson agreed with all the comments made by the rest of the Board members and agreed that without the dimensions and plans that it's difficult.

Mr. Benson made a motion to exit deliberations, seconded by Mr. DiPietro. The Board all agreed and exited out of deliberations at 8:04pm.

Mr. Wright explained to Mrs. Durakovic that she has heard their discussions while they were in deliberation and informed her that the Board would be looking for the plan with the blue lines is a good start but that she just needed to refine it and then to come back to the Board with very specific request with regard to exact dimensions and maybe it's redrawing that one line. Mr. Wright informed Mrs. Durakovic that the Board does not want her to go out and spend a lot of money but suggested that maybe the Conservation Commission could recommend someone and then have somebody go out there and give her an idea on whether or not the wetland status has changed and if so provide the Board with a letter from someone that is qualified and then work it into the

plan. Mr. Wright believed it sounded doable and that all the parties were more than willing to work together.

Mr. Wright further asked Mrs. Durakovic that if she was in agreement that they could continue this case until January and if she wanted to continue it beyond that, that she would need to send a letter to Ms. Royce or an e-mail requesting a continuance until the next hearing. Mrs. Durakovic asked when the next meeting would be. Mr. Wright informed Mrs. Durakovic that it would be held on Tuesday, January 24th. Mrs. Durakovic was unsure if she would be able to attend but understood what was required.

Mr. Lagana made a motion to TABLE the case until the next ZBA Hearing currently scheduled for Tuesday, January 24, 2017 for Case #16-13, 111 Steam Mill Road, Tax Map 2, Lot 9-31, Mr. DiPietro seconded the motion. Mr. DiPietro voted to grant, Mr. Benson voted to grant, Mr. Stuart voted to grant, Mr. Lagana voted to grant, and Mr. Wright also voted to grant. All were in favor, the motion passed unanimously.

Case #16-14

Luis Arteaga

10 Anderson Way – Tax Map 5, Lot 19-5

Zoned Residential One

Applicant is requesting a Variance to request a reduction of the 125 foot wetland buffer to 85 feet to permit lawn and pool area in the side and backyard of an existing house in a Residential One zone. (Article 5, Section 5.04(1)(a))

At this time, Mr. Mitchell requested that the Board Table this case until the next hearing because the Conservation Commission wanted to meet to discuss the site walk that was conducted on Saturday, December 10th at 8:00am as there were only three (3) members that were present for the site walk so with that Mr. Mitchell was requesting the case be continued until the next meeting in January.

Mr. Lagana made a motion to TABLE the case until the next ZBA Hearing currently scheduled for Tuesday, January 24, 2017 for Case #16-14, 10 Anderson Way, Tax Map 5, Lot 19-5, Mr. Stuart seconded the motion. Mr. DiPietro voted to grant, Mr. Benson voted to grant, Mr. Stuart voted to grant, Mr. Lagana voted to grant, and Mr. Wright also voted to grant. All were in favor, the motion passed unanimously.

Case #16-15
MSTimes 2 Property Management, LLC
20 Commercial Court – Tax Map 1, Lot 16-25
Zoned Commercial One

Applicant is requesting a Variance to request a reduction of the 125 foot wetland buffer to 95 feet to permit the construction of a 42 foot by 48 foot car storage addition to an existing building in a Commercial One zone. (Article 5, Section 5.04 (1)(a))

Mr. Mitchell began his presentation by introducing himself and the property owner of 20 Commercial Court which is doing business as Babb Motors and that Mr. Sturgis was present at tonight's hearing. Mr. Mitchell further informed the Board members that the property was subdivided in 1985 and received approval in 1986. Mr. Mitchell added that it most recently received site plan approval back in 1998 with the Planning Board to have the configuration of the parking the way it is today. Mr. Mitchell stated that what they are proposing to do today is to put on an addition that would be 42 feet by 48 feet and pointed out the location for the Board members on a plan provided to each of the Board members. Mr. Mitchell indicated that it was a pre-existing non-conforming use as far as the setbacks to wetlands as the wetlands ordinance did not come into play until 2009. There is a wetland ditch that goes down along the edge of the parking and had spoken with Mrs. Rouleau-Cote and it was determined to be a Level 3 wetland as it was basically a drainage ditch.

Mr. Mitchell stated that the purpose for the addition would be for the storage of vehicles because currently the vehicles are stored outside and believed that the original site plan was approved for up to 70 vehicles to be stored outside. Mr. Mitchell explained that the storage of vehicles inside would be for the purpose of having the vehicles inside as opposed to outside if they were to be worked on long term. The other reason would be for security as there have been parts stolen off of vehicles in the past so it would be both for security as well as convenience. Mr. Mitchell wanted to correct a statement made in the Conservation Commission minutes where it says that the addition would not have electricity as it would have electricity but it just would not be heated as it would be strictly for the storage of vehicles.

Mr. Mitchell further indicated that they have met with the Conservation Commission on two occasions with one being a month ago and one being last week. Mr. Mitchell did not believe there was much opposition with what they were proposing but there was a comment made to see if they could keep the water from the pavement in one area from going to the ditch and they suggested a cape cod berm. They reviewed this and noted that there was already a cape cod berm in place now and so they met with the Conservation Commission again last week and believed that the Board members had the minutes and could see that the Cons Com had no objections. Mr. Mitchell also mentioned that there would not be any increase in runoff.

At this time, Mr. Mitchell began by reading the application into the minutes for the Board. Mr. Mitchell stated that he would be happy to answer any questions that the Board may have at this time.

Mr. Wright asked Mr. Porter if he had any comments. Mr. Porter stated that he did not have any comments. Mr. Wright informed the Board members that Ms. Royce informed him that Mrs. Rouleau-Cote did not have any concerns as well and was unable to attend tonight's hearing.

Mr. Wright asked Mr. Mitchell about the fact that he mentioned a security reason and asked what the other reason was and if it was to basically get the vehicles out of the weather. Mr. Mitchell answered by saying that if a vehicle comes in for a long term fix where the parts are not readily available through the auto parts store and they have to have them shipped and they have to wait for the part to arrive that this way they can just put that car aside and move on to another one. Otherwise, currently they have to put the car back together and store it outside in the weather.

Mr. Benson asked if it would be a one story building. Mr. Mitchell said yes. Mr. Wright stated that Mr. Mitchell gave a good presentation and that it makes a lot of sense and that it was in an area that is hard to argue and that it seemed like a reasonable request.

Mr. Lagana made a motion to vote on the application as presented for Case #16-15, MSTimes 2 Property Management, LLC, 20 Commercial Court, Tax Map 1, Lot 16-25, seconded by Mr. DiPietro. Mr. DiPietro voted to grant, Mr. Benson voted to grant, Mr. Stuart voted to grant as all five (5) factors have been met, Mr. Lagana voted to grant, and Mr. Wright also voted to grant as all five (5) factors have been met. All were in favor, the motion passed unanimously.

Mr. Mitchell thanked the Board members for their time and informed the Board that they would have to go before the Planning Board for site plan approval so abutters will receive another notice at that time.

Mr. Wright informed the applicant and Mr. Mitchell about the two (2) years for substantial approval and the thirty (30) day appeal period where abutters or interested parties could appeal the Board's decision.

Other Business

Mr. Wright asked the Board if there was any old or new business that anyone wanted to discuss.

Mr. DiPietro explained that he had attended a Board of Selectmen meeting where there was a discussion about what they wanted to do at the Wayne Eddows Field and putting in a parking lot and where the buffer to the wetland was only 50 feet. Mr. DiPietro indicated that the town engineer had designed this and they indicated that they would

not be using fertilizers (phosphorus) that 50 feet was adequate to be responsible. Mr. Stuart asked if it was town land. Mr. DiPietro said yes. Mr. Porter explained that the Cons Com has challenged that because there is no plan and this is going before the Selectmen and just agreeing to it. Mr. Porter and the Board members added that we are making homeowners and developers jump through hoops and that it made no sense. Mr. Stuart believed that zoning did not apply to the town and they can basically do whatever they want to. Mr. Porter believed that our own groups need to follow the same suit. Further discussion ensued with regard to what is occurring at Wayne Eddows Field.

Minutes

Mr. DiPietro made a motion to accept the minutes of September 27, 2016 as written, seconded by Mr. Lagana. All were in favor with Mr. Wright abstaining and the motion passed.

Adjourn

Mr. Lagana made a motion to adjourn, seconded by Mr. Benson. All were in favor, the motion passed unanimously and the meeting stood adjourned at 8:30 p.m.

The ZBA will NOT be next ZBA Hearing is scheduled for January 24, 2017 at 7:00 pm and will be held at the Town Hall, 47 Chester Road unless otherwise noted.