

**UNAPPROVED MINUTES  
Town of Auburn  
Zoning Board of Adjustment  
June 20, 2017**

**Present:** Mark Wright, Chairman, Jim Lagana, Vice Chairman. Mike DiPietro, Member. Stephen Carroll, Peggy Neveu & Robert Beaurivage, Alternate Members. Minutes recorded by Denise Royce.

**Absent:** Kevin Stuart & Jeffrey Benson, Members.

**Also Present:** Carrie Rouleau-Cote, Building Inspector.

Mr. Wright called the meeting to order at 7:00 p.m. and introduced the Board members to everyone present tonight and explained the procedure for tonight's hearing.

**Case #17-07**

**Martha Herrick**

**640 Pingree Hill Road – Tax Map 2, Lot 44-3**

**Zoned Rural**

**TABLED from April 25, 2017**

*Applicant is requesting a Variance to allow a 16 foot by 20 foot storage shed to remain in the location it was built onsite within the side setback in a Rural zone. (Article 4, Section 4.05(4))*

Mr. Wright indicated that there were a few items on the agenda this evening and the first case has requested to be tabled until next month because apparently there were some issues with regard to a previous survey that was done when the right of way was built. Mr. Wright pointed out that a structure was built and was pretty close to the road and that it appears that it was built in the right of way and we sent the applicant away with a request for a survey and some specifics with respect to the right of way. Mr. Wright indicated that he was inclined to give the applicant another month to see if we could get them before the Board and if not we will have to start thinking about what kind of information or evidence they would need because we would need to know but at this time he would be agreeable to table it for another month.

At this time, Mr. Wright elevated both Mrs. Neveu and Mr. Carroll to full voting members in Mr. Stuart and Mr. Benson's absence tonight. Mr. Wright also wanted to point out for the Board that the last two (2) hearings have been out of cycle because of scheduling and that the next meeting to be held in July on the fourth Tuesday of the month which will be July 25<sup>th</sup>.

Mr. Wright went on to say that with that elevation that he would entertain a motion to table this until next month.

***Mr. DiPietro made a motion to TABLE the case until July 25<sup>th</sup>, 2017 for Case #17-07, 640 Pingree Hill Road, Tax Map 2, Lot 44-3, Mrs. Neveu seconded the motion.***

Mr. Wright noted that an abutter would like to speak and allowed the abutter the opportunity to speak at this time. The abutter asked why the Board was tabling this case. Mr. Wright explained that the applicant would like some time to complete the survey that was requested by this Board. The abutter indicated that this was the second time that he has lost time out of work to make it to this meeting and this was the second time that it has been tabled and was very upset that the Board was considering tabling this case another month and asked if the applicant presented anything to indicate that they were working on a survey. Mr. Wright pointed out that they have made a request that they are having issues with the survey that was done before the right of way was built and if that is enough for this Board to grant an extension then they would do that. Mr. Wright did not want to open this case up for any kind of discussion due to the applicant not being present tonight. The Board continued to hear the abutters concern with what has been going on with this particular property. Mr. Wright informed the abutter that the applicant has stated that they have ran into some issues with the survey and did not know if it was true or not but wanted to give them the benefit of the doubt and that it would get tougher and tougher as they go along. At this time, Mr. Wright suggested that, next time before the abutter comes all the way up from Worcester that he call the town hall and speak with Denise and ask her if there has been any indication that the applicant has requested another extension and then they could make the decision on whether to make the trip or not.

The abutter suggested to all the Board members that they take a ride by the property and to take a look at the dump that this has become and the 18 foot shed that is sitting right on the edge of the road with trash everywhere. Again, it was suggested that the Board take a ride by the property in question to see what was there. Mr. Wright believed that a vast majority of the Board has already driven by the property in question.

Again, Mr. Wright wanted to be very clear that he was not going to take any testimony tonight. The abutter asked the Board if they were questioning the survey that was done over a decade ago along with the multiple surveys that have been done. Mr. Wright acknowledged the abutters frustration and some of the comments made was well outside of the Board's jurisdiction and purview and believed it was a civil matter. Again, Mr. Wright pointed out that personally that if another month goes by that the burden becomes greater for the applicant to get additional extensions because they would not allow this to continue for months and months on end.

It was asked what the timeframe was for the applicant to request another extension and when should they call to see if the applicant has requested another extension. Mr. Wright indicated that they have to formally request an extension in writing. The abutters have informed the Board members that it has progressively gotten worse since the last

meeting. Mr. Wright stated that if there are any other zoning violations that they should contact the Code Enforcement Officer and ask them to go by to see if there is anything going on that should not be going on. The abutter thanked the Board members for their time.

Mr. Beaurivage asked the Mr. Wright if it would be appropriate to inform the applicant that the extension will be made provided that the survey information is presented at the July 25<sup>th</sup> meeting. Mr. Wright believed that the Board could put any additions on the request for extension that the Board wants. Mr. Wright pointed out that there was a motion and a second and asked the other Board members if they had any other questions or comments at this time. Mr. Lagana began by saying that, when this case was first scheduled way back in March or April and that he was sitting in as Chairman in Mr. Wright's absence that they asked for an extension even before testimony was given and the Board granted it. Mr. Lagana went on to point out that eventually when the case was heard in April or May that he was absent and it was extended until tonight and that his concern is whether the Board is being treated in good faith or just simply buying time. Mr. Lagana stated that he certainly appreciates the concerns of the speakers before the Board tonight but the problem he sees right now is that the Board is in waist deep right now and if the Board refuses the extension this evening then the person continues to practice this out on the property. Mr. Lagana went on to say that he agreed with Mr. Beaurivage that the Board acts in good faith by granting the extension and that the Board should put some sort of proviso that after 3 or 4 months of delays and extensions that on July 25<sup>th</sup> it's time to provide that testimony and get that survey brought before the Board. The Board discussed what the Board would like to place for a condition. Mr. Wright stated that he would rather deal with this once rather than going 3 or 4 more months. Mr. Lagana stated that it was exactly what he was trying to say that by failing to grant the extension would buy the applicant more time so they grant the extension with the proviso that the survey be available to them by July 25<sup>th</sup>. Mr. Wright indicated that it would be in their motion and minutes and that when Ms. Royce relays to the applicant that the Board will be expecting real and substantial progress and quite frankly he was getting the sense from the Board that they were looking for very significant information to move this along next month. Mr. Wright further added that it would be very difficult to continue this case next month so they will want to be present so if the Board votes on this case as it was presented. Mrs. Neveu wanted to make it clear that they would need to have a certified licensed surveyor. Mr. Wright believed they understood what the Board was looking for and what they needed to move forward and if anyone on the Board wants to add a finer point on what the Board was looking for. An abutter stated that he assumed it was the expectation of the Board that what the Board was looking for was a certified licensed surveyor and not him going out with a transit and a hand drawing correct. Mr. Wright informed the abutter that it was his understanding that they were working with a licensed land surveyor and asked Ms. Royce if he was correct. Ms. Royce said yes.

Mrs. Marzloff wanted to suggest that the Board require that the applicant provide a plan prepared by a licensed land surveyor in the State of New Hampshire because they should be very specific because they may not know what the Board is looking for. Mr.

Wright agreed. The abutter asked if the applicant has gone to the town and obtained any prior surveys that were done. Mr. Beaurivage explained that it was incumbent upon the surveyor to go to the town and obtain all the information that the town has with regard to town boundaries and so forth and it's not incumbent upon the applicant. Mr. Wright did not know what they would present and that Mrs. Marzloff made a good point with what we are asking for precisely. A brief discussion ensued with regard to what was required for the applicant to obtain. Mr. Carroll indicated to Mr. Wright that he believed in one of the meeting minutes that it was perfectly clear what the Board was asking for from the applicant.

Mrs. Rouleau-Cote wanted to point out to the Board members that the survey is only one little piece of the puzzle that ultimately the Board will be given information as to where the shed sits relative to the property line. The Board is still going to have to decide what type of relief they will want to grant because there is no question in anyone's mind that the shed was constructed within the 50 foot setback. The path that the applicant has been led down that the Board is focusing tonight on the survey but ultimately that is one little piece of the pie because this Board is going to have a bigger decision to make and ultimately this property owner is spending some money on a survey that potentially the shed will have to be moved anyways. Mr. Lagana added that there was no question that the shed was in the right of way. Mrs. Rouleau-Cote felt that the applicant should have been present at tonight's hearing making the request in person to answer questions and to hear the concerns of abutters.

With this in mind, Mr. Wright asked the Board members if they wanted to make an amendment to the motion previously made. Mr. DiPietro requested to make a motion to retract the prior motion.

***Mr. DiPietro made a motion to Retract the previous motion made for Case #17-07, 640 Pingree Hill Road, Tax Map 2, Lot 44-3, Mrs. Neveu seconded the motion. All were in favor, and the motion was retracted.***

***Mr. DiPietro made a motion to allow the applicant another 30 days until next month's meeting to provide the Board with a Certified Plot Plan for where the shed currently sits on the lot to move forward with his application***

Mr. Carroll wanted to amend the motion to include that the applicant shows proof of hiring a New Hampshire Licensed Certified Surveyor within a specific timeframe so that he does not come within 30 days of the original stipulation. Mr. Carroll further indicated that the applicant will need to show within a two (2) week timeframe that he has hired a NH Licensed Land Surveyor and if he does not provide these two (2) things prior to the next meeting that the Board will take action. Mr. Carroll's belief is that they need to negotiate both sides in fairness.

Mr. Wright asked Ms. Royce to read the motion back and Ms. Royce read as follows: "Mr. DiPietro made a motion to grant an extension to allow the applicant time to get a certified plot plan to show where the shed sits on the property and then Mr. Carroll

made a friendly amendment to include that it be a NH Licensed Land Surveyor and that they show within two (2) weeks proof that they hired a licensed land surveyor.” Mr. Carroll explained that, this way the surveyor can state that he could not get out there within two (2) week’s timeframe and that the Board will know that the applicant has actually engaged in obtaining a surveyor. Mr. Wright believed they should get to the next meeting and give them a road map of what is needed and if they don’t meet it then the Board will make their decision. Mr. Carroll wanted to retract the second half of his addition to the motion where it states a NH Licensed Land Surveyor because he believed they were certified and not licensed. Mr. Beaurivage indicated that they were licensed.

Mr. Lagana wanted to add that the Board would like to see all structures on the property and not just the shed but the septic, well and driveway curb cuts.

The final motion is as follows:

***Mr. DiPietro made a motion to grant the extension to allow the applicant another 30 days until next month’s meeting (July 25<sup>th</sup>) to provide the Board with a Certified Plot Plan for where the shed currently sits on the lot to move forward with his application. Mr. Carroll added that it be a NH Licensed Land Surveyor and that they show within (2) weeks proof that they hired a NH Licensed Land Surveyor. Mr. Lagana also added that the Board would like to see all structures located on the property and not just the shed but to include the septic, well and approved driveway cuts. Seconded by Mrs. Neveu. All were in favor, the motion passed unanimously.***

Mr. Wright asked Ms. Royce to notify the applicant and to prepare a letter to be sent to the applicant. Mr. Wright also asked Ms. Royce to send him and Mr. Lagana a copy of the draft letter so they could review it. Ms. Royce understood and stated that she would get it done.

In conclusion, Mr. Wright informed everyone present that this case, Case #17-07 has been Tabled until July 25<sup>th</sup>.

#### **Case #17-14**

**Jonathan L’Abbe**

**113 Hooksett Road – Map 31, Lot 19**

**Zoned Commercial Two**

*Applicant is requesting a Variance from Article 4, Section 4.06(6), to allow an Accessory Dwelling Unit to be less than 30 feet from the side setback in a Residential Two zone.*

Mr. Wright elevated both Mr. Beaurivage and Mrs. Neveu to full voting status for this next case.

Mr. L'Abbe read his application into the minutes for the record and explained that the proposal is to extend the Accessory Dwelling Unit approximately 7 feet into the side setback. Mr. L'Abbe also informed the Board members that there was only one tree that would have to be removed and then once the structure is built that they would be planting some arborvitae shrubs for privacy. Mr. Wright explained that the Board approved the Accessory Dwelling Unit last time and asked for clarification on the amount of relief that Mr. L'Abbe was looking for. Mr. L'Abbe stated that it was about 7 feet.

At this time, Mr. Wright asked Mrs. Demirjian if she had any questions or comments with what Mr. L'Abbe is proposing. Mrs. Demirjian commented that from the past meeting that the only thing they were concerned about was making sure that there was some sort of landscaping barrier. Mrs. Demirjian added that there was already vegetation back there and she had asked Mr. L'Abbe what the plan was and if they were removing the vegetation and he informed her that they were only removing one tree. Mrs. Demirjian stated that they had a pretty substantial investment with a swimming pool and stuff in their backyard and their main concern was maintaining some privacy back there and not only for us but for them as well.

Mr. Donckers stated that Mr. L'Abbe had mentioned putting in a row of arborvitae the length of the house and that was Mr. Demirjian's main concern. Mr. Donckers further added that Mr. Demirjian was in agreement with the addition as long as the trees were planted for a buffer so if that was one of the conditions of approval that he was sure that they would be happy. A brief discussion ensued with regard to the addition. Mrs. Rouleau-Cote wanted to clarify that the applicant was before the ZBA for the use to be able to have an Accessory Dwelling Unit and that he is now before the Board members seeking a variance for relief of the side line. Mr. L'Abbe stated that he had a drawing but it was not a professional drawing. Mr. Wright believed that they would want to say "no closer than" and asked Mr. L'Abbe if he was prepared to give a precise measurement. Mr. Wright thought that if they said "no closer than 22 feet from the property line" that it would give him some leeway. Mr. Wright then asked Mr. L'Abbe about the condition to plant the arborvitae and how many. A brief discussion ensued with regard to removal of the one tree and the planting of arborvitae. Mrs. Rouleau-Cote commented that she wanted to caution the Board about specifying a number of trees because it becomes a concern on her end because what if the trees die and then their asking for the trees to be replaced and this was not commercial property and is private property that the Board is talking about. Mrs. Rouleau-Cote and Mr. Wright talked about when they have someone reclaim a wetland buffer.

At this time, Mr. DiPietro asked Mr. L'Abbe if he could see the plan even if it wasn't a professional drawing. Mr. DiPietro asked to have a copy for the file as he was ready to make a motion.

***Mr. DiPietro made a motion to grant the applicant a variance to be no closer than 22 feet to the property line and not 25 feet as shown on the plan and to provide a landscaping plantings of arborvitae consisting of the length of the house to***



***provide a buffer for Case #17-14, 113 Hooksett Road, Tax Map 7, Lot 25-4, Mr. Beaurivage seconded the motion. Mr. Beaurivage voted to grant, Mrs. Neveu voted to grant, Mr. DiPietro voted to grant, Mr. Lagana voted to grant as the five (5) criteria have been satisfied and, Mr. Wright also voted to grant as he believed the five (5) factors have been met by the applicant. All were in favor, the motion passed unanimously.***

Mr. Wright explained to the applicant that he would be getting a notice of the Board's decision and that there was a 30 day appeal period where someone could appeal the Board's decision.

## **Minutes**

At this time, Mr. Wright moved on to the approval of minutes for May 16, 2017.

***Mr. Lagana made a motion to accept the minutes of May 16, 2017 as written, seconded by Mr. DiPietro. All were in favor, and the motion passed.***

## **Other Business**

Mr. Wright ended the discussion and indicated that he would entertain a motion to adjourn.

## **Adjourn**

***Mr. DiPietro made a motion to adjourn, seconded by Mr. Beaurivage. All were in favor, the motion passed unanimously and the meeting stood adjourned at 7:52 p.m.***

The next ZBA Hearing is scheduled for July 25, 2017 at 7:00 pm and will be held at the Town Hall, 47 Chester Road.