

**UNAPPROVED MINUTES**  
**Town of Auburn**  
**Zoning Board of Adjustment**  
**October 24, 2017**

**Present:** Jim Lagana, Vice Chairman. Mike DiPietro & Kevin Stuart, Members, Peggy Neveu & Robert Beaurivage, Alternate Members. Minutes recorded by Denise Royce.

**Absent:** Mark Wright, Chairman. Stephen Carroll, Alternate Member.

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

Mr. Lagana 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. Mr. Lagana proceeded to inform the applicants that, if their case is granted that there was a 30-day appeal period where an abutter or interested party could appeal the ZBA decision tonight.

Mr. Lagana elevated both Mrs. Neveu and Mr. Beaurivage to full voting members tonight. At this time, Mr. Lagana asked Ms. Royce to read the case into the minutes for the record.

**Case #17-18**  
**Kathy & Rick Clement**  
**90 Cedar Crest Lane – Tax Map 9, Lot 28-1-13**  
**Zoned Residential One**

*Applicant is requesting a Variance to allow a 14-foot by 20-foot shed within the side setback in a Residential One zone. (Article 4, Section 4.06(6))*

Mr. Clement presented his application to the Board members and also informed the Board about how his property sits and the reason for choosing the area. Mr. Clement explained the topography and location of his driveway as well as a stone wall that is approximately 12 to 14 feet high. Mr. Clement also presented the Board members some photos of the area he would like to use for his shed. Mr. Clement read his application into the minutes for the record. Mr. Clement explained that he has lawn equipment and it would allow him to store stuff that he did not want within the garage and that it would be easier to locate the shed on the side where the garage is located. Mr. Lagana thanked Mr. Clement for his presentation and went on to ask if there were any abutters or interested parties who would like to speak. None were noted.

Mr. Lagana asked if there were any comments from the Board. The Board had no comments. Mr. Lagana asked how the Board would like to proceed.

***Mr. DiPietro made a motion to vote on the variance application as presented and referencing the plot plan presented tonight for the shed location. Article 4, Section 4.06(6) for Case #17-18, 90 Cedar Crest Lane, Tax Map 9, Lot 28-1-13, Mrs. Neveu seconded the motion. Mr. Beaurivage voted to grant, Mrs. Neveu voted to grant, Mr. DiPietro voted to grant, Mr. Stuart voted to grant and Mr. Lagana also voted to grant. The Board members unanimously believed the five (5) factors have been met by the applicant. All were in favor, the motion passed unanimously.***

Mr. Lagana reminded Mr. Clement that there was a 30-day appeal period and that if he wished to begin that it would be at his own risk.

### **Case #17-19**

**Kenneth & Jennifer Remington**

**371 Chester Turnpike – Tax Map 11, Lot 9-1**

**Zoned Residential Two**

*Applicant is requesting an Appeal from an Administrative Decision – Interpretation of Building Official who has determined existing detached ADU does not meet criteria of non-conforming use based on lack of evidence that ADU was lawfully existing at time of adoption of Ordinance and permits were lawfully issued. Article 2, Section 2.02(28) & (62); and, a Variance to maintain a detached Accessory Dwelling Unit at the property under Article 14.09 of the Zoning Ordinance in a Residential Two zone.*

Attorney Laura Dodge of McLane, Middleton in Manchester, NH presented on behalf of Kenneth and Jennifer Remington. Attorney Dodge began by asking Mr. Lagana if he wanted her to read the whole application as it was very lengthy. Mr. Lagana asked Attorney Dodge to read the application only into the minutes for the record. Attorney Dodge asked Mr. Lagana if he wanted her to address the Appeal of an Administrative Decision first or the Variance but would defer to the Board on how they would like to proceed. Mr. Lagana believed that it would be appropriate that the Board address the Appeal of an Administrative Decision first because in the event that the Appeal is granted then the Variance becomes Moot. Attorney Dodge began going through the application and explained that the ADU was a one-bedroom apartment over the garage/barn. Attorney Dodge explained how it was subdivided and how the lot become Tax Map 11, Lot 9-1. Attorney Dodge believed the barn had been built in 1977 although there was not a record of the permit in the file. Attorney Dodge stated that they were told that it was lawfully constructed and that the owner at the time was Samson Construction who built the barn. The property was then conveyed to Harold Towne and Harold Towne was the one who came before the Board to subdivide the two lots. He obtained a permit to build the 3-bedroom home which now had two structures on the lot. Attorney Dodge indicated that while Harold Towne was constructing the home in 1989 that he was utilizing the barn as an ADU over part of his business utilizing it for a family member to stay there. Mr. Towne conveys the property to the Remington's in 1995 at which time it was marketed and advertised as having a great set up for an in-law apartment as a detached barn with an in-law above it with one-bedroom and one-bathroom. The Remington's have owned

the property for 22 years and have been taxed by the town as two separate structures and have paid taxes on the two structures since that time until they received a Notice of Violation letter from the Building Inspector saying that it was not permitted to be used as such. Attorney Dodge stated that she has been working with the Building Inspector and apparently the lack of permit in the file is certainly an issue. Attorney Dodge wanted the Board to consider that, when the barn was built back in 1977 what the permit requirements were then and understood there was a box of unidentified building permits as there was not a lot of information on these permits. Basically, Attorney Dodge believed that the Remington's bought the property under the pretense that an ADU existed on the property and they have not expanded it but have continually maintained the property beautifully. Attorney Dodge also indicated that the Remington's have also been continually paying taxes on the two-structures. Mr. Lagana asked Attorney Dodge why both the house and the barn are described as a one and three-quarter cape. Mr. DiPietro asked if the barn was showing to have a one-bedroom one-bathroom ADU. Attorney Dodge said yes. Mrs. Neveu asked if the ADU has been occupied continuously since the Remington's have owned the property. Attorney Dodge stated that she could speak for the Remington's and yes, the ADU has been occupied continuously for 22 years they have owned it and that when she spoke with Mr. Towne that she stated that he used it as his business and a dwelling for his son. Attorney Dodge could not speak for Mr. Samson but only that he used it for his construction business.

Mr. Stuart asked Attorney Dodge if the barn and the house had separate septic systems. Attorney Dodge said yes. Mr. Stuart asked when it was put in. Attorney Dodge stated that the septic design for the house shows the house but there is no separate septic design on file for the barn so they do not know when that system was put in. Mrs. Rouleau-Cote wanted a chance to comment on this. Mr. Beaurivage asked if there were two separate wells or was the barn serviced by the same well as the home. Mr. Lagana noted that Attorney Dodge stated several times the separate septic systems for each building but asked about the well and if there was a well for each structure. Attorney Dodge believed there was only one well servicing both buildings. Mr. Remington explained that when they built the house they put in the well and separated the barn from the parent tract so the water line runs off his house. A brief discussion ensued with regard to the well. In conclusion, Mr. Remington stated that there was one well for both buildings because when he purchased the house, Mr. Towne separated the water line from the parent tract and ran the line from the current house. At this time, the Board reviewed some of the materials. Attorney Dodge commented that, the ADU law says that they don't have to separate septic systems that it just has to have adequate provisions for water and sanitation. Mr. Lagana informed Attorney Dodge that this was a detached ADU and not an attached ADU. Attorney Dodge added that she has researched the property records for the parent tract and this subsequent tract and the lack of permits and the information on the septic is missing. Mr. Stuart asked if the septic has been pumped. Mrs. Remington said yes. Mr. Stuart asked if they had any documentation on when they had the septic pumped. Mr. Stuart also commented that, the fact that there is no information on where the septic is or if there is a separate septic system for the detached barn/ADU and believed that if the barn was built in 1977 that adequate sanitation would have been required with the septic. Attorney Dodge was unsure of the requirements back in 1977

and thought if the barn being part of the parent tract and tied to the house that she suspected that the water line that it ties into that the septic would have tied into the parent tract too. Attorney Dodge had a copy of the septic plan when Mr. Towne built the house and in speaking with Mrs. Rouleau-Cote that when she looked in the file that there wasn't anything that indicated that there was a separate septic system for the barn. Attorney Dodge mentioned that she could check the parent tract and see what the septic design was for the parent tract and presumably that the barn might have derived from there.

Mr. Lagana asked about the well on the parent tract and asked if that well was servicing the barn. Attorney Dodge stated that it was her understanding that the barn was connected to the well for the parent tract. Mr. Lagana asked if the barn was being serviced from the parent tract. Attorney Dodge stated no, the barn was being fed by the well from the Remington's home. Discussion ensued with regard to the well. Mrs. Rouleau-Cote presented a larger copy of the septic plan for the Board to review. Mrs. Rouleau-Cote commented that, from her perspective that she has no disagreement or argument that the barn may have been constructed in 1977. However, it is her belief that the barn was constructed as a barn in 1977 as part of the parent tract. Mrs. Rouleau-Cote pointed to the box of unfiled permits because they are very difficult to figure out where they go to because the permits just basically say "Bunker Hill Road" with no name or address and sometimes no date. Mrs. Rouleau-Cote believed the permits were from 1966 to 1978 or so and basically in 1967 was when the state began requiring septic systems at DES. So basically, that is when the archives will begin at DES. Also, Mrs. Rouleau-Cote stated that, the Town of Auburn's Zoning Ordinance in 1975 specifically states that, there will be no more than one residential building located on a lot, so that was part of the 1975 ordinance. Mrs. Rouleau-Cote believed that this would be one piece of evidence that she would say that raises an issue if a second dwelling unit was being proposed during that time. Mrs. Rouleau-Cote jumped to 1987 when the subdivision was presented to the Planning Board which they show the house the well and the pool and the septic system and they label another building as a barn and they make no reference to the barn having a dwelling unit and they make no reference to a water line or septic connected to the barn. If there was they would have had to of had some kind of easement to allow a water line to transfer over to another property. Mrs. Rouleau-Cote questions whether or not the barn truly had water or a septic system in 1987. In the minutes of the Planning Board meeting the applicant specifically states that, the house and the septic system will be located on Lot 11-9 and the existing barn and storage shed will be on Lot 11-9-1. They do not imply anything about the barn being tied to a septic system at that time. In 1988, is when they come forward to build the house that the Remington's live in now on Lot 11-9-1 and showed the Board members the septic system plan that is for Lot 11-9-1 which is actually an As-Built that was amended to show the house and tank location. When a septic plan is presented to the State of New Hampshire, they typically show a proposed house location and the field location and they labeled this as an existing barn and don't say anything about an existing water line or an existing septic system. What the As-Built shows is where the true foundation went and it's showing that the tank did not end up in the proposed location but ended up in another location because the house got moved. Mr. Lagana asked if the well was in the front yard. Mrs. Rouleau-Cote informed Mr. Lagana that he would need to ask the Remington's if their well was in the

front yard. Mr. DiPietro asked Mr. and Mrs. Remington if their well was in the front yard. Mrs. Remington nodded yes. In conclusion, Mrs. Rouleau-Cote pointed out the septic design and indicated that, her purpose for showing the Board this was because it shows where the house is, where the leach field is and calls it an existing barn and talks nothing about there being any loading or septic system or water line used at this barn. Mr. Lagana if this was in 1987. Mrs. Rouleau-Cote stated that the subdivision was in 1987 and the septic plan was in 1988 and there is a permit in the file for the construction of a new home which was built in 1989. Mrs. Rouleau-Cote explained that the Town of Auburn's Zoning Ordinance with regard to Accessory Dwelling Units in the past we have prohibited the rental of those units and it has only been since last year that, that clause of being able to rent the unit was allowed and our Zoning Ordinance has never allowed a detached Accessory Dwelling Unit. The language has always been regarding an attached Accessory Dwelling Unit. The Remington's have been before the Planning Board for two (2) different business uses at the property and at one- point Mr. Remington approached the Planning Board about doing a business in that detached garage to do an auto detailing out of the garage. The Planning Board advised Mr. Remington that he would have to seek a variance from the Zoning Board of Adjustment for that use and at that time he never mentioned anything about there being an apartment or sewer tied to that building. Mrs. Rouleau-Cote did point out that Mr. Remington was not asked at that time. Mrs. Rouleau-Cote went on to mention that Mrs. Remington does have a business that she runs out of the primary home which is a dog kennel of which she went before the Zoning Board of Adjustment for that use.

At this time, Attorney Dodge spoke on behalf of the Remington's and reiterated that the Remington's have owned the property for the past 22 years and that they were trying to speculate what happened 40 years ago on this property. Attorney Dodge pointed out that the property has been exactly the same for the past 22 years that the Remington's have owned it with the detached barn with an apartment with one-bedroom one-bathroom with its own septic provisions for sanitation and water and that is how they have continued to use it for the past 22 years. Mr. DiPietro asked if they could establish how long the tax card has recognized the barn having a bedroom and a bathroom or being a one and three-quarter story cape. Attorney Dodge explained that, when she pulled the information off the GIS it went back as far as 2005 and when she spoke with Mrs. Jenkins in the tax office that she gave her property tax records that showed payments but did not know at what point the information was picked up. Mr. DiPietro believed that to him it would be important to establish how long the barn was being taxed as a dwelling. Attorney Dodge agreed and asked the Board if they wanted to continue this until she could provide that documentation believed that the town tax and assessing records would show that. Mr. Lagana explained that when the Assessor visits a property that they kind of call it like they see it without any regard to whether its correct or not. Mr. Lagana did not believe they could rely on how the property was assessed in terms of whether or not it was an appropriate use of that property. Mr. Lagana did not believe that the assessor was the adjudicator on whether or not the use is zoned properly. Mr. Lagana mentioned what Mrs. Rouleau-Cote stated that, the Town Zoning Ordinance in 1975 which was two (2) years before the structure was built indicated that, no more than one residential unit on a lot so in order for any use to be grandfathered it would have had to of been compliant



before the new regulation went into effect. Mr. Lagana went on to say that it appears that this was not compliant in 1977 because there were two (2) structures on the lot. Mrs. Rouleau-Cote did not think there was any real known point of when it turned into this Accessory Dwelling Unit. They may say that it started when it was built but she's going to argue that she believed it happened sometime after 1987 when the subdivision was done. Mr. Lagana talked about when Attorney Dodge indicated that Mr. Samson was using it as an apartment back in 1977 when he owned it and if that was the case that it would certainly reinforce your case. Mr. DiPietro believed that if the applicant could establish when the use started to him that made sense. Mr. Lagana reiterated that the Assessor is going to write down what he sees and would not be going back to the Zoning Ordinance to be sure it is appropriate. Mr. DiPietro reiterated what he said previously which is to have the applicant establish how long it's been used. Mr. Beaurivage also suggested that they go back to DES and asking them if they have any record of a septic system for the barn but with those two (2) pieces of information they we could possibly make a decision on.

Attorney Dodge pointed out that when the house was built that the Building Inspector at the time was Frank Gamache and he went out and inspected the property and issued a permit for the construction of the house and the Certificate of Occupancy for the house was issued. Going back to the ordinance in 1975 where the ordinance said that you cannot have more than one dwelling on a lot then fast forward to 1989 where there is already a structure on the lot that is being used as a dwelling according to Harold Towne who requested a permit to build a home and then a permit was approved and issued and a Certificate of Occupancy for that home. The Board discussed that possibly Mr. Gamache was more interested in the house and possibly was not paying any attention to the barn. Mr. DiPietro believed that if someone had living arrangements in the barn that they probably would want to keep that quiet and call it a barn.

Mr. Lagana asked if there were any abutters that would like to speak. Mr. and Mrs. Corton of 378 Chester Turnpike commented that they've know the Remington's for approximately 17 years and it's always been like it is now. Julie Spencer of 361 Chester Turnpike commented that she believes she owns the parent tract and said that the Remington's are fabulous neighbors and that there was a gentleman that rents the barn and when she moved in about 7 years ago that they told her about it and mentioned that it was a grandfathered use. Mrs. Spencer stated that she was an appraiser and was confused that she believed that towns were supposed to look at allowing rentals to help people to stay in their homes. Mrs. Spencer went on to say that she believed that a law passed allowing Accessory Dwelling Units that also allowed detached Accessory Dwelling Units. Mrs. Spencer believed it was unfair especially when someone purchases a home years ago and then this happens and did not believe the town was very understanding. Mr. Lagana stated that he appreciated the comments and pointed out that the State does require that we allow Accessory Dwelling Units and we do here in Auburn and further explained that, our Accessory Dwelling Units have to be attached and that the Board must uphold the ordinance and the language in our ordinance is very specific. Mr. Lagana stated that this was voted on by the citizens within the Town of Auburn. Mrs. Spencer remembered that detached was never known to the citizens as being an option.

Mr. DiPietro added that, as a citizen of this town she could help in amending the Zoning Ordinance. Mrs. Rouleau-Cote explained that, last year the town did amend its Zoning Ordinance with regard to an Accessory Dwelling Unit as a change on the March ballot and that detached dwelling units was again upheld by the voters. Mr. Carpenter indicated that he was unaware of this until he received a letter in the mail. Mr. Carpenter explained that in 1989 or 1990 that his wife and Mr. Nye used to carpool Mr. Towne's youngest son and she realized at that time that it was being used as a dwelling unit. Cynthia Correia of 362 Chester Turnpike indicated that she has lived there since 1981 and ever since she has lived in that neighborhood there has been someone living in that apartment. Christine McQuillen of 368 Chester Turnpike and has been living there for 19 in a half years and since she's purchased it there has been an ADU there and that the property is impeccable and the tenant is great and they greatly support the Remington's.

Mr. Lagana thanked the abutters for their comment and asked the Board how they would like to proceed or if they would like to go into deliberation.

**Mr. Stuart made a motion to enter into deliberation, Mr. DiPietro second the motion and the Board entered into deliberation at 7:55pm.**

Mr. Stuart began by saying that maybe we could Table this and get some more information but had a few points where he did not see enough evidence on and the first being the septic and we have no idea when the septic was installed or if there is a septic and believed this was important because it would show if this was continually used legally and believed this needs to be established and it has not yet been established. Mr. Stuart also said that the same goes with the water and did not see enough evidence on this either and believed that this needed to be addressed as well. Mr. Stuart stated that the comments from abutters with regard to the length of time this has been utilized but the lack of evidence from the town is problematic. All this information would be helpful in making a decision.

Mr. Beaurivage added that he is leaning towards Tabling this as well and having them go to DES and getting more information would be helpful particularly on the septic. Mr. Beaurivage also pointed out what Mr. DiPietro said with regard to going back on the tax cards and recognizing what Mr. Lagana said about the appraiser looking at this and labeling it an ADU within the tax cards for occupancy.

Mrs. Neveu agreed with both Mr. Stuart and Mr. Beaurivage and did not have anything to add. Mr. DiPietro believed that if it could be established a case could be made if there's a prescriptive right to do this if it's been going on for 20 years or so.

Mr. Lagana believed that the applicants had a compelling case and believed the case was presented very well and that a lot of work was done and was very complete and obviously the abutters think very highly of the applicant. Mr. Lagana added that he was not so focused with the well and septic but whether or not an assessor saw a particular situation or not but on the use itself and if we come back on the use itself, the Code Enforcement Officer's attempts to uphold the ordinance that in 1977 when this structure

was built it was not necessarily in compliance then because in 1975, the town mandated that there be no detached Accessory Dwelling Unit and allowed only one residential unit per lot so when the home was built, if in fact the barn was a residence, be it compliant or not that when the main home was built, that second home was put on the lot. So, by default, if the barn had an apartment in it and then the home was built you have two (2) homes on a single lot. Mr. DiPietro asked why the Planning Board did not question it at the time. Mr. Lagana wished there was a permit for the barn and a septic plan because we don't know where the septic is. Mrs. Neveu added that, if the Planning Board was told that it was a barn then they would not question it. Mr. Lagana believed that some of these improvements were done under the radar. Mr. DiPietro agreed and said that they probably labeled it as a barn and not as a house so that they could build a house. With that said, Mr. Lagana believed that comment reinforced what he was saying. Mr. DiPietro believed if they could establish that there was open and notorious use for 20 years then perhaps even though it does not comply that a case could be made. Mr. Lagana believed the proper forum would be in civil court and not here at the Zoning Board and that the correct thing would be to uphold the Code Enforcement Officer's decision on this and let the applicant proceed in court. Mr. DiPietro agreed with Mr. Lagana.

Mr. Lagana believed the septic and well were obviously important but that they should be focusing on the use. The Board agreed.

Mr. Lagana asked the Board if there was anything else to discuss. Mr. Stuart said no. Mr. Lagana asked for a motion to come out of deliberation.

**Mr. DiPietro made a motion to exit deliberation, Mr. Stuart second the motion and the Board entered into deliberation at 8:02pm.**

Mr. Lagana explained that this was a meeting within a meeting and asked if anyone had any questions. Julia Spuria had a comment with regard to supporting the applicants. Attorney Dodge understood Mr. Lagana's frustration with regard to the lack of evidence and stated that she was frustrated too and that Mrs. Rouleau-Cote was great to work with and that it's frustrating when you're trying to prove something that you know exists and you don't have the paper to back it up. Attorney Dodge indicated that she would be happy to do a little more digging but that the Remington's are incurring a lot of legal costs and to utilize property when they thought when they purchased it was a permissible use and would encourage the Board to think about that in terms of the fairness if they have to battle this out in court. The Board does have the authority to make a decision and she would be happy to provide the Board with additional documentation that would hopefully satisfy the Board. Mr. Lagana stated that there have been cases before the Board which included Bunker Hill Road and Spofford Road requesting detached Accessory Dwelling Units and we have denied both of them. Mr. Lagana went on to say that in terms of equity it would be very difficult to grant one and deny another. A comment was made that this has been there for years. Mr. Lagana stated that, that is where the Variance comes in and that they were here tonight to hear out the Code Enforcement Officer's decision. Mrs. Rouleau-Cote informed the Board that at this point she has not ordered them to vacate that apartment either. At this time, she does not have a State Approved Septic



System nor does she have any records of inspections with regard to life safety of that area. That is something that weighs on her mind that she has people occupying a dwelling that she has no permit for or no inspections for that dwelling unit. An abutter did not believe that it would require its own well and septic. Mr. Lagana pointed out that it was a detached dwelling and that the effluent from this unit was going somewhere and that there was no record that what is there was an approved septic system and believed it was very important in this case. Attorney Dodge stated that it was up to the town has the independent authority to establish whether or not they would permit an attached or detached Accessory Dwelling Unit but the statute specifically states that they do not have to have separate septic's but they do have to have adequate provisions for water and sanitation. Mr. Lagana understood what Attorney Dodge was saying but added that, the barn has its own septic system but we can't find any plan for it so don't know if it's an approved plan or something that was put in without any kind of inspection and effluent is going into the ground there. Mr. Stuart also believed that this was a big concern and that was why he suggested more evidence be produced on that as well as the life safety.

Mr. Lagana asked Mrs. Rouleau-Cote to comment. Mrs. Rouleau-Cote reiterated that the septic design that they have on file for parcel 11-9-1 is for the existing three (3) bedroom home and that is what it is designed for and makes no reference to the one-bedroom Accessory Dwelling Unit.

Julie Spencer, who owns the parent tract commented that when her husband went to the town hall to obtain records on their home that the town was in the process of putting records on microfiche or they were on microfiche and were sent out which was approximately 7 years ago and asked if they were on microfiche somewhere. Mr. Lagana deferred the question to Mrs. Rouleau-Cote. Mrs. Rouleau-Cote answered by saying that the building permits are not and that the only thing that they had on microfiche were the deeds that Mrs. Phillips used to have when she was working in assessing.

Attorney Dodge didn't know if they were chasing something that did not exist but that the Board was looking for more information. Mr. Stuart said that, that could be the case. Mr. DiPietro commented that Mr. Lagana reminded them that they were here tonight to decide about an Administrative Decision and that the other avenues were separate and they would include the well, the septic and not the decision that the Building Inspector made and would be prepared to vote on that. The Board asked what he'd be voting on. Mr. DiPietro stated to vote on the Building Inspector error. Mr. Lagana believed that they should be voting to uphold the Code Enforcement Officer's decision.

***Mr. DiPietro made a motion to uphold the Code Enforcement Officer's Decision for Case #17-19, 371 Chester Turnpike, Tax Map 11, Lot 9-1.***

Mr. Stuart was curious to ask the applicant if they wanted to have a vote tonight or continuing the hearing. Mrs. Neveu believed the Board would be voting on the Code Enforcement Officer's Decision. Mr. Lagana stated that the Board could choose to vote or not and if they choose to withdraw their Variance without prejudice that they could do that. Mr. Stuart believed that they could give them the option to Table it and coming back

with more evidence but would leave it up to the Board. Attorney Dodge asked what exactly is the Board looking for and are they looking for them to contact DES to see what they have for a septic plan. Again, Attorney Dodge indicated that, in going through the file at town hall to see if a permit exists and it could be in that box of permits that do not have all the information on them and would be more than happy to go through that box to see if a permit were in there. Mr. Beaurivage expressed his concern which was based on the septic plan which was key because they need to know if there is a septic for the barn. Mr. DiPietro believed that the applicant has a right to this use and also believed that the Building Inspector was following her guidelines to do her job.

Mr. Lagana commented that, you have to come back to the two (2) elements of this case tonight and one is that the Code Enforcement Officer's Decision on whether they uphold it or deny it and then should they not uphold the decision then the Variance becomes Moot but if they uphold it and then go to the Variance then maybe some of these things that you folks have voiced concerns about when and where and if an approved septic system is in place may become mitigating factors that would allow the Board if they so choose to condition an approval. Mr. Lagana believed that they could vote on the Code Enforcement Officer's Decision tonight on whether or not she acted appropriately. Mr. Lagana went on to say that, if the applicant decides to withdraw the case without prejudice for this evening and have it scheduled for the next evening that some of these other items can be researched and brought back before the Board. Mr. Lagana believed that if they find out that an approved and licensed septic system was installed back in 1977 or 1975 and the State and other entities knew that there was an apartment there then maybe there is a compelling case for this. In his opinion, they may be mixing the two (2) elements of this case this evening. Mr. Lagana stated that he would like to see the Board move to a vote on the Code Enforcement Officer's Decision and then ask the applicant if they would like to move forward on the Variance this evening based on the information presented on this case or withdraw it until more evidence can be researched. Discussion ensued with regard to voting on the Decision. Mr. Lagana did not believe that they could move to a Variance without some of the information. Mr. DiPietro believed that they could Table the case until the next meeting. Mr. Lagana agreed. Attorney Dodge commented that procedurally they would be inclined to do that because they would want to preserve their right to appeal to the superior court with a Motion for Rehearing with the Board first. Mr. Lagana asked Attorney Dodge if they would like to Table the Code Enforcement Officer's Decision. Attorney Dodge wanted to be clear that they would not be withdrawing anything as they would like to preserve procedurally their rights. Mr. Lagana understood what they were asking and explained that it would appear that more evidence would be needed and maybe it would be appropriate if they Tabled the case and believed that the Board would grant that from what was discussed tonight.

At this time, Attorney Dodge requested a brief recess to confer with her clients. The Board recessed at 8:20pm to allow the applicant to meet with counsel.

At 8:27pm, the Public Hearing resumed.

Attorney Dodge stated that she has had an opportunity to speak with her clients and that they feel that if the Board feels there is not enough evidence to make a decision tonight that they would then ask that the Board continue this hearing. Attorney Dodge asked for some guidelines from the Board on what they would be looking for and she would be happy to do the research and take a look at the microfiche, tax records from the assessor's office and look for septic documentation showing two (2) tanks were pumped to help the Board make a decision. Mr. Lagana reiterated that his focus was on the use and would defer to the Board members. Mr. Stuart mentioned what he had pointed out previously which was to obtain any information about the septic system as there was none and when it was put in and who put it in and if there was anything at DES would be helpful. A drawing of where it is located on the property and if it was two (2) septic systems. Basically, any information showing its legal use and tax information showing how far back has it been taxed by the town and showing the bedroom. Also, any evidence from the prior owner with regard to the use would be important. Mrs. Rouleau-Cote mentioned that all the utilities might be helpful and talked about the water line that was relocated after they purchased the home and was that part of the purchase and sales agreement or was it part of a gentlemen's agreement. Mrs. Rouleau-Cote also pointed out the electricity and if it had its own service or does it feed off the house and believed all the utilities would be helpful. Mr. Remington commented on Mrs. Rouleau-Cote's statement with regard to the water line being moved and stated that he could not feed the water line from the neighbor's house and that was why it was moved to connect to the house that currently exists on the property. Mr. Remington stated that it has all its own utilities. Mrs. Rouleau-Cote was asking the Board to determine when the electrical service was established and does it have its own service and how long has it had its own service. Mr. Lagana asked Attorney Dodge to incorporate that into her search. Mrs. Remington asked how they were supposed to obtain this information as they have been in the house for 22 years and this was a 40-year old barn and informed the Board that they purchased it that way.

Mr. Lagana believes that the best avenue may be court and not the Zoning Board as they are trying to uphold the ordinance and trying to work the best we can to decide whether or not they uphold or deny the Code Enforcement Officer's Decision.

Attorney Dodge commented that they have a situation where the first structure on the lot is the barn and then later comes the house and maybe we're looking at the wrong structure and possibly should be looking at the house. Mrs. Rouleau-Cote disagreed and believed that the barn was there as a barn and not as occupied dwelling unit. Mrs. Remington disagreed. Discussion ensued with regard to the apartment over the barn. Mrs. Rouleau-Cote commented that when they came before the Planning Board for the subdivision that they were not truthful and didn't show the septic system or the water line to the barn in the 1987 subdivision plan. Mrs. Rouleau-Cote stated that, in order to be a legally grandfathered thing that the person would have had to be upfront in everything presented to the Board. Mr. Lagana agreed that the original circumstances would have had to be compliant and did not believe it was. Attorney Dodge stated that when the Remington's purchased it that it's been in use that way for 22 years and was never abandoned and was advertised and marketed as such and has always been used as

such. Mr. Lagana reiterated that because of the lack of record keeping that this may not be able to be resolved and asked to Table this case. Attorney Dodge stated that, if the Board that they could not make an informed decision that she would ask that the Board Table the case until they can obtain more evidence to present to the Board. Mr. Lagana believed that there was enough evidence to act on the Administrative Decision tonight personally but that he has heard from the Board members that they would like to see more evidence before they move to a Variance. Personally, Mr. Lagana would prefer that they continue with the Administrative Decision action this evening and then if they prefer to Table it and wait for the Variance then they could do that. Attorney Dodge believed it was up to the Board. Mr. Beaurivage would be happy if they would look at the septic system and the tax cards. Mrs. Neveu would agree with Mr. Beaurivage for the Variance but agreed with Mr. Lagana for the Administrative Decision.

Mr. Lagana asked Attorney Dodge if they would like to Table both elements of the case this evening. Attorney Dodge said yes. Mr. Lagana reiterated that they would vote to Table both elements be Tabled tonight without prejudice. Attorney Dodge was hoping that Mrs. Jenkins would be able to help and asked to be Tabled until the December hearing. Mr. Lagana asked Ms. Royce when the December hearing would be as they had moved it up due to the Christmas holiday. Ms. Royce indicated that the hearing would be held December 19<sup>th</sup>. Mr. DiPietro withdrew his motion to vote on the Administrative Decision and moved to Table.

***Mr. DiPietro made a motion to TABLE both the Administrative Decision and the Variance for this case until December 19<sup>th</sup>, 2017 for Case #17-19, 371 Chester Turnpike, Tax Map 11, Lot 9-1, Mr. Stuart seconded the motion. Mr. Stuart voted to Table, Mr. Beaurivage voted to Table, Mrs. Neveu voted to Table and Mr. Lagana also voted to Table. All were in favor, the motion passed unanimously and this case has been Tabled until December 19<sup>th</sup>, 2017.***

#### **Case #17-20**

**Stephen Viger & Dorothy Sederquest  
298 Chester Road, Tax Map 19, Lot 2-2  
Zoned Residential One**

*Applicant is requested a Variance to allow the construction of a 13 foot by 30-foot boat shelter to be within the 30-foot side setback in a Residential One zone. Article 4, Section 4.06(6)*

At this time, Mr. Lagana asked Mr. Viger to read his application. Mr. Viger read his application into the minutes for the record. Mr. Viger informed the Board he was looking for a Variance to allow a 13-foot by 30-foot boat shelter to be within 30-feet side setback. Mr. Viger stated that it would be hundreds of feet from the nearest house and would have low visibility from the road.

Mr. Lagana asked if Manchester Water Works was the abutter closest to the shed. Mr. Viger said yes. Mr. Lagana asked Mr. Viger if he has already begun constructing the structure. Mr. Viger said yes.

Mr. Lagana explained that the property is very challenging. Mr. Viger stated that it was the only place to put it on the property. Mr. Viger further stated that it would be approximately 18 to 19 feet from the property line on the side of Manchester Water Works. A brief discussion ensued while the Board review the plan showing the location of the shed. Mr. Stuart asked what type of structure was he looking at building. Mr. Viger explained it to be a like a Pole Barn.

Mr. Lagana asked if there were any abutters or interested parties that wished to speak. None were noted. Mr. Lagana reiterated that it was a challenging lot and asked the Board members if they had anything to add. The Board did not have anything to add. Mr. Lagana believed that he would like to kind of define the distance as being no closer than 19 feet. Mrs. Rouleau-Cote commented that she has been out there and has measured it with him and that there was a tree with a boundary marker. Mr. Lagana asked if they said no closer than 19 feet would that work and asked the Board to make a motion.

***Mr. Stuart made a motion to vote on the variance application as presented tonight to allow a 13-foot by 30-foot structure consistent with the plan shown tonight for the existing piers to be no closer than 19 feet for the piers for Case #17-20, 298 Chester Road, Tax Map 19, Lot 2-2, Mrs. Neveu seconded the motion. Mr. Stuart voted to grant as he believed that all the factors have been met, Mr. Beaurivage voted to grant, Mrs. Neveu voted to grant, Mr. DiPietro voted to grant and Mr. Lagana also voted to grant as he believed all five (5) factors have been satisfied. All were in favor, the motion passed unanimously.***

Mr. Lagana reminded Mr. Viger that there was a 30-day appeal period and pointed out that he may want to wait in case an appeal comes up and thanked Mr. Viger. At this time, Mr. Viger thanked the Board members and exited the meeting.

#### **Case #17-21**

**LKB, LLC**

**50 Raymond Road, Tax Map 26, Lot 13**

**Zoned Commercial Two/Village District**

*Applicant is requesting a Variance to allow a reduction from the 125-foot wetland buffer to a Level One wetland in a Commercial Two zone/Village District. Article 5, Section 5.08(1)(a)*

Mr. Chadwick of Bedford Design presented on behalf of LKB, LLC. Mr. Chadwick informed the Board members that the property was purchased last October which was the old fire station located on Raymond Road. Mr. Chadwick explained that when the owner purchased the property it looked like the plan presented tonight. At this time, Mr.



Chadwick showed the existing site plan to the Board and noted that they went before the Planning Board and received approval on this site plan. Mr. Chadwick further explained that now, the owner has decided to divide the building to allow for another tenant. Mr. Chadwick also informed the Board members that they have been before the Conservation Commission and believed the Board was in receipt of those minutes from the Conservation Commission. Mr. Chadwick explained what they proposed to do to the property to make it more compliant and where they would be adding pavement and removing pavement to allow access to the rear of the building instead of in front of the building. Mr. Chadwick talked about the drainage and bio-retention area to the Board and how they are proposing to add wildflower mixture to allow it to grow naturally. Mr. Chadwick also mentioned the parking and that he had spoken with the owner and that he would prefer to meet the parking requirements that would be required for that structure not to limit his future use of the structure. In talking to the Planning Board, they would be willing to grant a waiver to that affect but it would limit his clients use of the building in the future as to what he could put in there so he would prefer to meet the requirements. Mr. Chadwick pointed out the location of the septic and well for the Board members and if the septic were to fail there was talk about moving the septic system out of the buffer. Mr. Lagana asked if the septic system was in failure. Mr. Chadwick indicated that they did not know if the septic system was failed. A brief discussion ensued with regard to the septic system. Mrs. Rouleau-Cote stated that if this were to move forward that she would consider this an expansion of use and so the septic system would need to be addressed. Mr. Lagana talked about the Conservation Commission minutes that they were in receipt of but did not see an opinion from the Conservation Commission within the minutes. Mr. Chadwick commented that his understanding was that this was certainly better than what existed today and if any additional pavement could be removed that they would certainly prefer that. Mr. Chadwick reiterated what was stated above about limiting the use for parking that his client did not want to limit his use. Mr. Lagana commented that it appears to be quite an improvement than what is existing now. Mr. Chadwick also agreed with Mr. Lagana. Mr. Stuart asked about snow storage. Mr. Chadwick pointed out the snow storage areas on the plan for the Board members.

At this time, Mr. Chadwick read the application into the minutes for the record. Mr. Lagana pointed out to the Board members, Article 5 of the Zoning Ordinance, Section 5.08(2) with regard to having Conservation Commission comments prior to granting any such Variance. Mr. Lagana asked Mrs. Rouleau-Cote if she was satisfied that the meeting with the Conservation Commission meets that requirement because there is no recommendation from them. Mrs. Rouleau-Cote answered by saying that typically you would have one of the Board members here to address that for the Board. Mr. DiPietro would assume if they're not present at tonight's meeting that they were not against it. Mrs. Rouleau-Cote added that she would agree with Mr. DiPietro because if they had an issue that they would have address the issue before the Board tonight. Mr. Chadwick stated that they did see a plan but not this revised plan. Mr. Lagana wanted it noted that they did mention the Conservation Commission meeting minutes and that they were looking for a recommendation from them that was not available. Ms. Royce understood and noted that it would be added to the minutes.

Mr. Lagana asked the Board members if there were any questions or comments. None were noted. Mr. Lagana asked the Board members how they would like to proceed with this case.

***Mr. Stuart made a motion to vote on the variance application as presented and to incorporate the map into the record for Case #17-21, 50 Raymond Road, Tax Map 26, Lot 13, Mr. Beaurivage seconded the motion. Mr. Beaurivage voted to grant, Mrs. Neveu voted to grant, Mr. DiPietro voted to grant, Mr. Stuart voted to grant and Mr. Lagana also voted to grant. The Board members unanimously believed the five (5) factors have been met by the applicant. All were in favor, the motion passed unanimously.***

Mr. Lagana reminded Mr. Chadwick that there was a 30-day appeal period. Mr. Chadwick thanked the Board and exited the meeting.

## **Minutes**

At this time, Mr. Wright moved on to the approval of minutes for September 26<sup>th</sup>, 2017.

***Mr. DiPietro made a motion to accept the minutes of September 26, 2017, as written, seconded by Mrs. Neveu. All were in favor, with Mr. Lagana and Mr. Beaurivage both abstaining and the motion passed.***

Mr. Lagana indicated that he would entertain a motion to adjourn.

## **Adjourn**

***Mr. DiPietro made a motion to adjourn, seconded by Mrs. Neveu. All were in favor, the motion passed unanimously and the meeting stood adjourned at 9:17 p.m.***

The next ZBA Hearing is scheduled for November 28<sup>th</sup>, 2017 at 7:00 pm and will be held at the Town Hall, 47 Chester Road.