

**UNAPPROVED MINUTES  
Town of Auburn  
Zoning Board of Adjustment  
January 26, 2021**

**Present:** Mark Wright, Chairman. Mike DiPietro, Vice-Chairman, Kevin Stuart, Dennis Vieira & Stephen Carroll, Members of the Board. Minutes recorded and prepared by Denise Royce.

**Also, Present:** Carrie Rouleau-Cote, Building Inspector/Code Enforcement Officer. Anne Marie Kenyon & John Kenyon.

**Absent:** Shawn Matte, Alternate.

Mr. Wright called the meeting to order at 7:02 p.m.

Mr. Wright began by reading the Meeting Preamble During COVID-19 Emergency which is as follows:

**MEETING PREAMBLE DURING COVID-19 EMERGENCY**

Good Evening, as Chairman of the Zoning Board of Adjustment, I am declaring that an emergency exists and I am invoking the provisions of RSA 91-A:2, III (b). Federal, state, and local officials have determined that any public gathering of people may pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19 and is reinforced by Emergency Order #16 issued by the Governor on March 23<sup>rd</sup>. In concurring with their determination, I also find that this meeting is imperative to the continued operation of Town government and services.

Governor Sununu issued Emergency Order #12 on March 23<sup>rd</sup> which provides local government boards the ability to conduct business using technology to hold remote meetings and not provide a public place of meeting but provide for the public's ability to listen to the meeting. As such, this meeting will be conducted without a quorum of this body physically present in the same location.

Please note that all votes that are taken during this meeting shall be done by Roll Call vote as required by RSA 91-A:2, III (e).

At this time, I welcome members of the public accessing this meeting remotely. Even though this meeting is being conducted in a unique manner under unusual circumstances, the usual rules of conduct and decorum apply.

Let us start the meeting by taking a Roll Call attendance. When each member is called please state your name, and also please state if there is anyone in the room with you during this meeting, which is required under the Right-to-Know law (RSA 91-A:2, III (c) and whether you agree to your voice being recorded.

Mr. Wright moved on to the roll call of attendees and began with the Board members as follows:

Mr. Wright moved on to call on Mr. Kevin Stuart. Mr. Stuart indicated that no one else was in the room with him and that he consented to this meeting being recorded.

Mr. Wright called on Mr. Stephen Carroll. Mr. Carroll indicated that no one else was in the room with him and that he consented to this meeting being recorded.

Mr. Wright called on Mr. Michael DiPietro. Mr. DiPietro indicated that no one else was in the room with him and that he consented to this meeting being recorded.

Mr. Wright called on Mr. Dennis Vieira. Mr. Vieira indicated that no one else was in the room with him and that he consented to this meeting being recorded.

Mr. Wright indicated that no one else was in the room with him and that he also consented to this meeting being recorded.

Mr. Wright called on Ms. Denise Royce. Ms. Royce indicated that she was in a room by herself and consented to this meeting being recorded.

Mr. Wright called on Mrs. Carrie Rouleau-Cote. Mrs. Rouleau-Cote stated that she was in a room by herself and consented to this meeting being recorded.

Mr. Wright moved called on Mrs. Kenyon. Anne Marie Kenyon indicated that she was in a room with her husband John R. Kenyon and that she consented to this meeting being recorded. Mr. John Kenyon also stated that he consented to being recorded.

Mr. Wright asked if there was anyone else online. Ms. Royce informed Mr. Wright that, that was everyone that had called in. With that said, Mr. Wright indicated that, they only had one case this evening which was an Appeal or Request for Rehearing. Mr. Wright went on to say that, all five (5) members of the ZBA were present this evening and each member was provided a copy of the Appeal/Rehearing Request from the applicant.

**Case #20-18**

**John & Anne Marie Kenyon, Trustees**  
**47 Boxwood Drive – Tax Map 2, Lot 44-10**  
**Zoned Rural**

*Applicant is requesting a Rehearing for Variance to allow a use not permitted under Article 4, Section 4.05(2) to operate a Commercial Service Establishment (Landscaping Business) within a Rural zone, which was previously DENIED by the Zoning Board of Adjustment on December 15, 2020.*

Before Mr. Wright asked the Board if they had any questions or comments that he wanted to open it up to John and Anne Marie Kenyon to see if they had anything to add to their appeal or not before they discussed it. Mrs. Kenyon commented that, she did not think they would be able to speak and thought they were just listening and was not really prepared. Mr. Wright stated that, it was not required but wanted to give them a few minutes. Mrs. Kenyon began by saying that, in the last meeting there was some discussion about if there was any connection between her sons and their residence and at the time, they did not think there was. In review, their sons are co-successors of their trust as their names are in the trust so they would be connected in that regard. She did not know if it made a difference, but they are part of their trust and the house is in the trust. Secondly, Mrs. Kenyon questioned house values only because house values are going up and not going down. Lastly, she felt the last meeting was a little defamatory in nature and pointed out that they did not go down the same path as one of their neighbors did as there was no reason to do that. Mrs. Kenyon commented that they are looking for some kind of time to allow the boys to find a place. Basically, they are looking for any type of allowance to allow the boys to find a place to relocate too.

Mr. Wright moved on to the Board members and began by saying that they all have the request in front of them and asked Ms. Royce to confirm this for him that, the period of time in which the applicant had to appeal was within 30 days of their decision. Mr. Wright informed everyone that, the 30-day appeal period ended on January 14<sup>th</sup>, but the Appeal was submitted after that date which was dropped off at town hall which would put it after the 30-day appeal period. With that said, Mr. Wright asked Ms. Royce if that was accurate. Ms. Royce said yes that Steve Bennett reviewed it and stated that the 30 days would have been Thursday, January 14<sup>th</sup>. Mr. Wright wanted to add that, Steve Bennett is the Town of Auburn's Town Counsel to anyone that didn't know that.

At this time, Mr. Wright asked the members of the Zoning Board if they had any questions or comments. None were noted. Mr. Wright moved on to discuss the applicants question with regard to timing, in his view was outside the Board's jurisdiction and the decision on the case and believes that, that will fall on our Code Enforcement Officer to respond to that inquiry pending whatever decision they make this evening. If they move forward tonight and deny that motion for rehearing then our decision is reinstated and that particular question would be best answered by Mrs. Rouleau-Cote, Code Enforcement Officer for the Town of Auburn. Mr. Wright asked if anyone disagreed with his interpretation. Mr. Stuart commented that, he would agree with that and with it being filed late that, he wasn't sure they have jurisdiction but if they did, most of those questions would be more for the Code Enforcement Officer. Mrs. Rouleau-Cote commented that, it wasn't like she had the authority or jurisdiction to go against the decision that has been made. Basically, she would want to know from the Kenyon's of what type of timeframe are we talking about. Was it 30 days, 60 days or 90 days because obviously, as much as she would like to work with them that, she is somewhat bound by what the ordinance says and by what the decision of the Zoning Board has been. Again, Mrs. Rouleau-Cote wanted to know what timeframe they were looking at. Mr. Wright believed it was an excellent point and believed that they could have a conversation at a later date or tomorrow because that really doesn't have any bearing on them or their decision and believed that Mrs. Rouleau-Cote described it accurately and it was something that she could follow up with them depending on where this goes.

Mr. Wright asked if there was anyone else on the Zoning Board that had comments or questions and believes Mr. Stuart is right, given the period of time believes it is out of our jurisdiction and any appeals or action to the Zoning Board have been exhausted. If there are no other questions or comment, then he would entertain a motion to vote on this motion to reconsider or if it's a notice of appeal intended to be a motion to reconsider the denial of our variance a decision on it based on the fact that it was filed after the expiration of the 30-day period. Mr. Wright suggested that, someone make a motion and move this along.

***Mr. Vieira made a motion to vote on the Appeal that was filed beyond the time allotted, seconded by Mr. Stuart.***

Mr. Wright indicated that, they have a motion to deny the request or motion for reconsideration of the Board's denial of the variance based on the filing after the expiration of the 30-day appeal period. At this time, Mr. Wright took a roll call vote from the Board members.

***Mr. Vieira voted to Deny, Mr. Carroll voted to Deny, Mr. Stuart voted to Deny the motion to reconsider, Mr. DiPietro voted to Deny based on the fact that, it is outside the reconsideration period, and Mr. Wright also voted to Deny the motion to reconsider the case as it was filed after the 30-day appeal period. A vote was taken and, all were in favor to DENY the motion to reconsider the case.***

Mr. Wright explained to Mr. and Mrs. Kenyon that, the decision has been made and that, they can see how they were in effect bound to reach that decision based on the zoning laws that no longer allow us to reconsider that request after the 30-day period and unfortunately it was filed after the 30-day appeal period. Mr. Wright informed Mr. and Mrs. Kenyon that, it would be back to our Code Enforcement Officer to proceed as she would activity occurring on property that has not been granted a variance. Mrs. Kenyon understood and stated that, she would have her son contact Mrs. Rouleau-Cote and give her a call. Mr. Wright thanked Mr. and Mrs. Kenyon and Mrs. Kenyon thanked the Board and the discussion ended.

## **Minutes**

Mr. Wright moved on to the approval of the minutes of December 15, 2020.

***Mr. Vieira made a motion to approve the minutes of December 15, 2020, seconded by Mr. DiPietro.***

Mr. Wright conducted a roll call vote to approve the meeting minutes for December 15, 2020.

***Mr. Vieira voted to approve the minutes, Mr. DiPietro voted to approve the minutes, Mr. Stuart voted to approve the minutes, Mr. Carroll voted to approve the minutes, and Mr. Wright also voted to approve the minutes. A vote was taken and, all were in favor and the motion passed.***

## **New Business/Other Business**

Mr. Wright believed that, that was all they had on the agenda this evening. Ms. Royce said yes. Mr. Wright asked if there were any other comments or questions before they close the hearing this evening. Ms. Royce just wanted to inform the Board that, they do have two (2) applications for February. Mr. Wright so noted the comment. Mr. Carroll asked if Ms. Royce could resend the schedule for ZBA Hearings for year. Ms. Royce indicated that, she would resend the schedule again to all the Board members. Mr. Carroll thanked Ms. Royce.

Mr. Wright thanked the Board members for meeting this evening as it was short notice and with that, would entertain a motion to adjourn.

## Adjourn

***Mr. Carroll made a motion to adjourn, seconded by Mr. Vieira.***

***Mr. Vieira voted to adjourn, Mr. Stuart voted to adjourn, Mr. Carroll voted to adjourn, Mr. DiPietro voted to adjourn, and Mr. Wright also voted to adjourn. All were in favor, the motion passed unanimously, and the meeting stood adjourned at 7.25 p.m.***

Mr. Wright again thanked Ms. Royce and Mrs. Rouleau-Cote for being available this evening and helping them through this and that they would see each other next month.

**The Zoning Board of Adjustment next scheduled meeting would be for February 23, 2021 at 7:00 pm. Due to Governor Sununu's Emergency Order #12 on March 23<sup>rd</sup>, all meetings will be held via teleconference until further notice.**