

UNAPPROVED MINUTES
Town of Auburn
Zoning Board of Adjustment
June 29, 2021

Present: Mike DiPietro, Vice-Chairman, Kevin Stuart & Stephen Carroll, Members of the Board. Patrick Bergeron, Shannon Daoust & Shawn Matte, Alternate Members. Minutes prepared by Denise Royce.

Also, Present: Carrie Rouleau-Cote, Building Inspector/Code Enforcement (via teleconference), Eric Mitchell, Alan Villeneuve, Jeff Porter & Doug MacGuire.

Absent: Mark Wright, Chairman. Dennis Vieira, Member.

Mr. DiPietro called the meeting to order at 7:00 p.m.

Mr. DiPietro informed everyone present tonight that they had three (3) cases before the Board tonight. Mr. DiPietro pointed out that, he would be chairing the meeting tonight and would elevate both Mr. Bergeron and Mr. Matte to full voting members for tonight's meeting. At this time, Mr. DiPietro introduced the members of the Board and went into explaining the procedure for tonight's hearing and also noted that Mrs. Rouleau-Cote was also attending via teleconference call.

Mr. DiPietro asked Ms. Royce to read the first case into the minutes for the record. Ms. Royce read the case into the minutes for the record.

Case #21-10
David Gilmore
69 Hook Road – Tax Map 13, Lot 44
Zoned Residential One

Applicant is requesting a Variance to construct a 24-foot by 24-foot garage and driveway access within a Level One wetland and watershed protection buffer in a Residential One zone. (Article 5, Section 55.08(1)(a))

Mr. Gilmore was present along with Aaron Wechsler, Owner, Aspen Environmental Consultants, LLC. Mr. Gilmore began by reading his application into the minutes for the record. Mr. DiPietro asked if there were any questions from the Board. Mr. Stuart asked if it was going to be a detached garage or an attached garage. Mr. Gilmore stated that it would be attached. At this time, the Board reviewed the proposed plan of the attached garage structure. Discussion ensued with regard to the proposed second driveway which would access the proposed garage.

Mr. DiPietro asked Mrs. Rouleau-Cote if she had any questions or comments. Mrs. Rouleau-Cote indicated that, she has been working with the applicant for several months and he actually had to go through the Department of Environmental Services Archives to obtain a copy of his septic design which did prove that the septic is located to the left-hand side of the house which limits the ability to put the garage on that side of the house. Mr. Gilmore has also been working with a wetland scientist which has determined that the wetland is a Level One wetland which is actually part of the Hook Brook. Mrs. Rouleau-Cote also added that, as part of the town requirements that Mr. Gilmore will also be working with NH DES for a Shoreline Permit because Hook Brook is considered part of the NH Shoreland Protection waterways. He does have someone working with him and that she has been encouraging him to work with the Conservation Commission to work out a plan to minimize the impact to the wetland buffer as well as the wetland. Mr. DiPietro thanked Mrs. Rouleau-Cote for her comment.

At this time, Mr. DiPietro asked Mr. Wechsler how much of an impact to the wetlands would occur. Mr. Wechsler indicated that, he has not done the design for the driveway to date. Mr. Wechsler did indicate that, as with any construction that they would be cognizant of erosion controls and silt fence as well as revegetating the area impacted. Mr. DiPietro asked what the distance would be into the buffer. Mr. Wechsler pointed out that, the northeast corner would be the closest point being 4 feet and the rest of the driveway moves further away and 23 feet from the back right corner.

Mr. DiPietro asked Mr. Porter to comment on behalf of the Conservation Commission. Mr. Porter began by saying that the plans did not have any real details seeing that the buffer would be significantly impacted. Mr. Porter added that there was no information on how they would contain that whole area with regard to infiltration and believed that a continuation would be in order tonight as they have not seen the plans.

Mrs. Daoust had a question regarding the slope and asked how Mr. Gilmore intended to handle the slope. Mr. Gilmore explained that he wanted to put plans together to see if this were even possible and was hoping to see if he could even get the garage location approved and then the next step would be all the fine details worked out with the professionals. Basically, the location and controls and water mitigation. Mr. Wechsler added that, cost is a significant issue and that they have been working with Mrs. Rouleau-Cote with the details as well.

Mr. DiPietro asked if there were any interested parties or abutters present that would like to speak. None were noted. With that said, Mr. DiPietro asked the Board what they would like to do. Mr. Stuart had one more question for the Conservation Commission and asked Mr. Porter if there was a continuance and more detail what type of information they would be looking for. Mr. Porter stated that, they would be looking for information regarding infiltration and how they would handle runoff from the roof. Also, any type of disturbance if they would have any type of plantings and if it would be reseeded and would native species be included. Mr. Porter also pointed out the two (2) driveways and a better set of plans. Mr. Stuart asked if the roof would be asphalt. Mr. Gilmore said yes. Mr. Stuart asked Mr. Wechsler if he had any concerns with having asphalt roofing that close to the

wetlands. Mr. Wechsler stated that, he did not think asphalt shingles are a cause for pollution. Mr. Stuart asked if 4 feet would be the closest point for the driveway. Mr. Wechsler informed the Board members that, the 125-foot buffer basically encompasses the whole house.

Mr. DiPietro commented that, if there is a motion made to proceed on this that he believed that they could include best practices and that Mrs. Rouleau-Cote is well aware of as well as the Conservation Commission is well aware will probably take care of concerns. Mr. DiPietro stated that, if there were no more questions that he would entertain a motion to vote on this application.

Mr. Stuart made a motion to vote on the Variance application with the addition that best management practices will be conducted in the construction to include silt fencing and proper reseeding prior to removal of the silt fence and that the driveway be no closer than 4 feet to the wetlands and no closer than 23½ feet for the garage as presented at tonight's meeting dated June 29, 2021 for Case #21-10, 69 Hook Road, Tax Map 13, Lot 44. Seconded by Mr. Bergeron. Mr. Stuart voted to grant finding all five (5) factors have been met given the unique qualities of the property, Mr. Carroll voted to grant finding all five (5) factors have been met, Mr. Matte voted to grant as he believed all five (5) factors have been met, Mr. Bergeron voted to grant as all the factors have been met, and, Mr. DiPietro also voted to grant finding all five (5) factors have been met. A vote was taken and, all were in favor and the motion passed.

Mr. DiPietro informed Mr. Gilmore that there was a 30-day appeal period and that he had two (2) years for substantial completion of the garage.

With that said, Mr. Gilmore thanked the Board members for their time and the Board moved on to the next case. Ms. Royce read the second case into the minutes for the record.

**Case #21-11
Eric Mitchell
On Behalf of 269 Rockingham Road, LLC
269 Rockingham Road – Tax Map 25, Lot 40
Zoned Commercial Two**

Applicant is requesting to amend a Variance previously granted on April 24, 2018, based on an updated plan prepared by ECM showing landscape retaining wall and DES approved subsurface holding tank to be within the 75-foot Level Two wetland and watershed protection buffer in a Commercial Two zone. (Article 5, Section 5.08(1)(b))

Mr. Mitchell began by explaining where the property was located which was located within a Commercial Two zone. Mr. Mitchell explained that the lot consisted of .33 acres and that they acquired additional land from the State which the property now consists of .73

acres which has now more than doubled in size. Mr. Mitchell pointed out that, he had indicated the wrong section of the ordinance that they were seeking relief from which was not Section 5.01 but in fact Section 5.08(1)(b). Mr. Mitchell went on to say that they received a Variance in 2018 from a Level Two wetland setback. Mr. Mitchell added that, the project is near completion, and they are before the Board tonight is because there was a retaining wall that was built, and they are asking for a Variance to allow that to stay. In addition to that they are proposing a 3,000-gallon holding tank to take water from a floor drain in the building. They already have approval for a septic system and the property has town water. The holding tank is only if they wash a car it will go into the holding tank and once the tank gets full it will be pumped out. Mr. Mitchell read the application into the minutes for the record. Mr. Mitchell added that, the lot coverage has been reduced due to the additional land acquired. Mr. Mitchell asked the Board to consider granting the Variance and that he would be happy to answer any questions at this time.

Mr. DiPietro asked Mr. Villeneuve if he had anything to add. Mr. Villeneuve addressed the Board and explained what he is proposing to do and also passed out photos of the property and what has been done. At this time, the Board reviewed the photos presented by Mr. Villeneuve. Mr. Villeneuve further explained the location of the holding tank and that he had to go through the permit process with the State. Mr. Villeneuve explained that he thought the retaining wall was part of the landscaping and that Mrs. Rouleau-Cote informed him that it was not and that was why he was before the Board tonight.

Mr. DiPietro asked the Board members if there were any questions for the Engineer or applicant. None were noted. Mr. DiPietro asked Mrs. Rouleau-Cote if she had anything else to add. Mrs. Rouleau-Cote indicated that, she has been working with Mr. Villeneuve and his contractors trying to get this site and building up and running and explained that there have been challenges with the site. Mrs. Rouleau-Cote also agreed that the added acreage certainly does help his lot coverage issues. Mrs. Rouleau-Cote also informed the Board that, Mr. Villeneuve also had some difficulties with getting the utilities to the site whereby the electrical service to the property had to come in from a different direction than he was originally hoping for. Mrs. Rouleau-Cote also explained that the retaining wall does create a better buffer for the wetland as it is located between his building and Route 101 and stated that, there were a lot of contaminants that already come off the highway. Mr. DiPietro thanked Mrs. Rouleau-Cote for her comments.

Mr. DiPietro asked Mr. Porter stated that, the Conservation Commission voted not to approve because it had already been built and the vote was 3 to not support and 1 to support. Mr. DiPietro asked Mr. Porter if they had come to them first would they support it. Mr. Porter said yes but to have the work done first they could not support.

Mr. DiPietro also mentioned that the Board did receive a letter from a Mr. Scarpetti indicating that they support the improvements including the retaining wall and holding tank as they believe these modifications will only approve the existing lot and better protect their lot. Mr. DiPietro commented that, if there were no further questions or comments that he would entertain a motion to vote on this application.

Mr. Matte made a motion to vote on the Variance application with the condition of obtaining all state approvals and Planning Board approvals as presented tonight for Case #21-11, 269 Rockingham Road, Tax Map 25, Lot 40. Seconded by Mr. Stuart. Mr. Bergeron voted to grant that he believes the five (5) factors have been met and that the improvements will improve the environmental standards, Mr. Matte voted to grant as he believes that all five (5) factors have been met and agreed with Mr. Bergeron, Mr. Carroll voted to grant as he believed all five (5) factors have been met, Mr. Stuart voted to grant as he believed all five (5) factors have been met, and Mr. DiPietro also voted to grant finding all five (5) factors have been met. A vote was taken and, all were in favor and the motion passed.

Mr. DiPietro reminded Mr. Villeneuve of the 30-day appeal period. Mr. Villeneuve understood and thanked the Board for their time and the discussion ended.

Case #21-12

Eric Mitchell

On Behalf of Geraldine A. Silva Irrevocable Trust

177 Chester Turnpike – Tax Map 11, Lots 15-1 & 15-2

Zoned Rural

Applicant is requesting a Variance for the reduction of the wetland buffer to 75-feet and, a Variance to allow a common driveway to cross an existing culvert crossing and to be constructed in the wetland buffer in a Rural zone. (Article 5, Section 5.08(1)(a) and Article 5, Section 5.08(1)(b))

Mr. DiPietro explained that there was a request from Mr. Mitchell to continue this case until the next Zoning Board of Adjustment meeting which is scheduled for August 24th pending more information.

The Board all agreed to continue Case #21-12, 177 Chester Turnpike at the request of Mr. Mitchell until the next scheduled ZBA Hearing, which is August 24, 2021 at 7:00pm.

Case #21-13

Doug MacGuire

On Behalf of David Haddad

Londonderry Turnpike – Tax Map 1, Lot 27

Zoned Rural

Applicant is requesting a Variance to permit the construction of a townhome style multi-family dwelling unit (6 units) and a Variance to allow the number of dwelling units to exceed the per acreage requirement of zoning district which is 3 acres per unit within a Rural zone. (Article 4, Section 4.05(2) and Article 3, Section 3.13(1)(a))

Mr. MacGuire presented on behalf of Mr. Haddad, who is the owner of the property located on Londonderry Turnpike. Mr. MacGuire had copies of the plan to submit to the Board members for review. Mr. MacGuire stated that, this is a piece of property that was before the Board last year for a Variance for two (2) duplex units instead of four (4) single family properties with a shared driveway. Mr. MacGuire indicated that, the ZBA approved that application for two (2) duplexes at that time. Mr. MacGuire explained that the new owner is ready to build the two (2) duplexes and in discussions with the new owner that it seemed like there were merits for doing a townhouse style development in lieu of the two (2) duplexes. Mr. MacGuire went through the plans that were presented to the Board tonight and went over the overlay of what was approved with a Variance and in red shows the six (6) unit townhouses. The reason they are proposing this is that there was concern about the buffer and what their proposal will do is pull the driveway that much further away from the wetland setbacks. Mr. MacGuire went on to say that they would lessen the impervious by doing the six (6) unit townhouses as they are more compact. They will have one well and one septic as opposed to two (2) wells and two (2) septic. Also, by doing the townhouse set up that it would require a site plan and that they would have to go before the Planning Board which would provide additional protection for the property as it would be handled with a Homeowners Association. The site plan would control landscaping, maintenance, lighting, and lawns and plowing. Mr. MacGuire explained in detail the benefit of having a townhouse development as opposed to the two (2) duplexes. Mr. MacGuire also wanted to point out that, the location is a good fit for the townhouse style as it would be set into the side slope of the property with the garage under and that the first floor would contain the living area and kitchen and the top floor would have the bedrooms. With that said, Mr. MacGuire indicated that, he would be happy to answer any questions. Mr. DiPietro asked what the number of bedrooms would be. Mr. MacGuire asked Mr. Haddad what the number of bedrooms he was proposing. Mr. Haddad stated that he would be proposing three (3) bedrooms. Mr. MacGuire added that, these would be a higher end townhouse with three (3) bedrooms, two (2) garages with covered entryways and some stone on the front.

Qat this time, Mr. MacGuire read the application into the minutes for the record. Mr. DiPietro asked if there were any questions from the Board. Mr. Carroll commented that, this would be a better plan than the duplexes. Mr. Stuart asked if they have run this plan by the Fire Department yet. Mr. MacGuire stated that, they have not run it by the Fire Department yet, but they did go to the Planning Board conceptually per the advice of staff who suggested that they go to the Planning Board first and they really did not give much direction and really did not say much except to ask about drainage which would be taken care of at the site plan review. A brief discussion ensued with regard to the driveway set up and the ability for fire apparatus to be able to turn around.

Mr. DiPietro asked Mrs. Rouleau-Cote if she had any questions or comments. Mrs. Rouleau-Cote stated that, her only comment was that she does agree that the townhomes would have less impact on the area, however, her concern is that the spirit of the ordinance with the number of units and the density which was reiterated by the voters as most recent as 2019 to keep the density to the requirements of the zone. Mrs. Rouleau-

Cote also mentioned that the Planning Board is hearing a couple of cases right now with regard to a different type of development but a lot of the comments by the residents do center around the density and she does believe that this is a concern of some of the residents and reminded the Board that they need to make sure that the spirit of the ordinance is being captured. In conclusion, Mrs. Rouleau-Cote agreed the townhouses would be a better fit. Mr. DiPietro thanked Mrs. Rouleau-Cote for her comments.

Mr. DiPietro asked if there were any abutters or interested parties who would like to speak. Mr. Desfosses asked where they intended to put the well and the septic. Mr. MacGuire stated that they would probably put the well down gradient and off to the side because you can put that in a wooded section where you would be only temporarily impacting the area. Mr. MacGuire did say that, when they go before the Planning Board that they would have a full design and address any issues at that time. Mr. Porter pointed out that, the Board has had discussions on this and that 3 acres per unit that they will not have the coverage but for two (2) duplexes they do have the coverage. Mr. Porter asked about the 300 feet of frontage. Mr. MacGuire indicated that, they do have over 300 feet of frontage if you include the frontage on the By-pass and the frontage on Wilsons Crossing Road. Mr. MacGuire also wanted to point out that, this site is unique and is a good fit for the townhomes and that they are not trying to tuck townhomes in a rural single family home development. Mr. MacGuire did not believe they would have any issue fitting a well and septic system on this piece of property to accommodate six (6) townhouse units and did not believe there would be impact to the wetlands because of the well.

Mr. Carroll asked two (2) abutters to the property to please state their names and addresses. Mr. Desfosses who is on Londonderry Turnpike and Mr. Kittle who is on Westminster Lane.

In conclusion, Mr. MacGuire indicated that, they are looking for two (2) Variances with one for density and one for the use and believed that that is the job of the Zoning Board is to look at each application individually and believed there was a lot of uniqueness to this property. A brief discussion ensued regarding parking, garage, and access to backyard.

Mr. DiPietro stated that, this is in a rural zone and that the Board needs to consider the spirit and intent of the ordinance and believed that they could go into deliberation. Mr. Stuart asked if it had to be six (6) units or two (2) duplexes. Mr. Haddad said yes, they will be doing either six (6) unit townhouses or two (2) duplexes. Mr. MacGuire reiterated that going back for a full site plan for townhouse style building that Mr. Haddad would have engineering fees incurred and it would have to be justified to not just do the duplexes as originally approved. Mr. Stuart thanked the applicant for their comment.

Mr. Stuart made a motion to enter deliberations. Seconded by Mr. Bergeron. The Board entered deliberations at 8:23pm.

Mr. DiPietro began by saying that, what is the spirit and intent of the ordinance if they approve this Variance and would like to hear everyone's thought on that. Mr. DiPietro commented that he had to check the zoning map as he thought it was commercial but it's not. Mr. DiPietro read the section of the ordinance that states, "*multi-unit dwellings shall have minimum lot sizes no less than the acreage requirement per dwelling unit for the zoning district in which the dwelling is to be located*" and asked what the spirit and intent of that is. Mr. Carroll believed it would improve that area of Auburn and that the location warrants the townhouses as there is a gas station right there and Master Halco across the street. Mr. Carroll believed that they needed to take each case on a case-by-case basis and truly believed that the townhomes are better suited for that area.

Mr. Bergeron believed that they should add what the amount of acreage per unit would be and thought they should add that into the vote. Mr. DiPietro believed that this was a unique piece of land. Mr. DiPietro asked Mrs. Daoust for any comments. Mrs. Daoust asked if there was anything that would stop them from rezoning this piece. Mr. DiPietro indicated that the town would put it to a vote. A brief discussion ensued regarding rezoning a section and the process that would take place. In the end, Mrs. Daoust commented that, right now it's not in the spirit and intent of the ordinance.

Mr. DiPietro believed that the intent is to not have density and keep it rural and the fact that it would not be contrary to the spirit and intent of the ordinance because some of the reasons that Steve touched on and the rural zone would not suffer. Mr. Carroll mentioned the last time they were before the Board that there were a number of abutters that were present at that time, and he believed that there would be less impact and less roadway and that the townhouses would look nicer than the two (2) duplexes. Mr. Stuart believed there would be more control with having the townhomes and that one septic is better than two (2) septic.

Mr. DiPietro stated that, when we come out of deliberation that they would be voting on two (2) Variances, and one is for the density and the other Variance is for the use (multi-Family) which was verified by Mrs. Rouleau-Cote. Mr. DiPietro believed they could come out of deliberation at this time.

Mr. Bergeron made a motion to exit out of deliberations. Seconded by Mr. Carroll. The Board exited deliberations at 8:42pm.

Mr. Porter and Mr. MacGuire had a brief discussion with regard to density. Mr. Bergeron asked Mrs. Rouleau-Cote to clarify if the construction of multi-family townhomes is based on useable or the actual lot. Mrs. Rouleau-Cote believed they were confusing what is occurring and that if they were going for subdivision and it was under the previous cluster subdivision regulations or the current 55 and older regulation then yes there is language in there with regard to removing wetlands and steep slopes but that is only during a subdivision process. Those are not the items that would be brought up tonight because this is not a subdivision. This would go through the site plan review process with the Planning Board. Mrs. Rouleau-Cote did point out that, when they go through their septic calculations that the loading ability of the lot that they will need to prove those numbers

to New Hampshire Department of Environmental Services when they do their septic design by taking out wetlands, the well radius, and the like when they do their septic with DES.

At this time, Mr. DiPietro stated that, if there is nothing else that he would entertain a motion to vote on the application for each Variance individually.

Mr. Carroll made a motion to vote on the Variance request for Article 4, Section 4.05(2) to allow a six (6) unit multi-family townhouse style building as presented tonight for Case #21-13, Londonderry Turnpike, Tax Map 1, Lot 27. Seconded by Mr. Matte. Mr. Bergeron voted to grant as he believed all five (5) factors have been met, Mr. Matte voted to grant as he believed all five (5) factors have been met, Mr. Carroll voted to grant as he believed all five (5) factors have been met, Mr. Stuart voted to grant finding all five (5) factors have been met, and Mr. DiPietro also voted to grant finding all five (5) factors have been met. A vote was taken and, all were in favor and the motion passed.

Next, the Board voted on the Variance to allow the number of dwelling units to exceed the per acreage requirement of zoning district which is 3 acres per unit within a Rural zone.

Mr. Stuart made a motion to vote on the Variance request for Article 3, Section 3.13(1)(a) to allow the density to be 2.3 acres per unit instead of the required 3 acres per unit to allow a six (6) unit multi-family townhouse style building as presented tonight and subject to site plan review with the Planning Board for Case #21-13, Londonderry Turnpike, Tax Map 1, Lot 27. Seconded by Mr. Bergeron. Mr. Carroll voted to grant as he believed all five (5) factors have been met, Mr. Stuart voted to grant as he believed all five (5) factors have been met, Mr. Bergeron voted to grant as he believed all five (5) factors have been met, Mr. Matte voted to grant, and Mr. DiPietro also voted to grant finding all five (5) factors have been met. A vote was taken and, all were in favor and the motion passed.

Mr. MacGuire wanted to clarify an earlier discussion that the section that they requested the Variance from in the Zoning Ordinance does not mention anything about buildable area and read the section of the ordinance aloud to the Board as follows:

Article 3, Section 3.13(1)(a) – multi-unit dwellings shall have minimum lot sizes no less than the acreage requirement per dwelling unit for the zoning district in which the dwelling is to be located. (March 2018)

Mr. MacGuire just wanted to clarify that, that was why they were asking for a Variance from this section because they did not meet the density to have a six (6) unit multi-family townhouse style building and wanted to make sure that anyone thought that he was trying to misrepresent what he was requesting. With that said, Mr. MacGuire thanked the Board members for their time and the discussion ended.

Mr. DiPietro moved on to the approval of the meeting minutes for April 20, 2021.

Minutes

Mr. Carroll made a motion to accept the minutes of April 20, 2021, as written, seconded by Mr. Bergeron. All were in favor, with Mr. Wright abstaining as he was not present, and the motion passed.

Other Business

Ms. Royce indicated that there would be no meeting of the Zoning Board of Adjustment in July. The next ZBA Public Hearing is scheduled for Tuesday, August 24, 2021.

With that said, Mr. DiPietro asked for a motion to adjourn.

Adjourn

Mr. Carroll made a motion to adjourn, seconded by Mr. Bergeron. All were in favor, the motion passed unanimously, and the meeting stood adjourned at 8:55 p.m.

The Zoning Board of Adjustment will not be meeting during the month of July. The next scheduled meeting for the Zoning Board of Adjustment is August 24, 2021 at 7:00 pm and will be held at the Town Hall, 47 Chester Road unless otherwise noted on the upcoming Agenda.