

**Town of Auburn  
Zoning Board of Adjustment  
September 23, 2014**

**Present:** Mark Wright, Chairman; Jim Lagana, Vice Chairman; Elizabeth Robidoux, Mike DiPietro, Members; Robert Beaurivage, Kevin Stuart and Jeffrey Benson Alternate Members.  
Minutes recorded by Kathryn Skoglund

**Also Present:** Carrie Rouleau-Cote, Building Inspector; Ron Poltak, Planning Board Chairman and Alan Cote, Planning Board Vice Chairman

**Absent:** Peggy Neveu, Member

Mr. Wright called the meeting to order at 7:01 p.m., introduced the Board members and secretary and explained the procedure for tonight's hearing to those present.

Mr. Wright elevated Mr. Stuart to full voting status for the first case. At this time, Ms. Skoglund read the first case into the minutes for the record.

**Case #14-10  
Eric Mitchell  
On Behalf of Strategic Contracting Company, LLC  
77 Pingree Hill Road – Map 5, Lot 19  
Zoned Residential One  
TABLED from August 26, 2014**

*Applicant is requesting a special exception to allow clustered residential development which is allowed by special exception in a Residential One zone. (Article 4, Section 4.06(3)(a))*

Mr. Mitchell presented on behalf of the applicant. Mr. Wright asked Mr. Mitchell if the Planning/Zoning secretary had provided the applicant with the Zoning Determination drafted by the Building Inspector/Code Enforcement Officer, Carrie Rouleau-Cote. After reviewing a copy of the Zoning Determination Mr. Mitchell indicated that he had not but much of the determination was brought up at the applicants' informal meeting with the Planning Board meeting. Mr. Mitchell continued that the Planning Board did not look favorably upon the original proposed plan and briefly described the original plan to the Board. Mr. Mitchell relayed the Planning Boards concerns including the buffers, the flag lot, they preferred the lot lines out of the buffers and they were not inclined to consider a necessary waiver. Mr. Mitchell distributed to the Board a new proposed plan and indicated that it takes into consideration and addresses a lot of the requirements, comments and concerns of the Planning Board. Mr. Mitchell showed that the new proposed plan consists of 3 lots on Pingree Hill Road that are not part of the cluster subdivision that will be 2 acres with 200 foot road frontage. The proposed road is located to the right of the existing building. Mr. Mitchell indicated that as proposed this lot will have frontage and access on the proposed road, the other two lots frontage will be on Pingree Hill Road. The proposed cluster subdivision is to the rear of these 3 lots and consists of 8 lots with approximately 12 acres of open space. Mr. Mitchell continued that this new proposed plan removes the wetland setbacks from the cluster lots and results in a variance not being necessary as it meets the 20% criteria for Cluster Subdivision. Mr. Mitchell stated that they believe a cluster with open space works well and is best in this area, the approximate 12 acres of open space consists of 8 dry acres, 4 wet. Mr. Mitchell presented an infrared aerial photo of

the area which depicts the wetlands on and surrounding the property. Mr. Mitchell stated that as proposed this allows for more contiguous open space. Mr. Mitchell continued that if the Zoning Board grants the request for Special Exception tonight the applicant will still need Planning Board approval.

Mr. Lagana noted that the original plan shows 10 housing units and the new plan show 11 and asked how this is possible. Mr. Mitchell described the layout differences between the two plans. Mr. Wright verified the new proposed plan satisfies the cluster development requirements. Mr. Mitchell stated yes. Mr. Stuart clarified that the 3 2-acre, 200 foot frontage lots are not part of the proposed cluster therefore are not included in the cluster calculations. Mr. Mitchell stated that was correct. Mrs. Rouleau-Cote asked if this proposal would then be a 2 phase subdivision; the 3 lot traditional subdivision being 1<sup>st</sup> and the cluster being the 2<sup>nd</sup> in conjunction with that. Mrs. Rouleau-Cote asked if they were leave a 50 foot right of ways to qualify for a cluster subdivision. Mr. Mitchell clarified some points on the plan and noted that while the 3 lots are separate from the cluster they will be proposed simultaneously. Mr. Mitchell indicated that if the Zoning Board does not approve the Special Exception then they will present the Planning Board with a traditional grid subdivision instead of the cluster. Mrs. Robidoux questioned whether at the last meeting the matter was tabled for Planning Board input. Mr. Wright clarified that the request to table the case was made by the applicant. Mr. Mitchell explained that he was not able to be present so he asked that the matter be tabled so that he could be in attendance for the discussions. Mr. Lagana noted that the applicant has another case on the agenda this evening and confirmed that this new proposed plan will eliminate the need for that request. Mr. Mitchell stated yes, that application will be withdrawn if there is support for this new proposed plan. Mrs. Robidoux verified that the Planning Board has not yet seen this conceptual plan. Mr. Mitchell indicated that was correct. Mr. Wright asked why the applicant did not go before the Planning Board first with this plan and then to the Zoning Board. Mr. Mitchell explained that it was mainly a matter of timing, their intent is not to push the Zoning Board into making a decision but they were already on the agenda for this evening so are taking the opportunity to make the presentation now rather than wait another month. Mr. Lagana stated that the Zoning Board typically acts on ok'd plans and the presented plan is conceptual. Mrs. Robidoux agreed and noted that she does not want to delay the applicant and it is not a matter of not liking the plan but her concern is with the process. Mr. Mitchell stated that he understands and regardless of what the Zoning Board decides the plan still needs to go before the Planning Board for their approval. Mrs. Rouleau-Cote asked if the Zoning Board grants the Special Exception this evening is it for the parent tract or for the one to be created. Mrs. Robidoux agreed that the lots do not exist yet and expressed that she would not be opposed to the applicant going before the Planning Board for the proposed 2 phase subdivision simultaneously. Mr. Wright indicated that there is enough information here to act on, however the action is limited to the plan that is presented, if through the Planning Board process with Conservation Commission comments, etc. the plan changes at all the applicant will need to come back to the Zoning Board of Adjustment anyway. Mr. Mitchell noted that the Conservation Commission is not opposed to a cluster development on this property and presented the Board with an email expressing the opinion of the Conservation Commission from Chairman Chuck Joy. Mr. Mitchell relayed that the email notes that with either a cluster or conventional subdivision the wetlands on the property will be a challenge. Mr. Lagana reiterated Mr. Wright's sentiment that there is enough information for the Zoning Board to act on but it is a little cart before the horse. Mr. Stuart stated that he too has no problem voting on the matter tonight but agrees with Mr. Wright and Mr. Lagana. Mr. Wright reiterated that he is comfortable either way; he is more comfortable with the applicant going to the Planning Board first and then returning to the Zoning Board. Mr. Poltak Chairman of the Planning Board introduced himself and indicated that the Planning Board

would welcome the applicant back to present this proposed plan and then render their opinion to the Zoning Board. Mr. Mitchell asked if the Zoning Board felt that the applicant should have a discussion with the Planning Board and then come back before the Zoning Board or if the applicant should go for full approval with the Planning Board first before coming back. Mrs. Rouleau-Cote suggested the applicant have a public hearing with the Planning Board to obtain comments and blessing from the Planning Board. Mr. Wright agreed that if the applicant comes back to the Zoning Board with Planning Board approval then he is more comfortable acting on the request. Mr. Mitchell stated that based on this discussion tonight the applicant would like to table the matter until the next Zoning Board meeting, they will present their plan to the Planning Board prior to that meeting; they would also like to formally withdraw the application requesting a Special Exception to allow a duplex on a lot less than 2 acres in a cluster subdivision.

***Mr. DiPietro made a motion to CONTINUE the matter until the next scheduled hearing on Tuesday, October 28<sup>th</sup>, 2014 for Case #14-10, Tax Map 5, Lot 19, seconded by Mrs. Robidoux.***

Mr. Wright indicated that at this time the Board would entertain comments from the public and asked that individuals introduce themselves and state their address for the record.

Mr. Joe Diorio, 5 Rattlesnake Hill Road asked what the purpose of common land is; what is it used for; kids, people; is it good and useable. He sees a lot of swamp and wetlands in town. Mr. Wright acknowledged that much of Auburn is wet. Mr. Diorio asked shouldn't a percentage of common land be dry and usable. Mrs. Rouleau-Cote noted that is more a discussion for the Planning Board. Mr. Wright agreed and noted that while Mr. Diorio's questions are good questions the roll of the Zoning Board was to uphold the Zoning Ordinance. Mr. Wright suggested that Mr. Diorio bring his questions forth to the Planning Board. Mr. Diorio continued that the Planning and Zoning Boards are letting developers build on wetlands and are allowing the town to lose its country feel, he thinks the Boards can do a better job.

Ms. Jarlene Cornett, 57 Pingree Hill Road acknowledged that she has not seen this proposed plan and how it differs from the previous plan but asked how many waivers the applicant is going to want. Ms. Cornett continued by reading Article 14.14 (2) (e) *"The requested use will not create hazards to the health, safety, or general welfare of the public, nor be detrimental to the use of, or out of character with, the adjacent neighborhood in that location, and the nature and height of the buildings and structures will neither discourage the permitted use of the adjacent land and buildings nor impair the value thereof."* Ms. Cornett stated that all of the abutters present tonight agree that the cluster development is out of character with the neighborhood. Ms. Cornett continued that she has horses and knows that those who purchase homes within the proposed development will complain. Ms. Cornett referenced other farms in town that have been driven out due to developments. Mr. Diorio stated that he agrees a cluster development is not right for this neighborhood.

Mr. Don Snowdale, 92 Pingree Hill Road stated that most of the existing properties in the area have 2 acres or more and have 200 feet frontage. Mr. Snowdale continued that cluster developments are taking the country character out of Auburn. Mr. Snowdale asked what good is common land if you can't use it and added that everyone that he talks to is opposed; cluster developments bring in a different type of people. Mr. Snowdale also expressed his opposition of making the lot with the existing house smaller. Mr. Diorio additionally commented that cluster subdivisions add more burdens on the school system.

Ms. Cynthia Paige, 129 Pingree Hill Road stated that it seems that people want an opportunity to say what they need to say and asked if there would be a forum for that. Mr. Wright stated yes, the applicant would be moving forward to the Planning Board to present the proposed plan and will be back before the Zoning Board as well, the public is welcome to attend and be a part of the discussions. Ms. Paige asked if the applicants plan meets the necessary criteria will the Planning Board approve the plan even if abutters are against it. Mr. Wright stated that he cannot speak for the Planning Board; the Zoning Board however is governed by the Zoning Ordinance which is voted on by residents and noted that the applicant is a landowner with rights as well and the Zoning Board takes that as well as abutter's comments into consideration. Mr. DiPietro commented that the ordinance is based on a number of public hearings and the vote of residents; residents have the power to change the Zoning Ordinance as well as the Master Plan should they wish to. Mr. Wright agreed and noted that some cluster subdivisions come forth to the town boards and the meeting room is empty but he understands that this case directly affects those present tonight.

Mr. Robert Minnon, 102 Pingree Hill Road commented that what he is hearing from the Board is shame on the abutters for not being more involved. Mr. Wright stated no but noted that the much of the comments made tonight have little to do with the case before the Zoning Board tonight; the Board is happy to let people talk but it is not the charge of the Zoning Board to make changes to the Zoning Ordinance. Mr. Minnon stated that he feels bad now that they did not get involved earlier. Mr. Lagana stated that the Zoning Board takes great pains to consider all input provided and would like people to understand that the Zoning Board is sworn to uphold the Zoning Ordinance. Mr. Lagana continued that there are many that support cluster subdivisions but he hears the residents tonight loud and clear, it is a matter of opinion but the Zoning Board will listen and take all comments into consideration.

Mr. Diorio asked if the applicant has figured out how many 2 acre lots they could get. Mr. Mitchell displayed a conceptual plan for a traditional grid subdivision depicting 9 2-acre lots. Ms. Cornett stated that she is not against cluster subdivisions in the right place and her opinion is that this is not the right place. Referencing the conceptual grid subdivision plan, Ms. Cornett asked where the building envelope is on various lots. Mr. Mitchell described the building lots for each lot as asked. Mr. Wright noted that these are great questions and the Planning Board is the more appropriate Board to weigh in on them.

Mr. Aaron Benway, 90 Pingree Hill Road noted that his driveway is almost right across from the proposed subdivision and he is concerned with the traffic in and out as it is already a bad spot for backing out of his driveway. Mr. Benway asked if that would also be a conversation for the Planning Board. Mr. Wright stated yes.

***Mr. DiPietro voted to continue, Mrs. Robidoux voted to table, Mr. Stuart voted to table, Mr. Lagana voted to table and Mr. Wright also voted to table. The motion passed in the affirmative and the case was CONTINUED until October 28<sup>th</sup>, 2014.***

It was asked if the abutters would be re-noticed. Mr. Wright informed everyone present that this matter will be continued until the next scheduled public hearing on Tuesday, October 28<sup>th</sup>, 2014 and that this would be their only notice as no further notices will be mailed out. Mr. Mitchell stated that the abutters would be noticed regarding the meeting with Planning Board.

**Case #14-11  
Eric Mitchell**

**On Behalf of Strategic Contracting Company, LLC  
77 Pingree Hill Road – Map 5, Lot 19  
Zoned Residential One**

***Mrs. Robidoux made a motion to GRANT the withdrawal of the application for Case #14-11, Tax Map 5, Lot 19, seconded by Mr. DiPietro. Mr. DiPietro voted to grant, Mrs. Robidoux voted to grant, Mr. Stuart voted to grant, Mr. Lagana voted to grant and Mr. Wright also voted to grant. The motion passed in the affirmative and the case was WITHDRAWN.***

**Case #14-12  
Frank Hobbs  
32 Manchester Road – Map 7, Lot 27  
Zoned Village/Commercial Two**

*Applicant is requesting a variance to permit construction of a farmer's porch on existing dwelling within the 50 foot front setback in the Village/Commercial Two zone. (Article 4, Section 4.08(4)(c))*

Mr. Hobbs presented his application to the Board and read it into the record. Mr. Hobbs also presented the Board with a copy of the property tax card with a sketch of the proposed farmers' porch. Mr. Hobbs stated that he doesn't believe the porch will infringe on anyone or anything, it is just a grassy area and he will work with the Building Inspector to meet all codes. Mr. Wright asked how many feet the proposed porch would encroach into the setback. Mr. Hobbs showed on the sketch that the proposed porch is 30 x 10 feet. Mr. Lagana verified that the porch would be no closer to the road than the existing structure. Mr. Hobbs stated that was correct and added the proposed porch is a continuation of an existing deck. Mr. Stuart asked if the applicant was adding on to the existing deck or if the porch would replace the deck. Mr. Hobbs stated that he would prefer to replace it all than add on.

Mr. Wright elevated Mr. Benson to full voting status for this case.

***Mr. Lagana made a motion to GRANT the application for Case #14-12, Tax Map 7, Lot 27, seconded by Mr. DiPietro. Mr. DiPietro voted to grant, Mrs. Robidoux voted to grant, Mr. Benson voted to grant, Mr. Lagana voted to grant and Mr. Wright also voted to grant. The motion passed in the affirmative and the case was GRANTED.***

Mr. Wright noted that the applicant has two years to construct the porch and explained that abutters have the right to appeal the Zoning Boards decision within a certain amount of time.

**Case #14-09  
Mitchell and Rebecca Delacoe  
72 Donald Drive – Map 8, Lot 48-1-5  
Zoned Residential Two**

*Applicant is requesting rehearing of the request for a special exception to allow a private educational facility (yoga studio) which is currently allowed by special exception within a Residential Two zone. (Article 4, Section 4.06(5)(e))*

The Board reviewed a submitted Application of Appeal. Mr. Wright noted that the application

was submitted timely and the Board will need to make a decision tonight whether to grant or deny a rehearing. Mr. Wright asked was information missed, not discussed or is there new information that could possibly change the original decision of the Board. Mr. Wright did not think the one page write up that the applicant provided with the application added any new information; it hints that one abutter unable to attend the prior public hearing may support the case. Mr. Wright continued that the Zoning Board is typically pretty liberal with rehearing cases; rehearing is an opportunity to settle a matter before the applicant potentially appeals to the Superior Court, on the other hand he does not want to waste the applicant and abutters time if the Board believes they made a good decision at the original hearing. Mrs. Rouleau-Cote noted that the applicant did meet informally with the Planning Board and the minutes were provided to the Zoning Board. The Board members acknowledged that they had reviewed those minutes. Mr. Stuart stated that he appreciates that the applicant took that step and meet with the Planning Board and added that he does not like the appeals process and that the applicant and abutters are not notified of or present for the matter being discussed. Mr. Cote spoke with regards to the process, if the applicant and abutters were noticed and present tonight it would be a rehearing not a discussion about whether to rehear or not. Mr. Stuart stated he disagrees. Mr. DiPietro stated that he thinks the abutters swayed the Boards decision and noted that this is a Residential 2 zone and the abutters expressed that they were of the opinion that the proposed business would diminish the quality of life, the safety of the children and the value of the homes but they didn't offer any facts to support that. Mr. Lagana stated that having sat through the original case, acted upon the testimony and gone through the minutes again he doesn't believe the Board did not consider information or acted erroneously, the Board acted exactly upon the testimony that was given which was that no commercial activity, no school, or other activity beyond the storage of personal vehicles toys etc. would be stored in that garage. Mr. DiPietro commented that is a different case from the one they have been asked to rehear. Mr. DiPietro added that the Board has acted in favor of cases like this before and no one's children got run over and no one's house was depreciated. Mr. DiPietro stated that he would be in favor of granting a rehearing. Mr. Lagana continued that he would not vote in favor of a rehearing, he believes rehearing would not be a judicious use of this board, he believes this Board has been compromised with not being used correctly, due process was served, one thing was told and another preformed and it would be a great disservice to the abutters if they grant a rehearing without proper notice; should the applicant want to come back with a very specific request for a Special Exception for a private education facility as opposed to have a rehearing of this case that would be much more appropriate and fair for all as there is no new evidence to rehear this case.

Mr. Wright elevated Mr. Benson and Mr. Stuart to vote on this rehearing as they acted on the original case; Mrs. Robidoux was not present at that original hearing.

Mr. Stuart stated that the Zoning Board ruled appropriately at the original hearing, the applicant had a lack of evidence to support the request for special exception, had no plan, there were a lot of abutters' comments against the applicants request but Mr. Stuart noted that he would support a rehearing. Mr. Wright stated that he does not see any err in the Board original decision, everyone was fully heard, the case was fully vetted but asked if the Board wants to pause and gather more information. Mr. Benson stated that the applicant had opportunity to provide new information on the application and the presented application for appeal does not provide any new information. Mr. Benson continued that the Zoning Board has acted on requests similar to this but this case is a little different, the applicant has history, there is testimony that the Board doesn't normally hear, by the applicants own admission there is a second business being run out of the house which compounds the concerns of traffic, etc.; if

they had come forth with a plan, hours of operation, what they are doing with the other business. Mr. Benson stated that what was provided does not meet the requirement for a rehearing. Mr. Lagana reiterated that there was repeated testimony that there was going to be no commercial activity in the garage, it would be used for personal storage. Mr. Lagana stated that to grant a rehearing would be alluding that the Board acted erroneously or overlooked information, which the Board did not do. Mr. Wright replied to Mr. DiPietro's early comments about the Board acting on cases like this by stating that every case is different; a dance studio on Hooksett Road, a heavily traveled road and no abutters show up to the public hearing is different than a yoga studio in a quiet cul de sac and every abutter is opposed. Mrs. Robidoux stated that she was not present for the original hearing but she did read the minutes on record and she does not see anything that would warrant a hearing. Mr. Wright concurred the Zoning Board applied the ordinance appropriately. Mr. DiPietro agreed that the applicant has not made a case to support a rehearing however he thinks that the Board should rehear the case, he feels that there is no difference between the request of this applicant and the dance studio on Maverick Drive. Mr. Lagana commented that Mr. DiPietro feels that the Board was swayed by the abutters and asked if Mr. DiPietro thinks the Board should not consider abutters input. Mr. DiPietro replied that abutters input should be considered but believes that if no abutters were present the Board would have granted the original request. Mr. Stuart commented that in the past they have granted rehearing with as much information as this applicant has provided; if the Board is going to hold one applicant to a thin reed then the same should apply to another applicant but if the Board would like to change their standard he is fine with that. Mr. Wright did not think the Board was changing standard, it depends on the case and in this case the applicant and abutters both got a fair shot and the character of the case has not changed to warrant a rehearing. Mrs. Rouleau-Cote noted that if this yoga studio had activity in the primary house rather than the detached structure would that make a difference; if the other business was out of the attached 3 stall garage the applicant wouldn't be before the Zoning Board, it would be a permitted use and the abutters would have no say per her interpretation of a home shop. Mr. Wright stated that the Zoning Board asked the applicant specifically and the use is happening in both the upstairs of the garage and the basement of the house. Mr. Beaurivage stated that he agrees with Mr. Lagana the Zoning Board make a good solid decision and he gets the feeling that the applicant will ignore the process and do what they want to do. Mr. Beaurivage also noted that being too liberal with rehearing can at some point discredit the Board. Mr. Wright commented that this case is important to the applicant and the abutters.

***Mr. Wright made a motion to vote on the request for REHEARING of the application for Case #14-09, Tax Map 8, Lot 48-1-5, 72 Donald Drive, seconded by Mr. DiPietro. Mr. DiPietro voted to grant, Mr. Benson voted to deny, Mr. Stuart voted to grant, Mr. Lagana voted to deny, and Mr. Wright also voted to deny. The request to rehear the application was DENIED by a vote of 3 to 2 based on the applicant not presenting new evidence to support a rehearing of the application and the fact that the Board did not err in their decision to deny the original application.***

## **Minutes**

Mrs. Robidoux noted that on page 8 and 9 of the minutes it depicted Mr. Lagana voting twice, she believes once should be Mr. Wright, also on page 12 Mr. Benson's vote was to deny not grant.

## **Zoning Board of Adjustment Town of Auburn**

## **Rules of Procedures**

The Board agreed that they are prepared to vote on the Rules of Procedures as amended.

***Mrs. Robidoux made a motion to adopt the Town of Auburn Zoning Board of Adjustment Rules of Procedures as previously amended, seconded by Mr. Lagana. All were in favor, the motion passed unanimously.***

The Board thanked Mr. Stuart for spearheading this. The Board asked that a final draft be provided to each member.

Mr. Stuart relayed that he and Mr. Beaurivage attended the Planning Board meeting where it was proposed to form a work group to discuss cluster developments and potentially draft a change in the ordinance in time for the March election. Mr. Stuart asked if it was appropriate for member(s) of the Zoning Board to participate. Mr. Lagana spoke regarding clusters and noted that he would like to attend just to get some background and understanding regarding how they come up with numbers. The Board continued to discuss the varying opinions regarding cluster subdivisions. Mr. Lagana noted that some feel it is a pretty responsible use of land. Mr. Beaurivage stated that this all came about as a result of the varying opinions of the boards with regards to the proposed Maverick subdivision off of Pingree Hill Road with a proposed connection to Haven Drive. Mrs. Robidoux thinks it is a wonderful idea to have a workgroup but she does not believe that the Zoning Board can craft what they are charged with upholding. Mr. DiPietro noted that cluster developments don't sit well with country people. Mrs. Robidoux agreed that these residents have used and enjoyed the land and the proposed subdivision will take that away from them. Mr. Lagana noted that the proposed cluster that Maverick was proposing was good for the abutting neighbors as the open space provided a wooded buffer. Mr. Wright stated that if there is a strong want for Zoning Board participation with the workgroup the question can be raised to town counsel, but the Zoning Board does a good job of segregation from other boards as they are a quasi-judicial board and suggested let the Planning Board do the planning. Mr. Stuart stated he would report back to the Planning Board Chairman and agrees that they are a board of interpretation and there should be a separation of powers.

## **Adjourn**

***Mr. Wright made a motion to adjourn, seconded by Mrs. Robidoux. All were in favor, the motion passed unanimously and the meeting stood adjourned at 9:09 p.m.***

**The next ZBA Hearing is scheduled for October 28<sup>th</sup>, 2014 at 7:00 pm and will be held at the Town Hall, 47 Chester Road.**