

UNAPPROVED MINUTES

Town of Auburn Zoning Board of Adjustment November 18, 2014

Present: Jim Lagana, Vice Chairman; Elizabeth Robidoux and Mike DiPietro, Members; Robert Beaurivage and Kevin Stuart, Alternate Members. Minutes recorded by Denise Royce.

Also Present: Carrie Rouleau-Cote, Building Inspector.

Absent: Mark Wright, Chairman; Peggy Neveu, Member. Jeffrey Benson, Alternate.

Mr. Lagana called the meeting to order at 7:03 p.m. and introduced the Board members and explained the rules of procedure for tonight's hearing to those present.

Mr. Lagana elevated both Mr. Stuart and Mr. Beaurivage to full voting status for both cases. At this time, Ms. Royce read the first case into the minutes for the record.

Case #14-14

Otto & Lisa Kinzel

381 Chester Road – Map 8, Lot 1-1

Zoned Residential Two

Applicant is requesting a Variance to permit the installation of a child's play set structure within 75 feet of a Level One watershed wetland protection buffer in a Residential Two zone. (Article 5, Section 5.08(1)(a))

Mrs. Kinzel began by saying that it was actually 79 feet from the back of their property and that it was a 28 foot by 28 foot area that would be covered in mulch with the play set sitting on top of it. Mrs. Kinzel informed the Board that they have had the Conservation Commission come out and walk the property and that they have come up with a location that they have all agreed that would be the best location on the property. Mrs. Kinzel further stated that they have obtained letters from abutters saying that they have no problem with the location of the child's play set. Mrs. Kinzel showed the Board members a photo of what the play set looks like and also included a map of their property which shows the rock walls. Mr. Lagana asked Mrs. Kinzel to read her application into the minutes for the record. Mrs. Kinzel read her application into the minutes for the record.

Mr. Lagana pointed out that the Zoning Board Secretary had provided the Board members with pretty comprehensive list of articles and asked Mrs. Kinzel if she had gone to both the Conservation Commission as well as the Planning Board. Mrs. Kinzel stated that they had gone before the Planning Board and was told that they did not have to go before the Planning Board but had to go before the Zoning Board. Mr. Lagana stated that Mrs. Kinzel had mentioned several times that the Conservation Commission had approved this location and pointed out that in the minutes of September 2nd that the Conservation Commission opposed the motion. Mrs. Kinzel stated that they opposed the current location and in their plan they are showing the new proposed location which is still in the wetland buffer but further from the buffer. At this time, the Board reviewed the certified plot plan that was provided in the application package. Mrs. Robidoux asked Mrs. Kinzel if the Conservation Commission did a

site walk. Mrs. Kinzel said yes and that they had an e-mail from Mr. Joy. Mr. Lagana informed the Board that the e-mail was included in their package provided by Ms. Royce. Mr. Stuart asked Mrs. Kinzel to show the location that the play set is currently in on the plan. Mrs. Kinzel pointed out the location for the Board. Mr. Lagana asked if the Conservation Commission pointed out an exact location for the play set. Mrs. Kinzel said yes. Mr. Lagana asked if they were in agreement with the new proposed location. Mrs. Kinzel said yes. Mr. Beaurivage believed that the structure was not permanent and if they planned to move that they could remove the structure and take it with them. Mr. Stuart asked Mrs. Kinzel to mark the current location of the play set on the plan provided to the Zoning Board of Adjustment and wanted it included for the record.

Mr. Lagana asked Mrs. Rouleau-Cote if the specific site had been communicated to either the Building Department or the Town Hall from the Conservation Commission. Mrs. Rouleau-Cote stated that she was aware of the e-mail but was unaware of the location that was agreed upon between the Conservation Commission and the homeowner. Discussion ensued with regard to the location and the proposed agreed upon location.

Mr. Lagana asked Mrs. Kinzel if she understood that this was a wetland protection area and that the area was placarded for no develop. Mrs. Kinzel stated that there was poor signage and very poor communication when they purchased the home and that the only thing they received was a map which by looking at it is very confusing. When they first started building it they did not realize they were in violation. Mr. Lagana also pointed out that even the cultivation of grass was not allowed within the wetland buffer. Mrs. Kinzel stated that it had been maintained by mowing prior to them purchasing the property and when they met with the Conservation Commission that they stated that they could continue to mow the area because it had been mowed in the past. Mr. Lagana stated that the Level One wetland is the most sensitive of all wetlands we have in the town. Further discussion ensued with regard to encroachment into the wetlands.

Mr. Lagana was very concerned with whatever they do this evening would be closely looked upon and understands how innocuous a swing set might be and that someone wanting to put in a shed might think it might be the same as putting in a swing set. Mrs. Kinzel believed that the difference is that a swing set is totally impermeable and pointed out that there was no other location on the property that would be suitable. Discussion ensued with regard to the swing set not being a permanent structure.

Mrs. Robidoux asked Mrs. Kinzel if she received a copy of the certified plot plan. Mrs. Kinzel said yes, that they received it in their mortgage package. Mr. Stuart asked where they got the distances. Mrs. Kinzel stated that they measured them. Mr. Stuart asked if they were putting plastic down under the mulch. Mrs. Kinzel stated that it would be fabric. Discussion ensued with regard to the size of the structure which was noted to be 16.2 feet by 13.7 feet according to Mrs. Kinzel.

Mr. Lagana asked the Board members if they had any further questions or comments. Mr. DiPietro asked if the play set needed a building permit. Mrs. Rouleau-Cote said no.

At this time, the Board discussed the Conservation Commission's e-mail. Mr. Lagana asked if there were any further questions or comments and if not, he would entertain a motion to vote on the application.

Mr. Beaurivage suggested that Mr. and Mrs. Kinzel work with the Conservation Commission to pinpoint a specific location that the Conservation Commission sees appropriate and that they inform the Building Inspector of the location. Mr. Lagana believed that was done during the site walk with the Conservation Commission.

Mr. DiPietro made a motion to vote on the Variance application as presented for Case #14-14, Tax Map 8, Lot 1-1, seconded by Mrs. Robidoux. Mr. Beaurivage voted to grant, Mrs. Robidoux voted to deny as she believes it's contrary to public interest and did not believe that substantial justice would be done and that it did not meet the spirit of the ordinance, Mr. DiPietro voted to grant, Mr. Stuart voted to grant and Mr. Lagana voted to deny because the requirements did not satisfy the spirit of the ordinance and substantial justice as he expressed during discussions. The motion passed by a vote of 3 to 2.

Mr. Lagana explained to the applicants that there was a 30 day appeal period and that they had two (2) years to complete substantial construction or they would have to come back before the Zoning Board of Adjustment to request an extension. Mrs. Kinzel asked if there was any follow up to show that it has been completed. Mrs. Rouleau-Cote explained that the Board just wants to make sure that the Conservation Commission and the applicant were both on the same page with the location of the play set. Mr. Lagana said that was correct. A brief discussion ensued with regard to notifying the Conservation Commission, Code Enforcement Officer as well as the Planning and Zoning Secretary in writing of the final location of the play set.

Case #14-15

Frank Mesmer, Trustee

Geraldine Thomas

382 Manchester Road – Map 28, Lot 5-1

Zoned Residential Two

Applicant is requesting a Variance to modify a Variance that was granted on September 24, 2013 to allow the construction of a room at the rear of the existing house from 12 feet by 16 feet to 22 feet by 16 feet in a Residential Two zone. (Article 4, Section 4.06(6))

Mr. Tom Clatanoff, Contractor for the Mesmer's will be presenting the application tonight. Mr. Clatanoff began by saying that they have reduced the size of the addition from 22 feet by 16 feet to 16 feet by 16 feet. Mr. Lagana asked Mr. Clatanoff to read the application into the minutes for the record. Mr. Clatanoff explained the plan and pointed out that the house is so tiny and has only one (1) bedroom now and this would add another bedroom. Discussion ensued with regard to the previous variance that was granted in 2013.

The Board members and Mr. Clatanoff reviewed the proposed plan presented tonight. Mr. Lagana asked about property setbacks since they were making it bigger and lot coverage. Mrs. Rouleau-Cote said it was a very small lot and that it had to do with everything. Discussion ensued with regard to the size of the lot. Mrs. Rouleau-Cote asked about the well and if it had been drilled. Mr. Clatanoff said no that the well is still in the front. Discussion ensued with regard to the previous variance request for 12 feet by 16 feet and now they want to go 16 feet by 16 feet. Mrs. Rouleau-Cote pointed out that there was supposed to be a well drilled in the back corner. Mrs. Rouleau-Cote further stated that as part of their original process they had a septic design done for the property that was pretty entailed which also included relocating the well from out front to out back. They received approval to construct the leach field with significant conditions on it. Mr. Stuart asked if one of the conditions was to install a new well.

Mrs. Rouleau-Cote said yes but that they have not installed the new septic system yet. Mrs. Rouleau-Cote stated that the new system was for a two (2) bedroom. Mrs. Rouleau-Cote wanted to know when these actions would take place because the new design was approved in 2013 and it's good for four (4) years. Discussion ensued with regard to septic, well and shoreland protection and whether or not to condition the variance if it is granted.

Mrs. Robidoux made a motion to vote on the Variance to allow the construction of a 16 foot by 16 foot room to the rear of the home.

Mrs. Rouleau-Cote informed the Board that one of the conditions of the Shoreland Impact Permit was that "No more than 28.3% of the area of the lot within the protected shoreland shall be covered by impervious surfaces unless additional approval is obtained from DES" so if Shoreland says no, they may want to go back to their 12 foot by 16 foot that they received approval for.

Mrs. Robidoux made a motion to approve the modification of the Variance #13-23, the amendment allows the construction of a 16 foot by 16 foot to the rear of the home and continues to allow the 18 foot by 25 foot deck to the front of the house and a 5 foot by 8 foot deck on shed roof to the front of the house understanding that it will all encroach within the buffers in a Residential Two zone. Conditions of approval will include: 1) completion of the installation of the approved septic plan and; 2) that all of the elements attached to this Variance receive approval from Shoreland Protection for Case #14-15, Tax Map 28, Lot 5-1, seconded by Mr. DiPietro.

Mrs. Robidoux made an amendment to her previous motion to approve the modification of the Variance #13-23, the amendment allows the construction of a 16 foot by 16 foot to the rear of the home and continues to allow the 18 foot by 25 foot deck to the front of the house and a 5 foot by 8 foot deck on shed roof to the front of the house understanding that it will all encroach within the buffers in a Residential Two zone. Conditions of approval will include: 1) completion of the installation of the approved septic plan and; 2) that all of the elements attached to this Variance receive approval from Shoreland Protection. In the event that Shoreland Protection does not allow the 16 foot by 16 foot addition to the rear of the house, the Board understands that the applicant may revert back to the approval of the Variance (#13-23) which allows a 12 foot by 16 foot addition to the rear of the house for Case #14-15, Tax Map 28, Lot 5-1, seconded by Mr. DiPietro. Mr. Stuart voted to grant, Mr. Beaurivage voted to grant, Mrs. Robidoux voted to grant, Mr. DiPietro voted to grant and Mr. Lagana also voted to grant. All were in favor and the motion passed in the affirmative.

Mr. Lagana informed the applicant that there was a 30 day appeal period in which abutters or interested parties may appeal the ZBA decision tonight. Mr. Lagana further informed the applicant that he had two (2) years for substantial completion of the construction.

Mr. Clatanoff asked if he could start now. Mr. Lagana suggested that he wait the 30 day appeal period. Mrs. Rouleau-Cote believed that Mr. Clatanoff should start by contacting Tim Ferwerda to inform him that they went from a 12 foot by 16 foot to a 16 foot by 16 foot addition and ask him if it will affect the Shoreland Protection Permit so he can start working on that if it needs to be redone. Mr. Clatanoff understood what the Board and Mrs. Rouleau-Cote was saying.

Other Business

Mr. Lagana informed the Board that, at this time, there were no new applications for December.

Minutes

Mr. DiPietro made a motion to accept the minutes of October 28, 2014, seconded by Mrs. Robidoux. All were in favor, the motion passed with Mr. Lagana abstaining.

Adjourn

Mr. Stuart made a motion to adjourn, seconded by Mrs. Robidoux. All were in favor, the motion passed unanimously and the meeting stood adjourned at 8:05 p.m.

The next ZBA Hearing is scheduled for December 16th, 2014 at 7:00 pm and will be held at the Town Hall, 47 Chester Road.