**APPROVED MINUTES**

**Town of Auburn**

**Zoning Board of Adjustment**

**July 28, 2015**

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

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

**Absent:** Jeffrey Benson, Member.

Mr. Wright called the meeting to order at 7:04 p.m. and informed everyone that all the Board members were present and that he was informed that all the applicants were present as well. Mr. Wright also stated that there was a note on the sign at town hall informing everyone that the meeting was being held at the Safety Complex. At this time, Mr. Wright introduced the Board Members and explained the procedure for tonight’s hearing to everyone present. Mr. Wright elevated Mr. Bob Beaurivage to full voting status for the first case and asked Ms. Royce to read the first case into the minutes for the record.

**Case #15-15**

**Malcolm & Helen Wood**

**376 Manchester Road – Map 28, Lot 4**

**Zoned Residential One**

*Applicant is requesting a Variance to allow a storage container on the property in a Residential One zone. (Article 4, Section 4.06(6))*

Mr. Wood did not have a copy of his application so Ms. Royce gave him her original to read from. At this time, Mr. Wood began by explaining the reasons that his tenant needed to have the storage container allowed to be on the property temporarily. Mr. Wright asked Mr. Wood to read his application into the minutes and Mr. Wood proceeded to do so. Mr. Wood stated that it was not a permanent structure but that it was a temporary structure and asked the Board members to allow the structure to remain on the property.

Mr. Lagana asked Mr. Wood if he knew what was in the storage container. Mr. Wood stated that he did not know but believed that it may be tools and the like because the tenant was in the flooring business. Mr. Wright explained to the Board members that they have received a packet of materials which shows a few letters from the Code Enforcement Officer pointing out to them that they were in violation. Mr. Wright also pointed out what appeared to be a complaint from an abutter as well as a letter from counsel who was representing an abutter commenting on the variance. Mr. Wood asked if he had a copy of the letter. Attorney Morin gave Mr. Wood a copy of the letter to Mr. Wood.

Mr. Wright asked for abutter comments and if they were represented by counsel to please state your name and address for the record. Ms. MacAskill who owns 380 Manchester Road and Attorney Andrew Morin was representing Ms. MacAskill began by saying that according to the Town of Auburn’s statute that if you have a storage container on your property for more than 365 days that it would be considered permanent. Attorney Morin went on to say that, their contention was that because the storage container has been there for three (3) years and that it is used to store flooring materials that they do not feel as though this contention really amounts to a variance. As he stated in his letter that, anyone that has a small site that needed commercial storage would be allowed to do so. Also, the Town of Auburn zoning statute states “no storage space used for commercial purposes should be visible to any of the neighbors” and that this was clearly visible and does actually block their lake views. At this time, Attorney Morin asked the Board if they had any questions. Mr. James Zielinski who was the tenant of the property indicated that he has been living there for 12 years and stated that the storage container gets moved every 7 to 8 months when the winter time comes he has them take it out and during the summertime when he is really busy and he cannot keep the actual materials where his shop is then he will use the storage unit. Mr. Zielinski further explained that there is a table saw as well as his grandfather’s stuff way in the back of the storage container. Mr. Zielinski pointed out that they do not have a view of the lake because their door looks directly into his yard. Mr. Zielinski stated that the reason for the storage container was to protect his tools from rusting because of the lake because the lake puts off so much water and that if the storage container leaves that his tools would be sitting on a pallet. Mr. Zielinski commented that there was no way to put up a garage because the lot was so small. At this time, Mr. Zielinski thanked the Board for their time and stated that it was 14 feet away from the property line.

Mr. Wright asked Mrs. Rouleau-Cote if she had any questions. Mrs. Rouleau-Cote stated that she did not have any comments at this time and that she was listening.

Mr. Richard Gable of 374 Manchester Road informed the Board members that he was an abutter and that he had no problem with the storage container. Mr. Wright reiterated the abutters to direct their comments to the Board and not to each other to maintain order.

Mr. Wright asked if there were any questions or comments from Board members. Mr. Zielinski wanted to make one more comment and stated that 75% of his work is done right here within the Town of Auburn on new homes and taking his tools out of the container. Mr. DiPietro asked Mr. Zielinski if there was any other place on the property or in the house that he could store his tools in. Mr. Zielinski stated that he did have stuff already in the back office which was already loaded with stuff and that there really was no other place to store his tools. Mr. DiPietro asked about the basement. Mr. Zielinski stated that it was a crawl space and that it was very wet. Mr. Zielinski stated that the container has been there for three (3) or four (4) years and that all of a sudden they received a letter.

Mr. Wright again asked the Board if they had any questions for the applicant. Mr. Beaurivage asked what the size of the container was. Mr. Zielinski stated that it was 8 feet by 16 feet. Mr. Beaurivage asked Mr. Zielinski that he had mentioned that he was considering looking for another location for the container at the end of the summer. Mr. Zielinski said yes but it was very expensive and that he would have to travel to Nashua and then back into Auburn would be time consuming so having the container where it is now lets him save on gas and time.

***Mr. Lagana made a motion to go into deliberations, seconded by Mrs. Robidoux. A vote was taken and the Board entered into deliberations at 7:32pm.***

Mr. Lagana began by saying the basic premise of the case seems flawed because they have heard testimony and that they have seen written testimony that this is desired for temporary use whether it’s a year or two (2) years. This is a temporary storage container by definition which is a rental and the ZBA is being asked to affix some kind of permanent status via a variance to a temporary situation so regardless of how one feels about the merits of the case and the setbacks and whether or not it belongs there or it’s obstructing a view that any argument that comes into play is that the very premise is flawed. This Board cannot be assigning permanent status to a temporary issue and they cannot say that they have a variance and it expires in one year. Secondly, although certain business practices are allowed by special exception in an R1 zone that it sounds like a business is being run from the home because the Board has heard about an office and storage facility and they have not discussed before the Board any kind of special exception or variance request to allow a home shop, home business or home office so before they can even get to the container issue that they should be looking to see whether or not the business is allowed in the zone. Mr. Lagana believed that there were a couple of levels to this issue. Mr. Wright commented that, even if they get to that that they would still have to deal about the issue with outdoor storage being visible to abutting properties even if it was allowed in this area. Further discussion ensued with regard to the home shop, home business and home office.

Mrs. Robidoux explained that the ordinance allowed these structures to be put in place with a building permit and that temporary structures were only allowed for 180 days and not 365 days. Mrs. Robidoux stated that anything over 180 days is considered permanent for commercial purposes. Mrs. Robidoux talked about setbacks because they did not see anything with regard to setbacks and that they were not asking for setback relief and was unsure if the Board was looking at the right thing. Mr. Wright stated that even if the Board decides it is temporary that it would still have to meet the setbacks and could only be used during construction on the premises and did not believe it fell within this category. Mr. Wright believed that based on testimony and written submissions from abutters that it was commercial and non-residential in a residential one zone. Mr. Wright wanted to be sure that the Board would not only be thinking about this case but any future case that comes before the Zoning Board of Adjustment in a residential zone with very similar facts and be prepared to apply the same analysis and understanding that every case is unique.

Mr. Wright asked Mr. DiPietro if he had anything to add. Mr. DiPietro indicated that the storage unit was definitely being used to store commercial materials. Mr. DiPietro further stated that the land was not being used commercially but was in fact being used as a residence and that he probably would look at this as a shed for the variance point of view. Mr. DiPietro stated that the size was marginal and the bigger question was where does the commercial begin and end. A brief discussion ensued with regard to usage of the property.

Mr. Wright asked Mr. Stuart or Mr. Beaurivage if they had anything to add. Mr. Beaurivage commented that it did not conform with Section 3:11 because they have no dimensions to look at setback issues and that it was hard for him to put it in the shed category because it is intended to be temporary. Mr. Stuart commented that if they made it through this that it would seem like they would have to come back before them for a number of other issues for more variances. Mr. Wright believed that if the Board concludes that based on what they read in the ordinance that it was prohibited then there was no reason to discuss the setback issues.

Mrs. Robidoux stated that if this were her that she would simply withdraw the application and come back with one to do business from the home and to allow a storage container to do it all at once. Mr. Wright pointed out that whether it was a home business or a home shop that you still could not satisfy the factors for a variance because you would still need a variance to deviate from Section 3.11. The Board all agreed with Mr. Wright.

***Mr. Lagana made a motion to come out of deliberations, seconded by Mr. DiPietro. A vote was taken and the Board entered into deliberations at 7:45pm.***

Mr. Wright stated that he would give the applicant and abutters another opportunity to if they had any questions or comments before he would entertain a motion from the Board members. Mr. Zielinski had one more question and asked about the conversation of having a trailer that he could take to work with him every day and that he had a trailer like that because he is a subcontractor. Mr. Zielinski further talked about the comment that Mr. DiPietro that it was like a shed and if he had a shed he would use a shed and the only reason why the container was so big was that it was only $10 more than the smaller one. If the Board was telling him that he could have a trailer that he could put his tools in and tag along with his van to have a moveable storage for his tools then he would do that. Mr. Zielinski further added that if he had to move the storage container that he would be parking his camper in its place which is 29 feet and they still would not be able to look over his yard. Mr. Zielinski asked Mr. Wright if he moved the storage container and parked his camper there would he be back for another meeting. Mr. Wright stated that the issue of obtaining a tag along trailer and parking his camper in the same spot as the storage container were all different facts and were not topics for this Board to discuss at this time and did not want to get between what is a civil matter between abutters. Mr. Wright directed Mr. Zielinski to speak with the Code Enforcement Office and describe what it is that he would like to do and let her determine what is allowed through our ordinance and if not what would be your recourse through the Zoning Board. Mr. Zielinski did not believe it had anything to do with the container but had everything to do with blocking their view to the lake through his yard.

Attorney Morin stated that the storage container is considered a permanent structure because it has not been moved within the last three (3) years. Attorney Morin further pointed out that it was a Residential One zone and that they believe it is a Home Shop which is allowed under Section 4 in the Residential One zone and that in Section 3.22 Home Shop – shall not utilize outdoor storage visible to surrounding properties. Attorney Morin believed it was pretty clear in the Town of Auburn’s Zoning Ordinance how the Board should decide.

Mr. Wright moved on to ask the Board members for a motion.

***Mr. Lagana made a motion to vote on the application as presented for Case #15-15, Tax Map 28, Lot 4, seconded by Mr. DiPietro.***

Mr. Wright explained that they had an application on its face to request temporary storage container within the setbacks which has not been defined in a Residential One zone. The applicant has presented their case and went through the factors and a vote to grant would allow exactly what the applicant has done within undetermined setbacks and a vote to deny would be to deny the use of the temporary storage container within the setbacks.

***Mrs. Robidoux voted to Deny because she believes it fails factor #5 as she did not believe it was temporary storage, Mr. DiPietro voted to Deny but believed the applicant has met all the factors, however, he voted to deny because the Board had no plan, Mr. Beaurivage voted to Deny because he believed the applicant was looking for another place to put the storage container and did not believe there was a hardship, Mr. Lagana voted to Deny because he believed the application failed all five (5) factors and Mr. Wright also voted to Deny because he believed that the applicant has not satisfied Factors #3, #4 & #5. The request was DENIED by a vote of 5 to 0.***

Mr. Wright informed the applicant that there was a 30 day appeal period to request a rehearing and if they did that he would ask that they come prepared with new and additional information that the Board has not heard this evening and that they should have a very detailed plan showing the dimensions of existing structures, lot lines and easements and where this storage unit resides and/or where it’s proposed should they ask for a rehearing.

Mr. Zielinski asked Mr. Wright if he did not decide to come back before the Board, how long he would have to move the storage container and could he ask for 60 or 90 days before he had to move the container. Mr. Wright informed Mr. Zielinski that he would have to ask the Code Enforcement Officer about that. Mr. Zielinski asked about the time limit. Mrs. Rouleau-Cote and Mr. Wright both reiterated to Mr. Zielinski that he had 30 days to appeal the ZBA Decision. Mr. Wright did not believe that Mrs. Rouleau-Cote would take action until after the 30 day appeal period was up but that it was up to her. Mr. Zielinski thanked the Board for their time and exited the meeting.

**Case #15-16**

**April Adams**

**23 Cottage Avenue – Map 27, Lot 1**

**Zoned Residential One**

*Applicant is requesting a Variance to allow the expansion of a non-conforming structure on a non-conforming lot adding a second floor in a Residential One zone. (Article 3, Section 3.05(4)(b))*

Mrs. Adams began by reading her application into the minutes for the record. Mrs. Adams further pointed out that they were before the Board tonight to seek a variance to put an addition onto their home and explained the water damage to the home from ice damning which cause a lot of interior damage. They had to upgrade the smoke alarms and turned the discussion over to her husband. Mr. Wright asked the applicant if this was an urgent issue that they would like to take care of it before any further damage were to occur. Mr. Adams said yes and talked about the wiring and the mice issue and that it wasn’t until they talked to Mrs. Rouleau-Cote that they were told they had to go before the Zoning Board of Adjustment for a variance. Mrs. Adams stated that the house has been in the family for many years. Mr. Adams commented that the trusses were broken. A brief discussion ensued with regard to what they were proposing. Mr. Lagana asked if they had a building permit. Mrs. Adams explained that they filed for a permit to do a new roof which was signed off by someone other than Mrs. Rouleau-Cote and then once they started construction they were told to stop construction by Mrs. Rouleau-Cote until they went before the ZBA to seek a variance. At this time, Mr. Adams showed the Board members the construction and the location of the construction. Mrs. Adams stated that their septic system is approved for three (3) bedrooms.

Mr. Wright asked Mrs. Rouleau-Cote if she had any comments. Mrs. Rouleau-Cote explained that what Mrs. Adams has stated was true and they did apply for a building permit for roofing when she was away from the office and once she pointed out to the applicant that it was beyond the scope that they needed a permit for they were very responsive and complying and filed an application with the ZBA. Mrs. Rouleau-Cote further added that they do have a state approved septic system for a three (3) bedroom home.

Mr. Wright asked if there were any abutters present. Mr. Erik Wallin of 17 Cottage Ave stated that from what he has seen it is very similar to the neighborhood and that they were adding to what they already have. Mr. Wallin also stated that there was a tree line between the two properties so he really doesn’t see anything and did not have any issues with what they are proposing to do. Mr. Wright thanked Mr. Wallin for his comment.

Mr. Wright elevated Mr. Stuart to full voting status for this case. Mr. Wright asked the Board members if they had any further questions or comments. None were noted. Mr. Wright stated that he would entertain a motion to vote on this application.

***Mr. Lagana made a motion to vote on the application as presented for Case #15-16, Tax Map 27, Lot 1, 23 Cottage Avenue, seconded by Mrs. Robidoux.***

Mr. Wright explained that they have a motion to vote on the application as submitted to grant a variance to allow the expansion of a non-conforming structure on a non-conforming lot adding a second floor in a Residential One zone as described by the applicant and the application.

***Mrs. Robidoux voted to grant, Mr. DiPietro voted to grant, Mr. Stuart voted to grant as he believed they met all the criteria, Mr. Lagana voted to grant, and Mr. Wright also voted to grant. The motion passed in the affirmative.***

Mr. Wright explained to the applicant that, just as he described to the prior applicant that there was a 30 day appeal period at which time someone could request a rehearing if they had a problem with the Boards decision and just wanted to point it out. Mr. Wright stated that it did not mean they had to stop but wanted them to know that there was a window of 30 days for someone to challenge the Board’s decision.

**Case #15-17**

**David and Michelle Mudge**

**425 Manchester Road – Map 25, Lot 4**

**Zoned Residential Two**

*Applicant is requesting an Appeal from a ZBA Decision that the Zoning Board of Adjustment made on May 26, 2015 regarding repairing and sales of classic cars in a Residential Two zone and that the ZBA granted a request for rehearing on June 23, 2015. (Article 14, Section 14.06(1))*

Mr. Wright began by saying that this was a case that was before the Board last month which a decision of the Board to grant a new hearing for this matter. Mr. Wright asked who was present on the first case. Mr. Wright asked the Board members present who was present at the first hearing. Mr. Wright also asked Ms. Royce who the voting members were that voted at that time. Ms. Royce informed Mr. Wright that Mrs. Robidoux, Mrs. Neveu, Mr. Lagana, Mr. DiPietro, Mr. Benson and Mr. Wright himself. With this in mind, Mr. Wright elevated Mrs. Neveu to full voting status for this case.

Mr. Mudge began by saying that he would like Mr. Jean Methot to speak on his behalf as he was under the weather. At this time, Mr. Methot stated that he was before the Board tonight on behalf of Mr. Mudge for the appeal of conditions that was set on May 26, 2015. Mr. Methot indicated that he went through the minutes and that he went through everything and it showed that some assumptions were made by both sides that were incorrect. Mr. Methot went through the conditions and began at **Condition #1** which tied Mr. Mudge being a licensed dealer and should the dealer license lapse that no repair activity takes place. Mr. Methot stated that he submitted in evidence that the state had changed how they would be operating. This year Mr. Mudge could not renew his license without the ZBA approval because of a business name and the ZBA would not give it. This year if you are a bonded dealer you will need to cease business operation by December 31, 2015. If you wish to become another type of dealer you will need to apply as new. By doing this, it has the potential for the ZBA to deny him again. Mr. Methot believed that it would be unreasonable for the ZBA to say he can’t work here anymore if he can’t comply for some unforeseen reason and get a state license.

Mr. Methot moved on to **Condition #3**. Mr. Wright asked Mr. Methot if they were not taking issue with Condition #2. Mr. Methot said no and believed that was on the form that Mr. Mudge received from Mr. Jore. Mr. Mudge asked Mr. Wright to read what Condition #2 was again. Mr. Wright read the Condition #2 which stated “that there should be no display sales on the property (paperwork sales only)”. Mr. Mudge said yes that is what Mr. Jore had put on for conditions. Mr. Methot talked about Condition #3 which was “Repair activity shall be relegated to Classic Vehicles only” and believed it was unreasonable for the ZBA to limit him to just classics because he could not continue just on that basis. Mr. Methot indicated that Mr. Mudge has relied on other vehicles and small engine/mower type of work for 17 years.

**Condition #4** which was “No cars off the street, no pickup trucks off the street as the trade name implies and excludes lawnmowers, small engines, boats and snowmobiles.” Mr. Mudge’s tradename is “Dave’s Repair Shop” doesn’t imply any such thing other than a general repair shop and that cars and trucks have always been done here off the street, along with lawnmowers, small engines, etc., for the past 17 years.Mr. Methot feels it is unreasonable to restrict Mr. Mudge from working as he has. Since he has been unable to work for the last few months, he is financially strained because of the burden placed on his business. Actually, Mr. Mudge should be commended for operating a business in a residential zone for 17 years with no complaints from the neighbors. Mr. Mudge should be viewed as a showcase for the Town of Auburn on how to operate a vehicle repair/or small repair business, with no exterior vehicles parked in the yard and his property is very well maintained. Mr. Methot further indicated that, the use does not diminish the value of surrounding properties and motor repair business is not contrary to the public interest. Mr. Methot stated that by the ZBA placing conditions on Mr. Mudge that the ZBA is creating an unnecessary hardship.

Mr. Methot understood that Mr. Jore put the Town of Auburn in a quandary and he also worked for the Town of Chester and had spoken to Mrs. Rouleau-Cote about that and now it has put the ZBA on a fence as well. Mr. Methot did not believe that Mr. Mudge should be penalized for what Mr. Jore had done. Mr. Methot stated that he was not familiar with the Town of Auburn’s Zoning Ordinances and especially back in 1998 but that the town had an opportunity to appeal his decision back then but failed to do so.

Mr. Methot pointed out that Mr. Mudge currently has his property for sale and his desire is to continue to conduct his repair business until his home is sold. Mr. Methot requested that the Board grant Mr. Mudge a temporary permit without the imposed restrictions until such time that he vacates the property. At this time, Mr. Methot thanked the Board for their time. Mr. Wright asked about **Condition #5** which states that “advertising immediately ceases as a commercial garage” was not a problem. Mr. Methot said no. Mr. Wright reiterated that Condition #2 and Condition #5 was not in question. Mr. Methot said that was correct. Mr. Methot added that Condition #1 really restricts Mr. Mudge and by December 31, 2015 that he may not have a dealer license.

Mr. Wright asked if there were any abutters present. Mr. Murray Towle of Kimball’s Point stated that he had no issues and wanted to speak in support of Mr. Mudge’s appeal. Mr. Towle indicated that Mr. Mudge has been operating his business for about 17 years and during that period of time, the house, the garage and the grounds have all been maintained in excellent condition. There is very little evidence of commercial activity and that the repair work is done within the garage and liked having Dave’s Repair Shop nearby in case he needed some work done. Ms. Kathleen Provost of 415 & 417 Manchester Road was a little confused with the lack of forthrightness with all these different hearings because when she came to the hearing to allow the Justice of the Peace/wedding thing there was no mention of classic cars and no mention of the lawnmower repair business. Ms. Provost continued to say that at the last meeting Mr. Mudge stated that he only did classic cars and sometimes works on friend’s cars and do lawnmower repair sometimes but hadn’t done it for a long time. Ms. Provost further pointed out that now Mr. Mudge is stating that he has done all along and that it was his only source of income and was just trying to figure out exactly what Mr. Mudge is doing and will it move on to the new owners once Mr. Mudge sells the property. Mrs. Mudge commented that she does not do the Justice of the Peace there but only has a sign out there and that her husband did bring up that he did have a repair shop at that time.

Mr. Racino of 423 Manchester Road stated that he has lived there for 7½ years and has known Mr. Mudge just as long and has never had any issues whatsoever. Mr. Mudge has always kept the property very clean and has never had any issues.

Mr. Wright asked the Board members if there were any questions. Mr. Lagana wanted the record to show that he voted against the rehearing because he believed that the original decision and the conditions placed on that decision was fair and prudent. Mr. Lagana believed that the conditions accommodated the needs of the applicant, the town and abutters fairly and was very comfortable with it. Mr. Lagana stated that he was a little concerned that the testimony seems to have changed in his opinion over the course of the meetings. Mr. Lagana started with Condition #1, which the entire foundation of this case was built on the fact that Mr. Mudge had been a continuous dealer and recognized by Mr. Jore and recognized by the town for over 15 years. It was the continuous renewals of those licenses that actually turned the case for him back in the original hearing. Mr. Lagana went on to Condition #3, the Board constantly heard about classic vehicles and traveling to Florida in the wintertime and buying the vehicles and bringing them back, fixing them up and restoring them and selling them. Mr. Lagana once again talked about taking trade off the street, various cars and trucks and that the Board heard testimony many, many times that business was based on the maintenance and restoration of classic cars and not just the ordinary vehicles. Mr. Lagana realizes that there is a fine line and matter of opinion and interpretation but the entire foundation was Mr. Mudge being a licensed dealer and also one that concentrated on classic vehicles. Mr. Lagana reiterated that he voted in favor of the original decision and is comfortable with the conditions imposed and voted against the rehearing.

Mr. Wright believed that Mr. Lagana was the sole member that denied the rehearing and asked which members voted to rehear the case and asked those members if they wanted to go into deliberations to discuss the case and what they have heard tonight and if they had questions about to cause them to rehear the case or do they want to express their opinion without the benefit of discussion amongst the Board.

***Mrs. Robidoux made a motion to enter into deliberations, seconded by Mr. Lagana. A vote was taken and the Board entered into deliberations at 8:25pm.***

Mr. Wright explained to everyone present that the Board was in deliberations of which they can hear everything. Mr. Methot understood.

Mrs. Robidoux believed that Condition #1 should be there and Condition #3 agreed with the abutter because she did not know what Mr. Mudge was doing because it’s been classic cars, regular car repair and all of these things and needed to know exactly what the repair business encompasses in order to make a decision. If it’s more than classic cars and it’s an occasional lawnmower here and there then she would be okay with changing Condition #3. Mrs. Robidoux went on to Condition #4 and maybe they reword Condition #4 to say “no off street customers” or something like that and then they would have to be careful about that because they cannot infringe upon his ability to conduct a business.

Mr. Wright wanted to give a bigger picture of how the Board got to where they were now and the standard of their decision. The first case, the Board decided based on municipal estoppel and something that a town employee said and an applicant justifiably relied on it and did certain things. Mr. Wright pointed out that, their decision should address what he could justifiably rely on and decide what those perimeters are, no more and no less based on what they see for documentation in the file and based on what they have heard for testimony but this is a very narrow relief which is different than a variance or special exception. This is something that, when they look back in time and they see some of the things and they make their best decision based on what was presented and what they have heard, what he justifiably could rely on. Mr. Wright understood that he was a great neighbor and running his business in a clean and responsible way is great. If someone has been doing it for 15 years and doing something that they shouldn’t it doesn’t matter that they were a model citizen and no one knew about it. The simple fact is, once someone finds out about it or Mrs. Rouleau-Cote gets a call is almost irrelevant. Mr. Wright had very specific comments and in his view but wanted to hear the Board’s comments.

Mrs. Neveu stated that she agreed with Mr. Lagana and Mrs. Robidoux about the classic vehicles because he talked about at the first meeting and how much money he was making because he didn’t know because of his bookkeeping but it was classic cars period and that was what Mr. Mudge brought up and that was what they based their decision on. Mrs. Neveu pointed out that she missed the rehearing but it wasn’t pickup trucks but he did comment that he helps a neighbor once in a while but it was specifically “classic cars”. Then when the rehearing came was when all the mechanical things came into place but when they made their decision on what they heard at the first hearing and now the perimeters have changed.

Mr. DiPietro commented that he thought the conditions were rather restrictive to classic cars. Mr. DiPietro had a question on whether repair activities even take place without a dealer license which has to do with Condition #1. If repair activity can’t take place without a dealer license then Condition #1 is perfectly reasonable but if repair activity can take place without a dealer license then Condition #1 may be unreasonable. Condition #3 it’s a very fine line between turning a wrench on a classic vehicle because you can only do so much under one roof at one time. Mr. DiPietro believed of the three (3) that Condition #3 is the most unreasonable one but recalls how they got there. Condition #4 really ties into Condition #3 and believed that he agreed with the original Building Inspector that he would not have off the street business. Mr. DiPietro believed that for Mr. Mudge to not be able to do the small engine or lawnmower repair was unreasonable in his opinion. Mr. DiPietro asked Mr. Lagana if he had any information regarding repair activity based upon dealer and whether or not you need a dealer license in order to repair something. Mr. Lagana said no. Mr. DiPietro asked if it was reasonable to tie his approval on that he mains that. Mr. Lagana talked about the phrase on how the Board got here and in his opinion how they got to Condition #1 was the very foundation of his argument and of all his efforts was the fact that he was a licensed dealer and Mr. Jore had issued this permission based on Mr. Mudge being a licensed dealer and that he argued that he had been a licensed dealer for 17 years so that he could move classic cars. Mr. Lagana explained that Mr. Mudge is faced with the reality that the business will be restricted to classic cars unless this relief is rolled up and believes that Mr. Mudge wants the ability to work on basically any vehicle without restrictions and without the requirement for a license. Basically run a repair shop, home business with no restrictions which he believes is being sought.

Mr. Beaurivage believed it was confusing because he attended the first hearing and as he recalls the first hearing was all about classic cars. Mr. Beaurivage recalled that he couldn’t get a license because of the name “Dave’s Classic Cars” was taken and so he had to change it to Dave’s Repair Shop” or something. Mr. Beaurivage stated that it was unclear and very confusing about what was going on and whether it was classic cars or lawnmowers or just cars and trucks period. Mr. Beaurivage said that he did not attend the second hearing but it was very confusing.

Mr. Wright believes that the focus should not be what is going on at the facility but what was permitted or he was told he could do and what he justifiably relied on. Mr. Wright wanted to tell the Board something and to give specific information to make his case out on what it is that he was told versus what it is that he was doing and how it ties into the conditions but wanted to let everyone get their view out first. Mr. Wright believed that what he says might put a finer point or at least shape this a little better which does in his mind as he focuses specific on these conditions relative to what Mr. Jore signed off on that he could justifiably rely on. Mr. Stuart believed that Mr. Wright made a good point and thought that this was equitable relief that Mr. Mudge would be getting and not going with the land but was something that Mr. Mudge has relied on. Mr. Stuart believed that Mr. Mudge presented quite a lot of evidence that it was beyond classic cars and have heard through testimony that this has been going on with regular other vehicles throughout this time and Mr. Mudge has produced paperwork as well. Mr. Stuart talked about Condition #3 and that Mr. Mudge cannot get his dealer license because the condition is restrictive to classic cars, which defeats the purpose. Mr. Wright asked Mr. Stuart if what he was saying was, if it was not restricted to just classic cars and that they change it to “passenger vehicles” that Condition #1 could remain as a condition. Mr. Stuart stated that he does have a little concern for Condition #1 and that Condition #3 is impossible if restricted to classic cars.

Mrs. Robidoux believed that it started when Mrs. Rouleau-Cote received a slip from the state asking if he meets zoning and she said no and that is why Mr. Mudge is before the Board and believes what Mr. Mudge has relied on up until this law changed that he was allowed to be a dealer and he said it was classic cars and that was what Mr. Jore gave him permission to do. Mr. Wright said not exactly and pointed out some of the things that jumped out at him but the one condition that he would be willing to revisit and speak in terms of repair activity relegated to passenger vehicles only would be only because what he sees in the record and that everything else remains because there is nothing to support that Mr. Jore ever permitted or authorized anything beyond automobiles. Mr. Wright could not see anything that would have led Mr. Mudge to believe that anything other than automobiles is what Mr. Jore said. Mr. Wright also stated that he did not see anything in the paperwork that it was restricted to classic vehicles because it says vehicles. Mr. Wright went on to say that he could get comfortable with changing it to say “passenger vehicles” which would include automobiles and trucks but there is nothing in the paperwork that says any of the other conditions were things where someone could justifiably argue or relied upon when these documents were signed and there were no policing going on. This does not mean that this was something that was permitted or allowed, they just occurred and simply because they have occurred for 15 years. Mrs. Neveu wanted to clarify that the thought is to change Condition #3 from classic cars to passenger vehicles. Mr. Wright said yes as it is clearly focused on automobiles and what is the minimum that they can grant that would allow Mr. Mudge to do what he was told he could do. Mr. Wright reiterated that he would be comfortable with removing the classic and inserting passenger vehicles.

Further discussion ensued with regard to Condition #3. Mr. Wright was unsure about Condition #1 but believed that the remaining conditions should remain in place. Mr. Lagana stated that in order to be a dealership that he would have to pass zoning. Mrs. Robidoux did not know if the state looks at the conditions imposed by the ZBA but believed that they only looked at the box being checked off that he passes zoning. Mr. Wright said that he would be inclined to keep Condition #1 but if it was impossible then the question would be does the Board say too bad the state changed its law and it is what it is and for a period of time you were doing what you were doing and now the laws changed. Mrs. Robidoux believed that he would be able to get a dealer license.

Mr. Beaurivage asked Mr. Lagana if the definition of a licensed dealer allows you to buy and sell cars. Mr. Lagana stated that you are able to convey title on a car, correct. Mr. Wright believed if he was going to do that he would need a dealer’s license. Mr. Lagana explained that a bonded dealer privilege is going away because a bonded dealer is a private individual who is bonded and who has been entrusted to convey title on a vehicle without a search. Mr. Stuart asked what the next step would be. Mr. Lagana said that the next step would be to be a true dealer which is one with a landed facility instead of working from the kitchen table. Mr. Wright asked what caused the change in the law and asked if it was because people were getting ripped off. Mr. Lagana explained that it was a consumer protection law because what you had was people who would post the bond and buying and selling cars and driving around in a repair plate which was not good practice. Mr. Lagana believed Mr. Wright made a very good point and that the applicant acknowledged that this was a business that he was operating from his home which was done kind of like on a hobby basis and have heard testimony from Mr. Mudge about him being a dealer and having the ability to restore classic vehicles there to the point where he could not provide invoices or sales records because it was basically done on a cash basis and on a hobby basis. At this time, the Board discussed state licensing.

The Board reviewed the paperwork from Mr. Jore and saw that Mr. Jore checked off Dealer and Repair only and the Inspection Station was denied. Mr. Wright asked if there were any further questions or comments.

***Mrs. Neveu made a motion to exit out of deliberations, seconded by Mrs. Robidoux. A vote was taken and the Board exited deliberations at 8:55pm.***

Mrs. Rouleau-Cote wanted to point out that the paperwork that Mr. Jore signed was for a dealer/repair and that typically dealers have the ability to repair in order that they are able to sell the vehicle and didn’t mean that the property was zoned for a dealer/repair shop. Mrs. Rouleau-Cote further pointed out that there was definitely evidence in the file that the previous owner wanted to do something similar and the Zoning Board denied his request and told him he had to go for a variance in order to do that. The appeal of her decision to not sign off on the dealer was one thing and that she was fine with whatever way the Board decided to go with estoppel and that he is presumed to continue his business based on what Mr. Jore signed. Mrs. Rouleau-Cote wanted to caution the Board that it was not a blanket repair shop because that would need separate action because she did not believe that Mr. Jore granted permission for that. Mr. Wright explained again that the fact that the law is changing is it is what it is and agreed with Mrs. Rouleau-Cote that it was not an automobile repair garage and that it was tied to dealer/repair. Mr. Wright understood that there was no restriction on classic vehicles and was not willing to relax any of the other conditions. Mrs. Rouleau-Cote added that if Mr. Mudge wanted to expand what he was doing that he could come back before the ZBA for a special exception or variance. Mr. Wright believed that the applicant has satisfied which is very difficult but believed that there was enough here to give him some justifiable reliance but very narrow and very limited but what expanded after that point is just not in the record or something that the municipality said would be okay.

Mr. Methot asked if there was another form for small engines at that time because a mechanic is a mechanic. Mr. Wright understood where Mr. Methot was going with this but if you go to a repair garage you don’t see lawnmowers sitting there parked outside. Mr. Wright also pointed out that there could have been more checked off or handwritten in if he had requested. Mr. Mudge stated that Mr. Jore knew he was doing lawnmowers right from the beginning and what the Board is looking at is what the state sent Mr. Jore for him to sign with regard to the dealer license which wasn’t required for small engines. A brief discussion ensued with regard to lawnmowers. Mr. Wright again stated that just because he was doing it for 15 years did not mean that he was doing it with permission. Mr. Mudge commented that it just wasn’t documented because the state did not require a license for that.

Mr. Joe Racino commented about a comment that the Board made with regard to going to a dealership and believed the comment was wrong because he’s gone to a dealership and have seen dealerships that take boats in trade or snowmobiles in trade and then they repair them and sell them. Mr. Racino explained that Mr. Mudge has been doing lawnmower repairs for a long time and that we have been here 3 or 4 times over the same thing. Ms. Piper wanted to comment that she is the listing agent and that the zone is residential and that the garage size is commercial and there is no commercial listing. Mr. Wright thanked Ms. Piper.

Mr. Mudge stated that he was only looking for the relief until he sells the place so he can makes ends meet and just trying to pay the bills. Mr. Mudge further stated that he was retired and that he just wanted to do what he has always done.

At this time, Mr. Methot presented Ms. Royce with a written copy of what was presented tonight by him.

Mrs. Rouleau-Cote wanted to make an editorial comment that when people come in and we tell them they have to apply for variance or a special exception we feel like we’re being burdensome on them because the town said so and a lot of times we try to explain to the person that this variance or special exception in essence will protect you so if there is a change to zoning and there is an abutter that doesn’t like what’s going on that they would have the protection and have something in the file that shows that. Mr. Wright agreed with Mrs. Rouleau-Cote and believed it was required. Mr. Wright reminded the Board that the ZBA Board’s job is to interpret the ordinance and grant minimal relief.

Mr. Wright asked if there were any other questions or comments. None were noted. Mr. Wright stated that if there were no further questions or comments that he would entertain a motion and then he would ask if there were any discussions.

***Mr. Lagana made a motion to vote that they maintain the existing decision with Conditions #1, #2, #4 & #5 and that they amend Condition #3 to read “Repair activity shall be relegated to passenger vehicles only”, seconded by Mrs. Neveu. Mrs. Robidoux voted to grant, Mrs. Neveu voted to grant, Mr. DiPietro voted to grant, Mr. Lagana voted to grant and Mr. Wright also voted to grant. The motion passed in the affirmative.***

Mr. Mudge asked Mr. Wright if Condition #1 was still there. Mr. Wright stated that Condition #1 was still there. Mr. Mudge stated that this would mean that January 1, 2016 that he would be out of business. Mr. Wright stated that it was there decision and that their decision was appealable to Superior Court. Mr. Mudge also wanted to inform the Board members that his agreement with not advertising his place as commercial was dependent upon all of this too. In other words, Mr. Mudge stated that he was not in agreement with what was done tonight because he still had nothing and was still out of business and why should he not advertise his place as such where it is a commercial type garage because he was not agreeing to this so we really don’t have an agreement. Mr. Wright informed Mr. Mudge that he would have to speak to Mrs. Rouleau-Cote about that because she was the Code Enforcement Officer. Mr. Wright informed Mr. Mudge that the Board made a decision.

**Zoning Board of Adjustment**

**Town of Auburn**

**Rules of Procedures**

Mr. Wright stated that the Board had Rules of Procedure that was duly noticed and advertised. Ms. Royce said yes. Mr. Wright asked if there was any discussion with regard to the Rules of Procedure. None were noted. Mr. Wright believed the Board could adopt the Rules of Procedure and then move on to the election of officers.

***Mr. DiPietro made a motion to accept the amended Rules of Procedure, seconded by Mr. Lagana. A vote was taken and all were in favor. The motion passed in the affirmative.***

# Election of Officers

**CHAIRMAN**

Mr. Wright asked if there was anyone that wanted to be the Chairman. Mrs. Robidoux nominated Mr. Wright. Mr. Wright stated that he could do it for another year.

***Mrs. Robidoux made a motion to elect Mark Wright as Chairman of the Zoning Board of Adjustment, seconded by Mr. Lagana. A vote was taken and all were in favor. The motion passed in the affirmative.***

**VICE-CHAIRMAN**

Mr. Wright asked if there was a nomination for Vice-Chairman. Mrs. Neveu nominated Mr. Lagana.

***Mrs. Neveu made a motion to elect James Lagana as Vice-Chairman of the Zoning Board of Adjustment, seconded by Mr. DiPietro. A vote was taken and all were in favor. The motion passed in the affirmative.***

Mr. Wright informed Mr. Lagana that he was on the hook until 2018. Mr. Wright wanted to inform the Board members that after all the times that he was unable to attend some of the hearings that he was very impressed with how the Board has conducted their business. Mr. Wright indicated that he would do it for another year and that Mr. Lagana would be doing it for another 3 years.

# General Business

No new business was discussed.

# Minutes

***Mr. Lagana made a motion to accept the minutes as amended for June 23, 2015, seconded by Mr. DiPietro. All were in favor, the motion passed in the affirmative.***

Adjourn

***Mr. Lagana made a motion to adjourn, seconded by Mrs. Robidoux. All were in favor, the motion passed unanimously and the meeting stood adjourned at 9:23 p.m.***

**The next ZBA Hearing is scheduled for August 25, 2015 at 7:00 pm and will be held at the Town Hall, 47 Chester Road.**