

**UNAPPROVED MINUTES  
Town of Auburn  
Zoning Board of Adjustment  
August 23, 2016**

**Present:** Jim Lagana, Vice Chairman. Mike DiPietro and Jeffrey Benson, Members. Robert Beaurivage and Peggy Neveu, Alternates. Minutes recorded by Denise Royce.

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

**Absent:** Mark Wright, Chairman, Kevin Stuart, Member.

Mr. Lagana called the meeting to order at 7:03 p.m. and introduced the Board members and explained that there were two (2) cases of which one was Tabled from last month and the other was a request for rehearing which were kind of extensions of previous cases and would refrain from explaining the process tonight unless someone had a question of which he would be happy to answer. Mr. Lagana elevated both Mrs. Neveu and Mr. Beaurivage to full voting status for tonight's hearing.

At this time, Mr. Lagana asked Ms. Royce to read the first case into the minutes for the record.

**Case #16-09**

**Eric C. Mitchell & Associates, Inc.**

**Strategic Contracting Company, LLC**

**10 Anderson Way – Tax Map 5, Lot 19-7**

**Zoned Residential One**

**TABLED from July 26, 2016**

***Applicant is requesting a Variance to allow a reduction from the 125 foot wetland buffer to a Level One wetland in a Residential One zone. (Article 5, Section 5.08(1)(a))***

Mr. Mitchell pointed out that he was before the Board tonight on behalf of Strategic Contracting Company, LLC as well as the new owner of the lot, Luis artiga. Mr. Mitchell went on to say that it was under contract at the last hearing and has since closed last Friday. Mr. Mitchell stated that the new owner is present tonight as well. Mr. Mitchell explained that they were before the Conservation Commission a few weeks ago and that they were unable to meet with them because they did not meet in July and therefore the meeting with the ZBA was Tabled until today so they could get input from the Conservation Commission. Mr. Mitchell explained what had transpired with the Conservation Commission which was that they had some concerns about the use of the backyard with a pool and asked for plans of what the pool would look like and also what they would be doing for discharge. Mr. Mitchell went on to say that the Commission

was not comfortable granting a variance for someone that was not the ultimate owner of the lot. The Board suggested that they come back and that they would give consideration when it was actually owned by the homeowner. Mr. Mitchell talked about the variance and the fact that construction would have to start within that two (2) year period after granting the variance and after talking with the new homeowner, who has a newborn and a two in a half year old and was unsure if he was going to put a pool in his backyard within a two year period. Mr. Mitchell further explained that the new homeowner would like to use the backyard. Mr. Mitchell stated that one of the things that they talked about was putting in a pool but now that has changed and they would now like it to not be contingent on a pool being put in but would like to have an additional 40 feet for lawn area and play area for the kids to be able to kick the soccer ball around.

At this time, Mr. Mitchell passed out pictures showing the backyard of the proposed property and also passed out copies of the plan as well as a google earth aerial photo of the property for the Board to review. The photos showed the delineation of the buffer area with a fence. Copies are included in the file for review.

Mr. Mitchell asked the Board members to consider giving approval for the homeowner to be able to use the backyard for any permitted use and because they are unsure if the pool would be put in within two (2) years they would be willing to have that a condition of the Board if they would agree that before a building permit is granted to put a pool in that the plan would have to go before Conservation Commission for their review. As a second option, they realize that all the Board has is the minutes of the Conservation Commission and there is nothing that is final and if the Board wants them to go back before the Conservation Commission in a couple of weeks and then come back before the Board that they would be willing to do that. These are the two (2) choices they would like the Board to consider at this time.

Mr. Mitchell further talked about the concerns that the Conservation Commission had and that they had suggested putting in a dry well to take care of draining the pool. Mr. Mitchell also talked about waiting for the chlorine levels to be down to drain the pool.

Mr. Mitchell asked the Board if they had any questions. Mr. Benson asked Mr. Mitchell if they were asking to go back to the green lines located on the plan provided to the Board members. Mr. Starace showed Mr. Benson where the location would be that they were talking about receiving relief from the buffer. Mr. Mitchell also talked about the stone wall being the delineated area as it was approximately two (2) to three (3) feet high.

Mr. Lagana asked the Board members if they had any questions at this time. Mr. Beaurivage asked if it would be an above-ground pool. Mr. Mitchell stated that it would most likely be an in ground pool. When the homeowner was thinking of purchasing the property his thought was about putting a pool in and wanted to know if he would have the ability to do that and that was why they were before the Board to find out before he purchased it. Mr. Mitchell talked about the homeowner not having a lot of room with

having the deck on the back of the house. Mr. Lagana had some concerns but first wanted to give a warm welcome to the new homeowner and welcome him to the Town of Auburn. Mr. Lagana explained that the Board tries very hard to uphold their ordinance and was concerned about the chain of custody. Mr. Lagana went on to say that they were first before the Board seeking a variance on behalf of the purchaser and now the purchaser is now the homeowner and pointed out that the Conservation Commission stated that they preferred that the homeowner applies on his own behalf as opposed to a third party. Mr. Lagana added that he preferred that the application be rewritten or reapplied for by the homeowner. Secondly, even if it were not the case, the application is still written in the context of the swimming pool and now it's being changed. Thirdly, Mr. Lagana pointed out that this has been something that the Zoning Board has been very vocal about over the past several years and believed that this was a lot that was bought with a fresh set of eyes and that we know going into the lot and into the purchase that the building envelope existed like that. We're not even into the house essentially seeking relief to put in a swimming pool. Mr. Lagana added that at least the swimming pool was a defined use and now it is kind of undefined. Mr. Lagana went on to talk about lawns and jungle gyms. Mr. Lagana wanted to hear from the other Board members and would like to see a change of custody corrected. Mr. Lagana reiterated that this lot was purchased with the fence delineating the buffer. Mr. Mitchell wanted to correct a comment made by Mr. Lagana that the application was not specific to a swimming pool. Mr. Mitchell did say that there was discussion about possibly putting in a swimming pool but it was not noticed as such. Mrs. Neveu also pointed out that the application did not specify a swimming pool but just to reduce the buffer. A brief discussion ensued in this regard.

Mr. Mitchell stated that he was the applicant and because the ownership has changed that there was no reason to move forward because if it has to be re-noticed with the new owners name then they could consider to do that and if that was going to be the decision of the Board members then they would accept any input the Board would have to give them more information. Mr. Lagana again stated that he would like to see what the use would be out there and in his opinion that they would have to show a strong case for such early intrusion into that land that is already marked with a fence. Mr. Mitchell explained that they were before the Board back in 2015 asking for a reduction in the buffer down to 75 feet and it was at that time that both the Commission and the ZBA requested the homeowner to appear before the Boards to seek relief. Mr. Mitchell further added that it was at that time that they withdrew their application. Mr. DiPietro and Mrs. Neveu both stated that they would feel more comfortable if the applicant (homeowner) came before the Board seeking the relief for something specific. Mr. Beaurivage agreed with Mr. DiPietro and Mrs. Neveu that it should be something specific that they are seeking relief for. Mr. Benson commented that if the pool is not going to be in the picture then it should be aimed at something specific to ask for relief.

Mr. Mitchell stated that if the requirement is to resubmit with the new owners name and any additional information then they would do that and withdraw their application but they would like to obtain any additional information that the Board may have as well as the public while they are all there tonight.

Mr. Lagana asked Mrs. Rouleau-Cote, Code Enforcement Officer for her comments at this time. Mrs. Rouleau-Cote just wanted to reiterated that if the Board were to limit it to a lawn that the Board would have conditions on it as to future structures and that they would need to be aware of that so that if there are things that they are hoping to do such as sheds or pools that the Board would include it in their approval. Mrs. Rouleau-Cote also added that if it did not occur within that two (2) year period that they could seek an extension. Mrs. Rouleau-Cote also encouraged that they work with the Conservation Commission and possibly ask for a site walk so they feel comfortable.

Mr. Lagana asked for any comments from abutters. Mr. Ryan Snowdale of Pingree Hill Road believed that the Board has answered his concerns and that he was also under the assumption that they were going for a pool and now they are looking for backyard space and wanted to know what exactly what they were seeking a variance for.

Mr. Lagana asked if there were any interested parties that wished to speak. None were noted.

At this time, Mr. Mitchell asked formally to withdraw the application and to have time to go see the Conservation Commission and then reapply with the new owner.

Mr. Starace, the developer of the subdivision requested that the Board conduct a site walk before the next meeting to see the lay of the land and to see the field and that the land does not drain towards the wetlands. Mr. Lagana suggested to Mr. Starace to work with the Conservation Commission and get their input because the ZBA does rely heavily on what the Conservation Commission has to say.

Mr. Mitchell and Mr. Starace both thanked the Board for their time and exited the meeting.

**Case #16-07**

**George A. Chadwick, P.E.**

**Bedford Design Consultants, Inc.**

**On Behalf of Robert Merrill**

**391 Pingree Hill Road, Tax Map 2, Lot 18-1**

**Zoned Rural**

**Request Appeal from ZBA Decision of June 28, 2016**

***Applicant is requesting an Appeal from the ZBA Decision of June 28, 2016 Denying the request for a Variance from Article 4, Section 4.05(4), to create a non-conforming lot consisting of 50 feet of frontage instead of the required 300 feet as part of a two (2) lot subdivision in a Rural zone.***

Ms. Royce read the request into the minutes for the record. Mr. Lagana began by asking Mr. Chadwick. Mr. Chadwick stated that it was his understanding that the Board needed to decide whether or not to rehear the case or not and did not believe there was

anything else they needed to do. Mr. Chadwick further added that if the Board wanted any more information from him that he would be glad to assist in any way.

Mr. Lagana pointed out that the Board did receive correspondence from Mr. Chadwick, the applicant's attorney and also from the town's attorney and indicated that the Board was not here tonight to hear testimony but only to decide whether or not they will rehear it. Mr. Lagana added that it was incumbent upon them to decide whether they used faulty process in arriving at the decision or they did not apply the five (5) criteria correctly. Mr. Lagana asked the Board members if there were any other factors that they believed the Board overlooked that would cause a rehearing and asked the Board if they wanted to hear a statement from either the applicant, the attorney or the engineer that he would be happy to solicit that or if the Board would rather discuss it amongst themselves then they could do that as well.

Mrs. Neveu stated that she would abstain from comment as she was not present at that hearing and could not make a fair decision. Mr. Lagana asked Mr. Beaurivage if he had any comments. Mr. Beaurivage passed for the moment. Mr. DiPietro stated that he would vote to rehear the case as the Board could do a better job. Mr. Lagana asked Mr. DiPietro to be more specific on his comment. Mr. DiPietro commented that he did not see a lot of new evidence but believed that the Board may have erred in their decision.

Mr. Lagana asked Mr. Benson for comment. Mr. Benson stated that he did not see a lot of new evidence as well and talked about the 300 feet of frontage and having the 300 feet of frontage and connecting to a large lot of land and believed that the 300 feet of frontage is there for a reason which is to keep the rural character of the road. Mr. Benson further added that he did not see any substantial change in the information. Mr. Lagana agreed with Mr. Benson and believed that they arrived at a rational and defensible position and believed that they also applied the five (5) criteria correctly and believed that they did weight the hardship issue correctly and in the same token he was concerned at the decision that was arrived at 3 to 2 where something as extreme as this with 50 feet of frontage is usually arrived at a unanimous decision. Based on this, Mr. Lagana also stated that he would be willing to rehear the case.

Mr. Beaurivage agreed with Mr. DiPietro that they didn't make as good a decision or gave it as thorough a shot as they should have and would agree that a rehearing is in order.

Mr. Lagana noted that Mrs. Neveu abstained from the discussion or voting on this matter. Mr. Benson believed that they could take a vote.

***Mr. DiPietro made a motion to vote that the Board rehear Case #16-07, 391 Pingree Hill Road, Tax Map 2, Lot 18-1, Mr. Beaurivage seconded the motion. Mr. Beaurivage voted to grant, Mr. DiPietro voted to grant, Mr. Benson voted to deny, and Mr. Lagana voted to grant. The application was in favor of rehearing the case by a vote of 3 to grant and 1 to deny, therefore the request has been GRANTED.***

Mr. Lagana pointed out that the request for rehearing has been granted and therefore would be reheard at the next ZBA Hearing scheduled for September 27<sup>th</sup>.

At this time, both Mr. Chadwick and Mr. Mitchell thanked the Board and exited the Public Hearing.

### **Other Business**

Mr. Lagana asked the Board if there was any new business. None were noted.

### **Minutes**

***Mr. DiPietro made a motion to accept the minutes of July 26, 2016 as written, seconded by Mr. Benson. All were in favor with Mrs. Neveu abstaining and the motion passed.***

### **Adjourn**

***Mrs. Neveu made a motion to adjourn, seconded by Mr. Benson. All were in favor, the motion passed unanimously and the meeting stood adjourned at 7:49 p.m.***

**The next ZBA Hearing is scheduled for September 27, 2016 at 7:00 pm and will be held at the Town Hall, 47 Chester Road unless otherwise noted.**