

**UNAPPROVED MINUTES
Town of Auburn
Zoning Board of Adjustment
November 27, 2018**

Present: Mark Wright, Chairman. Mike DiPietro, Vice-Chairman, Peggy Neveu & Kevin Stuart, Member; Dale Phillips, Dennis Vieira and Stoney Worster, Alternate Members of the Board. Minutes recorded by Patricia Rousseau and prepared by Denise Royce.

Also, Present: Carrie Rouleau-Cote, Building Inspector/Code Enforcement Officer and Jeffrey Porter, Conservation Commission.

Absent: Stephen Carroll, Members.

Mr. Wright called the meeting to order at 7:02 p.m.

Mr. Wright indicated that there was only one case to be heard tonight and that there was one tabled case from September 25th that we will open just for the record and to acknowledge the applicant's withdrawal of the case as a result of settlement with the Town of Auburn. Mr. Wright went on to say that they have the number of zoning members that they would have to tonight minus a few missing and moved on to explain the procedure for tonight's hearing and introduced the Board members to everyone present tonight.

Mr. Wright explained to the applicant present that he would be asked to read his request for a Special Exception and the request for a Variance into the minutes and understood that the factors that support the Special Exception and the Variance would be the same. Mr. Wright stated that, if there were any abutters present that he would give the abutters time to comment.

At this time, Mr. Wright moved to ask Ms. Royce to read the first case into the minutes and elevated Mrs. Phillips as a full voting member for tonight's hearing so that there would be five (5) voting members but that anyone could comment or ask questions.

Case #18-13

Michael & Norianne Browder

415 Wilson's Crossing Road – Tax Map 2, Lot 4-6

Zoned Rural

TABLED from September 25, 2018

Applicant is appealing an Administrative Decision (Building Inspector/Code Enforcement Officer) which resulted in the issuance of a notice of violation for the removal of vegetation/site disturbance within the wetland and Watershed Area buffers in violation of Zoning Ordinance Section 5.05. (Article 13, Section 13.11)

Mr. Wright commented that, as he indicated earlier in his opening remarks that everyone has received a withdrawal notice dated October 30th from our Building Inspector/Code Enforcement Officer along with a settlement agreement between the applicant and the Town of Auburn. Mr. Wright went on to say that, as a result of these two (2) documents the case has been withdrawn and did not believe the Board needed to vote on it but just wanted to open the case and note this for the record in case someone goes back and wants to know what happened then this would be in the file.

Mr. Wright asked if there were any questions or comments. The Board did not have any questions or comments. Mr. Wright asked Mrs. Rouleau-Cote if she had anything to add. Mrs. Rouleau-Cote did not have anything else to add.

With that said, Mr. Wright asked Ms. Royce to move on to read the next case into the minutes.

Case #18-15

Jeffrey Webb

43 Highwood Drive – Tax Map 5, Lot 9-15

Zoned Residential One

Applicant is requesting a Special Exception to allow an Accessory Dwelling Unit (ADU) within a single-family home and, a Variance to allow the establishment of an ADU of which the property owner will not occupy one of the dwelling units as his principal place of residence. (Article 4, Section 4.06(3)(m) and Article 2, Section 2.02(28)(f))

Mr. Brian Webb presented on behalf of his father Jeffrey Webb. Mr. Webb began by saying that he lives in the house with his two (2) daughters along with his father. Mr. Webb indicated that his father was currently in Florida right now. Mr. Webb stated that, what they are looking for was a permit to build an in-law apartment in the downstairs portion of the house. Mr. Webb asked the Board members if they had any questions.

Mr. Wright asked Mr. Webb to read his application into the minutes for the record and to start with Section #2 and Section #3 and that they would vote on them separately. At this time, Mr. Webb read the application into the minutes for the record. Mr. Webb pointed out that the in-law apartment would be totally within the confines of the existing house and that it would allow three (3) generations to live in the house to take care of each other. Mr. Webb stated that his father was a snowbird right now but foresees him living here full-time as he progresses in age. Mr. Webb stated that, he understood that this was the first time the Board has seen this where the homeowner did not have this as his permanent residence and that his father would change that if he has to but it would cause a hardship on his father as in Florida his father gets to claim homestead residency there. Also, his birthday is in April and that he would not be able to come to New Hampshire until May which would cause him hardship as well but if required to make Auburn his permanent residence, he would but would strongly hope that the Board would allow a Variance for

that. Mr. Webb added that only family members would reside in the home which would be him and his two (2) daughters and his father.

Mr. Wright asked if there were any abutters present that would like to speak? Mrs. Cathleen Charest of 29 Highwood Drive asked if they would be adding a kitchen. Mr. Webb showed the Board a sketch that he drew up to show the location of the in-law apartment and that it would only be 422 square feet which would include a kitchen, bathroom, shower and a bedroom. Mrs. Charest asked if he would think of ever renting it. Mr. Webb said no that it was only for his father and that it was very small. Mr. Webb also pointed out that, if another owner ever wanted it to be a rental that more work would have to be done to it because there would be entrances into a shared family room to watch TV together and then his father would have his own area to go back into. Mrs. Charest asked about parking. Mr. Webb said that he has one garage and his father has the other and until his daughters are old enough then it would change but for now, they only have two (2) cars.

Mr. Wright opened up to questions or comments from Board members. Mr. Stuart asked if there would be a new entrance installed. Mr. Webb said that there would be no new entrance but in the back of the house there was a sunroom and that would be how you would enter or through the garage. A brief discussion ensued with regard to the layout of the existing house, garage and proposed in-law.

Mr. Wright asked Mrs. Rouleau-Cote if she had any questions or concerns. Mrs. Rouleau-Cote began by saying that, the abutter asked about parking especially with three (3) generations. Mrs. Rouleau-Cote then moved on to talk about the potential for it to become a rental unit and the fact that one of the units was not going to be owner occupied. Mrs. Rouleau-Cote also pointed out that the provision was part of the ADU language that got changed a few years ago based on State Statute where it's part of the language that it must be owner occupied. Mrs. Rouleau-Cote did inform the Board that, town counsel did suggest that they look upon this very carefully because this was somewhat of a slippery slope because by taking the owner occupied portion out that it would become more of a duplex and believed that the comments made tonight by the homeowner that it would be occupied by family members and the fact that it was only 422 square feet which is way below the town requirement and did not believe that they intended to rent this out. Mr. Wright commented that if the Board approves this that it would go with the property and not the homeowner and that if ownership changes hands whatever we approve will go to the next owner who might think differently. Mr. Wright noted that Mrs. Rouleau-Cote made a good point and understood that many people split their time throughout the country and understands the tax benefit. Mr. Wright talked about whether the homeowner would be spending 50 percent of his time here which might guard against the next owner having to spend 50 percent of the time here.

Mr. Wright asked if any other Board members had any further questions. Mrs. Phillips wanted to point out that the square footage certainly meets the regulations and believes that in Florida you have to live in Florida for 6 months and one day in order to get the homestead exemption and maybe put something in the language. Mrs. Neveu also

pointed out that it was going to be an in-law apartment and not a rental unit. Mr. Wright asked Mrs. Rouleau-Cote if there was anything in the amended law in New Hampshire that prohibits restricting it to being a non-rental unit. Mrs. Rouleau-Cote stated that there was nothing in the language but it was indicating that it was supposed to assist homeowners in being able to remain in their homes.

Discussion ensued with regard to the Variance to allow the homeowner to not have to owner occupy the residence and that the Special Exception was to allow the single-family home to have an in-law apartment. Mr. Webb stated that they wanted to do it the right way and have a legal in-law apartment for his father. Mr. Wright thanked Mr. Webb for doing it the right way and appreciated the fact.

Mr. Vieira wanted to add that, before he came here tonight that he had a problem with the request and it being a slippery slope and believed that their intent now was fine but that, down the road if something were to happen that they could rent the whole house out. In conclusion, Mr. Vieira had a problem of setting a precedence.

Mr. Worster wanted to point out that a Special Exception is made to be used and that you don't need a Variance but basically permitted by Special Exception which is in the regulations and believed that 422 square feet was very modest. Mr. Vieira just wanted it noted that it would go with the property. Mr. Wright understood the reluctance of the issue of it not being 100% owner occupied and believes the applicant is being upfront, trustworthy and credible and everything that he has heard tonight should be an easy one except for this piece. Mr. Wright agreed that he was only troubled by that piece but the only thing that he balances with that is with what he's heard and what is being asked relative to the entire house and the fact that it's only 422 square feet but every case presents different facts and circumstances. Mr. Vieira also pointed out that he has two (2) daughters and that they leave and come back.

Mrs. Phillips commented that she would have a hard time living in 422 square feet and likes what is being presented but possibly putting some sort of language in the conditions. Mrs. Rouleau-Cote wanted to point out that the sale of the property may not be an issue because the new owner may be in compliance in the sense that the owner is living in one of the areas. Mrs. Rouleau-Cote wanted to caution the Board not to put the language in the conditions to not be a rental unit because in the situation if a new owner buys it that they would have the ability to rent it. A brief discussion ensued with regard to conditions.

At this time, the Board entered into deliberations.

Mr. Stuart made a motion to enter into deliberations at 7:38 p.m., seconded by Mrs. Neveu.

Mr. Stuart began by saying that, he agreed with Mr. Wright about putting a percentage such as 49% of the time that the owner will reside at the residence to at least protect it somewhat. Mr. Wright added that, at that point, it makes it less likely to have the worst-case scenario if someone buys it. Mr. Wright also agreed that it gets to the spirit where

it allows for some flexibility and protects the town. Mr. Wright also talked about what Mrs. Rouleau-Cote that if someone buys it and lives there full-time then it's a non-issue.

The Board discussed the in-law and possible rental property and Mr. Wright would personally be in favor of putting some percentage that the owner occupies the home at an amount of time. Mrs. Neveu thought 45% of the time to allow some time for travel. Mr. Wright agreed and understood that people do spend time in other climates and would have a hard time if the square footage was larger and possibly half the house. Mr. Wright believed it was a reasonable request.

Mr. DiPietro would not be opposed to putting some type of qualification and that it would protect the spirit of the ordinance and believed that each case is different and that it was a classic in-law apartment that was attached. Mr. DiPietro also talked about setting a precedence and again believed that each case should be treated differently and would be in favor of granting a Variance for this case but agreed they should put a timeframe where it would be needed to be occupied by the homeowner for a number of days. Mrs. Neveu agreed that by putting a timeframe on it that it will stop the perception that this Board will hand out Variances for anyone. Mr. Wright added that, everyone was aware of the families aging and there are people who are spending half the time in warmer climates.

At this time, the Board discussed dealing with these types of issues on a case by case basis. Mr. Vieira commended them on wanting to keep the family together and taking care of each other. Mr. Wright also commended them on going about it the right way by coming before this Board to seek a Special Exception as well as the Variance.

Mr. DiPietro made a motion to exit out of deliberations at 7:46 p.m., seconded by Mr. Stuart.

Mr. Wright informed everyone that they were now out of deliberation and asked Mr. Webb if he had anything to add. Mr. Webb commented that, he understands what the Board is saying and that he has no intention of renting it out. Mr. Webb went on to reiterated what he said previously was that, his father would change his residency to New Hampshire if he had to but it would cause him a hardship because he would lose his tax credit he's getting in Florida and he would have an illegal car for a month. Mr. Webb believed that if the Board went with 45 percent of the time that he would have to reside here then that would work. Mr. Wright appreciated the willingness of changing his residency and is willing to work with them and follow the regulations. Mr. Wright believed that they could move forward with a vote and again stated that, coming before the Board was the right way to go and appreciated the willingness of the applicant.

Mr. Wright believed that they would take these up separately and asked the Board to vote on the Variance. Mrs. Rouleau-Cote asked Mr. Wright if the Variance vote would include the approximate dimensions of the Accessory Dwelling Unit. Mrs. Rouleau-Cote went on

to point out that, an Accessory Dwelling Unit can be up to 750 square feet and was hearing from the Board members that they were happy with the size and the fact that it was not half of a duplex size. Mr. Wright stated that the applicant was asking for 422 square feet and asked the applicant if they approved an ADU not to exceed 450 square feet if that would be sufficient. Mr. Webb said yes that if they did 450 square feet that it would cover any area if they were off. Mr. Wright believed that would be the way to go and it would make this case unique and thanked Mrs. Rouleau-Cote for her comment.

Mr. Wright asked if there were any further questions from the applicant, Board members or abutters and if not, then he would entertain a motion to vote on the Special Exception and to also note 45 percent and then to also state 450 square feet.

Mr. DiPietro made a motion to vote on the Special Exception as presented with the condition that the ADU does not exceed 450 square feet for Case #18-15, 43 Highwood Drive, Tax Map 5, Lot 9-15. Seconded by Mr. Stuart. Mrs. Phillips voted to grant, Mrs. Neveu voted to grant, Mr. Stuart voted to grant as he believed all the factors have been met, Mr. DiPietro voted to grant and Mr. Wright also voted to grant and believed that all the factors for a Special Exception have been met. A vote was taken and, all were in favor and the motion passed.

Mr. Wright moved on to request for a Variance.

Mr. Stuart made a motion to vote on the Variance request with the additional restriction that the owner needs to occupy the dwelling for at least 45 percent of the year for Case #18-15, 43 Highwood Drive, Tax Map 5, Lot 9-15. Seconded by Mr. DiPietro. Mrs. Phillips voted to grant, Mrs. Neveu voted to grant, Mr. Stuart voted to grant as he believed all five (5) factors have been met in this unique case, Mr. DiPietro voted to grant and Mr. Wright also voted to grant finding all five (5) factors for the Variance have been met. A vote was taken and, all were in favor and the motion passed.

Mr. Wright explained that the Board has approved the Special Exception and that they have approved the Variance for 450 square feet and 45 percent of the time he has to be there. Mr. Wright further explained that there was a 30-day appeal period where abutters or interested parties could appeal the ZBA decision. Mr. Wright thanked the applicant and the Mr. Webb thanked the Board for their time.

Minutes

Mr. DiPietro made a motion to accept the minutes of September 25, 2018 as written, seconded by Mrs. Phillips. All were in favor, and the motion passed.

Other Business

Mr. Wright asked if there was anything else to discuss and asked Ms. Royce if there were any cases for December. Ms. Royce stated that there were no cases for December. Mr. Stuart asked when the deadline was. Ms. Royce said the deadline was today.

Mr. Wright thanked Mrs. Rouleau-Cote for her input throughout the year.

Adjourn

Mr. DiPietro made a motion to adjourn, seconded by Mr. Stuart. All were in favor, the motion passed unanimously, and the meeting stood adjourned at 8:00 p.m.

The Zoning Board of Adjustment will not be meeting during the month of December and therefore, the next ZBA Hearing is scheduled for January 22, 2019 at 7:00 pm and will be held at the Town Hall, 47 Chester Road unless otherwise noted on the upcoming Agenda.