

UNAPPROVED MINUTES
Town of Auburn
Zoning Board of Adjustment
April 30, 2019

Present: Mark Wright, Chairman. Mike DiPietro, Vice-Chairman, Kevin Stuart & Dennis Vieira, Members of the Board. Minutes recorded by Denise Royce.

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

Absent: Stephen Carroll, Member. Dale Phillips, Alternate.

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

Mr. Wright began by explaining to everyone present that they usually have a five (5) member board present to hear cases and recently they have had an alternate leave and one member and one alternate that are not present tonight as well. Mr. Wright informed the applicants that the Board could hear their cases this evening or they have the ability to wait until they have a full board to hear the case but that was up to them. Mr. Wright also wanted to mention that, with a four (4) member Board that there was the possibility of a deadlock vote of 2 to 2 and if that were to occur, they would have to Table the case and hear it again next month. With that said, Mr. Wright wanted to give the applicants the option to leave this evening and move the case until next month or go forward with their case heard tonight with four (4) members. The applicants all agreed to move forward with their application.

Mr. Wright also noted that there was a Tabled case that was to be heard first but the applicant was not present and therefore he indicated that he would move that case to the end.

Mr. Wright explained the procedures for tonight's meeting and that the applicant would be reading their application into the minutes after Ms. Royce reads the case. With that said, Mr. Wright moved forward to the first case and that the Tabled case would be moved to the end as the applicant was not present at this time.

Case #19-05

Nancy Hammell, Susan Anderson & William Hammell
74 Spofford Road – Tax Map 4, Lot 41
Zoned Residential One

Applicant is requesting a Variance to permit demolition of existing garage and to allow the construction of an addition of mudroom housing staircases to second story and basement as well as elevator access to second floor and the new construction of a two-story

garage/carriage house connecting to the existing structure in a Residential One zone. (Article 4, Section 4.06(6)) (Article 3, Section 3.05(2)(a))

At this time, Ms. Hammell read the application into the minutes for the record. Mr. Wright thanked Ms. Hammell for a very thorough and a well-presented application.

Mr. Wright asked Mrs. Rouleau-Cote if she had anything to add. Mrs. Rouleau-Cote indicated that she did not have any issues and that she did have a proposed plan and they also have a recent septic design and that this was just a hiccup in the process.

Mr. Wright asked if there were any questions or comments from the Board. Mr. DiPietro asked if the carriage house would be any closer to the road. Ms. Hammell stated that it would not be any closer but further back than the existing house. A brief discussion ensued and it was noted that the garage and carriage house would not be any closer than what it is now. The Board members understood and moved on with the case.

Mr. Wright asked if there were any abutters present. Mrs. Sue Anderson of 96 Spofford Road talked about the house that was her mother's house and that now her sister was interested in renovating the house for the family. Mrs. Anderson also pointed out that it was called "Bottom Dollar Farm" which was 40+/- acres. Mr. Wright asked if there were any other abutters. Mr. Villeneuve commented that he lived across the street and did not have any objections with what they were proposing to do. Mr. & Mrs. Titcomb who also live across the street stated that they have no problem with what they are proposing.

Mr. Wright asked if there were any further questions or comments from anyone. None were noted. With that said, Mr. Wright stated that he would entertain a motion to vote on the Variances one at a time.

Mr. Stuart made a motion to vote on the Variance request from Article 4, Section 4.06(6) setbacks as presented tonight provided that the new construction does not go any closer than the corner of the house for Case #19-05, 74 Spofford Road, Tax Map 4, Lot 41. Seconded by Mr. DiPietro. Mr. Vieira voted to grant, Mr. Stuart voted to grant as he believed all five (5) factors have been met, Mr. DiPietro voted to grant as all factors have been met, 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. Stuart made a motion to vote on the Variance request from Article 3, Section 3.05(2)(a) repair and expansion of non-conforming uses and structures as presented tonight provided that the repair and expansion does not encroach any closer to the setback of the corner of the house for Case #19-05, 74 Spofford Road, Tax Map 4, Lot 41. Seconded by Mr. Vieira. Mr. Vieira voted to grant as he believed all five (5) factors have been met, Mr. Stuart voted to grant as he believed all five (5) factors have been met, 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 wanted to inform the applicant that, the Board's decision can be appealed within 30 days which is an appeal period where interested parties may appeal the ZBA decision. Mr. Wright also explained that they must act upon the Variance within two (2) years.

With that said, Ms. Hammell and Mrs. Anderson thanked the Board members for their time and exited the meeting.

Mr. Wright noted that Mr. Duggan had appeared at the meeting and informed him that he was not present at the start of the meeting and therefore his case was moved to the end. Mr. Wright asked Ms. Royce to move on to read the next case into the minutes.

Case #19-06
Derek & Christine Cook
30 Mountain Road – Tax Map 9, Lot 4-2
Zoned Residential One

Applicant is requesting a Variance to permit a proposed 27 foot by 34 foot detached 3-car garage to be within the side setback in a Residential One zone. (Article 4, Section 4.06(6))

Mr. Wright pointed out that Mr. Cook did not answer Factor #3 of the hardship and asked him to answer it during the time that he would be reading his application into the minutes. Mr. Cook commented on Factor #3 that there were wetlands on one side of the house and therefore the best spot was where they were proposing to place the detached garage. Mr. Wright asked if it was possible to place it somewhere else or push it closer to the house. Mr. Cook commented that he has a 2-car garage under with a family room in the back of the house which would make it hard for them to back out of those garages and that's why he placed it where it would fit.

Mr. Wright asked Mrs. Rouleau-Cote if she had anything to add. Mrs. Rouleau-Cote said no that she has worked with the applicant and asked some of the question that Mr. Wright already asked like, was there another place on the property that he could put the garage and given the other issues of septic location and setbacks and topography that this was the best location. Mr. Wright believed that was what it would come down to with him with regard to placement and didn't see a big encroachment into the setback.

Mr. Wright asked if there were any Board members that had any questions. Mr. Stuart pointed out a hand drawn sketch showing the garage and did he calculate that it was 225 square feet of encroachment. Mr. Cook said yes, he used the scale that Mrs. Rouleau-Cote had and did not believe it would be more than that. Mr. Cook was asking for 15 feet into the setback but was hoping to keep it at 10 feet if possible but wanted a little bit of wiggle room in case of ledge or something. A brief discussion ensued with regard to the existing garage and location of the new garage. Mr. Cook wanted enough room to back

out of the existing garage. Mr. Cook showed Mr. Stuart the location of the existing garage and the family room location.

Mr. Wright asked if there were any abutters present. Mr. Downing of 24 Mountain Road commented that he did not have a problem and believed that the location was the best location on the property and would enhance property values in the neighborhood. Mr. Wright asked if there were any other abutters present. None were noted.

Mr. Wright asked if they needed to go into deliberation. There was no request to enter into deliberations and therefore, Mr. Wright asked for a motion to vote on the application.

Mr. DiPietro made a motion to vote on the Variance application as presented tonight for Case #19-06, 30 Mountain Road, Tax Map 9, Lot 4-2. Seconded by Mr. Vieira.

Mr. Wright wanted to make a friendly amendment to the motion to include that the detached garage will not encroach more than 15-feet into the setback. Mr. DiPietro asked Mr. Cook to change the drawing showing 10-feet to 15-feet. Mr. Cook agreed.

Mr. DiPietro made a motion to amend the vote on the Variance application as presented tonight with the condition that the detached garage will not encroach more than 15-feet into the setback for Case #19-06, 30 Mountain Road, Tax Map 9, Lot 4-2. Seconded by Mr. Vieira. Mr. Vieira voted to grant as all five (5) factors have been met, Mr. Stuart voted to grant as all conditions have been met, Mr. DiPietro voted to grant as he believed all five (5) factors have been met, and Mr. Wright also voted to grant and believed that all five (5) factors have been met. A vote was taken and, all were in favor and the motion passed.

Mr. Wright explained that the Variance has been granted and that there was a 30-day appeal period where abutters or interested parties could appeal the ZBA decision. Mr. Wright also stated that they had two (2) years for substantial completion.

Case #19-07

Jamie and Douglas Dinnsen

21 Hawthorne Road – Tax Map 5, Lot 69-7

Zoned Rural

Applicant is requesting a Variance to permit the construction of a farmer's porch which will encroach into the front setback in a Rural zone (Cluster Subdivision). (Article 4, Section 4.05(4))

Mr. Dinnsen began by saying that he wanted to give the Board members a little overview of what he would like to do. Mr. Dinnsen explained that his wife would like a porch and she would like a swing so he would like to build a 9-foot porch and in order to have a 9-foot porch that one of the corners clips the setback by 3-feet. At this time, Mr. Dinnsen passed out copies of the proposed construction of the porch showing the area of

encroachment for the Board to review. Mr. Dinnsen did not have a copy of his application so Ms. Royce handed him a copy to read into the minutes for the record. Mr. Dinnsen added that the porch would be the width of the house which was 36-feet and it would be 9-feet deep and due to the angle of the house the south corner of the house clips the setback approximately 3-feet. Mr. Dinnsen indicated that he never specifically asked for and obviously it would be 3-feet but also asked for a buffer like his predecessors of some reasonable limit. Mr. Dinnsen asked Mrs. Rouleau-Cote for a tolerance number that he could ask for. Mrs. Rouleau-Cote stated that, unless he was going to get a surveyor out there that she wasn't going to give him a tolerance because she was going by a plot plan that was presented when the house was constructed. Mr. Dinnsen stated that he would need a little bit of leeway. Mr. Dinnsen finished reading his application to the Board and asked the Board if they had any questions.

Mr. Wright commented that the only open question was that Mr. Dinnsen mentioned wanting more than 3-feet. Mrs. Rouleau-Cote wanted to comment on this request and stated that, Mr. Dinnsen mentioned the previous applicant and that, that was a little different where the garage was a detached structure where you may need a little bit of tolerance. Mrs. Rouleau-Cote went on to say that, this application seems pretty clear that he wants a 9-foot porch so the application as presented would be a 9-foot extension off of the existing house and he doesn't need to have a tolerance to it unless he wants to go larger than 9-feet. Mr. DiPietro stated that, they have done that in the past where they tied it to the house. A brief discussion ensued with regard to the size of the porch. Mr. Wright pointed out that, the application presented is 9-feet and Mr. DiPietro is right that, they can go off of an existing structure and they are certain of the dimensions then often times they do that rather than go from the setback and measure in. Mr. Wright stated that, he would be inclined to do what Mrs. Rouleau-Cote has suggested and grant the variance approving the construction of a front porch and then tie that relief to the number of feet that the porch will be off of the house. Mr. Wright stated that, if the porch were going to be 10-feet then they would amend his application to indicate that the porch would be 10-feet instead of 9-feet and that's how they would deal with it. Mr. Wright asked Mr. Dinnsen if he was absolutely certain that the porch would be 9-feet from the house then that would be what they would grant because that would be all he would need. Mr. Dinnsen asked to make it 9-feet and maybe 2 to 3 inches as he was uncertain it wouldn't go any further. Mr. Wright believed they could make it 9½ feet. Mr. Dinnsen agreed.

Mr. Wright asked Mrs. Rouleau-Cote if she had any other questions. Mrs. Rouleau-Cote did not have anything else to add. Mr. Wright asked if there were any abutters present. None were noted. Mr. Wright asked the Board members if they had any further questions. The Board did not have any other questions. Mr. Wright asked for a motion on the application as amended to allow a front porch to be no greater than 9½ feet off the existing house structure as presented in the plan.

Mr. DiPietro made a motion to vote on the Variance application as amended to allow the front porch to be no greater than 9 ½ feet off the existing house structure as presented in the plan for Case #19-07, 21 Hawthorne Drive, Tax Map 5, Lot 69-7. Seconded by Mr. Vieira. Mr. Vieira voted to grant as all five (5) factors have been

met, Mr. Stuart voted to grant as all five (5) factors have been met, Mr. DiPietro voted to grant as he believed all five (5) factors have been met, and Mr. Wright also voted to grant and believed that all five (5) factors have been met. A vote was taken and, all were in favor and the motion passed.

Mr. Wright explained that the Variance has been granted and that there was a 30-day appeal period where abutters or interested parties could appeal the ZBA decision. Mr. Wright also stated that they had two (2) years for substantial completion. Mr. Dinnsen thanked the Board and exited the meeting.

Case #19-04

Christopher S. Duggan

56 Nutt Road – Tax Map 14, Lot 7

Zoned Residential One

TABLED from March 26, 2019

Applicant is requesting a Special Exception to operate a home business making furniture in a Residential One zone. (Article 4, Section 4.06(3)(c))

Mr. Wright noted that the applicant was present and asked the Board for a motion to open this Tabled case from last time.

Mr. Vieira made a motion to open this Tabled case from last month, March 26th, for Christopher Duggan, 56 Nutt Road, Tax Map 14, Lot 7, seconded by Mr. DiPietro. A vote was taken and, all were in favor and the case was reopened.

Mr. Wright began by talking about the Conservation Commission's report on the site walk that took place on Sunday, April 7th at 9:00am. Mr. Wright asked Mr. Porter if he would like to comment on the report. Mr. Porter stated that he would be happy to put any comments in if the Board would like but right now, he believed that the report was sufficient.

Mr. Wright asked the Board members if they had any questions or comments. Mr. Vieira began by asking Mr. Porter about the freshwater forested/shrub wetland with a stream that is currently active and runs through this property and then runs through a culvert to another freshwater forested wetland which was a big concern for him. Mr. Vieira moved on to say that, especially based on Cons Com report that milling inside the structure would be fine but no processed on the property especially being so close to a wetland. Mr. DiPietro had the same thoughts as well that, he had no problem with it occurring inside but the outdoor storage/slash piles seems to be a concern to the abutters.

Mr. Wright asked Mr. Porter if the applicant was provided a copy of this report. Mr. Porter stated that he has not forwarded a copy to the applicant. At this time, Mr. Wright presented Mr. Duggan with a copy to review. Mr. Wright also indicated that the report would be part of the record and placed in the file.

Mr. DiPietro commented that it would be reasonable to ask the applicant to do the processing off site at a more appropriate place considering the lot is very small due to the wetlands. Mr. Vieira also commented on the size of the property and that there was not a lot of room to run a sawmill there. Mr. DiPietro stated that he did not have a problem with the home business but the processing is where the objection. Mr. Stuart added that, the milling and all of the large logs and storage does not meet the spirit of the ordinance as far as running a home business and did not believe it matched the definition of a home business by making furniture outside with the mill work and storage outside.

Mr. Vieira added that the Cons Com report was very well done as he was unaware of the freshwater wetland that runs under the road. Mr. Wright indicated that, the report was the additional or new information that they were waiting for in this case and asked Mr. Duggan if there was anything additional at this time that he would like to add. Mr. Duggan commented about the mill and that the Cons Com asked him to move it off to the side and he did not have a problem with doing that and the reduction of the logs which he was going to do but he's had a few problems recently and was unable to do it right away along with the slash piles but would be taking care of it. Mr. Duggan commented that he needs to run his mill in order to make the rustic furniture and if he can't run it then he won't be able to do it anymore. Mr. Duggan pointed out that, it was not a big mill. An abutter commented that Mr. Duggan has just talked about moving over to the side of the house which now will be able to be seen from the street.

Mr. Wright wanted to mention to Mr. Duggan because he wasn't present at the start of the meeting where he asked the applicants that were present if they wanted to move forward with the Board hearing their cases because they only had 4 members present tonight and if there was a vote tonight that it could lead to a 2 to 2 vote which would end in a deadlock. Mr. Wright stated that, they could continue hearing the case and if there was a deadlock of a vote of 2 to 2 then they would have to Table it until next month. Mr. Wright further stated that, he was giving the applicant the option because they only had 4 members to wait until next month to get a full Board or simply proceed with the 4-member Board tonight and if it was deadlocked, they would Table it until next month anyways. In conclusion, Mr. Wright wanted to give the option to Mr. Duggan to proceed with the case tonight with a 4-member Board or wait until next month when they would have a 5-member Board. Mr. Duggan pointed out that he has been shut down since receiving the cease and desist in November so he can't even do anything and he was retired. Mr. Duggan informed the Board members that he would prefer the case be heard tonight.

Mr. Duggan wanted to comment with regard to the comment made by the abutter that if he moved the mill that it would be seen from the street that he had a shed in that area and that it would not be seen from the street.

Mr. DiPietro made a motion to enter into deliberations at 8:04 p.m., seconded by Mr. Stuart.

Mr. Wright asked Mr. DiPietro to comment. Mr. Wright wanted to first comment to the Board members to first focus on the 4 factors and as to whether the comments and input is relevant and say either they think the 4 factors are met because or I don't think the 4 factors are met because and then explain why. Mr. Wright went on to say that, if the 4 factors are met then it's their obligation to grant and if the 4 factors are not met then it is likewise our obligation to deny. Mr. Wright wanted to make sure the record was complete either way that they were basing their decision on the 4 factors.

Mr. DiPietro commented that, in order to not diminish the property values in the neighborhood there has to be some sort of control but from the scale that they are seeing in the pictures it could be detrimental to the neighborhood. If there was a way to put something in place to regulate the scale to keep the piles of logs to a minimum and the piles of slash to a minimum then he believed he could meet the factors.

Mr. Vieira had a few problems with diminishing the property values in the area and not having enough room on that property for the operation that he has now. Mr. Vieira agreed with Mr. DiPietro about how would they regulate this and if we put regulations on it, how would they police it from a neighbor's standpoint. Mr. Wright talked about what is allowed and the possibility of sending it to the Planning Board to address the hours of operation and screening with regard to the business. Mr. Wright pointed out that the policing would be Mrs. Rouleau-Cote who was the Code Enforcement Officer. A brief discussion ensued with regard to the business.

Mr. Stuart stated that, heard testimony from the abutters and seen the photographs and the testimony that we've heard from the applicant believed the evidence is not going to support that this would not diminish the property values. Mr. Stuart was skeptical with the milling being outside and would not meet factor #1 for him. Mr. Stuart also believed that it was contrary to the spirit of the ordinance and therefore would not meet factor #4 either. Based on the info here that it does not meet the criteria.

Mr. Wright thought the comments were all good points and may not be agreeable to neighbors and appreciated Mr. DiPietro's comments and believed that it would extend to factor #3 and believed that if there was some screening or something that he believed there would be a diminution of value and that it would be contrary to public interest as well as contrary to the spirit of the ordinance. Mr. Wright would tie a number of those things back to his view as he does not think that it meets the definition of a home business under our ordinance. Mr. Wright stated that when you have a number of people that come out believed the red flag should go up. Mr. Wright commented that it's not often that a Special Exception has such difficulty but believed the character of the use and what is proposed takes a number of these factors out.

Mr. Wright asked if there were any additional comments. None were noted and therefore a motion to exit deliberations was made.

Mr. Vieira made a motion to exit out of deliberations at 8:14 p.m., seconded by Mr. DiPietro.

Mr. Wright commented that he did not have any further questions for Mrs. Rouleau-Cote, Conservation Commission or the applicant and if everyone else felt the same way that he would entertain a motion to vote on the application. Mr. Wright also wanted to point out that if they do vote to deny that they state in their decision what factors have not been met.

Mr. Vieira made a motion to vote on the Special Exception to operate a home business making furniture for Case #19-04, 56 Nutt Road, Tax Map 14, Lot 7. Seconded by Mr. DiPietro. Mr. Vieira voted to deny because the diminution of value of the property in the area and the encroachment to the wetlands and it was contrary to public interest, Mr. Stuart voted to deny as the application failed the diminution of property value, not in the public interest and contrary to the spirit of the ordinance, Mr. DiPietro voted to deny based on the proposed use would diminish the property values of the neighborhood, and Mr. Wright also voted to deny as factors #1, #3 & #4 have not been met. A vote was taken and, all voted to Deny and therefore the motion did not pass.

Mr. Wright explained to Mr. Duggan that the Variance request was denied and that he has 30-days to appeal the Board's decision which is a request for rehearing to the ZBA. If he does ask for a rehearing then he would need to present additional information that the Board has not considered and that may not have been presented already. Basically, any new information that was not presented.

In conclusion, Mr. Wright thanked Mr. Duggan for coming before the Board and his willingness to accommodate the neighbors and the town and the Board did not think that type of activity was considered a home business because of what's happening outside. Mr. Wright mentioned to Mr. Duggan that possibly he could come up with a Plan "B" as he has heard some of the concerns mentioned above. Mr. Wright also pointed out to Mr. Duggan that if he was thinking about changing his plans to first speak with Mrs. Rouleau-Cote and if you need to come back before this Board.

Mr. Duggan thanked the Board and exited the meeting and the discussion ended.

Other Business

Mr. Wright asked if there was any new business. None were noted. Mr. Wright asked for a motion to adopt the minutes of March 26th.

Minutes

Mr. DiPietro made a motion to accept the minutes of March 26, 2019 as written, seconded by Mr. Vieira. All were in favor, and the motion passed.

Mr. Wright informed the Board members that the May meeting date has been moved up to Tuesday, May 21st due to the Memorial Day holiday. Mr. Wright indicated that he will not be around for that meeting and asked Ms. Royce to send an e-mail around to make sure that there was a quorum and make sure that the other two (2) member/alternate is available.

Mr. Wright asked Ms. Royce to see if something could be placed in the Crier seeking alternates for the Zoning Board of Adjustment.

Mr. Wright thanked Mrs. Rouleau-Cote for her input. Mrs. Rouleau-Cote commented that Conservation Commission did a great job on the report. The Board members all agreed with Mrs. Rouleau-Cote.

Adjourn

Mr. Vieira made a motion to adjourn, seconded by Mr. DiPietro. All were in favor, the motion passed unanimously, and the meeting stood adjourned at 8:35 p.m.

The Zoning Board of Adjustment is scheduled for May 21, 2019 at 7:00 pm and will be held at the Town Hall, 47 Chester Road unless otherwise noted on the upcoming Agenda.