

**UNAPPROVED MINUTES**  
**Town of Auburn**  
**Zoning Board of Adjustment**  
**June 18, 2019**

**Present:** Mark Wright, Chairman. Mike DiPietro, Vice-Chairman, Kevin Stuart & Dennis Vieira, Members of the Board. Dale Phillips & Shawn Matte, Alternate Member. Minutes prepared by Denise Royce.

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

**Absent:** Stephen Carroll, Member.

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

Mr. Wright informed everyone present tonight that they would have 5 members voting on the cases tonight. At this time, Mr. Wright introduced the members of the Board and went into explaining the procedure for tonight's hearing and also noted that Mrs. Rouleau-Cote was also present as well.

Mr. Wright stated that they were missing one full member of the Board so that he would elevate Mrs. Phillips to a full voting member for the first case. With that said, Mr. Wright asked Ms. Royce to read the first case into the minutes for the record.

**Case #19-10**  
**Dustin & Cindy Bello**  
**52 Donald Drive – Tax Map 8, Lot 48-1-3**  
**Zoned Residential Two**

*Applicant is requesting an extension of Variance previously granted on September 27, 2016 to permit a 30-foot by 40-foot structure to be 10-feet from the side setback in a Residential Two zone. (Article 4, Section 4.06(6))*

Mr. Wright began by saying that, Mr. Bello was before the Board a few years ago and his Variance has expired sometime in September of 2016 and most of the time, the applicant will come back prior to the Variance expiring to ask for an extension. With that said, Mr. Wright believed it would be best for Mr. Bello to read his application into the record as the Board would be taking this case up like it was a new case. Mr. Wright noted that the minutes from 2016 were included in the package of information to the Board so they can see what was presented previously and what will be presented now. Mr. Bello indicated that he had just copied the last application and began to read his application into the minutes for the record. Mr. Bello added that the structure would be located approximately 800 to 1,000 feet from the driveway entrance and would not be visible to surrounding abutters or neighbors. Mr. Wright asked Mr. Bello to answer #4 and #5 because they were blank on the application as all five factors need to have been met in order for them

to be able to grant them. Mr. Bello answered by saying the layout of the property and that it would protect the wetlands and that this would accomplish that.

Mr. Wright asked Ms. Royce if all the abutters had been notified. Ms. Royce said yes. Mr. Wright acknowledged that the request for a Variance was for the structure to be 10-feet from the property line as had been requested previously. Mr. Bello said yes that the structure would be the same as before being 30-feet by 40-feet. Mr. Wright asked if anything had been done. Mr. Bello stated that only the area had been cleared.

Mr. Wright stated that, before he opened it up for the Board members to comment asked Mrs. Rouleau-Cote if she had anything else to add. Mrs. Rouleau-Cote said no and agreed with the procedure that the Board was going through.

Mr. Wright asked the Board members if they had any questions and again pointed out that, if the applicant had come before the Board prior to the Variance expiring that they could take it up as an extension but that since the Variance had lapsed approximately 9 months ago that they would go through it as a new case given the lapse in time.

Mr. Stuart asked Mr. Bello if there were any changes to the building proposed. Mr. Bello said no that it would still be 30-feet by 40-feet and talked about it being either a post barn or having a concrete foundation and it looked like they were leaning towards it being a concrete foundation. Mr. Stuart asked if there would be any windows. Mr. Bello said that there may be windows if they go with a foundation structure but the post barn would be windowless and there were no other changes.

Mr. Wright asked if there were any abutters present. Mr. Delacoe of 72 Donald Drive and asked if it would be used for commercial use because he read it somewhere. Mr. Wright said not in this case but there is a case regarding the use of commercial vehicles but asked Mr. Bello to comment. Mr. Bello indicated that it would be solely used for residential purposes.

Mr. Wright asked if there was anyone else that would like to speak. None were noted. Mr. Wright believed that, unless anyone felt the need to discuss this case further that he would entertain a motion to vote on the application as presented.

***Mr. Vieira made a motion to vote on the Variance as presented tonight to permit a 30-foot by 40-foot structure to be 10-feet from the side setback from Article 4, Section 4.06(6) for Case #19-10, 52 Donald Drive, Tax Map 8, Lot 48-1-3. Seconded by Mrs. Phillips. Mr. Phillips voted to grant, 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 the factors have been met, and, Mr. Wright also voted to grant finding all five (5) factors have been met. A vote was taken and, all were in favor and the motion passed.***

Mr. Wright informed Mr. Bello that he had two (2) years to utilize the Variance and also informed him that anyone that was aggrieved by the ZBA decision that there was a 30-day appeal period where interested parties may appeal.

With that said, Mr. Wright thanked the applicant and moved on to the next case. Ms. Royce read the second case into the minutes for the record. Mr. Wright elevated Mr. Matte to a full voting member for the second case.

**Case #19-11**

**Michael F. Carpenter**

**351 Chester Road – Tax Map 8, Lot 2-1**

**Zoned Residential Two**

*Applicant is requesting a Variance to allow use (Commercial Service Establishment) which is not permitted in the R-2 zone for rental of 5 parking spaces in a Residential zone. (Article 4, Section 4.06(4))*

Mr. Carpenter read his application into the minutes for the record. Mr. Wright asked Mr. Carpenter how long he has owned the property. Mr. Carpenter stated that, it has been a year to the date. Mr. Wright asked if the vehicles have been parking there since he purchased the property. Mr. Carpenter said no that, they have been there about 4 or 5 months now. Mr. Wright asked if the vehicles were the ownership of anyone related to him. Mr. Carpenter said no. Mr. Wright asked where the business was located. Mr. Carpenter stated that they are out of Auburn and did not know the address. Mr. Wright asked when they arrive and when they leave. Mr. Carpenter stated that, typically they leave in the morning around 7:00am to 8:00am and return around 3:30pm and 5:30pm. Mr. Wright asked if it was Monday through Friday. Mr. Carpenter said yes and occasionally a Saturday. Mr. Wright asked Mr. Carpenter to describe the vehicles. Mr. Carpenter indicated that, they were small mini-vans used for “Mosquito Joe’s” which is the name of the company which are yellow and are parked outside in the parking lot. Mr. Wright asked about lighting, fencing and cameras. Mr. Carpenter said that there was minimal lighting and no fencing and that he did have some cameras on the property.

Mr. Vieira asked if any chemicals were stored in these vans and asked if he was fully insured. Mr. Bernard of 44 Cedar Crest Lane indicated that he was the owner of the vans and that there are no chemicals kept in the van but brought into the shop and locked up for the night and that he was fully insured.

A brief discussion ensued between Mrs. Phillips and Mr. Carpenter with regard to the property location and layout of the property and the buffer zone between the property and the new development off of Saddle Hill Drive. Mr. Stuart asked Mr. Carpenter if he lived in the house and about the garage or garages. Mr. Carpenter said yes and that there were two (2) garages that were connected and that they were approximately 4,800 square feet.

Mr. Wright commented that, the Board has received their packet and that in the packet was a letter from the Code Enforcement Officer to the applicant and a response from the applicant and some photos. The Board members all received the packet. Mr. Wright asked Mrs. Rouleau-Cote if she had any additional comments that she wanted to add. Mrs. Rouleau-Cote began by saying that she did prepare a Zoning Determination for the Board to kind of outline the history of the property. Mrs. Rouleau-Cote talked about the previous uses which were the dance studio and the construction company which was prior to the subdivision located on Saddle Hill Drive who are now behind the property. Mrs. Rouleau-Cote reiterated that, her Zoning Determination was prepared as an outline for the Board and then also outlining her Notice of Violation that went out to the property owner and he has responded and has filed an application to seek the relief that was outlined.

Mr. Wright asked if there were any abutters present. Lori Ryan of 20 LedgeWood Drive passed out copies of photographs taken from her kitchen window to each Board member along with another business that has been running from this same property for motorcycles and RV roof repairs. Ms. Ryan indicated that she was a realtor and that she was worried about her property value and that she did her due diligence prior to purchasing her property and was aware of the previous business of the dance studio which had dance classes 3 days a week for a few hours and would have never purchased the property if it was next to a commercial property. Mr. Edgar of 20 LedgeWood Drive commented about the water issues that a number of homes have in the area and was very concerned about these vehicles and having chemicals on a property as there are a lot of families and a lot of kids up in that area and they don't need anything else in their aquafer. Mr. Robinson of 22 LedgeWood Drive commented that one was the eyesore and also the noise issue with running an RV repair and Motorcycle repair shop out of there is an issue for him and stated that he also did his due diligence prior to purchasing the home. Mr. Lee of 16 LedgeWood Drive asked what the limitations were if he gets a Variance to go to a commercial site. Basically, what is the cap or limit to what he can do. Mr. Wright commented that, the request this evening is very specific which is for 5 parking spaces to be used as rental spaces and that the ZBA's job is to figure out what the minimum relief would be to accomplish what the applicant would like to do and still stay within the zoning laws and meeting the five (5) criteria for a Variance. In this specific case the applicant has asked for a Variance to park 5 vehicles for rental purposes in there space and if granted, the Variance would be specific to allowing someone to have five (5) vehicles that can be rented for space parked there and that would be the extent of the Variance and anything that exceeds that would be in violation of our ordinance. Mr. Lee asked what the property is zoned now. Mr. Wright informed Mr. Lee that the property is zoned Residential Two. Mr. Wright further explained that, the Variance is to allow something that is otherwise not permitted in that zone. A brief discussion ensued with regard to the Zoning Ordinance and what is allowed in the Residential Two zone and if it's not known then it would require a Variance.

A brief discussion ensued with regard to camera's and what they were pointed at. Mr. Carpenter stated that the cameras were pointed at the driveway and the front door and did not have cameras pointed at the garage. Mr. Carpenter also wanted to address the

question with regard to the motorcycle and RV business. Mr. Carpenter stated that the motorcycles are a hobby and has his best friend living with him and has been there since he moved in. The RV business is owned by him and that they do RV roof repairs which is separate and that the property allows him to do that because it had a business there which was his understanding.

Mr. Bernard explained to everyone present about the product that is used by Mosquito Joe's and that it was basically meant to be used on residential lawns and leaves etc. Mr. Bernard also mentioned that, in approximately 21 to 30-day period that it will breakdown. Mr. Bernard added that, the chemicals are not kept overnight in the vehicles but is safely locked away inside the garage in a locked cabinet. Also, Mr. Carpenter's driveway is paved in the event of a spill and that what the abutter saw was one of his guys adding water to the vehicles.

Mr. Wright asked if anyone had any further questions or comments to add. None were noted. Mr. Wright asked Mrs. Rouleau-Cote to speak regarding the RV and motorcycle repair business. Mrs. Rouleau-Cote commented that, she had spoken with the property owner about that, specifically the RV business as he does do the repairs inside the garage of which if you look at the zoning ordinance it would be considered a home shop which is a permitted use in the Residential Two zoning district. As long as he does the repairs inside then it is a permitted use. Mr. Wright asked Mrs. Rouleau-Cote that Mr. Carpenter would meet the definition with regard to no more than one employee outside the home. Mrs. Rouleau-Cote indicated that, Mr. Carpenter explained that, his employee lives on the property as well.

Mr. Wright asked if there were any other questions from abutters or interested parties. None were noted. With that said, Mr. Wright asked the Board members if they had any questions or comments. Mr. DiPietro made a motion to go into deliberations.

**Mr. DiPietro made a motion to enter deliberations. Seconded by Mr. Vieira. The Board entered deliberations at 7:41pm.**

Mr. DiPietro began by saying that he believed the question before them was the photographs showing the trucks and does that diminish property values. Mr. Matte asked if there was any other place on the property that they could park the vehicles that would make it less visible and also was there a limit on the number of RV's that he could have on the property at one time or are they brought in, then fixed and then leave the property within a short window. Mr. Wright stated that, it was a good question regarding the parking and the location and believed that the RV's are not part of it but the trucks that are being brought there for rental purposes which are not his business but someone else's business. Mr. Wright believed that as far as Mr. Carpenter's business with the RV's are okay as long as he does all of the repairs inside the garage and that there is not more than one person that does not live there and it doesn't sound like it. Mr. Wright believed it was the trucks that he does not own and is not his business that the Board needs to focus on as well as Mrs. Rouleau-Cote's determination who looked and found it most analogous to a Commercial Service Establishment. Mr. Wright went on to say that, you

can look at what is permitted in a Residential Two zone in our Zoning Ordinance and home shop, home business, home office is permitted without any relief. Mr. Wright commented that there are a number of other things listed such as Commercial Service Establishment which is not allowed and went through the list.

Mr. Wright talked about the previous activity that occurred on the property before such as the dance studio and construction company and what is occurring now which was conducted by the owner. Mr. Stuart pointed out that those business types have since lapsed and now they are coming before them to establish a new use. Mr. Vieira talked about what was occurring there and did not believe it was only parking vehicles. A brief discussion ensued with regard to what was occurring previously and what is occurring now. Mr. Stuart talked about the testimony heard tonight with regard to property values which was a concern from the abutters. Mr. Vieira pointed out that this was one of the five (5) factors. Mr. DiPietro believed that if they were parking the vehicles inside the garage or hidden from view that he did not think that it would diminish property values. Mr. Wright stated that, even if they were parked inside that if you look at the definition it talks about the building and/or structure used principally for providing commercial services to the public and you would have these vehicles coming in and out and you would have commercial activity. Mr. Wright believed that, you still don't get away from the idea that it's a commercial establishment by putting the vehicles inside. The Board talked about diminishing property values none the less.

Mr. Wright wanted the Board to look at this very carefully when you start getting into Variances that are changing the use. Mr. Wright talked about what is allowed in the zone and what is not allowed in the zone and you get into an idea of spot zoning when you start picking things and allowing things to be done that are used space in a zone versus dimension where you can get this close. Mr. Wright wanted to caution the Board when you start to rewrite the ordinance and the matrix that says you can't do this in a residential zone but you can do this in an industrial zone that you start creating pockets of things that were never intended. That the dimension and use Variances are very different. Mr. Wright also wanted to point out that, a lot of times we don't have abutters present and when we do that, that really means something and we have to listen a little more carefully.

Mr. Wright asked the Board if there were any other thoughts or comments. Mr. Vieira agreed with Mr. Wright about listening to what the abutters have to say. Mr. Matte commented that there was a previous commercial use there and that there were no houses around and now there are people who just bought \$600k houses.

Mr. Wright moved on to say that, assuming we come out of deliberation that he would suggested that, if they vote to grant that obviously all five (5) factors have been met but, if you vote to deny that, he would ask that they specifically note which factors they believe that has not been met.

**Mr. DiPietro made a motion to exit out of deliberations. Seconded by Mr. Vieira. The Board exited deliberations at 7:41pm.**



Mr. Wright asked if there were any additional questions for the applicant or Code Enforcement Officer. None were noted. Hearing none, Mr. Wright stated that, he would entertain a motion to vote on this application as presented.

***Mr. DiPietro made a motion to vote on the Variance application as presented tonight for Case #19-11, 351 Chester Road, Tax Map 8, Lot 2-1. Seconded by Mr. Stuart. Mr. Matte voted to deny as he believed it was not in the spirit of the ordinance as it was not his business but someone else's business and would diminish property values, Mr. Vieira voted to deny as he did not believe that all five (5) factors have been met as it would diminish property values in the neighborhood, Mr. Stuart voted to deny as he did not believe any of the five (5) factors have been met, Mr. DiPietro voted to deny as he believed it was not in the spirit of the ordinance as it would diminish property values, and Mr. Wright also voted to deny finding only factor #4 has been met and factors #1, #2, #3 and #5 have not been met. A vote was taken and, all voted to deny and therefore the Variance was Denied.***

Mr. Bernard asked the Board members how long they would have to move the vehicles off the premises. Mr. Wright informed him that he would need to speak with the Code Enforcement Officer in that regard. Mr. Wright also wanted to point out that, there was a 30-day appeal period if they wanted to appeal the ZBA decision tonight. Mr. Wright also added that, they would need to see new evidence that was not presented at the first hearing in order for the Board to agree to rehear the case. If they deny the motion for rehearing or rehear the case and deny the case again that their recourse would be to bring suit at the Rockingham Superior Court which is the recourse from a ZBA decision. Mr. Carpenter stated that he understood what Mr. Wright was saying but wanted to ask if it would make a difference if he was an owner in the business. Mr. Wright suggested that Mr. Carpenter speak with the Code Enforcement Officer about that as he could not answer that question and that the best person to speak with would be the Code Enforcement Officer.

Discussion ensued between Mr. Carpenter and the abutters on Ledgewood Drive. Mr. Wright informed them that the decision has been made and that this was a discussion that should take place between the abutters and that the Board had more cases to go over. Mr. Carpenter thanked the Board and exited the meeting.

**Case #19-12**  
**Megan Grandmaison**  
**Dollard Road – Tax Map 9, Lot 2**  
**Zoned Residential Two**

*Applicant is requesting a Special Exception to allow the proposed construction of a dwelling unit – duplex in the Residential Two zone. (Article 4, Section 4.06(5)(h))*

Mr. Wright pointed out that the applicant was Megan Grandmaison and that the owner of record was Bette Dollard and heirs and understood that the owner, Bette Dollard was

present tonight and asked Ms. Dollard if the applicant had the authority to apply for this even though she was the owner. Ms. Dollard said yes.

Mr. Alden Beauchemin presented on behalf of the applicant who put together the application for the buyers. Mr. Beauchemin passed out copies of a conceptual plan for the Board members to review. Mr. Beauchemin explained a little bit about the plan to the Board members and stated that there is a lot to the rear with an access off of Dollard Road and they are looking at building a duplex on the property. The lot itself is a total of 35 acres and the buyers would essentially like to just build a duplex on the lot. Mr. Beauchemin also noted that they have done test pits and that the lot can obviously support a duplex. At this time, Mr. Beauchemin read the application into the minutes for the record.

At this time, Mr. Wright wanted to open up the meeting to any abutters or interested parties. Mr. Dollard of 73 Dollard Road stated that, he would like to be reassured that the duplex will be owner occupied and if the driveway would be paved as he is concerned about salt. Mr. Beauchemin asked Mr. Dollard if he'd like the driveway paved. Mr. Dollard said, not necessarily. One of the applicants commented that it would be paved up by the house but that the entrance would be gravel as it was a long driveway and that she was sensitive to salt as well and also mentioned that it would be owner occupied.

Mr. Wright elevated Mrs. Phillips to a full voting member for this case. Mr. Wright asked Mrs. Rouleau-Cote if she had anything to add. Mrs. Rouleau-Cote commented that, based on the abutters comment that, she was not sure if the Board's decision could be based on if it's owner occupied as we usually do not do that on a single family home and did not believe she had the ability to enforce that or whether or not the driveway is paved or gravel on a private driveway. Mrs. Rouleau-Cote added that, in the Accessory Dwelling Unit that there is language in the statute that says that one of them has to be owner occupied but for a duplex which is basically two single family dwellings attached that she did not believe there was any enforcement for a duplex to be owner occupied. Mr. DiPietro thought that they could make that a condition of their decision. Mr. Wright was a little uncomfortable reading something into our ordinance that is not there and read the definition of duplex and there is nothing that restricts it to being owner occupied. Mr. Wright read the definition of duplex to read *"two (2) attached dwelling units must share a common wall or common floor/ceiling assembly, have separate access to each dwelling and meet all current building code standards"* and that was it. Mrs. Rouleau-Cote also pointed out that, they could also go to the Planning Board in the future and make these into a condo with two (2) ownerships. Mr. Wright also mentioned the comment on paved driveways and that, in our zoning ordinance that there was nothing that obligates a land owner to pave their driveway. In conclusion, Mr. Wright believed that these go beyond their scope and asked if anyone else had any further questions or comments. Mrs. Phillips asked about the houses and what was located between them. The applicant commented that it was a courtyard between them and the garages were attached in the front. Mrs. Phillips mentioned a few in town that we have where one was on Drouin Circle and the other one was on Manchester Road. Mr. Wright read the definition for duplex again to say *"dwelling units must share a common wall or common floor/ceiling assembly"*



so basically, it's the dwelling unit which it appears the garage share a common wall to not have two homes on one lot. Mrs. Rouleau-Cote explained the difference between an Accessory Dwelling Unit where it specifically talks about sharing a habitable wall so the two spaces can communicate. In this scenario, it's not uncommon for a duplex to be built with the two (2) garages connecting in the middle and then the houses and this one they just happened to shift the garages forward. It's still the garages that are connecting and that they have a courtyard in the back and had the garages been pushed back it would still be the garages connecting. In conclusion, Mrs. Rouleau-Cote pointed out that the garages are still connecting by a common wall. Mr. Wright thanked Mrs. Rouleau-Cote for her interpretation between the two scenarios. A brief discussion ensued with regard to the duplex. Mr. Vieira asked what the square footage would be. The applicant commented that they would each be just shy of 2,000 square feet.

Mr. Wright asked if there were any further questions from the Board or anyone else. None were noted. With that said, Mr. Wright stated that this was for a Special Exception and that there was no hardship but the other four (4) factors need to be met and if no one wanted to go into deliberations that he would entertain a motion to vote on the application as presented.

***Mr. DiPietro made a motion to vote on the Special Exception as presented tonight to allow the proposed construction of a dwelling unit – duplex for Case #19-12, Dollard Road, Tax Map 9, Lot 2. Seconded by Mr. Vieira. Mrs. Phillips voted to grant as it meets the qualifications, Mr. Vieira voted to grant as he believes it meets all the factors, Mr. Stuart voted to grant as it has met all four (4) factors, Mr. DiPietro voted to grant as he believed all four (4) factors have been met, and Mr. Wright also voted to grant as all four (4) factors have been met. A vote was taken and, all were in favor and the motion passed.***

Mr. Wright reiterated about the 30-day appeal period to the applicant. Ms. Grandmaison asked if they were to start and there was an appeal that they wouldn't get in trouble for starting correct that they would just have to stop what they were doing. Mr. Wright said that was correct. Ms. Grandmaison understood and thanked the Board for their time and the discussion ended.

**Case #19-13  
Granite State Solar  
Paula & Bruce Royer  
315 Chester Turnpike – Tax Map 11, Lot 11-3  
Zoned Residential Two**

*Applicant is requesting a Variance to allow the construction of a solar tracker that the overhang of the solar panels will be within the 30-foot side setback in a Residential Two zone. (Article 4, Section 4.06(5)(h))*

Mr. Donnelly, one of the owners of Granite State Solar and Jaimie Harris and Troy Diamond were also available to answer any questions. Mr. Wright elevated Mr. Matte to a full voting member for this case. Ms. Harris read the application into the minutes for the record. Mr. Wright wanted to make sure the owner of the property was present as well and Mr. Royer was present. Mr. Donnelly wanted to explain what basically happened that, they understood that it was a 30-foot buffer from the property and when he and Mr. Diamond were out there they talked to Mr. Royer and went over where they could and couldn't put it and he was fairly familiar with his property line and they measured 30 feet from the line and added 6 feet. Mr. Donnelly stated that, there was nothing specific to solar and apparently, according to the Building Inspector that the overhang of the panels went into the buffer but the base of the tracker was within the limits. Mr. Donnelly reiterated that there was nothing in the ordinance with regard to solar and they noted that they could apply for a Variance as they had a similar situation where they moved it. Mr. Donnelly stated that he informed the owner that he did not think that there would be a problem with the Variance and passed out copies of the tracker and the location. Mr. Donnelly explained the photos to the Board members and in the meantime, Ms. Richards had a surveyor come out. Mr. Donnelly pointed out in one of the photos where Mr. Royer was standing was where they would have to move the tracker which he is able to do and stated that it would not be a benefit for the homeowner or the neighbor because it would be more in the neighbor's view and would be closer to the applicant's house. Mr. Donnelly stated that, this was basically why they were asking for the Variance and they meant to do the right thing and they made a mistake according to the Building Inspector. Mr. Donnelly stated that they, made a mistake but it doesn't say anywhere in the restrictions that it was the overhang of the panels and not the base and understands that solar is fairly new and these trackers are fairly new and a lot of towns don't have anything written in their ordinance and they try to go overboard and stay as far away as they can and believed that they had a 6 foot buffer. Mr. Donnelly reiterated that they can move the tracker as it was not a problem but believed that the neighbor would not like it where they need to move it as it would be more in their view than it is now. Mr. Donnelly added that, since they did mark out the property line that they only had to move it 9 feet and that they couldn't move it back because there is another tracker there as well and the well is there as well. Mr. Wright noted that the overhang was 9 feet from the property line. Mr. Donnelly said yes as they used a plum line. Ms. Harris corrected Mr. Donnelly by saying that it was not 9 feet from the setback but 9 feet into the setback so 21 feet from the property line. Mr. Donnelly explained that it would only be 9 feet into the setback at certain times when the tracker moves which would be at night when the sun goes down when they go flat or when there is wind but did not believe there would be an issue with wind. Mr. Donnelly stated that, 9 feet would be the worse-case scenario.

Mr. Wright wanted to ask about one of the points that Mr. Donnelly had made that, he was under the impression that it was the pedestal. Mr. Donnelly said correct. Mr. Wright went on to say that, Mr. Donnelly stated that there were a few instances where they encountered something similar to this. Mr. Donnelly commented by saying that, one was that they miscalculated the buffer from the road where they went with the side and/or the back and they were off by 6 feet and they moved it 6 feet and he said that, he didn't want to say that this has not happened before.

Mr. Wright went on to say that, before he opens it up to abutters and asked Mrs. Rouleau-Cote for comments. Mrs. Rouleau-Cote wanted to say that, before a permit was issued for this solar array that she was very clear that the solar array had to meet setbacks and when they originally submitted the application to her it was more of a google map and they kind of piece together where they were going to put the arrays. Mrs. Rouleau-Cote explained further that, she sent them a certified plot plan from the file outlining the setbacks and telling them that they should be taking swing ties off the house to establish the setback. When they resubmitted their application, they indicated that it was going to be 47 feet from the property line so a permit was issued. During the installation, she received a phone call from an abutter who questioned the proximity of the solar array and at that time she contacted Granite State Solar and reminded them that they need to meet setbacks and they indicated to her that the field crew was aware of that. It wasn't until they went for the inspection after the arrays were up that it was noted very clearly that they were within the setback. At that point, we gave them the two (2) options of either filing for a Variance or relocating one of the arrays to comply with the setback. Mr. Donnelly asked Ms. Harris to respond. Ms. Harris stated that, it was completely and fully absolved before they were notified about the abutters having a concern and when they went out there again that the well was in a spot where we couldn't put it and they weren't able to see the well on the mapped plan. Mr. Donnelly commented that, he went through her e-mails and questioned her on conversations with the inspector and there were no e-mails in reference to the setbacks. Mr. Donnelly pointed out that, many times they get to a site that, there are certain things that our solar advisors or project coordinator manager will plot things and they get there and decide that it won't work and then they ask what is the setback and when they were told 30 feet he wanted to go 36 feet and he did not want to admit that they made a mistake. What is important here is, if Mr. Royer or Ms. Richards believe that they would prefer it to be moved then he will move it but he wanted Ms. Richards to understand that this would be the place that he would be moving it too. Mr. Donnelly did not believe that, that was where she would want it to go and believed that where it was currently located was the best spot for the abutter. Mr. Donnelly reiterated that, he could move it in one day if they wanted it to be moved and would like to give Mr. Royer the opportunity to speak as well. At this time, Mr. Royer reiterated that when he went through the Zoning Ordinance that there was nothing specific with regard to solar but basically what he could find was referencing structures and there was nothing with regard to the solar array or anything about the solar array hanging over. The only thing that was mentioned was about a structure or what a structure would be. Mr. Royer mentioned that, as far as he was concern that the abutter's concern was basically regarding the visual of it and buffering the visual of the solar array.

Mr. Wright asked if there were any abutters. Ms. Richards of 335 Chester Turnpike began by saying that her daughter and son-in-law are the ones that live next door in the red house and that when you drive up the driveway that it literally is in your face. As far as the property line concern, it wasn't exactly located when this all started and she paid \$740 to get S&H Land Surveyors out there to determine the exact property line. Ms. Richards went on to say that they are neighbors and they are talking as it was not hostile by any means and determined that they were 28 feet to the post and not 30 feet and believed that this would diminish property values. Ms. Richards also explained that, when the

panel is straight up flat that you are literally staring at an 18-foot-high giant panel. That being said, a mistake was made and they talked about doing tree line buffer for a 20-foot buffer line and should be paid by the people who made the mistake and did not believe it should be the homeowner. They talked to a few people and it would be \$300 to \$500 in order to get a tree that is at least 15 feet tall to block the 18-foot-high panel. Mrs. St. Pierre commented that the tree buffer would work and that they have a good relationship with the abutter and that their children actually play together and with the trees it would give them a little privacy buffer so when they are sitting on their front porch they wouldn't be looking at a huge 18-foot panel. Ms. Richards was asking to have the trees installed by someone who will warranty them and have the trees at least 15 feet high. Ms. Richards further added that, they would like to have monies put into escrow with the town. Mr. DiPietro asked Mr. Wright if we had the ability to do that. Mr. Wright said no. Mr. Wright wanted to say that, it was great to see neighbors trying to work together and figure out a solution and wanted to add that, the Variance runs with the land and when they make their decisions that they absolutely listen to abutters and they listen to the parties but they also know that one or both of you may not be living there in a year from now and they may have completely different people with completely different views to live with whatever it is that was granted. They definitely listen to abutters and all parties but in the end, if something just simply was not right and didn't meet the factors that it really doesn't matter if you have a written agreement from the people next to you that promise that they are in full support they would still deny it if it didn't meet the factors. Mr. Wright also pointed out that, they do attach conditions to Variances from time to time including things that address particular concerns and what they are detailing is outside the scope of what they would want to get involved in. Mr. Wright talked a little about enforcement and hearing the testimony from Ms. Richards and the applicant and would prefer to stay out of the middle of that and focus on what they have before them which is a structure that may or may not have been expressly described in our ordinance and it's impossible to list everything so we list by example and whenever you're in doubt that the best thing to do is call the town and that especially the Town of Auburn is incredibly helpful and any office you call and just ask and tell them what you are planning on doing. Mr. Wright added that, they were not the first and this is what this Board does and hear these cases and figure things out in a way that protects the town and is in compliance with the ordinance.

Mr. Stuart had a question for the abutter and asked what they would like to see occur as opposed where they have it or where they would need to move it. Ms. Richards stated that it was in the setbacks and putting up the screening should be the responsibility to the person who made that mistake. Ms. Richards added that, moving it because it's not compliant then that's a whole other thing. Mr. Stuart noted that they were asking to keep it where it is by getting a Variance versus them having to move it. Ms. Richards ended by saying that clearly not being closer to the property line doesn't make it in your face and being the size of the unit that it's a large unit one way or the other and they are trying to save time and money that they are trying to be somewhat agreeable and their solution was for the people that made the mistake to make it not so much in your face. Mr. Donnelly commented that, the reason he took the picture where you can see the front of the red car, was that he wanted to show the abutter what the difference would be of where it would be and to him it seemed that it would be more visible if they moved it the 9 feet

but we'll call it 13 feet and that he would probably have to hire someone to come out and measure it. Mr. Donnelly wanted the abutter to know that, if they have to move it that, that was where it will go and believed it was actually more hidden where it is now and agreed that they do see it. Mr. Donnelly stated that, he told Mr. Royer that he made the mistake and that he would move it. Mr. Matte asked Mr. Donnelly how much it would cost him to move the structure. Mr. Donnelly stated that he would be out there and with one more person and it would take a half day and at the most one day which would probably cost \$500 to \$1,000. Mr. Matte asked Mrs. Rouleau-Cote if there was an inspection on the base or is it just go ahead. Mrs. Rouleau-Cote said go ahead.

Ms. Richards asked about the Variance and if it runs with the property. Mr. Wright stated that it runs with their property. Mr. Wright commented that, given the size of the structure and the visual impact that he appreciated their honesty and willingness to come before the Board and the abutters and the neighbors obviously have a good relationship and they are trying to work this out and a decision was made to put it there and it will be 10 or 15 feet in one direction and it sounds like it's not going away and either way whether it stays or it gets moved and it sounds like moving it was not insurmountable and that it was something that can be done. Mr. Wright reiterated that their decision is based on input from abutters and the applicant and ultimately, they look at the application and if the five (5) factors have been met then they are obligated by law to grant the Variance. It's not discretionary because if you meet these factors the law says that they are forced to give the relief which is the whole reason why we are here to give people a way to get exceptions from an ordinance that says you can and cannot do these things and that's why the Zoning Board is here.

Mr. Wright asked if anyone had any further questions before they enter into deliberations or vote on the case. None were noted. Mr. DiPietro made a motion to vote on the case. Mr. Wright explained that they would be voting on the Variance as presented tonight to basically allow the structure to stay where it currently sits to be 21 feet from the property line where 30 feet is required. Ms. Richards disagreed with the dimensions. Mr. Donnelly commented that, that was the measurements they took and they used a plum line and reiterated that he told Mr. Royer that he would move it. Mr. Wright asked if 21 feet and would say no closer than 21 feet. Mr. Donnelly stated approximately and that he did not pay to have it surveyed and did not know the distance exactly. Mr. Wright stated that it needed to be specific so there is no question. Mr. Royer believed that it would be 15 feet exactly. Mr. Wright reiterated that it would be 15 feet from the property line. Mr. Royer said yes.

***Mr. DiPietro made a motion to vote on the Variance application as presented tonight for Case #19-13, 315 Chester Turnpike, Tax Map 11, Lot 11-3.***

Mr. Matte asked if they could move it somewhere else on the property as he took a ride by and there seems to be a lot of places elsewhere to place the structure. A brief discussion ensued and it was determined that Mr. Royer did not want it directly in front of his house as well. Mr. Donnelly talked about the well and irrigation lines in the front lawn and the location of his meter and they were able to use an existing piece of conduit and



keeping it away from your driveway is best too. Mr. Wright stated that they amended the application to be 15 feet from the property line.

***Mr. DiPietro made a motion to vote on the Variance application as presented tonight and amended to be not more than 15 feet from the property line for Case #19-13, 315 Chester Turnpike, Tax Map 11, Lot 11-3. Seconded by Mr. Vieira. Mr. Matte voted to deny as it wasn't brought up to Carrie's specifications and it wasn't in the ordinance, Mr. Vieira voted to deny as he would like to see it brought in as it's too close to the property line, Mr. Stuart voted to deny for factor #2 and factor #4, Mr. DiPietro voted to grant as he believed that it met all the factors, and Mr. Wright voted to deny finding that factors #1, #3 & #5 have not been met. A vote was taken and, the vote of 4 to 1 to deny and therefore the motion was DENIED.***

Mr. Wright informed the applicant that he could either move the tracker or they could appeal the Board's decision within 30-days. Mr. Wright thanked the applicant. Mr. Donnelly asked Mr. Matte to repeat his decision as he did not understand his reasoning. Mr. Matte explained that, it was because he stated that he did not follow what Mrs. Rouleau-Cote had informed him with regard to the 30-foot setback. Mr. Donnelly asks which of the five (5) factors was it. Mr. Matte stated it was #4 – Application for equitable waiver of dimensional requirements. Mr. Wright indicated that they would have a copy of the minutes which would be made available.

Mr. Wright indicated that he was not present at last months hearing and asked Mr. DiPietro if he had minutes to approve. Mr. DiPietro asked if anyone wanted to make a motion to approve last month's minutes.

## **Minutes**

***Mr. Vieira made a motion to accept the minutes of May 21, 2019 as written, seconded by Mr. Stuart. All were in favor, with Mr. Wright abstaining as he was not present and the motion passed.***

## **Other Business**

Mr. Wright stated that there was one case scheduled for July and asked Ms. Royce when the cut off was for the hearing in July. Ms. Royce stated that it was Tuesday, July 25<sup>th</sup>.

The Board talked about tonight's cases and believed that everyone should come to a Planning Board meeting or a Zoning Board meeting as they could learn a lot from attending these meetings especially to check with the town with regard to setbacks and locations for placement before doing anything.

With that said, Mr. Wright asked for a motion to adjourn.

## 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 9:15 p.m.***

**The Zoning Board of Adjustment is scheduled for July 23, 2019 at 7:00 pm and will be held at the Town Hall, 47 Chester Road unless otherwise noted on the upcoming Agenda.**