

**UNAPPROVED MINUTES
Town of Auburn
Zoning Board of Adjustment
December 14, 2021**

Present: Mike DiPietro, Chairman. Kevin Stuart, Vice-Chairman, Patrick Bergeron (7:23pm), Jill Dross & Shawn Matte, Members. Steven Kimball & Nick Pappas, Alternate Members. Minutes were taken and prepared by Denise Royce.

Also, Present: Carrie Rouleau-Cote, Building Inspector/Code Enforcement. Eric Mitchell & Matthew Scott. Attorney Michael Tierney.

Absent: Shannon Daoust, Alternate Member.

Mr. DiPietro called the meeting to order at 7:00 p.m.

Mr. DiPietro introduced himself and moved on to introduce each of the Board members and Alternate members of the Board. Mr. DiPietro explained the procedure for tonight's hearing whereby the applicant would read their case into the minutes and then he would ask if there were any questions from abutters and interested parties. Mr. DiPietro also stated that, if they go into deliberation that no questions would be taken as they would be discussing the issue amongst themselves.

Mr. DiPietro elevated Mr. Kimball to a full voting member for the first case in the absence of Mr. Bergeron who had not arrived yet. Mr. DiPietro asked Ms. Royce to read the first case into the minutes for the record.

**Case #21-31
Revision Energy
Francois De La Bruere-Terreault
193 Old Candia Road – Map 13, Lot 13A
Zoned Commercial Two**

Applicant is requesting a Variance from Article 4, Section 4.07(6) to permit construction of three (3) ground mounted solar arrays between the home and side property line to be within the 30-foot side setback in a Commercial Two zone.

Mr. DiPietro asked the applicant to read his case into the minutes for the record. Mr. De La Bruere-Terreault was waiting for someone from Revision Energy who was supposed to come to the meeting but had not arrived yet. Mr. DiPietro asked Mr. De La Bruere-Terreault if he wanted it tabled. Mr. De La Bruere-Terreault stated that, he had the application on his phone and could read it from that. At this time, Mr. De La Bruere-Terreault read his application into the minutes for the record. Mr. De La Bruere-Terreault explained that the closest solar panel would be 5 feet from the property line.

Mr. DiPietro asked Mr. De La Bruere-Terreault about the 5 feet from the property line and wanted to know if that was the extent of the solar array itself or was it the pedestal. Mr. De La Bruere-Terreault commented that, the closest space from the property line was 5 feet at the closest corner and would be shielded from view with a line of trees. The solar energy system will not threaten public health, safety or welfare of the neighborhood as they do not produce any noise, lighting or combustion.

Mr. DiPietro asked the Board members if they had any questions for the applicant. Ms. Dross asked if they were stationary solar panels and how big was the lot. Mr. De La Bruere-Terreault stated that they were stationary and that the lot was a little under an acre. Ms. Dross asked about possibly putting them to the rear of the house to get them within the setbacks and asked if there was a reason, he did not want to put them in that area. Mr. De La Bruere-Terreault stated that, that part of the house closest to the backyard is the part that they use the most and that he did not want them to be shaded from the trees that are between his yard and the neighbor on the east side. Discussion ensued regarding the solar panels, and it was noted that all three (3) solar panels would be placed within the side setback.

Mr. Stuart thought that \$477 for an electric bill was a lot and asked if the applicant had an electric car. Mr. De La Bruere-Terreault stated that he just had heat pumps installed and a heat pump water heater he is charging an electric car as well. Mr. Stuart understood that the roof was not going to work due to the dormers on the house. Discussion ensued regarding the number of panels and location of the panels. Mr. Stuart asked about the neighbor closest to him. Mr. De La Bruere-Terreault stated that he did speak with him and showed him what he was proposing and that he did not have a problem.

Mr. Kimball asked about the trees along the tree line, and they are small right now but once they grow it may become a problem with that particular location. Mr. De La Bruere-Terreault understood that they would grow. Mr. Kimball talked about the location between the side of the house and the property line and possibly shading from the house itself. Mr. De La Bruere-Terreault pointed out that it would shadow the furthest panel and understood that but noted that it was not a problem and without putting them smack in the middle of the backyard which would be great but would be less convenient. Mr. Kimball talked about the hardship section and how much money he could save and asked if he had power to the property now. Mr. De La Bruere-Terreault said yes. Mr. Kimball pointed out that he could use commercial electric sources as opposed to solar power. Mr. Kimball asked what the hardship would be and what was it that he could not do on his property if he did not have these panels. Mr. De La Bruere-Terreault commented that there was really nothing that he could not do but would have to look at what was written in that section again, but the long term would be saving money, but the hardship did not apply. Mr. Kimball also talked about question #5 regarding the side yard setback and not allowing overcrowding which is the reason it was put in the Zoning Ordinance. Mr. Kimball believed that the applicant would need to decide if he would rather have a backyard or the solar arrays and place the solar arrays in the backyard as opposed to placing them within the side setback.

Mr. Pappas asked if the panels made any noise. Mr. De La Bruere-Terreault said no and believed it was noted in the documents. Ms. Dross asked how the solar panels were mounted. Mr. De La Bruere-Terreault explained that they were post braced together and screwed into the ground. Ms. Dross stated that there was no other reason for placing them in this location except for aesthetic reasons as he is just worried about the use of space. Mr. De La Bruere-Terreault stated that basically it would take up the whole backyard. Mr. Matte asked if he looked into the type of solar array on a pedestal. Mr. De La Bruere-Terreault stated that he did, but it was more money and more chances of it breaking with a lot of moving parts. Mr. DiPietro asked what was in the backyard right behind the house currently. Mr. De La Bruere-Terreault stated that there is a garden. A brief discussion ensued with regard to the backyard area. It was also noted that the septic system is located in the front of the house.

Mr. Stuart asked if Revision looked at other areas on the property. Mr. De La Bruere-Terreault said yes but it would be 20 feet from the house which would not be an ideal spot. Mr. DiPietro stated that, from a sun point of view that the panels were placed in an optimal spot. Mr. De La Bruere-Terreault said yes.

Mr. DiPietro asked Mrs. Rouleau-Cote if she had any input to add. Mrs. Rouleau-Cote said no that Revision came in with different proposals for this which one was proposing to place the panels in the backyard. Mrs. Rouleau-Cote informed the Board that she has recently been out there as the owner recently installed mini-splits and hot water heater.

Mr. DiPietro asked if there were any abutters or interested parties to this project. None were noted. Mr. DiPietro stated that, if there were no other questions or comments that he would entertain a motion to vote on this application as presented.

Mr. Stuart made a motion to vote on the application as presented for Case #21-31, 193 Old Candia Road, Tax Map 13, Lot 13A. Seconded by Mr. Matte.

Mr. DiPietro asked if there was any more discussion.

Mr. Stuart made a motion to enter into deliberation. Seconded by Mr. Kimball. The Board members entered deliberation at 7:28pm.

Mr. Stuart began by saying that there was definitely some conflicting evidence and believed that the proposal was a good one and the hang up he has is whether there is anything special about this property from others in the area. Mr. Stuart believed that this could be done outside of the setbacks and believes that it is a good proposal but putting all three (3) significantly in the setback when they don't have to be. Basically, Mr. Stuart did not believe it needed to be placed within the setback when there is the ability to place it somewhere else.

Mr. DiPietro asked if anyone else had anything to add. Mr. Kimball agreed with Mr. Stuart and believed it was a good summary. Mr. DiPietro indicated that if there were nothing else that we could come out of deliberation.

Mr. Stuart made a motion to exit out of deliberation. Seconded by Mr. Matte. The Board members exited out of deliberation at 7:30pm.

Mr. DiPietro moved on to the votes since a motion to vote on the application was issued.

Mr. Kimball voted to Deny finding that it does not meet the hardship criteria, Ms. Dross voted to Deny as she believed it could be placed elsewhere on the property, Mr. Matt voted to Deny as he believed the panels could be placed elsewhere on the property, Mr. Stuart voted to Deny finding that it does not meet the hardship criteria, and Mr. DiPietro voted to Grant finding that the location was the best use for the southern exposure. A vote was taken and, the request was DENIED by a vote of 4 to 1.

Mr. DiPietro explained that the decision was to deny by a vote of 4 to 1. Mr. DiPietro informed the applicant that he would be receiving a notice of decision. Mr. DiPietro also explained that he had 30 days to appeal the decision. Mr. De La Bruere-Terreault thanked the Board members for their time and exited the meeting.

Mr. DiPietro asked Ms. Royce to move on to the next case. Ms. Royce read the next case into the minutes for the record.

**Case #21-32
Eric Mitchell
H.Q. Properties Realty Trust
29 King Street – Map 25, Lot 47
Zoned Industrial**

Applicant is requesting a Variance from Article 4, Section 4.09(1) & (2) to amend previously approved Variance granted November 2020 (Case #20-16) where the applicant proposes a new site plan configuration, with the increase of multi-unit contractor bays from 17 to 22 in an Industrial zone.

Mr. Mitchell gave the Board members a quick history of the property and informed the Board that the plan was approved by the Planning Board this past summer. Mr. Mitchell went on to explain what was approved and the Variance that was approved previously in November 2020 which was for 17 contractor units and 57% impervious. Mr. Mitchell went on to say that what they are doing on this plan is changing Phase One and Phase Two is not changing but Phase One will build 5 additional contractor units instead of moving the dome building as the dome building will be removed and the office associated with that dome building will not be built. Mr. Mitchell went on to read the application into the minutes for the record (a copy of which can be found in the file). Mr. Mitchell indicated that the impervious will not change from the 57% impervious previously requested and granted by the ZBA. Mr. Mitchell further informed the Board that they would be going to the Planning Board tomorrow night (12/15/21) for a revised site plan. In conclusion, Mr.

Mitchell indicated that, he would be happy to answer any questions that the Board may have.

Mr. Kimball asked if the height of the building would be the same height as the dome building. Mr. Scott answered by saying that, the dome building is 39-feet, and the new building would be 20-feet with a 17-foot interior ceiling height. Mr. Scott added that all the buildings would be Morton buildings. A brief discussion ensued with regard to the Variance request. Mr. Mitchell stated that, because they were adding 5 more contractor units and they were getting rid of the dome completely they had to come back before the ZBA. Mr. DiPietro asked if there were any further questions. None were noted. Mr. DiPietro asked Mrs. Rouleau-Cote if she had any questions or comments. Mrs. Rouleau-Cote commented that, when she and Ms. Royce read the original Variance Notice of Decision it was specific to 17 units and where he was going for 22 units, we thought at best that they ask for that to be amended. Mr. DiPietro also noted that they would be going before the Planning Board tomorrow night for site plan as well. Mr. DiPietro asked if there were any abutters present. Mr. Rand of Rockingham Road asked if the dome was being removed. Mr. Scott said yes. Mr. Rand asked Mr. Scott what he was doing with the salt business. Mr. Scott said it was staying but it was going to be two (2) covered bins that would be 20-feet by 25-feet located on the back side of the property. At this time, Mr. Mitchell pointed out the area that the bins would be located. A brief discussion ensued with regard to the changes to the site plan. Mr. Rand ended by saying that answered his questions that he had. Mr. DiPietro asked if there was anything else.

Mr. Stuart made a motion to vote on the application as presented for Case #21-32, Matthew Scott, H.Q. Properties Realty Trust, 29 King Street, Tax Map 25, Lot 47. Seconded by Mr. Bergeron. Mr. Bergeron voted to grant finding all five (5) factors have been met, Ms. Dross voted to grant finding all five (5) factors have been met, Mr. Matte voted to grant finding all five (5) factors have been met, Mr. Stuart voted to grant finding all five (5) factors have been met, and Mr. DiPietro 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. Mitchell thanked the Board for their time and the discussion ended.

Mr. DiPietro asked Ms. Royce to move on to the next case. Ms. Royce read the next case into the minutes for the record.

Case #21-26, Case #21-27, Case #21-28 & Case #21-29
Joseph Girard
Patricia Franklin, Roberta & mark Jordan & Wan Ping Ruan
Brian & Kathryn Hybsch
Gerald & Verna Nye
Timothy Amsden
Re: Lynn Pelligrino
22 Noll's Farm Road – Map 8, Lot 8-13
Zoned Residential One

Applicants filed a Motion for Rehearing Pursuant to RSA 677:2. On October 26, 2021, the Board Denied the above-referenced Appeals of Administrative Decision related to the equestrian uses being made of the subject property at 22 Noll's Farm Road.

Mr. DiPietro explained that tonight would be to decide if the Board would rehear the case and to not accept any testimony at this time. If the Board decides to rehear the case, that is when testimony would be heard. Mr. DiPietro took votes from the Board on whether to rehear the case or deny the request for rehearing.

Mr. Bergeron voted to Deny the request for rehearing, Ms. Dross voted to Deny the request for rehearing, Mr. Matte voted to Deny the request for rehearing, Mr. Stuart voted to Deny the request for rehearing, and Mr. DiPietro also voted to Deny the request for rehearing. A vote was taken and, all were in favor to Deny the request for rehearing and therefore the Motion for Rehearing is DENIED.

Mr. DiPietro informed everyone present that the request was Denied and that they would be getting a Notice of Decision and that there were other avenues to take.

Mr. DiPietro moved on to the approval of the meeting minutes for November 16, 2021.

Minutes

Mr. Bergeron made a motion to accept the minutes of November 16, 2021, as written, seconded by Mr. Matte. All were in favor, and the motion passed.

Other Business

A brief discussion ensued with regard to the next ZBA meeting which is scheduled for the fourth Tuesday of January which would be January 25, 2022. Ms. Royce reminded the Board of the continued case from September 2021. The Board recalled the case that would be coming before them in January. Ms. Royce added that, so far that was the only case on the agenda at this time.

Adjourn

Mr. Stuart made a motion to adjourn, seconded by Ms. Dross. All were in favor, the motion passed unanimously, and the meeting stood adjourned at 7:53 p.m.

The next scheduled meeting is scheduled for Tuesday, January 25, 2022 at 7:00 pm and will be held at the Town Hall, 47 Chester Road unless otherwise noted on the upcoming Agenda.