

**UNAPPROVED MINUTES**  
**Town of Auburn**  
**Zoning Board of Adjustment**  
**March 29, 2022**

**Present:** Mike DiPietro, Chairman. Shawn Matte, & Jill Dross, Members. Shannon Daoust, Nick Pappas & Steven Kimball, Alternate Members. Minutes recorded and prepared by Denise Royce.

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

**Absent:** Kevin Stuart, Vice-Chairman. Patrick Bergeron, Member.

Mr. DiPietro called the meeting to order at 7:00 p.m. At this time, Mr. DiPietro introduced the Board members to everyone present tonight and then explained the procedure for tonight's hearing. Mr. DiPietro noted that there were two (2) members absent tonight and elevated both Mr. Pappas and Mrs. Daoust to full voting members for the first case. Mr. DiPietro moved on to the first case on the agenda and asked Ms. Royce to read the case into the minutes. Ms. Royce read the first case into the minutes for the record.

**Case #22-05**  
**Joe Midolo**  
**22 Dartmouth Drive, LLC**  
**266 Rockingham Road – Tax Map 25, Lot 44**  
**Zoned Industrial**

*Applicant is requesting a Variance from Article 4, Section 4.09(2) to allow a multi-unit Commercial Service Establishment within the Industrial zone.*

Mr. George Chadwick would be presenting on behalf of the applicant. Mr. Chadwick informed the Board members that the owner, Mr. Joe Midolo, and Mr. Eaton who will be involved with the construction of the project were both present at tonight's meeting. Mr. Chadwick began his presentation by giving the Board a little history of the property. Mr. Chadwick stated that, there was a house on the property whereby the Fire Department burned it down. Mr. Chadwick pointed out that the existing driveway is on Rockingham Road. Their proposal is to construct what Mrs. Rouleau-Cote classified it as which was a Multi-Unit Commercial Service Establishment with two buildings. Mr. Chadwick pointed out the buildings on a plan shown to the Board members. Mr. Chadwick informed the Board members that they were before the Planning Board Conceptually and their only concern was that they did not want any retail type use. Their application before the ZBA tonight is requesting to allow 22,680 square feet Multi-Unit Commercial Service Establishment in two (2) separate structures excluding retail services. The Planning Board's concerns really had to do with parking, congestion, and traffic. They will be before the Conservation Commission in a couple of weeks and back in front of the Planning Board if they are successful tonight. At this time, Mr. Chadwick read through the

application. Mr. Chadwick went on to say that the buildings would be 22,680 square feet and be single story. Mr. Chadwick went commented that the lot coverage would total 25.6% impervious which would not exceed the 40% impervious and even though this lot consists of eight acres, more than 50% of the lot is encumbered by a wetland and wetland buffer. Mr. Chadwick reiterated that they would be back before the Planning Board but that they were before the ZBA tonight for a use Variance. With that in mind, Mr. Chadwick indicated that he would be happy to answer any questions that the Board may have.

Mr. DiPietro asked the Board members if they had any questions. None were noted at this time. Mr. DiPietro asked Mrs. Rouleau-Cote if she had anything to add. Mrs. Rouleau-Cote wanted to clarify that Mr. Chadwick did call it a Commercial Service Establishment and she classified it as a Multi-Unit Commercial Service Establishment and that's why he's going for a Variance as opposed to a Special Exception. Mrs. Rouleau-Cote wanted to point out what Mr. Chadwick had stated which was that the Planning Board recommended that it would be limited to not have any retail sales from the property and did not know if the Board would put that as a condition with their decision.

Mr. DiPietro asked if there were any abutters present who would like to speak? Mr. Demirjian who owns a building across the street asked if there were any plans showing the elevation and type of building. Mr. Chadwick answered by saying that he would have all that when they appear before the Planning Board. Mr. Rolfe commented that, that was definitely a stipulation of the Planning Board. Mr. DiPietro asked if there were any further questions from abutters or interested parties. None were noted.

Mr. DiPietro indicated that he would entertain a motion to vote on the application as presented or go into deliberation.

***Mr. Matte made a motion to vote on the Variance request with the condition that it go before the Planning Board for review; that the units be single story; and that there will be no retail sales conducted on this property for Joe Midolo, 22 Dartmouth Drive, LLC, 266 Rockingham Road, Tax Map 25, Lot 44, seconded by Mrs. Daoust. Mr. Pappas voted to grant finding all five (5) factors have been met, Mrs. Daoust 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, 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. DiPietro pointed out that there was a 30-day appeal period where interested parties or abutters could appeal the ZBA decision and that there was 2 years for substantial completion, or they would have to come back before the ZBA to request an extension.

Mr. DiPietro moved on to the second case on the agenda and asked Ms. Royce to read the case into the minutes for the record.

**Case #22-06**  
**Kara Carrier & John McGrath**  
**218 Old Candia Road, Tax Map 13, Lot 25**  
**Zoned Residential One**

*Applicant is requesting a Variance from Article 4, Section 4.06(6) to allow the subdivision of one new lot which will create a non-conforming lot that will have 1.7 acres where two acres is required within a Residential One zone.*

Mr. DiPietro elevated both Mr. Kimball and Mr. Pappas to full voting members for this case.

Mr. Alden Beauchemin of Keyland Enterprises presented on behalf of the applicants, Kara Carrier and John McGrath who were both present tonight. Mr. Beauchemin also introduced Attorney Andrew Sullivan who was also present tonight for this case. Mr. Beauchemin began by giving an overview of the plan and pointed out the location of the property. Mr. Beauchemin indicated that Ms. Carrier bought it about 6 months ago and believed it would be an easy subdivision. They did a septic design for the existing house as the existing septic system was in need of repair. Mr. Beauchemin stated that they thought it was an easy subdivision but when they did a survey and found there was some boundary line issues. They had S&H Land Survey conduct a survey of the property and found that they only had 3.7 acres when they thought they had 4.2 acres. They are proposing a subdivision of the land as shown on the conceptual plan presented tonight which shows the existing house as having two acres and the new lot with having 1.7 acres where two acres is required. At this time, Mr. Beauchemin turned the meeting over to Attorney Sullivan.

Attorney Sullivan handed out packets to each Board member for review (a copy of which can be found within the file). Attorney Sullivan began going through the packet and started out with the aerial overlay showing the property and abutting properties in the neighborhood.

At this time, Mr. Matte recused himself as he will be doing some work for the applicant. With that said, Mr. DiPietro elevated Mrs. Daoust to a full voting member with the recusal of Mr. Matte.

Attorney Sullivan continued his presentation with the Board and stated that the subdivision would fit right into the neighborhood whereby abutting properties have similar acreage or less acreage. Attorney Sullivan believed that by subdividing the lot into two (2) lots would be in character with the neighborhood and would not diminish property values. Attorney Sullivan stated that it would not have the two acres needed but would have 1.7 acres and would have more than enough frontage on a Class V Road. Attorney Sullivan commented that, Ms. Carrier and Mr. McGrath purchased the property because the town records indicated that there was 4.2 acres as shown on the property card as well. Attorney Sullivan pointed out that the current median house sales in Auburn is \$647,000.

At this time, Attorney Sullivan read the application into the minutes for the record and then turned to the Board to say that he would be happy to answer any questions. Mr. DiPietro thanked Attorney Sullivan and asked the Board Members if they had any questions. None were noted at this time. Mr. DiPietro asked Mrs. Rouleau-Cote if she had any input. Mrs. Rouleau-Cote said no and stated that the Board has received her Zoning Determination and added some other historical data regarding that area. Mrs. Rouleau-Cote explained that of the eleven or so lots that Attorney Sullivan mentioned that were non-conforming and that all of those lots were created prior to the current zoning of two (2) acres. All of those lots were created sometime before 1973 and in 1974 the zoning changed to require two (2) acres in that zone. Mrs. Rouleau-Cote went on to say that, regarding the tax map indicating that it was over 4 acres which our tax maps are not to be used as a survey or to indicate boundaries. There is a large disclaimer on the tax maps that indicate that and also the deed does not indicate any acreage in it at all. There are other documents in the town hall that indicate it as a 3-acre parcel so you cannot go by the tax maps as it is not a survey of the properties in town, and we would not suggest that anyone use the tax map as a survey. Mrs. Rouleau-Cote talked about another avenue potentially allowing the applicant to move forward and she did consult with Auburn's Town Counsel with regards to the tract of land that is adjacent to this property and the options of the Town of Auburn selling that piece of property so that the lot would be conforming. Mrs. Rouleau-Cote added that, Attorney Tierney quoted an RSA which was RSA 80:80 VI (b) and talked a little bit about that RSA and because there are no other abutters to that parcel that it may be a process that could go through the Board of Selectmen. Mrs. Rouleau-Cote also commented that Attorney Tierney did indicate that he would need a little more time to review this issue. Mrs. Rouleau-Cote agreed with Attorney Sullivan that sale prices within the Town of Auburn have spiked dramatically.

Mr. Pappas asked Mrs. Rouleau-Cote if the ZBA has ever granted this before. Mrs. Rouleau-Cote indicated that, historically the ZBA has not granted the creation of a non-conforming lot and the only few that she called was where there was an actual discrepancy in a survey and was off by a couple of inches and the same thing as the other one where they were off by a couple of inches.

Attorney Sullivan commented that, the only thing before the Board today is what's before the Board and that could be something in the future because we can't do anything about something that isn't there. What Attorney Sullivan is hearing from the Board is the lack of a precedence and what the Board should be looking at is if they meet the five criteria and he believed that they have established the five criteria. Attorney Sullivan stated that, his point was that they are in a neighborhood with half the lots being under 2 acres and this would not diminish abutting properties.

Ms. Carrier wanted to comment and stated that she was the owner and that she was also a real estate agent who also lives in town and wanted the Board members to know that she would not just come to the Board just to subdivide. Ms. Carrier went on to say that when she purchased the property it was listed as 4.2 acres and the seller's representative stated that it was 4.2 acres and the Town of Auburn's Tax Card online also stated that it was 4.2 acres which is what the realtor's look at and use. Ms. Carrier went on to say that

a neighbor who she thought would be present tonight informed her that it was always listed as 4.2 acres but that there has always been a problem with it. Ms. Carrier thanked the Board.

Mr. DiPietro moved on to ask if the Board had any questions. Mr. Kimball had a question for Mrs. Rouleau-Cote and asked her if they grant this Variance would they be coming back before the ZBA seeking further relief. Mrs. Rouleau-Cote commented no, that if they meet all the setbacks and lot coverage they would not be coming back before this Board but would be going before the Planning Board for subdivision. Mr. DiPietro wanted to clarify with Mrs. Rouleau-Cote that if they grant this subdivision with a lot being 1.7 acres and somewhere down the line, they purchase the piece from the town that the lot would no longer be non-conforming correct. Mrs. Rouleau-Cote commented that if it were merged with this lot that the Board of Selectmen would put some kind of condition in the deed that it could no further be subdivided. This is something that they have done in the past. Ms. Dross asked Mrs. Rouleau-Cote how big the lot was that the town owned. Mrs. Rouleau-Cote stated that it was three quarters of an acre which would give them over two acres. A brief discussion ensued with regard to the town owned land.

Mr. DiPietro commented that, what he sees is a non-conforming neighborhood. Ms. Dross also commented that, the reason with that was that it was all done before the two-acre zoning came into play. Mr. Kimball added that, the purpose of the two-acre ordinance was to reduce the density and to control the density and it's actually doing what it's supposed to do. Mr. Kimball added that, he was struggling with the hardship criteria because the land has a use and there's a single-family home already on the property and it was never previously subdivided and therefore does not see any hardship with this request. Attorney Sullivan indicated that the tax card lists it as two parcels of one being two acres and the other being 2.2 acres. Mr. Kimball commented that, we also know that tax cards are not to be construed as being correct. Ms. Carrier asked how houses can be built in Auburn on half an acre in the last three years. Mr. DiPietro pointed out that they were lots of record. Again, Attorney Sullivan pointed out to the Board members that they were before the Board tonight for a Variance and do they meet those criteria and that this is an allowed use, and they can't meet the allowed use without the Variance. Mr. Rolfe informed everyone that, the cluster ordinance was voted out by the residents of Auburn 7 or 8 years ago because they wanted to make sure that the lots conformed with the Zoning Ordinance. Mrs. Rouleau-Cote wanted to clarify that when you're reading the tax card that the land valuation is not really representing acreage but classifying that two acres of the land is taxed at one value and the 2.2 acres of land is taxed at a different value. The first two acres is for the conformity of the zoning and the second half goes according to wetlands, topography and slope. Mr. Kimball thanked Mrs. Rouleau-Cote for the clarification.

Mr. DiPietro asked the Board if they had any questions. Mr. DiPietro believed if there was nothing else to add that he would entertain a motion to vote on the application as presented. Mrs. Daoust wanted to make a motion to enter into deliberation.



***Mrs. Daoust made a motion to enter into deliberation. Mr. Kimball second the motion and the Board entered into deliberations at 7:52pm.***

Mrs. Daoust began by saying that, her personal feelings on this is that if someone is looking to purchase the property with the intent of subdividing it that one of the due diligences should have been to have a survey done because we all know that tax maps and tax cards are notoriously inaccurate. Mrs. Daoust did not believe it meets the spirit of the ordinance. Ms. Dross agreed with Mrs. Daoust and believed that all the other lots were created in the 70's and the ordinance is two acres and believes that we need to stick with the ordinance. Mrs. Daoust commented that the town feels strongly on this topic and did not want to go against something that was a very important issue with the town. Mr. Pappas also agreed with Mrs. Daoust.

***Mrs. Daoust made a motion to exit out of deliberation. Ms. Dross second the motion and the Board exited out of deliberations at 7:54pm.***

Ms. Carrier wanted to make a comment and talked about the real estate market and to even buy a piece of property in Auburn that property had 40 people looking to buy that piece of property and she had 5 minutes to decide and looked at the tax card and the seller's card and it listed it as being 4.2 acres. Attorney Sullivan commented that the intent for purchasing the lot was irrelevant and the only thing that is relevant is did they meet the five criteria for a Variance.

Mr. DiPietro stated that if there was nothing further, they could put it to a vote.

**A vote was taken on the Variance application as presented for Case #22-06, Kara Carrier & John McGrath, 218 Old Candia Road, Tax Map 13, Lot 25. Ms. Dross voted to Deny the Variance due to the fact that our ordinance requires two acres and it did not meet the spirit of the ordinance, Mr. Pappas voted to Deny due to the fact that our ordinance requires two acres, Mr. Kimball voted to Deny as he feels it does not meet the criteria of the spirit of the ordinance and substantial justice or the hardship criteria, Mrs. Daoust voted to Deny as it does not meet any of the five (5) factors and in particular the spirit of the ordinance, and Mr. DiPietro voted to grant finding all five (5) factors have been met. A vote was taken and, the Variance was DENIED by a vote of 4 to 1 and therefore the motion did not pass.**

Attorney Sullivan requested that the Board go through and do a poll vote and go through all the criteria. Mr. DiPietro commented that, they have not done that in the past and that they have already taken a vote. Attorney Sullivan indicated that he had a right to request that to prepare for an Appeal. Mr. DiPietro informed Attorney Sullivan that it may have been prudent to ask for that before they voted and that they have never done that in the past. Mr. Kimball believed they could do that in an appeal.

Mr. McGrath asked about the piece of land that the town owns that abuts this piece of property. Mrs. Rouleau-Cote commented that she has spoken with town counsel, and he believed it seems to be a viable option but that he needed more time to review it further.

Mr. DiPietro thanked the applicant and informed them that they would get a Notice of Decision from Ms. Royce. Attorney Sullivan thanked the Board members and the discussion ended.

## **Minutes**

Mr. DiPietro moved on to the approval of the minutes of February 22, 2022.

***Mr. Matte made a motion to approve the minutes of February 22, 2022, seconded by Mr. Kimball. Ms. Dross voted to approve the minutes, Mr. Matte voted to approve the minutes, Mr. Pappas voted to approve the minutes, Mr. Kimball voted to approve the minutes, and Mr. DiPietro also voted to approve the minutes with Mrs. Daoust abstaining. A vote was taken and, all were in favor and the motion passed.***

## **New Business/Other Business**

Mr. DiPietro asked if there was any new business. Ms. Royce informed the Board that there was one application for April and the cutoff date for the ZBA Applications had passed by. Ms. Royce stated that the April meeting is scheduled for Tuesday, April 19<sup>th</sup> at 7:00pm here at town hall.

Mr. DiPietro thanked the Board members for tonight's meeting and asked for a motion to adjourn as this concluded tonight's hearing on an early note.

## **Adjourn**

***Mr. Matte made a motion to adjourn, seconded by Ms. Dross. All were in favor, the motion passed unanimously, and the meeting stood adjourned at 8:05 p.m.***

**The next scheduled meeting is scheduled for Tuesday, April 19<sup>th</sup>, 2022 at 7:00pm and will be held at the Town Hall, 47 Chester Road unless otherwise noted on the upcoming Agenda.**