**UNAPPROVED MINUTES**

**Town of Auburn**

**Zoning Board of Adjustment**

**November 17, 2015**

**Present:** Jim Lagana, Vice Chairman; Elizabeth Robidoux and Mike DiPietro, Members; Robert Beaurivage, Peggy Neveu and Kevin Stuart, Alternate Members. Minutes recorded by Denise Royce.

**Also Present:** Carrie Rouleau-Cote, Building Inspector and Jeffrey Porter, Conservation Commission.

**Absent:** Mark Wright, Chairman, Chairman and Jeffrey Benson, Member.

Mr. Lagana called the meeting to order at 7:00 p.m. and introduced the Board members and explained the rules of procedure for tonight’s hearing to those present. Mr. Lagana pointed out that Mark Wright, the Chairman of the Board as well as Jeff Benson who is a member of the Board were absent for tonight’s hearing. Mr. Lagana also stated that the two (2) cases before the Board tonight involve the construction of sheds and that if the cases are granted then the applicant would have two (2) years for substantial completion of the project and if they did not act within that two (2) year period then the decision would be considered abandoned and that the applicant would have to come back before the Zoning Board of Adjustment.

At this time, Ms. Royce read the first case into the minutes for the record.

**Case #15-22**

**David & Cara Bronson**

**82 Nathaniel Way – Map 5, Lot 104-9**

**Zoned Residential Two**

*Applicant is requesting a Variance to permit a 16 x 20 foot shed to be within 75 feet of a Level One watershed wetland protection buffer in a Residential Two zone. (Article 5, Section 5.08(1)(a))*

Mr. Lagana began by saying that there was an administrative issue with this matter and asked if David and Cara Bronson were present. Mrs. Royce informed Mr. Lagana that the applicant was not present at this time. Mr. Lagana decided to move on to the next case to allow the applicant time to show up for the meeting.

**Case #15-24**

**Sean & Janet Johnson**

**16 Jennifer Lane – Map 12, Lot 19-14**

**Zoned Residential One**

Applicant is requesting a Variance to allow a 16 x 24 foot shed to be within the 30 foot side setback in a Residential One zone. (Article 4, Section 4.06(6))

Mr. Johnson began by explaining the reason behind the location of the shed and presented the Board members with photos of the property as well as the shed that they were replacing which was an 8 x 16 foot shed. Mr. Johnson indicated that they were replacing the 8 x 16 foot shed with a 16 x 24 foot shed in the same location as the old shed. Mr. Lagana asked if the shed was on a slab. Mr. Johnson said that the shed was on footings. Mr. Lagana indicated that the shed was substantially larger and that they really were not replacing the shed in kind. Mr. Johnson stated that he obtained ideas by going to Reeds Ferry and decided to build it on his own for less money and that it was bigger than the one they had because the old one was not big enough for his family. Mr. DiPietro asked about the plot plan that was included in the packet.

At this time, Mr. Lagana stated that he would need to elevate both Mr. Stuart and Mrs. Neveu to full voting status for both cases.

Mr. Lagana asked Mr. Johnson to read his application into the minutes for the record. At this time, Mr. Johnson read his application for the Board members. Mr. Johnson pointed out that they were unaware that the 8 x 16 foot shed was not in compliance when they purchased the property. Mr. Johnson went over the photos with the Board members while the Board members reviewed the photos. Ms. Koufopolos asked how tall the shed was. Mr. Johnson indicated that the shed was 16 feet tall. Mr. Lagana commented that the plot plan did not look like an officially surveyed plot plan. Mr. Lagana asked Mr. Johnson if he was seeking relief to have the shed two (2) feet from the property line. Mr. Johnson indicated that it was the same location that the old shed was in that they have taken down. A brief discussion ensued with regard to having the shed just two (2) feet from the property line. Ms. Koufopolos asked to see the plot plan that the Board members were reviewing and asked if she could have a copy of what was submitted. Mr. Lagana said yes.

Mr. Lagana asked Mr. Johnson if after he received the letter from the Code Enforcement Officer on October 20th regarding construction of a structure without permit if any construction had continued after that period. Mr. Johnson said no. Mr. Beaurivage asked if the shed was sitting on concrete footings. Mr. Johnson said they were pre-made footings.

Mrs. Rouleau-Cote wanted to clarify that an 8 x 16 shed would have just been over the cusp of where they would have had to meet setbacks because any shed that is 120 square feet or less did not have to meet setbacks. Mrs. Rouleau-Cote further pointed out that the shed was just over the requirement of 120 and could have very well been within the setbacks because it was just over the 120 square foot requirement. Mrs. Rouleau-Cote also indicated that when she first visited the property that the shed was on the abutters property and has since been relocated since the letter. Mr. Stuart asked Mr. Johnson if it was on the abutter’s property prior to the letter and that now the shed was located two (2) feet from the property line and asked if the footings had been moved. Mr. Johnson stated that the footings have not been moved as he was awaiting the decision from the Zoning Board and did not want to move it if he would be able to leave it there. Mr. Stuart reviewed the photos presented to the Board by Mr. Johnson. Ms. Koufopolos said that it has not been removed.

Mr. Lagana asked about moving closer to the house. Mr. Johnson stated that because of the slope of the land that when they put the ramp on the shed that it would be straight. Mr. Lagana asked about moving further to the back of the property. Mr. Johnson said that it was flat back there. Mrs. Robidoux asked if there was a reason why he did not put the shed to the back of the property. Mr. Johnson said no, that the previous shed was located conveniently close to the garage and had easy access. Ms. Koufopolos reiterated that it was on her property. Mr. Johnson stated that when they removed the smaller shed that they wanted to put it back in the same spot because it was convenient. A brief discussion ensued with regard to moving to the rear of the property. Mr. Johnson pointed out that there was an above ground pool in the back and that he puts up a skating rink in the winter for the boys and liked that the property was flat. Mr. Stuart could not understand why the shed could not be moved to another location on the property.

Ms. Koufopolos commented that she liked her privacy and that the shed was on her property. Mr. Lagana informed Ms. Koufopolos that the Board would do the right thing. Mrs. Rouleau-Cote had photos of the shed which at the time was located on the abutter’s property. Mr. Johnson stated that the shed has been moved since the photos that Mrs. Rouleau-Cote had taken.

Mr. Lagana asked the Board members if there were any questions. None were noted. Mr. Lagana asked if there were any questions from abutters. Ms. Koufopolos informed the Board members that there was also another shed on the property. Mrs. Rouleau-Cote stated that the tax card did indicate that there was another shed located on the property which was not shown on the plan. Mr. Lagana asked about the other shed. Mrs. Rouleau-Cote pointed out that the 8 x 14 shed. Mrs. Rouleau-Cote stated that the 8 x 14 foot shed would be exempt from setbacks because it was less than 120 square feet but had to be on his property and not the abutter’s property. Discussion ensued with regard to the location of the 8 x 14 foot shed.

Mr. Lagana asked Mr. Johnson if he would be willing to relocate the shed to the flat area to the rear of the property out of the property setbacks. Mr. Johnson said cost wise the only other option would be to disassemble it. Mr. Lagana explained to Mr. Johnson that the Board is mandated by the state that a request for a variance has to satisfy all five (5) conditions. Mr. Lagana explained the spirit of the ordinance and the fact that Mr. Johnson did not obtain a permit and that construction was substantially complete. Mr. Lagana further pointed out that the shed has also gone from one size to a shed that is three (3) times the size and unless Mr. Johnson moved the shed out of the setbacks that he would have a difficult time seeing any kind of satisfaction with the fifth criteria because it clearly was not within the spirit of the ordinance. Mrs. Neveu added that Mr. Johnson has already agreed that there was no hardship that he couldn’t move the shed to another location. Mr. Lagana agreed with Mrs. Neveu and believed that the topography did not limit the location for the placement of the shed.

Ms. Koufopolos also stated that there is also a turnaround established where the property has been cleared and that she loves the neighborhood and did not see any reason why the shed couldn’t be placed somewhere else on the property. Ms. Koufopolos reiterated that they cleared a section of the property to turn cars around and that she did not use that property and that her pool is there and that she likes her privacy. Mr. Lagana understood and asked Ms. Koufopolos about the area that was cleared and if the applicant had cleared it. Ms. Koufopolos said yes, that someone had cleared it so they could drive their cars on it. Mr. Johnson stated that it was like that when they purchased the house. Mr. Lagana stated that it was not part of the application and that if Ms. Koufopolos had a strong concern that she should bring it up with Mrs. Rouleau-Cote.

Mr. Lagana asked the Board members how they would like to proceed.

***Mrs. Neveu made a motion to vote on the application as presented, Mr. DiPietro seconded the motion. Mr. Stuart voted to deny as he did not meet #3 – Literal enforcement of the provisions & #4 – Substantial justice as he believed was a self-created problem, Mrs. Robidoux voted to deny as it failed to meet #4 - substantial justice as he is able to move it outback, Mrs. Neveu voted to deny because the applicant stated that he could put the shed someplace else and therefore did not meet the hardship, Mr. DiPietro voted to deny because he did not believe there was any hardship, and Mr. Lagana also voted to deny because after hearing testimony, he felt it failed to meet the hardship and the spirit of the zoning ordinance criteria. All voted to Deny and the motion did not pass and therefore the request has been DENIED.***

Mr. Lagana explained to Mr. Johnson that it was a unanimous denial and that Mr. Johnson had 30 days to appeal the ZBA decision and should the Board decide to rehear the case that the Board would require new evidence that they did not hear at tonight’s hearing. Mr. Lagana asked Mr. Johnson if they could keep a set of photos for the file as it was part of the presentation for tonight’s hearing. Mr. Johnson understood and exited the meeting.

Mr. Lagana asked if Mr. Bronson was present. Mr. Bronson was not present at this time.

**Case #15-22**

**David & Cara Bronson**

**82 Nathaniel Way – Map 5, Lot 104-9**

**Zoned Residential Two**

*Applicant is requesting a Variance to permit a 16 x 20 foot shed to be within 75 feet of a Level One watershed wetland protection buffer in a Residential Two zone. (Article 5, Section 5.08(1)(a))*

Since Mr. Bronson did not appear tonight, the Board made a motion to Table the matter until the January hearing.

***Mrs. Robidoux made a motion to TABLE the Variance application for Case #15-22, Tax Map 5, Lot 104-9 until January 26, 2016 with the understanding that Mr. Bronson meets with the Conservation Commission prior to returning to the Zoning Board of Adjustment, seconded by Mrs. Neveu. Mrs. Robidoux voted to grant, Mrs. Neveu voted to grant, Mr. DiPietro voted to grant, Mr. Stuart voted to grant and Mr. Lagana also voted to grant. All were in favor and the motion passed in the affirmative and the hearing was TABLED until January 26, 2016.***

Mr. Lagana informed everyone present that the case has been tabled until the January hearing.

**Other Business**

Mr. Lagana asked the Board if there was any new business. None were noted.

# Minutes

***Mr. DiPietro made a motion to accept the minutes of October 27, 2015 as written, seconded by Mrs. Robidoux. All were in favor, the motion passed.***

Adjourn

***Mrs. Robidoux made a motion to adjourn, seconded by Mr. Stuart. All were in favor, the motion passed unanimously and the meeting stood adjourned at 7:41 p.m.***

**The ZBA will not be meeting in December and therefore the next ZBA Hearing is scheduled for January 26, 2016 at 7:00 pm and will be held at the Town Hall, 47 Chester Road.**