

**TOWN OF NEW HAMPTON
ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
Site Visit – 94 Seminole Avenue
Upstairs Town Meeting Room, 6 Pinnacle Hill Road
NEW HAMPTON, NH 03256**

October 5, 2016

- MEMBERS PRESENT** Mr. Tierney, Ms. Karnis, and Mr. Smith.
- OTHERS PRESENT** Administrative Assistant Mrs. Vose, Town Attorney Laura Spector-Morgan, Mr. Perreault, and Attorney Alvin Nix, Jr.
- SITE VISIT**
- Mr. Tierney called the meeting to order at 5:10 pm. A site visit was performed at the applicant's property on 94 Seminole Avenue.
- Mr. Perreault pointed out windows in the basement that provide light or egress to the house and where a line goes from the house down towards the lake to his well. The board reviewed the southern side property line and measured setback distance from that line towards the house. The board looked at the site proposed for the shed, with Mr. Perreault pointing that he wanted to avoid taking any more trees down to accommodate the shed. He reviewed all the items he wants to store in the shed and mentioned other properties on Seminole Avenue have storage buildings placed near property lines. The board looked at the location by the lake that was somewhat level, where the shed could be located and meet setbacks. Mr. Perreault advised that there are limitations on permeable surfaces within 50' of the lake and whether that would be an issue. The board took measurements from the water to several locations along the northern side property boundary.
- Mr. Perreault said he visited the property at 42 West Shore Road where the board granted a variance for a shed, one foot from the side property line. He said that property was similar to his and there had been room in between the house and the roadway where that shed could have been placed and meet setbacks.
- RECESS** Ms. Karnis made a motion, seconded by Mr. Smith, to continue the meeting at the Town Office upstairs meeting room. Vote was unanimous.
- CALL TO ORDER** Mr. Tierney reconvened the meeting in the Town Office upstairs meeting room at 5:56 PM. Everyone present at the site visit was

present at the Town Office.

Mr. Tierney advised that it was Mr. Perreault's decision as to whether or not he wanted to continue deliberations without the full five member board present. Mr. Perreault advised that he wanted to continue with the members present. Mr. Tierney advised that regardless of the outcome of the hearing Mr. Perreault could not appeal any decision based on the fact there were only 3 voting members. Mr. Perrault said he was aware of that.

CONTINUATION OF REHEARING

*Brian Perreault, 94
Seminole Avenue, Tax
Map R-10, Lot 8, for a
Variance, Article IV,
Section A.4.iii, of the New
Hampton Zoning
Ordinance*

Atty. Nix advised that Mr. Perreault is submitting written responses to the Table 1 comments from the town. He said they addressed the same issues mentioned during the hearing on 9/14/16 where variances were granted on substandard lots for storage buildings, which is what Mr. Perreault would like. He pointed out the variance granted for Tax Map U15, Lot 6 where there was adequate room in front of the house for a shed but it was allowed to be five feet from the side property line. Mr. Perreault showed two photos taken of this house and shed, on his laptop computer.

Atty. Nix advised that Mr. Perreault is submitting written responses to Table 2 comments from the town.

Atty. Nix pointed out that the site visit reflects that the Perreaults have a lawn area that is used by his children and guests and the area proposed for the shed is unused for any other purpose, it is mostly level, therefore it is a reasonable location. He expressed concern with placing the shed close to the lake as that seems to go against what Shoreland Protection is trying to accomplish. He agreed that a variance looks at the uniqueness of the property but asked what benefit is there to the ordinance or the neighborhood when everybody has storage whether they pre-existed or were granted by a variance. All the other properties in the neighborhood have shed/garages.

Mr. Perreault said putting the shed in another location would mean placing it in between the house and the lake which would spoil the view and would block the view of children playing in the yard or lake, from the house. It would spoil the view from the water. It would be closer to the lake which would require review by (NHDES) Shoreland Protection and there are limitations relative to the square footage of impervious surface. It would take up the small grass area used by his children. Atty. Spector-Morgan asked if the shed would put him over the (impervious surface) limit allowed by Shoreland Protection and Mr. Perreault said he did not know. Mr. Perreault pointed out the previously granted variance for Map U9,

Lot 13 (Table 1) and the fact that the minutes from that hearing reflect the property owner saying there was a location to place the shed that would not be within the setbacks but it wasn't convenient for them. Mr. Perreault pointed out the variance granted to Map U10, Lot 6 for a garage near the ROW. This included a variance for a septic system. There had not been a garage there before, yet the board granted a variance for the septic *and* the garage as storage was needed for that property. He asked the board to consider what they would do if they were in his position. He said it is in the character of the neighborhood as all the properties have storage within a setback. Mr. Perreault referred to the Simplex ruling that states the zoning ordinances must be consistent with the character of the neighborhoods they regulate. He pointed out that the Fire Chief provided documentation that he did not object to the location of the proposed shed.

The board read the letter from the Fire Chief. Mrs. Vose advised the board she had items emailed to her by Mr. Perreault on 10/3/16. These included site specifications from the shed manufacturer and minutes from hearings where variances were granted 9/12/12, 2/13/13, and 10/3/13. Mrs. Vose noted the minutes had already been provided to board members as they were noted in Table 1 - part of Mr. Perreault's request for rehearing.

Mr. Tierney advised the hearing was closed and the board would go into deliberations reviewing and discussing each of the variance criteria.

Board members took some time to reread various pieces of evidence.

The variance will not be contrary to the public interest; Mr. Perreault had originally written "*it allows the removal of plastic sheds replacing them with a structure that fits better with the character of the area. It will be mostly hidden from view from the closest neighbor by the neighbor's own shed which sits right on the property line. Location about 50 feet from the lake behind existing trees improves the view from the lake as compared with existing sheds. The affected abutter approved of the shed*".

Mr. Tierney advised that the 1st and 2nd criteria should be considered together.

The spirit of the ordinance is observed; Mr. Perreault had originally written "*The 3/10's acre, non-conforming, sloping, small lot significantly limits the locations for the shed. The addition of a*

new shed also allows for the removal of existing sheds, one of which already violates the same setback requirement”.

Mr. Tierney asked the board to consider whether granting the variance would alter the essential character of the locality and whether granted the variance would threaten the public health, safety, or welfare. Mr. Tierney stated that the Fire Chief has submitted a letter stating he has no concerns with the proposed shed and its proposed location.

Mr. Smith pointed out that the abutter and Fire Chief do not have a problem with the location.

Ms. Karnis expressed concern with the character of the location and looking at not only this application, but the cumulative impact to granting similar variances to others in the neighborhood. She said the character of the what neighborhood is supposed to be and the goals of the setback requirements are to not only protect the public safety but to prevent overbuilding on lots, so looking at the cumulative effect of constantly granting variances would alter the essential character of the neighborhood. She said when she was onsite, looking from the water towards the Perreault's house and the abutters properties – towards the right she saw a shed on the property line, a large house, a shed on the line; on the applicant's property – another potential shed on the line, large house; on the next lot – another shed right on the line and a house and sheds. There are a number of these that appear, which could be sheds being placed without permits, but the cumulative effect you see as you drive along the road is one of overbuilding. The nature and character of the neighborhood is beginning to look like Canobie Lake as opposed to New Hampton. Ms. Karnis said she sees the gain to the public is that the area is being preserved by adhering to the setback requirements. The lots in the area are small but if the town had wanted to create smaller setbacks for smaller lots they would have done so. For this reason she said granting this variance would be contrary to the public interest. Regarding the slope, there are slopes to other properties in the area, some to the same degree, and some having not as much slope. Ms. Karnis said that relative to Mr. Perreault wanting to avoid putting the storage up against the house because of the location of windows and doors, she noted an area under the deck where a storage area could be created while avoiding those windows and doors. There are other locations but they are less desirable to the applicant. Ms. Karnis said she saw substantial differences between this application and the other variances noted by Mr. Perreault, and why they were granted.

Mr. Smith said he is concerned with the constant building in the area but understood why Mr. Perreault would have chosen the location he did. He said just because others have built on the property line it doesn't make it right for Mr. Perreault. Mr. Smith said he did not think granting the variance would not be contrary to the public interest and the spirit of the ordinance would be observed.

Mr. Tierney advised that for previous variances granted, each case was unique and the ZBA bases everything on the evidence presented, interpreting the zoning ordinance and the rules that guide the board. He said he didn't feel the previously granted variances were relevant to this case as they are unique and do not set precedents. Each variance stands on its own and are related to that particular property. He said he remembered the variance granted on Pemi Point and that it was very different than this application. Mr. Tierney referred to the variance granted on Seminole Avenue and its unique reasons for the approval. He said he did not think the conditions on Mr. Perreault property are that unique. He said the variance would be contrary to the public interest because granting it would allow the congestion and density in the area to continue.

Substantial justice is done; Mr. Perreault had originally written *“Without the Variance he would not be able to reasonably build a new shed which is needed for storage which is on the property line”*.

Mr. Tierney pointed out the consideration on whether the loss to the individual outweighs the gain to the public interest or whether it is an injustice to Mr. Perreault not have that shed in that location, and whether that causes a deprivation of the use of his property. Mr. Tierney said it is the ZBA's responsibility to uphold the ordinance and there is nothing stated in the ordinance that asks the board to use reason in considering a variance request, but instead to use facts and evidence. For this reason he feels denying the application is not denying substantial justice.

Ms. Karnis said there is a gain to the public to preserve the character. There is a detriment to the public caused by the cumulative effect of overbuilding, pointing out that this is New Hampton, not a southern lake community where properties are built to their corners. She referred to the setbacks approved by the town and that they were to limit overbuilding. Relative to whether there is a loss to the applicant that is not outweighed by the gain, when you look at a shed where there are other alternatives the denial is to the applicant placing the shed where he most desires it. Therefore she said it was not a loss to the applicant but a gain to the public interest.

Mr. Smith advised he felt it would only be a gain to the homeowner, not a gain to the public interest.

The values of surrounding properties are not diminished.

Ms. Karnis said she did not see evidence that values would be diminished if the variance was granted. She said her opinion was that a property that appears crowded may not be as valuable as one that looks more pristine and unadulterated.

Mr. Smith said that placing the shed where the applicant is proposing would probably have the least effect on the neighbors.

Mr. Tierney said he didn't think the shed would diminish property values.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because special conditions of the property distinguish it from other properties in the area; no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific application of that provision to the property, and the proposed use is a reasonable one.

Ms. Karnis said that the special conditions noted by the applicant were that it was small and non-conforming, but all the properties in the neighborhood were small and non-conforming so this is not a unique and special condition of the property. The fact that it is sloping in parts, is not terribly unique as compared to other properties as it is not the only one with a slope. She said she sees a substantial relationship between the setback requirements and the spirit of the ordinance because one of the aspects, besides public safety, is preserving the integrity of the area. When you look at the two of them combined, overbuilding – particularly on the small lots, would be contrary to what the goals are. For this reason she said there is a fair and substantial relationship between zoning and this particular area. Ms. Karnis said that if the town wanted different setback requirements for small lots it would have done so, but chose not to. She pointed out another area in town where the town *did* change the setback requirements, along the (Pemigewasset) river.

Mr. Tierney said he asks “where is the unique hardship” and if there is a place where the shed could be put but the applicant does not desire it, that then he believe a hardship does not exist. Therefore based on the current regulations there is no hardship.

Mr. Smith said he felt the slope creates a hardship for where the applicant can place the shed, and putting it in front of the house could make it a hardship for the neighbors. He said he did not like two sheds close together but pointed out that the Fire Chief's, in his letter, did not have a problem with it.

Mrs. Vose read Fire Chief Drake's letter into record, where he stated that he would prefer to have storage items, which could potentially increase the fire load, in the proposed shed and not in the house.

Special conditions of the property that distinguishes it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Ms. Karnis said she does not see any special conditions of the property that make it different from others in the area. Mr. Smith agreed that most of the properties in the area have the same issue. Mr. Tierney agreed with their statements.

Mr. Tierney asked for any further discussion before making a motion.

Mr. Smith said the other variances granted, as noted by Mr. Perreault, are different that this situation but are unique to each property.

Ms. Karnis made a motion, seconded by Mr. Smith, to deny the variance request based on the facts presented and the hearing discussion. Vote was unanimous.

MINUTES

Ms. Karnis made a motion, seconded by Mr. Smith, to continue a vote on the minutes until the meeting of 10/14/16. Vote was unanimous.

ADJOURNMENT

Ms. Karnis made a motion, seconded by Mr. Smith, to adjourn at 7:04 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose
Administrative Assistant