

**TOWN OF NEW HAMPTON
ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
Site Visit – 94 Seminole Avenue
TOWN OFFICE, Selectmen’s Room, 6 Pinnacle Hill Road
NEW HAMPTON, NH 03256**

June 13, 2016

MEMBERS PRESENT Regular members: Mr. Tierney, Ms. Karnis, Mrs. Erler, Mr. Frazier, and Mr. Orvis.

OTHERS PRESENT Administrative Assistant Mrs. Vose and Brian Perreault

CALL TO ORDER Acting Chair Mr. Tierney called the meeting to order at 6:01 PM.

MINUTES There were none.

SITE VISIT
*Property of Brian & Margaret Perreault
94 Seminole Ave., Tax
Map U10, Lot 8*

Mr. Tierney reminded the board that at the meeting with Mr. Perreault on 4/6/16, the board had asked Mr. Perreault to obtain a survey as he was unsure of where the exact property lines were located when considering his Variance application. A survey has now been done, submitted, and the site visit and subsequent hearing scheduled and noticed.

Mr. Perreault had strung lines between the pins to mark the property. The board reviewed the location where Mr. Perreault wanted to construct the shed (NW side of house). It was noted that the proposed location, being 1 foot from the side property line, placed it 1 foot from the abutter’s shed as that was constructed right on the property line. There was discussion on placing the shed further from the property line to allow more room between the opposing sheds but Mr. Perreault expressed concern with the proximity of some of the trees on his property in this vicinity. The board reviewed an area closer to the lake, where the shed could be placed and meet the setback distance from the side and the lake but Mrs. Erler said she would prefer to keep the shed away from the water. Mr. Tierney pointed out that there were trees that would need to be removed if the shed were placed there. Mr. Perreault advised that this location near the water is where he plans a permeable patio. Mr. Perreault said that placing the shed near the water would block more of the view of the lake. Ms. Karnis asked the board to make note of the properties in the area once they leave the site, to determine if there was something unique about this property and its topography compared to the others. Mr. Orvis said it appeared there were other

locations for a shed. Mrs. Erler pointed out that the proposed location seemed to be the only somewhat flat area to put a shed while keeping it a distance from the water. Mr. Orvis said he would prefer to see the shed be further from the abutter's shed to allow access around the structures.

Ms. Karnis made a motion, seconded by Mr. Orvis, to recess at 6:18 pm, to travel to the Town Office meeting room for the hearing. Vote was unanimous.

PUBLIC HEARING

*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*

Mr. Tierney reconvened the meeting at 6:42 pm. Members of the board and Mr. Perreault were present.

Mrs. Vose advised that the applicant, Brian Perreault, has requested a Public Hearing in accordance with RSA 676:7, for a Variance under Article IV, Section A.4.iii of the New Hampton Zoning Ordinance. The applicant's proposal is to construct a 10'x16' shed within the 20 foot setback from the side property line, being one foot from the property line. The property belonging to Brian & Margaret Perreault is located at 94 Seminole Avenue, Tax Map U-10, Lot #8, in the General Residential, Agricultural and Rural District and the Waukegan Watershed Overlay District.

Mrs. Vose advised that all abutters were notified but heard from none and there were no abutters or members of the public present.

The variance will not be contrary to the public interest; the applicant states *"it allows the removal of plastic sheds replacing them with a structure that fits better with the character of the area"*.

The spirit of the ordinance is observed; the applicant wrote *"The 3/10's acre, non-conforming, sloping lot significantly limits the location of the shed"*.

Substantial justice is done; the applicant wrote: *"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"*.

The values of surrounding properties are not diminished; the applicant wrote *"View of the shed by the closest abutter is blocked by the abutter's own shed, which is on the property line. The new shed will fit better with the character."*

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 because: The applicant wrote *“the lot is an existing, non-conforming one and has very limited space inside the setback lines. The proposed location is the only relatively level location on the lot more than 50 feet from the lake other than the driveway, which is less than the 35 foot setback”*.

The proposed use is a reasonable one because; the applicant wrote *“it fits the neighboring properties, which both have sheds which violate the setback limits of their property. To help preserve the character of the area by allowing removal of less aesthetic plastic sheds. It preserves the lake quality by being setback about 50’ from the lake”*.

The 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; the applicant wrote an explanation but Mr. Tierney advised he would not read this as the board had viewed other properties in the area, most of which had sheds near the property line.

Ms. Karnis stated that the uniqueness of the property wasn't relative to other properties having sheds within the setback but applied to the Perreault land itself, such as topography and slopes. For this reason she said there needed to be something unique about this property and not the fact it was non-conforming as all the nearby lots are also non-conforming. Ms. Karnis said in observing the lots close to the Perreault lot most in the vicinity had similar slopes, therefore she does not see his lot as unique. The other members agreed except Mrs. Erler who said it was her opinion that the steep topography and lot size was a problem even though the abutting lots were similar. Mr. Orvis advised there were other locations on the property where a shed could be placed. Mrs. Erler said she wants to do what is best for the lake and keeping structures away from the water improves run-off. Ms. Karnis agreed there were other locations for the shed, though not preferable to the property owner.

Mr. Tierney advised the hearing was closed and the board would go into deliberations.

Mr. Orvis said he could not approve a shed 1 foot from the abutting shed. Mrs. Erler expressed her opinion that this property, as are most lakefront properties, limited due to their size and slopes, but are unique to most properties in town. Mr. Orvis suggested the shed

could be attached to the house in some way, and more conforming. Ms. Karnis advised that because other properties have sheds within setbacks, either constructed prior to zoning, or placed without the town knowing, does not mean Mr. Perreault's request should be granted. Ms. Karnis pointed out that the ordinance is trying to limit overcrowding and as the lakefront lots are smaller the owners realize their limitations when they purchase the property. If the owners were continually allowed to build into the setback areas the entire area would become contrary to the spirit of the ordinance - not to overcrowd or overbuild. In order to grant the variance Ms. Karnis felt there should be a substantial deprivation, and does not see it. Mr. Tierney advised he sees alternative locations for the shed, though they may be less desirable, while he understands the advantage to keeping the shed further from the water. Relative to the surrounding properties being affected it was the consensus of the board the shed as proposed, would not negatively affect the abutters. Mrs. Erler advised that the other side property line was steeper and would require more work to create a level spot for a shed. Ms. Karnis noted that several other properties that shared a similar slope to the Perreaults have their sheds up near the road. Mrs. Erler said that having the shed placed in a different location could potentially have more negative affects to the lake than what is being proposed. Mr. Tierney asked Mr. Orvis if he was agreeable to the shed if it was not as close to the abutters shed, and Mr. Orvis said it would be better to be 4 feet away but that there were other options. Mr. Frazier suggested the shed be placed closer to the water were the patio is being proposed. Ms. Karnis advised she didn't think the application meets the criteria, no hardship has been created, and there are no special conditions of the property.

Mrs. Erler made a motion to approve the variance, increasing the distance from the abutting shed from 1 foot to 4 feet because the lot is unique compared to other lots in town. The proposed location is best for the lake and the proposed use is a reasonable one.

Hearing no second Mr. Tierney asked if there were any other motions.

Ms. Karnis made a motion, seconded by Mr. Orvis, to deny the variance request as there is no unnecessary hardship due to any special conditions of the property. Facts supporting the motion to deny were:

1. Though the property slopes it is not an egregious slope compared to other lots in that same area, there are places within the permitted area where a shed could be constructed.
2. As this is a shed the denial would not limit the property

owners in the use of their property.

3. The spirit of the ordinance, in terms of wanting to control overbuilding, is important because allowing many sheds to be built on a small lot within those setbacks creates overcrowding and is contrary to the spirit of the ordinance.

Vote was 4 – yes, 1 – no.

Mr. Tierney asked Mr. Perreault, with the board's permission, if he wanted to comment. Mr. Perreault asked board members what they would do if they wanted a shed on this property. He said if the shed was constructed along the walkout (SE side) it would obstruct an egress window, or if it was up that same grade (SE side) it would obstruct a bedroom window. It would also require a foundation in those cases which would be expensive and create more disturbance of the soil. He pointed out that the application states the "*special conditions of the property that distinguishes it from other properties in the area*" which can be interpreted as not just the immediate neighbors, but the whole area which includes properties with more acreage that could allow room for a shed. He pointed out this was a small shed to be placed on blocks on crushed stone and replaces 2 plastic sheds. He said he is agreeable to moving the shed further from the abutting shed and property line. He said it fits the character of the area and if it is the intent of the ordinance to prevent properties from becoming something that does not fit the character of the area, this is not the case.

Mr. Tierney advised that a decision would be sent and an appeal can be made to the ZBA, if Mr. Perreault decides to request one.

OTHER BUSINESS

There was none.

CORRESPONDENCE

There was none.

ADJOURNMENT

Mr. Frazier made a motion, seconded by Mr. Orvis, to adjourn at 7:31 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose
Administrative Assistant