

**TOWN OF NEW HAMPTON  
ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
Upstairs Town Meeting Room, 6 Pinnacle Hill Road  
NEW HAMPTON, NH 03256**

September 14, 2016

**MEMBERS PRESENT** Regular members: Mr. Tierney, Ms. Karnis, Mr. Orvis, Mr. Frazier, and alternate member Mr. Smith.

**OTHERS PRESENT** Administrative Assistant Mrs. Vose and Town Attorney Laura Spector-Morgan.

**CALL TO ORDER** Mr. Tierney called the meeting to order at 7:30 PM.

Mr. Tierney appointed Mr. Smith to act as a voting member in place of Mrs. Erler.

Mr. Tierney advised that as he is undergoing surgery on 9/15/16 and the Marsh's site visit and subsequent hearing deliberations were scheduled for that evening. He suggested that based on this and some issues relative to the septic designs and what was approved, that the board authorize Town Administrator Mrs. Lucas to ask the applicants, David & Debra Marsh, if they are willing to reschedule the site visit and hearing that had been continued at the public hearing on 9/7/16. He said the town could request the septic designer and installer be available for that meeting also.

Ms. Karnis made a motion, seconded by Mr. Frazier, to authorize Mrs. Lucas to request a rescheduling from the applicants. Vote was unanimous.

**MINUTES** There were none.

**REHEARING** Applicant Mr. Perreault and his attorney Alvin Nix, Jr., were present.

*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*

Mrs. Vose advised that the Board of Adjustment granted a Motion for Rehearing on August 3, 2016 and will hold a Public Hearing on Wednesday, September 14, 2016, at 7:30 PM to reconsider the application submitted by Brian Perreault. The applicant's proposal is to construct a 10' by 16' shed within the 20-foot setback of a side property line, the shed being one foot from the property line. In accordance with RSA 677:2-3, as requested by Brian Perreault there

will be a Rehearing of the Public Hearing for Brian Perreault's variance request under Article IV, Section A.4.iii of the New Hampton Zoning Ordinance. The property belongs to Brian & Margaret Perreault and is located on 94 Seminole Avenue, Tax Map U-10, Lot #8, in the General Residential, Agricultural, and Rural District and the Waukewan Watershed Overlay District.

Mrs. Vose advised that all abutters were notified and the office had received an email from abutters Mr. and Mrs. Ruescher stating their support, which was read into record.

Mr. Tierney advised that as this is a rehearing new testimony is taken and reviewed. Attorney Nix advised he was present to represent the applicants. He reviewed that the applicant has a home in an area that is very dense. He reviewed the plot plan from the building permit application and the survey, stating the applicants wish to construct a 10'x16' shed in an area next to the northern property line. This area was chosen due to it being a somewhat level area on the parcel and the recommendations made by the shed manufacturer that the shed not vary by any more than one foot across its plane. Attorney Nix advised the purpose of the shed is to store and protect recreational items and yard equipment and to avoid having the small Rubbermaid containers the Perreaults currently use.

**The variance will not be contrary to the public interest;** Atty. Nix reviewed what Mr. Perreault had written: "...removal of plastic sheds, replacing them with a structure that fits better with the character of the area. Mostly hidden from view in the locality in which it is." This will put the shed in an appropriate location.

**The spirit of the ordinance is observed;** Atty. Nix said the applicant is trying to place the shed in the most appropriate place on the property, giving the property a cleaner appearance.

**Substantial justice is done;** Atty. Nix said there are properties around the Perreaults that have places to store things and the applicants want a similar opportunity to keep items out of the weather.

**The values of surrounding properties are not diminished;** Atty. Nix said this would improve the property, not diminish it. He pointed out that no abutters have come forward to argue this variance and one has offered his support.

**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;** Atty. Nix reviewed some history of the unnecessary hardship requirements and how they've been applied over the years. He referred to the Harborside Assoc. vs Parade Residents Hotel case and how it relates to this variance saying the unnecessary hardship exists when special conditions of the land render the use for which the variance is sought - reasonable. He explained that though some lakefront owners have larger lots Mr. Perreault and his neighbors have substandard lots and this variance addresses what they have and what they want to do and whether this shed is reasonable. Relative to the spirit of the ordinance Atty. Nix asked if granting the variance would alter the essential character of the neighborhood and if substantial justice is done would the general public realize an appreciable gain from denying this variance.

Atty. Nix pointed out through photos taken and submitted by Mr. Perreault, that properties near the applicant have garages and sheds for storing their items and he wishes to have the similar benefit. The photos were of all properties from the beginning of Seminole Avenue to the property after Mr. Perreault's. Mr. Nix said the photos indicated garages and sheds, some of which appeared to be in the setback distance of the ROW, side, or rear property lines. He advised that #84 Seminole Ave had their garage approved through a variance - to be built within the front ROW setback.

Atty. Nix showed pics of Mr. Perreault's property showing the steps they take to get from the parking at the road down to the house, due to the slope. Some were photos of the southerly and lakeside of the home where the foundation is constructed into the hill, and the 3 Rubbermaid sheds presently being used and how they deteriorate over time. Atty. Nix pointed out the applicant is requesting to have a shed in the setback that many of the neighbors in his immediate area have, with the neighbors enjoying a benefit of their properties that the Perreaults would like to have.

Relative to the unnecessary hardship criteria, Atty. Nix said the 20' setback is to keep congestion down while keeping the area safe and healthy, however to hold this setback for the Perreaults is not consistent with what's occurring in the neighborhood and the benefit the other neighbors are receiving. The Perreaults want to place the shed in a location that is not near the road or lake, alongside the abutter's shed, keeping it more hidden from view, while allowing storage of items. Atty. Nix said it is reasonable to grant the variance because allowing this shed in this location would not alter the

essential character of the neighborhood or violate the basic objective of the ordinance. He advised the general public will not get an appreciable gain by denying the variance pointing out that the area around the Perreaults are substandard lots, with storage as a benefit.

Atty. Nix pointed out other variances granted for outbuildings on similar size properties, as submitted by Mr. Perreault in Table 1.

Mr. Tierney provided to members, the applicant, and Atty. Nix, copies of responses to Mr. Perreault's Table 1 (Variances granted) and Table 2 (list of outbuildings on properties in area) that had been prepared by the Selectmen's Office based on the town's records.

In Table 1, Mr. Tierney advises that prior to the variance approval date of 8/5/09, variances were decided on a different set of criteria. Atty. Spector-Morgan stated that the Boccia case made it much easier to get an area variance vs. a use variance, which was criteria in place from 2004-2009. For this reason, Mr. Tierney advised the board would only review the more recent variance approvals noted by Mr. Perreault as they were under the same criteria as what is being used currently.

1. Variance approval 10/3/13 on Tax Map U9, Lot 13 notes the shed the variance was granted for, had been in the setback (pre-zoning), on the other side of the property, and had to be moved to accommodate a new septic system which required the land to be built up. The property was out on a point, with one abutter being a condominium development, and the other a 1.1 acre lot.
2. Variance approval 2/13/13 on Tax Map U10, Lot 6 notes the garage was approved for a variance as a new septic design had to be done which limited where the garage could go. Mr. Tierney said minutes from that meeting also reflected the fact that the driveway had previously zigzagged down the slope towards the house which is where septic ended up going.
3. Variance approval 9/12/12 on Tax Map U15, Lot 6 notes this property as being long and narrow, with the shed 1' from the side property line with properties on either side being .85 and 1.14 acres.

For these reasons Mr. Tierney said there were no close similarities to the Perreault lot.

In Table 2, Mr. Tierney reviewed Mr. Perreault's listed outbuildings on properties. The table prepared by the town noted whether they were grandfathered non-conforming structures, whether a building permit had been obtained and shown to meet setback distances, or

whether a permit would not have been required based on size and value, but would have been required to meet the setback distances. Atty. Spector-Morgan pointed out that the grandfathered structures would not be comparable to the Perreault variance. Structures that were constructed without a building permit, as it wasn't necessary, but meet setbacks, are not comparable. She said there were some structures that did not require a permit and may not meet the setback requirements but the town was not aware that these violations may exist until Mr. Perreault brought it to the town's attention. She said the Selectmen can now take this under advisement and determine whether or not any enforcement action is needed. Atty. Spector-Morgan pointed out that lack of a need for a permit for any structures that are in the setback does not mean the town permitted them in that location.

Atty. Nix said he understood the position of the board on these structural issues as discussed in the town's response to Table 2. He asked the board to look at the neighborhood, disregarding what's grandfathered, permitted, or in violation, in that owners are able to use outbuildings for storage. He said neighbors are enjoying the benefits of their property in having storage and that's what the Perreaults are looking for, so he asked the board to look at the personal aspect of the variance request.

Mr. Tierney asked Atty. Nix if he was asking the board to ignore the unnecessary hardship criteria and Atty. Nix he was not, but this request was different than, for example, requesting to have a commercial use in a residential neighborhood where surrounding properties are very different. Atty. Nix said granting this variance will not make the neighborhood any different than it is now. All other properties in the area are the same, relative to outbuildings for storage, except the Perreault's.

Mr. Tierney asked if there was another location on the property where this shed could be located and conform to the setbacks. Atty. Nix said he knew the board may have discussed other locations when they performed their site visit on 6/13/16. He said he would have to place it between the house and the road, or between the house and the lake, but felt that may not be reasonable to the applicant. Atty. Nix said if the shed was constructed under the deck it would block a window; if it was constructed on the east side of the house it would block more windows. He asked the board to consider what is reasonable under the circumstances for the applicant. Mr. Perreault said that the shed company requirements prevent the shed from being put in several other locations due to the slope as indicated by a link noted in his request for rehearing. Ms.

Karnis suggested the link be printed for the record and Mr. Perreault attested to the fact that the requirements from the shed company were what he stated.

Ms. Karnis advised that discussion is taking place about the site, for which Mr. Smith did not visit. Mr. Smith said he finds it hard to believe there is no other location, but is also concerned with any safety concerns the Fire Chief may have. It was the consensus of the board to get input from the Fire Chief on a shed being placed 1' from the abutter's shed and 9' from the house, and for the board to perform another site visit. Mr. Tierney asked Mr. Perreault for permission for the Fire Chief to visit the property. Mr. Perreault agreed.

Ms. Karnis made a motion, seconded by Mr. Orvis, to continue the rehearing to October 5, 2016 beginning at 5:00 pm at 94 Seminole Avenue, following by deliberations at the upstairs town meeting room, 6 Pinnacle Hill Road. Vote was unanimous.

**OTHER BUSINESS**

There was none.

**CORRESPONDENCE**

There was none.

**ADJOURNMENT**

Ms. Karnis made a motion, seconded by Mr. Orvis, to adjourn at 7:53 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose  
Administrative Assistant