

**ZONING BOARD OF ADJUSTMENT**

**MINUTES**

September 7, 2021

**APPROVED: 10/5/21**

**AGENDA:** 21VAR05 VARIANCE: JOHN J. SPRAGUE, 3 Hedstrom Way, #115-009-003  
21SPX04 SPECIAL EXCEPTION: MATTHEW O'NEILL, Lake St., #106-002  
21VAR06 VARIANCE: MATTHEW O'NEILL, Lake St., #106-002  
21VAR07 VARIANCE: DAVID DUBREUIL, 65 Sugar Hill Dr, #223-022-065

**ATTENDING:** Alan DeStefano (Chair), Lorraine Bohmiller, Larry Denton,

**ABSENT:** Richard LaFlamme (Vice Chair), Melody Mansur, Ashley Dolloff (alternate), Jackie Elliott (alternate)

**OTHER:** Christina Goodwin (Land Use Manager), Lindsay Thompson (Land Use Administrative Assistant), applicants & public

Mr. DeStefano opened the meeting at 6:03pm with a quorum. He then explained that, with only three (3) members present, all three (3) will need to agree to approve any of tonight's hearings. Therefore, should any applicant wish, they may ask for a continuance until a full Board is present.

**MINUTES OF JUNE 1, 2021:**

Ms. Bohmiller had a couple of minor corrections. L. Denton made a motion, second by L. Bohmiller, to approve the minutes as amended. The motion carried 3-0.

At this time, Ms. Goodwin introduced Ms. Lindsay Thompson. Lindsay is the new Land Use Administrative Assistant. She is training and will be taking over meetings for the Land Use Department.

**VARIANCE: JOHN J. SPRAGUE, 3 Hedstrom Way, #115-009-003**

Ms. Goodwin read the application, list of abutters notified, and where the hearing was advertised. She reported that there were no phone calls, written correspondence, or Department Head comments received.

L. Denton made a MOTION, second by L Bohmiller, to ACCEPT THE APPLICATION AS COMPLETE. The motion CARRIED 3-0.

Mr. Sprague stated that this Variance is for a shed needed for equipment storage for his job. The location of the shed has been approved by Habitat for Humanity and the Homeowners Association (HOA), which will provide good access to the wellhead located on the common lot. The current bylaws of the Association allow each of the owners (four lots) to have one (1) shed in the common area of Lot #9. The shed is currently located up against the boundary of that space.

Mr. Denton addressed the color-coded plan and asked about the smaller buildings. It was explained that there is a bob-house and one (1) shed and then the shed that the Board is

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SPRAGUE VARIANCE continued:

reviewing for the Variance. Mr. Sprague explained that, if they move the shed out of the setback, it blocks the access to the wellhead and because of the wellhead position, repair folks must access it from across his property. Mr. Sprague pointed out the access path and a fenced in area that is for his dog. Mr. DeStefano pointed out that the shed seems to be close to wetlands as presented by the Sprague's plan.

The criteria for a Variance were reviewed:

1. Not contrary to public interest: The location is on a private lot and abuts the HOA and Humanity lot 9. Both have approved the location.
2. Spirit of the Ordinance: No other public lot is involved. The HOA bylaws allow for one (1) outbuilding. The shed location is on lot 3 and has been approved.
3. Substantial justice: The shed location allows Capitol Well access to the shared wellhead for service and repair.
4. Values of surrounding properties are not diminished: The location is allowed by both the HOA and Habitat.
5. Unnecessary hardship:
  - AI. Special conditions of the property: Approval given for the necessary access to the wellhead.
  - ALL. Reasonable use: Best access.
  - B. Special conditions of the property: There was no HOA access in the original plan.

Mr. Denton asked the background of the land. Ms. Goodwin explained that Habitat owns the larger Lot 9 and are required to keep partial ownership due to the funding that was used to building the project. The intent is to pass ownership to the HOA when this timeframe has expired. Mr. DeStefano pointed out that if the shed was moved to Lot #9, it would be completely in the wetland. He asked how many sheds are allowed on each lot and was told that the covenant does not say. Mr. Sprague added that, behind his house it gets steep. Mrs. Sprague stated that they created the access as originally it was supposed to be between the two (2) houses. Mr. Denton asked why they don't put it closer to the other shed and was told that area is partly fenced in.

Mr. DeStefano then asked for comments in favor from the audience. There were none. He asked for comments against and again there were none. Mrs. Sprague mentioned that this access benefits the entire neighborhood. Mr. DeStefano then closed the public portion of the hearing.

- Criteria #1. L. Denton made a motion, second by L. Bohmiller, to approve criteria #1. The motion carried 3-0.
- Criteria #2. L. Denton made a motion, second by L. Bohmiller to approve criteria #2. Ms. Bohmiller stated that the HOA allows one shed on lot #9. Mr. DeStefano added that these are HOA rules and allowed this in their setback. Mr. Denton mentioned the letter of approval and that this will all become common land eventually. The motion carried 3-0.

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SPRAGUE VARIANCE deliberations continued:

- Criteria #3. L. Bohmiller made a motion, second by L. Denton, to approve criteria #3. The motion carried 3-0.
- Criteria #4. L. Denton made a motion, second by L. Bohmiller, to approve criteria #4. The motion carried 3-0.
- Criteria #5, AI. L. Bohmiller made a motion, second by L. Denton, to approve criteria #5AI. Mr. Denton felt that the nature of the lot and the approval by the HOA backs this. The motion carried 3-0.
- Criteria #5All. L. Denton made a motion, second by L. Bohmiller, to approve criteria #5All. Mr. DeStefano stated the placement is for necessary access to the wellhead. Mr. Denton added that it had to be put somewhere and is nearest the area of this lot. Mr. DeStefano said that the HOA created it. The motion carried 3-0.
- Criteria 5B. L. Denton made a motion, second by L. Bohmiller, to approve criteria #5. Mr. Denton again mentioned that it will all become one property. Mr. DeStefano stated that we usually would not allow this, but the abutter is the HOA and has approved it. The motion carried 3-0.

L. Denton made a MOTION, second by L. Bohmiller, to APPROVE THE VARIANCE FOR JOHN J. SPRAGUE. The motion CARRIED 3-0. Mr. DeStefano again stated that it is granted only because of the HOA.

#### **SPECIAL EXCEPTION: MATTHEEW O'NEILL (via Zoom), Lake St, #106-002**

Ms. Goodwin read the application, abutters notified, and where the hearing was advertised. She reported there were no phone calls, written responses, or Department Head comments.

L. Denton made a MOTION, SECOND by L. Bohmiller, to accept the APPLICATION AS COMPLETE. The motion CARRIED 3-0.

Mr. O'Neill explained that he wants to replace and increase storage space to alleviate crossing the road with beach items. Mr. Denton asked if it would have a second story and was told that he is only looking to increase the height by 3-feet. Mr. DeStefano pointed out that the current shed is 12 feet in height. He also explained that the Special Exception only deals with the height increase and not the length.

The criteria were reviewed:

2. Appropriate location and size: The old structure is to be replaced with a new shed that will be aesthetically pleasing and allow for increase of storage.
3. Will not adversely affect the character of the area: The current shed will be replaced by a nicer one.
4. No nuisance or hazard to vehicles or pedestrians: There will be no additional access to the shed or work being done that will disrupt traffic.
5. Will not place undue burden on town services or facilities: Just replacing the shed and there will be nothing hazardous stored there.

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O'NEILL SPECIAL EXCEPTION continued:

6. No effect on public health, safety, and general welfare of the neighborhood: Replacement of the shed will allow for extra storage, eliminating carrying it across busy Route 3A.

L. Denton verified that the shed is on one (1) side of the road and the house on the other. He asked what the shed is used for and was told it is to store beach stuff. It is on the same side of the road as the Lake.

Mr. DeStefano called for anyone to speak in favor of this plan. There was none. He then asked for any against and there was none again. He then closed the public portion of the hearing and reminded the Board that the purpose of a Special Exception is to take into consideration anyone's view.

Deliberations on the criteria were held:

- Criteria #2. L. Denton made a motion, second by L. Bohmiller, to approved criteria #2. The motion carried 3-0.
- Criteria #3. L. Denton made a motion, second by L. Bohmiller, to approve criteria #3. The motion carried 3-0.
- Criteria #4. L. Denton made a motion, second by L. Bohmiller, to approve criteria #4. The motion carried 3-0.
- Criteria #5. L. Denton made a motion, second by L. Bohmiller, to approve criteria #5. The motion carried 3-0.
- Criteria #6. L. Denton made a motion, second by L. Bohmiller, to approve criteria #6. The motion carried 3-0.

L. Denton made a MOTION, SECOND by L. Bohmiller, to APPROVE THE SPECIAL EXCEPTION FOR MATTHEW O'NEILL. The motion CARRIED 3-0.

#### **VARIANCE: MATTHEW O'NEILL (Zoom), Lake St, #106-002**

Ms. Goodwin read the application, abutters notified, and where the hearing was advertised. She reported that there were no written correspondence, phone calls, or Department Head comments. She stated that the NH Department of Environmental Services (NHDES) is aware of the proposal. Ms. Thompson stated that the calculations for coverage are not over what is allowed, and the current shed is 11.4 feet from the setback. Mr. Denton questioned the present shed and was told that it is grandfathered. As the new shed is to be 4 feet longer, Ms. Lindsay said they have applied for a Special Use Permit with the Planning Board, but any change would require that a Variance be obtained. Mr. O'Neill said that the Variance is for the front setback of 11.4 feet instead of 15 feet. Mr. DeStefano read that, with no town water or sewer, it is considered Class 3 and has setbacks of 20 feet all around. Mr. Denton stated that it would still be grandfathered if in the same footprint and that was agreed. Mr. O'Neill did not know about the 20-foot setback all around.

L. Denton made a MOTION, SECOND by L. Bohmiller, that the APPLICATION IS NOT COMPLETE as the plan is confusing and has inaccurate setbacks. The motion carried 3-0.

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L. Denton made a MOTION, SECOND by L. Bohmiller, to CONTINUE THIS CASE TO OCTOBER 5, 2021. The motion CARRIED 3-0. Mr. O'Neill was told to check in with Ms. Goodwin or Ms. Thompson to update his plan.

**VARIANCE: DAVID E. DUBREUIL, TONI M. NEVILLE, 65 Sugar Hill Dr, #223-022-065**

Ms. Goodwin read the application, the abutters notified, and where the hearing was advertised. She reported that there were two (2) phone calls asking about the case, but no written comments received. The Water/Sewer Department asked that the owners contact them before beginning construction. Ms. Goodwin further explained that the property is in the Village Residential District and part of a Cooperative, so the Town's Attorney advised the Land Use Department on the abutters to notify for this case. She also reported that the Land Use Department advised the applicant to ask for a waiver of the lot coverage calculations due to the size of the Cooperative and the information on the structures is not readily available.

L. Denton made a MOTION, SECOND by L. Bohmiller, to ACCEPT THE APPLICATION AS COMPLETE. The motion CARRIED 3-0.

Mr. Dubreuil explained that his wife has vertigo so they have widened the hallway and bathroom and would like to add to the living area to allow for the use of a wheelchair. He also has lupus and will eventually need the wheelchair. They feel that going inside from the back is best. Ms. Neville stated that she does not need the wheelchair yet, but they need an adequate emergency exit. Mr. Denton asked if they currently use the front access and was told that they do. Ms. Neville added that they don't know for sure if they will eventually need a ramp. Mr. Denton asked about the 10 x 12 building and was told that it is a shed used for storage that was there when the property was purchased.

The criteria of the Variance were reviewed:

1. Not contrary to public interest: The setback is 15 feet. The public and residents will not be affected.
  2. Spirit of the Ordinance: The benefit would be to keep them in their home by making the home wheelchair accessible. It will allow improving the living area so that there is turning radius for a wheelchair or walker.
  3. Substantial Justice: They are asking for so little over the setback. They believe that the property is really 4 feet beyond the stone wall. The variance will allow for a future ramp in the front.
  4. Values of surrounding properties are not diminished: It will do justice to the aesthetics and meet their medical needs. An addition anywhere else will not work.
  5. Unnecessary Hardship
- 5AI. No substantial relationship between the general public and application of the provision to the property: This will not limit anyone else from using the property as they usually do.
- 5AII. Reasonable use: It will allow them to safely stay in their home and allow for the use of a walker or wheelchair.

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DUBREUIL VARIANCE continued:

5B. Special conditions of the property: It will not affect abutting properties and will allow space so they can stay in their home.

Mr. Denton asked about the property line beyond the wall which would make this less than 4 feet. Ms. Goodwin stated that a survey would be required to support that information. The Cooperative allows just 8 feet for a setback. Mr. Denton added that the addition would give them more space as the coffee table and couch are too close currently. Ms. Bohmiller asked if the space is to relieve mobility issues and was told that it is. Ms. Goodwin showed a plan of the whole Cooperative and the common area by the side.

Mr. DeStefano called for anyone to speak for this variance. Henrique Oliveira said that this is help for a wheelchair. There were no other speakers for or against. Ms. Bohmiller stated that there isn't much space and Mr. Denton added that medical is the hardship. Mr. DeStefano then closed the public portion of the meeting.

Deliberations on the Criteria began:

- Criteria #1. L. Bohmiller made a motion, second by L. Denton, to approve criteria #1. The motion carried 3-0.
- Criteria #2. L. Bohmiller made a motion, second by L. Denton, to approve criteria #2. Mr. Denton stated that the variance is from the setback, that they are trying to use the home due to medical reasons. Mr. DeStefano asked about the spirit of the ordinance and Mr. Denton felt it to be the hardship. The motion carried 3-0.
- Criteria #3. L. Denton made a motion, second by L. Bohmiller, to approve criteria #3. The motion carried 3-0.
- Criteria #4. L. Bohmiller made a motion, second by L. Denton, to approve criteria #4. The motion carried 3-0.
- Criteria #5AI. L. Denton made a motion, second by L. Bohmiller, to approve criteria #5AI. The motion carried 3-0.
- Criteria #5AII. L. Denton made a motion, second by L. Bohmiller, to approve criteria #5AII. The motion carried 3-0.
- Criteria #5B. L. Denton made a motion, second by L. Bohmiller, to approve criteria #5B. Mr. Denton felt they are making the most of what they have. The motion carried 3-0.

Mr. DeStefano stated that the approval is based on medical reasons and questioned future tenants. Ms. Goodwin answered that they would be grandfathered.

L. Denton made a MOTION, SECOND by L. Bohmiller, to APPROVE THE VARIANCE FOR DAVID DUBRUEIL. The motion CARRIED 3-0.

**COMMUNICATIONS:** None.

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**NEW BUSINESS:**

Mr. DeStefano asked to wait for a full Board to discuss Equitable Waiver forms. The other members agreed.

**NEXT MEETING:** The next meeting is October 5, 2021. There is the continued Variance, but applicants have until September 17 to submit applications.

With no other business before the Board, L. Denton made a MOTION, SECOND by L. Bohmiller to adjourn at 8:10pm. The motion CARRIED 3-0.

Respectfully submitted,  
Jan Laferriere,  
Land Use Associate