

**Zoning Board of Adjustment
Kingston, NH 03848**

**January 8, 2015
Public Hearing**

Members in Attendance:

Electra Alessio, Chair
Peter Coffin

Ray Donald, V. Chair
Daryl Branch

Members Absent: John Whittier, Jay Alberts

Ellen Faulconer, Acting Board secretary.

Ms. Alessio called the meeting to order at 7:03.

Mr. Branch noted that his first name had been spelled incorrectly (only one "R" in his name) in the December minutes.

MM&S to approve the December, 2014 minutes as amended by correcting the spelling of Mr. Branch's name. (Motion by Mr. Donald, second by Mr. Coffin) **PUNA** (Passed unanimously)

Ms. Alessio noted that Mr. Donald and Mr. Whittier's terms were up this March; Mr. Whittier has told Ms. Alessio that he is not running for re-election.

Ms. Alessio reviewed letters received by the Board; one was for tonight's hearing which would be read at that time. She read a letter from Shirley and Eugene Buzderwicz re: the ROW at Sand's Lane; she stated that the letter would be included with the file for the property.

**Timothy Reed
79 Sunny Oaks Terrace
Strafford, NH 03884**

**Re: 92B Main Street
Tax Map: U7 Lot 9**

Ms. Alessio read the notice asking for a Variance and an Administrative Appeal introduced the Board members. Ms. Alessio noted that the Board only consisted of 4 members this evening and the applicant had the right to request a 5 member Board; if that request was made, the hearing would be postponed; with the four-member Board, three of the four would have to be in agreement for a decision. Mr. Reed did not want to delay and was fine with going forward with tonight's hearing.

Mr. Reed explained that he had received a Notice of Violation on October 28, 2014 for the construction of a 20 x 50 shed on his property; he noted that he had a small lot and it was not possible to conform to setbacks. He said that the house was built in 1958; it had recently sat empty for 12 years; he bought the house in 2009 and built the shed in 2010; he said that there had previously been a shed on the property

that had been wider and longer than the shed he built. He noted that this was a seasonal property and only used in the summer. He stated that he could not meet the setback requirements as there are trees on the hill; the other possible location would block the windows.

Mr. Reed said that the Building Inspector was requiring a certified plot plan but that would cost more than the shed cost. He is asking for a waiver of the setback requirements; he said a different shed had been there for at least 25 years. If he is granted a waiver, he will resubmit the building permit. He noted that he had removed the electricity that went to the shed.

There were no comments from the audience.

Ms. Alessio read a letter from Ted Holcum, abutter, in opposition to the request for a variance; the letter noted that there is no record of a permit for the structure; there is a site sketch showing ample space for the structure to be located on the east side of the lot that would not need a variance. The letter continued that Mr. Holcum had been approached to sell land to address the inappropriately placed shed; this proposal did not move forward. Mr. Holcum's letter stated that the placement was "convenient" but was not a reason for a variance.

Ms. Alessio read a letter received from the Building Inspector. The letter notes that he had requested a certified plot plan and had only received a sketch; abutter believe that the shed is actually on their property line; upon review of the site, this belief may be valid. The letter continued that the shed was built then a permit was requested; a building permit with the shed in the current location would not have been issued in the first place; abutting property owners may have recourse if the Board grants a variance for a building to remain on property that they don't own. Ms. Alessio noted that the ZBA application does state that it may be necessary to provide a certified plot plan.

Mr. Donald stated that the Board of Selectmen has said that they must provide a certified plot plan for this permit. Ms. Alessio asked why the applicant wouldn't move the shed to the back area where it looks like there is room. Mr. Reed said it was tough to squeeze in between the trees and it would block the window. He is here asking for a variance for the setback. Mr. Coffin explained that if there is an alternative location than it doesn't require a variance. The Board reviewed the property folder.

Mr. Donald stated that there is a problem with dealing with this issue; usually there are dimensions noted so the Board knows the amount of the variance requested and there are none shown here with this application. He added that there is a probability of needing a plot plan as there are questions as to whether the building is over the property line; the Board can't approve if located on someone else's property. He said if the property lines are verified they may be able to grant a variance. Mr. Branch said that dimensions would still be required for the application. Mr. Coffin advised that the application would still need to if there is a hardship or if the proposed structure could go somewhere on the property without a variance. Mr. Reed confirmed that the shed was built so it could be moved. Ms. Alessio explained that the Board was not adverse to granting a variance for a non-conforming lot; she stated that the concern is that the placement is contested as to not on the right property which could open the Town up to a legal issue; there need to be specifics as to the amount of a variance that is being requested. Ms. Alessio continued that there are no dimensional specifications in the letter of denial; due to the boundary questions a certified plot plan has been requested. Mr. Branch re-iterated the need to have specifics shown in order to review the request for a variance. Ms. Alessio added that if the

abutters proved the shed was on their land, he would have to move it. Mr. Coffin agreed with Mr. Donald that the Board of Selectmen were requiring a plot plan and they could not overturn that decision. There was discussion about housing in the area that may show some of the information about the lot lines, previous fencing on the property, adverse possession, historical inaccuracies establishing ownership.

Mr. Reed said that he would like a waiver regardless of the correct lot lines; he was discussing the possibility of him owning that land by adverse possession. Mr. Coffin said there is no grandfathering of the shed as he took down the old one and built a new one without permits. Ms. Alessio reminded him that the property had been vacant for 12 years. She added that part of the problem is that the application does not have any dimensions listed for the variance/waiver request; it may be that the shed may only need to be moved two feet but without dimensions, the Board does not have enough information. Ms. Alessio suggested that the applicant request a continuation for a couple of months to determine the correct lot lines and provide dimensions; he could still get this resolved prior to the summer and give him time to work with the Town and work out property lines; it gets him the correct boundary lines and the amount of feet needed for the variance. The Board reviewed the posting and determined that the hearing could be continued without reposting.

Mr. Reed asked that the hearing be continued to May. He also asked if he would get the variance if it was found to be on his property and not over the property line. Mr. Coffin answered that this would be an issue that the Board would need to look at during the hearing; they would need to see the dimensions and the requested variance and determine if hardship existed. Ms. Alessio explained that if he found an alternate location, he could withdraw the application without prejudice.

MM&S to continue the hearing to May 14, 2015 at 7:05 per the applicant's request. (Motion by Mr. Coffin, second by Mr. Branch) **PUNA**

The Chairperson adjourned the hearing at 7:50.

Respectfully submitted,
Ellen L. Faulconer
Acting Board Secretary