

Town of Newington, NH
ZONING BOARD OF ADJUSTMENT
Meeting Minutes – June 2, 2014

Call to Order: Chair Matt Morton called the June 2, 2013 meeting at 6:33 PM.

Present: Matt Morton, Chair; Ted Connors; Ralph Estes; Jim Weiner; Planning Board rep, Justin Richardson; Town Planner, Tom Morgan; and Jane Kendall, recorder

Absent: John Frink

Public Guests: Robert Dell Isola

Public Hearing: Request by **Robert Dell Isola** for a variance to permit a shed to be situated one foot from his side lot line where a 15-foot setback is required by Article VI of the Zoning Ordinance. The property is located at **224 Little Bay Road, Tax Map 23, Lot 16.**

Mr. Robert Dell Isola appeared before the Board with his request to build a shed so that he could house his riding lawn mower. Chairman Morton commented that no plan had been submitted. Mr. Dell Isola said he thought that was the best location for aesthetics and accessibility that was on flat ground, not in the middle of the lawn, over the irrigation or in the children's play area. He said the shed would be inside the split rail fence.

Planning Board representative, Justin Richardson asked how far the shed would be from the property line and Mr. Dell Isola said he wasn't sure, but he knew the fence was not on the property line. Chairman Morton said it appeared to be 3" from the fence. Mr. Dell Isola said he made sure the fence was where it was supposed to be. Board member, Jim Weiner asked how the far fence was from the property line and Mr. Dell Isola said he believed it was at least a foot in from the property line but he was not sure.

Mr. Weiner asked Town Planner, Tom Morgan if there was way to do a lot line adjustment between neighbors that would create space for the 15' setback. Mr. Morgan said that would not be a viable option because the Gundalow Landing development was created with minimum lots with only 80 square feet. Mr. Weiner asked if it would be possible for the neighbors to traded 15' either way with a bump out and a bump in. Mr. Morgan said if it was a possibility if it was an equal swap. Mr. Richardson said a lot line adjustment and land swap would require a survey plan and Chairman Morton said that would add to the expensive. Mr. Richardson said covenants, lot line adjustments and

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subdivision plans had to be approved by the Planning Board so he thought it would be better to request a variance than spend \$2,000 for a survey plan and then find out it couldn't be done. Board member, Ted Connors said they would need to record the plan with Rockingham County too.

Mr. Richardson asked Mr. Dell Isola he had heard from his neighbor, Mr. Hamlin and Mr. Dell Isola said he had spoken with him and he was okay with the plan because his house was way back. Mr. Richardson said it was important to get a written letter to confirm full understanding. Chairman Morton said it was also important should the property change hands because the new owner could complain. Mr. Richardson said he was especially concerned because the abutter was not there to speak now or forever hold their peace. Mr. Dell Isola asked if they wouldn't make the buyer aware during the sale. Chairman Morton said it could make the sale difficult and the Town could be sued for granting a variance when it was a choice not an actual hardship.

Chairman Morton asked Mr. Dell Isola why he didn't consider a different placement closer to the pine tree and 15' from the lot line. Mr. Dell Isola said the terrain wasn't flat there and he had already put down crushed stone. Chairman Morton suggested he consider another placement 15' from the lot line and closer to the house. Mr. Dell Isola said he would need to move his daughter's playhouse and would need to move the irrigation, but if denied he would consider. Chairman Morton said at least it was not fully constructed with cement so it could be moved.

Mr. Robert Raymond of 2212 Gundalow Landing said the shed wouldn't be visible through the trees in summer, but they would be more visible in the winter and he would like it further away because he would rather not see it from his lot. Mr. Dell Isola said the shed had been there since November 2013. Mr. Richardson asked Mr. Raymond if he would see the shed more or less if it was moved 15'. Mr. Raymond said he would see it less if it were moved in more.

Chairman Morton asked Mr. Dell Isola was unaware of the setback requirements. Mr. Dell Isola said he hadn't realized he wasn't within the setback requirement until he talked with the building inspector. Chairman Morton asked if he had sought a building permit. Mr. Dell Isola said he didn't think a shed required a building permit, but the building inspector recommended he apply for one when he called.

Mr. Dell Isola said the shed would not be placed in the right of way, close to another building or near wetlands or a body of water. Chairman Morton said he was sure it was an honest mistake, but Towns had to protect abutters' rights too.

Mr. Richardson asked for a clarification on the property owner of 2316 Gundalow Landing. Mr. Richardson said his law firm had done some work for the Yaseks so he suggested he recused himself. Chairman Morton said he regretted that John Frink did not show up for the meeting, because they were now down to four voting members. He said they could take a vote or table the vote. Mr. Morgan said State law said a variance could be granted with only three votes. Chairman Morton asked Mr. Dell Isola if he wanted to go forward and Mr. Dell Isola said he was okay with the Board making a decision unless it would be helpful to have a non-objecting abutter present. Mr. Weiner said in the absence of an abutter's presence or letter expressing objections or support, he concluded they were neutral.

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Chairman Morton said it was a shame it was built, but didn't think hardship to move what shouldn't have been built in the first place.

*Ralph Estes moved to grant the request as proposed. Mr. Connors seconded. The motion **failed** to pass, 2-1.*

Chairman Morton said it would be one thing if he had asked for a minor variance from the 15' setback, but he was asking proposing to put the shed only 3' off the lot line. Mr. Dell Isola asked what constituted a hardship and Chairman Morton said there were five criteria. Mr. Richardson said hardships were often owing to special circumstances that differentiated the property from others and he had started to address that when he discussed the configuration of the sloping terrain.

Mr. Dell Isola asked how far a building had to be from a leach field. Mr. Morgan said there were no Town regulations, but NH DES had setbacks. Mr. Richardson said the 10' building setback was based on concern with leaching into basements, but this shed didn't have a foundation so it actually could be placed on top of a leach field, but most people didn't want to so they could have easy access to their leach fields for maintenance. Mr. Dell Isola said he wasn't certain where his leach field was, but he was told he had to have the plan on file. Mr. Richardson said he thought plans would be filed with the building inspector. Mr. Morgan said the former building inspectors were not as organized as the current building inspector so the plans might not be on file.

Adjournment: *Ted Connors motioned to adjourn, and Ralph Estes seconded. All were in favor, and the meeting adjourned at 7:08 p.m.*

Respectfully

Submitted by: Jane K. Kendall, recording Secretary