

MINUTES  
ZONING BOARD OF ADJUSTMENT  
TOWN OF PETERBOROUGH  
Monday, March 4, 2013 – 7:00 pm  
1 Grove Street, Peterborough, New Hampshire

**Board Present:** Jim Stewart, Sharon Monahan, Bob Lambert, Loretta Laurenitis, Matt Waitkins, and David Sobe

**Staff Present:** Laura Norton, Office of Community Development and Dario Carrara, Code Enforcement Officer.

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At 7:00 p.m. Chair Stewart began with “good evening everyone, I would like to call the meeting to order. This is the regularly scheduled March meeting of the ZBA, I am Jim Stewart and I am the Chairman.” Chair Stewart then introduced the members and staff.

Chair Stewart then noted “we have two cases tonight but first I would like to review the general rules of procedure. He reviewed the process of reading the application followed by a presentation by the applicant; questions from the Board; questions/concerns from the audience (in favor then opposed) and closure of the hearing followed by deliberation and decision. He noted if a decision was not reached this evening the case would be continued to a date and time certain. He concluded by asking “and anyone wishing to speak from the audience to please state their name and affiliation (abutter, agent, concerned citizen) for the record.

Chair Stewart noted the first case on the Agenda was No. 1188 Divine Mercy Parish. He read the request for a Special Exception “to locate a church as regulated by Article 11, Section 245-7 (B) (5) of the Zoning Ordinance and a Special Exception to realign the entrance road and install associated utilities within the Shoreland Conservation Zone on property located at 161 Wilton Road, Parcel No. U019-001-000 in the General Residence District.” He looked up and said “as you can see they have requested this case be tabled to the April meeting “so I would entertain a motion to do so.” A motion was made/seconded (Laurenitis/Stewart) with all in favor.

Chair Stewart read the second case on the agenda “**Case No. 1189 Mona A. Brooks & Michael Teitsch**. A request for a Variance to the front and side setbacks for a shed, as regulated by Article II, Section 245-6 (B) (2) of the Zoning Ordinance on property located at 77 Cheney Avenue in the Family District.”

In response to their request Chair Stewart recused Ms. Monahan and Mr. Waitkins from the case and appointed Mr. Lambert to sit. He noted “we now have 4 of the 5 members here.” Chair Stewart explained to the applicants that they had a right to request a full (5-member Board). He also noted that if they chose to be heard tonight and the case went to deliberation and decision, “the decision is final. If you are denied, the fact that you had a 4 member Board is not grounds for appeal.” Mr. Teitsch asked “what about a tie?” Chair Stewart replied “it would have to be continued.” Mr. Lambert asked if he should step down (leaving a 3-member Board but

eliminating the chance of a tie). Chair Stewart noted he would like to have as many members as possible on the case.

Mr. Teitsch noted "I think we would like to have a 5-member Board, I don't want to delay it but. ...." He then asked if he and his wife might have a moment to discuss it privately. "Of course" replied Chair Stewart.

Ms. Brooks and Mr. Teitsch left the room for a few moments. When they came back in Mr. Teitsch asked about a continuance. A brief discussion about scheduling and potential obstacles with member attendance followed. "That is the danger of trying to reschedule to next week or the week after" said Chair Stewart. Mr. Teitsch replied "let's just do it."

Mr. Teitsch introduced himself and his wife Mona Brooks. "We live at 77 Cheney Avenue, thank you for considering our case." Mr. Teitsch gave a brief overview of his request for relaxation of the front and side setbacks so that he could continue the completion of a woodshed on his property. He reviewed the dimensions of the shed and that it was currently 5 feet from the Fernald property line, 12 feet from the stone wall running along Cheney Avenue and 27 feet from the edge of the road. He noted his lot was a non-conforming lot with a sloping terrain in the back so there was no other place to locate it. He noted "before the shed we had a wood pile covered with a tarp in that same location." Mr. Teitsch told the Board "75% of our heat is from the wood stove. We would like to protect the wood and make it accessible."

The members reviewed several slides of the woodshed from several different angles. One of the aerial photographs depicted a small structure in the back (west side) of the Mr. Teitsch's home. "What is that?" asked Chair Stewart. A brief discussion about the pre-existing storage shed that was exempt from the side setback as it pre-dated zoning followed. Code Enforcement Officer Dario Carrara read §245-5 (D) "Setback Exemptions. Single story residential storage sheds, playhouses, and similar structures up to 120 square feet that are exempt from building permit requirements must still comply with front setbacks, but one such structure may be located as close as five feet from the side or rear property lines" adding "this is the *one* structure." He noted since the lot had one exempted shed the woodshed must meet the front and the side setbacks of 30 and 25 feet respectively. "He needs two Variances, one for the front setback and one for the side setback."

A member asked what was in the shed in the back with Mr. Teitsch replying "art supplies." Another member asked "can you put wood in there?" Mr. Teitsch replied "no." Mr. Carrara reiterated the exemption and the need for two Variances. He told the Board "I would like to remind you that you have full judicial power, you can approve it, deny it or give partial relief."

Mr. Lambert asked about a previous decision by the ZBA regarding this woodshed, and whether or not that Decision would have to be enforced before additional decisions were made. Chair Stewart and Mr. Carrara agreed the other Decision was with relief from enforcement until this request was resolved.

The members then viewed several more slides of how the finished woodshed would look (covered roof and shingled sides) should it be allowed. "Right now it is covered with a tarp, it

looks kind of ugly” said Mr. Teitsch. He went on to note “if completed, it would look a lot different and it would be sheltered and screened by the trees and bushes in the summer time.” Mr. Teitsch then showed the Members several photos of other structures (sheds and outbuildings) taken in different neighborhoods in town. Ms. Brooks noted “the reason we took the photos of various sheds and outbuildings is very paramount to the discussion on what constituted a building or shed and what was around town. That is why we did it.” The photographs were taken randomly in several different neighborhoods around town. Ms. Brooks also noted the graphic of the artist’s rendering of the finished shed shows it will match the aesthetics of the neighborhood and protect their wood investment in such a way they can store it and use it in a way that makes sense. “This is why we are asking for the Variance, I think it is a reasonable request” she said. She concluded by noting “I would like only to add one thing” adding “this has been a very fruitful thing because of the aesthetics. We will make it look so innocuous that you would have to fall over it to notice it. We really need it, it is a necessity not something we would *like* to have. We are getting older, I just hope that we can keep it and finish it well and we will I promise.”

Chair Stewart asked the applicants if they had a one or two car garage. Mr. Teitsch replied “No garage.” It was noted the applicant had converted the garage to an art studio and they parked their vehicles outside without cover.

Ms. Brooks continued by showing several photographs of the shed from several angles. She noted “as you can see, it is not attached to the ground, it is on sand.” Chair Stewart noted “you said your primary source of heat was the wood” and asked “do you have another source?” Mr. Teitsch replied “yes, we have a forced hot air furnace and a natural gas heater in one room. “Does that have a tank?” asked Chair Stewart. Mr. Teitsch noted that it did and pointed out the general location of the tank (in the front, west side of the house, screened by a large bush) to the members.

Ms. Brooks noted that the aerial photograph and said “it strikes me to look at this photograph of what a small place we have in relationship to our neighbors” adding “but it shows our possibilities are limited by the slope in the back and the stone wall in the front.” She also pointed out where the wood man dropped their wood. “That is as far as he can go” she said. Ms. Brooks also noted “I am not an architect but there is quite a slope in the back” adding “we and I want to stress the point that we use wood for 75% of our heat. Placing the wood in the back would be a hardship; I want to stress *that* word.”

The members briefly reviewed the dimensions of the applicant’s lot with Ms. Laurenitis noting “they are not the only ones, in fact the lot across the street is even smaller.” She then asked to have the photo of the shed showing the tree projected. “How about putting it on the other side of the tree?” Mr. Teitsch replied “you can’t see it very well but there is quite a slope there.” He also noted “if we could put it there it would be more visible to the Fernalds than it is now.” He went on to describe the location of the woodshed and the current view versus the potential view the Fernalds *would* have. Chair Stewart asked if the shed were moved to the other side of the tree “would it meet the front setback?” Mr. Carrara replied “I am not sure, I would have to measure it but it would be a lot closer to meeting it and would be much more conforming than it is now.”

Chair Stewart “then maybe we should talk about a site visit. I hate them but it may be warranted.”

Mr. Teitsch once again noted the major proportion of heat for their home came from the wood stove. “For years we have kept it underneath a tarp, now we have a wood shed that is not a woodshed with a tarp. We would like to complete it and have it look nice” adding “there are other structures in town that don’t look any worse than this would. It would certainly look nicer than a pile of wood with a tarp. I don’t know what else to say.”

Chair Stewart asked if the applicant was with their presentation noting “I would like to open this up to questions from the Board.

Mr. Lambert asked if the woodshed was moved to the back “would the Fernalds see it?” Mr. Teitsch interjected “first of all I am not going to drag 4 or 5 cords of wood to the back of my house.” Ms. Brooks pointed out where the woodman drops their wood and noted “this is where it gets dropped, there is no way our woodman can drop it anywhere else but the driveway.” She also noted “yes, they would most definitely see it.”

Ms. Laurenitis asked “what about the other side of the house?” Ms. Brooks described a water problem on that side of the house. She noted that she felt the water table had been interrupted by construction of a home built on the other side of the street. She noted the water flows right under the street and across her yard. She also noted that “the footprint is such that we don’t have the room on that side either.” Ms. Brooks added “and by the way I might add the tree (pictured by the woodshed) is a hundred years old. It was planted by Mr. Baldwin, it is pre-civil war and not indigenous to this area.”

Mr. Sobe asked “how much do you burn again?” with Mr. Teitsch replying “4 to 5 cord, was about 4 cord in there and we have used about 2/3 of it.” Chair Stewart asked “is there wood in the shed all year long?” Mr. Teitsch noted they may have wood left over due to a mild winter.

With no other questions from the Board Chair Stewart opened the hearing to the public. Jan Dolan introduced herself as a resident of Union Street and a friend of the applicant. She told the members “I have spent a lot of time over there and everything they say is true.” She gave a brief history of the property (once the Kendall School for girls and an art colony) adding “it is a small footprint.” Ms. Dolan concluded by noting “it is a very nice little place and they will act like they do with everything, it will be well done.”

Michael Cheery introduced himself as a resident of Cheney Avenue. He noted he walked by the woodshed all the time. He voiced his support for the applicant noting “if they could finish it properly “it would look better than a pile of wood with a tarp over it I think it” adding “I think it would be fine. I have no problem with it.”

Matt Waitkins introduced himself as a resident of Union Street. He pointed out another woodshed at 45 Cheney Avenue “within a few houses of the applicant’s on the same side” he said.

Jim Vanvalkenburg introduced himself as a resident of Cheney Avenue. He pointed out the woodshed at 45 Cheney was “well within the setback.” He also noted that he felt the woodshed in question “seemed inappropriate at the crest of the hill, I would like to see it on the other side of the tree. That might be a compromise.”

Richard Fernald introduced himself as a direct abutter to the applicant’s home. He noted “we have been neighbors since they bought the house in 1997” he added “there was a garage on the property but they converted it into a studio.” Mr. Fernald pointed out while the sides of the applicant’s lot were restricted “they go way back in the back, they have a whole lot of land” he said. Adding “they can put their wood back there, it can be done, it is done by everyone else who lives on the street.”

Mr. Fernald told the members he had thought about having a realtor and appraiser weigh in about the potential impact to the neighborhood. “There is not a single woodshed in the neighborhood, not on Cheney, Lookout Hill, Orchard Hill or Kaufman Drive” he said. He added “79 houses in that area and not one woodshed in violation of the setback that is required in the Family District.” Mr. Fernald pointed out the neighbors across the street also have a sloping problem “but theirs is uphill and they haul their wood up their driveways.” Mr. Fernald also noted he used to heat with wood “and I hauled it” he said.

Mr. Fernald then reviewed the dimensions of the woodshed and the amount of space in the back of the applicant’s home. He reiterated “they should not be granted a Variance because it is an inconvenience to store the wood somewhere else. I think this Board ought to come up and take a look.” A brief discussion and review of the setbacks and the constraints of the lot followed. Chair Stewart noted “I think the Board should do a sight visit and just get this out of the way. As much as I hate to do it, we need to go see it. I am resolved to the fact that we need a site visit.”

A brief discussion about the potential to move the woodshed to the other side of the tree followed with Mr. Fernald reiterating the front setback dimensions. It was also noted that if this were a possible solution it would increase the frontage setback by about 15 feet but would not satisfy the side setback regulation. The members revisited the photographs of the woodshed and noted it was currently 12 feet from the front and 5 feet from the side property lines.

Ms. Brooks put up her hand and asked “may I say something?” Chair Stewart replied “as long as it is constructive.” Ms. Brooks continued “we have been here a long time about this and I am sure everyone is wearing thin as I am.” She began to point out how the Fernald’s view would be more obstructed if the woodshed were moved. Chair Stewart suggested she point out her concerns at the site visit. Ms. Brooks replied “please come! I really wish you would.”

Mr. Fernald gave a brief review of the legal requirements and criteria necessary to grant a Variance. “It used to be to get a Variance you had to prove there was no other reasonable use for the property unless you were granted the relief.” He went on to review the difference between an area variance and a use variance “this is an area variance” he said. He went on to note a change in 2010 but added “you still cannot get one unless an unnecessary hardship.” Mr. Fernald concluded by noting “the only inconvenience or trouble here is that they would have to stack the wood in the back” adding “his claim of hardship is a claim of inconvenience.”

The members reviewed some of the graphics again with several thoughts and suggestions about potential or alternative locations for the woodshed. Chair Stewart noted the best thing to do was to wait for the sight visit and actually see the lot. "We have an obligation to the applicant to do that" he said. A time and date certain of Monday, March 11, 2013 at 4:30 p.m. was agreed on. Chair Stewart noted "after the site visit we will reconvene here to deliberate and make a decision."

Mr. Fernald noted he would have an opinion from an expert on what the woodshed may be doing to the character of the neighborhood and the property values of the homes.

### **Minutes**

A motion was made/seconded (Lambert/Laurenitis) to approve the Minutes of January 7, 2013 as written with typos corrected with all in favor.

A motion was made/seconded (Stewart/Laurenitis) to approve the Minutes of February 4, 2013 as written with typos corrected with all in favor.

### **Other Business**

Chair Stewart noted Mr. LaRoche (candidate for an alternate position on the Board) was on vacation. "He will try to get in to see us next month" noted Chair Stewart. Mr. Lambert asked about the procedure of appointing alternates. He noted he was not required to come in to meet the members. Chair Stewart noted Mr. Lambert's application was "descriptive enough to be able to vote, Peter's was not." Ms. Laurenitis interjected "and some of us do not know him." Ms. Manahan noted she had been interviewed when she applied for an alternate's position "I think it is a reasonable practice" she said.

Chair Stewart announced that Alternate Maude Salinger had resigned her seat as she was moving out of town. The members went on to discuss the status of their alternates. They also reviewed whose term was up and when. They determined Ms. Monahan's term was the only one up for reelection this year with Ms. Laurenitis and Mr. Sobe in 2014 and Chair Stewart and Mr. Leishman in 2015. After a very brief clarification about the term limits Ms. Monahan confirmed she would run for re-election.

### **Continued Discussion of Potential Amendments to Rules of Procedure**

Chair Stewart began with "we basically are revisiting three things. The first is the appointment of alternates which we have currently been doing at the beginning of the public hearing." The Members briefly discussed the scenarios of appointing an alternate to sit only to have a regular member show up a bit late or the instance of a continuation of a case and whether or not that alternate could be present. One Member noted a counter argument to appointing just prior to deliberation is that "an applicant should have the right to know who will be voting on their case." Ms. Monahan offered her thought of appointing an alternate each month "the trouble is, we don't have enough alternates." It was also noted that that approach may lead to the (incorrect) notion that the other alternates did not have to attend. "It is very important that every alternate attend every meeting" said Chair Stewart" adding "sometimes we can't even get all the regular members to come."

Mr. Carrara suggested they consult the RSA about it with Chair Stewart replying “there is nothing on it.” A brief discussion followed with Chair Stewart noting “we need to correct it; we are vulnerable in the way things are set up.” While all the members agreed the alternates should attend every meeting to learn and familiarize themselves with the process, Ms. Laurenitis noted “our newest alternate (Bob Lambert) has been to every meeting.” Another member noted “yes, it seems like it is our *old alternates* that have not been attending.” A very brief discussion about the perception of bias followed with the members discussing the potential of an alternate who may only show up if the case is an interesting one.

Chair Stewart looked to Mr. Waitkins and noted “your attendance has not been great.” Mr. Waitkins replied “I agree” adding I was voted out and was taking a break, but I should have informed you.” He added “you are being accurate when you say I was not good about notifying you, I see that” and with a smile on his face added “but I did not show up for the interesting ones either. I showed up for none, *then* I came back.”

Chair Stewart reiterated “well, if you are an alternate you better be at every meeting or have a good excuse for not being there.” Chair Stewart then suggested “alright, let’s just take out the last sentence.” The members also discussed the challenges of appointing an alternate when a case is continued “what if that person is not available for the next meeting?” asked Ms. Monahan. Chair Stewart noted the challenge of appointing an alternate that rarely shows up for an ongoing case, “as was the case with Scott-Farrar” he said. Ms. Laurenitis noted she advocated for the appointment of a particular alternate in that case “because of her experience, it was a pretentious case.”

Chair Stewart note the next issue was a request from Ms. Laurenitis. “She is looking for language regarding a ZBA member’s request to their own Board to reconsider a decision made by that Board.” Chair Stewart noted the town attorney’s advice was to do nothing “there is no need to put that in the Rules of Procedure” he said. He went on to note such a request is a discretionary thing and “one of the powers of the Chairman to hold such a meeting.” A brief but lively discussion about that statement followed.

The members briefly discussed the appeal process, changes of circumstances, submission of new evidence, Supreme Court intervention and a case in recent history where the Board did in fact reverse a decision they had made. Ms. Laurenitis concluded she was not comfortable that there may not even be any discussion when a member thought there was a real error made unless the Chairman agreed. Mr. Waitkins agreed. He looked to the Chairman and asked “if someone had a good reason would you listen to them?” Chair Stewart replied “yes.”

Ms. Monahan agreed noting “I agree with Loretta and Matt, I should be able to express my concerns as an individual if I felt something was omitted or something was totally missed. It should not be up to the Chair, it should be up to the Board with everyone participating in the discussion.” Chair Stewart suggested anyone who had questions should contact the town attorney for clarity. “Talk to John (Ratigan)” he said adding “maybe he can explain it to you better. There is a whole procedure that has to happen.”

Chair Stewart noted the last item to talk about was the process involved when the Office of Community Development (OCD) writes our decision. He looked up and said “I really want to go home so let’s table this one.” It was noted “there are a bunch of different ways Boards do it” and it was suggested the members review the different processes. “There is no right or wrong” said Chair Stewart.

The hearing adjourned at 9:30 p.m.

Respectfully submitted,

Laura Norton  
Administrative Assistant

**Approved 4-1-13**