

<b>ZONING BOARD OF ADJUSTMENT</b>	<b>May 25, 2023 7:00 PM</b>
<b>TOWN OF HAMPTON FALLS</b>	<b>TOWN HALL</b>

**FINAL**

*Please note that meetings of the ZBA have been video recorded.* Meeting Minutes are maintained on file at the Town Clerk's office, Town Hall, 1 Drinkwater Road, Hampton Falls, NH. Meeting Notices are posted on bulletin boards at the Town Hall, Library, Hampton Falls Post Office, and the Town website at: [www.hamptonfalls.org](http://www.hamptonfalls.org) for minutes, meeting agendas, videos, and more information.

**A. CALL TO ORDER:**

J. DeLeire, Chairman, called the meeting to order at 7:00 PM.

**B. ROLL CALL:**

**4 MEMBERS and 3 ALTERNATES PRESENT:** John DeLeire, Chairman; Steve Bryant, Vice-Chairman; Mark Call, Member; James Manna, Member; Jamie Hasenfus, Alternate; Weezie Vance, Alternate; Alex Dittami, Alternate

**2 ABSENT:** Patti Young, Alternate; Jude Augusta, Alternate

**STAFF:** Mark Sikorski, Building Inspector; Rachel D. Webb, Assistant Administrator.

**GUESTS:** Dana Jaremko, representative for the owner of 9 Cider Hill Road

Chairman DeLeire stated that he was going to change the-sequence of the Agenda to move the "Reorganization of the Board" to the end of the meeting, in order to be able to hear the applicants first, and to not have them wait.

Chairman DeLeire stated that Alternate Member Jamie Hasenfus will be a voting member tonight so that the ZBA could have five (5) voting members. He continued that Alternate members Weezie Vance and Alex Dittami can participate in the discussions and ask questions all the way up to the voting.

**C. PUBLIC HEARING:**

**1) Case # 23-04:** Application from **Christopher Rondeau and Dana Jaremko**, for an Equitable Waiver of Dimensional Requirements to the terms of Zoning Ordinance Article III, Section 8.4.1 and asks that said terms be waived to permit a newly constructed shed to remain in current location at 9 Cider Hill Road, in Zone AR: Agricultural Residential, at property located at **9 Cider Hill Road, Map 4, Lot 58-5.**

Ms. Dana Jaremko introduced herself as a representative for the owner Christopher Rondeau of 9 Cider Hill Road, and distributed written letters from the neighbors in support of the application, 5 and 10 Cider Hill Rd. D. Jaremko stated that the owner wanted to put a shed on his property, so they found a vendor online and submitted the Building Permit in February 2023. The shed construction began and the owner decided he wanted power to the shed, so the trench for the electrical was dug. When the Building Inspector went to the site to inspect the trench he identified that the location of the shed was problematic as there might be wetlands behind the shed. The inspection procedure was stopped, even though the shed was already built, and the Building Inspector instructed the owner to obtain an Equitable Waiver from the ZBA.

Chairman DeLeire asked the applicant to present their application package, and he explained that all of the conditions must be decided favorably for the Equitable Waiver to be granted by the ZBA. D. Jaremko presented their application for 9 Cider Hill Road.

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**674:33-a Equitable Waiver of Dimensional Requirement. –**

- I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

**Please explain (a through d):**

- (a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

D. Jaremko responded that the shed was already built, as the owner had hired a contractor to put the shed in the best location on the property, with a concrete foundation under it. She described how there is a treeline, and an area of bushes that together formed a nook in which to locate the shed so that it would not be in the middle of the back yard. The property was staked for the shed and it appeared to fit perfectly, got the approval for the permit and waited for the vendor to deliver the shed. When the shed was built, they determined that they needed an electrical permit, and that's when the Building Inspector found the shed seemed to be close to possible wetlands.

Chairman DeLeire asked who staked out the area in which to locate the shed, was it the vendor or was it a contractor, and the response was their landscaper did the staking work. He continued asking if the landscaper had any information available from which to measure the stakes, and D. Jaremko responded no. He followed up asking if the application material submitted was available at the time of staking the area for the shed placement, and she said no. D. Jaremko stated that she obtained the maps on April 13<sup>th</sup>.

A. Dittami asked if D. Jaremko had a copy of the Building permit applied for by the contractor, and she responded no. He followed up by asking M. Sikorski if the Building permit application showed property setback lines, and he responded saying that the wetlands boundaries were not shown on the Building permit application, and he based the finding on visual information. M. Sikorski added some context that when he first went to the property the wet area was obscured by shrubs and wooded area. While placing the shed, some of the shrubbery was cleaned up, so when he went back for the electrical inspection of the trench, the wet areas were apparent. A. Dittami asked if the shed was placed where the original building permit showed, and M. Sikorski responded that the sketch submitted showed the shed in the backyard, but the details of the dimensions were not wholly perfect but did not appear to be a problem due to the size of the property. When he paced off the dimensions the shed was too close to the stream. M. Sikorski continued that the backyard of the property has an extreme slope away from the house, and that the reason for the location of the shed was because that was where the property started to flatten out, instead of having to excavate into the slope to place the shed as a bunker. Once the foliage was removed the error of distance became apparent.

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S. Bryant asked if there was any delineation by a wetlands' scientist identifying the wet area prior to shed placement, and D. Jaremko responded no. S. Bryant asked how far from the wetlands was the shed placed, and M. Sikorski responded approximately seventy-two feet (72 ft) where it is supposed to be one-hundred feet (100 ft).

M. Call asked M. Sikorski if he did an initial site visit prior to the shed being placed, and he responded no, that the permit was issued based on the diagram provided.

*(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;*

D.Jaremko responded that the applicant did everything as they were supposed to (filed Building Permit and applied for Electrical permit), only when the shrubs were removed was the close proximity to the wetlands apparent. S. Bryant suggested that for the future the applicant should know where lines are for both the property line, in addition to the wetland buffer line.

M. Call asked if there was a survey done as a result of this process, and D. Jaremko said yes there was, and now the owner understands where the property lines and 100-foot wetlands' buffer area are located.

*(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property;*

D.Jaremko said that the letters of support from the neighbors, which she distributed earlier in the meeting to the ZBA members, pointed out that the neighbors are in support of the shed, what it looks like and its location so that the shed is not going to adversely affect anyone. She continued that the vendor builds a very nice shed, and if anything, it increases the value of the property.

A.Dittami asked what the shed is going to be used for, and the applicant responded that she is still trying to figure out what the owner wants to do with the shed, and stated hypothetically it may become an alternate place for family members to utilize, but there will be no water provided.

*(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.*

D. Jaremko said that the location of the shed made sense because it was the first flat spot in the yard. She continued that if the shed had been located closer to the house a retaining wall would have needed to be built into the slope, doing a lot more work than planned. M. Sikorski stated

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earlier in the meeting that to have located the shed anywhere else on the property, due to the slope, would have necessitated excavation into the hillside.

W. Vance asked what the time was between when the Building Permit was granted until the time of the electrical inspection, and the applicant responded that the permit was granted February 7, the shed was delivered March 9, and April 3 was the digging of the trench for the electrical line so a total of two (2) months' time overall.

A.Dittami asked M. Sikorski if the ZBA grants the relief requested by the applicant, that does not relieve other zoning ordinance restrictions in terms of the use of the shed. M. Sikorski referred A.Dittami to his Case Review memo of May 16 where it is stated that *"There will be no hazardous materials stored in the structure."*

W. Vance asked if the electrical utility is being continued to the shed, and M. Sikorski said it was already completed. A. Dittami stated that in theory there should be no excavation allowed, but he discussed the ZBA's authority to grant a Special Exception to cover the same relief being requested in the Equitable Waiver but the approval for a Special Exception would "run with the land" and transfer to future owners whereas the Equitable Waiver approval sunsets with the current owner. S. Bryant stated that it was his opinion that installing electrical to the shed is fairly non-invasive, and A. Dittami countered with the statement, but yet it is prohibited. S. Bryant said that he understands but the ZBA should address that, to try to accommodate that fact.

M. Call asked what the dimensions are for the relief being requested, and M. Sikorski stated that the wetland buffer is 100-feet, and the shed is located approximately 28-feet too close to the wetland.

Chairman DeLeire asked M. Sikorski if the equitable waiver is granted, is there any prohibition against completing the electrical installation, and the response was no. A.Dittami said that it would be the prohibition of the excavation. M. Sikorski stated that currently the trenching has been completed, as he asked the applicant to restore the trench. S. Bryant stated that then the conduit needs to be pulled, and M. Sikorski said that he would not see any reason to do that. A.Dittami said that the test is the cost, as filling the trench and pulling the conduit is not expensive; however, removing the foundation is expensive. He continued that the ZBA granting a Special Exception is within their authority and would cover the excavation and electrical line issues. M. Call asked how does the ZBA get from an Equitable Waiver request to a Special Exception approval, does the ZBA need to disapprove the Equitable Waiver first, and then pursue the Special Exception? A.Dittami said that the ZBA has the ability to examine each case and decide if there is a "better" remedy, and the applicant has the option of refusing it (A.Dittami cited the Zoning Ordinance, Art III, Section 8.7 for reference). Chairman DeLeire said that he always hesitates to grant more relief, over and above what the applicant is requesting, and that it is his approach to keep it simple. A. Dittami stated that the ZBA has the authority, both statutorily in the State RSAs and locally in the Hampton Falls Zoning Ordinance, to grant a Special Exception.

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Chairman DeLeire stated that the letters of support were received from the neighbors, and the public was notified of the hearing for a request for an Equitable Waiver, and now A. Dittami is proposing to expand what the applicant has asked for, without notifying the public or the neighbors as to those changes and he stated that it just did not feel like the right thing to do. He continued that it was his opinion to stay within the bounds of what is being requested and either request or deny the Equitable Waiver request. He said that the ZBA may have powers to go beyond what is being requested if warranted, but it was not his opinion that it is warranted to debate the additional granting of rights when not requested.

S. Bryant asked M. Sikorski if granting the request of the applicant adequately meets the needs of the applicant or is the alternative approach of the Special Exception better for the applicant in the future. M. Sikorski responded that the Zoning Ordinance Art III, Section 8.7.2 says: *"The use for which the (Special Exception) exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Wetland Conservation District."* M. Sikorski's conclusion was that the Equitable Waiver application addresses the applicant's situation better than a Special Exception. He continued that the ZBA could add conditions of approval to disallow any expansion of the residential use, and no storage of hazardous materials.

PUBLIC COMMENT: There was no public comment.

Chairman DeLeire stated that he was in favor of the application for an Equitable Waiver saying that it is a nice-looking shed, he is familiar with the slope of the backyard of the property, and that this was an instance of a mistake and that he did not see the need to rip up a concrete foundation and move the shed approximately thirty feet (30 ft) to remedy the mistake. In his opinion the Equitable Waiver request makes sense, and it fits the criteria. He added that he would like to see the shed remain in its current location.

S. Bryant had no concerns with the application.

W. Vance agreed, although she was not a voting member for the application, as she is an Alternate.

**MOTION: To approve Case # 23-04: Application from Christopher Rondeau and Dana Jaremko, for an Equitable Waiver of Dimensional Requirements to the terms of Zoning Ordinance Article III, Section 8.4.1 and asks that said terms be waived to permit a newly constructed shed to remain in current location at 9 Cider Hill Road, in Zone AR: Agricultural Residential, at property located at 9 Cider Hill Road, Map 4, Lot 58-5, with the following conditions:**

- 1) That there is no expansion of use of the shed;
- 2) That there is no storage of hazardous chemicals in the shed;

**AMENDED MOTION by J. DELIERE to add the additional conditions:**

- 3) To incorporate, by reference, the representations made by the applicant both in writing, in their application materials, and also verbally tonight during their presentation;

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- 4) To incorporate, by reference, the Building Inspector's Case Review memo of May 16, 2023, specifically regarding the statement that there shall be no hazardous chemicals stored in the structure of the shed.

**MOTION: S. BRYANT**

**SECOND: M. CALL**

**UNANIMOUS**

**D. COMMUNICATIONS TO BOARD MEMBERS:**

1) 2023 Zoning Board of Adjustment members' Listing, Chairman DeLeire asked the ZBA members to please confirm their contact information and all members stated that their information was correct.

**E. REVIEW AND APPROVAL OF PREVIOUS MEETING MINUTES: 02/23/2023**

**MOTION: To approve the meeting minutes from 02/23/2023 as written.**

**MOTION: S. BRYANT**

**SECOND: J. DELEIRE**

**VOTE: 6 YES, 1 ABSTAINED**

**MOTION: PASSED**

**F. REORGANIZATION OF THE BOARD:**

- 1) Nomination and Election of Chairman:

**MOTION: To nominate and elect J. DeLeire Chairman of the ZBA.**

**MOTION: S. BRYANT**

**SECOND: W. VANCE**

**UNANIMOUS**

- 2) Nomination and Election of Vice-Chairman:

**MOTION: To nominate and elect S. Bryant Vice-Chair of the ZBA.**

**MOTION: J. DELEIRE**

**SECOND: M. CALL**

**UNANIMOUS**

**G. OTHER BUSINESS: There was no other business.**

**H. ADJOURN**

**MOTION: To adjourn the Zoning Board of Adjustment at 7:40 PM.**

**MOTION: J. DELEIRE**

**SECOND: S. BRYANT**

**UNANIMOUS**

The next meeting of the Hampton Falls Zoning Board of Adjustment is scheduled for Thursday, June 22, 2023, at 7:00 PM at Hampton Falls Town Hall.

Zoning Board of Adjustment Minutes prepared by Rachel D. Webb, Assistant Administrator.