



*OLD VALUES - NEW HORIZONS*  
**COMMUNITY DEVELOPMENT**

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**Zoning Board of Adjustment**  
**Draft Minutes**  
**August 9, 2011**

**Board Members**

Tom Murray – Chairman  
Heath Partington – Vice-Chairman  
Elizabeth Dunn – Secretary (excused)  
Mark Samsel – Member (excused)  
Dianna Fallon – Member  
Jim Tierney – Alternate  
Mike Scholz –Alternate

**Staff**

Tim Corwin – ZBA/Code Enforcement Administrator

Jim Tierney was seated for Elizabeth Dunn and Mike Scholz was seated for Mark Samsel.

**Public Hearing**

**Lot 22-L-4, Case #28-2011**

Applicant/Owner – Dexter Cluff  
Location – 93 West Shore Road  
Zone – Residence District A

A variance is requested from Section 702/Appendix A-1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the placement of a plastic storage shed to be located 15 ft. from the rear lot line where a minimum 30 ft. setback is required and 53 inches from the side lot line shared with 95 West Shore Road where a minimum 30 ft. setback is required, and another plastic storage shed to be located on the side lot line shared with 91 West Shore Road where a minimum 30 ft. setback is required.

The case was read into the record by Mr. Tierney.

Mr. Tierney expressed concern that the rear of the property was incorrectly identified in the hearing notice as the side of the property fronting on Canobie Lake. Mr. Corwin stated that it was his interpretation of the Zoning Ordinance that the side of the property fronting the lake is considered the rear.

Mr. Dexter Cluff, applicant and property owner, presented his case. Mr. Cluff described the location of the shed proposed for the rear of the house and stated that the other shed would be located on the other side of the house on the lot line with 91 West Shore and towards the front. They are snap together, no maintenance type bins, and are 6.5 feet by 6 feet in size.

Ms. Fallon asked whether the applicant is adding another shed or whether he needs approval for the one that's already there. Mr. Cluff stated that both sheds are already installed and Mr. Corwin explained that the sheds are existing. Mr. Scholz asked how tall the sheds are. Mr. Cluff stated that they are 7 feet tall.

Mr. Cluff submitted (7) photographs, including one depicting the sheds he proposes, and the others of sheds in the area that are located on lot lines and/or in the front yards. Mr. Murray marked the photographs together as Exhibit A.

The Board examined the 7 pictures. Ms. Fallon asked whether the rear shed is sitting on a foundation. Mr. Cluff replied that both sheds are on a piece of pressure treated plywood sitting on 2 x 4s; the shed is screwed to the plywood. Mr. Tierney noted that the sheds have to be anchored to account for uplift.

Mr. Cluff read the 5 points into the record. In support of his application, Mr. Cluff noted that he has no garage or basement. The house was converted from a summer home and has no place to store lawn equipment such as a lawn mower or winter equipment such as a snow blower.

Mr. Richard Lamon of 91 and 64 West Shore Road spoke in favor of the application stating that he's spoken with Mr. Cluff and understands his need for this request and that he's in favor of it.

Mr. Mohammad Khusro of 95 West Shore Road stated that he spoke with Mr. Cluff at length about this issue and expressed two concerns to Mr. Cluff: the first was that he installed the sheds without getting a variance first. The second is that he and Mr. Cluff agreed to move the shed away from the lot line and next to the staircase on the rear of the property. Mr. Murray stated that the request before them is for 53 inches away from the lot line. Mr. Khusro said that Mr. Cluff agreed yesterday that he would move it there. Mr. Tierney pointed out that Mr. Cluff would then need a variance to locate the shed off of the other lot line. Mr. Murray stated that what is before them is what was set forth in the application and hearing notice, and asked whether Mr. Khusro was opposed to the request to place the shed 53 inches from lot line. Mr. Khusro stated he neither opposed nor supported the request.

Mr. Tom Case asked if the applicant was aware that, if granted the variance from the rear yard setback requirements, he would have to apply to the state for a shoreland permit.

Mr. Tierney read a letter from Francis and Alberta Bagget of 89 West Shore Road in support of the application.

Mr. Tierney asked whether the applicant had submitted a plot plan. Mr. Corwin noted that a plot plan is not required as part of the application process. Mr. Tierney stated that a plot plan should have been included with the building permit application. Mr. Corwin responded that according to Mike McGuire, the Town Building Inspector, building permits are not required for structures under 200 sq. ft. Mr. Tierney stated that is incorrect; the Building Code that the Town adopted took that exception out of the State Code. The Town is still under the 2003 IRC as adopted by the Town and until they take that away the Town has to enforce both codes, whichever is more restrictive. Mr. Corwin stated that he would relay Mr. Tierney's concerns to the Building Inspector and Community Development Director.

Mr. Partington asked how this matter is before the ZBA if it was not based on appeal, stating that it is his belief that the Board can only hear appeals.

Mr. Murray informed Mr. Cluff that he will need to apply for and obtain a Shoreland Permit from the NH DES to install the sheds on his property.

Mr. Cluff stated that he spoke with Mr. McGuire even before the sheds were built and was told that he did not need building permits for the shed.

Mr. Murray asked Mr. Cluff to clarify his variance request in light of Mr. Khusro's statements. Mr. Cluff stated that the shed was constructed on the lot line. Mr. Khusro wanted it removed, but they compromised on 53 inches. Mr. Cluff stated that Mr. Khusro is constructing a 6 foot fence on the lot line and Mr. Cluff was asking questions about it. Mr. Cluff still wants the 53 inches because if he moved it to the other side, he'd be impeding on the other lot. Mr. Murray asked where his house sits off the water. Mr. Cluff stated that the corner of his house is within the 50 ft. primary buffer, so the entire shed is within the buffer.

Ms. Fallon asked how high the roofline is above the fence. The fence is 6 feet and the shed peaks at 7 feet, away from his neighbor. Mr. Tierney, Mr. Murray and Mr. Corwin discussed the hearing notice and whether it sufficiently described the required relief.

Mr. Tierney asked Mr. Cluff how the shed at the 91 West Shore Rd side lot line is pitched. Mr. Cluff stated that it's pitched onto his property and not the abutting property.

Mr. Tierney made a motion to go into Deliberative Session. Ms. Fallon seconded. The Board approved the motion 5-0.

### **Deliberative Session, Case 28-2011**

The Board entered the Deliberative Session based on testimony provided and the five points as read into the record.

Mr. Tierney stated that he does not like to see 0 to the lot line. He believes the sheds are reasonable, but is concerned about 0 to the lot line, and that if there was a motion to grant, that it be conditioned upon the submittal of a plot plan.

Mr. Partington was concerned about the zero lot line shed, and was concerned with the rear shed given the abutter's concerns.

Mr. Murray noted that the Board did not ask whether the shed in the front could be moved off the front line.

Mr. Murray asked Mr. Cluff, as a point of information, whether the shed could be relocated farther from the lot line. Mr. Cluff responded that if he moved it any closer there would be not enough room between the house and the ramp leading up to the shed.

Mr. Lamon noted that there is a retaining wall near the shed, and if you pull the shed forward it will create a trap between the shed and the retaining wall and for that reason would rather have the shed on the lot line.

Mr. Scholz stated that Mr. Lamon satisfied his concerns regarding the zero lot line.

Ms. Fallon stated that hardship is clearly met and that these are more like temporary structures that could be easily dismantled and that she did not have a problem with the application.

Mr. Tierney stated that the shed is not pitched to cause runoff, and will not cause any nuisance or damage.

Mr. Murray stated that per the shoreland permit, the shed might need to be located farther from the shoreline than 15 feet.

**Mr. Tierney motioned and Mr. Scholz seconded the motion to grant Case #28-2011 to place storage shed A 15 ft. from the rear lot line where a 30 ft. setback is required and 53 inches from the side lot line, and shed B 0 ft. to the lot line shared with 91 West Shore Road where a minimum 30 ft. setback is required, with the condition that a building permit and plot plan showing the location of the sheds be submitted to the Community Development Department. Motion passed 4-1. Mr. Partington voted against the motion because the request for two sheds does not meet the hardship criteria.**

#### **Review and Approval of 6/28/11, 7/12/11 and 7/26/11 Draft Meeting Minutes**

Mr. Partington motioned and Mr. Scholz seconded the motion to approve the June 28, 2011 minutes, as amended. **Motion passed 4-0**, with Ms. Fallon abstaining.

The Board continued consideration of the 7/12/11 and 7/26/11 meeting minutes until the next meeting on August 23, 2011.

#### **Review of Draft Amendment to Section 904 of the Zoning Ordinance**

The Board considered a draft amendment to Section 904 of the Zoning Ordinance which provides that administrative appeals to the Zoning Board of Adjustment shall be made within thirty (30) days from the date of the decision by the Planning Board or from the action taken by the Administrative Officer. Mr. Partington suggested that the words "to the Zoning Board of Adjustment" be deleted from the first sentence of the proposed amendment.

#### **Consideration of Amendments to ZBA By-Laws**

The Board considered draft language prepared by Mr. Tierney to amend the By-Laws to address administrative appeals. The Board agreed to hold a hearing on the proposed language in accordance with the procedure set forth in the By-Laws. The Board agreed to postpone further deliberations on other draft by-law amendments to the Board's September 13, 2011 meeting.

#### **Adjournment**

Mr. Tierney motioned and Mr. Scholz seconded the motion to adjourn. **Motion passed 5-0.**

The next meeting of the Zoning Board of Adjustment is scheduled for August 23, 2011 at 7:30 PM in the Community Development Department.

These minutes are in draft form and are submitted for approval by Tim Corwin.